

D R A F T
FOR DISCUSSION ONLY

Uniform Commercial Code and Emerging Technologies

Uniform Law Commission

June 15–16, 2021 Informal Sessions



Copyright © 2021
National Conference of Commissioners on Uniform State Laws

This draft, including the proposed statutory language and any comments or reporter's notes, has not been reviewed or approved by the Uniform Law Commission or the drafting committee. It does not necessarily reflect the views of the Uniform Law Commission, its commissioners, the drafting committee, or the committee's members or reporter.

June 4, 2021

Uniform Commercial Code and Emerging Technologies

The committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this act consists of the following individuals:

Edwin E. Smith	Massachusetts, <i>Chair</i>
Juliet M. Moringiello	Pennsylvania, <i>Vice Chair</i>
Carl S. Bjerre	Oregon
Thomas J. Buiteweg	Michigan
Henry Deeb Gabriel	North Carolina
Larry T. Garvin	Ohio
Thomas S. Hemmendinger	Rhode Island
William H. Henning	Alabama
Philip A. Nicholas	Wyoming
Harvey S. Perlman	Nebraska
Sandra S. Stern	New York
Frank Sullivan Jr.	Indiana
William W. Barrett	Indiana, <i>Division Chair</i>
Carl H. Lisman	Vermont, <i>President</i>

American Law Institute Members

Amelia H. Boss	Pennsylvania
Neil B. Cohen	New York
Marek Dubovec	Arizona
Walter Effross	District of Columbia
Teresa Wilton Harmon	Illinois
Tarik J. Haskins	Delaware
Stephanie A. Heller	New York
Charles W. Mooney	Pennsylvania
Norman M. Powell	Delaware
Sandra M. Rocks	New York
Steven O. Weise	California

Other Participants

Steven L. Harris	Illinois, <i>Reporter</i>
Stephen L. Sepinuck	Washington, <i>Associate Reporter</i>
Stephen Y. Chow	Massachusetts, <i>American Bar Association Advisor</i>
Candace M. Zierdt	North Dakota, <i>American Bar Association Advisor</i>
Guido Carducci	France, <i>American Bar Association Section Advisor</i>
Stephen J. Curley	Connecticut, <i>American Bar Association Section Advisor</i>
Mark J. Cutrona	Delaware, <i>Style Liaison</i>
Tim Schnabel	Illinois, <i>Executive Director</i>

Copies of this act may be obtained from:

Uniform Law Commission
111 N. Wabash Ave., Suite 1010
Chicago, IL 60602
(312) 450-6600
www.uniformlaws.org

Uniform Commercial Code and Emerging Technologies

Table of Contents

Prefatory Note.....	1
---------------------	---

A. Controllable Electronic Records

Prefatory Note.....	2
---------------------	---

ARTICLE 1

GENERAL PROVISIONS

Section 1-204. Value.	8
----------------------------	---

ARTICLE 12

CONTROLLABLE ELECTRONIC RECORDS

Section 12-101. Short Title.....	8
Section 12-102. Definitions.....	8
Section 12-103. Scope.....	9
Section 12-104. Rights in Controllable Electronic Records, Controllable Accounts, and Controllable Payment Intangibles.	10
Section 12-105. Control of Controllable Electronic Record.	15
Section 12-106. Discharge of Account Debtor on Controllable Account or Controllable Payment Intangible.....	17
Section 12-107. Governing Law.....	21

ARTICLE 9

SECURED TRANSACTIONS

Section 9-102. Definitions and Index of Definitions.....	21
<u>Section 9-107A. Control of Controllable Electronic Record, Controllable Account, or Controllable Payment Intangible.....</u>	23
Section 9-203. Attachment and Enforceability of Security Interest; Proceeds; Supporting Obligations; Formal Requisites.	24
Section 9-207. Rights and Duties of Secured Party Having Possession or Control of Collateral....	25
Section 9-208. Additional Duties of Secured Party Having Control of Collateral.....	26
Section 9-308. When Security Interest or Agricultural Lien Is Perfected; Continuity of Perfection.....	26

Section 9-312. Perfection of Security Interests in <u>Controllable Electronic Records, Controllable Accounts, Controllable Payment Intangibles</u> , Chattel Paper, Deposit Accounts, Documents, Goods Covered by Documents, Instruments, Investment Property, Letter-of-Credit Rights, and Money; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.	26
Section 9-314. Perfection by Control.	26
Section 9-326A. Priority of Security Interests in <u>Controllable Electronic Record, Controllable Account, and Controllable Payment Intangible</u>	27
Section 9-331. Priority of Rights of Purchasers of Instruments, Documents, and Securities <u>Securities, Controllable Electronic Records, Controllable Accounts, and Controllable Payment Intangibles</u> Under Other Articles; Priority of Interests in Financial Assets and Security Entitlements Under Article 8 <u>and Controllable Electronic Records Under Article 12</u>	27
Section 9-406. Discharge of Account Debtor; Notification of Assignment; Identification and Proof of Assignment; Restrictions on Assignment of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes Ineffective.	28
Section 9-601. Rights After Default; Judicial Enforcement; Consignor or Buyer of Accounts, Chattel Paper, Payment Intangibles, or Promissory Notes.	29
Section 9-605. Unknown Debtor or Secondary Obligor.	30
Section 9-628. Nonliability and Limitation on Liability of Secured Party; Liability of Secondary Obligor.	30

B. Money

Prefatory Note.	32
----------------------	----

ARTICLE 1

GENERAL PROVISIONS

Section 1-201. General Definitions.	33
--	----

ARTICLE 9

SECURED TRANSACTIONS

<u>Section 9-105A. Control of Intangible Money</u>	34
Section 9-203. Attachment and Enforceability of Security Interest; Proceeds; Supporting Obligations; Formal Requisites.	35
Section 9-301. Law Governing Perfection and Priority of Security Interests.	36
Section 9-310. When Filing Required to Perfect Security Interest or Agricultural Lien; Security Interests and Agricultural Liens to Which Filing Provisions Do Not Apply.	37
Section 9-312. Perfection of Security Interests in Chattel Paper, Deposit Accounts, Documents, Goods Covered by Documents, Instruments, Investment Property, Letter-of-Credit Rights, and Money; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.	37

Section 9-313. When Possession by or Delivery to Secured Party Perfects Security Interest
 Without Filing..... 38
 Section 9-314. Perfection by Control. 38
 Section 9-332. Transfer of Money; Transfer of Funds from Deposit Account. 39

C. Chattel Paper

Prefatory Note..... 39

ARTICLE 1

GENERAL PROVISIONS

Section 1-201. General Definitions. 42

ARTICLE 9

SECURED TRANSACTIONS

Section 9-102. Definitions and Index of Definitions..... 44
~~SECTION 9-105. CONTROL OF ELECTRONIC CHATTEL PAPER.~~ 46
Section 9-105. Control of Electronic Copy of Record Evidencing Chattel Paper. 46
 Section 9-203. Attachment and Enforceability of Security Interest; Proceeds; Supporting
 Obligations; Formal Requisites. 48
 Section 9-301. Law Governing Perfection and Priority of Security Interests. 50
 Section 9-310. When Filing Required to Perfect Security Interest or Agricultural Lien; Security
 Interests and Agricultural Liens to Which Filing Provisions Do Not Apply. 51
 Section 9-313. When Possession by or Delivery to Secured Party Perfects Security Interest
 Without Filing..... 52
 Section 9-314. Perfection by Control. 52
Section 9-314A. Perfection by Possession and Control of Chattel Paper. 53
 Section 9-317. Interests That Take Priority Over or Take Free of Security Interest or Agricultural
 Lien. 53
 Section 9-330. Priority of Purchaser of Chattel Paper or Instrument. 54

D. Payments

Prefatory Note..... 56

ARTICLE 3

NEGOTIABLE INSTRUMENTS

Section 3-104. Negotiable Instrument. 56
 Section 3-105. Issue of Instrument. 56
 Section 3-604. Discharge by Cancellation or Renunciation. 57

ARTICLE 4

BANK DEPOSITS AND COLLECTIONS

Section 4–406. Customer’s Duty to Discover and Report Unauthorized Signature or Alteration... 57

ARTICLE 4A

FUNDS TRANSFERS

Section 4A–103. Payment Order - Definitions..... 58
Section 4A–201. Security Procedure..... 58
Section 4A–202. Authorized and Verified Payment Orders. 59
Section 4A–203. Unenforceability of Certain Verified Payment Orders. 60
Section 4A–206. Transmission of Payment Order Through Funds-Transfer or Other
Communication System..... 60
Section 4A–207. Misdescription of Beneficiary. 60
Section 4A–208. Misdescription of Intermediary Bank or Beneficiary’s Bank..... 61
Section 4A–210. Rejection of Payment Order. 62
Section 4A–211. Cancellation and Amendment of Payment Order..... 62

E. Miscellaneous Amendments

ARTICLE 1

GENERAL PROVISIONS

Section 1-201. General Definitions. 63

ARTICLE 5

LETTERS OF CREDIT

Section 5-102. Definitions..... 64

ARTICLE 9

SECURED TRANSACTIONS

Section 9-102. Definitions and Index of Definitions..... 65

1 **Uniform Commercial Code and Emerging Technologies**

2 **Prefatory Note**

3 **Background**

4
5 The Uniform Commercial Code (the UCC) has been enacted in all 50 states, the District of
6 Columbia, Puerto Rico, and the U.S. Virgin Islands. Since its widespread enactment in the 1960s,
7 the UCC has been periodically revised to address changes in commercial practices.

8
9 In 2019, the Uniform Law Commission and The American Law Institute (the Sponsors)
10 appointed a Joint Committee to consider whether changes to the UCC are advisable to
11 accommodate emerging technologies, such as artificial intelligence, distributed ledger technology,
12 and virtual currency. At the time when the Joint Committee was formed, invitations were sent to
13 large groups of potential stakeholders including trade organizations, financial institutions,
14 technology companies, government agencies, academicians, and consumer groups. The Joint
15 Committee currently has over 200 observers.

16
17 The Joint Committee was initially formed as a study committee. However, the Joint
18 Committee subsequently received the permission of the Sponsors to act as a drafting committee for
19 amendments to the UCC dealing with digital assets, bundled transactions (*i.e.*, transactions
20 involving the sale or lease of goods together with the provision of services, the licensing of
21 information, or both), and payments, as well as for certain discrete amendments to the UCC
22 unrelated to emerging technologies.

23
24 **Organization of the draft**

25
26 The Joint Committee’s charge is broad, and the resulting draft is expansive. To facilitate
27 discussion, the draft is divided into five parts:

28
29 A. *Controllable electronic records.* The draft includes a new UCC Article 12 that
30 would govern the transfer of property rights in intangible assets (“controllable electronic records”)
31 that have been or may be created using new technologies. These assets include certain types of
32 virtual currency and nonfungible tokens (NFTs). The draft also includes amendments to UCC
33 Article 9 to govern security interests in controllable electronic records and in rights to payment that
34 are embedded in (or tethered to) controllable electronic records.

35
36 B. *Money.* The draft includes amendments to accommodate intangible money
37 when used to make payments and when used as collateral to secure a loan.

38
39 C. *Chattel paper.* UCC Article 9 affords special treatment to “chattel paper” (*e.g.*,
40 installment sale contracts and personal property leases). The draft redefines “chattel paper” and
41 updates the Article 9 provisions applicable to this type of collateral. The new definition resolves
42 uncertainty that has arisen under the current definition and more accurately reflects the distinction
43 between the seller’s or lessor’s right to payment and the record (*e.g.*, installment sale contract or
44 lease) evidencing that right. The new definition also resolves uncertainty that has arisen when

1 goods are leased as part of a bundled transaction.

2
3 D. *Payments.* These amendments primarily concern payments made by check and
4 wire transfer.

5
6 E. *Miscellaneous amendments.*

7
8 **A. Controllable Electronic Records**

9 **Prefatory Note**

10 *Introduction to controllable electronic records.* New UCC Article 12, which deals with
11 controllable electronic records, and the accompanying amendments to Article 1 and 9 are a major
12 part of the effort to adapt the UCC to emerging technologies as they might affect electronic
13 commerce.

14
15 Article 12 creates a legal regime that is meant to apply not only to electronic (intangible)
16 assets that are created using existing technologies such a distributed ledger technology (DLT),
17 which powers transactions in Bitcoin and other digital assets, but also to electronic assets that may
18 be created using technologies that have yet to be developed, or even imagined.

19
20 The adoption of distributed ledger technology (DLT) has underscored two important trends
21 in electronic commerce. First, people are using the creation or transfer of electronic records to
22 transfer rights to receive payment, rights to receive performance of other obligations (*e.g.*, services
23 or delivery of goods), and interests in personal and real property. Second, people have begun to
24 assign economic value to some electronic records that bear no relationship to extrinsic rights and
25 interests. For example, without any law or binding agreement, people around the world have
26 agreed to treat Bitcoin (or, more precisely “transaction outputs” generated by the Bitcoin protocol)
27 as a medium of exchange and store of value.

28
29 These trends will inevitably result in disputes among claimants to electronic records and
30 their related rights and other benefits. Uncertainty as to the criteria for resolving these claims
31 creates commercial risk. The magnitude of these risks will grow as these trends continue.

32
33 As explained in more detail below, draft Article 12 is designed to reduce these risks by
34 providing the legal rules governing the transfer—both outright and for security—of interests in
35 some, but not all, electronic records (*controllable electronic records*). These rules specify the
36 rights in a controllable electronic record that a purchaser would acquire. Many systems for
37 transferring controllable electronic records are pseudonymous, so that the transferee of a
38 controllable electronic record is unable to verify the identity of the transferor or the source of the
39 transferor’s title. Accordingly, controllable electronic records would be negotiable, in the sense
40 that a good faith purchaser for value would take a controllable electronic record free of third-party
41 claims of a property interest in the controllable electronic record.

42
43 Experience with DLT and other records-management systems has established some general
44 functions required for electronic records to serve as an effective and reliable means of transferring
45 economic value.

- 1 • The electronic record must have some “use” that one person can enjoy to the
2 exclusion of all others, *e.g.*, the power to “spend” a Bitcoin (or, more precisely, the
3 power to include an unspent transaction output in a message that the Bitcoin
4 protocol will record to its blockchain).
- 5
- 6 • A person must be able to transfer to another person this exclusive power to use the
7 electronic record. To remain exclusive, the transfer must divest the transferor of the
8 power to use the electronic record.
- 9
- 10 • A person must be able to demonstrate to others that the person has the power to
11 “use” the electronic record.
- 12

13 As discussed in the Reporter’s Note to draft § 12-105, these functions form the basis of the
14 Article 12 concept of *control*. To receive the benefits of negotiability and take free of third-party
15 claims of a property interest in a controllable electronic record, a person must have control of the
16 controllable electronic record. In addition, control serves as a method of perfection of a security
17 interest in a controllable electronic record. In this context, it may be useful to think of control as
18 the rough functional equivalent of possession of tangible personal property such as goods.

19

20 Article 12 governs the rights of transacting parties and the rights of persons that might be
21 affected by the transactions. With the important exception of certain rights to payment evidenced
22 by a controllable electronic record (discussed below), Article 12 does not govern assets other than
23 controllable electronic records. Like the UCC in general, Article 12 is not a regulatory statute.
24 The fact that an asset is or is not a controllable electronic record would not affect the application of
25 laws regulating securities, commodities, or money transmission.

26

27 *What is the scope of draft Article 12?*

28

29 Article 12 applies to *controllable electronic records*. Controllable electronic records are a
30 subset of what often are referred to as digital assets. Article 12 is designed to work for both
31 technologies that are known and those that may be developed in the future. Whether an asset is a
32 controllable electronic record (and therefore within the scope of Article 12) depends on whether the
33 characteristics of the asset and the protocols of any system on which the asset is recorded make it
34 suitable for the application of Article 12’s substantive rules. The nature of electronic commerce is
35 constantly changing. For this reason, the technology on which an asset depends, the type of asset,
36 and the prevailing use of the asset are all irrelevant to whether the asset is a controllable electronic
37 record.

38

39 To determine whether Article 12 applies to a particular asset, *e.g.*, Bitcoin, one must
40 determine whether the asset falls within the definition of *controllable electronic record*. A
41 controllable electronic record is a *record*, as the UCC defines the term. A *record* is information
42 that is retrievable in perceivable form.¹ A *controllable electronic record* is a record that is stored
43 in an electronic or other intangible medium and can be subjected to *control*, as defined in draft §
44 12-105. An electronic record that cannot be subjected to control under draft § 12-105 is outside the
45 scope of Article 12.

¹ See UCC § 1-201(b)(31).

1 The meaning of *control* in the UCC depends on the type of property involved.² The
2 Reporter’s Note accompanying draft § 12-105 explains the requirements for obtaining control of a
3 controllable electronic record. For present purposes, it is sufficient to think of Bitcoin as the
4 prototypical controllable electronic record.
5

6 The existing law governing some types of electronic records that can be subjected to Article
7 12 control is sufficient. These electronic records, which include electronic chattel paper, electronic
8 documents, investment property, and transferable records under UETA, are excluded from Article
9 12.
10

11 *What are the substantive provisions of Article 12?*
12

13 The principal function of Article 12 is to specify the rights of a *purchaser* of a controllable
14 electronic record. A purchaser is a person that acquires an interest in property by a voluntary
15 transaction, such as a sale.³ Law other than Article 12 would determine whether a person acquires
16 any rights in a controllable electronic record and so would be eligible to be a purchaser.
17

18 Draft § 12-104 adopts the “shelter” principle, under which a purchaser of a controllable
19 electronic record acquires whatever rights the transferor had or had power to transfer. This rule
20 appears in Article 2 with respect to goods and Article 8 with respect to securities.⁴
21

22 The ability to take a controllable electronic record free of third-party property claims
23 appears to be necessary for a controllable electronic record to have commercial utility. As is the
24 case with Articles 2, 3, 7, and 9, Article 12 would facilitate commerce by affording to certain good-
25 faith purchasers for value greater rights than their transferors had or had power to transfer.⁵ Draft
26 Article 12 refers to these purchasers as *qualifying purchasers*. Qualifying purchasers are
27 purchasers that obtain control of a controllable electronic record for value, in good faith, and
28 without notice of any claim of a property interest in the controllable electronic record. Like a
29 holder in due course of a negotiable instrument, a qualifying purchaser of a controllable electronic
30 record takes the controllable electronic record free of property claims.
31

32 Consider the case in which *B* contracts to buy Bitcoin from *S*. Assume that *S* is the owner
33 of the Bitcoin.
34

- 35 • Law other than Article 12 generally would determine whether *S* is the owner of the
36 Bitcoin.
- 37
- 38 • Law other than Article 12 would resolve issues concerning the formation of the

² *E.g.*, UCC § 7-106 (electronic documents of title); § 8-106 (containing four definitions of “control,” one for each of four different types of investment property); § 9-104 (deposit accounts); § 9-105 (electronic chattel paper).

³ “Purchase” means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.” UCC § 1-201(b)(29).

⁴ UCC § 2-403(1) provides, “A purchaser of goods acquires all title which his transferor had or had power to transfer” UCC § 8-302(a) provides, “a purchaser of a certificated or uncertificated security acquires all rights in the security that the transferor had or had power to transfer.” Other UCC provisions also reflect the shelter principle. *See, e.g.*, UCC § 3-203(b) (concerning negotiable instruments); UCC § 7-504(a) (concerning documents of title).

⁵ Article 8 also provides for certain purchasers for value to take greater rights but does not contain a good-faith requirement. *See* UCC § 8-303.

1 contract of sale between *B* and *S* and the obligations of the parties under the
2 contract.

- 3
- 4 • Law other than Article 12 would determine what steps are necessary for *B* to acquire
5 rights in the Bitcoin.⁶
 - 6
 - 7 • By acquiring rights in the Bitcoin by sale, *B* would become a *purchaser* of the
8 Bitcoin within the meaning of UCC Article 1.
 - 9
 - 10 • Article 12 provides that if *B* becomes a purchaser, *B* would acquire whatever rights
11 *S* had or had power to transfer. As a general matter, law other than Article 12 would
12 define these rights. *B* would acquire these rights regardless of whether *B* obtained
13 control of the Bitcoin.
 - 14

15 Now assume that *S* is a hacker, who acquired the Bitcoin illegally from the owner, *O*.

- 16
- 17 • Just as a buyer of goods can obtain possession from a seller that has no rights in the
18 goods, *B* can obtain control of the Bitcoin, even if *S* “stole” it from the owner.
- 19
- 20 • If *B* obtains control of the Bitcoin for value, in good faith, and without notice of any
21 claim of a property interest, *B* would be a *qualifying purchaser*.
- 22
- 23 • Even if *B* would not have acquired any rights in the Bitcoin under non-Article 12
24 law, as an Article 12 qualifying purchaser, *B* would acquire the Bitcoin free of all
25 claims of a property interest in the Bitcoin. In the unlikely event that *O* could locate
26 *B*, *B* would defeat *O*’s claim of ownership and own the Bitcoin free and clear. (The
27 same result would obtain if *B* bought a negotiable instrument from a thief under
28 circumstances where *B* became a holder in due course.)
- 29

30 *How would Article 12 deal with rights or property that is linked to a controllable electronic*
31 *record?*

32

33 *The general rules.*

34

35 Recall that a controllable electronic record is a record, *i.e.*, information. Some records have
36 what one might call “inherent value.” Bitcoin would be an example of such a record. Bitcoin can
37 be exchanged (sold) for cash or other valuable assets. Or, the owner of Bitcoin can hold the
38 Bitcoin as an investment.

39

40 The value of many (if not most) records, however, is as evidence of the rights of the parties
41 to a transaction. In these situations, it is essential to differentiate between the *record* and the *rights*
42 that are evidenced by the record.

43

⁶ Law other than Article 12 includes UCC Article 9. Thus, Article 9 would determine whether a security interest attaches to a controllable electronic record. More generally, Article 9 governs any conflict between Article 9 and Article 12. Draft § 12-102(b).

1 Suppose, for example, that *S* and *B* enter into a written contract for the sale of 100 air
2 purifiers. The contract provides that at a specified time in the future, *S* is to deliver the goods and
3 *B* is to pay for them. *B* may sell (assign) to *P* the right to receive delivery of the goods from *S*. *P*
4 has acquired a valuable asset, *i.e.*, the right to receive delivery.
5

6 In contrast, if *B* sells to *P* only the paper (record) on which the contract is written, *P* might
7 or might not acquire the right to delivery of the goods, depending on whether applicable law treats
8 the sale of the paper as an assignment of the right to delivery. *P* would become the owner of the
9 paper in any event, but the paper itself may be of little value.
10

11 If the contract for the sale of air purifiers were electronic rather than written, the same
12 analysis would apply. The *right* evidenced by the electronic record (*i.e.*, *B*'s right to receive
13 delivery from *S*) would be the valuable asset, not the *record* itself.
14

15 Suppose that the contract of sale between *B* and *S* is evidenced by a controllable electronic
16 record that *B* sells to *P*. Under draft § 12-104(c), *P* would acquire all rights *in the controllable*
17 *electronic record* that the transferor (*B*) had or had power to transfer. If *P* obtains control of the
18 controllable electronic record for value, in good faith, and without notice of any claim of a property
19 right in the controllable electronic record, *P* would become a *qualifying purchaser* and, as such,
20 would acquire its rights *in the controllable electronic record* free of any claim of a property right.
21

22 But the controllable electronic record itself may not be a valuable asset. It would have
23 value to *P* only if by virtue of acquiring rights in the controllable electronic record, *P* would also
24 acquire the right to receive delivery of the goods from *S*.
25

26 Article 12 leaves to other law the question whether *P*'s acquisition of rights in the
27 controllable electronic record gives *P* the right to receive delivery of the goods. We would
28 typically expect that under other law *P* would not acquire the right to receive the goods merely by
29 acquiring rights in the controllable electronic record, any more than *P* would have acquired the
30 right to receive the goods if the record were in paper form and physically delivered to *P*.
31

32 Suppose, however, that other law does provide that, by acquiring the controllable electronic
33 record, *P* would acquire the right to receive delivery of the goods from *S*. Suppose also that *P*
34 becomes a qualifying purchaser of the controllable electronic record. As we have seen, as a
35 qualifying purchaser, *P* would take its rights *in the controllable electronic record* free of property
36 claims. But *P* would not acquire *the right to receive delivery* of the goods free of property claims
37 unless non-Article 12 law provides otherwise.
38

39 *The exceptions: controllable electronic records and controllable payment intangibles.*
40

41 As a general rule, draft Article 12 applies to records and not to rights evidenced by records
42 (or to rights that records purport to evidence). Law other than Article 12 would determine what
43 steps must be taken for a person to acquire an interest in a controllable electronic record and the
44 rights, if any, that the person acquires. This "other" law includes UCC Article 9.
45

46 The draft provides an important exception to the general rule. The exception concerns
47 rights to payment (specifically, accounts and payment intangibles) that are evidenced by a

1 controllable electronic record that provides that the obligor (account debtor) undertakes to pay the
2 person that has control of the controllable electronic record. These rights to payment are referred
3 to as “controllable accounts” and “controllable payment intangibles.”⁷ Under amendments to UCC
4 Article 9, the attachment and perfection of a security interest in a controllable electronic record
5 would also be attachment of a security interest in controllable accounts and controllable payment
6 intangibles that are evidenced by the controllable electronic record.⁸ The draft provides a similar
7 rule with regard to perfection of a security interest in a controllable account or controllable
8 payment intangible.⁹ Under Article 12, a qualifying purchaser of the controllable electronic record
9 would acquire its rights in the controllable account or controllable payment intangible free of any
10 claim of a property interest.¹⁰

11
12 The draft amends several other sections of Article 9 to deal with other aspects of security
13 interests in controllable accounts and controllable payment intangibles. The Reporter’s Notes to
14 these sections discuss the amendments.

15
16 *Note on formatting*

17
18 The amendments to Articles 1 and 9 are marked to show changes from the most recent UCC
19 official text. At this time, we are uncertain whether new sections that appear in draft will make their
20 way into the final Act. Any necessary renumbering will occur before the final draft is presented to
21 the 2022 Annual Meeting. Accordingly, new sections, subsections, and paragraphs are numbered
22 with an “A” at the end, e.g., Section 9-107A.

23
24 Because Article 12 is a completely new UCC article, its provisions are not underscored.

⁷ See draft § 9-102(b) (defining “controllable account” and “controllable payment intangible”).

⁸ Draft § 9-203(j).

⁹ Draft § 9-310(h).

¹⁰ Draft § 12-104.

1 **Uniform Commercial Code and Emerging Technologies**

2 **ARTICLE 1**

3 **GENERAL PROVISIONS**

4 **Section 1-204. Value.**

5 Except as otherwise provided in Articles 3, 4, ~~and 5, and 6~~, 6, and 12, a person gives
6 value for rights if the person acquires them:

7 (1) in return for a binding commitment to extend credit or for the extension of immediately
8 available credit, whether or not drawn upon and whether or not a charge-back is provided for in the
9 event of difficulties in collection;

10 (2) as security for, or in total or partial satisfaction of, a preexisting claim;

11 (3) by accepting delivery under a preexisting contract for purchase; or

12 (4) in return for any consideration sufficient to support a simple contract.

13 **Reporter's Note**

14 1. "*Value.*" The amendment to this section implements the policy choice described in
15 Reporter's Note 8 to draft § 12-104.

16 **ARTICLE 12**

17 **CONTROLLABLE ELECTRONIC RECORDS**

18 **Section 12-101. Short Title.** This article may be cited as Uniform Commercial Code—
19 Controllable Electronic Records.

20 **Section 12-102. Definitions.**

21 (a) In this article, "controllable electronic record" means an electronic record that can be
22 subjected to control under Section 12-105. The term does not include deposit accounts, electronic
23 chattel paper, electronic documents of title, intangible money, investment property, or "transferable
24 records", as defined in the Electronic Signatures in Global and National Commerce Act, 15 U.S.C.
25

1 Section 7021(a)(1) or as defined in [cite to Uniform Electronic Transaction Act Section 16(a)].

2 (b) The definitions of “account debtor,” “authenticate,” “controllable account,”
3 “controllable payment intangible,” “deposit account,” “electronic chattel paper,” “intangible
4 money,” “investment property,” and “proceeds” in Article 9 apply to this article.

5 (c) “Value” has the meaning provided in Section 3-303(a).

6 **Legislative Note:** *In subsection (a), the state should cite to the state’s version of the Uniform*
7 *Electronic Transactions Act Section 16(a) or comparable state law.*

8
9

Reporter’s Note

10 1. “*Controllable electronic record.*” A “controllable electronic record” is an “electronic
11 record,” *i.e.*, information that is stored in an electronic or other intangible medium and is
12 retrievable in perceivable form. To be within the scope of Article 12, the record must be
13 susceptible of control under Section 12-105. Unlike a “transferable record” under E-SIGN or
14 UETA, a record can be a controllable electronic record under Article 12 in the absence of an
15 agreement to that effect.

16
17 The provisions of Article 12 are unsuitable for certain types of electronic records, and the
18 definition has been limited accordingly.

19

20 2. “*Value.*” The concept of value in Section 3-303 is narrower than the generally applicable
21 concept in Section 1-201. Reporter’s Note 8 to draft § 12-104 explains the difference between the
22 two concepts and why the draft adopts the Article 3 approach.

23

Section 12-103. Scope.

24
25 (a) This article applies to controllable electronic records, controllable accounts, and
26 controllable payment intangibles.

27 (b) If there is conflict between this article and Article 9, Article 9 governs.

28 (c) A transaction subject to this article is subject to any applicable rule of law which
29 establishes a different rule for consumers and [insert reference to (i) any other statute or regulation
30 that regulates the rates, charges, agreements, and practices for loans, credit sales, or other
31 extensions of credit and (ii) any consumer-protection statute or regulation].

32

Reporter’s Note

1 1. *Source of these provisions.* Subsection (b) follows Section 3-102(b). As is the case with
2 respect to Article 3, Article 9 would defer to Article 12 in some instances. See draft § 9-331.
3 Subsection (c) is copied from Section 9-102.

4
5 2. *Controllable accounts and controllable payment intangibles.* As to controllable accounts
6 and controllable payment intangibles, see Reporter’s Note 1 to draft § 9-102.

7
8 **Section 12-104. Rights in Controllable Electronic Records, Controllable Accounts, and**
9 **Controllable Payment Intangibles.**

10 (a) In this section, “qualifying purchaser” means a purchaser of a controllable electronic
11 record or an interest in the controllable electronic record that obtains control of the controllable
12 electronic record for value, in good faith, and without notice of a claim of a property right in the
13 controllable electronic record or a controllable account or controllable payment intangible
14 evidenced by the controllable electronic record.

15 (b) Except as provided in this section, law other than this article determines whether a
16 person acquires a right in a controllable electronic record and the right, if any, the person acquires.

17 (c) A purchaser of a controllable electronic record acquires all rights in the controllable
18 electronic record that the transferor had or had power to transfer.

19 (d) A purchaser of a limited interest in a controllable electronic record acquires rights only
20 to the extent of the interest purchased.

21 (e) In addition to acquiring the rights of a purchaser, a qualifying purchaser acquires its
22 rights in the controllable electronic record and a controllable account or controllable payment
23 intangible evidenced by the controllable electronic record free of a claim of a property right in the
24 controllable electronic record, controllable account, or controllable payment intangible.

25 (f) Except as provided in subsection (e) or law other than [the Uniform Commercial Code],
26 a qualifying purchaser takes a right to payment, right to performance, or interest in property
27 evidenced by the controllable electronic record subject to a claim of a property right in the right to

1 payment, right to performance, or interest in property.

2 (g) The following rules apply to a purchaser of a controllable electronic record traceable to
3 another controllable electronic record:

4 (1) An action based on a claim of a property right in the other controllable electronic
5 record or a controllable account or controllable payment intangible evidenced by the other
6 controllable record, whether framed in conversion, replevin, constructive trust, equitable lien, or
7 other theory, may not be asserted against the purchaser if the purchaser acquires its interest in and
8 obtains control of the traceable controllable electronic record for value, in good faith, and without
9 notice of a claim of a property right in the traceable controllable electronic record or a controllable
10 account or controllable payment intangible evidenced by the traceable controllable electronic
11 record.

12 (2) The purchaser takes free of a security interest in the traceable controllable
13 electronic record and a controllable account or controllable payment intangible evidenced by the
14 traceable controllable electronic record if:

15 (A) the purchaser acquires its interest in and obtains control of the traceable
16 controllable electronic record for value, in good faith, and without notice of a claim of a property
17 right in the traceable controllable electronic record or a controllable account or controllable
18 payment intangible evidenced by the traceable controllable electronic record; and

19 (B) the traceable controllable electronic record constitutes proceeds of the
20 other controllable electronic record.

21 (h) Filing of a financing statement under Article 9 is not notice of a claim of a property
22 right in a controllable electronic record.

23 **Legislative Note:** *In subsection (f), the state should insert the appropriate reference to the Uniform*
24 *Commercial Code.*

25

1 **Reporter’s Note**

2 1. *Source of these provisions.* Subsection (a) derives from Section 3-302(a)(2) (defining
3 “holder in due course”).

4 Subsections (c) and (d) derive from Section 2-403(1) (concerning the rights of a purchaser).

5 Subsection (e) derives from Section 3-306 (concerning the rights of a holder in due course).

6 Subsection (g) derives from Section 8-502 (protecting entitlement holders).

7 Subsection (h) derives from Section 3-302(b) (concerning notice of a claim).

8
9
10
11
12 2. *Applicability of other law.* As a general matter, this section leaves to other law the
13 resolution of questions concerning the transfer of rights in a controllable electronic record, such as
14 the acts that must be taken to effectuate a transfer of rights and the scope of the rights that a
15 transferee acquires. See subsection (b). Subsections (c) through (h) contain important exceptions
16 to this subsection.
17

18
19 **Example:** *A* creates a controllable electronic record. Other law would determine
20 what rights *A* has in the controllable electronic record. *A* and *B* agree to the sale of
21 the controllable electronic record to *B*. Other law would determine what steps need
22 to be taken for *B* to acquire rights in the controllable electronic record. Once *B*
23 acquires those rights, *B* would be a purchaser (as defined in Section 1-201), whose
24 rights would be determined by either subsection (c) or (e), depending on whether *B*
25 was a qualifying purchaser.
26

27 The “law other than this article” that may apply to the transfer of rights in a controllable
28 electronic record includes UCC Article 9. Section 9-203 would apply, for example, to determine
29 whether a purported secured party acquired an enforceable security interest in a controllable
30 electronic record.
31

32 3. *Nonpurchaser having control.* Under draft § 12-105, a person may have control of a
33 controllable electronic record even if the person has no property interest in the controllable
34 electronic record. A person that has control of, but no interest in, a controllable electronic record
35 would not be a purchaser of the controllable electronic record and so would not be eligible to be a
36 qualifying purchaser under this section.
37

38 **Example:** Debtor granted to Secured Party a security interest in all Debtor’s
39 existing and after-acquired accounts, chattel paper, and payment intangibles.
40 Secured Party perfected its security interest in a specific controllable account by
41 obtaining control of the controllable electronic record that evidences the controllable
42 account. See draft § 9-107A.
43

44 Because Debtor’s security agreement does not cover controllable electronic records,
45 Secured Party would have no interest in the controllable electronic record.
46 Accordingly, Secured Party would not be a purchaser of the controllable electronic

1 record and would not benefit from the take-free rule in subsection (e) (discussed in
2 Note 5). Secured Party’s security interest in Debtor’s controllable accounts and
3 controllable payment intangibles would, however, have priority over a conflicting
4 security interest that was perfected by a method other than control. *See* draft § 9-
5 326A.
6

7 4. *Conditions for, and consequences of, becoming a qualifying purchaser.* The conditions
8 for, and consequences of, becoming a qualifying purchaser were drawn from Article 3. More
9 specifically, the conditions for becoming a qualifying purchaser were drawn from Section 3-
10 302(a)(2), which defines “holder in due course” of a negotiable instrument. Among these
11 conditions is that a person take the instrument “for value.” As Note 8 explains, the concept of
12 value in Article 3 differs from the concept of value that is generally applicable in the UCC. Article
13 12 adopts the Article 3 concept.
14

15 The definition of “qualifying purchaser” omits some of the conditions for becoming a
16 holder in due course. For example, to qualify as a holder in due course, a holder must take
17 “without notice that any party has a defense or claim in recoupment” Section 3-302(a)(2)(vi).
18 A controllable electronic record is information; there are no parties to a controllable electronic
19 record. (There are parties to a controllable account or controllable payment intangible. Sections 9-
20 404 and 9-403 would determine whether a purchaser of the controllable account or controllable
21 payment intangible takes free of a defense.)
22

23 Subsection (e) derives from Section 3-306, under which a holder in due course takes a
24 negotiable instrument free of a claim of a property right in the instrument. A qualifying purchaser
25 of a controllable electronic record takes free of all claims of a property right in the controllable
26 electronic record and any related controllable account or controllable payment intangible.
27

28 5. *The take-free rule.* Subsection (e) makes controllable electronic records highly
29 negotiable. It protects a qualified purchaser of a controllable electronic record against claims of a
30 property interest in the controllable electronic record as well as in any related controllable account
31 or controllable payment intangible.
32

33 As a general matter, law other than Article 12 would determine whether any particular
34 transaction creates a property interest in a controllable electronic record. *See* subsection (b). The
35 applicable law may provide that a hacker, who is essentially a thief, acquires no rights in a “stolen”
36 controllable electronic record. Even if this is the case, subsections (c) and (e) would enable a
37 purchaser that obtains control from a hacker and that otherwise meets the definition of “qualified
38 purchaser” (for value, in good faith, and without notice of property claims) to take the controllable
39 electronic record and any related controllable account or controllable payment intangible free of
40 property claims.
41

42 6. *The no-action rule.* The take-free rule in subsection (e) applies when both the person
43 having control and another person each claim a property interest in the same controllable electronic
44 record. The no-action rule in subsection (g) is meant to provide analogous protection when a
45 purchaser obtains control of a controllable electronic record that is not the same controllable
46 electronic record in which a third person claims a property interest but is traceable to that
47 controllable electronic record. To qualify for protection under subsection (g), a purchaser must

1 acquire its interest in, and obtain control of, the traceable controllable electronic record for value,
2 in good faith, and without notice of a claim of a property interest in the traceable controllable
3 electronic record or any related controllable account or controllable payment intangible.

4
5 **Example:** Secured Party holds a perfected security interest in Debtor’s Bitcoin
6 unspent transaction output. Debtor contracts to sell Bitcoin to Buyer. To fulfill its
7 obligation under the contract of sale, Debtor uses the transaction output as a
8 transaction input to transfer Bitcoin to Buyer. Subsection (e) would protect Buyer
9 from Secured Party’s claim that the Bitcoin recorded in the transaction input are the
10 same as the Bitcoin recorded in the transaction output. Subsection (g) would protect
11 Buyer if the Bitcoin were recorded in a transaction output that is not the same as the
12 claimed transaction input.

13
14 7. “*Tethered*” assets. Certain controllable electronic records may carry with them rights to
15 other assets, e.g., goods or rights to payment. By its terms, the take-free rule in subsection (e)
16 applies to controllable electronic records, controllable accounts, and controllable payment
17 intangibles. One might argue that the reference to controllable accounts and controllable payment
18 intangibles is unnecessary. By taking a controllable electronic record free of property claims,
19 wouldn’t a person take not only the controllable electronic record itself but also all rights that are
20 “carried” in the controllable electronic record free and clear?

21
22 Subsection (f) defeats that argument and limits the application of the take-free rule in
23 subsection (e) to controllable electronic records, controllable accounts, and controllable payment
24 intangibles. Under subsection (f), a qualifying purchaser of a controllable electronic record takes
25 other rights to payment, rights to performance, and interests in property that are evidenced by a
26 controllable electronic record subject to third-party property claims, unless law other than the UCC
27 provides to the contrary.

28
29 **Example:** *O* is the owner of a controllable electronic record. The controllable
30 electronic record is a nonfungible token (NFT) that provides access to an electronic
31 image file depicting LeBron James. The image file is not a controllable electronic
32 record, and *O* does not own the copyright in the image of LeBron James. *O* granted
33 to *SP* a security interest in all of *O*’s existing and after-acquired property. *SP*
34 perfected the security interest. Thereafter, *O* sold the NFT to Buyer.

35
36 Because the NFT is a controllable electronic record, a purchaser (*P*) of the NFT
37 (here, Buyer) ordinarily would acquire only those rights that the seller had or had
38 power to convey. Thus, Buyer would acquire its interest subject to *SP*’s perfected
39 security interest. See draft § 12-104(c); UCC § 9-315(a)(1).

40
41 However, if Buyer is a qualifying purchaser, Buyer would acquire its interest in the
42 NFT free of any claim of a property right in the NFT, including *SP*’s security
43 interest. See draft § 12-104(e); UCC § 9-331. Article 9 would determine whether
44 *SP*’s security interest attached to the image file depicting LeBron James. If it did
45 attach, law other than Article 12 would determine whether Buyer would acquire the
46 image file free and clear of *SP*’s security interest.

1 8. *Creating the functional equivalent of a negotiable instrument.* Two defining
2 characteristics of an Article 3 negotiable instrument are that a holder in due course (1) takes free of
3 claims of a property or possessory right to the instrument (Section 3-306) and (2) takes free of most
4 defenses and claims in recoupment (Section 3-305). Article 3 applies only to written instruments.
5 This draft provides a method for reaching a similar result with respect to controllable accounts and
6 controllable payment intangibles. As regards the first characteristic, a qualified purchaser of the
7 controllable electronic record would acquire the controllable account or controllable payment
8 intangible free of any claim of a property interest. As regards the second, Section 9-403 ordinarily
9 would give effect to the account debtor's agreement not to assert claims or defenses.

10
11 Section 9-403 adopts the meaning of value in Section 3-303, as does Article 12. The
12 concept of value in Section 3-303 is narrower than the concept in Section 1-204, which applies
13 generally to UCC transactions. Under Section 1-204, a person gives value for rights if the person
14 acquires them in return for a promise. However, under Section 3-303, if a negotiable instrument is
15 issued or transferred for a promise of performance, the instrument is transferred for value only to
16 the extent that the promise has been performed.

17
18 **Section 12-105. Control of Controllable Electronic Record.**

19 (a) A person has control of a controllable electronic record if:

20 (1) the controllable electronic record, a record attached to or logically associated
21 with the controllable electronic record, or the system in which the controllable electronic record is
22 recorded, if any, gives the person:

23 (A) the power to avail itself of substantially all the benefit from the
24 controllable electronic record;

25 (B) subject to subsection (b), the exclusive power to:

26 (i) prevent others from availing themselves of substantially all the
27 benefit from the controllable electronic record; and

28 (ii) transfer control of the controllable electronic record to another
29 person or cause another person to obtain control of a controllable electronic record that is traceable
30 to the controllable electronic record; and

31 (2) the controllable electronic record, a record attached to or logically associated
32 with the controllable electronic record, or the system in which the controllable electronic record is

1 recorded, if any, enables the person to readily identify itself as having the powers specified in
2 paragraph (1). The person may be identified in any way, including by name, identifying number,
3 cryptographic key, office, or account number.

4 (b) A power specified in subsection (a)(1) is exclusive, even if:

5 (1) the controllable electronic record or the system in which the controllable
6 electronic record is recorded, if any, limits the use to which the controllable electronic record may
7 be put or has a protocol that is programmed to result in a transfer of control; or

8 (2) the person has agreed to share the power with another person.

9 **Reporter’s Note**

10 1. *Why “control” matters.* Control serves two major functions Article 12. An electronic
11 record is a “controllable electronic record” and is subject to the provisions of this article only if it
12 can be subjected to control under this section. *See* draft §§ 12-102; 12-103. And a person having
13 control of a controllable electronic record is eligible to become a qualified purchaser and so take
14 free of claims of a property interest in the controllable electronic record. *See* draft § 12-104.

15
16 In addition, draft amendments to Article 9 provide that obtaining control of a controllable
17 electronic record is one method by a security interest in the controllable electronic record can be
18 perfected. Under these amendments, perfection of a security interest in controllable accounts and
19 controllable payment intangibles can be achieved by obtaining control of the related controllable
20 electronic record.

21
22 2. *Powers; inability to exercise a power.* This section conditions control on a person’s
23 having the three powers specified in paragraph (a)(1). A person would have a power described in
24 this paragraph if the controllable electronic record or any system in which it is recorded gives the
25 purchaser that power, even if the characteristics of the particular purchaser disable the person from
26 exercising the power. This would be the case, for example, when the purchaser holds the private
27 key required to access the benefit of the controllable electronic record but lacks the hardware
28 required to use it.

29
30 3. *“Benefit.”* Subparagraphs (a)(1)(A) and (a)(1)(B)(i) condition control of a controllable
31 electronic record on a person’s relationship to the benefit of the controllable electronic record.

32
33 As used in the section, the “benefit” of a controllable electronic record refers to the rights
34 that are afforded by the controllable electronic record and the uses to which the controllable
35 electronic record can be put. These, in turn, depend on the characteristics of the controllable
36 electronic record in question. For example, Bitcoin can be held or disposed of (sold). A
37 controllable electronic record evidencing a controllable account or controllable payment intangible
38 affords the right to collect from the account debtor (obligor).

1 The system in which a controllable electronic record is recorded may limit the benefit from
2 the controllable electronic record that is available to those who interact with the system. In
3 determining whether a person has the power to avail itself of substantially all the benefit from a
4 controllable electronic record under subparagraph (a)(1)(A), or to prevent others from availing
5 themselves of substantially all the benefit from a controllable electronic record under subparagraph
6 (a)(1)(B)(i), only the benefit that the system makes available should be considered.

7
8 4. *Power to retrieve information.* By definition, the information constituting an electronic
9 record must be “retrievable in perceivable form.” UCC § 1-201. The power to retrieve the record
10 in perceivable form is included in the benefit of a controllable electronic record. “Perceivable
11 form” means that the contents of the record are intelligible; the ability to perceive the
12 indecipherable jumble of an encrypted record does not give a person the power to retrieve the
13 record in perceivable form.

14
15 To have control of a controllable electronic record under subparagraph (a)(1)(A), a person
16 must have at least the nonexclusive power to avail itself of this benefit. If a person also has the
17 exclusive power to decrypt the encrypted record, the person would have the exclusive power to
18 prevent others from availing themselves of substantially all the benefit from the controllable
19 electronic record and thereby satisfy the condition in subparagraph (a)(1)(B)(i).

20
21 5. *Exclusive powers.* Unlike the power in subparagraph (a)(1)(A), the powers in
22 subparagraphs (a)(1)(B)(i) and (a)(1)(B)(ii) must be held exclusively by the person claiming
23 control in order to establish control.

24
25 Subsection (b) contains two limitations on the term “exclusive” as used in subsection (a).
26 Under subsection (b), a power can be “exclusive” if one or both of these limitations apply.

27
28 Paragraph (b)(1) takes account of the fact that the powers of a purchaser of a controllable
29 electronic record necessarily are subject to the attributes of the controllable electronic record and
30 the protocols of any system in which the controllable electronic record is recorded.

31
32 One effect of paragraph (b)(2) is that, under a multi-signature (multi-sig) agreement, any
33 person that is readily identifiable under paragraph (a)(2) and shares the relevant power would be
34 eligible to have control, even if the action of another person is a condition for the exercise of the
35 power.

36
37 6. *Readily identify.* Paragraph (a)(2) provides that a person does not have control of a
38 controllable electronic record unless the controllable electronic record, a record attached to or
39 logically associated with the controllable electronic record, or any system in which the controllable
40 electronic record is recorded enables the person to readily identify itself as the person having the
41 requisite powers. This paragraph does not obligate a person to identify itself as having control.
42 However, to prove that it has control, a person would need to prove that the relevant records or any
43 system in which the controllable electronic record is recorded readily identifies the person as such.
44 The last sentence of paragraph (a)(2) derives from Section 3-110(c). It adds “cryptographic key”
45 as an example of a way in which a person may be identified.

46
47 **Section 12-106. Discharge of Account Debtor on Controllable Account or Controllable**

1 **Payment Intangible.**

2 (a) Except as provided in this section, an account debtor on a controllable account or
3 controllable payment intangible may discharge its obligation:

4 (1) by paying the person having control of the controllable electronic record that
5 evidences the controllable account or controllable payment intangible; or

6 (2) by paying a person that formerly had control of the controllable electronic
7 record.

8 (b) Subject to subsections (c) and (g), an account debtor may not discharge its obligation by
9 paying a person that formerly had control of the controllable electronic record if the account debtor
10 receives a notification, authenticated by a person that formerly had control or the person to which
11 control was transferred, that reasonably identifies the controllable account or controllable payment
12 intangible, notifies the account debtor that control of the controllable electronic record that
13 evidences the controllable account or controllable payment intangible was transferred, identifies
14 the transferee, and provides a commercially reasonable method by which the account debtor is to
15 pay the transferee. The transferee may be identified in any way, including by name, identifying
16 number, cryptographic key, office, or account number. After receipt of the notification, the
17 account debtor may discharge its obligation only by paying in accordance with the notification and
18 may not discharge the obligation by paying a person that formerly had control.

19 (c) Subject to subsection (g), notification is ineffective under subsection (b):

20 (1) unless, before the notification is sent, the account debtor and the person that at
21 that time had control of the controllable electronic record that evidences the controllable account or
22 controllable payment intangible agree in an authenticated record to a commercially reasonable
23 method by which a person can furnish reasonable proof that control has been transferred;

24 (2) to the extent that an agreement between the account debtor and the seller of a

1 payment intangible limits the account debtor's duty to pay a person other than the seller and the
2 limitation is effective under law other than this article; or

3 (3) at the option of the account debtor, if the notification notifies the account debtor
4 to divide a payment and pay portions by more than one method.

5 (d) Subject to subsection (g), if requested by the account debtor, the person giving the
6 notification shall seasonably furnish reasonable proof, using the agreed method, that control of the
7 controllable electronic record has been transferred. Unless the person complies with the request,
8 the account debtor may discharge its obligation by paying a person that formerly had control, even
9 if the account debtor has received a notification under subsection (b).

10 (e) A person furnishes reasonable proof that control has been transferred if the person
11 demonstrates, using the agreed method, that the transferee has the power to avail itself of
12 substantially all the benefit from the controllable electronic record, prevent others from availing
13 themselves of substantially all the benefit from the controllable electronic record, and transfer these
14 powers to another person.

15 (f) Subject to subsection (g), an account debtor may not waive or vary its option under
16 subsection (c)(3).

17 (g) This section is subject to law other than this article which establishes a different rule for
18 an account debtor who is an individual and who incurred the obligation primarily for personal,
19 family, or household purposes.

20 **Reporter's Note**

21
22 1. *Source of these provisions.* These provisions derive from Section 3-602, which governs
23 the discharge of a person obligated on a negotiable instrument, and Section 9-406, which governs
24 the discharge of an account debtor (obligor), including a person obligated on an account or
25 payment intangible.

26
27 2. *The basic rules.* This section applies only to an account debtor that has undertaken to
28 pay the person that has control of the controllable electronic record that evidences the obligation to

1 pay. See draft § 9-102 (defining “controllable account” and “controllable payment intangible”).
2 Section 9-406 would continue to apply to all other account debtors.

3
4 Under subsection (a)(1), an account debtor may discharge its obligation on the controllable
5 account or controllable payment intangible by paying the person that has control of the related
6 controllable electronic record at the time of payment. Subsections (a)(2) and (b) would remove
7 from an account debtor the burden of determining who has control of the related controllable
8 electronic record at any given time—a burden that, with respect to some controllable electronic
9 records, an account debtor may be unable to satisfy. Under paragraph (a)(2), an account debtor
10 may discharge its obligation by paying a person that formerly had control of the related
11 controllable electronic record, which presumably would include the initial obligee.

12
13 Subsection (b) reflects the fact that a person to which control has been transferred may not
14 wish to take the risk that the account debtor will discharge its obligation by paying the transferor.
15 Subsection (b) would protect the transferee by providing that if the account debtor receives a
16 notification that control has been transferred, the account debtor may discharge its obligation by
17 paying in accordance with the notification and may not discharge its obligation by paying a person
18 that formerly had control. The notification must be authenticated by a person formerly having
19 control or by the transferee.

20
21 To be effective under subsection (b), a notification must reasonably identify the controllable
22 account or controllable payment intangible, notify the account debtor that control of the
23 controllable electronic record that evidences the controllable account or controllable payment
24 intangible was transferred, identify the transferee in any way, and provide a commercially
25 reasonable method by which the account debtor is to make payments to the transferee. A change in
26 the identity of the person to which the account debtor must make payment should not, and typically
27 will not, impose a significant burden on the account debtor. However, one can imagine a method
28 of making payment that would be burdensome, e.g., making a payment through a trading platform
29 or payment service with which the account debtor does not have an account. For this reason, the
30 designated method of making payment must be “commercially reasonable.”

31
32 3. “*Reasonable proof.*” As noted above, this section derives in large part from Section 9-
33 406, which provides for notification that an account or payment intangible has been assigned.
34 Account debtors that have received notification of an assignment under Section 9-406 almost
35 always make payments in accordance with the notice. Recognizing that an account debtor may be
36 uncertain whether a notification is legitimate, Section 9-406 affords to an account debtor the right
37 to request proof that the account or payment intangible was assigned.

38
39 Subsection (d) contains a similar provision. Upon the account debtor’s request, the person
40 giving the notification must seasonably furnish reasonable proof that control of the controllable
41 electronic record has been transferred. If the person does not comply with the request, the account
42 debtor may ignore the notification and discharge its obligation by a paying a person formerly in
43 control.

1 “Reasonable proof” requires evidence that would be understood by a typical account debtor
2 to whom it is proffered as demonstrating to a reasonably high probability that control of the
3 controllable electronic record has been transferred to the transferee. Subsection (e) provides a safe
4 harbor for providing reasonable proof. It enables a person to satisfy the account debtor’s request
5 by demonstrating that the transferee has the power to avail itself of substantially all the benefit
6 from the controllable electronic record, to prevent others from availing themselves of substantially
7 all the benefit from the controllable electronic record, and to transfer these powers to another
8 person. This demonstration would not necessarily prove that a person actually has control of a
9 controllable electronic record because it need not show that the transferee held the last two powers
10 exclusively. Nevertheless, such a demonstration would constitute “reasonable proof” under
11 subsection (e). A person that has control should have little difficulty providing this proof, as a
12 person cannot have control unless it can readily identify itself as having the requisite powers. *See*
13 *draft § 12-105(a)(2).*

14
15 Reasonable proof that is seasonably furnished by a person other than the person that gave
16 the notification would constitute compliance with the account debtor’s request.

17
18 Subsection (d) requires that reasonable proof be provided “using the agreed method.”
19 Subsection (e) requires that a person use “the agreed method” to demonstrate that the transferee has
20 the specified powers. “Agreed method” refers to the commercially reasonable method to which the
21 parties agreed, in an authenticated record, before the notification was sent. If parties did not so
22 agree, the notification is ineffective under subsection (c)(1).

23
24 4. *Relationship to Section 9-406.* Section 9-406 governs the discharge of the obligation of
25 an account debtor. It will be amended to carve out transactions covered by this section. *See draft §*
26 *9-406.*

27 28 **Section 12-107. Governing Law.**

29 [The Drafting Committee will not consider this section until after the Annual Meeting]

30 **ARTICLE 9**

31 **SECURED TRANSACTIONS**

32 **Section 9-102. Definitions and Index of Definitions.**

33 (a) [Article 9 definitions.] In this article:

34 * * *

35 (2) “Account”, except as used in “account for”, means a right to payment of a
36 monetary obligation, whether or not earned by performance, (i) for property that has been or is to

1 be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be
2 rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation
3 incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a
4 vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or
5 information contained on or for use with the card, or (viii) as winnings in a lottery or other game of
6 chance operated or sponsored by a State, governmental unit of a State, or person licensed or
7 authorized to operate the game by a State or governmental unit of a State. The term includes
8 controllable accounts and health-care-insurance receivables. * * *

9 * * *

10 (27A) “Controllable account” means an account evidenced by a controllable
11 electronic record that provides that the account debtor undertakes to pay the person that has control
12 of the controllable electronic record under Section 12-105.

13 (27B) “Controllable payment intangible” means a payment intangible evidenced by
14 a controllable electronic record that provides that the account debtor undertakes to pay the person
15 that has control of the controllable electronic record under Section 12-105.

16 * * *

17 (61) “Payment intangible” means a general intangible under which the account
18 debtor’s principal obligation is a monetary obligation. The term includes controllable payment
19 intangibles.

20 * * *

21 (b) **[Definitions in other articles.]** The following definitions in other articles apply to this
22 article:

23 * * *

24 “Controllable electronic record” Section 12-102.

1 * * *

2 **Reporter’s Note**

3
4 1. “*Controllable account*”; “*controllable payment intangible*.” The draft affords special
5 treatment to security interests in controllable accounts and controllable payment intangibles, *i.e.*,
6 those accounts and payment intangibles that are evidenced by a controllable electronic record that
7 provides that the account debtor (obligor) undertakes to pay the person having control of the
8 controllable electronic record. This special treatment includes the following:
9

- 10 • Attachment of a security interest in a controllable electronic record is attachment of a
11 security interest in a related controllable account and controllable payment intangible.
12 Draft § 9-203(j).
13
14 • Perfection of a security interest in a controllable electronic record is perfection of a
15 security interest in a related controllable account and controllable payment intangible.
16 Draft § 9-308(h).
17
18 • Perfection of a security interest in a controllable account or controllable payment
19 intangible can be achieved by filing a financing statement or obtaining control of the
20 controllable electronic record that evidences the controllable account or controllable
21 payment intangible. Draft §§ 9-314(a); 9-107A(b).
22
23 • A security interest in a controllable electronic record, controllable account, or
24 controllable payment intangible that is perfected by control has priority over a
25 conflicting security interest that is perfected by another method. Draft § 9-326A.
26
27 • A person that enjoys the benefit of the take-free and no-action rules with respect to a
28 controllable electronic record would also enjoy those benefits with respect to a
29 controllable account or controllable payment intangible that is evidenced by the
30 controllable electronic record. Draft § 12-104(e), (g).
31

32 2. “*Person that has control*.” An undertaking to pay the “person that has control” means
33 an undertaking to pay the person that has control at the time payment is made. An undertaking to
34 pay Smith, who has control of the relevant controllable electronic record at the time the
35 undertaking was made, is not an undertaking to pay the person that has control.
36

37 **Section 9-107A. Control of Controllable Electronic Record, Controllable Account, or**

38 **Controllable Payment Intangible.**

39 **(a) A secured party has control of a controllable electronic record as provided in Section 12-**

40 **105.**

41 **(b) A secured party has control of a controllable account or controllable payment intangible**

1 if the secured party has control of the controllable electronic record that evidences the controllable
2 account or controllable payment intangible.

3 **Reporter's Note**

4
5 1. *Control of controllable electronic records.* This draft provides for perfection by filing
6 and perfection by control as alternative methods of perfection with respect to a controllable
7 electronic record. See draft §§ 9-313; 9-314. Under draft § 9-107A(a), a secured party has control
8 of a controllable electronic record as provided in draft § 12-105. Under draft § 9-326A, a security
9 interest in a controllable electronic record that is perfected by control has priority over a security
10 interest perfected by another method.

11
12 2. *Consequences of control of controllable account or controllable payment intangible.*
13 This draft provides for perfection by filing and perfection by control as alternative methods of
14 perfection with respect to a controllable account or controllable payment intangible. See draft §§
15 9-313, 9-314. Under draft § 9-107A(a), a secured party would obtain control of a controllable
16 account or controllable payment intangible by obtaining control of the related controllable
17 electronic record. Under draft § 9-326A, a security interest in a controllable account or
18 controllable payment intangible that is perfected by control would have priority over a security
19 interest perfected by another method.

20
21 By definition, a controllable account would be an Article 9 “account,” and a controllable
22 payment intangible would be an Article 9 “payment intangible.” Draft § 9-102. The fact that an
23 account or payment intangible is a controllable account or controllable payment intangible would
24 afford to the secured party an alternative method of perfection, *i.e.*, filing. However, that fact
25 would not affect the applicability of other provisions of Article 9, including the provisions
26 governing an account debtor’s agreement not to assert defenses (Section 9-403) and the statutory
27 overrides of legal and contractual restrictions on the assignability of accounts and payment
28 intangibles (Sections 9-406 and 9-408).

29 **Section 9-203. Attachment and Enforceability of Security Interest; Proceeds;** 30 **Supporting Obligations; Formal Requisites.**

31 * * *

32
33 (b) **[Enforceability.]** Except as otherwise provided in subsections (c) through ~~(j)~~ (i), a
34 security interest is enforceable against the debtor and third parties with respect to the collateral only
35 if:

36 (1) value has been given;

37 (2) the debtor has rights in the collateral or the power to transfer rights in the

1 collateral to a secured party; and

2 (3) one of the following conditions is met:

3 * * *

4 (D) the collateral is controllable electronic records, controllable accounts,
5 controllable payment intangibles, deposit accounts, electronic chattel paper, investment property,
6 or letter-of-credit rights, or electronic documents, and the secured party has control under Section
7 7-106, 9-104, 9-105, 9-106, ~~or 9-107~~ 9-107, or 9-107A pursuant to the debtor's security agreement.

8 * * *

9 **(j) [Controllable account or payment intangible.]** The attachment of a security interest in
10 a controllable electronic record that evidences a controllable account or controllable payment
11 intangible is also attachment of a security interest in the controllable account or controllable
12 payment intangible.

13 **Section 9-207. Rights and Duties of Secured Party Having Possession or Control of**
14 **Collateral.**

15 * * *

16 **(c) [Duties and rights when secured party in possession or control.]** Except as otherwise
17 provided in subsection (d), a secured party having possession of collateral or control of collateral
18 under Section 7-106, 9-104, 9-105, 9-106, ~~or 9-107:~~ 9-107, or 9-107A:

19 (1) may hold as additional security any proceeds, except money or funds, received
20 from the collateral;

21 (2) shall apply money or funds received from the collateral to reduce the secured
22 obligation, unless remitted to the debtor; and

23 (3) may create a security interest in the collateral.

24 * * *

1 **Section 9-208. Additional Duties of Secured Party Having Control of Collateral.**

2 [The Drafting Committee will not consider this section until after the Annual Meeting]

3 **Section 9-308. When Security Interest or Agricultural Lien Is Perfected; Continuity of**
4 **Perfection.**

5 * * *

6 **(h) [Controllable account or payment intangible.]** Perfection of a security interest in a
7 controllable electronic record that evidences a controllable account or controllable payment
8 intangible also perfects a security interest in the controllable account or controllable payment
9 intangible.

10 * * *

11 **Section 9-312. Perfection of Security Interests in Controllable Electronic Records,**
12 **Controllable Accounts, Controllable Payment Intangibles, Chattel Paper, Deposit Accounts,**
13 **Documents, Goods Covered by Documents, Instruments, Investment Property, Letter-of-**
14 **Credit Rights, and Money; Perfection by Permissive Filing; Temporary Perfection Without**
15 **Filing or Transfer of Possession.**

16 **(a) [Perfection by filing permitted.]** A security interest in controllable electronic records,
17 controllable accounts, controllable payment intangibles, chattel paper, negotiable documents,
18 instruments, or investment property may be perfected by filing.

19 * * *

20 **Section 9-314. Perfection by Control.**

21 **(a) [Perfection by control.]** A security interest in investment property, deposit accounts,
22 letter-of-credit rights, controllable electronic records, controllable accounts, controllable payment
23 intangibles, electronic chattel paper, or electronic documents may be perfected by control of the
24 collateral under Section 7-106, 9-104, 9-105, 9-106, ~~or 9-107.~~ 9-107, or 9-107A.

1 (b) [Specified collateral: time of perfection by control; continuation of perfection.] A
2 security interest in controllable electronic records, controllable accounts, controllable payment
3 intangibles, deposit accounts, electronic chattel paper, letter-of-credit rights, or electronic
4 documents is perfected by control under Section 7-106, 9-104, 9-105, ~~or 9-107~~ 9-107, or 9-107A
5 when the secured party obtains control and remains perfected by control only while the secured
6 party retains control.

7 * * *

8 **Section 9-326A. Priority of Security Interests in Controllable Electronic Record,**
9 **Controllable Account, and Controllable Payment Intangible.**

10 A security interest in a controllable electronic record, controllable account, or controllable
11 payment intangible held by a secured party having control of the controllable electronic record,
12 controllable account, or controllable payment intangible has priority over a conflicting security
13 interest held by a secured party that does not have control.

14 **Reporter's Note**

15 1. *Priority.* This section adopts an approach to priority in controllable electronic records,
16 controllable accounts, and controllable payment intangibles that is similar to the approach of
17 Sections 9-327 and 9-328: A security interest perfected by control has priority over conflicting
18 security interests that are not perfected by control. The approach taken in Section 9-330, which
19 applies to chattel paper and instruments, would be likely to yield the same outcomes that would
20 obtain under the provisions applicable to qualifying purchasers (draft §§ 12-104(e) and (g) and 9-
21 331) in the vast majority of cases.

22
23 **Section 9-331. Priority of Rights of Purchasers of Instruments, Documents, and**
24 **Securities Securities, Controllable Electronic Records, Controllable Accounts, and**
25 **Controllable Payment Intangibles Under Other Articles; Priority of Interests in Financial**
26 **Assets and Security Entitlements Under Article 8 and Controllable Electronic Records Under**
27 **Article 12.**

28 (a) [Rights under Articles 3, 7, ~~and 8~~ 8, and 12 not limited.] This article does not limit

1 the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable
2 document of title has been duly negotiated, ~~or~~ a protected purchaser of a security, or a qualifying
3 purchaser of a controllable electronic record. These holders or purchasers take priority over an
4 earlier security interest, even if perfected, to the extent provided in Articles 3, 7, ~~and~~ 8, and 12.

5 (b) **[Protection under ~~Article 8~~ Articles 8 and 12.**] This article does not limit the rights of
6 or impose liability on a person to the extent that the person is protected against the assertion of a
7 claim under Article 8 or 12.

8 (c) **[Filing not notice.]** Filing under this article does not constitute notice of a claim or
9 defense to the holders, or purchasers, or persons described in subsections (a) and (b).

10 **Reporter's Note**

11
12 1. *Purpose of this section.* This section insures that Article 9 does not interfere with the
13 protections that Article 12 affords to a good faith purchaser for value under the take-free and no-
14 action rules in draft § 12-105(e) and (g).

15 **Section 9-406. Discharge of Account Debtor; Notification of Assignment;**

16
17 **Identification and Proof of Assignment; Restrictions on Assignment of Accounts, Chattel**
18 **Paper, Payment Intangibles, and Promissory Notes Ineffective.**

19 (a) **[Discharge of account debtor; effect of notification.]** Subject to subsections (b)
20 through (i) and (l), an account debtor on an account, chattel paper, or a payment intangible may
21 discharge its obligation by paying the assignor until, but not after, the account debtor receives a
22 notification, authenticated by the assignor or the assignee, that the amount due or to become due
23 has been assigned and that payment is to be made to the assignee. After receipt of the notification,
24 the account debtor may discharge its obligation by paying the assignee and may not discharge the
25 obligation by paying the assignor.

26 (b) **[When notification ineffective.]** Subject to ~~subsection~~ subsections (h) and (l),
27 notification is ineffective under subsection (a):

1 (1) if it does not reasonably identify the rights assigned;

2 (2) to the extent that an agreement between an account debtor and a seller of a
3 payment intangible limits the account debtor's duty to pay a person other than the seller and the
4 limitation is effective under law other than this article; or

5 (3) at the option of an account debtor, if the notification notifies the account debtor
6 to make less than the full amount of any installment or other periodic payment to the assignee,
7 even if:

8 (A) only a portion of the account, chattel paper, or payment intangible has
9 been assigned to that assignee;

10 (B) a portion has been assigned to another assignee; or

11 (C) the account debtor knows that the assignment to that assignee is limited.

12 (c) **[Proof of assignment.]** Subject to ~~subsection~~ subsections (h) and (l), if requested by the
13 account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been
14 made. Unless the assignee complies, the account debtor may discharge its obligation by paying
15 the assignor, even if the account debtor has received a notification under subsection (a).

16 * * *

17 (l) [Inapplicability of certain subsections.] Subsections (a) through (c) and (g) do not apply
18 to a controllable account or controllable payment intangible.

19 Reporter's Note

20 1. *Controllable accounts and controllable payment intangibles.* For controllable accounts
21 and controllable payment intangibles, subsections (a) through (c) and (g) will be replaced by
22 analogous provisions in draft § 12-106.

23
24 **Section 9-601. Rights After Default; Judicial Enforcement; Consignor or Buyer of**
25 **Accounts, Chattel Paper, Payment Intangibles, or Promissory Notes.**

26 * * *

1 (b) **[Rights and duties of secured party in possession or control.]** A secured party in
2 possession of collateral or control of collateral under Section 7-106, 9-104, 9-105, 9-106, ~~or 9-107~~
3 9-107, or 9-107A has the rights and duties provided in Section 9-207.

4 * * *

5 **Section 9-605. Unknown Debtor or Secondary Obligor.**

6 (a) A Subject to subsection (b), a secured party does not owe a duty based on its status as
7 secured party:

8 (1) to a person that is a debtor or obligor, unless the secured party knows:

9 (A) that the person is a debtor or obligor;

10 (B) the identity of the person; and

11 (C) how to communicate with the person; or

12 (2) to a secured party or lienholder that has filed a financing statement against a
13 person, unless the secured party knows:

14 (A) that the person is a debtor; and

15 (B) the identity of the person.

16 (b) Subsection (a) does not apply to a secured party that, at the time the secured party's
17 security interest attaches to a controllable electronic record, controllable account, or controllable
18 payment intangible, has notice that the nature of the collateral or the system in which the collateral
19 is recorded, if any, would prevent the secured party from acquiring the knowledge specified in that
20 subsection.

21 **Section 9-628. Nonliability and Limitation on Liability of Secured Party; Liability of**
22 **Secondary Obligor.**

23 (a) **[Limitation of liability of secured party for noncompliance with article.]** Unless a
24 secured party knows that a person is a debtor or obligor, knows the identity of the person, and

1 knows how to communicate with the person:

2 (1) the secured party is not liable to the person, or to a secured party or lienholder
3 that has filed a financing statement against the person, for failure to comply with this article; and

4 (2) the secured party's failure to comply with this article does not affect the liability
5 of the person for a deficiency.

6 (b) **[Limitation of liability based on status as secured party.]** ~~A~~ Subject to subsection

7 (c), a secured party is not liable because of its status as secured party:

8 (1) to a person that is a debtor or obligor, unless the secured party knows:

9 (A) that the person is a debtor or obligor;

10 (B) the identity of the person; and

11 (C) how to communicate with the person; or

12 (2) to a secured party or lienholder that has filed a financing statement against a
13 person, unless the secured party knows:

14 (A) that the person is a debtor; and

15 (B) the identity of the person.

16 (c) Subsection (b) does not apply to a secured party that, at the time the secured party's

17 security interest attaches to a controllable electronic record, controllable account, or controllable

18 payment intangible, has notice that the nature of the collateral or the system in which the collateral

19 is recorded, if any, would prevent the secured party from acquiring the knowledge specified in that

20 subsection.

21

Reporter's Note

22 1. *Liability to unknown persons.* Practices are developing under which lenders extend
23 secured credit without knowing, or having the ability to discover, the identity of their borrowers.
24 Existing Sections 9-605 and 9-628 would excuse these secured parties from having duties to their
25 debtors, including, *e.g.*, the duty to notify the debtor before disposing of the collateral and the duty
26 to account to the debtor for any surplus arising from a disposition.

1 Comment 2 to Section 9-628 observes, “Without this group of provisions [in Sections 9-605
2 and 9-628], a secured party could incur liability to unknown persons and under circumstances that
3 would not allow the secured party to protect itself.” The draft amendments to this section reflect
4 the policy that a secured party should not be free to avoid statutory duties or absolve itself from
5 liability by entering into a transaction when the secured party can protect itself, *i.e.*, when the
6 secured party has notice that the nature of the collateral or any system in which the collateral is
7 recorded would prevent the secured party from acquiring the knowledge necessary to fulfill its
8 statutory duties. (A person has notice of a fact if, *inter alia*, from all the facts and circumstances
9 known to the person at the time in question, has reason to know that it exists. Section 1-202(a)(3).)

10
11 **EFFECTIVE DATE AND TRANSITION PROVISIONS**

12 [The Drafting Committee will not consider these provisions until after the Annual Meeting]

13 **B. Money**

14 **Prefatory Note**

15 With one exception, all of these amendments address the use of intangible fiat currency
16 (money) as collateral under UCC Article 9.¹¹

17
18 We have no way of knowing how intangible money might develop. There are indications
19 that some countries might authorize or adopt intangible tokens as a medium of exchange (the
20 Peoples Bank of China has been developing a digital Yuan), whereas others might authorize or
21 adopt accounts with a central bank.¹²

22
23 Section 1-201(b)(24) defines “money” as “a medium of exchange currently authorized or
24 adopted by a domestic or foreign government.” For many purposes, there is no need for the UCC
25 to distinguish among types of money. *See, e.g.*, UCC § 3-103(a)(12) (“‘Promise’ means a written
26 undertaking to pay money . . .”) For Article 9 purposes, however, distinctions must be drawn.
27 Only tangible money is susceptible of perfection by possession. The acts needed for perfection by
28 control with respect to intangible tokens will not work for accounts with a central bank, and vice
29 versa. Thus the draft draws a sharp distinction between money that is an account maintained with a
30 bank, and other intangible money, including token-based money.

31
32 The existing Article 9 provisions governing “deposit accounts” would remain suitable for
33 accounts with a central bank, even if a government has adopted these accounts as money. The draft
34 makes no changes with respect to Article 9’s treatment of these accounts, aside from distinguishing
35 them from other intangible money. The draft draws this distinction by excluding “deposit
36 accounts” from the defined term “intangible money.” Under the draft, a security interest in
37 intangible money as original collateral can be perfected only by control. The requirements for
38 obtaining control of intangible money are the same as those for obtaining control of a controllable
39 electronic record under draft Article 12.

¹¹ The exception is an amendment to UCC § 1-201(b)(24) that would delete from the UCC’s generally applicable definition of “money” a unit of account that is established by an intergovernmental organization or by agreement between two or more countries.

¹² These accounts sometimes are referred to as central bank digital currency or CBDC.

1 **ARTICLE 1**

2 **GENERAL PROVISIONS**

3 **Section 1-201. General Definitions.**

4 * * *

5 (b) Subject to definitions contained in other articles of the [Uniform Commercial Code] that
6 apply to particular articles or parts thereof:

7 * * *

8 (24) “Money” means a medium of exchange currently authorized or adopted by a
9 domestic or foreign government. ~~The term includes a monetary unit of account established by an
10 intergovernmental organization or by agreement between two or more countries.~~

11 * * *

12 **Reporter’s Note**

13
14 1. “*Money.*” The definition of “money” applies to the term as used in the UCC. The
15 definition does not determine whether an asset constitutes “money” for other purposes.

16
17 “Money” does not include credits in a deposit account, money market account, securities
18 account, or payment-processor account (*e.g.*, PayPal), inasmuch as those do not constitute a
19 medium of exchange that is authorized or adopted by a government. However, future
20 governmental action could bring one or more of these accounts within the definition. Likewise,
21 virtual currency that is not “money” today may become so in the future.

22
23 2. “*Monetary unit of account.*” The draft deletes the second sentence of the existing
24 definition, which covers, *e.g.*, special drawing rights (SDRs) created by the International Monetary
25 Fund. Despite the deletion, a monetary unit of account would be “money” if it also a medium of
26 exchange that falls within the remaining sentence. (SDRs are not a medium of exchange.)

27
28 **ARTICLE 9**

29 **SECURED TRANSACTIONS**

30 * * *

31 (29) “Deposit account” means a demand, time, savings, passbook, or similar account
32 maintained with a bank. The term includes an account that is money under Section 1-201. The

1 term does not include investment property or accounts evidenced by an instrument.

2 * * *

3 (47A) “Intangible money” does not include money that is a deposit account.

4 * * *

5 **Reporter’s Note**

6
7 1. “*Deposit account.*” The new sentence clarifies that an account that otherwise would fall
8 within the definition of “deposit account” would not be excluded from the definition if the account
9 is “money,” *i.e.*, if a government adopts or authorizes such an account as a medium of exchange.
10 The new sentence does *not* provide that all deposit accounts are “money.”

11
12 2. “*Intangible money.*” By excluding deposit accounts from the definition of “intangible
13 money,” the draft leaves within that category intangible token-money and other non-deposit-
14 account intangible money that may be created in the future.

15 **Section 9-105A. Control of Intangible Money.**

16
17 (a) A person has control of intangible money if the following conditions are met:

18 (1) the intangible money or the system in which the intangible money is recorded, if
19 any, gives the person:

20 (A) the power to avail the person of substantially all the benefit from the
21 intangible money;

22 (B) subject to subsection (b), the exclusive power to:

23 (i) prevent others from availing themselves of substantially all the
24 benefit from the intangible money; and

25 (ii) transfer control of the intangible money to another person or
26 cause another person to obtain control of intangible money that is traceable to the intangible
27 money; and

28 (2) the intangible money, a record attached to or logically associated with the
29 intangible money, or the system in which the intangible money is recorded, if any, enables the

1 person to readily identify itself as having the powers under subsection (a)(1). The person may be
2 identified in any way, including by name, identifying number, cryptographic key, office, or account
3 number.

4 (b) A power specified in subsection (a) is exclusive, even if:

5 (1) the intangible money or the system in which the intangible money is recorded, if
6 any, limits the use to which the intangible may be put or has protocols that are programmed to
7 result in a transfer of control; or

8 (2) the person has agreed to share the power with another person.

9 **Reporter's Note**

10
11 1. "*Control.*" A security interest in intangible money as original collateral may be perfected
12 only by control under this section. See draft § 9-312(b)(4). The requirements for obtaining control
13 track those in draft § 12-105.

14
15 **Section 9-203. Attachment and Enforceability of Security Interest; Proceeds;**
16 **Supporting Obligations; Formal Requisites.**

17 * * *

18 (b) [**Enforceability.**] Except as otherwise provided in subsections (c) through (i), a security
19 interest is enforceable against the debtor and third parties with respect to the collateral only if:

20 (1) value has been given;

21 (2) the debtor has rights in the collateral or the power to transfer rights in the
22 collateral to a secured party; and

23 (3) one of the following conditions is met:

24 (A) the debtor has authenticated a security agreement that provides a
25 description of the collateral and, if the security interest covers timber to be cut, a description of the
26 land concerned;

27 (B) the collateral is not a certificated security and is in the possession of the

1 secured party under Section 9-313 pursuant to the debtor’s security agreement;

2 (C) the collateral is a certificated security in registered form and the security
3 certificate has been delivered to the secured party under Section 8-301 pursuant to the debtor’s
4 security agreement; or

5 (D) the collateral is deposit accounts, electronic chattel paper, intangible
6 money, investment property, letter-of-credit rights, or electronic documents and the secured party
7 has control under Section 7-106, 9-104, 9-105, 9-105A, 9-106, or 9-107 pursuant to the debtor’s
8 security agreement.

9 * * *

10 **Section 9-301. Law Governing Perfection and Priority of Security Interests.** Except as
11 otherwise provided in Sections 9-303 through 9-306, the following rules determine the law
12 governing perfection, the effect of perfection or nonperfection, and the priority of a security
13 interest in collateral:

14 (1) Except as otherwise provided in this section, while a debtor is located in a
15 jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or
16 nonperfection, and the priority of a security interest in collateral.

17 (2) While collateral is located in a jurisdiction, the local law of that jurisdiction
18 governs perfection, the effect of perfection or nonperfection, and the priority of a possessory
19 security interest in that collateral.

20 (3) Except as otherwise provided in paragraph (4), while tangible negotiable
21 documents, goods, instruments, tangible money, or tangible chattel paper is located in a
22 jurisdiction, the local law of that jurisdiction governs:

23 (A) perfection of a security interest in the goods by filing a fixture filing;

24 (B) perfection of a security interest in timber to be cut; and

1 (C) the effect of perfection or nonperfection and the priority of a
2 nonpossessory security interest in the collateral.

3 * * *

4 **Section 9-310. When Filing Required to Perfect Security Interest or Agricultural Lien;**
5 **Security Interests and Agricultural Liens to Which Filing Provisions Do Not Apply.**

6 * * *

7 (b) [**Exceptions: filing not necessary.**] The filing of a financing statement is not necessary
8 to perfect a security interest:

9 * * *

10 (8) in deposit accounts, electronic chattel paper, electronic documents, intangible
11 money, investment property, or letter-of-credit rights which is perfected by control under Section
12 9-314;

13 * * *

14 * * *

15 **Section 9-312. Perfection of Security Interests in Chattel Paper, Deposit Accounts,**
16 **Documents, Goods Covered by Documents, Instruments, Investment Property, Letter-of-**
17 **Credit Rights, and Money; Perfection by Permissive Filing; Temporary Perfection Without**
18 **Filing or Transfer of Possession.**

19 (a) [**Perfection by filing permitted.**] A security interest in chattel paper, negotiable
20 documents, instruments, or investment property may be perfected by filing.

21 (b) [**Control or possession of certain collateral.**] Except as otherwise provided in
22 Section 9-315(c) and (d) for proceeds:

23 (1) a security interest in a deposit account may be perfected only by control
24 under Section 9-314;

1 (2) except as otherwise provided in Section 9-308(d), a security interest in a
2 letter-of-credit right may be perfected only by control under Section 9-314; ~~and~~

3 (3) a security interest in tangible money may be perfected only by the
4 secured party's taking possession under Section ~~9-313~~; 9-313; and

5 (4) a security interest in intangible money may be perfected only by control
6 under section 9-105A.

7 **Section 9-313. When Possession by or Delivery to Secured Party Perfects Security**
8 **Interest Without Filing.**

9 (a) [**Perfection by possession or delivery.**] Except as otherwise provided in subsection (b),
10 a secured party may perfect a security interest in tangible negotiable documents, goods,
11 instruments, tangible money, or tangible chattel paper by taking possession of the collateral. A
12 secured party may perfect a security interest in certificated securities by taking delivery of the
13 certificated securities under Section 8-301.

14 * * *

15 **Section 9-314. Perfection by Control.**

16 (a) [**Perfection by control.**] A security interest in investment property, deposit accounts,
17 intangible money, letter-of-credit rights, electronic chattel paper, or electronic documents may be
18 perfected by control of the collateral under Section 7-106, 9-104, 9-105, 9-105A, 9-106, or 9-107.

19 (b) [**Specified collateral: time of perfection by control; continuation of perfection.**] A
20 security interest in deposit accounts, electronic chattel paper, intangible money, letter-of-credit
21 rights, or electronic documents is perfected by control under Section 7-106, 9-104, 9-105, 9-105A,
22 or 9-107 when the secured party obtains control and remains perfected by control only while the
23 secured party retains control.

24 * * *

1 Section 9-102 defines “chattel paper” to include a record that evidences a monetary
2 obligation that is owed under a lease of goods and a monetary obligation with respect to software
3 used in the goods. Lease transactions have increasingly given rise not only to obligations for goods
4 and related software but also for services (e.g., cloud services) relating to the goods. Not
5 infrequently, the value of the non-goods aspect of the transaction is substantially greater than the
6 value of the lessee’s rights under the lease. Those who finance chattel paper and other rights to
7 payment have become uncertain as to whether these transactions give rise to chattel paper.
8

9 The draft resolves this issue by treating only those transactions whose predominant purpose
10 was to give the obligor (lessee) the right to possession and use of the goods as giving rise to
11 “chattel paper.”
12

13 Consider this example: Customer agrees to pay Cable Company for 12 months of television
14 programming and for 12 months’ use of a cable box needed to access the programming. Customer
15 agrees to pay \$150 a month for the programming and the use of the cable box. The predominant
16 purpose of this transaction is to provide television programming to Customer, not to enable
17 Customer to use the cable box. Under the draft, this transaction does not give rise to chattel paper.
18

19 Issue #2: The statutory distinction between “tangible chattel paper” and “electronic chattel paper”
20 causes practical problems.
21

22 *Background.*

23
24 “Chattel paper” is one of several types of collateral that relate to rights to payment
25 (receivables). Others include “accounts,” “instruments,” and “payment intangibles.”
26

27 Until Article 9 was revised in the 1990s, chattel paper was deserving of its name. It was a
28 writing (*paper*), that was connected with a security interest in or lease of specific goods (*chattels*).
29 A common example is an installment sale contract, under which a buyer of goods on credit
30 promises to pay the sale price and secures that promise with a security interest in the goods.
31 Another common example is an equipment lease, where the lessee promises to pay rent and the
32 lessor retains a leasehold interest in the leased goods.
33

34 The 1999 official text expanded the definition of chattel paper to allow for an electronic
35 record instead of a writing. Traditional, written chattel paper was denominated “tangible chattel
36 paper,” whereas intangible chattel paper was denominated (despite the oxymoron) “electronic
37 chattel paper.” The principal difference between tangible chattel paper and electronic chattel paper
38 is that a security interest in the former can be perfected by taking possession (which, of course, is
39 impossible to do with respect to an electronic record), whereas a security interest in the latter can
40 be perfected by having control, a concept that subsequently appeared in UETA and E-SIGN.
41

42 *Shortcomings in the current Article 9 provisions.*

43
44 *Tangible chattel paper.* Even before the 1999 revision of Article 9, “everyone” understood
45 that the copy of the lease that constituted *the* chattel paper, *i.e.* the writing with respect to which
46 possession was necessary and sufficient for perfection of a security interest, was the signed
47 original. In a typical lease transaction for which the lessor receives financing, however, the lessor,

1 the lessee, and the financier each would receive a signed copy of the lease.
2

3 When there was more than one original, litigation required judges to determine whether
4 possession of all signed originals was necessary to perfect by taking possession of the chattel paper
5 or whether possession of one of several originals would suffice. The comments to the 1999
6 revision addressed this issue.
7

8 In addition, different aspects of a single transaction may be evidenced by separate writings.
9 For example, a transaction in which several items of equipment are leased often includes a master
10 lease, which includes the terms applicable to all the goods, and specific schedules, which apply to
11 specific leased goods. This issue, too, arose in litigation before the 1999 revision was promulgated
12 and was addressed in the official comments.
13

14 *Electronic chattel paper.* As for electronic chattel paper, *control* was designed to function
15 to the extent possible like *possession*. Just as Article 9 contemplated that only one person at a time
16 can have possession of tangible chattel paper, so Article 9 defined control of electronic chattel
17 paper by reference to a “single authoritative copy.”
18

19 As secured parties tried to take advantage of the electronic-chattel-paper provisions, they
20 confronted some difficulties.
21

- 22 • *First*, the rule that a secured party cannot obtain control of electronic chattel paper unless
23 there is a “single authoritative copy” impeded system design.
24
- 25 • *Second*, in some cases it has proven to be commercially desirable to “convert” tangible
26 chattel paper into electronic chattel paper or to “paper out” electronic chattel paper into
27 tangible chattel paper. The legal consequences of doing so are thought to be uncertain.
28
- 29 • *Third*, existing law does not deal satisfactorily with the situation where the records
30 referred to in the current definition comprise one or more tangible authoritative copies of
31 the records that evidence the right to payment and rights in related property and one or
32 more electronic authoritative copies of those records.¹³ This situation might arise when,
33 *e.g.*, electronic chattel paper is subsequently amended by a writing, such that some
34 material terms of the chattel paper are contained in a tangible authoritative copy and some
35 are contained in an electronic authoritative copy.
36

37 The 2010 amendments to Article 9 addressed the first issue by adding a general standard for
38 control (borrowed from UETA and E-SIGN) and turning the 1999 conditions for control into a safe
39 harbor. Under the general standard, a person would have control if “a system employed for
40 evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the
41 person to which the chattel paper was assigned.” UCC § 9-105(a). The amendments addressed the
42 second and third issues in official comments.
43

44 Lawyers proved uncomfortable issuing a legal opinion to the effect that a particular system
45 satisfied the general standard for control. As a result, their clients had strong incentives to use

¹³ The only copies that are relevant under the draft are those that are “authoritative.” Regarding the meaning of the term, see the Reporter’s Notes to draft § 9-314A.

1 systems that allow for a “single authoritative copy” rather than, for example, utilizing distributed
2 ledger technology, which always involves multiple authoritative copies. Thus, the technology for
3 maintaining electronic chattel paper remains frozen in time.

4
5 Lawyers remain uncertain as to how a court would resolve the second and third issues
6 described above.

7
8 *Controllable electronic records v. chattel paper.*

9
10 A fundamental principle underlying draft Article 12, dealing with controllable electronic
11 records, is the distinction between a record that evidences a right (e.g., a right to payment) and the
12 right itself.

13
14 The current definitions of “chattel paper,” “tangible chattel paper,” and “electronic chattel
15 paper” muddle that distinction and so would be in tension with draft Article 12. Article 9 defines
16 “chattel paper” as a “record or records” that evidence a monetary obligation and a security interest
17 in or lease of specific goods. A record of this kind, e.g., the paper on which an installment sale
18 contract or equipment lease is written, typically is of no value, other than as evidence of the right to
19 payment and interest in goods.¹⁴ For the most part, this has not presented a problem, as those who
20 deal with chattel paper understand that even though Article 9 defines “chattel paper” as a record or
21 records, a security interest in chattel paper is in fact a security interest in the right to payment of the
22 monetary obligation and in the interest in related property that are evidenced by the chattel paper.

23
24 *Approach taken in the draft.*

25
26 The draft provides a single rule, under which a security interest in chattel paper can be
27 perfected by taking possession of the tangible authoritative copies, if any, and obtaining control of
28 the electronic authoritative copies, if any. This single rule would address cases where some records
29 evidencing chattel paper are electronic and some are tangible or where a record in one medium is
30 replaced by a record in another.

31
32 The draft also defines chattel paper more accurately, as the right to payment of a monetary
33 obligation that is secured by a security interest in specific goods or owed under a lease of specific
34 goods, if the right to payment and interest in the goods are evidenced by a record.

35
36 **ARTICLE 1**

37 **GENERAL PROVISIONS**

38 **Section 1-201. General Definitions.**

39 * * *

¹⁴ Where a record evidencing the monetary obligation is a negotiable instrument, the paper itself is likely to have considerable value. See the Concluding Note below for a discussion of chattel paper evidenced by a negotiable instrument.

1 (b) Subject to definitions contained in other articles of the [Uniform Commercial Code] that
2 apply to particular articles or parts thereof:

3 * * *

4 (2) “Account”, except as used in “account for” and “on account of”, means a right to
5 payment of a monetary obligation, whether or not earned by performance, whether or not earned by
6 performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise
7 disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to
8 be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to
9 be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of
10 the use of a credit or charge card or information contained on or for use with the card, or (viii) as
11 winnings in a lottery or other game of chance operated or sponsored by a State, governmental unit
12 of a State, or person licensed or authorized to operate the game by a State or governmental unit of a
13 State. The term includes health-care-insurance receivables. The term does not include (i) ~~rights to~~
14 ~~payment evidenced by chattel paper or an instrument, chattel paper,~~ (ii) commercial tort claims,
15 (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, ~~or~~ (vi)
16 rights to payment for money or funds advanced or sold, other than rights arising out of the use of a
17 credit or charge card or information contained on or for use with the ~~card.~~ card, or (vii) rights to
18 payment evidenced by an instrument.

19 * * *

20 **Reporter’s Note**

21
22 1. “*Account.*” As the Prefatory Note explains, the draft redefines “chattel paper” to mean a
23 right to payment rather than a record evidencing a right to payment. The amendments to the
24 definition of “account” reflect the redefinition.

25 **ARTICLE 9**

26 **SECURED TRANSACTIONS**

27

1 **Section 9-102. Definitions and Index of Definitions.**

2 (a) [Article 9 definitions.] In this article:

3 * * *

4 (11) ~~“Chattel paper” means a record or records that evidence both a monetary~~
5 ~~obligation and a security interest in specific goods, a security interest in specific goods and~~
6 ~~software used in the goods, a security interest in specific goods and license of software used in the~~
7 ~~goods, a lease of specific goods, or a lease of specific goods and license of software used in the~~
8 ~~goods. In this paragraph, “monetary obligation” means a monetary obligation secured by the goods~~
9 ~~or owed under a lease of the goods and includes a monetary obligation with respect to software~~
10 ~~used in the goods. The term does not include (i) charters or other contracts involving the use or~~
11 ~~hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or~~
12 ~~charge card or information contained on or for use with the card. If a transaction is evidenced by~~
13 ~~records that include an instrument or series of instruments, the group of records taken together~~
14 ~~constitutes chattel paper.~~

15 (11) “Chattel paper” means:

16 (A) a right to payment of a monetary obligation secured by specific goods, if
17 the right to payment and security agreement are evidenced by a record; or

18 (B) a right to payment of a monetary obligation owed by a lessee under a
19 lease agreement with respect to specific goods and a monetary obligation, if any, owed by the
20 lessee in connection with the transaction giving rise to the lease, if:

21 (i) the right to payment and lease agreement are evidenced by a
22 record; and

23 (ii) the predominant purpose of the transaction giving rise to the lease
24 was to give the lessee the right to possession and use of the goods.

1 The term does not include (i) a right to payment arising out of a charter or other contract involving
2 the use or hire of a vessel or (ii) a right to payment arising out of the use of a credit or charge card
3 or information contained on or for use with the card.

4 * * *

5 ~~(31) “Electronic chattel paper” means chattel paper evidenced by a record or records~~
6 ~~consisting of information stored in an electronic medium.~~

7 * * *

8 (47) “Instrument” means a negotiable instrument or any other writing that evidences
9 a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of
10 a type that in ordinary course of business is transferred by delivery with any necessary indorsement
11 or assignment. The term does not include (i) investment property, (ii) letters of credit, ~~or~~ (iii)
12 writings that evidence a right to payment arising out of the use of a credit or charge card or
13 information contained on or for use with the card, or (iv) writings that evidence chattel paper.

14 * * *

15 ~~(79) “Tangible chattel paper” means chattel paper evidenced by a record or records~~
16 ~~consisting of information that is inscribed on a tangible medium.~~

17 * * *

18 *Legislative Note. Replicate the formatting of the tabulated material in this section exactly to ensure*
19 *that the meaning of the material is preserved.*

20
21 **Reporter’s Note**

22 1. “Chattel paper.” Under the revised definition, “chattel paper” is a right to payment
23 rather than a record evidencing a right to payment. Records evidencing chattel paper remain
24 relevant to perfection of a security interest in chattel paper. See draft § 9-314A.

25
26 The right to payment that constitutes “chattel paper” under section (a)(11)(B) may include
27 the right to payment of a variety of monetary obligations owed by a lessee of specific goods. These
28 obligations may include obligations arising in connection with the transaction giving rise to the
29 lease, such as obligations for software or services. However, to constitute “chattel paper,” these

1 obligations must include the right to payment of a monetary obligation owed by the lessee under
2 the lease agreement.

3
4 A right to payment is not “chattel paper” under section (a)(11)(B) unless the predominant
5 purpose of the transaction giving rise to the lease was to give the lessee the right to possession and
6 use of the goods. The comments will explain the predominant-purpose test and give examples of
7 its application. (The Prefatory Note provides one example.)
8

9 ~~**SECTION 9-105. CONTROL OF ELECTRONIC CHATTEL PAPER.**~~

10 ~~(a) [General rule: control of electronic chattel paper.] A secured party has control of~~
11 ~~electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel~~
12 ~~paper reliably establishes the secured party as the person to which the chattel paper was assigned.~~

13 ~~(b) [Specific facts giving control.] A system satisfies subsection (a) if the record or~~
14 ~~records comprising the chattel paper are created, stored, and assigned in such a manner that:~~

15 ~~(1) a single authoritative copy of the record or records exists which is unique,~~
16 ~~identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;~~

17 ~~(2) the authoritative copy identifies the secured party as the assignee of the record or~~
18 ~~records;~~

19 ~~(3) the authoritative copy is communicated to and maintained by the secured party~~
20 ~~or its designated custodian;~~

21 ~~(4) copies or amendments that add or change an identified assignee of the~~
22 ~~authoritative copy can be made only with the consent of the secured party;~~

23 ~~(5) each copy of the authoritative copy and any copy of a copy is readily identifiable~~
24 ~~as a copy that is not the authoritative copy; and~~

25 ~~(6) any amendment of the authoritative copy is readily identifiable as authorized or~~
26 ~~unauthorized.~~

27 **Section 9-105. Control of Electronic Copy of Record Evidencing Chattel Paper.**

28 **(a) [When secured party has control.] A secured party has control of an electronic copy of**

1 a record evidencing chattel paper if:

2 (1) the electronic copy, a record attached to or logically associated with the
3 electronic copy, or the system in which the electronic copy is recorded, if any:

4 (A) enables the secured party to readily identify each electronic copy of the
5 record as an authoritative copy or nonauthoritative copy of the record;

6 (B) enables the secured party to readily identify itself as the assignee of each
7 authoritative electronic copy of the record; and

8 (C) subject to subsection (b), gives the secured party the exclusive power to:

9 (i) prevent others from adding or changing an identified assignee of
10 each authoritative electronic copy of the record; and

11 (ii) transfer control of the authoritative copy of the record; or

12 (2) another person obtains control of the electronic copy of a record evidencing
13 chattel paper or, having previously obtained control of the electronic copy, acknowledges in an
14 authenticated record that it has control on behalf of the secured party.

15 (b) [Meaning of exclusive.] A power specified in paragraph (a)(1) is exclusive, even if:

16 (1) the electronic copy or the system in which the electronic copy is recorded, if any,
17 limits the use to which the electronic record may be put or has protocols that are programmed to
18 result in a transfer of control; or

19 (2) the secured party has agreed to share the power with another person.

20 (c) [Identification of secured party.] For the purposes of subsection (a)(1)(B), a secured
21 party may be identified in any way, including by name, identifying number, cryptographic key,
22 office, or account number.

23 **Reporter's Note**

24 1. *The function of control.* Under the draft, as under current law, a secured party can perfect

1 a security interest in chattel paper by filing. *See* Section 9-312(a). Alternatively, a secured party
2 can perfect a security interest in chattel paper by taking possession of all tangible authoritative
3 copies of the record evidencing the chattel paper and obtaining control of all electronic
4 authoritative copies. *See* draft § 9-314A.
5

6 2. *Conditions for obtaining control.* As explained in the preceding Note, control relates to
7 perfection of a security interest in chattel paper. One method of perfecting a security interest in
8 chattel paper is to take possession of all tangible authoritative copies of the record evidencing the
9 chattel paper and obtain control of all electronic records. Perfection generally serves the function
10 of enabling the public to determine that the asset in question (here, chattel paper) may be
11 encumbered with a security interest.
12

13 The amended definition of “control” is meant to reflect the functions that possession serves
14 with respect to writings in a more accurate and technologically flexible way than does the current
15 definition.
16

17 To show that it has possession of all tangible authoritative copies of a record evidencing
18 chattel paper, a secured party can produce the copies in its possession and provide evidence that
19 these are authoritative copies and that no other tangible authoritative copies exist. (The Reporter’s
20 Note to draft § 9-314A explains the meaning of “authoritative copy.”) The secured party’s
21 possession of the tangible authoritative copies gives the secured party the power to prevent others
22 from taking possession of the copies and to transfer possession of the copies.
23

24 Under the draft, to obtain control of an electronic copy of a record evidencing chattel paper
25 a secured party must be able to identify each electronic copy as authoritative or nonauthoritative
26 and identify itself as the assignee of each authoritative copy. In addition, the secured party must
27 have the exclusive power to prevent others from adding or changing an identified assignee and to
28 transfer control of the authoritative copies.
29

30 The utility of distributed ledger technology (blockchain) depends on there being multiple
31 authoritative copies of a record. The safe harbor under existing Section 9-105(b) contemplates a
32 “single authoritative copy” and so is unavailable when the relevant record is maintained on a
33 blockchain. The draft allows a secured party to obtain control when there are multiple authoritative
34 copies.
35

36 3. *Use of singular.* The draft refers to “record” and “copy.” In any given case, there may
37 be more than one relevant record and more than one copy. Under Section 1-106, unless the
38 statutory context otherwise requires, words in the singular number include the plural.
39

40 **Section 9-203. Attachment and Enforceability of Security Interest; Proceeds;**

41 **Supporting Obligations; Formal Requisites.**

42 * * *

43 (b) [**Enforceability.**] Except as otherwise provided in subsections (c) through (i), a security

1 interest is enforceable against the debtor and third parties with respect to the collateral only if:

2 (1) value has been given;

3 (2) the debtor has rights in the collateral or the power to transfer rights in the
4 collateral to a secured party; and

5 (3) one of the following conditions is met:

6 (A) the debtor has authenticated a security agreement that provides a
7 description of the collateral and, if the security interest covers timber to be cut, a description of the
8 land concerned;

9 (B) the collateral is not a certificated security and is in the possession of the
10 secured party under Section 9-313 pursuant to the debtor's security agreement;

11 (C) the collateral is a certificated security in registered form and the security
12 certificate has been delivered to the secured party under Section 8-301 pursuant to the debtor's
13 security agreement; ~~or~~

14 (D) the collateral is deposit accounts, ~~electronic chattel paper~~, investment
15 property, or letter-of-credit rights, and the secured party has control under Section 9-104, ~~9-105~~, 9-
16 106, or 9-107 pursuant to the debtor's security agreement; or

17 (E) the collateral is chattel paper and the secured party has possession and
18 control under Section 9-314A pursuant to the debtor's security agreement.

19 * * *

20 **Reporter's Note**

21 1. *Substitute for authenticated security agreement.* Under existing subparagraphs (b)(3)(B)
22 and (b)(3)(D), possession of tangible collateral and control of intangible collateral may substitute
23 for an authenticated security agreement that provides a description of the collateral. With respect
24 to chattel paper, some of the authoritative records that evidence the right to payment may be
25 tangible and some electronic. Accordingly, new subparagraph (b)(3)(E) would provide that
26 possession of the tangible authoritative records, if any, and control of the electronic records, if any,
27 may substitute for an authenticated security agreement.

1 **Section 9-301. Law Governing Perfection and Priority of Security Interests.** Except as
2 otherwise provided in Sections 9-303 through 9-306, the following rules determine the law
3 governing perfection, the effect of perfection or nonperfection, and the priority of a security
4 interest in collateral:

5 (1) Except as otherwise provided in this section, while a debtor is located in a
6 jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or
7 nonperfection, and the priority of a security interest in collateral.

8 (2) ~~While~~ Except as otherwise provided in paragraph (5), while collateral is located
9 in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or
10 nonperfection, and the priority of a possessory security interest in that collateral.

11 (3) Except as otherwise provided in paragraph (4), while negotiable documents,
12 goods, instruments, or money, ~~or tangible chattel paper~~ is located in a jurisdiction, the local law of
13 that jurisdiction governs:

14 (A) perfection of a security interest in the goods by filing a fixture filing;

15 (B) perfection of a security interest in timber to be cut; and

16 (C) the effect of perfection or nonperfection and the priority of a
17 nonpossessory security interest in the collateral.

18 (4) * * *

19 (5) While a tangible authoritative copy of a record evidencing chattel paper is
20 located in a jurisdiction, the local law of that jurisdiction governs:

21 (A) perfection of a security interest in the chattel paper by possession and
22 control under Section 9-314A; and

23 (B) the effect of perfection or nonperfection and the priority of a security
24 interest in the chattel paper.

1 **Reporter’s Note**

2
3 1. *Choice of governing law.* Under the amended definition of chattel paper, a right to
4 payment and rights in related property may be evidenced by one or more tangible authoritative
5 copies and one or more electronic authoritative copies.
6

7 Draft paragraph (5) would address these cases by tying the choice-of-law rules to the
8 authoritative tangible copy. As a consequence, the local law of the jurisdiction where the
9 authoritative tangible copy is physically located would govern perfection of a security interest in
10 the chattel paper by possession and control under Section 9-314A.
11

12 The location of the debtor would govern perfection by filing. *See* paragraph (1). However,
13 under paragraph (5), if there is a tangible authoritative copy, the location of that copy would govern
14 the effect of perfection or nonperfection and the priority of a security interest in the chattel paper.
15

16 This approach is modeled on paragraph (3), which is designed to reduce the confusion that
17 might arise when the choice-of-law rules of a given jurisdiction result in each of two conflicting
18 security interests in the same collateral being governed by a different priority rule. The Drafting
19 Committee plans to reconsider the approach, as it may create difficulties when, for example, all
20 existing tangible authoritative copies are destroyed.
21

22 2. *Multiple tangible authoritative records.* Like existing law, paragraph (5) assumes that
23 all the tangible authoritative records are located in the same jurisdiction.
24

25 **Section 9-310. When Filing Required to Perfect Security Interest or Agricultural Lien;**
26 **Security Interests and Agricultural Liens to Which Filing Provisions Do Not Apply.**

27 * * *

28 (b) [**Exceptions: filing not necessary.**] The filing of a financing statement is not necessary
29 to perfect a security interest:

30 * * *

31 (8) in deposit accounts, ~~electronic chattel paper~~, investment property, or letter-of-
32 credit rights which is perfected by control under Section 9-314;

33 (9) in proceeds which is perfected under Section 9-315; ~~or~~

34 (10) that is perfected under Section ~~9-316.~~ 9-316; or

35 (11) in chattel paper which is perfected by possession and control under Section 9-
36 314A.

1 * * *

2 **Section 9-313. When Possession by or Delivery to Secured Party Perfects Security**
3 **Interest Without Filing.**

4 (a) **[Perfection by possession or delivery.]** Except as otherwise provided in subsection (b),
5 a secured party may perfect a security interest in negotiable documents, goods, instruments, or
6 money, ~~or tangible chattel paper~~ by taking possession of the collateral. A secured party may
7 perfect a security interest in certificated securities by taking delivery of the certificated securities
8 under Section 8-301.

9 * * *

10 **Reporter's Note**

11 1. *Perfection by possession.* Perfection by possession of tangible chattel paper has been
12 deleted from this section. Instead, perfection by possession and control would be governed by new
13 Section 9-314A.

14
15 **Section 9-314. Perfection by Control.**

16 (a) **[Perfection by control.]** A security interest in investment property, deposit accounts, or
17 letter-of-credit rights, ~~or electronic chattel paper~~ may be perfected by control of the collateral under
18 Section 9-104, ~~9-105~~, 9-106, or 9-107.

19 (b) **[Specified collateral: time of perfection by control; continuation of perfection.]** A
20 security interest in deposit accounts, ~~electronic chattel paper~~, or letter-of-credit rights is perfected
21 by control under Section ~~9-104, 9-105~~, 9-104 or 9-107 when the secured party obtains control and
22 remains perfected by control only while the secured party retains control.

23 * * *

24 **Reporter's Note**

25 1. *Perfection by control.* Perfection by control of electronic chattel paper has been deleted
26 from this section. Instead, new Section 9-314A would govern perfection by possession and
27 control.

1 **Section 9-314A. Perfection by Possession and Control of Chattel Paper.**

2 **(a) [Perfection by possession and control.]** A secured party may perfect a security interest
3 in chattel paper by taking possession of the tangible authoritative copy, if any, of the record
4 evidencing the chattel paper and obtaining control of the electronic authoritative copy, if any, of the
5 electronic record evidencing the chattel paper.

6 **(b) [Time of perfection; continuation of perfection.]** A security interest is perfected under
7 subsection (a) when the secured party takes possession and obtains control and remains perfected
8 under subsection (a) only while the secured party retains possession and control.

9 * * *

10 **Reporter’s Note**

11 1. *“Authoritative copy.”* This section of the draft provides that to perfect a security interest
12 in chattel paper other than by filing, a secured party must obtain control of all electronic
13 authoritative copies and take possession of all tangible authoritative copies.

14 Existing Section 9-105(b) distinguishes between authoritative and nonauthoritative copies
15 of electronic chattel paper. Like current law, the draft refers to copies that are “authoritative.”
16 And, like current law, the draft does not define the term. However, the draft would apply this
17 concept also to tangible records that evidence chattel paper.

18
19 As explained above, perfection of a security interest in chattel paper by taking possession of
20 the collateral was understood to mean taking possession of the wet-ink “original.” Experience has
21 shown that the concept of an original breaks down when one allows for the possibility of the same
22 monetary obligation being evidenced in different media over time, such as where electronic records
23 evidencing the chattel paper “papered out” (replaced with tangible records evidencing the same
24 chattel paper) or tangible records are “converted” to electronic records.

25
26 To accommodate current practices and future technology, the draft would allow the parties
27 considerable flexibility in determining the method used to establish whether a particular copy is
28 authoritative, as long as third parties are able to reasonably identify the authoritative copies that
29 must be possessed or controlled to achieve perfection. For example, the parties could develop a
30 system or protocol where each copy is watermarked as authoritative or nonauthoritative or where
31 the terms of the records themselves describe how to determine which copies are authoritative and
32 which are not.

33
34
35 2. *Time of perfection.* Subsection (b) is modeled on Sections 9-313(d) and 9-314(b).

36
37 **Section 9-317. Interests That Take Priority Over or Take Free of Security Interest or**

1 **Agricultural Lien.**

2 * * *

3 (b) **[Buyers that receive delivery.]** Except as otherwise provided in subsection (e), a buyer,
4 other than a secured party, of ~~tangible chattel paper~~, documents, goods, instruments, or a security
5 certificate takes free of a security interest or agricultural lien if the buyer gives value and receives
6 delivery of the collateral without knowledge of the security interest or agricultural lien and before it
7 is perfected.

8 * * *

9 (d) **[Licensees and buyers of certain collateral.]** A licensee of a general intangible or a
10 buyer, other than a secured party, of accounts, ~~electronic chattel paper~~, general intangibles, or
11 investment property other than a certificated security takes free of a security interest if the licensee
12 or buyer gives value without knowledge of the security interest and before it is perfected.

13 * * *

14 **(f) [Buyers of chattel paper.]** A buyer, other than a secured party, of chattel paper takes
15 free of a security interest if, without knowledge of the security interest and before it is perfected,
16 the buyer gives value and receives delivery of the tangible authoritative copy, if any, of the record
17 evidencing the chattel paper and obtains control of the electronic authoritative copy, if any, of the
18 record evidencing the chattel paper.

19 **Section 9-330. Priority of Purchaser of Chattel Paper or Instrument.**

20 (a) **[Purchaser's priority: security interest claimed merely as proceeds.]** A purchaser of
21 chattel paper has priority over a security interest in the chattel paper which is claimed merely as
22 proceeds of inventory subject to a security interest if:

23 (1) in good faith and in the ordinary course of the purchaser's business, the
24 purchaser gives new value and takes possession of the tangible authoritative copy, if any, of the

1 record evidencing the chattel paper or and obtains control of the electronic authoritative copy, if
2 any, of the record evidencing the chattel paper under Section 9-105; and

3 (2) the ~~chattel paper does~~ authoritative copy of the record evidencing the chattel
4 paper does not indicate that ~~it has~~ the copy has been assigned to an identified assignee other than
5 the purchaser.

6 (b) **[Purchaser’s priority: other security interests.]** A purchaser of chattel paper has
7 priority over a security interest in the chattel paper which is claimed other than merely as proceeds
8 of inventory subject to a security interest if the purchaser gives new value and takes possession of
9 the tangible authoritative copy, if any, of the record evidencing the chattel paper or and obtains
10 control of the electronic authoritative copy, if any, of the record evidencing the chattel paper under
11 ~~Section 9-105~~ in good faith, in the ordinary course of the purchaser’s business, and without
12 knowledge that the purchase violates the rights of the secured party.

13 * * *

14 **Concluding Note**

15 As noted above in footnote 2, a right to payment that is evidenced by an Article 3 negotiable
16 instrument is different from a right to payment that is evidenced by a nonnegotiable record. This is
17 because the obligation to pay a negotiable instrument is “embodied in” or “travels with” the
18 negotiable instrument. For this reason, the definition of “account debtor” excludes the obligor on a
19 negotiable instrument, even if the negotiable instrument constitutes part of chattel paper.
20

21 The reason why Article 9 distinguishes negotiable instruments that are secured by a security
22 interest in specific goods or relate to a lease of specific goods from other negotiable instruments is
23 unclear. Perhaps the distinction arose because the drafters of former Article 9 wanted to create an
24 exception to the general rule that a security interest in a negotiable instrument could not be
25 perfected by filing. Regardless, under revised (current) Article 9, a security interest in a negotiable
26 instrument, like a security interest in chattel paper, may be perfected by filing or possession. Many
27 other Article 9 rules apply to both chattel paper and negotiable instruments. Perhaps the main
28 exception appears in Section 9-330, under which the “superpriority” rules applicable to chattel
29 paper (§ 9-330(a) through (c)) differ from the rule applicable to negotiable instruments (§ 9-
30 330(d)).
31

32 The Drafting Committee plans to consider whether a right to payment evidenced by a
33 negotiable instrument should be excluded from the definition of “chattel paper,” even if the

1 accompanying records evidence a security interest or lease of specific goods.

2
3 **D. Payments**

4 **Prefatory Note**

5 These amendments address issues arising under UCC Articles 3, 4, and 4A.

6
7 **ARTICLE 3**

8 **NEGOTIABLE INSTRUMENTS**

9 **Section 3–104. Negotiable Instrument.**

10 (a) Except as provided in subsections (c) and (d), “negotiable instrument” means an
11 unconditional promise or order to pay a fixed amount of money, with or without interest or other
12 charges described in the promise or order, if it:

13 (1) is payable to bearer or to order at the time it is issued or first comes into
14 possession of a holder;

15 (2) is payable on demand or at a definite time; and

16 (3) does not state any other undertaking or instruction by the person promising or
17 ordering payment to do any act in addition to the payment of money, but the promise or order may
18 contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii)
19 an authorization or power to the holder to confess judgment or realize on or dispose of collateral, ~~or~~
20 (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor; or
21 (iv) an undertaking to litigate a dispute concerning the promise or order in a specified forum.

22 * * *

23 **Reporter’s Note**

24 1. *Choice-of-law provisions.* The amendment does not address choice-of-law provisions, as
25 an agreement concerning the governing law is not an undertaking or instruction.

26
27 **Section 3–105. Issue of Instrument.**

1 (a) “Issue” means the first delivery of an instrument or first transmission of an image of an
2 item or information describing the item by the maker or drawer, whether to a holder or nonholder,
3 for the purpose of giving rights on the instrument to any person.

4 * * *

5 **Reporter’s Note**

6 1. *Source.* The phrase “transmission of an image of an item or information describing the
7 item is derived from Section 4–110(a), dealing with electronic presentment.

8
9 **Section 3–604. Discharge by Cancellation or Renunciation.**

10 (a) A person entitled to enforce an instrument, with or without consideration, may discharge
11 the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender
12 of the instrument to the party, destruction, mutilation, or cancellation of the instrument,
13 cancellation or striking out of the party’s signature, or the addition of words to the instrument
14 indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party
15 by a signed record. The obligation of a party to pay the instrument is not discharged solely by the
16 destruction of a check in connection with a process by which, initially, information is extracted
17 from the check or an image is made and, subsequently, the information or image is transmitted for
18 payment.

19 * * *

20 **ARTICLE 4**

21 **BANK DEPOSITS AND COLLECTIONS**

22 **Section 4–406. Customer’s Duty to Discover and Report Unauthorized Signature or**
23 **Alteration.**

24 (a) A bank that sends or makes available to a customer a statement of account showing
25 payment of items for the account shall either return or make available to the customer the items

1 paid or provide information in the statement of account sufficient to allow the customer reasonably
2 to identify the items paid. ~~The A statement of account provides sufficient information if the item is~~
3 ~~described~~ that describes each item paid by item number, amount, and date of payment and includes
4 an image of each item showing the name of the payee and date of the item is sufficient. Whether a
5 statement of account that does not include an image of each item is sufficient is a question of fact.

6 * * *

7 ARTICLE 4A

8 FUNDS TRANSFERS

9 Section 4A–103. Payment Order - Definitions.

10 (a) In this Article:

11 (1) “Payment order” means an instruction of a sender to a receiving bank,
12 transmitted orally, ~~electronically, or in writing~~ or in a record, to pay, or to cause another bank to
13 pay, a fixed or determinable amount of money to a beneficiary if:

14 * * *

15 Section 4A–201. Security Procedure.

16 “Security procedure” means a procedure established by agreement of a customer and a
17 receiving bank for the purpose of (i) verifying that a payment order or communication amending or
18 cancelling a payment order is that of the customer, or (ii) detecting error in the transmission or the
19 content of the payment order or communication. A security procedure may impose an obligation
20 on the receiving bank or the customer and may require the use of algorithms or other codes,
21 identifying words, ~~or~~ numbers, symbols, sounds, or biometrics, encryption, callback procedures, or
22 similar security devices. Comparison of a signature on a payment order or communication with an
23 authorized specimen signature of the customer or requiring that a payment order be sent from a
24 known email address, IP address, or phone number is not by itself a security procedure.

1 **Section 4A–202. Authorized and Verified Payment Orders.**

2 (a) A payment order received by the receiving bank is the authorized order of the person
3 identified as sender if that person authorized the order or is otherwise bound by it under the law of
4 agency.

5 (b) If a bank and its customer have agreed that the authenticity of payment orders issued to
6 the bank in the name of the customer as sender will be verified pursuant to a security procedure, a
7 payment order received by the receiving bank is effective as the order of the customer, whether or
8 not authorized, if (i) the security procedure is a commercially reasonable method of providing
9 security against unauthorized payment orders, and (ii) the bank proves that it accepted the payment
10 order in good faith and in compliance with the bank's obligations under the security procedure and
11 any ~~written~~ agreement or instruction of the customer, evidenced by a record, restricting acceptance
12 of payment orders issued in the name of the customer. The bank is not required to follow an
13 instruction that violates ~~a written~~ an agreement, evidenced by a record, with the customer or notice
14 of which is not received at a time and in a manner affording the bank a reasonable opportunity to
15 act on it before the payment order is accepted.

16 (c) Commercial reasonableness of a security procedure is a question of law to be
17 determined by considering the wishes of the customer expressed to the bank, the circumstances of
18 the customer known to the bank, including the size, type, and frequency of payment orders
19 normally issued by the customer to the bank, alternative security procedures offered to the
20 customer, and security procedures in general use by customers and receiving banks similarly
21 situated. A security procedure is deemed to be commercially reasonable if (i) the security
22 procedure was chosen by the customer after the bank offered, and the customer refused, a security
23 procedure that was commercially reasonable for that customer, and (ii) the customer expressly
24 agreed in ~~writing~~ a record to be bound by any payment order, whether or not authorized, issued in

1 its name and accepted by the bank in compliance with the bank's obligation under the security
2 procedure chosen by the customer.

3 * * *

4 **Section 4A–203. Unenforceability of Certain Verified Payment Orders.**

5 (a) If an accepted payment order is not, under Section 4A-202(a), an authorized order of a
6 customer identified as sender, but is effective as an order of the customer pursuant to Section 4A-
7 202(b), the following rules apply:

8 (1) By express ~~written~~ agreement evidenced by a record, the receiving bank may
9 limit the extent to which it is entitled to enforce or retain payment of the payment order.

10 * * *

11 **Section 4A–206. Transmission of Payment Order Through Funds-Transfer or Other**
12 **Communication System.**

13 (a) If a payment order addressed to a receiving bank is transmitted to a funds-transfer
14 system or other third-party communication system for transmittal to the bank, the system is deemed
15 to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there
16 is a discrepancy between the terms of the payment order transmitted to the system and the terms of
17 the payment order transmitted by the system to the bank, the terms of the payment order of the
18 sender are those transmitted by the system. This section does not apply to a funds-transfer system
19 of the Federal Reserve Banks or to a third-party communication system that is part of a security
20 procedure.

21 * * *

22 **Section 4A–207. Misdescription of Beneficiary.**

23 * * *

24 (c) If (i) a payment order described in subsection (b) is accepted, (ii) the originator's

1 payment order described the beneficiary inconsistently by name and number, and (iii) the
2 beneficiary's bank pays the person identified by number as permitted by subsection (b)(1), the
3 following rules apply:

4 (1) If the originator is a bank, the originator is obliged to pay its order.

5 (2) If the originator is not a bank and proves that the person identified by number
6 was not entitled to receive payment from the originator, the originator is not obliged to pay its
7 order unless the originator's bank proves that the originator, before acceptance of the originator's
8 order, had notice that payment of a payment order issued by the originator might be made by the
9 beneficiary's bank on the basis of an identifying or bank account number even if it identifies a
10 person different from the named beneficiary. Proof of notice may be made by any admissible
11 evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before
12 the payment order was accepted, ~~signed a writing~~ authenticated a record stating the information to
13 which the notice relates.

14 * * *

15 **Section 4A-208. Misdescription of Intermediary Bank or Beneficiary's Bank.**

16 * * *

17 (b) This subsection applies to a payment order identifying an intermediary bank or the
18 beneficiary's bank both by name and an identifying number if the name and number identify
19 different persons.

20 * * *

21 (2) If the sender is not a bank and the receiving bank proves that the sender, before
22 the payment order was accepted, had notice that the receiving bank might rely on the number as the
23 proper identification of the intermediary or beneficiary's bank even if it identifies a person
24 different from the bank identified by name, the rights and obligations of the sender and the

1 receiving bank are governed by subsection (b)(1), as though the sender were a bank. Proof of
2 notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof
3 if it proves that the sender, before the payment order was accepted, ~~signed a writing~~ authenticated a
4 record stating the information to which the notice relates.

5 * * *

6 **Section 4A–210. Rejection of Payment Order.**

7 (a) A payment order is rejected by the receiving bank by a notice of rejection transmitted to
8 the sender orally, ~~electronically~~, or in ~~writing~~ a record. A notice of rejection need not use any
9 particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will
10 not execute or pay the order. Rejection is effective when the notice is given if transmission is by a
11 means that is reasonable in the circumstances. If notice of rejection is given by a means that is not
12 reasonable, rejection is effective when the notice is received. If an agreement of the sender and
13 receiving bank establishes the means to be used to reject a payment order, (i) any means complying
14 with the agreement is reasonable and (ii) any means not complying is not reasonable unless no
15 significant delay in receipt of the notice resulted from the use of the noncomplying means.

16 * * *

17 **Section 4A–211. Cancellation and Amendment of Payment Order.**

18 (a) A communication of the sender of a payment order cancelling or amending the order
19 may be transmitted to the receiving bank orally, ~~electronically~~, or in ~~writing~~ a record. If a security
20 procedure is in effect between the sender and the receiving bank, the communication is not
21 effective to cancel or amend the order unless the communication is verified pursuant to the security
22 procedure or the bank agrees to the cancellation or amendment.

23 * * *

24 **E. Miscellaneous Amendments**

1 **ARTICLE 1**

2 **GENERAL PROVISIONS**

3 **Section 1-201. General Definitions.**

4 * * *

5 (b) Subject to definitions contained in other articles of the [Uniform Commercial Code] that
6 apply to particular articles or parts thereof:

7 * * *

8 (16A) “Electronic” means relating to technology having electrical, digital, magnetic,
9 wireless, optical, electromagnetic, or similar capabilities.

10 * * *

11 (27) “Person” means an individual, corporation, business trust, estate, trust,
12 partnership, limited liability company, association, joint venture, government, governmental
13 subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.
14 The term includes a protected series, however denominated, of an entity if the protected series is
15 established under law that limits, or limits if conditions specified under law are satisfied, the ability
16 of a creditor of the entity or of any other protected series of the entity to satisfy a claim from assets
17 of the protected series.

18 * * *

19 ***Legislative Note:*** *The added second sentence would provide needed clarity as to the status of a*
20 *protected series for purposes of the Uniform Commercial Code. A number of states have enacted*
21 *statutes that provide for protected series within a limited liability company or other*
22 *unincorporated organization. These statutes afford rights and impose duties upon a protected*
23 *series and generally empower a protected series to conduct its own activities under its own name.*
24

25 *By providing that a protected series is a “person” for purposes of the enacting state’s*
26 *Uniform Commercial Code, the sentence will expressly permit a protected series, whether created*
27 *under the law of the enacting state or of another state, to be, for example, (a) a “seller” or a*
28 *“buyer” under Article 2, (b) a “lessor” or a “lessee” under Article 2A, or (c) an “organization”*
29 *and a “debtor” under Article 9, and (d) if the law under which the protected series is organized*

1 requires a public filing for the protected series to be recognized under that law, a “registered
2 organization” under Article 9. These matters are not clear under the current Uniform
3 Commercial Code.
4

5 A state should enact this amendment regardless of whether the state has enacted the
6 Uniform Protected Series Act (2017) or otherwise recognizes a protected series under its own
7 domestic law. Since the sentence applies only for purposes of the enacting state’s Uniform
8 Commercial Code, inclusion of the sentence in and of itself does not require the enacting state to
9 recognize a limit on liability of a protected series organized under the law of another state or a
10 limit on liability of the entity that established the protected series. It merely clarifies the status of
11 a protected series as a “person” for purposes of the choice-of-law and substantive law rules of
12 the enacting state’s Uniform Commercial Code.
13

14 **Reporter’s Note**

15 1. “*Electronic.*” The draft adopts the standard ULC definition.
16

17 2. “*Person.*” The draft retains the UCC’s existing definition of “person.” Although the
18 UCC definition differs from the ULC’s current standard definition, the Drafting Committee sees no
19 reason to create uncertainty by revising the UCC definition.
20

21 As the Legislative Note explains, by enacting the draft amendment, an enacting state would
22 treat a protected series, whether organized under the law of the enacting state or under the law of
23 another state, as a “person” for purposes of the Uniform Commercial Code. The draft uses the
24 ULC’s standard language to accomplish this purpose.
25

26 **ARTICLE 5**

27 **LETTERS OF CREDIT**

28 **Section 5-102. Definitions.**

29 (a) In this article:

30 * * *

31 (14A) “Signed”, with respect to a record that is not a writing, means to attach to or
32 logically associate with the record an electronic sound, symbol, or process with present intent to
33 adopt or accept the record.

34 * * *

35 **Reporter’s Note**

36 1. “*Signed.*” The definition of “signed” contained in Section 5-102(a)(14A) would

1 accommodate the use of electronic signatures under Sections 5-104(i), 5-108(i)(5), 5-113(a), (b),
2 (c) and (d), and 5-116(a) without invalidating the use of traditional, non-electronic signatures on
3 paper documents in letter-of-credit transactions.

4
5 The Drafting Committee plans to consider more generally the definition and use of “sign”
6 throughout the Uniform Commercial Code.

7
8 **ARTICLE 9**

9 **SECURED TRANSACTIONS**

10 **Section 9-102. Definitions and Index of Definitions.**

11 (a) [Article 9 definitions.] In this article:

12 * * *

13 (6A) “Assignee,” in part 4 of this article, means a person (i) in whose favor a
14 security interest that secures an obligation is created or provided for under a security agreement,
15 whether or not an obligation to be secured is outstanding or (ii) to which accounts, chattel paper,
16 payment intangibles, or promissory notes have been sold; and

17 (6B) “Assignor,” in part 4 of this article, means a person that (i) under a security
18 agreement creates or provides for a security interest that secures an obligation or (ii) sells accounts,
19 chattel paper, payment intangibles, or promissory notes.

20 * * *

21 **Reporter’s Note**

22
23 1. “Assignor”; “assignee”. Instead of referring to a “debtor,” “secured party,” and
24 “security interest,” all of which terms are defined in the UCC, several provisions of Article 9, Part
25 4, refer to an “assignor,” “assignee,” and “assignment,” or sometimes an “assigned contract,” none
26 of which terms are defined in the UCC. Some courts read the undefined terms in an unduly narrow
27 way. In 2020, the Permanent Editorial Board for the UCC issued a Commentary clarifying the
28 meanings of these terms and amended the official comments accordingly. *PEB Commentary No.*
29 *21, Use of the Term “Assignment” in Article 9 of the Uniform Commercial Code* (Mar. 11, 2020).
30 New subsection (6A) incorporates the essence of the Commentary into the statutory text.