Join the Commercial Financial Services Committee Online!
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JOIN THE UNIFORM COMMERCIAL CODE COMMITTEE ONLINE!
FREE FOR ALL BUSINESS LAW MEMBERS

**Messages from the Chairs**

**Committee on Commercial Financial Services**
Christopher J. Rockers, Chair, Husch & Eppenberger, LLC

The 32nd Annual Spring Meeting of the Business Law Section will be held March 15 – 18, 2007 in Washington, D.C. We will meet at the Renaissance Hotel at 999 Ninth Street NW in Washington and we have a great lineup of programs, forums and subcommittee meetings. Jim Prendergast and Jim Schulwolfe have a description of CLE offerings and most subcommittees have outlined plans for the Spring Meeting elsewhere in this newsletter, so I will not report those reports.

Each year Commercial Financial Services and the Uniform Commercial Code Committee host a joint dinner. This year the dinner will be held at Clyde's of Gallery Place, 707 7th Street, NW, Washington, DC on Thursday, March 15, 2007 at 8:00 P.M. A map from the hotel to the restaurant is [here](http://www.clydes.com). It's walking distance from the hotel. We are expecting a big crowd and again this year we will seat first time attendees with the leadership of CFS and the UCC Committees.

**Committee on Uniform Commercial Code: Spotlight**

**Joint Newsletter of the ABA Section of Business Law Committees on Commercial Financial Services and Uniform Commercial Code**

**Committee on Commercial Financial Services: Subcommittee Reports**
- Agricultural and Agri-Business Financing
- Aircraft Financing
- Creditors Rights
- Cross-Border Secured Transactions
- Intellectual Property Financing
- Lender Liability
- Loan Documentation
- Loan Workout
- Real Estate Financing
- Securitization and Derivatives
- Surveys of Commercial Law
- Syndications and Lender Relations

**Committee on Uniform Commercial Code: Subcommittee Reports**
- Equipment Leasing
- Investment Securities
- Letter of Credit
- Payments

**Joint Subcommittee Reports**
- Secured Lending (CFS) and Secured Transactions Subcommittees (UCC)

**Joint Task Forces**
- Joint Task Force On Deposit

**Committee on Uniform Commercial Code**
Stephen L. Sepinuck, Chair, Gonzaga University School of Law

The UCC Committee has some wonderful programming scheduled for the Spring Meeting of the ABA Business Law Section. My favorite, and back by popular demand, is "Stump the Chumps," in which a panel of UCC experts fields questions from the audience about UCC-related issues. This year's panel consists of Barkley Clark, Stephanie Heller, Meredith Jackson, Charles Mooney, and Bob Zadek. Come and get free expert advice on that question that's been nagging you. The program will be held on Friday, March 16 at 2:00pm in the Convention Center, Room 144A, and will be preceded by bestowal of the UCC Committee's Award for Exceptional Service. If you cannot attend, e-mail your question to UCC Committee Vice-chair Mario Ippolito at marioippolito@paulhastings.com. We will endeavor to make some record of the panel's response and post them on the Committee's web page.

**Committee on Uniform Commercial Code: Spotlight**

**Stephen Sepinuck, UCC Committee Chair**

The purpose of this column is to identify some of the most disconcerting judicial decisions interpreting the Uniform Commercial Code to be published after the previous edition of the Newsletter. The purpose of the column is not to be mean. It is not to get judges recalled, law clerks fired, or litigators disciplined for...
incompetence. Instead, it is to shine a spotlight on major errors of analysis, and thereby provide practitioners and judges with reasons to disregard the opinion as precedent.

The last column focused on judicial opinions containing one or more patent analytical errors. In contrast, the decisions noted here might not be wrong; reasonable readers might well conclude that both courts’ analysis is correct. To that extent, then the cases present valuable lessons for litigators and legislatures.

More…

Featured Articles

Changes to LIBOR Definitions in Credit (and Other) Agreements
Jeremy S. Friedberg, Leitess Leitess Freidberg & Fedder P.C., Chair, CFS Loan Documentation Subcommittee

As a result of Reuters acquisition of MoneyLine Telerate, effective December 31, 2006, the references in the typical definition of Eurodollar Rate should be updated in any credit agreement (or other agreement) that uses a customary definition of Eurodollar Rate (or LIBOR for dollar-denominated deposits). The commonly used “page 3750 of the Telerate service” becomes “Reuters Screen LIBOR01 Page.” Check your documents to determine whether changes are needed.

For more information please see the Memo on migration of rate sources from Telerate to Reuters and implications for the 2000 ISDA Definitions available on the ISDA website.

Defeasance: Shining a Spotlight on the Market Reality Stage
Wendelin A. White and Peter G. Freeman, Pillsbury Winthrop Shaw Pittman LLP

Real estate professionals experiencing the frenzied market for commercial properties might wonder when they’ll see a reality show featuring aspiring young moguls competing to win deals based on price, terms and speed to closing. To keep things interesting, producers likely would focus on attempts at relationship-making in order to scoop a deal.

However, they will miss the whole story if they skip over the fascinating topics of financing, loan assumptions and defeasance, since in commercial real estate, the drama frequently begins and ends with a buyer's ability to get financing and a seller's ability to get rid of it. In today's market, with many properties subject to the provisions of conduit loan documents, the available choices—loan assumption or defeasance—involve complex financial, timeline and other strategic considerations.

More…

Task Force On Model Negotiated Covenants and Related Definitions
William J. Whelan, III, Chair

The Task Force on Model Negotiated Covenants and Related Definitions was established by the Committee on Trust Indentures and Indenture Trustees (James Gadsden, Chair), Business Law
Section, to prepare a set of the covenants that typically appear in indentures for high yield issuers with the necessary definitions and commentary on the issues that arise in connection with the negotiation and interpretation of the covenants. The commentaries also include citations to relevant court decisions. It was published in the August, 2006 edition of The Business Lawyer, which can be retrieved at: http://www.abanet.org/buslaw/tbl/tblonline/2006_061_04/home.shtml

More...

Committee on Commercial Financial Services: Subcommittee Reports

Subcommittee on Agricultural and Agri-Business Financing
R. Lawrence Harris, Chair, T. Randall Wright, Vice-Chair

The Agricultural and Agri-Business Finance Subcommittee keeps pace with current agriculture topics as they relate to commercial, financial and legal issues. The committee meets twice annually—at the Spring Meeting of the ABA Business Section, and in conjunction with the Fall meeting of the American Agricultural Law Association. Our meetings attract agricultural law professionals from all over the country. Recent programs have been on such wide-ranging topics as the Perishable Agricultural Commodities Act (PACA), fraud in farm programs, security interests in agricultural collateral, cases on the law of nuisance as applied to hog producers, the Food Security Act in conflict with lender setoff rights, and the status of litigation involving anti-corporate farming laws in the Midwest.

At the Spring Meeting of the Business Section in Washington D.C., we will feature an expert panel speaking on ethanol-related matters. Demand for ethanol and related bio-fuels has resulted in the creation, in the last several years, of dozens of ethanol companies, many of which have built or are in the process of building new ethanol plants in the farm belt. In turn, demand for corn and water in those states has increased dramatically, driving prices up. At the Spring meeting, the Subcommittee will present: "Wall Street Meets the Corn Belt—Debt and Equity Financing in the Ethanol Industry." An experienced panel will discuss debt and equity financing of ethanol plants, their impact on demand for corn and water, and the future of the industry. The panel will include an executive of an Iowa bio fuel company; a lawyer who has significant experience both on the legal and business side of the industry; and a principal at one of the nation's leading private equity firms that invests in ethanol plants. This is an important topic for anyone with an interest in agriculture and agricultural finance. Our program will be on Friday, March 16 from 7:30-9:00 a.m. in Meeting Room 2, Meetings Level of the Renaissance Hotel.

For a comprehensive list of the dates, times and locations of our committees’ programs and meetings during the Spring Meeting, please see the schedules included in this newsletter.

Subcommittee on Aircraft Financing
Michael K. Vernier, Chair, Peter B. Barlow, Vice-Chair
The Aircraft Financing Subcommittee has an exciting program of speakers and panels this spring. We will have speakers addressing the outlook for the U.S. airline industry, aircraft financing trends, techniques and structures, and aircraft financing in the Cayman Islands and Brazil.

Some of the speakers include Philip Baggaley from Standard & Poor's, Jeffrey Craine from Skyworks Capital, Nick Ivezaj from Smith, Gambrell & Russell, Alvin Leong from Milbank, Tweed, Hadley & McCloy, Mark Western from Maples and Calder and Maria Regina Lynch from Xavier, Bernardes, Braganca in Sao Paulo. We will have a Cape Town update from James Tussing and William Piels, our representatives on the International Registry Advisory Board, as well as panels addressing Cape Town opinion practice and FAA and International Registry issues. Panels members include John Pritchard from Holland and Knight, Scott Wilson from Pratt & Whitney, Marc Latman from Fulbright & Jaworski, and Erin Van Laanan from McAfee & Taft and William Teague from Crowe & Dunleavy.

We will meet on Thursday, March 15 from 2:00-5:30 pm, and again on Friday March 16 from 9:00am-12:30 pm, both in Meeting Room 16 – Meetings Level of the Renaissance Hotel.

Subcommittee on Creditors Rights
Carolyn P. Richter, Chair, Rhonda L. Nelson, Vice-Chair

Our topic for the spring meeting is "Structuring transactions to mitigate insolvency risks; use and limitations of escrow agreements, letters of credit, security deposits and other mechanisms." We look forward to an informative open style discussion from our committee members and attendees, and our panel.

The topic will be presented by Evan Hollander and Abraham Zylberberg, both partners in the New York office of White & Case LLP. Evan is a bankruptcy lawyer and Abe is a transactional lawyer, and both specialize in structuring transactions to minimize bankruptcy risk. We hope to learn some new techniques for reducing counter-party credit risk and to become aware of the limitations of various structures frequently used for this purpose.

We will meet on Thursday, March 15, from 1:00-2:30p.m. in Meeting Room 3, Meeting Room Level, at the Renaissance Hotel. If you are going to a lunch program, please join us even if it's later in the program. We will be meeting jointly with the bankruptcy litigation subcommittee.

Subcommittee on Cross-Border Secured Transactions
James C. Chadwick, Chair, Joseph Turitz, Vice-Chair

Our subcommittee is meeting on Friday March 16 from 9:00-10:30 am in Meeting Rooms 10 and 11 – Meetings Level of the Renaissance Hotel. Our meeting will focus on recent legislative
and caselaw developments relating to cross-border secured transactions during the past 12 months. An outline of the specific agenda items and speakers will be circulated in advance of the meeting.

For a comprehensive list of the dates, times and locations of our committees’ programs and meetings during the Spring Meeting, please see the schedules included in this newsletter.

Subcommittee on Intellectual Property Financing
Matthew W. Kavanaugh, Chair, John Murdock, Vice-Chair

The CFS Committee’s IP Financing Subcommittee’s meeting at the Spring Meeting in Washington D.C. will feature a speaker from Ocean Tomo, LLC, an Intellectual Capital Merchant Banc® firm specializing in understanding and leveraging intellectual property assets and providing advice in IP-related mergers and acquisitions, valuations, expert services, analytics and IP auctions. Andrew T. Ramer, a Managing Director of Ocean Tomo will discuss:

"The Evolving IP Marketplace"

- IAM v. (Traditional) Asset Management
- The IP Marketplace and the IP Auction
- IP in Investing and New IP-type Financial Transactions
- The IP Marketplace post eBay

The meeting will be held on Friday, March 16, 2007, from 4:30 - 6:00 p.m. at the Renaissance Hotel, Meeting Rooms 10 & 11, Meeting Room Level.

For a comprehensive list of the dates, times and locations of our committees’ programs and meetings during the Spring Meeting, please see the schedules included in this newsletter.

Subcommittee on Lender Liability
Jeffrey Kelley, Chair, Mathew Rotenberg, Vice-Chair

The subcommittee meets from 4:00 p.m.-5:30 p.m. on Thursday, March 15, Meeting Room 7 - Meetings Level of the Renaissance Hotel. New subcommittee chairman, Jeffrey Kelley, a partner in the Atlanta office of Troutman Sanders LLP specializing in commercial bankruptcy and reorganization and related restructuring, and new vice-chairman, Mat Rotenberg, a partner in the Philadelphia office of Blank Rome LLP specializing in commercial finance transactions, will lead a discussion on several recent cases of interest, including the Radnor Holdings Corporation decision from the Delaware bankruptcy court. For each case covered, we will discuss, where appropriate, the significance for both bankruptcy and transactional practitioners.

For a comprehensive list of the dates, times and locations of our committees’ programs and meetings during the Spring Meeting, please see the schedules included in this newsletter.

Subcommittee on Loan Documentation
Jeremy S. Friedberg, Chair, Stuart D. Ames, Vice-Chair

"Hedging Your Bets – Documenting Loans to and from Hedge Funds" will be our topic at the Spring meeting of the Loan Documentation Subcommittee in Washington, D.C. This timely
program explores the relatively unique documentation and disclosure issues raised with respect to loans to and by hedge funds, including using hedge fund interests as collateral, and the legal opinion issues encountered in closing such loans. Jeremy Friedberg will moderate expert panelists Jennifer C. Hagle, Elliot Ganz and Anna Dodson. We look forward to a lively discussion on **Thursday, March 15, 2007 from 1:00-2:30 p.m.** at the Renaissance Hotel, **Meeting Rooms 10 & 11 on the Meeting Room Level**.

For a comprehensive list of the dates, times and locations of our committees’ programs and meetings during the Spring Meeting, please see the schedules included in this newsletter.

**Subcommittee on Loan Workout**  
*Caroline C. Galanty, Chair, Kimberly S. Winick, Vice-Chair*

Loan Workout Subcommittee of the Commercial Financial Services Committee ("LWS") Explores **Workout Trends for the Next Big Wave on Thursday March 15 from 2:30-4:00 p.m. in Meeting Room 3 – Meetings Level of the Renaissance Hotel**.

Do you know what you need to about your credits? What else should you think about before the economy turns? On March 15th at the Washington DC Spring Meeting the LWS will present: "Recent Trends & Decisions to Get Ready for the Next Big Wave". This interactive program will explore how debt swap arrangements, which have gained popularity since the last wave of bankruptcies, are expected to have profound effects on the next wave. The panel will also explore other legal and transactional developments that are expected to change the way we do workouts and bankruptcy. Rick Hyman, partner in the New York office of Mayer, Brown, Rowe & Maw, LLP, and Elizabeth Bohn, partner, Jorden Burt LLP, Miami, will lead the discussion.

For a comprehensive list of the dates, times and locations of our committees’ programs and meetings during the Spring Meeting, please see the schedules included in this newsletter.

**Subcommittee on Real Estate Financing**  
*Neal Kling, Chair, Kathleen J. Hopkins, Vice-Chair*

Our Subcommittee is conducting a joint meeting with the Business Bankruptcy Business Transactions Subcommittee on **Saturday, March 17 from 1:00-2:30 pm in Meeting Room 13 - on the Meetings Level** of the Renaissance Hotel in Washington D.C. So don the green in honor of St. Patrick and learn a bit about protecting your client’s green. We promise an interesting program on **“Letters of Credit in Leases and Bankruptcy.”** This program is an absolute MUST for lawyers advising landlords, tenants, borrowers and lenders need to understand the intersection of LC and bankruptcy law, however, and the impact of recent case law on how documents should be drafted and claims asserted. Please join bankruptcy attorney Christopher Combest of Quarles & Brady and letter of credit expert Edwin Smith of Bingham McCutchen, as they guide us through this complex subject.

For a comprehensive list of the dates, times and locations of our committees’ programs and meetings during the Spring Meeting, please see the schedules included in this newsletter.

**Subcommittee on Securitization and Derivatives**  
*Teresa Wilton Harmon, Chair, Anthony R.G. Nolan, Vice-Chair*
Our subcommittee meeting during the Spring meeting will be on 
Saturday March 17 from 7:00 - 8:30 am in Meeting Room 17 - 
Meetings Level of the Renaissance Hotel. During our meeting 
we will be discussing several topics of interest to securitization 
and derivatives lawyers. Our program will include an overview of 
recent predatory lending cases and their impact on securitization 
of consumer receivables (led by Tony Nolan and Tom Hefferson 
of Goodwin Procter), a discussion of issues arising in giving 10b-5 
opinions and Rule 159 letters in securitization deals, and an 
update on developments related to the Basel II NPR – including 
the approach agencies may be taking in some key areas. We'll 
also hear about the work committee members are doing to adapt 
the Model Deposit Account Control Agreement for securitization 
transactions and hear from the Section of Business Law's Pro 
Bono Committee.

For a comprehensive list of the dates, times and locations of our 
committees' programs and meetings during the Spring Meeting, 
please see the schedules included in this newsletter.

Subcommittee on Surveys of Commercial Law
Brian Hulse, Chair, Jim Prior, Vice-Chair

Over the past several years, the State Law Surveys 
Subcommittee of the Commercial Financial Services Committee 
has been working on a project to prepare a detailed survey of the 
commercial lending laws of each of the 50 states plus the District 
of Columbia and Puerto Rico. That project is now almost 
complete. The surveys for all but two states have been posted to 
the ABA's website in pdf format, where they are available to all 
members of the Commercial Financial Services Committee and 
can easily be downloaded and printed. The surveys are available at 

Each of the surveys was prepared by a volunteer committee 
member from the relevant state. They represent a great deal of 
work by the volunteers and are a valuable resource for lawyers 
and clients needing a quick grounding in the lending laws of a 
particular jurisdiction.

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Subcommittee on Syndications and Lender Relations
Anthony R. Callobre, Chair, Michelle White Suárez and Gary D. Chamblee, 
Vice-Chairs

On Thursday, March 15 from 9:30 - 10:30 am in Meeting Room 
14, Meetings Level of the Renaissance Hotel, we will present a 
lively panel program on hot topics in syndicated loans. Matthew 
Kavanaugh of Buchalter Nemer PC will moderate our panel. We 
also will report on the status of our subcommittee's two major 
projects. Vice-Chair Gary Chamblee will describe the work of our 
task force in developing a model intercreditor agreement for 
second-lien financings, and Vice-Chair Michelle White Suarez will 
discuss the work of our task force in drafting chapters on 
syndicated loans and subordination agreements for Howard 
Ruda's treatise on asset based lending.

For a comprehensive list of the dates, times and locations of our 
committees' programs and meetings during the Spring Meeting, 
please see the schedules included in this newsletter.
Committee on Uniform Commercial Code: Subcommittee Reports

Subcommittee on Equipment Leasing
Barry A. Graynor, Chair, Teresa Davidson, Vice-Chair

The Subcommittee on Equipment Leasing will be hosting the following program at the Spring Meeting in 2007:

Vince Borst, of Askounis & Borst, P.C., will address Recent Developments in Lease Collection and Enforcement Issues. The session will be interactive and will cover bankruptcy and state decisions affecting a lessor's rights after default. Topics from bankruptcy include preference and adversary litigation; use of cash collateral; and reclassification of leases to loans. Topics on enforcement will range from recovery and disposal of equipment to deficiency collection issues.

Other topics of interest at the spring meeting will include a discussion of recent legislative developments and the state trial court decision in New York, Graham v. Dunkley, 13 Misc.3d 790, 827 NYS2d 513, 2006 WL 2596327 (NY Sup 2006), appeal pending NYAD, 2d Dept, No. 2006-09666, which held that the Graves Amendment was an unconstitutional exercise of Congressional authority under the Commerce Clause. The Graves Amendment (49 U.S.C. 30106 (Pub.L. 109-59) (effective for suits filed on or after August 10, 2005) abolishes vicarious liability without fault, based solely on ownership, for car rental and leasing companies.

For a comprehensive list of the dates, times and locations of our committees' programs and meetings during the Spring Meeting, please see the schedules included in this newsletter.

Subcommittee on Investment Securities
Penelope Christophorou, Chair, Meredith Jackson, Vice-Chair

The Investment Securities Subcommittee evaluates current issues involving Article 8 of the Uniform Commercial Code and Article 8 interrelationship with other law, including secured transaction law, securities laws and state partnership and LLC laws. Committee members come from a variety of backgrounds including private practice, banks, brokerage houses, academia and government.

More...

For a comprehensive list of the dates, times and locations of our committees' programs and meetings during the Spring Meeting, please see the schedules included in this newsletter.

Subcommittee on Letter of Credit
George Hisert, Chair

At the Spring Meeting in Washington, D.C., the Letter of Credit Committee will be presenting a seminar entitled "The New UCP 600: Everything You Were Too Afraid To Know But Need To Ask About" on Friday, March 16 from 12:30 p.m.-2:00 p.m. UCP 600 goes into effect July 1, 2007 and will significantly change the rules of the road for letters of credit which incorporate it. This is a topic which anyone who deals with letters of credit will need to have a basic understanding of. Panelists will include Professor

For a comprehensive list of the dates, times and locations of our committees’ programs and meetings during the Spring Meeting, please see the schedules included in this newsletter.

Subcommittee on Payments
Stephen C. Veltri, Chair, Greg Cavanagh, Vice-Chair

The Payments Subcommittee will be holding a joint meeting with two subcommittees of the Banking Law Committee on March 16, 2007, at 9:00 a.m. The meeting will feature a panel discussion on international payments and remittances. Lorraine Lawlor of the Office of Foreign Assets Control ("OFAC") and Serena Moe of Citigroup, Inc. will discuss common OFAC pitfalls with a particular focus on compliance issues related to international payments. Dilip Ratha of the World Bank will focus on smaller cross-border remittances and their importance to developing economies. Finally, Richard Fraher of the Federal Reserve Bank of Atlanta will describe the FedACH International® service with a particular emphasis on the new Directo a MéxicoSM program.

Members of the Subcommittee should also mark their spring calendars for a symposium hosted by the Federal Reserve Bank of New York. The symposium, Rethinking Payments Law, will examine whether the current legal infrastructure fits today’s payment practices. The symposium will address the question of whether society would be better served by a unified payments law - one that recognizes differences in payment types but seeks to apply consistent standards when possible - or by a multiplicity of laws, each of which governs a different payment system. The symposium will be held April 27, 2007, at the Federal Reserve Bank of New York, 33 Liberty Street, New York City. Along with the New York Fed, the symposium is being cosponsored by Brooklyn Law School, Columbia Law School, Hofstra University School of Law, New York University Law School and St. John’s University School of Law. There is no fee to attend, but registration is required. To register, visit https://www.newyorkfed.org/registration/legal/paylaw/form.cfm.

For a comprehensive list of the dates, times and locations of our committees’ programs and meetings during the Spring Meeting, please see the schedules included in this newsletter.

Joint Subcommittee Reports

Subcommittee on Secured Lending (CFS) and Subcommittee on Secured Transactions (UCC)
Katherine Simpson Allen, Chair (CFS), Leianne S. Crittenden, Chair (UCC), Wansun Song, Vice-Chair (CFS), Pauline M. Stevens, Vice-Chair (UCC)

We are excited to hold a jam-packed joint program entitled Chattel Paper—Plain and Fancy. It will be held in meeting rooms 10 and 11 of the Renaissance Hotel in Washington D.C. on Saturday, March 17, from 8:30 - 10:00 a.m. The program will consist of three acts:

More...
Joint Task Forces

**Joint Task Force On Deposit Account Control Agreements**

Marshall Grodner, Chair (CFS), Edwin E. Smith, Chair (UCC), John Pickering, Vice-Chair

In 2004, the American Bar Association's Business Law created a special task force to draft a form of UCC Article 9 deposit account control agreement that was fair to all parties, represented market practice, could be widely accepted by market players and could be concluded with no or minimal negotiation. The task force is jointly sponsored by the Commercial Financial Services Committee, the Uniform Commercial Code Committee, the Banking Law Committee and the Consumer Financial Services Committee. Marshall Grodner is the Co-chair from the Commercial Financial Services Committee, and Ed Smith is the Co-chair from the Uniform Commercial Code Committee.

*For a comprehensive list of the dates, times and locations of our committees' programs and meetings during the Spring Meeting, please see the schedules included in this newsletter.*

More...
MESSAGE FROM THE CHAIR:
COMMERCIAL FINANCIAL SERVICES COMMITTEE
By:
Christopher J. Rockers
Husch & Eppenberger, LLC
Kansas City, Missouri
christopher.rockers@husch.com

February 19, 2007

The 32nd Annual Spring Meeting of the Business Law Section will be held March 15 – 18, 2007 in Washington, D.C. We will meet at the Renaissance Hotel at 999 Ninth Street NW in Washington and we have a great lineup of programs, forums and subcommittee meetings. Jim Prendergast and Jim Schulwolf have a description of CLE offerings and most subcommittees have outlined plans for the Spring Meeting elsewhere in this newsletter, so I will not report those reports.

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As mentioned in the last newsletter, Commercial Financial Services has been appointed a lawyer though the Business Law Ambassadors Program. Ross Romero will be with us in the Ambassadors program for the 2006-2008 term and we look forward to Ross’s involvement in the substantive work of our Committee. In addition to maintaining a practice in Salt Lake City, Ross is a member of the Utah State Senate. He will be joining us in Washington, so be sure to say hello.

Our latest appointments to the Commercial Financial Services Committee leadership roster have been announced. Jeff Kelley from Troutman Sanders in Atlanta will chair our Lender Liability subcommittee and he will be joined by Matt Rotenberg as vice chair. Matt is with Blank Rome in Philadelphia. Stop by the Lender Liability Subcommittee meeting and introduce yourself. The subcommittee meeting is Thursday, March 15 at 4:00 PM.

We are in the process of scheduling programs and presentations for the Annual Meeting this year in San Francisco – an ever popular spot from August 10 through the 12, 2007 and for our fall stand alone meeting held in conjunction with the Annual Convention of the Commercial Finance Association in Phoenix Arizona on November 6, 2007. We have some great ideas for programs, but we are always looking for ideas, new panelists and presenters and new concepts. If you have an idea, please call or we can discuss at the Spring Meeting in Washington.
If you are interested in becoming active or active in another area, please see me at the Spring Meeting. Each year some portion of Committee leadership rotates and we are always looking for people who want to continue or become active in Committee work. There are many opportunities and I look forward to talking to you about them.

I look forward to seeing you at the Spring Meeting in Washington. Safe travels.
Chair’s Column

The UCC Committee has some wonderful programming scheduled for the Spring Meeting of the ABA Business Law Section. My favorite, and back by popular demand, is “Stump the Chumps,” in which a panel of UCC experts fields questions from the audience about UCC-related issues. This year’s panel consists of Barkley Clark, Stephanie Heller, Meredith Jackson, Charles Mooney, and Bob Zadek. Come and get free expert advice on that question that’s been nagging you. The program will be held on Friday, March 16 at 2:00pm in the Convention Center, Room 144A, and will be preceded by bestowal of the UCC Committee’s Award for Exceptional Service. If you cannot attend, e-mail your question to UCC Committee Vice-chair Mario Ippolito at marioippolito@paulhastings.com. We will endeavor to make some record of the panel’s response and post them on the Committee’s web page.

The other highlights of the Spring Meeting include:

The Tricks and Traps of Financing Intellectual Property on Thursday, March 15 at 2:30pm in the Convention Center, Room 143A (co-sponsored by the Intellectual Property Committee and the Commercial Financial Services Committee).

E-Consumer Issues and Regulations in the Next Decade on Friday, March 16 at 8:00am in the Convention Center, Room 141 (sponsored by the Cyberspace Committee and co-sponsored by the UCC Committee).

What Happens When the Broker is Broke: Article 8 and the Bankruptcy of the Securities Intermediary on Friday, March 16 at 3:00pm in the Convention Center, Room 144A (co-sponsored by the Business Bankruptcy Committee).

Commercial Law Developments on Saturday, March 17 at 10:30am in the Renaissance Hotel Auditorium (sponsored by the Commercial Financial Services Committee and co-sponsored by the UCC Committee).

The Big Deal about the Fine Print: Negotiating & Drafting Contractual Boilerplate on Saturday, March 17 at 2:00pm in the Convention Center, Room 143C (co-sponsored by the Business Law Education Committee & Commercial Financial Services Committee).

A more complete table of UCC Committee events appears at the end of this column. Complete alphabetical and chronological schedules of all events is available at the Business Law Section website.

In addition, the annual CFS/UCC Committee Dinner will be held at Clyde’s of Gallery Place, 707 7th Street, NW, Washington, DC on Thursday, March 15, 2007 at 8:00 P.M. A map from the hotel to the restaurant is here. It’s walking distance from the hotel. We are expecting a big crowd, so if you wish to come buy your tickets in advance.
Finally, the committee leadership will be meeting on Friday, March 16 at 4:30pm. Everyone is welcome to attend, whether a member of the leadership or not. Among the things we will be discussing is what programming to offer at upcoming meetings and how else to provide content and services to the full membership of the Committee. Anyone who cannot attend is invited to offer suggestions in advance. Feel free to e-mail them to me at the address indicated below. Similarly, anyone interested in getting involved in the work of the Committee is more than welcome. Simply contact me or any other member of the leadership.

Stephen L. Sepinuck
Professor, Gonzaga University School of Law
ssepinuck@lawschool.gonzaga.edu
<table>
<thead>
<tr>
<th>Time</th>
<th>Room</th>
<th>Event</th>
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<tbody>
<tr>
<td>8:00-8:30am</td>
<td>Convention Center Room 154A</td>
<td>Task Force Meeting: Certificate of Title Laws</td>
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<tr>
<td>8:30-9:00am</td>
<td>Convention Center Room 154A</td>
<td>Task Force Meeting: Deposit Account Control Agreements</td>
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<tr>
<td>9:00-9:30am</td>
<td>Convention Center Room 143C</td>
<td>Subcommittee Meeting: Investment Securities: <em>Under What Circumstances Will a Note Be Deemed to Be a Security for Purposes of Article 8?</em></td>
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<td>9:30-10:00am</td>
<td>Convention Center Room 143C</td>
<td>Subcommittee Meeting: Leasing</td>
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<tr>
<td>10:00-10:30am</td>
<td>Convention Center Room 143C</td>
<td>Subcommittee Meeting: Investment Securities: <em>Under What Circumstances Will a Note Be Deemed to Be a Security for Purposes of Article 8?</em></td>
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<tr>
<td>10:30-11:00am</td>
<td>Convention Center Room 154B</td>
<td>Task Force Meeting: Consumer Involvement (jointly with Cyberspace Working Group on Consumer Protection)</td>
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<td>11:00-11:30am</td>
<td>Convention Center Room 154B</td>
<td>Subcommittee Meeting: Litigation</td>
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<tr>
<td>11:30-12:00pm</td>
<td>Convention Center Room 143C</td>
<td>Working Group: Transferability of Electronic Assets</td>
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<tr>
<td>12:00-12:30pm</td>
<td>Convention Center Room 154B</td>
<td>Program: <em>The Tricks and Traps of Financing Intellectual Property</em> (co-sponsored by the Intellectual Property Committee and the Commercial Financial Services Committee)</td>
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<td>Program: <em>The Tricks and Traps of Financing Intellectual Property</em> (co-sponsored by the Intellectual Property Committee and the Commercial Financial Services Committee)</td>
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<td>Program: <em>The Tricks and Traps of Financing Intellectual Property</em> (co-sponsored by the Intellectual Property Committee and the Commercial Financial Services Committee)</td>
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<td>4:30-5:00pm</td>
<td>Convention Center Room 154B</td>
<td>Task Force Meeting: Article 9 Forms</td>
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<td>8:00-8:30am</td>
<td>Convention Center Room 154B</td>
<td>Subcommittee Meeting: Sales: <em>Have Parties Stopped Fighting the Battle of the Forms?</em></td>
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<tr>
<td>8:30-9:00am</td>
<td>Convention Center Room 154B</td>
<td>Subcommittee Meeting: International Commercial Law</td>
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<tr>
<td>9:00-9:30am</td>
<td>Convention Center Room 152A</td>
<td>Subcommittee Meeting: Payments: <em>The Importance of Small, International Remittances and Innovative Means for Making Them.</em></td>
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<tr>
<td>10:00-10:30am</td>
<td>Room 144B</td>
<td>Subcommittee Meeting: General Provisions: <em>Why You Should Care About Article 1: Lessons for the Future of the ALI/NCCUSL Collaboration</em></td>
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<tr>
<td>11:00-11:30am</td>
<td>Convention Center Room 143B</td>
<td>Committee Meeting: <em>Stump the Chumps III</em> (the panelists will be B. Clark, S. Heller, M. Jackson C. Mooney &amp; B. Zadek). Also, presentation of the Committee’s Award for Exceptional Service.</td>
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<tr>
<td>11:30-12:00pm</td>
<td>Convention Center Room 144A</td>
<td>Committee Forum: <em>What Happens When the Broker is Broke: Article 8 and the Bankruptcy of the Securities Intermediary</em> (co-sponsored by the Business Bankruptcy Committee)</td>
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<td>9:00-9:30am</td>
<td>Convention Center Room 152A</td>
<td>Subcommittee Meeting: Secured Transactions (jointly with the Secured Lending Subcommittee of CFS): <em>Developments Involving Chattel Paper</em></td>
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<td>Renaissance Hotel Auditorium</td>
<td><strong>CFS Program</strong> (co-sponsored by UCC Committee): Commercial Law Developments</td>
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<td>2:00-2:30pm</td>
<td>Room 143C</td>
<td><strong>Program:</strong> <em>The Big Deal about the Fine Print: Negotiating &amp; Drafting Contractual Boilerplate</em> (co-sponsored by the Business Law Education Committee &amp; Commercial Financial Services Committee)</td>
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SPOTLIGHT

The purpose of this column is to identify some of the most disconcerting judicial decisions interpreting the Uniform Commercial Code to be published after the previous edition of the Newsletter. The purpose of the column is not to be mean. It is not to get judges recalled, law clerks fired, or litigators disciplined for incompetence. Instead, it is shine a spotlight on major errors of analysis, and thereby provide practitioners and judges with reason to disregard the opinion as precedent.

The last column focused on judicial opinions containing one or more patent analytical errors. In contrast, the decisions noted here might not be wrong; reasonable readers might well conclude that both courts’ analysis is correct. To that extent, then the cases present valuable lessons for litigators and legislatures.

Manufacturers and Traders Trust v. Wyoming Sand and Stone,
2007 WL 397377 (3d Cir. 2007)

In the case, the debtor wished to sell several collateralized motor vehicles by auction. To facilitate the sale, the debtor’s president asked the secured party to execute lien releases on the vehicles, with the understanding that the loan proceeds would be used to pay down the secured obligation. The secured party signed a release of lien on the back of the certificates of title and delivered the certificates to the auctioneer. Several of the vehicles were sold and the proceeds transferred to the secured party. The debtor then filed for Chapter 11 bankruptcy protection.

At the secured party’s request, the state department of motor vehicles issued new certificates of title for the unsold vehicles. These certificates noted the secured party’s lien. Thereafter, the debtor again hired the auctioneer to sell the remaining vehicles and the secured party again signed and delivered a release of lien to facilitate the sale and maximize the sale proceeds. The auctioneer sold the vehicles and the proceeds were placed in an escrow account maintained by the secured party. One of the debtor’s unsecured creditor’s then challenged the secured party’s right to the auction sale proceeds.1

The bankruptcy court and district court both ruled that by executing the release of lien on the certificates of title, the secured party released its security interest and was therefore not entitled to the sale proceeds. On appeal, the Third Circuit affirmed. The secured party tried to distinguish a 1992 bankruptcy court decision involving a mistakenly executed lien released by arguing that in that case, In re Cavalieri, 142 B.R. 710 (Bankr. E.D. Pa. 1992), the creditor has also mistakenly marked the loan agreement as “paid.” The Third Circuit was unpersuaded. It ruled that the secured party had released its lien prior to the sale and thus was simply not entitled to the sale proceeds.

1 It is unclear from the opinion whether the challenge applied to both auction sales or only to the postpetition sale.
There are several aspects of this decision that are disturbing. First, in some places the court seems to confuse the concepts of attachment and perfection. For example, near the end of the brief opinion, the court stated, “[t]he crucial factor is whether the lien is noted on the certificates. . . . Because M & T Bank released the lien, no lien was noted on the certificates.” Nevertheless, the court does correctly treat the issue as an attachment question, not a perfection question, and any confusion or ambiguity in the court’s language is of minor consequence.

Second, the opinion contains no discussion of the potentially conditional nature of the secured party’s execution of the lien releases. There appears to be no dispute that the creditor executed the lien releases to facilitate the sale (i.e., to maximize the sale proceeds) and with the express understanding that it was to receive the sale proceeds. The court expressly ruled that the secured party’s motive to facilitate the sale “was not determinative,” by which it apparently meant not relevant. However, it never discussed whether the secured party’s act was conditional. Perhaps the secured party never advanced such an argument. It should have. Just as the execution and delivery of any single document at a closing is normally conditioned on the execution and delivery of all the other closing documents, perhaps the secured party’s execution of the lien release was conditional on receipt of the sale proceeds.

Perhaps related to this, there is also a disturbing inattention to agency principles. The secured party delivered the executed lien releases not to the debtor, but to the hired auctioneer. While the debtor may have been the one who initially selected and hired the auctioneer, it was apparently the auctioneer – not the debtor – who decided to seek the lien releases before conducting the sale. It seems plausible, then, the at least for this purpose, the auctioneer became the secured party’s agent, not merely the debtor’s agent. After all, the debtor and the secured party had compatible interests in facilitating the auction, and there is thus no reason to think that the auctioneer could not be the agent of both parties. See, e.g., Restatement (Third) of Agency § 3.16 (2006). If so, there arguably was no effective delivery of the lien releases prior to the sale, thus preventing the lien releases from having effect until then.

Regardless of whether the deficiencies in the court’s opinion are traceable to omissions from the creditor’s brief, the lesson for secured parties are clear. Do not execute and deliver a bare release of lien prior to a sale of the collateral. Instead sign an authorization for the debtor to sell the property free of the security interest. See § 9-315(a)(1).

In re Villa,

The interaction of state certificate of title laws with revised Article 9 of the Uniform Commercial Code is not always smooth. The newly proposed Uniform Certificate of Title Act should remove all or almost all of the problems and confusion, but unless and until states enact it, creditors, lawyers, and judges are left trying to harmonize two different pieces legislation that do not always seem to be speaking the same language. This case is illustrative.

Under Kansas law, a security interest in a mobile home may normally be perfected only by having the lien noted on the certificate of title. It is not enough to send the appropriate
documentation to the Division of Vehicles. Instead, the lien must be noted on the certificate. However, a purchase-money security interest (“PMSI”) in a mobile home may be perfected merely by completing and sending a notice of security interest to the Division, along with the applicable fee. Specifically, the statute provides that:

The dealer or secured party may, within 10 days of the sale and delivery, mail or deliver the notice of security interest, together with a fee of $2.50, to the division. The proper completion and timely mailing or delivery of a notice of security interest shall perfect a security interest in the mobile home described on the date of such mailing or delivery.

In the case at hand, the debtor purchased a mobile home from a dealer on June 17, 2003. She granted the dealer a PMSI to secure a portion of the purchase price. The dealer immediately assigned its paper to Home Pride Finance Corp. and mailed the existing certificate of title to Home Pride. However, no certificate of title listing the debtor as owners was ever issued. The mobile home was delivered to debtor before August 1, 2003.

On August 15, 2003, Home Pride filed a properly completed notice of security interest, along with the requisite fee. Two years later, the debtor filed for bankruptcy protection and the trustee eventually sought to avoid Home Pride’s lien, claiming it was unperfected because the notice of security interest was not filed within the applicable 10-day period. The court agreed. It ruled that because notice was sent 14 days after delivery, it was not “timely” mailed within the meaning of the statute.

The case is a bit troubling because the delay in mailing is invisible to any subsequent searcher. In other words, the purpose of statute’s perfection rules is to provide a method of giving public notice of a security interest to others interested in acquiring an interest in the property. Anyone searching after the notice was filed would learn precisely the same thing, regardless of whether the notice was filed within the 10-day period or after it. Thus, there is simply no reason for perfection to depend on when the notice was filed, merely on the fact that it had been filed.

Home Pride appears to have made this point to the court, arguing that the 10-day rule was simply a relation-back provision. In other words, a creditor who mails the notice within the 10-day period is deemed perfected on the date of mailing, whereas one who mails it later is deemed perfected on when the Division files it. While the court found merit in Home Pride’s argument, it felt constrained by the plain wording of the statute. It also noted that its interpretation promotes prompt filing.

One might well disagree with the court’s conclusion and its almost cavalier disregard of the basic principles underlying Article 9. Nevertheless, the court had a difficult task. The state’s certificate of title statute simply does not mesh well with Article 9 and the language or policy of one was going to have to yield to the other. Perhaps the lesson here is for state legislatures and state bar UCC Committees to closely scrutinize any state law or proposed state legislation that supplants

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2 Cf. Uniform Certificate of Title Act §§ 25, 26(a), making perfection effective upon delivery of the security-interest statement to the appropriate state agency and payment of the applicable fee, regardless of whether the interest is ever noted on the certificate. See also U.C.C. § 9-516(a) (providing a similar rule for perfection by filing a financing statement).

Article 9’s filing system,\(^4\) and make sure the two work together properly. The UCC Committee of the ABA stands by to assist in this endeavor. It can provide experts willing to assist in the analysis involved.

Stephen L. Sepinuck  
Professor, Gonzaga University School of Law  
Chair, UCC Committee  
ssepinuck@lawschool.gonzaga.edu

\(^4\) See U.C.C. § 9-311(a).
DEFEASANCE: SHINING A SPOTLIGHT ON THE MARKET REALITY STAGE
Wendelin A. White and Peter G. Freeman

Real estate professionals experiencing the frenzied market for commercial properties might wonder when they'll see a reality show featuring aspiring young moguls competing to win deals based on price, terms and speed to closing. To keep things interesting, producers likely would focus on attempts at relationship-making in order to scoop a deal.

However, they will miss the whole story if they skip over the fascinating topics of financing, loan assumptions and defeasance, since in commercial real estate, the drama frequently begins and ends with a buyer's ability to get financing and a seller's ability to get rid of it. In today's market, with many properties subject to the provisions of conduit loan documents, the available choices—loan assumption or defeasance—involves complex financial, timeline and other strategic considerations.

Although the choice is frequently made by the seller before a property is marketed, both seller and buyer should be aware of these considerations. The loan assumption process is familiar enough (give notice, assemble due diligence, prepare application, ask for as few documents changes as possible, await approval, and assume loan). This article addresses certain benefits and drawbacks of defeasance, and offers practical tips for facilitating a smooth closing.

Defeasance, in the real estate finance context, is the substitution of government securities for real and personal property as collateral for a loan. In the typical defeasance, a borrower will acquire government securities expected to generate sufficient interest payments to make all monthly payments due on the loan, including any balloon payment due at maturity. The borrower will then assign its obligation to repay the loan, along with the securities, to an unaffiliated "successor borrower," thereby permitting the real property to be released from the lien of the loan and either sold or refinanced.

This process is primarily used for "conduit" loans, or loans that are pooled and assigned to a trust known as a real estate mortgage investment conduit, or "REMIC," that issues bonds supported by mortgage payments. By keeping the loan in place (and, in some cases, improving its credit quality), but permitting the release of the property, defeasance provisions balance a borrower's need for asset-management flexibility with investors' need for protection against prepayment and maintenance of a constant stream of debt service payments over a definite period of time.

Defeasance is not a simple or inexpensive process. It requires, in most cases, the retention of a disinterested consultant to coordinate the assembly of the defeasance securities, the delivery of a certification by an accounting firm that the securities will generate the required interest payments, and communication among the servicer, the seller/borrower, the successor borrower, the title company, and either the buyer or the new lender, and their respective counsel. Consultant, accountant, servicer and legal fees
are rarely under $60,000, and the cost to acquire the defeasance securities typically ranges from 20-25% of the outstanding loan balance.

Defeasance also requires the review and negotiation of several documents, including (i) a replacement note, (ii) an agreement of the borrower to pledge the defeasance securities to the REMIC, (iii) an account agreement governing the maintenance of the account in which the defeasance securities are held, and (iv) an assignment of the defeasance securities and borrower's loan obligations to the successor borrower. Borrower's counsel also will be required to deliver one or more legal opinions.

Loan assumptions, by comparison, are much simpler, at least on paper, typically requiring only a loan assumption agreement, replacement non-recourse carveout guaranty and environmental indemnity. So when does the choice to defease make sense?

Defeasance is most appropriate when a loan is in the final years of its term and interest rates have risen such that the yield on the defeasance securities is equal to or greater than the note rate. Under these circumstances, the borrower may be able to defease the unpaid principal balance at or below par.

Conversely, it generally makes little sense to defease a loan with six or more years remaining since the borrower would need to acquire a larger pool of government securities to match the remaining loan payments—particularly when, as now, long-term yields are lower than short-term yields. Under these circumstances, loan assumptions are essentially a financial necessity. Loan assumptions may also be preferred when the existing loan carries an attractive interest rate and the loan servicer is willing to make appropriate modifications to the loan documents to accommodate the requirements of the new borrower (certainly not a given).

Loan assumptions are required, and defeasance is not a possibility, when a loan is less than two years old, as tax rules prohibit defeasances until two years after the REMIC "start-up" day.

Today's market introduces a slight wrinkle, because although interest rates are low, property values are high and getting higher, so borrowers may be willing to absorb additional transaction costs to reallocate sale profits toward other assets and borrow more money at a lower interest rate. In addition, a buyer might be willing to pay more for a property if it is conveyed debt-free.

Once the parties have agreed to defease a loan, each party plays a role in ensuring a smooth closing (and post-closing). The seller must ensure that the purchase agreement provides enough time from the end of any study period to the closing date to effect the defeasance, or includes an appropriate extension provision.

Loan documents typically require 30 to 60 days' prior written notice of the date upon
which the seller intends to effect the defeasance. Buyers should be sure their replacement lenders are aware of the defeasance process from the beginning and are able to fund the acquisition according to the defeasance timeline.

Additionally, title companies should be brought into the defeasance process early, as they will work with the loan servicer to prepare release documents for delivery into escrow at closing (a three-day process with which not all title companies are familiar). All of these moving parts should be coordinated by the defeasance consultant.

Borrowers also may choose to discuss with their accountants whether the loan, once defeased, can be taken off the seller's books. Certain FASB guidance provides that borrowers may derecognize a liability only if the liability has been "extinguished," meaning, in the case of a defeasance, that the borrower is legally released as primary obligor. Borrowers should discuss with their accountants and counsel whether the documents effecting the defeasance are clear in this respect. It is possible the accountants will require a separate legal opinion on this issue.

The borrower's accountants may also require an isolation opinion confirming that the borrower has surrendered control over the defeasance securities. Ideally, the defeasance provision in the loan documents will have been drafted to facilitate a clean break (e.g., providing that covenants are transferred to the successor borrower), but at the very least, the borrower's accountants and counsel should discuss any accounting issues prior to closing.

A decision to defease requires the involvement of multiple additional professionals and will add complexity and, frequently, time and expense to a transaction. Nonetheless, it may be the best way to go in the overall context of a sale or refinancing. Lawyers who have shepherded even one defeasance transaction through closing likely will advise that the process is ready for prime time.

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Peter G. Freeman is a senior associate in the Washington, D.C. office and can be reached at (202) 663-8606 or peter.freeman@pillsburylaw.com
Task Force On Model Negotiated Covenants and Related Definitions

Chair: William J. Whelan, III
Cravath Swaine & Moore LLP
New York, New York

The Task Force on Model Negotiated Covenants and Related Definitions was established by the Committee on Trust Indentures and Indenture Trustees (James Gadsden, Chair), Business Law Section, to prepare a set of the covenants that typically appear in indentures for high yield issuers with the necessary definitions and commentary on the issues that arise in connection with the negotiation and interpretation of the covenants. The commentaries also include citations to relevant court decisions. It was published in the August, 2006 edition of The Business Lawyer, which can be retrieved at: [http://www.abanet.org/buslaw/tbl/tblonline/2006_061_04/home.shtml](http://www.abanet.org/buslaw/tbl/tblonline/2006_061_04/home.shtml)

The publication of model negotiated covenants is an outgrowth of a process that has began in 1960 as the Corporate Indenture Project. That project was originated by the Committee on Developments in Business Financing of the Section of Business Law with encouragement from the Securities and Exchange Commission and important financial support from the American Bar Foundation. The first Model Debenture Indenture Provisions were published in 1965. Commentaries on the Model Debenture Indenture Provisions were published by the American Bar Foundation in 1971. The forms, which included some negotiated covenants, and the commentaries have provided the drafting standard and authoritative guidance since that time. In 1983 a working group of the Committee on Developments in Business Finance of the Section of Business Law published the Model Simplified Indenture. In 2000 the Committee on Developments in Business Finance, with contributions from members of the Committee on Trust Indenture and Indenture Trustees, published the Revised Model Simplified Indenture. All the necessary terms for the issuance and exchange of the securities, appointment of the trustee and enforcement of remedies are fully elaborated in these models. The forms were simplified only by the omission of the negotiated covenants. The Model Negotiated Covenants are designed to integrate with the Revised Model Simplified Indenture to provide a complete drafting base for a corporate indenture.

Even if it is not adopted in substitution for various forms developed and currently used by investment banks and their law firms that are principally responsible for the preparation of indentures, it is the hope of the Committee and the Task Force that the model covenants and their commentary will be useful in highlighting issues to be considered by the representatives of issuers and other parties who become involved in the negotiation and interpretation of covenants.
Investment Securities Subcommittee
Penelope Christophorou, Chair, Meredith Jackson, Vice-Chair

The Investment Securities Subcommittee evaluates current issues involving Article 8 of the Uniform Commercial Code and Article 8 interrelationship with other law, including secured transaction law, securities laws and state partnership and LLC laws. Committee members come from a variety of backgrounds including private practice, banks, brokerage houses, academia and government.

The Investment Securities Subcommittee has a full agenda for the ABA Section of Business Law Spring Meeting in Washington, DC. On March 15, 2006 from 10:00 AM to 11:00 AM, Howard Darmstadt will give a presentation on the recent and ongoing case of Highland Capital Management LP v. Schneider, 460 F.3d 308 (2nd Cir. 2006) in which the Second Circuit was faced with the question of when a note may be determined to be a security for purposes of Article 8 and certified the question to the New York Court of Appeals. If time permits, we will also discuss the collusion standard, Section 8-115, as it applies to securities intermediaries, such as banks and brokers, and the extent to which a recent case decided in the bankruptcy context, In re Manhattan Investment Fund Ltd. v. Bear Stearns, 2007 WL 60843 (Bankr. S.D. NY 2007), indicates that the outcome in an insolvency context may be different.

On March 16, 2006 from 3:00 PM to 4:30 PM the UCC Committee and the Business Bankruptcy Committee will co-sponsor a forum entitled “What Happens When the Broker is Broke: Article 8 and the Bankruptcy of the Securities Intermediary”. The panel will consist of Michael Krimminger of the Federal Deposit Insurance Corporation, Josephine Wang of the Securities Investor Protection Corporation, Thomas J. Moloney and Sandra M. Rocks of Cleary Gottlieb Steen & Hamilton LLP, and Charles W. Mooney of The University of Pennsylvania Law School.
Secured Lending (CFS) and Secured Transactions (UCC) Subcommittees

CFS Chair: Katherine Simpson Allen
Stites & Harbison, PLLC
Nashville, TN
CFS Vice Chair: Wansun Song
Pillsbury Winthrop Shaw Pittman LLP
Los Angeles, CA

UCC Chair: Leianne S. Crittenden
Oracle Corporation
Redwood City, CA
UCC Vice Chair: Pauline M. Stevens
Morrison & Foerster
Los Angeles, CA

We are excited to hold a jam-packed joint program entitled Chattel Paper—Plain and Fancy. It will be held in meeting rooms 10 and 11 of the Renaissance Hotel in Washington D.C. on Saturday, March 17, from 8:30 to 10:00 a.m. The program will consist of three acts:

**Act One: Chattel Paper, Payment Intangibles and the PEB.** Steve Weise (Heller Ehrman LLP) and Ed Smith (Bingham McCutchen LLP) will discuss the possible responses of the UCC Permanent Editorial Board (PEB) to the 9th Circuit BAP's controversial decision in the NetBank/Commercial Money Center case which held that the payment rights evidenced by chattel paper can be assigned separately from the underlying chattel paper. They will also attempt to demystify the inner workings of the PEB by explaining how, when and why the PEB might decide to take positions on issues like this in general.

**Act Two: International Chattel Paper & Receivables.** Steve and Ed will also discuss the United Nations Convention on the Assignment of Receivables in International Trade, recently signed by the United States and on its way to ratification. The Convention covers the assignment (as security or outright) of contractual rights to payment in commercial transactions where either the assignment or the underlying receivable is deemed to be "international" in nature. The Convention establishes rules for the law governing perfection and priority and also deals with substantive matters, such as bulk assignments, assignments of future receivables, anti-assignment clauses, and the rights of the obligors.

**Act Three: Electronic Chattel Paper.** Richard Newman (Mayer, Brown, Rowe & Maw LLP) and Mattias Hallendorff (Dorsey & Whitney LLP) will discuss the successful development of the necessary technology systems and a usable legal framework for determining, and rendering opinions on, perfection of security interests in electronic chattel paper by control, as reflected in recent securitization transactions and the "white paper" issued by the ABA Joint Working Group on Transferability of Electronic Financial Assets (co-chaired by Mr. Hallendorff and Mr. Newman).
Joint Task Force on Deposit Account Control Agreements  
*Edwin E. Smith, UCC Chair, John Pickering, Vice Chair, Marshall Godner, CFS Chair*

In 2004 the American Bar Association’s Business Law created a special task force to draft a form of UCC Article 9 deposit account control agreement that was fair to all parties, represented market practice, could be widely accepted by market players and could be concluded with no or minimal negotiation. The task force is jointly sponsored by the Commercial Financial Services Committee, the Uniform Commercial Code Committee, the Banking Law Committee and the Consumer Financial Services Committee. Marshall Grodner is the Co-chair from the Commercial Financial Services Committee, and Ed Smith is the Co-chair from the Uniform Commercial Code Committee.

The form of deposit account control agreement developed by the task force was released at the American Bar Association’s 2006 Spring Meeting in Orlando, Florida, and was published in 61 *The Business Lawyer* 745 (February 2006) together with an initial report of the task force. The form addresses the common situation in which a secured party seeks to enter into a control agreement with its debtor and the debtor’s depositary bank relating to a transactional deposit account to which the debtor initially has access.

The task force has since developed two inserts to the DACA. One insert, entitled “Standing Disposition Instruction Insert”, addresses the typical transaction in which the debtor does not have access to the deposit account and the funds in the deposit account are regularly transferred to the secured party. The other insert, entitled “Lock Box Insert”, deals with lock box arrangements by which checks and other items are collected for deposit to the deposit account.

Other inserts “under construction” deal with blocked savings accounts, first and second lien arrangements, and sweeps to overnight investment accounts. In addition, a DACA is being developed for securitization transactions jointly with the Commercial Financial Services Committee’s Subcommittee on Securitizations.

The task force meets at the Spring and Annual Meetings of the Section and also at day-long sessions three or four times during the year, typically in New York City. The task force will meet at the 2007 Spring Meeting in Washington, D.C., on Thursday, March 15, 2007, from 8:30 a.m. to 10:00 a.m. at the Convention Center, Room 143C. The next all-day meeting of the task force is scheduled for Thursday, April 26, 2007, in New York City.

Many task force members participate at the day-long sessions in person or by telephone conference. The email list serve for the task force is quite active. Anyone
interested in joining the task force should contact Marshall Grodner at mgrodner@mcglinchey.com or Ed Smith at edwin.smith@bingham.com.

To obtain a copy of the task force’s initial report, the DACA, the General Terms and the completed and draft inserts, it is only necessary to surf the task force’s web site at http://www.abanet.org/dch/committee.cfm?com=CL710060.
# UNIFORM STATE LAWS SCORECARD

Survey of Adoptions of Revised Official Text of the UCC¹

As of February 1, 2007

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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 the National Conference of Commissioners on Uniform State Laws ("NCCUSL") for their help in compiling the information above. These revisions are based on information provided by NCCUSL available as of February 1, 2007.

1. In addition to enactments noted below, all states and the District of Columbia have adopted (i) the 1995 Official Text of Article 5 of the UCC, (ii) the 1994 Official Text of Article 8 of the UCC and (iii) the 1998 Official Text of Article 9 of the UCC.

2. All states have adopted the 1990 version of Article 2A with the exception of Louisiana and South Dakota. Louisiana has not enacted Article 2A and South Dakota still has the 1987 version of Article 2A. A 2003 version of Article 2A has been introduced in Kansas and Oklahoma, but has not yet been enacted in any state.

3. New York and South Carolina are the only states that still have the 1951 version of Articles 3 and 4.
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<th>Time</th>
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| 9:30 a.m. to 10:30 a.m. (1.0 hour) | CFS - Syndications and Lender Relations Subcommittee  
"Hot Topics in Syndicated Loans" | Meeting Room 14  
Meeting Level |
| 10:30 a.m. to 12:00 p.m. (1.5 hours) | CFS - Committee Forum  
"Do the Right Thing, Inside and Out: Ethics for Transactional Attorneys"  
Corie Pauling, Moderator  
Thomas B. Mason, Panelist  
Raymond L. Sweigart, Panelist | Auditorium  
Meeting Level |
| 1:00 p.m. to 2:30 p.m. (1.5 hours) | CFS - Creditors Rights Subcommittee– Joint Meeting Bankruptcy Litigation Subcommittee of the Business and Corporate Litigation Committee  
"Structuring transactions to mitigate insolvency risks; use and limitations of escrow agreements, letters of credit, security deposits and other mechanisms" | Meeting Room 3  
Meeting Level |
| 1:00 p.m. to 2:30 p.m. (1.5 hours) | CFS - Loan Documents Subcommittee  
"Hedging Your Bets -- Documenting Loans to and from Hedge Funds" | Meeting Rooms 10, 11  
Meeting Level |
| 2:00 p.m. to 5:30 p.m. (3.5 hours) | CFS - Aircraft Financing Subcommittee  
(Session 1 of 2)  
"Part 1 of outlook for the U.S. airline industry, aircraft financing trends, techniques and structures, and aircraft financing in the Cayman Islands and Brazil" | Meeting Room 16  
Meeting Level |
| 2:30 p.m. to 4:30 p.m. (2.0 hours) | Program (UCC Committee AND CFS Intellectual Property Committee)  
"The Tricks and Traps of Financing Intellectual Property" | Room 143A  
Level 1 |
| 2:30 p.m. to 4:00 p.m. (1.5 hours) | CFS - Loan Workouts Subcommittee  
"Workout Trends for the Next Big Wave" | Meeting Room 3  
Meeting Level |
| 4:00 p.m. to 5:30 p.m. (1.5 hours) | CFS - Lender Liability Subcommittee  
"Discussion and analysis of Radnor Holdings Corporation and other recent cases" | Meeting Room 7  
Meeting Level |
| 8:00 p.m. | Joint Commercial Financial Services/UCC Committee Dinner  
(TICKETED EVENT – PURCHASE ON-LINE IN ADVANCE) | Clyde’s of Gallery Place,  
707 7th Street NW, Wash DC |
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<th>Time</th>
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| 7:30 a.m. to 9:00 a.m. (1.5 hours) | **CFS - Agricultural and Agri-Business Financing Subcommittee**  
*Wall Street Meets the Corn Belt--Debt and Equity Financing in the Ethanol Industry*                                                                 | Meeting Room 2  
Meeting Level |
| 9:00 a.m. to 10:30 a.m. (1.5 hours) | **CFS - Cross-Border Secured Transactions Subcommittee**  
*Recent legislative and caselaw developments relating to cross-border secured transactions during the past 12 months*                                        | Meeting Rooms 10,11  
Meeting Level |
| 9:00 a.m. to 12:30 p.m. (3.5 hours) | **CFS - Aircraft Financing Subcommittee (Session 2 of 2)**  
*Part 2 of outlook for the U.S. airline industry, aircraft financing trends, techniques and structures, and aircraft financing in the Cayman Islands and Brazil* | Meeting Room 16  
Meeting Level |
| 10:30 a.m. to 12:30 a.m. (2 hours total) | **CFS - Program**  
*Lending to Regulated Industries*  
James C. Chadwick, Program Chair  
Leslie Polt, Panelist  
Mary Beth Bosco, Panelist | Auditorium  
Meeting Level |
| 3:00 p.m. to 4:30 p.m. (1.5 hours) | **Program (UCC and CFS Committees)**  
*What Happens When the Middleman Falls: Article 8 and the Bankruptcy of the Securities Intermediary* | Room 144A  
Level 1 |
| 4:30 p.m. to 6 p.m. (1.5 hours) | **CFS - Intellectual Property Financing Subcommittee**  
*The Evolving IP Marketplace* | Meeting Rooms 10,11  
Meeting Level |
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<th>Time</th>
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| 7:00 am. to 8:30 a.m. | **CFS - Securitization and Derivatives Subcommittee – Joint Meeting with the Securitization of Assets Subcommittee of the Developments in Business Financing Committee**  
*Hot Topics Discussion: applicable predatory lending cases, 10B-5 opinions and Rule 159 letters, update relating to Basel II NPR, work on Model DACA* | Meeting Room 17 |
| (1.5 hours)        |                                                                                                                                                    | Meeting Level  |
| 8:30 a.m. to 10:00 a.m. | **CFS - Secured Lending Subcommittee - Joint Meeting with the Secured Transactions Subcommittee of the UCC Committee**  
**Secured Lending Subcommittee**  
*Chattel Paper – Plain & Fancy (A Play in 3 Acts)* | Ballroom East |
| (1.5 hours)        |                                                                                                                                                    | Ballroom Level |
| 10:00 a.m. to 10:30 a.m. | **Commercial Financial Services Committee Meeting**  
Recap of CFS Fall Meeting Programs  
(DACA; Hedge Funds; and Multi-Borrower Issues)  
Christopher J. Rockers, Chair  
Lynn A. Soukup, Vice Chair | Auditorium  |
| (0.5 hours)        |                                                                                                                                                    | Meeting Level  |
| 10:30 a.m. to 12:30 p.m. | **Program**  
(Primarily Sponsored by the Commercial Financial Services Committee and Co-sponsored by the UCC Committee)**  
*Commercial Law Developments*  
Steven O. Weise, Program Co-Chair  
Teresa Wilton Harmon, Program Co-Chair | Auditorium  |
| (2.0 hours)        |                                                                                                                                                    | Meeting Level  |
| 1:00 p.m. to 2:30 p.m. | **CFS - Real Estate Financing – Joint Meeting with the Business Transactions Subcommittee of the Business Bankruptcy Committee**  
*Letters of Credit in Leases and Bankruptcy* | Meeting Room 13 |
| (1.5 hours)        |                                                                                                                                                    | Meeting Level  |
| 2:00 p.m. to 4:00 p.m. | **Program** (UCC and CFS Committees)  
*The Big Deal about the Fine Print: Negotiating & Drafting Contractual Boilerplate* | Room 143C      |
| (2.0 hours)        |                                                                                                                                                    | Level 1        |
| 3:00 p.m. to 4:00 p.m. | **Subcommittee Chairs and Vice Chairs Meeting**  
Christopher J. Rockers, Chair  
Lynn A. Soukup, Vice Chair | Meeting Room 3  |
<p>| (1.0 hour)         |                                                                                                                                                    | Meeting Level  |</p>
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<td>Convention Center Room 154A</td>
<td>Task Force Meeting: Certificate of Title Laws</td>
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<td>Task Force Meeting: Deposit Account Control Agreements</td>
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<td>9:00-9:30am</td>
<td>Convention Center Room 143C</td>
<td>Task Force Meeting: Deposit Account Control Agreements</td>
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<td>10:00-10:30am</td>
<td>Convention Center Room 143C</td>
<td>Subcommittee Meeting: Investment Securities: <em>Under What Circumstances Will a Note Be Deemed to Be a Security for Purposes of Article 8?</em></td>
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<td>10:30-11:00am</td>
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<td>11:00-11:30am</td>
<td>Convention Center Room 154B</td>
<td>Subcommittee Meeting: Leasing</td>
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<td>Task Force Meeting: Consumer Involvement (jointly with Cyberspace Working Group on Consumer Protection)</td>
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<tr>
<td>1:00-1:30pm</td>
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<td>Task Force Meeting: Consumer Involvement (jointly with Cyberspace Working Group on Consumer Protection)</td>
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<td>Working Group: Transferability of Electronic Assets</td>
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<td>2:00-2:30pm</td>
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<td>Program: <em>The Tricks and Traps of Financing Intellectual Property</em> (co-sponsored by the Intellectual Property Committee and the Commercial Financial Services Committee)</td>
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<td>2:30-3:00pm</td>
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<td>4:30-5:00pm</td>
<td>Convention Center Room 154B</td>
<td>Task Force Meeting: Article 9 Forms</td>
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<td>8:00-8:30am</td>
<td>Convention Center</td>
<td>Subcommittee Meeting: Sales: <em>Have Parties Stopped Fighting</em></td>
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<td>8:30-9:00am</td>
<td>Room 154B</td>
<td><em>the Battle of the Forms?</em></td>
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<td>Subcommittee Meeting: Payment: <em>The</em></td>
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<td>Room 152A</td>
<td><em>Importance of Small, International Remittances and Innovative Means</em></td>
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<td>10:00-10:30am</td>
<td>Room 144B</td>
<td>Committee Meeting: General Provisions: <em>Surprising</em></td>
</tr>
<tr>
<td>10:30-11:00am</td>
<td>Convention Center</td>
<td><em>Developments in UCC Case Law: Why You Should Care about</em></td>
</tr>
<tr>
<td></td>
<td>Room 143B</td>
<td><em>UCC Article 1</em></td>
</tr>
<tr>
<td>11:00-11:30am</td>
<td>Convention Center</td>
<td>Subcommittee Meeting: Letters of Credit: <em>The New UCP 600: Everything</em></td>
</tr>
<tr>
<td></td>
<td>Room 144A</td>
<td><em>You Were Too Afraid to Know But Need to Ask About</em></td>
</tr>
<tr>
<td>12:00-12:30pm</td>
<td>Convention Center</td>
<td>Committee Meeting: <em>Stump the Chumps III</em> (the panelists will be</td>
</tr>
<tr>
<td></td>
<td>Room 144A</td>
<td>B. Clark, S. Heller, M. Jackson C. Mooney &amp; B. Zadek). Also,</td>
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<tr>
<td></td>
<td></td>
<td>presentation of the Committee’s Award for Exceptional Service.</td>
</tr>
<tr>
<td>12:30-1:00pm</td>
<td>Convention Center</td>
<td>Committee Forum: <em>What Happens When the Broker is Broke: Article 8</em></td>
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<tr>
<td></td>
<td>Room 144A</td>
<td>and the Bankruptcy of the Securities Intermediary*</td>
</tr>
<tr>
<td>1:00-1:30pm</td>
<td></td>
<td>(co-sponsored by the Business Bankruptcy Committee)</td>
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<tr>
<td>1:30-2:00pm</td>
<td>Committee Meeting:</td>
<td>Leadership Meeting</td>
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<tr>
<td>2:00-2:30pm</td>
<td><em>Stump the Chumps III</em></td>
<td>(the panelists will be B. Clark, S. Heller, M. Jackson C. Mooney &amp; B.</td>
</tr>
<tr>
<td></td>
<td>Committee Meeting</td>
<td>Zadek). Also, presentation of the Committee’s Award for Exceptional</td>
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<tr>
<td>2:30-3:00pm</td>
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<td>Service.</td>
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<tr>
<td>3:00-3:30pm</td>
<td>Convention Center</td>
<td>Committee Forum: <em>What Happens When the Broker is Broke: Article 8</em></td>
</tr>
<tr>
<td></td>
<td>Room 144A</td>
<td>and the Bankruptcy of the Securities Intermediary*</td>
</tr>
<tr>
<td>3:30-4:00pm</td>
<td></td>
<td>(co-sponsored by the Business Bankruptcy Committee)</td>
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<tr>
<td>4:00-4:30pm</td>
<td>Committee Meeting:</td>
<td>Committee Forum: <em>What Happens When the Broker is Broke: Article 8</em></td>
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<tr>
<td></td>
<td>Leadership Meeting</td>
<td>and the Bankruptcy of the Securities Intermediary*</td>
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<tr>
<td>4:30-5:00pm</td>
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<td>(co-sponsored by the Business Bankruptcy Committee)</td>
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<tr>
<td>5:00-5:30pm</td>
<td>Convention Center</td>
<td>Committee Forum: <em>What Happens When the Broker is Broke: Article 8</em></td>
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<tr>
<td></td>
<td>Room 144B</td>
<td>and the Bankruptcy of the Securities Intermediary*</td>
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<tr>
<td>5:30-6:00pm</td>
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<td>(co-sponsored by the Business Bankruptcy Committee)</td>
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<td>6:00-6:30pm</td>
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<td>Committee Forum: <em>What Happens When the Broker is Broke: Article 8</em></td>
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<td>6:30-7:00pm</td>
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<td>and the Bankruptcy of the Securities Intermediary*</td>
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<td>(co-sponsored by the Business Bankruptcy Committee)</td>
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<tr>
<td>7:00-7:30pm</td>
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<td>Committee Forum: <em>What Happens When the Broker is Broke: Article 8</em></td>
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<tr>
<td>7:30-8:00pm</td>
<td></td>
<td>and the Bankruptcy of the Securities Intermediary*</td>
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<tr>
<td>8:00-8:30pm</td>
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<td>(co-sponsored by the Business Bankruptcy Committee)</td>
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<tr>
<td>Time</td>
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<td>Event</td>
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<tr>
<td>8:00-8:30am</td>
<td>Convention Center Room 152A</td>
<td>Subcommittee Meeting: Secured Transactions (jointly with the Secured Lending Subcommittee of CFS): Developments Involving Chattel Paper</td>
</tr>
<tr>
<td>8:30-9:00am</td>
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<tr>
<td>9:00-9:30am</td>
<td>Renaissance Hotel Auditorium</td>
<td>CFS Program (co-sponsored by UCC Committee): Commercial Law Developments</td>
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<tr>
<td>2:00-2:30pm</td>
<td>Room 143C</td>
<td>Program: The Big Deal about the Fine Print: Negotiating &amp; Drafting Contractual Boilerplate (co-sponsored by the Business Law Education Committee &amp; Commercial Financial Services Committee)</td>
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<tr>
<td>5:30-6:00pm</td>
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</table>
Committee Forum – Bankruptcy of the Securities Intermediary (3/16):

This forum will begin by detailing the rights available under Article 8 of the UCC and other applicable commercial law to customers maintaining securities and other property with brokers as securities intermediaries. That will be followed by a discussion of what happens when the broker becomes bankrupt, the interplay of the Bankruptcy Code and the Securities Investor Protection Act, and an analysis of how this may change if the securities intermediary is an insolvent bank. The forum will draw heavily from the experience of the recent Refco Capital Markets insolvency.

Committee Program – Contractual Boilerplate (3/17):

Danger lurks in the boilerplate provisions at the end of virtually every contract. Lawyers often take these provisions for granted, forgetting that significant business and legal issues lie buried within them. Among the provisions that this program will review are selection of governing law, waiver of the right to a jury trial, prohibitions on assignment, severability, attorney’s fees, and restrictions on non-written amendments. Learn how to tailor these provisions so that they work for the deals that you are doing.

Litigation Subcommittee Meeting (3/15):

We will discuss significant case law and other litigation developments of the past year under the UCC. Additionally, we will review the draft UCC template being prepared by the subcommittee.

Payments Subcommittee Meeting (3/16)

Article 4A and other legal regimes governing international funds transfers were necessarily drafted with large remittances in mind. Small remittances from overseas, however, are often critical to developing economies. Our panelists will discuss the importance of small, international remittances and innovative and efficient means of making them today. Presenters: Dilip Ratha, World Bank, Washington, D.C.; Richard Fraher, Federal Reserve Bank of Atlanta, Atlanta, Georgia.

Sales Subcommittee Meeting (3/16):

Jay Mootz, Professor of Law at Penn State-Dickinson, and co-author of Commercial Contracting, will make a brief presentation on finding the terms of a contract in an era of electronic contracting, particularly with respect to consumer transactions. He will then lead a roundtable discussion of issues raised by the presentation.

Secured Transactions Subcommittee Meeting (3/17):

Chattel Paper, Payment Intangibles and the PEB. Steve Weise and Ed Smith will discuss the possible responses of the UCC Permanent Editorial Board (PEB) to the Ninth Circuit BAP’s controversial decision in the Commercial Money Center case, holding that the payment rights evidenced by chattel paper can be assigned separately from the underlying chattel paper. They will also explain how, when and why the PEB might decide to take positions on issues like this in general.

International Chattel Paper & Receivables. Steve and Ed will also discuss the United Nations Convention on the Assignment of Receivables in International Trade, recently signed by the United States and on its way to ratification. The Convention covers the assignment (as security or outright) of contractual rights to payment in commercial and loan transactions where either the assignment or the underlying receivable is deemed to be “international” in nature. The Convention establishes rules for the law governing perfection and
priority and also deals with substantive matters, such as bulk assignments, assignments of future receivables, anti-assignment clauses, and the rights of the obligors.

*Electronic Chattel Paper.* Richard Newman and Mattias Hallendorff will discuss the successful development of the necessary technology systems and a usable legal framework for determining, and rendering opinions on, perfection of security interests in electronic chattel paper by control, as reflected in recent securitization transactions and the “white paper” issued by the ABA Joint Working Group on Transferability of Electronic Financial Assets.
Commercial Financial Services Committee  
Section of Business Law  
American Bar Association  
Leadership Roster  
February 2007

Chair:
Christopher J. Rockers  
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Term expires: Following Annual Meeting – August, 2007

Subcommittees, Liaisons and Other Leadership Positions

See pages that follow
Agricultural and Agri-Business Financing

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Aircraft Financing

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Creditors’ Rights

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Vice Chair:

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Intellectual Property Financing

Co-Chair:

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Lender Liability

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Loan Documentation

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Loan Workouts

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Maritime Financing

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Term expires: Indefinite
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Term expires: Indefinite
Programs and Seminars

Chair:

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Real Estate Financing

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Term expires:  Following Annual Meeting – August, 2009
Securitization and Derivatives

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Vice Chair:
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Surveys of Commercial Law

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Syndications and Lender Relations

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Term expires: Following Annual Meeting – August, 2008
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Co-Chair:

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Term expires: Following Annual Meeting – August, 2008
<table>
<thead>
<tr>
<th>Group</th>
<th>Chair(s)</th>
<th>Vice-Chair(s)</th>
</tr>
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<tbody>
<tr>
<td>Uniform Commercial Code Committee</td>
<td>Stephen L. Sepinuck</td>
<td>Penelope Christophorou Mario J. Ippolito</td>
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<td>Subcommittees</td>
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<tr>
<td>General Provisions &amp; Relations to Other Law</td>
<td>Kristen Adams</td>
<td>Mario J. Ippolito</td>
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<td></td>
<td>Gail Hillebrand</td>
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<tr>
<td>International Commercial Law</td>
<td>Larry I. Safran</td>
<td>Kate Sawyer</td>
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<tr>
<td>Investment Securities</td>
<td>Penelope Christophorou</td>
<td>Meredith S. Jackson</td>
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<tr>
<td>Leasing</td>
<td>Barry Graynor</td>
<td>Teresa Davidson</td>
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<tr>
<td>Letters of Credit</td>
<td>George A. Hisert</td>
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<td>Payments</td>
<td>Stephen C. Veltri</td>
<td>Greg Cavanagh</td>
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<td>Sale of Goods</td>
<td>David K. Daggett</td>
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<td></td>
<td>Keith A. Rowley</td>
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<tr>
<td>Secured Transactions</td>
<td>Leianne S. Crittenden</td>
<td>Pauline Stevens</td>
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<tr>
<td>Annual Survey</td>
<td>Russell A. Hakes</td>
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<td></td>
<td>Robyn Meadows</td>
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