REPORT ON ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE

Committee on Commercial Law and Uniform State Laws

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REPORT ON ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE

Article 9 of the Uniform Commercial Code ("*UCC*") governs secured transactions, as well as sales of accounts and chattel paper. In July 2010, the joint sponsors of the UCC, the National Conference of Commissioners on Uniform State Laws ("*NCCUSL*") and the American Law Institute ("*ALI*"), promulgated a revision to Article 9.[1] The joint sponsors have recommended that the amendments be adopted in each state with a target effective date of July 1, 2013.[2]

This Report of the Committee on Commercial Law and Uniform State Laws of the Association of the Bar of the City of New York ("*Committee*") analyzes the proposed revisions to Article 9, compares it to existing New York law, and makes recommendations as to whether New York should enact the proposed revisions to Article 9 as well as certain other non-uniform revisions. This Report is organized in parts. Part A is a section-by-section comparison, in chart form ("*Comparison Chart*"), of NYA 9 and the Committee's suggested proposed changes to NYA 9 to implement provisions of RA 9 and certain other non-uniform revisions. The first column reflects the Committee's recommendations concerning the adoption of RA 9 in the form of a suggested official text ("*Suggested Official Text*") for adoption by the legislature. The provisions of RA 9 that the Committee recommends for adoption are underlined. Non-uniform provisions (not contained in RA 9) that the Committee recommends for adoption are in *italics*. In the rightmost column of the Comparison Chart, the Committee has added comments reflecting the results of its research and analysis as to whether RA 9 and other non-uniform provisions of Article 9 should be enacted.

The Committee recommends adoption of RA 9 with the following notations: (i) Alternative B of Section 9-503 is preferred and (ii) the official comment to Section 8-102 in RA 9 should be addressed by modifying NYA Section 8-103 to effectively overturn the holding of Highland Capital Management LP v. Schneider, 8 N.Y.3d 406 (2007). In conjunction with the RA 9 amendments, the Committee recommends adoption of the non-uniform provisions indicated in the Comparison Chart and Suggested Official Text. The Committee discusses certain of the RA 9 and non-uniform amendments below.

A. RA § 9-102(A)(71)

The Committee is recommending adoption of RA § 9-102(a)(71), which will provide clarity and efficiency to secured transactions involving certain common law trusts having commercial or business purposes. The amendments to the definition of "registered organization" modify the definition to include organizations formed or organized under a single State or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the State or the United States. The revised definition of "registered organization" also makes explicit that a business trust formed or organized under the law of a single State if a statute of the State governing business trusts

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[1] National Conference of Commissioners on Uniform State Laws, Amendments to Uniform Commercial Code Article 9, July 2010, available at http://www.law.upenn.edu/bll/archives/ulc/ucc9/2010am_draft.pdf.

[2] This report and the accompanying chart uses the following abbreviations in referring to the various relevant texts of UCC Article 9: "NYA" (New York Article) will refer to New York's current statute, N.Y. U.C.C. (McKinney 2010); "RA" will refer to the amendments to Article 9 promulgated by the NCCUSL and ALI.

requires that the business trust's organic record be filed with the State, is a registered organization. A "registered organization" is located in the state under whose law it is organized under NY § 9-307(e), and status as a registered organization provides clarity and simplicity to a secured party as to where to file (see NY § 9-301(1) and compare to ascertaining the chief executive office of a non-registered organization). For these reasons, the Committee supports expanding the definition of "registered organization" to include business trusts and other legal entities so long as a public filing is of record.

B. RA § 9-104

The Committee is recommending adoption of certain non-uniform changes to NYA § 9-104, which have previously been adopted by the Delaware legislature and appear in Delaware's Article 9, Section 104. RA § 9-104 (a)(4) provides an additional method for a secured party to obtain control over a deposit account, by indicating the secured party's name on the deposit account or indicating in the name that the secured party has a security interest in the deposit account. The Committee believes RA § 9-104 (a)(4) is ultimately a clarification of NYA § 9-104 (a)(3). While the legislature intended that a secured party have a straightforward, cost effective mechanism to perfect its security interest, becoming the "bank's customer" as required by § 9-104 (a)(3) is not simply a nomenclature issue and may involve the secured party assuming indemnification obligations of a debtor and the like. Allowing a secured party to list its name on the debtor's deposit account to achieve control properly effectuates the legislature's intent.

RA § 9-104 (a)(5) is the analog to NYA § 8-106 (d)(3), which provides that a purchaser has "control" of a security entitlement if another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser. The Committee believes NYA § 8-106 (d)(3) is a proper application of agency law and thought RA § 9-104 (a)(5) would facilitate second lien financing transactions in New York, providing clarity that a second lien holder will be perfected if a first lien holder, having acquired control over the deposit account, acknowledges that it has control on behalf of the second lien holder.

RA § 9-104 (d) essentially codifies the Official Comments to NYA § 9-104; the Committee thought this change would be beneficial in eliminating any uncertainty (due to the fact that Official Comments do not have the force of law) that a secured party has control under NYA § 9-104 even if there are conditions on the depository bank complying with instructions originated by the secured party (other than further consent of the debtor) or there are conditions on a secured party's right to direct the disposition of funds (other than further consent of the debtor). Similarly, the Committee recommends adding the corresponding section NYA § 8-106(d)(4).

C. RA § 9-316

The Committee is recommending adoption of RA § 9-316(h) and (i), both of which fill unintended and non-obvious gaps in perfection that may occur under New York's current version of Article 9 and that have been misunderstood by many practitioners over the years.

RA § 9-316(h) applies to the situation where a debtor changes its location to another jurisdiction. If that occurs, under New York's current version of Article 9, the secured party remains perfected for a period of four months after the debtor's change of jurisdiction in collateral in which the secured party had an attached and perfected security interest as of the date of the debtor's change of jurisdiction. However, under current New York law, the secured party would not have the benefit of the four month grace period for collateral acquired subsequent to the debtor's change of jurisdiction, such as after acquired inventory or after acquired receivables, because the secured party did not have an attached and perfected security interest in such collateral as of the date the change of the debtor's jurisdiction occurred. RA § 9-316(h) modifies current law to fix this issue and thereby helps practitioners avoid this critical error often made as a result of misunderstanding of the scope of the current four month rule.

RA § 9-316(i) deals with a similar situation where a new debtor located in one jurisdiction becomes bound by a security agreement entered into by another debtor located in another jurisdiction. This type of situation would arise, for example, if an existing debtor located in one state merges into another person located in another state who will be the survivor of that merger (and therefore the new debtor). If that occurs, under New York's current version of Article 9, the secured party remains perfected for a period of one year after the new debtor becomes bound by the security agreement in collateral in which the secured party had an attached and perfected security interest as of the date the new debtor became bound. However, under current New York law, the secured party would not have the benefit of the four month grace period for collateral acquired by the new debtor subsequent to the new debtor becoming bound by the security agreement, such as after acquired inventory or after acquired receivables, because the secured party did not have an attached and perfected security interest in such collateral as of the date the new debtor became bound. RA § 9-316(i) modifies current law to fix this issue.

D. RA § 9-503 (A)(4)

In response to uncertainty as to the correct name a secured creditor must use to sufficiently identify an individual on a financing statement (i.e. are nicknames, birth certificate names, names on public records or names on legal documents such as tax forms sufficient?) for purposes of perfection, RA 9 suggests a revision to NYA 9 in the form of two alternatives: (1) Alternative A (the "Only if" option), providing that a financing statement must provide the name of the individual debtor indicated on the unexpired driver's license or non-driver identification card of the debtor most recently issued by New York[3] and (2) Alternative B (the "Safe Harbor" option), providing that a financing statement may sufficiently provide the name of the debtor if it provides one of the following three pieces of information: (a) the individual name of the debtor, (b) the surname and first personal name of the debtor, or (c) the name of the individual indicated on the unexpired driver's license or non-driver identification card of the debtor most recently issued by New York. The Committee sought guidance from the general counsel's office of the New York State Department of Motor Vehicles (the "*DMV*") as to whether the DMV's database would work effectively with New York's Uniform Commercial Code database – specifically as to the type of characters and name field sizes used in New

[3] If the debtor does not have a driver's license meeting these criteria, then the financing statement must provide either the individual name of the debtor or the surname and first personal name of the debtor.

York's driver's license and non-driver identification card databases and whether information is publicly available from the DMV regarding whether an individual holds an unexpired New York driver's license or New York non-driver identification card, but was unable to obtain a definitive response to our inquiries. The Committee considered the certainty and clarity of the "Only if" approach and the greater flexibility provided by the "Safe Harbor" approach. While the burden on searchers may be increased by adopting Alternative B, the Committee decided that the risk of nonperfection to a secured party outweighed any additional searching costs and time of searchers. In addition, it is not clear that Alternative A will alleviate the need to search under multiple names as tax lien searches are not similarly limited to the driver's license name. Ultimately, the Committee decided that Alternative B was the most flexible approach for secured parties perfecting against New York debtors.

E. TRANSITION RULES, RA ARTICLE 9, SECTION 8

The transition rules are modeled upon the transition rules used in connection with the 1998 revisions to Article 9 set forth in Part 7 of Article 9, so practitioners will have relative ease with the new transition rules. The rules provide secured parties with reasonable grace periods to perfect under the new rules. For example, if the § 9-503(a)(4) amendments are given effect and the name is rendered seriously misleading (see § 9-805(b)), the secured party will remain perfected until the financing statement ceases to be effective had the amendments not taken effect. If the secured party remains perfected under the rubric of RA 9, no additional action is needed. And similar to the Part 7 transition rules, an initial financing statement in lieu of continuation statement continues the effectiveness of a financing statement filed in another jurisdiction before RA 9 takes effect.

F. § 8-103

The surprising decision of the New York Court of Appeals in Highland Capital Management LP v. Schneider, 8 N.Y.3d 406 (2007) established the current law in New York as to whether promissory notes that are not traded on a securities exchange are subject to being classified as securities governed by Article 8 ("Article 8 Securities") of the UCC. In Highland Capital, the Court held that eight identical subordinated promissory notes were Article 8 Securities. In its decision, the Court walked through each of the criteria for a "security" set forth in UCC § 8-102(a)(15) including the requirement that a "security" must be in "bearer or registered form". The Court then analyzed the definition of "registered form" found in § 8-102(13)(ii) of the UCC and determined that the subordinated notes satisfied that definition because the notes "could have been registered on transfer books" maintained by the issuer even though the issuer, in fact, did not maintain transfer books for the purpose of effecting transfers of the subordinated notes.

The effect of Highland Capital was to cause the commercial law rules applicable to promissory notes to suddenly shift from Article 3 (or comparable common law principles) to Article 8 with the following effects:

1. *Endorsement*. Notes and securities certificates are both transferred by endorsement, but Article 3's default rules differ from Article 8's. Under Article 3, an endorser of a promissory note also guarantees that if the instrument is dishonored, the endorser will pay it in accordance with its tenor; an endorser of an Article 8 security makes no such undertaking.

2. *Registration of transfer*. Generally, when a security certificate is transferred, the transferee will deliver the endorsed certificate to the issuer or its transfer agent, who will issue a new certificate in the transferee's name. Indeed, Article 8 mandates that the issuer register transfers. So an issuer of promissory notes that are found to be securities will be obliged to register the transfer and issue new notes/securities upon a transferee's request.

3. *Restrictions on assignment*. Article 9 makes some restrictions on the assignment of promissory notes ineffective, but these rules do not apply to securities.

Although the underlying dispute in the Highland Capital case related to applicability of the statute of frauds which under the model UCC would be applicable to instruments but not securities, ironically, the case will have little effect on New York law with respect to this issue. That is because § 5-701(b) of the General Obligations Law severely limits the application of the Statute of Frauds otherwise applicable to the sale of promissory notes as a result of § 1-206 of the UCC. Due to the foregoing concerns, the Highland Capital case came to the attention of the Drafting Committee that prepared the Amendments to Uniform Commercial Code Article 9 (the "*Drafting Committee*"). Notwithstanding its Article 9 scope, the Drafting Committee prepared the following proposed amendment to § 8-103 of the UCC to overturn the Highland Capital decision by specifically providing that the registrability requirement of the definition of "registered form" would not be satisfied merely because the issuer maintains records of the owners of an obligation, share, participation, or interest for purposes other than registration of transfer:

SECTION 8-103. RULES FOR DETERMINING WHETHER CERTAIN OBLIGATIONS AND INTERESTS ARE SECURITIES OR FINANCIAL ASSETS.

* * *

(h) An obligation, share, participation, or interest does not satisfy Section 8-102(a)(13)(ii) or 8-102(a)(15)(i) merely because the issuer or a person acting on its behalf:

(1) maintains records of the owner thereof for a purpose other than registration of transfer; or
(2) could, but does not, maintain books for the purpose of registration of transfer.

Subsection (h) rejects the holding of Highland Capital Management LP v. Schneider, 8 N.Y.3d 406 (2007). The registrability requirement in the definition of "registered form," and its parallel in the definition of "security," are satisfied only if books are maintained by or on behalf of the issuer for the purpose of registration of transfer, including the determination of rights under § 8-207(a) (or if, in the case of a certificated security, the security certificate so states). It is not sufficient that the issuer records ownership, or records transfers thereof, for other purposes. Nor is it sufficient that the issuer, while not in fact maintaining books for the purpose of registration of transfer, could do so, for such is always the case. Subsection (h) is

declaratory of the proper interpretation of the definitions of "registered form" and "security," not a change in law.

This proposed amendment to § 8-103 was circulated in some drafts of the Amendments to Uniform Commercial Code Article 9 (the "*Article 9 Amendments*"). However, toward the end of the amendment process, the proposed amendment was removed from final draft of the Article 9 Amendments although a comment similar to the above rejecting the holding in Highland Capital was retained. The Drafting Committee apparently concluded that, given the universally acknowledged wrong result in the Highland Capital case, a comment would be sufficient. However, because Highland Capital is a decision of New York's highest court and thus would need to be legislatively overturned, the Drafting Committee expressed the hope that the New York legislature would enact this amendment.

Given the foregoing, and the recognition that the comments to the UCC have no binding effect, and therefore would not be legally effective to overturn the New York Court of Appeals' decision in Highland Capital, the Committee recommends that the New York version of the Article 9 Amendments contain the amendment to § 8-103 (and the accompanying comment) set forth above.

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COMPARISON OF REVISED ARTICLE 9 TO CURRENT NEW YORK ARTICLE 9

Proposed Revisions to Article 9 ("RA") (marked to reflect changes from Current New York Article 9) (*italics denote new non-uniform provisions*)	**Commentary**
PART 1 GENERAL PROVISIONS	
SUBPART 1. SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS	
Section 9-102. Definitions and Index of Definitions.	
(a) Article 9 definitions. In this article	
(2) "Account", except as used in account for, means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a State, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State. The term includes health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.	*Changes from current New York law*: NYA 9-102(a)(2)(viii) uses the term "state" instead of the defined term "State." The use of the undefined term "state" in current NYA 9-102(a)(2) seems to be a mistake as the defined term "State" is used otherwise in this provision.
[(5) "Agricultural lien" means an interest~~, other than a security interest,~~ in farm products:]	*Changes from current New York law*: The phrase ", other than a security interest," has been deleted.
(A) which secures payment or performance of an obligation for:	
(i) goods or services furnished in connection with a debtor's farming operation; or	

Proposed Revisions to Article 9 ("RA") (marked to reflect changes from Current New York Article 9) (*italics denote new non-uniform provisions*)	**Commentary**
(ii) rent on real property leased by a debtor in connection with its farming operation;~~ and~~	*Changes from current New York law*: The word "and" has been correctly deleted
(B) which is created by statute in favor of a person that:	
(i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or	
(ii) leased real property to a debtor in connection with the debtor's farming operation; and	
(C) whose effectiveness does not depend on the person's possession of the personal property.	
(7) "Authenticate" means:	
(A) to sign; or	
(B) ~~to execute or otherwise adopt a symbol, or encryptor similarly process a record in whole or in part, with the~~with present intent ~~of the authenticating person to identify the person and~~to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.	*Changes from current New York law*: These changes were made to clause (B) to conform to language in Revised Article 7 of the Official Text of the UCC, which has not yet been enacted in New York. However, we recommend this change in anticipation of changes to the other Articles of the UCC. This language is also now the standard NCCUSL definition appearing in non-UCC Acts.
(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.	
(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the	*Changes from current New York law*: In many States, a certificate of title covering goods that are encumbered by a security interest is delivered to the secured party by the issuing authority. To eliminate the need for the issuance of a paper certificate under these circumstances, several States have revised their certificate-of-title

Proposed Revisions to Article 9 ("RA") (marked to reflect changes from Current New York Article 9) (*italics denote new non-uniform provisions*)	**Commentary**
security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.	statutes to permit or require a State agency to maintain an electronic record that evidences ownership of the goods and in which a security interest in the goods may be noted. The second sentence of the definition provides that such a record is a "certificate of title" if it is in fact maintained as an alternative to the issuance of a paper certificate of title and even if the statute does not expressly state that the record is maintained instead of issuing a paper certificate.
(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided or to be provided.	*Changes from current New York law*: The phrase "or to be provided" was added.
(50) "Jurisdiction of organization", with respect to a registered organization, means the jurisdiction under whose law the organization is formed or organized.	
(64) "Proceeds", except as used in Section 9-609(b), means the following property:	
(A) ~~Whatever~~whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;	*Changes from current New York law*: The word "Whatever" is properly lower-cased.
(B) whatever is collected on, or distributed on account of, collateral;	
(C) rights arising out of collateral;	
(D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or	
(E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of	

Proposed Revisions to Article 9 ("RA") (marked to reflect changes from Current New York Article 9) (*italics denote new non-uniform provisions*)	**Commentary**
rights in, or damage to, the collateral.	
(67) "Public-finance transaction" means a secured transaction in connection with which:	
(A) debt securities are issued;	
(B) all or a portion of the securities issued have an initial stated maturity of at least 20 years; and	
(C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a ~~s~~State or a governmental unit of a ~~s~~State.	*Changes from current New York law*: The term "state" has been replaced with the defined term "State" in two instances. The use of the defined term "State" would make this reference apply to not only the 50 states of the United States but to any jurisdiction that falls within the definition of the term "State".
(68) "Public organic record" means a record that is available to the public for inspection and is:	*Changes from current New York law*: A new defined term "public organic record" has been added in order to clarify when an organization is a "registered organization." This definition sets forth guidelines on which public records are "public organic records".
(A) a record consisting of the record initially filed with or issued by a State or the United States to form or organize an organization and any record filed with or issued by the State or the United States which amends or restates the initial record;	
(B) an organic record of a business trust consisting of the record initially filed with a State and any record filed with the State which amends or restates the initial record, if a statute of the State governing business trusts requires that the record be filed with the State;	
(C) a record consisting of legislation enacted by the legislature of a State or the Congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the State or United States which amends or	

Proposed Revisions to Article 9 ("RA") (marked to reflect changes from Current New York Article 9) (*italics denote new non-uniform provisions*)	**Commentary**
restates the name of the organization.	
(69) ~~(68)~~"Pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.	*Changes from current New York law*: Due to the insertion of a new defined term "public organic record" as clause (68) all subsequent clauses have been renumbered.
(70) ~~(69)~~"Record", except as used in for record, of record, record or legal title, and record owner, means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.	
(71) ~~(70)~~"Registered organization" means an organization formed or organized solely under the law of a single ~~state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized~~State or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the State or United States. The term includes a business trust that is formed or organized under the law of a single State if a statute of the State governing business trusts requires that the business trust's organic record be filed with the State.	*Changes from current New York law*: The changes to the definition of "registered organization" are meant to simplify and clarify when an organization is a "registered organization" and contains a new sentence addressing business trusts. In addition, the use of the defined term "State" instead of the undefined term "state" (i) addresses a discrepancy between the official uniform text and the NYS-enacted version, and (ii) clarifies that an organization may be a registered organization even if formed or organized under the laws of a jurisdiction that meets the definition of "State" even if such jurisdiction is not one of the fifty states of the United States.
(72) ~~(71)~~"Secondary obligor" means an obligor to the extent that	
(A) the obligor's obligation is secondary; or	
(B) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.	
(73) ~~(72)~~"Secured party" means:	

Proposed Revisions to Article 9 ("RA") (marked to reflect changes from Current New York Article 9) (*italics denote new non-uniform provisions*)	Commentary
(A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;	
(B) a person that holds an agricultural lien;	
(C) a consignor;	
(D) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;	
(E) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or	
(F) a person that holds a security interest arising under Section 2-401, 2-505, 2-711(3), 2A-508(5), 4-210, or 5-118.	
(74) ~~(73)~~"Security agreement" means an agreement that creates or provides for a security interest. A cooperative record that provides that the owner of a cooperative interest has an obligation to pay amounts to the cooperative organization incident to ownership of that cooperative interest and which states that the cooperative organization has a direct remedy against that cooperative interest if such amounts are not paid is a security agreement creating a cooperative organization security interest.	
(75) ~~(74)~~"Send", in connection with a record or notification, means:	
(A) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or	
(B) to cause the record or notification to be received within the time that it would have been received if properly sent under	

Proposed Revisions to Article 9 ("RA") (marked to reflect changes from Current New York Article 9) (*italics denote new non-uniform provisions*)	**Commentary**
subparagraph (A).	
(76) ~~(75)~~"Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.	
(77) ~~(76)~~"State" means a *state* of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.	Note: Although the Official Text uses the defined term "State" in this definition, the use of the undefined term "state" seems correct.
(78) ~~(77)~~"Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.	
(79) ~~(78)~~"Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.	
(80) ~~(79)~~"Termination statement" means an amendment of a financing statement which:	
(A) identifies, by its file number, the initial financing statement to which it relates; and	
(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.	
(81) ~~(80)~~ "Transmitting utility" means a person primarily engaged in the business of:	
(A) operating a railroad, subway, street railway, or trolley bus;	
(B) transmitting communications electrically, electromagnetically, or by light;	

Proposed Revisions to Article 9 ("RA") (marked to reflect changes from Current New York Article 9) (*italics denote new non-uniform provisions*)	**Commentary**
(C) transmitting goods by pipeline or sewer; or	
(D) transmitting or producing and transmitting electricity, steam, gas, or water.	
(b) **Definitions in other articles**. The following definitions in other articles apply to this article: Applicant — Section 5-102. Beneficiary — Section 5-102. Broker — Section 8-102. Certificated security — Section 8-102 Clearing corporation — Section 8-102. Contract for sale — Section 2-106. Customer — Section 4-104. Entitlement holder — Section 8-102. Financial asset — Section 8-102. Holder in due course — Section 3-302. Issuer (with respect to a letter of credit or letter-of-credit right) — Section 5-102. Issuer (with respect to a security) — Section 8-201. Lease — Section 2A-103. Lease agreement — Section 2A-103. Lease contract — Section 2A-103. Leasehold interest — Section 2A-103. Lessee — Section 2A-103.	*Note*: The Official Text includes (i) the phrase "Control as provided in Section 7-106 and the" in place of the word "The" at the beginning of Section 9-102(b) and (ii) references to " 'Issuer' (with respect to a document of title) . . . Section 7-102" and " 'Prove' . . . Section 3-103" in this Section 9-102(b). These changes refer to Revised Articles 3 and 7 of the Official Text, which articles have not yet been enacted in New York. Accordingly, unless the legislature decides to enact Revised Articles 3 and 7 simultaneously with the proposed revisions of Article 9, the definitions of "Issuer" (with respect to a document of title) and "Prove" should be added to New York's version of Revised Article 9.

Proposed Revisions to Article 9 ("RA") (marked to reflect changes from Current New York Article 9) (*italics denote new non-uniform provisions*)	Commentary
Lessee in ordinary course of business — Section 2A-103. Lessor — Section 2A-103. Lessor's residual interest — Section 2A-103. Letter of credit — Section 5-102. Merchant — Section 2-104. Negotiable instrument — Section 3-104. Nominated person — Section 5-102. Note — Section 3-104. Proceeds of a letter of credit — Section 5-114. Sale — Section 2-106. Securities account — Section 8-501. Securities intermediary — Section 8-102. Security — Section 8-102. Security certificate — Section 8-102. Security entitlement — Section 8-102. Uncertificated Security — Section 8-102.	
(c) **Article 1 definitions and principles.** Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.	
Section 9-104. Control of Deposit Account. (a) Requirements for control. A secured party has control of a deposit account if: (1) the secured party is the bank with which the deposit account is maintained;	*Changes from current New York law*: The italicized language in proposed RA 9-104(a)(4) conforms to a non-uniform provision found in Delaware's 9-104(a)(5). This clause provides an additional method of obtaining control over a deposit account. Proposed RA 9-104(a)(4) provides that a secured party can

Proposed Revisions to Article 9 ("RA") (marked to reflect changes from Current New York Article 9) (*italics denote new non-uniform provisions*)	Commentary
(2) the debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; (3) the secured party becomes the bank's customer with respect to the deposit account; *(4) the name on the deposit account is the name of the secured party or indicates that the secured party has a security interest in the deposit account; or* *(5) another person has control of the deposit account on behalf of the secured party or, having previously acquired control of the deposit account, acknowledges that it has control on behalf of the secured party.* (b) Debtor's right to direct disposition. A secured party that has satisfied subsection (a) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account. *(c) No implied duties of bank. -- The authentication of a record by the bank under subsection (a)(2) does not impose upon the bank any duty not expressly agreed to by the bank in the record. The naming of the deposit account in the name of the secured party or with an indication that the secured party has a security interest in the deposit account under subsection (a)(4) does not impose upon the bank any duty not expressly agreed to by the bank.* *(d) Conditions not relevant. -- A secured party has control under subsection (a)(2) even if any duty of the bank to comply with instructions originated by the secured party directing disposition of the funds in the deposit account is subject to any condition or conditions (other than further consent by the debtor).* *(e) No inferences. -- The procedures and requirements of subsection (a)(4) available to obtain control shall not be used in interpreting the sufficiency of a secured party's compliance with the procedures and requirements of subsection (a)(1), (a)(2) or (a)(3) to obtain control. The provisions of subsection (a)(4) shall create no inference regarding the requirements for compliance with subsection (a)(1), (a)(2) or (a)(3).*	obtain control by requiring a certain name for the deposit account. Note that proposed RA 9-104 does not include Delaware's 9-104(a)(4), which provides that a secured party has control if there is an authenticated record clearly denominated as a control agreement that specifically identifies a deposit account and provides for disposition of funds in the deposit account. Proposed RA 9-104(a)(5) is yet another method of obtaining control and mirrors the corresponding provision found in NYA 8-106(d)(3) for securities accounts. Proposed RA 9-104(c) through (d) are also conforming provisions to Delaware's non-uniform 9-104.
Section 9-105. Control of Electronic Chattel Paper.	*Changes from current New York law*: The changes to subsection (a) are derived from Section 16 of the Uniform Electronic Transactions

Proposed Revisions to Article 9 ("RA") (marked to reflect changes from Current New York Article 9) (*italics denote new non-uniform provisions*)	**Commentary**
(a) [General rule: control of electronic chattel paper.] A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned. (b) [Specific facts giving control.] A system satisfies subsection (a) if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that: (1) a single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable; (2) the authoritative copy identifies the secured party as the assignee of the record or records; (3) the authoritative copy is communicated to and maintained by the secured party or its designated custodian; (4) copies or ~~revisions~~amendments that add or change an identified assignee of the authoritative copy can be made only with the ~~participation~~consent of the secured party; (5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and (6) any ~~revision~~amendment of the authoritative copy is readily identifiable as authorized or unauthorized ~~revision~~.	Act and sets forth a safe harbor test that if satisfied, establishes control under the general test in subsection (a)
9-307. Location of Debtor. 9-307(f) **[Location of registered organization formed or organized under federal law; bank branches and agencies]** (2) in the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location, including by designating its main office, home office, or other comparable office; or	*Changes from New York law*: clarifies what offices a registered organization might designate as its location. Changes "formed or" are to conform with changes to definition of "registered organization" in 9-102(a)(70).

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9-311 (a) [Security interest subject to other law.] (2) ~~a certificate of title statute of this state or regulations promulgated thereunder, to the extent such statute or regulations provide for a security interest to be indicated on the certificate as a condition or result of perfection~~ [A certificate of title statute covering automobiles, trailers, mobile home, boats, farm tractors, or the like, which provides for a security interest to be indicated on a certificate of title as a condition or result of perfection, and any non-Uniform Commercial Code central filing statute]; or (3) a ~~certificate of title~~ statute of another jurisdiction which provides for a security interest to be indicated on a certificate of title as a condition or result of the security interest's obtaining priority over right of a lien creditor with respect to the property.	*Changes from New York law*: (2) replaces a general clause with a shorter reference to certificate of title statutes. Changes to (3) are less substantive.
Section 9-316. ~~Continued Perfection of Security Interest Following~~ Effect of Change in Governing Law	*Changes from New York law*: Broadens section heading to reflect substance of section more accurately.
9-316(h) [Effect on filed financing statement of change in governing law.] The following rules apply to collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction: (1) A financing statement filed before the change pursuant to the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral if the debtor had not changed its location. (2) If a security interest that is perfected by a financing statement that is effective under paragraph (1) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in Section 9-301(a) or 9-305(c) or the expiration of the four-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for	*Changes from New York law*: This provision significantly alters the effect of a change in governing law. Under current Article 9 § 316, perfection of security interests that have attached prior to a change in the debtor's location continues for four months after such change. This new subsection 316(h) provides that a secured party would also enjoy perfection of security interests that attach within four months after a change in the debtor's location, provided it has already taken steps pursuant to which it would have been perfected absent the change in location. To illustrate, assume D is located in New Jersey and SP has properly perfected security interest in D's inventory and accounts receivable by filing a financing statement in New Jersey. Thereafter, D's location changes to New York. Under current law, SP remains perfected, for four months following the change in location, in any inventory and accounts receivable in which it was perfected before the change. Under this section, this remains so, but assuming that the security agreement also extends to after acquired inventory and accounts receivable, SP is also perfected in any (newly acquired) inventory and (newly arising) accounts receivable to which its

Proposed Revisions to Article 9 ("RA") (marked to reflect changes from Current New York Article 9) (*italics denote new non-uniform provisions*)	Commentary
value.	security interest first attaches during the four months after the change in location. Such perfection continues until the end of this four-month period or longer if a new UCC 1 is filed in the correct office.
(i) [Effect of change in governing law on financing statement filed against original debtor.] If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in Section 9-301(a) or 9-305(c) and the new debtor is located in another jurisdiction, the following rules apply: (1) The financing statement is effective to perfect a security interest in collateral in which the new debtor has or acquires rights before or within four months after the new debtor becomes bound under Section 9-203(d), if the financing statement would have been effective to perfect a security interest in the collateral if the collateral had been acquired by the original debtor. (2) A security interest that is perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the expiration of the four month period or the time the financing statement would have become ineffective under the law of the jurisdiction designated in Section 9-301(a) or 9-305(c) remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfect under the law of the other jurisdiction before the earlier time or event become unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.	*Change from New York law*: New subsection 316(i) provides for perfection of security interests that attach within four months after a new debtor becomes bound by an existing security agreement. Under current law generally, with respect to collateral in which the original debtor never held an interest, the security interest perfected by filing against the original debtor is subordinate to the security interest perfected by filing against the new debtor. This amendment preserves and extends this result to the circumstances contemplated by new subsection 316(i).
9-317. INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE OF SECURITY INTEREST OR AGRICULTURAL LIEN. (b) **[Buyers that receive delivery.]** Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a certificated security ~~certificate~~ takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.	*Changes from New York law*: "security certificate" changed to "certificated security."
9-317 (d) [Licensees and buyers of certain collateral.] A licensee of a general intangible or a buyer, other than a secured party, ~~of accounts, electronic chattel paper, electronic documents, general intangibles, or investment property other than~~ collateral	*Changes from New York law*: The application of subsection (d) is expanded to cover buyers of all types of collateral that are not susceptible to possession. Thus, a licensee of a general intangible,

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other than tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.	and a buyer (other than a secured party) of any collateral other than tangible chattel paper, tangible documents, goods, instruments, or certificated securities takes free of a security interest if the licensee gives value without knowledge of and before perfection of, such interest.
9-326. PRIORITY OF SECURITY INTEREST CREATED BY NEW DEBTOR. (a) **[Subordination of security interest created by new debtor.]** Subject to subsection (b), a security interest that is created by a new debtor ~~which is~~ in collateral in which the new debtor has or acquires rights and perfected by a filed financing statement that ~~is effective solely under Section 9-508 in collateral in which a new debtor has or acquires rights~~ would be ineffective to perfect the security interest but for the application of Section 9-508 or of Sections 9-508 and 9-316(i)(1) is subordinate to a security interest in the same collateral which is perfected other than by such a filed financing statement. ~~that is effective solely under Section 9-508.~~	*Changes from New York law*: This section addresses the priority contests that may arise when a new debtor (successor) becomes bound by the security agreement of an original debtor and each debtor has a secured creditor. With respect to collateral in which the original debtor never held an interest, it subordinates a security interest perfected by filing against the original debtor to a security interest perfected by filing against the new debtor. This section preserves this subordination in the face of new § 9-316(i).
9-326 (b) [Priority under other provisions; multiple original debtors.] The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements ~~that are effective solely under Section 9.508.~~ described in subsection (a). However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.	*Changes from New York law*: clarifies the interplay between this section and § 9-508 regarding subordination of certain security interests created by a new debtor.
§ 9-406. Discharge of Account Debtor; Notification of Assignment; Identification and Proof of Assignment; Restrictions on Assignment of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes Ineffective. **e) Inapplicability of subsection (d) to certain sales**. Subsection (d) does not apply to the sale of a payment intangible or promissory note~~.~~, other than a sale pursuant to a disposition under Section 9-610 or an acceptance of collateral under Section 9-620.	Under current law it is unclear whether the broad override in § 9-406(d) or the narrower override in § 9-408(a) applies if a payment intangible or promissory note secures an obligation and the secured party forecloses by selling it or by conducting a strict foreclosure. The revision clarifies applicability of § 9-406, and explicitly provides that a buyer at a foreclosure sale, as well as the assignee in a strict foreclosure under § 9-620, can enforce the right notwithstanding any contractual restriction.
§ 9-408. Restrictions on Assignment of Promissory Notes, Health-Care-Insurance Receivables, and Certain General Intangibles Ineffective. **(b) Applicability of subsection (a) to sales of certain rights to payment.** Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note~~.~~, other	Under current law it is unclear whether the broad override in § 9-406(d) or the narrower override in § 9-408(a) applies if a payment intangible or promissory note secures an obligation and the secured party forecloses by selling it or by conducting a strict foreclosure. The proposed amendment clarifies applicability of § 9-408, and

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than a sale pursuant to a disposition under Section 9-610 or an acceptance of collateral under Section 9-620.	explicitly provides that a buyer at a foreclosure sale, as well as the assignee in a strict foreclosure under § 9-620, can enforce the right notwithstanding any contractual restriction.
§ 9-503. Name of Debtor and Secured Party. (a) [**Sufficiency of debtor's name.**] A financing statement sufficiently provides the name of the debtor: (1) except as otherwise provided in paragraph (3), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name ~~of the debtor indicated~~that is stated to be the registered organization's name on the public organic record ~~of the debtor~~most recently filed with or issued or enacted by the registered organization's jurisdiction of organization which ~~shows the debtor to have been organized~~purports to state, amend, or restate the registered organization's name; (2) subject to subsection (f), if the collateral is being administered by the personal representative of a decedent~~'s estate~~, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that the ~~debtor is an estate~~collateral is being administered by a personal representative; (3) if the ~~debtor is a trust or a trustee acting with respect to property~~collateral is held in a trust that is not a registered organization, only if the financing statement: (A) provides, as the name ~~specified~~of the debtor: (i) if the organic of record the trust specifies a name for the trust ~~in its organic documents or, if no name is specified, provides~~, the name so specified, or (ii) if the organic record of the trust does not specify a name for the trust, the name of the settlor or testator; and (B) in a separate part of the financing statement:	(1) Registered Organizations -- It was unclear to some which public record is relevant to determining the name of a registered organization. The proposed amendment refers to the "public organic record," the newly defined term in subsection 9-102(a)(68), which means a record filed with the relevant state or the United States, and includes a charter issued by such state or the United States. The accompanying Official Comment 11 indicates that a certificate of good standing is not appropriate for determining a registered organization's name. (2) Decedents and their Estates - Under current Article 9 it is difficult to determine the exact identity of the "debtor" as defined in § 9-102(a)(28). The proposed amendments eliminate the requirement that a filing indicate whether the debtor is "a decedent's estate" and instead require indication that the collateral is "being administered by the personal representative of the decedent." The transition rules provide that financing statements filed prior to the effective date of these amendments that meet the then current requirements will not cease to be effective by their failure to comply with the amendments. However, as always the financing statement must be filed in the jurisdiction where the Debtor is located within the meaning of § 9-307. (3) Trusts and Trustees -- Under current Article 9 it is difficult to determine the exact identity of the "debtor" as defined in § 9-102(a)(28). The proposed amendments eliminate the requirement that a filing indicate whether the debtor is "a trust" or, alternatively, is a "trustee acting with respect to property held in trust," and instead require indication that "the collateral is held in trust". These special rules applicable to property held in trust do not apply where collateral is held by a trust that is itself a registered organization (in such cases the rules for filing against a registered organization apply). The

Proposed Revisions to Article 9 ("RA") (marked to reflect changes from Current New York Article 9) (*italics denote new non-uniform provisions*)	Commentary
(i) if the name is provided in accordance with subparagraph (A)(i), indicates that the collateral is held in trust; or (ii) if the name is provided in accordance with subparagraph (A)(ii) provides additional information sufficient to distinguish the ~~debtor~~trust from other trusts having one or more of the same settlors~~;~~ or the same testator and ~~(B)~~ indicates, ~~in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and~~ that the collateral is held in a trust, unless the additional information so indicates; ~~(4)~~ (4) if the debtor is an individual, only if; (A) it provides the individual name of the debtor; (B) it provides the surname and first personal name of the debtor; or (C) subject to subsection (g), it provides the name of the individual which is indicated on a [driver's license] that this State has issued to the individual and which has not expired; and (5) in other cases: (A) if the debtor has a name, only if it provides the ~~individual or~~ organizational name of the debtor; and (B) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor. **(f) [Name of decedent.]** The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the "name of the decedent" under subsection (a)(2).	transition rules provide that financing statements filed prior to the effective date of these amendments that meet the then current requirements will not cease to be effective by their failure to comply with the amendments. However, as always the financing statement must be filed in the jurisdiction where the Debtor is located within the meaning of § 9-307. (4) Individual Debtor Names -- Current Article 9 requires the "name of the debtor" but it does not indicate what an individual debtor's name is. To provide greater guidance, the amendments offer to each state one of two alternatives for the name of an individual debtor provided on a financing statement to be sufficient. This Alternative B, the "safe harbor" approach, retains the current "name of the debtor" approach, but also provides a "safe harbor" for using the name designated by statute (i.e., the name on the driver's license or state identification card). Under Alternative B, any of the following names for the debtor would be sufficient as the debtor's name on the financing statement: (1) the debtor's name as shown on the debtor's driver's license if the debtor holds an unexpired driver's license issued by the state, (2) the individual name of the debtor, as under current Article 9, or (3) the debtor's surname and first personal name. If the debtor holds two driver's licenses issued by the state, the most recently issued driver's license is the one to which reference should be made to determine the debtor's name to be provided on the financing statement.

Proposed Revisions to Article 9 ("RA") (marked to reflect changes from Current New York Article 9) (*italics denote new non-uniform provisions*)	Commentary
(g) **[Multiple driver's licenses.]** If this State has issued to an individual more than one [driver's license] of a kind described in subsection (a)(4)(C), the one that was issued most recently is the one to which the subsection (a)(4)(C) refers. **(h) [Definition.]** The "name of the settlor or testator" means: (1) if the settlor is a registered organization, the name that is stated to be the settlor's name on the public organic record most recently filed with or issued or enacted by the settlor's jurisdiction of organization which purports to state, amend, or restate the settlor's name; or (2) in other cases, the name of the settlor or testator indicated in the trust's organic record.	
§ 9-507 Effect of Certain Events on Effectiveness of Financing Statement. **(c) [Change in debtor's name.]** If ~~the~~ name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor under Section 9-503(a) so that the financing statement becomes seriously misleading under Section 9-506: (1) the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the ~~change~~filed financing statement becomes seriously misleading; and (2) the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the ~~change~~filed financing statement becomes seriously misleading, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after ~~the change~~that event.	Current Article 9 recognizes that if a debtor changes its name such change can render existing financing statements seriously misleading and thus, ineffective, unless amended. The proposed amendment coordinates with the proposed revisions to § 9-503 to recognize that a name may change not only be by action on the part of the debtor but also due to, for example, expiration of a driver's license.
§ 9-515. Duration and Effectiveness of Financing Statement; Effect of Lapsed Financing Statement. (f) **Transmitting utility financing statement**. If a debtor is a transmitting utility and a	Under current Article 9 filers could indicate a debtor was a transmitting utility in a UCC-3. However, in practice, many filing offices cannot revisit their initial coding of a financing statement to change its lapse date. The proposed amendment to Article 9

Proposed Revisions to Article 9 ("RA") (marked to reflect changes from Current New York Article 9) (*italics denote new non-uniform provisions*)	Commentary
filed initial financing statement so indicates, the financing statement is effective until a termination statement is filed.	recognizes this limitation and requires that the initial financing statement indicate the transmitting utility status of debtor in order of the financing statement to be effective until terminated.
§ 9-516. What Constitutes Filing; Effectiveness of Filing. 516(b)(3)(B)&(C) (b) **Refusal to accept record; filing does not occur**. Filing does not occur with respect to a record that a filing office refuses to accept because: (1) the record is not communicated by a method or medium of communication authorized by the filing office; (2) an amount equal to or greater than the applicable filing fee is not tendered; (3) the filing office is unable to index the record because: (A) in the case of an initial financing statement, the record does not provide a name for the debtor; (B) in the case of an amendment or ~~correction~~information statement, the record: (i) does not identify the initial financing statement as required by Section 9-512 or 9-518, as applicable; or (ii) identifies an initial financing statement whose effectiveness has lapsed under Section 9-515; (C) in the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's ~~last name; or~~ surname, ~~(D) in the case of a record filed in the filing office described in Section 9-501(a)(1),~~	A financing statement is legally sufficient if it provides the information required by § 9-502(a), even if it does not provide the additional information specified in § 9-516(b)(5). The additional information was meant to assist searchers in weeding out records that a search reveals but do not pertain to the debtor in question. However, since the additional information relates to registered organizations and most jurisdictions preclude the duplicative use of registered organization names, inserting this information has little or no benefit.

Proposed Revisions to Article 9 ("RA") (marked to reflect changes from Current New York Article 9) (*italics denote new non-uniform provisions*)	Commentary
~~the record does not provide a sufficient description of the real property to which it relates;~~ ~~(4) in the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;~~ (5) in the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not: (A) provide a mailing address for the debtor; or (B) indicate whether the name provided as the name of the debtor is the name of an individual or an organization~~; or~~ ~~(C) if the financing statement indicates that the debtor is an organization, provide;~~ ~~(i) a type of organization for the debtor; or~~ ~~(ii) a jurisdiction of organization for the debtor; or . . . .~~	
§ 9-518. ~~Claim Concerning Inaccurate or Wrongfully Filed Record~~ CLAIM CONCERNING INACCURATE OR WRONGFULLY FILED RECORD. (a) ~~Correction statement.~~ **[Statement with respect to record indexed under person's name.]** A person may file in the filing office ~~a correction~~an information statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed. (b) ~~Sufficiency~~ **[Contents of ~~correction~~ statement under subsection (a)**. ~~A correction~~	Current Article 9 permits the filing of a "Correction Statement" by a debtor to object to a filing. However, such "Correction Statement" has no legal effect and therefore has a misleading name. The proposed amendment renames the filings "Information Statements" and permits both secured parties and debtors to file them. They still have no legal effect.

Proposed Revisions to Article 9 ("RA") (marked to reflect changes from Current New York Article 9) (*italics denote new non-uniform provisions*)	Commentary
An information statement under subsection (a) must: (1) identify the record to which it relates by: (A) the file number assigned to the initial financing statement to which the record relates; and (B) if the ~~correction~~information statement relates to a record filed [or recorded] in a filing office described in Section 9-501(a)(1), the date [and time] that the initial financing statement was filed [or recorded] and the information specified in Section 9-502~~)~~(b); (2) indicate that it is a ~~correction~~an information statement; and (3) ~~provided~~provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed. (c) **[Statement by secured party of record.]** A person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so under Section 9-509(d). (d) **[Contents of statement under subsection (c).]** An information statement under subsection (c) must: (1) identify the record to which it relates by: (A) the file number assigned to the initial financing statement to which the record relates; and (B) if the statement relates to a record filed [or recorded] in a filing office described in Section 9-501(a)(1), the date [and time] that the initial financing	

Proposed Revisions to Article 9 ("RA") (marked to reflect changes from Current New York Article 9) (*italics denote new non-uniform provisions*)	Commentary
statement was filed [or recorded] and the information specified in Section 9-502(b); (2) indicate that it is an information statement; and (3) provide the basis for the person's belief that the person that filed the record was not entitled to do so under Section 9-509(d). (~~e~~e) [**Record not affected by ~~correction~~information statement.**] The filing of ~~a correction~~an information statement does not affect the effectiveness of an initial financing statement or other filed record.	
SECTION 9-607. COLLECTION AND ENFORCEMENT BY SECURED PARTY . . . (b) **Nonjudicial enforcement of mortgage**. If necessary to enable a secured party to exercise under subsection (a)(3) the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded; (1) a copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and (2) the secured party's sworn affidavit in recordable form stating that: (A) a default has occurred with respect to the obligation secured by the mortgage; and (B) the secured party is entitled to enforce the mortgage nonjudicially.	*Change from current New York law*: The change would clarify that the default required to be included in the secured party's affidavit is one with respect to the obligation secured by the mortgage (not a default with respect to the obligation of the debtor to the secured party, which default may not be required for the secured party to enforce the rights of the debtor with respect to the mortgage). It is worth noting that New York law does not currently provide for the non-judicial foreclosure of mortgages on real property (former Article 174 of the Real Property Actions and Proceedings Law ("RPAPL") of New York, which provided for non-judicial foreclosure in certain cases, terminated on July 1, 2009 and has not been renewed). However, we would recommend this change, as the provision could be applicable to transactions involving real property outside of New York, and also in the event the RPAPL is again amended to permit non-judicial foreclosure.

COMPARISON OF PROPOSED REVISIONS TO OTHER UCC ARTICLES TO CURRENT NEW YORK UCC ARTICLES

The following revisions to other UCC articles are proposed to conform with the proposed revisions to Article 9.

Proposed Revisions to UCC Article (marked to reflect changes from Current New York UCC) (*italics denote new non-uniform provisions*)	**Commentary**
Article 2A	
2A-103. Definitions and Index of Definitions. * * * (3) The following definitions in other Articles apply to this Article: * * * "Pursuant to commitment". Section 9-102(a)~~(68)~~(69) * * *	Due to the addition of term "Public Organic Record" to § 9-102(a), as recommended by the Committee, in connection with other revisions relating to the sufficiency of a debtor's name (§ 9-503) and the definition of "Registered Organization" (§ 9-102(a)), this is simply a conforming edit to maintain an accurate numbering of the definitions in this § 9-102. The Committee recommends adopting this conforming edit.
Article 8	
8-103. Rules for Determining Whether Certain Obligations and Interests Are Securities or Financial Assets. *** * *** *(g) An obligation, share, participation, or interest does not satisfy Section 8-102(a)(13)(ii) or 8-102(a)(15)(i) merely because the issuer or a person acting on its behalf:* *(1) maintains records of the owner thereof for a purpose other than*	This proposed amendment to § 8-103 would be wholly unnecessary but for the New York Court of Appeals' opinion in *Highland Capital*. The opinion's interpretation of the definitions of "registered form" and "security" in Section 8-102 cannot be supported by the existing statutory text. The Committee (and many practitioners) does not agree with the opinion and believes that the opinion is contrary to the language and intent of § 8-102. While the National Conference of Commissioners on Uniform State Laws also disagrees with the opinion, the Conference is recommending only a revision to the commentary for the uniform amendments, and not recommending this proposed statutory revision, because the Conference views this as an

Proposed Revisions to UCC Article (marked to reflect changes from Current New York UCC) (*italics denote new non-uniform provisions*)	Commentary
registration of transfer; or *(2) could, but does not, maintain books for the purpose of registration of transfer.* **Official Comment** * * * 9. *Subsection (g) rejects the holding of Highland Capital Management LP v. Schneider, 8 N.Y.3d 406 (2007). The registrability requirement in the definition of "registered form," and its parallel in the definition of "security," are satisfied only if books are maintained by or on behalf of the issuer for the purpose of registration of transfer, including the determination of rights under Section 8-207(a) (or if, in the case of a certificated security, the security certificate so states). It is not sufficient that the issuer records ownership, or records transfers thereof, for other purposes. Nor is it sufficient that the issuer, while not in fact maintaining books for the purpose of registration of transfer, could do so, for such is always the case. Subsection (h) is declaratory of the proper interpretation of the definitions of "registered form" and "security," not a change in law.*	issue unique to New York State. The Committee recommends the adoption of this proposed revision to and clarification of Article 8.
8-106. Control (a) A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser. (b) A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser, and: (1) the certificate is indorsed to the purchaser or in blank by an effective indorsement; or (2) the certificate is registered in the name of the purchaser, upon original issue	***Changes from current New York law*:** The italicized language in proposed Article 8-106(h) and (i) conforms to a non-uniform provision found in Delaware's Article 8-106, relating to control over securities accounts. These clauses are a parallel to proposed RA § 9-104(c) through (d), which relate to deposit accounts, and are also conforming provisions to Delaware's non-uniform § 9-104.

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or registration of transfer by the issuer. (c) A purchaser has "control" of an uncertificated security if: (1) the uncertificated security is delivered to the purchaser; or (2) the issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner. (d) A purchaser has "control" of a security entitlement if: (1) the purchaser becomes the entitlement holder; (2) the securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder; or (3) another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser. (e) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control. (f) A purchaser who has satisfied the requirements of subsection (c) or (d) has control even if the registered owner in the case of subsection (c) or the entitlement holder in the case of subsection (d) retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement. (g) An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection (c)(2) or (d)(2) without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required	

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to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder. *(h) Under subsection (c)(2) or (d)(2), authentication of a record does not impose upon the issuer or securities intermediary any duty not expressly agreed to by the issuer or securities intermediary in the record.* *(i) A purchaser has "control" under subsection (c)(2) or (d)(2) even if any duty of the issuer or the securities intermediary to comply with instructions or entitlement orders originated by the purchaser is subject to any condition or conditions (other than further consent by the registered owner or the entitlement holder).*	
Article 11	
Uniform Article 11: "Effective Date and Transition Provisions" **Repeal Proposed.** **** [text omitted]**** *Legislative Note: Article 11 affects transactions that were entered into before the effective date of the 1972 amendments to Article 9, which were supplanted by the version of Article 9 that has been in effect in all States since at least January 1, 2002. Inasmuch as very few, if any, of these transactions remain outstanding, States may wish to repeal Article 11.*	As indicated by the Legislative Note, the provisions of Article 11 relate to the transition between the "Original Article 9", from 1965, and the "Revised Article 9", from the 1972 amendments (1978 in New York State). These 1972/1978 amendments have since been superseded by the 2001 amendments to Article 9, which New York State adopted in 2001, under Laws 2001, Ch. 84, § 36, effective July 1, 2001. As this Article would only be applicable to a transaction entered into between September 27, 1964 and July 2, 1978, very few of which, if any, still remain outstanding, the Committee recommends the repeal of Article 11.