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Some Thoughts On The Success of The Revised Article 9 Enactment Effort

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Revised Article 9 of the Uniform Commercial Code ("Revised Article 9" or “the Act”) has been enacted into law in all 50 states and the District of Columbia. The Act became effective on July 1, 2001, except for the state of Connecticut, where it became effective on October 1, 2001, and the states of Florida, Mississippi and Alabama, where it will become effective on January 1, 2002.

The National Conference of Commissioners on Uniform State Laws (the “National Conference”) and The American Law Institute (the “ALI”) are the co-sponsors of the Uniform Commercial Code. Revised Article 9 was approved by the co-sponsors in 1998, and the legislative program for adoption of Revised Article 9 began in earnest in 1999.

The American Law Institute does not participate in the legislative activities that follow approval of UCC projects by the National Conference and the ALI. The National Conference therefore had sole organizational responsibility for the enactment of Revised Article 9. The goal of the National Conference was to complete the legislative process in just 2½ years because the Act had a uniform and delayed effective date of July 1, 2001. This delayed effective date was intended to give practitioners time to become familiar with the Act and to give the National Conference an opportunity to secure nationwide adoption of the Act so that it could become effective in all jurisdictions at the same time.

Set forth below are some of the factors that contributed to the success of the legislative enactment effort with respect to Revised Article 9.

1. Strong need for reform. There was widespread consensus that Article 9 needed fixing. Article 9 was last revised in 1972. Advances in technology and changes in secured financing techniques left Article 9 ill-suited to meet the needs of debtors and secured creditors in accessing and providing much needed capital. In addition, ambiguities in Article 9 led to litigation, which increased the cost of credit for all debtors. The Article 9 Drafting Committee was charged with responsibility for updating and modernizing Article 9 and resolving these ambiguities. This strong need for reform was a major factor in the success of the drafting and the enactment efforts since all participants were highly motivated to succeed.

2. Long gestation period. The work on Revised Article 9 began in 1990 as a Study Committee appointed by the Permanent Editorial Board of the National Conference. The Committee’s work began in earnest in 1993 under the chairmanship of William M. Burke. The Committee’s task was to modernize Article 9 and resolve its ambiguities. The Committee’s work was completed in 1998 and approved by the co-sponsors. The Committee then turned its attention to the legislative process.

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Board for the UCC. The Study Committee met seven times over the next two years and enlisted the assistance of numerous advisers and advisory groups. At the end of 1992, the Study Committee produced a lengthy report recommending that a drafting committee be appointed and suggesting some of the areas of needed reform. In 1993, the National Conference and the ALI appointed the Article 9 Drafting Committee. The Committee met 15 times over a five-year period, finishing its work in 1998 when the Act was approved by the co-sponsors. The Drafting Committee was given a significant head start with the excellent PEB report and had plenty of time to get it right.

3. Strong project support by credible co-sponsors. The revision project had strong support from the National Conference and the ALI, which are the nation’s premier law reform organizations. Both organizations appointed Drafting Committee members and operated in a cooperative and supportive fashion throughout the project. The success of the drafting and enactment efforts is a testimony to how these two great law reform organizations can work together for the common good. The reputation of the National Conference and the ALI for independence and integrity and for the excellence of their work products was a significant factor in convincing the legislatures that the Act was worthy of adoption.

4. Intellectually strong Drafting Committee. The members of the Article 9 Drafting Committee appointed by the co-sponsors were recognized national experts on Article 9 and personal property secured financing. All members of the Drafting Committee were totally dedicated to the improvement of Article 9 in a manner that would advance the public interest.

5. Excellent Co-Reporters. Professors Charles Mooney and Steven Harris served as Co-Reporters for both the PEB Study Committee and the Article 9 Drafting Committee. The Co-Reporters came to the project with great energy, enthusiasm and expertise and with no fixed preconceived notions as to the scope or content of the revision effort. They were solicitous and respectful of the views and votes of the Study Committee and the Drafting Committee. The Co-Reporters were also excellent draftsmen. This last factor is extremely important, since even the most necessary and worthwhile drafting project will fail if the statutory text is not solid and tight.

6. Excellent ABA Adviser. Steve Weise did an outstanding job as the American Bar Association Adviser to the Article 9 Drafting Committee. He prepared excellent pre-meeting summaries of Drafting Committee agendas and post-meeting minutes of the meetings. His summaries and minutes were widely circulated and publicized, and this helped the Drafting Committee get the word out to interested persons and garner support for the Act. The importance of public exposure of lengthy and complicated drafting projects cannot be overemphasized. It is inevitable that interested and affected persons and groups will not attend all Drafting Committee meetings, and some will not attend any meetings. Every effort must be made to give wide publicity to the work of the Drafting Committee and post the work product on publicly available websites.

7. Broad and diverse Advisers and Observers. In selecting Advisers and Observers, the Drafting Committee reached out to all interested persons and organizations. Most of those who were invited to join the Drafting Committee accepted the invitation and actively participated in the work of the Committee. As a result, the Committee membership was broadly representative and diverse and included individuals representing debtors, creditors, big firms, small firms, sole practitioners, industry specialists, academics, judges, consumer advocates, bar associations, trade organizations and state and federal agencies. The Committee also sought and achieved broad geographical representation, recognizing the fact that secured financing needs and techniques vary significantly throughout the country. The broad and diverse composition of the Committee was mutually beneficial to the Drafting Committee and the participants. The Drafting Committee received valuable input as to the needs and issues of the participants and the participants were able to hear the views of others and, in many cases, modify their own views and reach compromises that were necessary to produce a work product that could be supported on a consensus basis in the legislatures.

8. Attitude of openness, tolerance and respect at Drafting Committee meetings. At the Drafting Committee meetings, all points of view were considered and debated. No person was ever made to feel intimidated or reluctant to raise problems, issues or objections. While the debates were, at times, spirited and robust, they were always conducted in an orderly, polite and respectful manner. All participants were given a fair hearing, which helped build support for the final work product.

9. Liberal use of task forces. Many task forces were appointed to assist the Drafting Committee in specialized areas. For example, task forces were appointed on securitization, real estate, certificates of title, transition, international financing, bankruptcy, con-
The Resolution Of “Double Debtor” Issues Under Revised UCC Article 9

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This paper will summarize the provisions of revised Article 9 as contained in the 2000 Official Text of the Uniform Commercial Code (the “UCC”) dealing with “double debtor” issues. Unless otherwise indicated, references in this paper to “Article 9” or to sections of Article 9 are to the revised Article 9 or to sections of the revised Article 9.

Article 9 addresses a number of “double debtor” issues. These issues often arise when a debtor transfers assets to a third party, and the transfer is made subject to a security interest previously granted by the debtor in the transferred assets. They also arise when a debtor, which has previously entered into a security agreement granting to a secured party a security interest in the debtor’s existing and after-acquired assets, changes its legal form by incorporation, conversion from one organization to another, merger or the like. These issues are discussed below.

I. Transfer of Collateral to a “Person Who Thereby Becomes a Debtor”
A. Person Who Becomes a Debtor. Collateral in which a secured party holds a security interest may be transferred by the debtor to a third party outside of the ordinary course of the debtor’s business. As a general rule, if the security interest is perfected and unless the secured party authorized the transfer free and clear of the security interest, the secured party’s security interest in the collateral will continue notwithstanding its transfer. See §§9-315(a)(1) and 9-317(b). When the transferee acquires an interest, other than a security interest, in the collateral from the debtor, and the transfer is made subject to the secured party’s security interest, the transferee itself becomes a “debtor” of the secured party. This is the case whether or not the transferee is or becomes an obligor on the obligations secured. See §9-102(a)(28)(A) (defining “debtor”).

Example: D1 has granted to SP a security interest in a piece of equipment; the security interest has attached and is perfected by filing. D1 sells the equipment to D2 outside of the ordinary course of D1’s business and without SP’s authorization. The equipment is sold subject to the security interest. D2 is now SP’s debtor. It does not matter whether D2 assumed or guaranteed the obligations secured by the security interest.

B. Continuation of Perfection by Filing. If collateral in which a secured party has a security interest perfected by filing under the law of the jurisdiction of the location of the debtor is

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transferred to a person who thereby becomes a debtor, the filing remains effective to continue the perfection of the security interest. It does not matter whether the secured party knew of the transfer or authorized the transfer, so long as the secured party did not authorize that the transfer be made free of the security interest. §9-507(a); see §9-315(a)(1).

**Example:** D1, a New York corporation, sells a piece of equipment to D2. The equipment, at the time of the sale, is subject to a security interest granted by D1 in favor of SP and perfected by the filing of a financing statement against D1 in the New York Secretary of State’s office. If SP’s security interest continues in the equipment following the sale, D2 becomes SP’s debtor. SP’s security interest remains perfected by its filing against D1.

However, if the transferee debtor is located in a jurisdiction different from that of the transferor debtor, the secured party has a period of one year (or until the expiration of any earlier period in which the perfection of the security interest would lapse under the law of the transferor debtor’s jurisdiction) to perfect the security interest under the law of the jurisdiction of the location of the transferee debtor in order for the secured party to maintain the perfection of its security interest beyond that period. §9-316(a)(3); see §9-509(c) for the secured party’s authority to file a financing statement against the transferee debtor in the new jurisdiction. If the security interest is not perfected against the transferee debtor in that jurisdiction during that period, it is deemed never to have been perfected against a purchaser for value. §9-316(b).

**Example:** D1, a New York corporation, sells a piece of equipment to D2, a Delaware corporation. The equipment, at the time of the sale, is subject to a security interest granted by D1 in favor of SP and perfected by the filing of a financing statement against D1 in the New York Secretary of State’s office. If SP’s security interest continues in the equipment following the sale, D2 becomes SP’s debtor. SP’s security interest remains perfected by its filing against D1.

Nevertheless, assuming that SP’s financing statement against D1 would not lapse at any earlier date, SP has a period of one year to perfect the security interest against D2. SP may perfect by filing a financing statement, covering the equipment, against D2 in the Delaware Secretary of State’s office. If SP fails to perfect its security interest within that one-year period, SP’s security interest will become unperfected at the end of that period against a purchaser for value from D2.

**C. Priority Dispute Between Secured Party of Transferor Debtor and Secured Party of Transferee Debtor.**

A debtor may transfer collateral subject to a perfected security interest to a transferee who creates a security interest in the same collateral in favor of the transferee’s secured party. In that case, the “first-to-file-or-perfect” priority rule is called off, and the transferee debtor’s secured party will prevail as to the transferred collateral so long as the transferor debtor’s secured party’s security interest in the transferred collateral remains perfected. §9-325.

**Example:** D1, a New York corporation, sells a piece of equipment to D2, a Delaware corporation. The equipment, at the time of the sale, is subject to a security interest granted by D1 in favor of SP1 and perfected by the filing of a financing statement against D1 in the New York Secretary of State’s office. If SP1’s security interest continues in the equipment following the sale, D2 becomes SP1’s debtor, and SP1’s security interest remains perfected by its filing against D1.

The equipment, immediately after the time of the sale, becomes subject to a security interest granted by D2 in favor of SP2 and perfected by the filing of a financing statement against D2 in the Delaware Secretary of State’s office. SP1’s perfected security interest in the equipment will have priority over the perfected security interest of SP2. This is the case even if SP2’s financing statement filed against D2 preceded in time SP1’s financing statement filed against D1.

However, assuming that SP1’s financing statement against D1 would not lapse at any earlier date, SP1 has a period of one year to perfect the security interest against D2. SP1 may perfect by filing a financing statement, covering the equipment, against D2 in the Delaware Secretary of State’s office. If SP1 fails to perfect its security interest within that one-year period, SP1’s security interest will become unperfected at the end of that period. If SP1’s security interest becomes unperfected and SP2’s security interest in the equipment is then perfected, SP2’s perfected security interest in the equipment will be senior to SP1’s unperfected security interest under §9-322(a)(2).

**II. A “New Debtor” Becoming Bound by the Security Agreement of an Original Debtor**

A. **New Debtor.** A debtor, whose assets are subject to a security interest granted under a security agreement in favor of its secured party, may merge with another organization as trans-
Under the Surface of Revised Article 9
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At the ABA Annual Meeting the UCC Committee presented “Under the Surface of Revised Article 9: Non-Uniformity and Filing Office Procedures.” After many years of focus on the Official Text and the status of enactments, with the enactment process wrapped up on July 1, 2001, this was the Committee’s first program on “not-quite-uniformity” and how that will affect transactions. The program covered several aspects of non-uniformity.

Prof. Kenneth Kettering of New York Law School presented an update on the choice of law issues arising from the non-uniform effective date of Revised Article 9—although not apocalyptic (as feared at the Spring Meeting), four states adopted Revised Article 9 with an effective date later than the uniform July 1, 2001. (This issue was also the subject of a Permanent Editorial Board Report, Article 9 Perfection Choice of Law Analysis Where Revised Article 9 Is Not in Effect in All States by July 1, 2001 (June 13, 2001) which can be found at http://www.nccusl.org/ncusl/peb601part1.pdf and http://www.nccusl.org/ncusl/peb601part2.pdf). Ken’s presentation also covered other choice of law issues arising under the Article 1 choice of law rules, and the various circumstances in which the parties’ choice of law to govern their transaction will not be given effect by the courts. These circumstances include the applicability of the mandatory choice of law rules found elsewhere in the UCC (including in Sections 9-301 to 9-307), choice of law issues that affect the rights of third parties (such as account debtors or parties to contracts containing anti-assignment provisions), and imposition of choice of law rules by courts based on public or fundamental policy concerns of the forum state (even though Article 1 does not refer to that as a basis for overriding the law chosen by the parties to govern their transaction). The proposed revisions to the Article 1 choice of law provisions were reviewed, and issues not subject to the UCC (and therefore not subject to the choice of law rules established by Article 1) were also discussed.

Trish Bogenrief of LexisNexis Document Solutions Inc. gave a report on the collision between Revised Article 9 and the filing offices in the various states and counties. Trish’s presentation covered variations in the state enactments of Revised Article 9 from the official text, filing office rules, practices and requirements being developed by filing officers without a statutory basis, reasons given by the filing offices for the initially high rate of rejections of new filings and misunderstandings by the local filing offices of their ongoing responsibility for certain UCC filings. Trish also addressed issues relating to conducting searches, particularly during the transition period when filings made under Former Article 9 will remain effective.

Penelope Christophorou of Cleary Gottlieb, Lynn Soukup of Shaw Pittman and Steve Weise of Heller Ehrman presented a summary of selected variations in the text of Revised Article 9 as enacted in the states and DC. The topics reviewed by the panel included scope and pre-emption, negation of anti-assignment provisions, methods of perfection, transition rules and effectiveness, securitization, fixtures, filing issues, consumer provisions and other provisions. The summaries included general trends and specific state provisions likely to pose issues for transactions. The effect of the variations on choice of law issues (for example, differences in the scope provisions of Section 9-109 and in certain definitions) was also discussed.

The practice tip coming out of this discussion was clear—it’s a not-so-uniform world and matters such as whether Revised Article 9 applies, choice of law, method of perfection, collateral descriptions and other provisions in documents need to be reviewed at least as carefully under Revised Article 9 as under Former Article 9.

The panel collected quite a bit of information and received quite a bit of assistance from many contributors (who are listed in the program materials). We plan to post an updated version of the program materials to the Committee website shortly. If you have any comments on the program materials, or have prepared information on variations in your state that we can also post to the website, please send them to Lynn Soukup at lynn.soukup@shawpittman.com. Anyone interested in continuing and expanding this project, or doing a similar project on the filing office rules being promulgated under Revised Article 9, should contact Peter Carson at carsonph@cooley.com.

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fllicts of law, simplification, deposit accounts, intellectual property, electronic contracting, filing, agricultural financing and consumer law. Following approval of Revised Article 9 by the National Conference and the ALI, two more task forces were established: a task force on changes in the statutory text and Official Comments and a Legislative Task Force (discussed at paragraph 20 below). Task force members met both between and at Drafting Committee meetings, reached out to specialists for input and help, completed legal and factual research and prepared detailed reports with recommendations to the Drafting Committee. The task force members attended relevant meetings of the Drafting Committee, delivered their reports, and responded to questions from the Committee. Many recommendations of these task forces were accepted by the Drafting Committee and made their way into the Act.

10. Pro-active management of filing reform issues. Reform of the personal property filing system in the United States was the centerpiece of the Article 9 revision effort. The PEB Study Committee knew that major revisions would be proposed to the filing provisions of Article 9, including (i) changes in the choice of law provisions related to filing, (ii) elimination of dual filing, (iii) imposition of filing officer performance standards, (iv) constriction of filing officer authority to reject filings, (v) elimination of the debtor signature requirement and (vii) facilitation of electronic filing and searching. The Committee knew that these changes in the filing rules had the capacity to attract significant opposition from state and local filing officers, and that this opposition could doom the Article 9 revision project. For that reason, a filing systems task force was formed by the PEB Study Committee to aggressively and pro-actively manage these issues. This task force was continued by the Drafting Committee. Members of the task force met with state and local filing officers and their trade organizations, including the International Association of Corporate Administrators (“IACA”), in an effort to convince them of the need for filing reform and secure their commitment to support filing reform in Revised Article 9. Task force members regularly attended IACA meetings. These efforts paid huge dividends as the community of filing officers throughout the country ultimately came to support filing reform in Revised Article 9 and, indeed, took ownership of the filing reform project. Harry Sigman and Darrel Pierce deserve special recognition for their enormous contribution to the management of these filing reform issues.

11. Willingness to compromise. The Drafting Committee was able to forge compromises on controversial topics that generally won broad support from all competing interests. This ability to find acceptable compromises was crucial to the enactment effort since the tight July 1, 2001 deadline for uniform enactment of Revised Article 9 left no room for controversy and opposition in the legislatures. Much of the credit for the success in finding these compromises must be given to the Advisers and Observers who came to the meetings with open minds, firmly expressed their positions, listened to competing views, found a middle ground and then sold the resulting compromise to their constituents.

12. Early inclusion of consumer interests and the consumer compromise. Consensus on consumer issues was key to the success of the drafting project. Representatives of consumer advocates and consumer creditors were invited into the project from the very beginning. The Consumer Task Force, ably led by Marion Benfield, worked hard to reach a compromise on consumer issues. The consumer compromise that was reached at the end of the project was instrumental in obtaining the unanimous support of the co-sponsors and avoiding opposition in the legislatures. Equally important, the National Conference kept its word by supporting the consumer compromise in the legislatures.

13. Significant public exposure of the drafts before adoption. The Revised Article 9 work product was well publicized in panels, programs and articles before final approval by the co-sponsors. The Committee received valuable input from this public exposure.

14. Unanimous approval by the co-sponsors. Revised Article 9 was unanimously approved by the National Conference and the ALI. This unanimous approval was helpful in demonstrating strong support for the Act as well as the quality of the work product.

15. Excellent work product. The Act is well drafted. While there may be disagreements about the policy choices made by the Drafting Committee, those policy choices can be defended and are expressed well in the statutory text. In this respect, the Act sold itself in the state legislatures.
16. Firm and realistic deadline. The July 1, 2001 deadline for completion of the enactment effort was tight, but realistic. This deadline gave the Drafting Committee and the National Conference a firm goal, a strong motivation to achieve the goal and a persuasive story to tell in the legislatures as to the urgent need for enactment of the legislation. As evidence of the importance and usefulness of the deadline, in the six-month period between January 1, 2001 and June 30, 2001, Revised Article 9 was approved by the legislatures of 23 states. In the week preceding July 1, Revised Article 9 was signed into law in six states.

17. No organized opposition. The Act is long and complex and not of any particular political appeal to a state legislator. In addition, in many states, the Act needed review and approval by bar committees and law revision commissions. This left little margin for error in the timing of introductions and enactments and absolutely no time to deal with any organized opposition. The lack of such opposition in the legislatures was a key factor in finding bill sponsors, obtaining bar committee and law revision commission approvals and securing prompt introductions and enactments.

18. Significant public exposure of the Act after adoption. Panels, programs, seminars, articles and symposia all helped promote the work product after it was approved by the co-sponsors.

19. Rapid response to post-approval problems. When problems developed in the state legislatures, the Drafting Committee reacted quickly. For example, in 1999, lawyers representing bond financiers began to show up in the state legislatures expressing concern over certain provisions in Revised Article 9 that brought municipal financings within the scope of coverage of the Act. When these concerns surfaced in the state legislatures, the Chair of the Drafting Committee organized a series of telephone meetings between the representatives of the bond financiers and members of the Drafting Committee in an effort to find a compromise. A compromise was quickly reached that left states with the option to include or exclude municipal financings within the scope of coverage of the Act. This compromise removed the bond lawyers from the picture and allowed the bills to proceed smoothly through the legislatures.

20. Organization of Legislative Task Force. The American Bar Association Section of Business Law organized a Task Force on Revised Article 9 Enactment Process (“Legislative Task Force”), jointly sponsored by the Committee on Commercial Financial Services and the American College of Commercial Finance Lawyers. The mission of the Legislative Task Force was to assist the Drafting Committee and the National Conference in the Revised Article 9 enactment process. Commissioner Ed Smith and Carolan Berkley served as Co-Chairs of the Legislative Task Force. The Legislative Task Force appointed teams of lawyers in each state, as well as regional coordinators, to help in the state legislatures. The Legislative Task Force played a key role in the enactment process.

21. Creation of website. The Legislative Task Force established a Revised Article 9 website to promote the statute in the states (www.abanet.org/buslaw/cfs-ucc/ucc/article9/home.html). The website contains useful articles, a list of introductions and enactments, an Enactment Guide (discussed in paragraph 22 below), a state-by-state legislative survey, Revised Article 9 amendments, and other useful legislative information.

22. Preparation of Enactment Guide. Revised Article 9 is a lengthy and complicated statute, requiring a great deal of integration into, and coordination with, other state laws. In many instances, the Act offers the legislatures choices among alternatives. The task of preparing the Revised Article 9 bill for introduction in the legislature was daunting. The Drafting Committee was hopeful that the legislatures could be given some guidelines for bill preparation that would enable uniform solutions to be applied to these issues of coordination. The Legislative Task Force therefore prepared a detailed Enactment Guide to assist the state legislatures in preparing bills for introduction, and the Enactment Guide was posted on the Legislative Task Force website. The Enactment Guide is a user friendly, step-by-step instruction manual for the assembly of Revised Article 9. The Enactment Guide carried great credibility with legislative staffers because it was prepared under the auspices of the Drafting Committee and was written by individuals who were directly involved in the preparation of complete and enactable bills.

23. Effective assistance from the National Conference Legislative Director and his staff. John McCabe, the Legislative Director for the National Conference, and his extremely capable staff in Chicago did an excellent job in organizing support from the Commissioners in each state, securing bill introductions, testifying in the state legislatures, responding to questions and problems, tracking bills and reporting to the leadership of the National Conference, the Legislative Task Force and the Legislative Status Report Group (described in paragraph 28 below).

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24. **Dedicated Commissioners in the states.** The Commissioners responded to the call and did a marvelous job in securing bill introductions and obtaining passage of the Act in each state and the District of Columbia. Without this 100 percent level of dedication by the Commissioners, the Drafting Committee and the National Conference would have fallen far short of the goal.

25. **Effective volunteers in key states.** The Drafting Committee and the National Conference were greatly assisted by key individuals who came forward and helped obtain bill introductions, respond to problems and shepherd the bills through the legislative process. In many cases, these individuals had no involvement in the project before it was approved by the co-sponsors.

26. **Priority treatment by bill sponsors.** The sponsors of the bill in the state legislatures played a major role in the success of the Revised Article 9 enactment project by giving the Act priority treatment in the legislature. In many states, because of the need to obtain bar committee and law revision commission approvals, the bill sponsors did not even receive a finished bill ready for introduction until shortly before the July 1 deadline. In New York, for example, the final agreed-upon version of the Revised Article 9 bill was not ready until four business days before the Senate adjourned, and Revised Article 9 was just one of hundreds of bills then competing for the time and attention of legislators. The Drafting Committee and the National Conference owe a huge debt of gratitude to the bill sponsors, committee counsel and legislative staff members for their full cooperation and support in meeting the July 1, 2001 deadline.

27. **Good communication regarding problems, issues and solutions.** As the enactment effort proceeded and issues and problems were raised and solved in the legislatures, the Drafting Committee and the National Conference developed a level of experience and a database of information that were extremely helpful. Good communication was maintained among the states to be sure the Drafting Committee and the National Conference took full advantage of this valuable experience and database.

28. **Core leadership group tracking introduction and enactment status and tackling problems.** Early in the legislative process, a Legislative Status Report Group was created to quarterback the legislative effort. The Legislative Status Report Group consisted of Carolan Berkley, Michael Houghton, John McCabe, Fred Miller, Harry Sigman, Ed Smith, Steve Weise and William Burke. The Legislative Status Report Group was charged with coordinating the national legislative effort, including tracking bill introductions and enactments, responding to problems and issues, testifying, attending meetings, preparing reports and memoranda, reviewing proposed legislative language, begging, pleading, and cajoling and keeping Commissioners in the states motivated and advised.

29. **Biweekly Legislative Status Report Group meetings during the stretch run.** During the months leading up to the July 1, 2001 deadline, the Legislative Status Report Group met by telephone on a biweekly basis to review progress and plan legislative strategy. In advance of the telephone meetings, John McCabe prepared and circulated a state-by-state summary of the status of the bills in the legislatures. The Legislative Status Report Group discussed every state in the report in which bills were pending in an effort to keep the bills on track and deal with problems. In many instances, Commissioners in the states participated in the telephone calls to offer their insights and solicit advice or help from the Legislative Status Report Group.

**Concluding Observations**

The success of the Revised Article 9 enactment effort was the result of a confluence of many factors, each contributing in its own way, large or small, to the end result. In some cases, this came from planning and hard work; in other cases it came from just plain good timing and good luck.

Every drafting project of the National Conference and the ALI is different, each with its own set of needs and challenges. Many of the techniques and approaches set forth in this article have been used to varying degrees in other drafting projects. What may have made the Revised Article 9 effort unique was the sheer size of the project which enabled all of the methods to be deployed in unison to a common and useful end.

The purpose of this article is not to herald the planning, hard work and good fortune of the Article 9 Drafting Committee, but rather to offer suggestions that may be helpful to other drafting projects of the National Conference and the ALI.

On a personal note, I want to express my sincere appreciation to the National Conference, The American Law Institute, the Co-Reporters, the Article 9 Drafting Committee and the many volunteers who were part of this project for allowing me the privilege to serve as the Chair of the PEB Study Committee and the Article 9 Drafting Committee.
“Double Debtor” Issues - continued

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feree, or the debtor may otherwise transfer its assets or business to another person. In such a case, the survivor of the merger or other transferee may become bound by the original debtor’s security agreement, both for collateral existing at the time when the transferee becomes bound and, if applicable under the security agreement, after-acquired collateral in either of two cases: (1) By operation of law other than Article 9 or by contract, the security agreement of the transferee becomes effective to create a security interest in property of the transferee, or (2) By operation of law other than Article 9 or by contract, the transferee becomes generally obligated for the obligations of the transferor, including the secured obligations of the transferee, and acquires all or substantially all of the assets of the transferor. §9-203(d). Article 9 refers to the transferee in either of such cases as a “new debtor.” §9-102(a)(56).

Example: D, an organization, sells all its business to ND, who assumes D’s obligations under D’s security agreement with SP in a contract that says that ND “agrees to be bound by the security agreement as if ND were D.” ND is a new debtor.

Example: D, an organization, sells all of its assets to ND, who assumes all of D’s liabilities. ND is a new debtor.

Example: D, a sole proprietor, forms a limited liability company, ND. D transfers all of the assets of the sole proprietorship to ND, and ND assumes all of the liabilities of the sole proprietorship. If the sole proprietorship’s assets are substantially all of D’s assets and if the obligations assumed by ND are generally all of D’s obligations, ND is a new debtor.

Example: D, an organization, merges into ND, another organization. ND is the survivor of the merger. ND is a new debtor.

B. Attachment. A new debtor, by definition, becomes bound by the original debtor’s security agreement. §§9-102(a)(56) and 9-203(d). Accordingly, the security interest of the original debtor’s secured party in the collateral existing at the time of the new debtor becoming bound and, if applicable under the security agreement, after-acquired collateral, when acquired by the new debtor, attaches in the hands of the new debtor. It is not necessary that the new debtor enter into a new security agreement with the original debtor’s secured party. See §9-203(e).

Example: SP has a security interest in all of D’s existing and after-acquired assets under a security agreement authenticated by D. D merges into ND. ND is the survivor of the merger. Since ND is a new debtor, SP’s security interest continues in the collateral existing at the time of the merger and also, when acquired, attaches to assets acquired by ND after the time of the merger.

C. Perfection. A filing that would have been effective to perfect a security interest in the collateral of an original debtor’s secured party under the security agreement had the original debtor not effected the transaction with the new debtor is generally effective to perfect the secured party’s security interest in both existing collateral and, when acquired, after-acquired collateral in the hands of the new debtor. §9-508(a). But there are three important exceptions.

1. Continuation of Perfection as to Transferred Assets if the New Debtor is Located in a New Jurisdiction. If collateral in which the original debtor’s secured party has an attached security interest that is perfected under the law of the jurisdiction of the location of the original debtor but the new debtor is located in another jurisdiction, the secured party has a period of one year (or the expiration of any earlier period in which the perfection of the security interest would lapse under the law of the original debtor’s jurisdiction) to perfect the security interest under the law of the jurisdiction of the location of the new debtor in order for the secured party to maintain the perfection of its security interest.

The one-year grace period under §9-316(a)(3)... applies only to collateral in which a security interest is perfected at the time of the transfer.

Example: D1, a New York corporation, merges into D2, a Delaware corporation. D2 is the survivor of the merger. D1’s assets existing at the time of the merger are subject to a security interest granted by D1 in favor of SP under a security agreement authenticated by D1 and perfected by the filing of a financing statement against D1 in the New York Secretary of State’s office. SP’s security interest remains perfected by filing in the assets existing at the time of the merger.

However, assuming that SP’s financing statement against D1 would not lapse at any earlier date, SP has a period of one year to perfect the security interest against D2 as to the assets...
“Double Debtor” Issues - continued

(Continued from page 9)

existing at the time of the merger. SP may perfect by filing a financing statement, covering the assets existing at the time of the merger, against D2 in the Delaware Secretary of State’s office. If SP fails to perfect its security interest within that one-year period, SP’s security interest in those assets will become unperfected at the end of that period against a purchaser for value.

2. Perfection as to After-acquired Assets if the New Debtor is Located in a New Jurisdiction. If the new debtor is located in a jurisdiction different from that of the original debtor, the original debtor’s secured party must complete steps to perfect its security interest against the new debtor under the law of the new debtor’s jurisdiction in order for the original secured party’s security interest to be perfected in the new debtor’s collateral acquired after the new debtor became bound by the original debtor’s security agreement. For authorization for the original debtor’s secured party to file a financing statement against the new debtor, see §9-509(b).

The secured party of the original debtor has no grace period to perfect its security interest in collateral acquired after the new debtor became bound by the original debtor’s security agreement, if the location of the new debtor is in a jurisdiction different from that of the original debtor.

The one-year grace period under §9-316(a)(3) does not apply in this case. Section 9-316(a)(3) applies only to collateral in which a security interest is perfected at the time of the transfer. A security interest in after-acquired assets, of course, will not attach under §9-203(b)(2) and, therefore, will not be perfected until the time when the debtor has acquired rights in the collateral. At the time of the merger, the post-merger after-acquired assets will not yet have been acquired by the debtor. At that time, the debtor will not have rights in the post-merger after-acquired assets, and any security interest in those assets will not have been perfected.

Example: D1 has granted to SP a security interest in D1’s existing and after-acquired assets under a security agreement authenticated by D1. The security interest is perfected, as to existing and, when acquired, after-acquired collateral, by the filing of a financing statement against D1 in the New York Secretary of State’s office.

D1 merges into D2, a Delaware corporation. D2 is the survivor of the merger.

SP must perfect its security interest against D2 as to the assets acquired by D2 after the time of the merger. Because D2 is a new debtor and is bound by the after-acquired property clause in D1’s security agreement, SP may perfect by filing a financing statement, covering the post-merger after-acquired assets, against D2 in the Delaware Secretary of State’s office. For each day following the merger in which SP delays in perfecting its security interest in the assets then acquired by D2 after the time of the merger, SP’s security interest in those assets will be unperfected.

3. Perfection as to After-acquired Assets if the New Debtor is Located in Same Jurisdiction but its Name is Seriously Misleading. If the original debtor’s secured party has perfected its security interest in the collateral of the original debtor by filing in the jurisdiction of the location of the original debtor and the new debtor is located in the same jurisdiction, but the name of the new debtor is seriously misleading when compared to the name of the original debtor, the original debtor’s secured party has a period of four months from the time that the new debtor became bound by the original debtor’s security agreement to file a financing state-
quired by the new debtor more than four months after the time of the merger. This is because the new debtor’s name (now ABC Corp.) is no longer seriously misleading from that of the original debtor (ABC Corp).

D. Priority as to Existing Collateral. If the original debtor’s secured party has a perfected security interest in the collateral existing at the time when the new debtor becomes bound by the original debtor’s security agreement, the “first-to-file-or-perfect” priority rule is called off, and the original debtor’s secured party will prevail over the secured party of the new debtor as to that collateral so long as the original debtor’s secured party’s security interest remains perfected. §9-325.

Example: D1, a New York corporation, has granted to SP1 a security interest in D1’s existing assets under a security agreement authenticated by D1. The security interest is perfected by the filing of a financing statement against D1 in the New York Secretary of State’s office.

D2, a Delaware corporation, has granted to SP2 a security interest in D2’s existing and after-acquired assets under a security agreement authenticated by D2. The security interest is perfected, as to existing and, when acquired, after-acquired collateral, by the filing of a financing statement against D1 in the Delaware Secretary of State’s office.

D1 merges into D2. D2 is the survivor of the merger.

SP1’s security interest in the collateral existing at the time of the merger remains perfected by filing. SP1’s security interest in that collateral is superior to that of SP2. This is the case even if SP2’s financing statement filed against D2 preceded in time SP1’s financing statement filed against D1.

However, assuming that SP1’s financing statement against D1 would not lapse at any earlier date, SP1 has a period of one year to perfect the security interest against D2 in the collateral existing at the time of the merger. SP1 may perfect by filing a financing statement, covering that collateral, against D2 in the Delaware Secretary of State’s office. If SP1 fails to perfect its security interest within that one-year period, SP1’s security interest will become unperfected at the end of that period. If SP2’s security interest in the collateral existing at the time of the merger is then perfected, SP2’s perfected security interest in that collateral will be senior to SP1’s unperfected security interest under §9-322(a)(2).

E. Priority as to After-Acquired Collateral. If the original debtor’s secured party needs to rely upon perfection by filing against the original debtor to claim perfection of its security interest in collateral acquired by the new debtor after the time when the new debtor became bound by the original debtor’s security agreement, the original debtor’s secured party’s security interest in the after-acquired collateral is junior to a security interest created by the new debtor in favor of the new debtor’s secured party. §9-326. It does not matter whether the new debtor is located in the same jurisdiction as the original debtor.

Example: D1, a New York corporation, has granted to SP1 a security interest in D1’s existing and after-acquired assets under a security agreement authenticated by D1. The security interest is perfected, as to existing and, when acquired, after-acquired collateral, by the filing of a financing statement against D1 in the New York Secretary of State’s office.

D2, a New York corporation, has granted to SP2 a security interest in D2’s existing and after-acquired assets under a security agreement authenticated by D2. The security interest is perfected, as to existing and, when acquired, after-acquired collateral, by the filing of a financing statement against D2 in the New York Secretary of State’s office.

D1 merges into D2. D2 is the survivor of the merger.

SP1’s security interest in the collateral acquired by D2 after the time of the merger is junior to that of SP2. This is the case even if SP1perfects its security interest in the after-acquired collateral by a filing, covering the after-acquired collateral, against D2 at or before the time of the merger.

Example: D1, a New York corporation, has granted to SP1 a security interest in D1’s existing and after-acquired assets under a security agreement authenticated by D1. The security interest is perfected, as to existing and, when acquired, after-acquired collateral, by the filing of a financing statement against D1 in the New York Secretary of State’s office.

D2, a New York corporation, has granted to SP2 a security interest in D2’s existing and after-acquired assets under a security agreement authenticated by D2. The security interest is perfected, as to existing and, when acquired, after-acquired collateral, by the filing of a financing statement against D2 in the New York Secretary of State’s office.

D1 merges into D2. D2 is the survivor of the merger.

SP1’s security interest in the collateral acquired by D2 after the time of the merger is junior to that of SP2. This is the case even if SP1 perfects its security interest in the after-acquired collateral by a filing, covering the after-acquired collateral, against D2 at or before the time of the merger.

Example: D1, a New York corporation, has granted to SP1 a security interest in D1’s existing and after-acquired assets under a security agreement authenticated by D1. The security interest is perfected, as to existing and, when acquired, after-acquired collateral, by the filing of a financing statement against D1 in the New York Secretary of State’s office.

D2, a New York corporation, has granted to SP2 a security interest in D2’s existing and after-acquired assets under a security agreement authenticated by D2. The security interest is perfected, as to existing and, when acquired, after-acquired collateral, by the filing of a financing statement against D2 in the New York Secretary of State’s office.

D1 merges into D2. D2 is the survivor of the merger.

SP1’s security interest in the collateral acquired by D2 after the time of the merger is junior to that of SP2. This is the case even if SP1 perfects its security interest in the after-acquired collateral by a filing, covering the after-acquired collateral, against D2 at or before the time of the merger.
Message From the Chair:
Commercial Financial Services Committee

by Jeffrey S. Turner
Kaye Scholer LLP
Los Angeles, CA

Having now been the chair of the Commercial Financial Services Committee for three months, I am pleased to report that the CFSC is moving forward under the capable leadership of its subcommittee chairs and vice-chairs and plans a full and interesting array of meetings and programs for next April’s Spring Meeting of the Business Law Section in Boston.

During the last three months, we have made some changes in the CFSC leadership roster to fill vacant slots and replace retiring leaders. See page 24 for an updated leadership roster, including contact information. I encourage you to contact individual subcommittee leaders if you wish to join subcommittees or become active in their affairs. Suggestions for meeting and program topics or projects, and volunteers to speak at meetings and programs or work on projects, are always welcome. We are committed to bringing new members, young lawyers, women, minorities, and all other interested persons into the mainstream of the activities of the CFSC. I still vividly recall attending the first meeting of the CFSC, at the 1983 Spring Meeting in Boston at the very site where we will next meet. The CFSC is now in its 19th very successful year, and is one of the largest and most active committees in the ABA, but such sustained success and activity can only continue with a constant infusion of new volunteers and new ideas. I am gratified to see that many of the original founding members of the CFSC are still active in its affairs, but I am even more gratified to see that our meetings are gradually being populated by new faces and future leaders and contributors.

I would like to specifically mention a few recent leadership changes. Chris Rockers is the CFSC vice chair and is approaching his new responsibilities with the same enthusiasm and dedication that he brought to his years of service as chair of the Programs and Seminars Subcommittee. Jeff Rosenthal has moved from chair of the Loan Documentation Subcommittee to take over the reins of the Programs and Seminars Subcommittee, ably assisted by Jim Prendergast. Robert Handler has replaced Jeff Rosenthal at the helm of the Loan Documentation Subcommittee, and Marshall Grodner is his vice-chair. Neal Kling has volunteered to serve as the new vice chair of the Real Estate Financing Subcommittee. Several other subcommittee leadership positions will be available during the next couple of years as existing leaders move on to new positions, and we continue to look for people with an interest in taking on leadership roles. Once again, I would like to sincerely thank Bob Zadek and Steve Weise for their excellent stewardship of the CFSC during the last several years.

The CFSC most recently met on October 24 in San Francisco in conjunction with the annual meeting of the Commercial Finance Association. Despite the general decline in attendance at professional association meetings that has followed the tragedy of September 11, I am pleased to report that there was a strong turnout for the meeting, and those present were not disappointed, as they were treated to three excellent presentations, and a thick booklet of excellent materials. George Carrier (Wells Fargo Bank) made an excellent presentation regarding the many nuances (and, in some cases, unanswered questions) relating to lending to trusts and trustees under Revised Article 9. Trish Bogenrief (Lexis/Nexis Document Solutions), Meredith Jackson (Irell & Manella LLP), and Lynn Soukup (Shaw Pittman LLP) followed with a thorough, interesting and informative panel presentation on choice of law issues, filing office issues and non-uniform adoption issues under Revised Article 9. Jeff Wong (Cooper, White & Cooper LLP) and Larry Flick (Blank Rome Comisky & McAuley LLP) concluded the program with a comprehensive and up-to-date discussion of issues pertaining to equipment leasing and chattel paper financing, including practical review of and commentary on an annotated form of middle market equipment lease. We thank all the speakers for their fine contributions. Anyone who was unable to attend the meeting but wishes to acquire the excellent written materials may order them for $40 from the ABA. (See the order form on page 30.)

The CFSC and subcommittees next meet April 4 - 6 in Boston. Our meeting schedule includes several substantive committee meetings and two programs – the annual review by Steve Weise and me of commercial law developments, and a panel presentation on the subject of “Liability for the Failure to Fund Under Commitment Letters.” As always, our activities will be coordinated with those of the UCC Committee. On Thursday evening, April 4, the CFSC and the UCC Committee will host a joint committee dinner. While the arrangements have not yet been finalized, I can promise you a great dinner at a very interesting location in Boston. I have a special task force of prominent Boston gourmets working on the project! I hope to see many of you in Boston.
Message From the Chair:
Uniform Commercial Code Committee

by Linda J. Rusch
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This year, we have all been profoundly affected by the events of September 11, 2001 and the subsequent developments. As we celebrate the end of year holidays and the beginning of a new year, I hope that each of us takes the time to appreciate what we have and the people who are close to us.

I also hope that people will put on their calendars the Business Law Section Spring Meeting scheduled for Boston, April 4-7, 2002. The UCC Committee will be sponsoring or cosponsoring several programs as well as our usual slate of working committee meetings.

Peter Carson is chairing a program on Enforcement of Security Interests under Revised Article 9. Sandy Rocks is chairing a program on Legal Opinions under Revised Article 9. As usual, the Commercial Financial Services Committee and the UCC Committee will be cosponsoring the annual Commercial Law Developments program. David Snyder is chairing a UCC committee forum which will be presented during the UCC Committee meeting on Thursday, April 4, entitled "Reworking the Foundation: A Look at Revised UCC Article 1." On Thursday evening we are also planning a joint dinner with the CFS Committee. The dinner provides an excellent opportunity to catch up with old friends and make new ones.

The Spring Meeting is an opportunity to participate in ongoing law revision efforts and learn about the cutting edge of legal and commercial developments. As always, it will be a pleasure to see you there.

Jeffrey Joseph Wong, 1943-2001

We are sad to announce that Jeff Wong passed away suddenly on November 16, at the age of 58, as a result of a massive heart attack. Jeff was a partner at Cooper, White & Cooper in San Francisco, and a graduate of Princeton University and UC Hastings School of Law. He has been active for some years in the Commercial Financial Services Committee and the UCC Committee. As the San Francisco Chronicle reported, “Jeffrey's amazing sense of humor, generosity of spirit and joie de vivre, made him a special favorite among the many clubs and organizations to which he belonged. The Bohemian Club was central to his life and he was a talented and gifted comedian.” A service to celebrate his life was held on November 28 at the Bohemian Club in San Francisco.

From Jeff Turner: It is with great sadness that I report to you the sudden and unexpected death of our friend and colleague Jeff Wong of San Francisco. As recently as October 24, Jeff was a speaker at a meeting of the Committee, full of life and charm as always. It seems unimaginable that he has been taken from our midst so suddenly, and we will all miss him.

From Linda Rusch: As many of you know, Jeff was chair of the Subcommittee on Litigation for the UCC Committee. He made many contributions to the Committee and the Section. He was a wonderful colleague and will be missed.
The Article 1 Subcommittee is sponsoring a Committee Forum at the Spring Meeting in Boston, on Thursday, April 4, 2002. Entitled “Reworking the Foundation – A Look at Revised Article 1,” the Committee Forum will provide a lively discussion of the revised Article 1, which was approved last summer by the American Law Institute and the National Conference of Commissioners on Uniform State Laws. David Snyder will moderate the Forum. Participants will include Neil Cohen (reporter for the Article 1 revision), Ann Lousin, Fred Miller, Margaret Moses, and Bill Woodward. The Forum will take place during the second hour (3:00-4:00) of the UCC Committee meeting.

The Forum will begin with an overview of the Article 1 revision and will then focus on three topics affected by the revisions in Article 1: choice of law, good faith, and supplementation. Choice of law has been by far the most controversial part of the revision. The new section contains a number of consumer protections but in many other transactions will allow the parties to choose law that has no relation to the transaction. See Revised § 1-301 (Draft for Approval, Aug. 2001). Several commentators have already expressed strong views on the proposed rules; the panelists will represent different perspectives and will comment on the potential impact of the controversy on the chances for enactment.

The new definition of “good faith” will add what is often considered an objective prong to the test in current Article 1. Thus, except in Article 5, where “honesty in fact” remains the standard, good faith will now require not only “honesty in fact” but also “the observance of reasonable commercial standards of fair dealing.” Revised § 1-201(b)(19). The revised rule on supplementation, § 1-103, includes preliminary comments that would have the UCC preempt a significantly greater amount of common law and equity than under current interpretations of existing § 1-103. See Revised § 1-103 prelim. cmt. 2. The panelists will discuss the change in good faith and the implications of greater UCC preemption.

The Article 1 Subcommittee will also hold its regular meeting on Friday, April 5, 2002, from 11:00 until 12:00 noon. The agenda will include an update on the status of Article 1, and further discussion of the Subcommittee’s plans to draft an Enactment Guide and a Practitioners’ Guide. The Enactment Guide would have as a goal securing the adoption of Article 1 by the states and would probably be timed to coincide with the targeting of the Revised Article 1 for enactment by the states. The Practitioner’s Guide would be an independent and objective guide to the changes in Article 1 and would probably come out later. We will also need to consider what other steps may be appropriate to educate the bar as to the revisions, and to consider other programs to familiarize everyone with the new Article 1. Please join us and bring your ideas and suggestions.

The Investment Securities Subcommittee is in program planning mode. Although there have been many presentations over the years on financing transactions involving investment property (including the joint program with the Developments in Business Finance Committee at the Spring 2001 Business Law Section on “Finance Transactions Involving Investment Securities”) there have been fewer programs on the interplay between Article 8 and non-finance transactions. For 2003 (yes, really long-range planning), we plan to present a program on Article 8 issues of interest to non-finance lawyers (such as opinions in secondary offerings of securities, transfer restrictions and treatment of partnership and LLC interests), and will be looking for committee members interested in participating on that panel.

We also plan to begin a discussion at the Spring 2002 meeting on what it means for a partnership or LLC to “opt in” to Article 8 (so that interests in the entity are treated as investment property under Article 8) and the benefits to a lender taking the interests as collateral of requiring such an opt-in or requiring that such an interest be certificated.

If you have suggestions for other programs or subcommittee meeting topics, are interested in being a panelist for a program or leading a discussion at a subcommittee meeting or are interested in becoming a member of the subcommittee please contact me.

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December 2001
Subcommittee on Payments

Thanks to everyone who attended the Subcommittee meeting at the Annual Meeting in Chicago. The Subcommittee met jointly with the Banking Law Committee’s Subcommittee on Payments and Electronic Banking. Joseph Alexander, the new chair of that Subcommittee, organized a panel discussion entitled "Economic Sanctions and the Payments System: How the Activities of the Office of Foreign Assets Control Affects Funds-Transfer Systems." Because this topic has taken on increased importance since the Annual meeting, we thought that it might be useful to remind everyone of the Internet address for the Office of Foreign Assets Control – http://www.ustreas.gov/ofac/. The OFAC site is an extremely useful resource which contains summaries of the various sanction programs that are currently in effect (including the new anti-terrorist program) and industry specific guides (e.g., Foreign Asset Control Regulations for the Financial Community), as well as the Executive Orders and regulations governing the sanction programs.

As many of you by now know, subsequent to the Annual Meeting, the Executive Committee of the National Conference of Commissioners on Uniform State Laws acted to limit the Article 3/4/4A drafting project to only a few topics. Because there were no ABA meetings between the time that the NCCUSL Executive Committee reached its decision and the date of the final drafting committee meeting (December 1, 2001 in New Orleans), members of the Payments Subcommittee discussed the proposed amendments using a listserv format. The feedback developed during these discussions was shared with both the chair and the reporter to the drafting committee.

Finally, Paul and I are busy working on the Subcommittee's agenda for the Spring Meeting in Boston. We are interested in knowing if there are new projects or issues that members of the Subcommittee or the UCC Committee wish us to entertain.

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Subcommittee on Information Licensing

Three of the principal roles of our Subcommittee historically have been to provide the Drafting Committee for the Uniform Computer Information Transactions Act ("UCITA") with research on the status of case law related to computer information transactions as it has and is developing, to provide our comments on various UCITA's provisions and to educate other members of the ABA about UCITA as it was developing. At our Subcommittee meeting last August, several of our members volunteered to draft an updating memorandum specifically addressing the matters raised in the Report on UCITA submitted by the Tort and Insurance Practice Section (TIPS) at the Annual Meeting. The updating memorandum, in draft form, was then circulated to the 112 members of the Subcommittee for their review and comments. In the past, in light of the fact that we are a diverse group of over 100 members representing many points of view, we have not, as a Subcommittee, attempted to achieve unanimity of position on our reports. Rather, we have circulated memoranda in draft form to our members, requested comment, and indicated the percentage of Subcommittee members who objected to any particular submission. We followed that same procedure with respect to this memorandum which addresses the TIPS Report. To the extent that we received comments reflecting the position of a majority of the committee, or a significant minority, we included them in the final memorandum. The final memorandum was provided to the members of the ABA Task Force on UCITA which was appointed by the Board of Governors following the 2001 Annual Meeting, and also is available to any interested ABA member who requests it.

Our thanks to all of our Subcommittee members who took the time to prepare and review the memorandum and provide comments.

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Task Force on Forms

The Task Force on Forms Under Revised Article 9 continues to finalize the more than 30 forms submitted by a wide range of practitioners. As you may recall from prior issues of this newsletter, the Forms Task Force has spent the last year and a half developing highly annotated, “best practices” forms for use under Revised Article 9. Among other things, we expect the book will contain state-of-the-art security agreements, perfection documents (financing statements, control agreements), enforcement documents and ancillary materials (including, most important, form opinion letters). The Forms have been prepared and reviewed by some of the nation’s leading commercial finance practitioners, including Ed Smith, Steve Weise, Jeff Turner, Lynn Soukup, Howard Darmstadter, and Sandra Rocks. The Task Force itself includes these individuals as well as about twenty other leading UCC practitioners. The Task Force is chaired by Professor Jonathan C. Lipson, of the University of Baltimore. As you may also recall, the Task Force had hoped to publish its book of forms this fall. The events of September 11 have, unfortunately, delayed publication. The forms are currently being reviewed by the senior editorial board of the Task Force. We hope to have them in final form and delivered to the ABA publication staff in December for publication in early spring 2002. You can view the forms at http://www.abanet.org/buslaw/cfs-ucc/ucc/rev_article9/home.html.

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Subcommittee on Agricultural Finance

The Subcommittee on Agricultural Finance held its fall meeting in conjunction with the American Agricultural Law Association in Colorado Springs. Steve Sanford of Sioux Falls, South Dakota had a spectacular set of materials on insurance coverage for agribusiness with amply annotated materials for our Committee program. I am sure he would be pleased to share copies on request.

The afternoon program dealt with special subjects on Revised Article 9, as opposed to a general discussion. The PEB report on transition, multi-state transactions and different effective dates was addressed. In the agricultural context, because of some local filing office rules on crops, these issues can be much trickier than in traditional financing.

The AALA is having an executive management transition. William Babione, present Executive Director (from the National Agricultural Center), was honored throughout the meeting. We have appreciated his close cooperation with our Committee and will miss him very much both professionally and personally.

We are looking forward to a program on warehouse receipts and the BOLERA convention this spring, and a lending documentation program for integrated agricultural production facilities next fall. Volunteers willing to assist meaningfully in programs are welcome.

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Special Update from Steve Weise:
The revised Article 9 Standby Committee has approved a few proposed changes to the text and comment of Article 9. Only one change (relating to perfection of a security interest on the sale of lottery winnings) is substantive. The other modifications either correct mistakes (usually cross-references) or clarify provisions.

The NCCUSL Executive Committee has approved the changes. The American Law Institute Executive Committee will consider them in mid-December. The proposed changes are posted on the Web page of the National Conference of Commissioners on Uniform State Law. (See the link near the bottom of the NCCUSL home page, at nccusl.org).
The Task Force on Simplification continues its work of assisting the Article 1 and Article 2 Drafting Committees and other interested groups in developing simplified user-friendly final texts of Revised Articles 1 and 2. To facilitate early enactment of a user-friendly Article 1 final draft we have forwarded to the Commissioners and other interested parties the latest side-by-side complete Actual and Simplified Versions of Article 1 as developed by our ABA Task Force, which is available on the ABA web site at www.abanet.org.

We have recommended that, in accordance with the procedure adopted in the Article 9 revision, Article 1 also include headings for the subsections as an aid to readers. We suggest that a cautionary statement be included in the comments, similar to the Comment 3 Revised Article 9 Section 9-101 language stating that:

This article also includes headings for the subsections as an aid to readers. Unlike section captions, which are part of the UCC, see section 9-109, subsection headings are not a part of the official text itself and have not been approved by the sponsors. Each jurisdiction in which this Article is introduced may consider whether to adopt the headings as a part of the statute and whether to adopt a provision clarifying the effect, if any, to be given to the headings.

This Article has also been conformed to current style conventions.

Apart from providing headings for subsections, the only other adjustments are use of vertical rather than horizontal listing techniques in the definitions of sections 1-201(9) Buyer in Ordinary Course and 1-201(37) Security Interest.

We plan to meet at the Spring Meeting in Boston to facilitate continuing cooperation among all interested parties and will invite representatives of the NCCUSL Committee on Style and the Reporters and Chairs of the Drafting Committees of the various UCC articles to meet with our Task Force.

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CFS Secured Lending Subcommittee/ UCC Secured Transactions Subcommittee

We were glad to see so many of you at our joint subcommittee meeting in Chicago, thanks to our excellent speakers, Steve Harris on effects of the new bankruptcy legislation and Revised Article 9 on securitization transactions, Jim Junewicz discussing the impact of Regulation FD on secured lenders, particularly on syndications and claims trading, Maury Poscover and Chris Rockers anticipating developments in lender liability claims under Revised Article 9, and George Hisert with frightening new developments arising in discussions with the SEC.

Our Boston program is still being developed. It will feature Martin Fingerhut discussing current issues in U.S./Canada cross-border financings, and other lively discussions of timely issues. As always, we look forward to seeing you there!

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Master Commercial Finance Calendar Subcommittee

The Master Commercial Finance Calendar posts meetings, seminars and other events of possible interest to commercial finance attorneys. In particular, many seminars on "Revised Article 9" have been posted and can be accessed, like all other events, simply by clicking on the event and details screens to get a brief description of the program, a list of the presenters and the URL of the sponsoring organization to facilitate electronic registration. A "search" option is also available to enable the user to search by event name, sponsoring organization and/or name of presenter. The benefit of the Master Calendar to our membership is, however, limited by the scope and relevancy of the events posted and ease of its use. The Subcommittee’s mission is to make the Calendar as comprehensive and useful to the membership as possible. To that end, the Subcommittee welcomes any and all suggestions from the membership, including identification of organizations (be they business, professional or CLE; national, regional or local) and events for Calendar inclusion. Please respond by e-mail or by telephone at (860) 275-8274.

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Loan Workouts Subcommittee

Peter S. Clark II, Chair of the Loan Workouts Subcommittee, joined other members of the Commercial Financial Services Committee in a presentation at the 57th Annual Convention of the Commercial Finance Association on October 26, 2001 in San Francisco, California. The topic was "Sailing through your Workouts" and Mr. Clark spoke about workouts under Revised Article 9. He predicted that, in the long term, Revised Article 9 will give lenders greater leverage in workouts. However, during the next five years, problems will arise for lenders unfamiliar with the transition rules. Mr. Clark was joined by Jeffrey Rosenthal, Chair of the Loan Documentation Subcommittee, Gerald Blanchard, Associate General Counsel for Bank of America, and Edward Dobbs, a partner with Parker, Hudson, Rainer & Dobbs.

The next meeting of the Loan Workouts Subcommittee will be held in April in Boston during the ABA Section of Business Law Spring Meeting. At the meeting, a panel of distinguished speakers will talk about the unique aspects of a healthcare industry workout.

Peter S. Clark II, Chair
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Program Subcommittee

We had the following very informative group of programs in connection with the CFA Convention in San Francisco on October 24, 2001: a presentation by George Carrier (of Wells Fargo Bank) on "Lending to Trusts and Trustees Under Revised Article 9", a panel presentation by Trish Bogenrief (of Lexis-Nexis), Meredith Jackson (of Irell & Manella LLP) and Lynn Soukup (of Shaw Pittman LLP) on "Choice of Law Issues, Filing Peculiarities and Key Non-Uniform Provisions Of Revised Article 9 As Enacted", and a third presentation, by Jeff Wong (of Cooper, White & Cooper LLP) and Larry Flick (of Blank Rome et al) on current issues and developments pertaining to equipment leasing. In addition, the CFS presented a well attended program to the CFA Convention, entitled "Sailing Thru Your Workouts", with a panel moderated by Jeffrey Rosenthal (of Greenberg Traurig), and presented by Edward Dobbs (of Parker Hudson, et al.), Gerald Blanchard (of Bank of America) and Peter Clark (of Reed Smith).

We have a full slate of Subcommittee meetings planned for the Spring Meeting in Boston commencing on Thursday, April 4, 2002 and concluding on Saturday, April 6, 2002. In addition to the ever-popular "Commercial Law Developments" program by Jeffrey Turner (of Kaye Scholer) and Steven Weise (of Heller Ehrman), the Subcommittee on Lender Liability chaired by Paul B. O'Hearn (of Burr & Forman) and Vice Chair Gerald Blanchard (of Bank of America) will be doing a program and the Committee Forum will be presented as a Joint Presentation of the Secured Lending Subcommittee (Meredith S. Jackson [of Irell & Manella LLP], Chair and Kenneth C. Kettering [of New York Law School], Vice Chair, and the Uniform Commercial Code Committee Secured Transactions Subcommittee (Peter H. Carson [of Cooley Godward], Chair and Leianne Crittendon [of Oracle], Vice Chair.)

We are looking forward to a very productive and informative group of meetings in Boston and hope to see all of you there in the Spring.

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International Financial Services Subcommittee

At the ABA Annual Meeting in Chicago in August the Subcommittee held its joint meeting with the International Commercial Law Subcommittee of the UCC Committee. Attendance at the meeting was quite good, partly due to the fact that we were fortunate to have two extremely qualified speakers. Ed Smith of Bingham Dana LLP gave a status report on the approval by UNCITRAL of the final draft of the United Nations Convention on the Assignment of Receivables in International Trade (“UN Convention”). As Ed noted, this final draft will be presented to the United Nations probably in November or December of 2001 for its approval. Our Subcommittees have been asked to co-sponsor this UN Convention on behalf of the Business Law Section. A draft Recommendation and Report is available for anyone interested in this document either on our website or by request to the co-chairs listed below.

Also at the August meeting, James Rogers of Boston College Law School provided a summary of the work of the Hague in developing a conflicts rule for the indirect holding of securities. While the location of the relevant intermediary seems to have significant support, many countries still cling to the old rule of location of the actual securities. With the current trend of de-materialized securities, this issue has become extremely significant. Our thanks to Ed and Jim for their helpful and timely observations.

Our next meeting is scheduled during the Business Law Section’s Spring Meeting in Boston, April 4-7, 2002. In keeping with prior sessions, this will be a joint meeting with the International Commercial Law Subcommittee of the UCC Committee. In addition to general business matters and an update of the status of the UN Convention, we hope to have a guest speaker discuss the recent secured lending revisions to the commercial code of Mexico and how the revisions have changed the playing field for secured lending and securitization. Anyone with suggestions on other topics should contact the Subcommittee co-chairs.

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## UNIFORM STATE LAWS SCORECARD

### 50 State Survey of Adoptions of Revised Official Text of the UCC\(^1\), UETA & UCITA

**AS of September 4, 2001**

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Please note that the Enactment Date does not necessarily reflect the effective date. Please refer to the applicable statute for the relevant effective date.

Our thanks to John McCabe and Katie Robinson at the National Conference of Commissioners ("NCCUSL") on Uniform State Laws for their help in compiling the information above. These revisions are based on information provided by NCCUSL available as of September 4, 2001.

1. In addition to enactments noted below, all states have adopted the 1995 Official Text of Article 5 of the UCC, other than Georgia (no action), Puerto Rico (no action) and Wisconsin (Intro SB 203). Furthermore, all states have adopted the 1994 Official Text of Article 8 of the UCC and the 1998 Official Text of Article 9 of the UCC. Alabama, Florida and Mississippi each enacted a January 1, 2002 effective date for Article 9.

2. South Dakota has adopted only 1987 Official Text without the 1990 Amendments.

3. States that have repealed Article 6 are identified by "Repeal"; states that have adopted the revisions suggested in Alternative B to the 1989 Official Text are identified by "Revise".


5. In addition to the enactments noted, Puerto Rico has only adopted the following Articles: Article 1, Article 4A, the original versions of Article 5 and Article 7, and the 1972 version of Article 9.
UCC Scorecard - Revisions

ARTICLE 1 – GENERAL PROVISIONS
Latest Draft: October 2001
UCC Committee Contact:
David Snyder (216) 687-2319 or Margaret Moses (312) 915-6430.

ARTICLE 2 – SALES
Latest Draft: August 2001
UCC Committee Contact:
Rob Beattie (612) 607-7000.

ARTICLE 2A – LEASES
Latest Draft: August 2001
UCC Committee Contact:
Larry Flick (215) 569-5556 or Ed Huddleson (202) 333-1360

ARTICLE 3 – NEGOTIABLE INSTRUMENTS
Latest Draft: November 2001
Status: Next Drafting Committee meeting December 2001.
UCC Committee Contact:
Stephanie Heller (212) 720-8198 or Paul Turner (310) 472-5802

ARTICLE 4
BANK DEPOSITS AND COLLECTIONS
Latest Draft: November 2001
Status: Next Drafting Committee meeting December 2001.
UCC Committee Contact:
Stephanie Heller (212) 720-8198 or Paul Turner (310) 472-5802

ARTICLE 4A – FUNDS TRANSFERS
Latest Draft: November 2001
Status: Next Drafting Committee meeting

UCC Committee Contact:
Stephanie Heller (212) 720-8198 or Paul Turner (310) 472-5802

ARTICLE 7 – WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE
Latest Draft: Expected in January 2002
Status: Drafting Committee’s next meeting in January 2002
UCC Committee Contact:
William Towle (406) 721-0720.

ARTICLE 9 – SECURED TRANSACTIONS
Final Version: 1999, with Errata 1/2001
Status: Adopted in 50 states and the District of Columbia, (FL, MD, AL effective 1/1/02).
UCC Committee Contact:
Steve Weise (213) 244-7831 or Pete Carson (415) 693-2000

UNIFORM ELECTRONIC TRANSACTIONS ACT
Final Version: 1999
Status: Adopted by 37 states and the District of Columbia and pending in several more
UCC Committee Contact:
Rob Beattie (612) 607-7000 or Ben Beard (208) 885-6747

UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT
Final Version: 1999
Status: Adopted by 2 states and pending in several more
UCC Committee Contact:
Mary Jo Dively (412) 392-2136

UNIFORM CONSUMER LEASES ACT
Latest Draft: October 2001
Status: Approved at NCCUSL annual meeting in August 2001.
UCC Committee Contact:
Michelle Hughes (757) 499-8800
ABA Business Law Section Publications

The Portable UCC: Third Edition, edited by Corinne Cooper
The Portable UCC is in a compact, convenient size, and includes the complete text of the UCC as amended through 2000, including Revised Article 9 and the conforming amendments to other articles. The completely revised, comprehensive index incorporates new terms from Revised Article 9, including new categories of collateral and other key concepts. ($29.95 for 1-9 copies; $26.95 for 10 or more copies. Product Code 5070367)

The Portable Bankruptcy Code 2001, edited by Sally M. Henry
This compact, up-to-date reference will provide you with quick and easy access to relevant Code and Bankruptcy Rule provisions, U.S. Trustee Guidelines, Selected Rules of Civil Procedure and Federal Rules of Evidence. ($29.95 for 1-9 copies; $26.95 for 10 or more copies. Product Code 5070366)

The NEW Article 9, Second Edition, edited by Corinne Cooper; Steven O. Weise and Edwin E. Smith, contributing authors.
This handy guide provides a clear, in-depth explanation of Revised UCC Article 9, including the full 1999 text (as modified in January 2000) and Official Comments along with the complete text of former Article 9 (1995) for comparison. With chapters by Steven O. Weise, the ABA Advisor to the Revised Article 9 Drafting Committee, and Edwin E. Smith, a member of the Drafting Committee, this book has all you need, including: a plain-English overview of Revised Article 9, a checklist of issues to consider as you move to the new rules, a detailed analysis of the complex transition provisions, extensive charts comparing significant provisions of former and Revised Article 9, and a comprehensive index, with particular attention to new terms and new rules. ($39.95 for 1-25 copies; $29.95 for 26-50 copies; $23.95 for 51 or more copies. Product Code 5070360)

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  Article 2: Sales, by Linda J. Rusch and Henry D. Gabriel (Product Code 5070312)
  Article 2A: Leases, by Amelia H. Boss and Stephen T. Whelan (Product Code 5070307)
  Article 3: Negotiable Instruments and Article 4: Bank Deposits and Collections, by Stephen C. Veltri (Product Code 5070308)
  Article 4A: Funds Transfers, by Thomas C. Baxter, Jr. and Stephanie A. Heller (Product Code 5070309)
  Article 5: Letters of Credit, by James G. Barnes, James E. Byrne and Amelia H. Boss (Product Code 5070313)
  Article 8: Investment Securities, by Sandra M. Rocks and Carl S. Bjerre (Product Code 5070314)
  (Revised) Article 9: Secured Transactions, by Russell A. Hakes (Product Code 5070365)

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