

PROPOSED AMENDMENTS TO ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE FILLING IN THE GAPS

In July of 2010, the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) met and approved proposed amendments to Article 9 of the Uniform Commercial Code (“UCC”), which are now available for consideration and adoption by the states. These are the first changes to Article 9 since the enactment of the Revised Article 9 in 2001. Over the last ten years, many ambiguities in the language of the Revised Article 9 have arisen in practice. The proposed amendments have been designed to address some of these issues that have surfaced over time in an effort to streamline the process of perfecting security interests throughout the states.

The following is a summary of the proposed amendments to Article 9 and the major changes that can be expected from the adoption thereof:

§ Name of Debtor. Arguably the most deserving of clarification are issues relating to the debtor’s name because the failure to perfect under the correct name can result in the loss of priority. A financing statement must comply with the requirements of Article 9 in order to perfect a security interest, which includes, but is not limited to, providing the debtor’s name. Although it sounds straightforward, a number of courts have struggled with the actual meaning of Section 9-503 for the purpose of determining the proper name of a debtor. In an attempt to dispel the confusion, the amendments offer two alternative approaches to determine the name of an individual debtor and provide new definitions to specify which records to use to determine the name of an organizational debtor. Other debtor name revisions covered by the amendments address situations involving collateral held by a personal representative of a decedent or by a trust.

A more detailed explanation of the foregoing described amendments may be found at: <http://www.uniformlaws.org/ActSummary.aspx?title=UCC>

§ Debtor Relocation. The amendments also address perfection issues arising when a debtor moves to a new jurisdiction. The current language of the Revised Article 9 provides a temporary four-month period of perfection after relocation with respect to collateral owned by a debtor at the time of relocation. This temporary period of perfection does not apply to the debtor’s collateral that is acquired immediately after the relocation of the debtor, even if the security interest attaches to such after-acquired collateral. Instead, the secured party is required to perfect its interest in the after-acquired collateral by filing in the new jurisdiction. The amendments, however, broaden the temporary period of perfection following the debtor’s relocation to not only apply to collateral owned by the debtor at the time of relocation but also to collateral acquired by the debtor after such relocation. As a result, the filer will have a perfected security interest in the collateral owned by the debtor at the time of relocation as well as the after-acquired collateral of the debtor, provided a filing is made in the new jurisdiction within the four-month period. A similar change is also made with respect to a debtor that is a successor by merger.

§ Information Statement. Another topic covered by the amendments is the filing of “correction statements”. The current language of the Revised Article 9 permits a debtor to file a correction statement to put others on notice of its claim that a financing statement filed against it was unauthorized, wrongfully filed or otherwise incorrect. Such statements have no legal effect on the underlying filing or record. Because the “correction statement” does not in fact “correct” anything, this defined term is somewhat misleading. In addition, over the years it has become apparent that there is just as much of a need to put others on notice of improper filings against debtors as there is secured parties. The proposed amendments address these issues by revising the existing language to make such statements of notice available to both debtors and secured parties of record and by re-defining such statements as “information statements”.

§ Technical Amendments. The amendments also provide for a number of changes that are technical in nature. For example, some of the extraneous information that is currently required under the Revised Article 9 for the filing of financing statements (i.e., the debtor’s organizational information) will no longer be necessary. Although these changes are characterized as being “technical” in nature, they still have a significant impact on the filing procedures.

§ Transition Provisions. The amendments have an effective date of July 1, 2013, so as to enable the states to adopt the amendments uniformly and so that they will become operative simultaneously. Also provided in the amendments are transitional provisions which have been designed to govern issues that are expected to arise as a result of adopting the amendments. In general, a perfected security interest under the existing rules will also be a perfected security interest under the amendments so long as it satisfies the requirements for attachment and perfection under the amendments. Similarly, a financing statement filed prior to the amendments will be sufficient to perfect a security interest after the amendments are enacted, without any further action being required, so long as the filing satisfies the applicable requirements for perfection under the amendments (sufficient in detail). However, if the pre-amendment filing fails to satisfy the new requirements for perfection under the amendments, the security interest thereunder will remain perfected for a period of twelve months after the effective date of the amendments before such filing will lapse. In order to avoid the lapse of any such filing, the secured party must amend the financing statement to comply with the new rules prior to the end of the twelve month period. There is, however, one exception to the foregoing rule and it involves only those security interests that are perfected by filing financing statements. If a financing statement filed prior to the amendments would not be sufficient to perfect a lien on collateral under the new requirements, the secured party will have until the normal lapse of such financing statement to amend such statement to comply with the new rules, or, if the financing statement is not filed in the proper location under the new rules, the secured party will have until the earlier of the normal lapse of such statement or June 30, 2018 to file an initial financing statement or continuation statement in the appropriate location.

The proposed amendments discussed herein provide some much needed resolution to some of the existing ambiguities and inconsistencies of the Revised Article 9 that have surfaced over the years. They serve to clarify and further explain what was originally intended by the Revised Article 9. Specifically, they improve the system of filing financing statements, provide detailed guidance on determining the name of a debtor, eliminate the need for unnecessary extraneous information from filings, and, most importantly, provide greater protection to secured parties.