Article 9 Drafting Committee Considers Consumer Issues Subcommittee Report

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By Alvin C. Harrell

I. Introduction

The Uniform Commercial Code (UCC) Article 9 Drafting Committee1 met June 7-9, 1996 in Washington, D.C.2 to consider the Report of the Consumer Issues Subcommittee (Report) and other issues. The Reporters noted that the draft of proposals being considered was the 1996 Annual Meeting draft to be considered at the July 1996 Annual Meeting of the National Conference of Commissioners on Uniform State Laws (NCCUSL). The Reporters have subsequently produced an October 1996 draft, which will be discussed in the next issue of the Quarterly Report.

After introductory comments and reports on international secured transaction issues, Harry Sigman gave a report on filing issues. He again noted that the new national filing form is now acceptable in virtually all states and that electronic filing is permissible in Texas and is being accepted elsewhere.

II. The Consumer Issues Subcommittee

A. Introduction

The discussion of consumer issues began with comments by Gail Hillebrand presenting the positions of the consumer advocacy group. (See generally the preceding article in this issue, by David B. McMahon.)

Ed Heiser responded on behalf of the American Financial Services Association. He repeated prior concerns over the section 9-507 statutory penalty provision, and the proposed statutory right of reinstatement for defaulting debtors. He noted there is over $600 billion in secured consumer credit outstanding and possibly $800 billion more in unsecured or partially secured consumer credit. A change affecting even a small percentage of this market could have enormous economic and individual consequences.

Current Article 9 has served this market well, and Mr. Heiser argued that changes should be very carefully considered. The lack of empirical evidence on the issues being considered should be a cause for concern. The Article 9 penalty provision, while not widely enforced under the current UCC, is punitive and far more severe than any existing state consumer credit code.

Mr. Heiser argued that the proposed reciprocal attorney fee provision would change the impact of the statutory penalty and single out secured consumer creditors for adverse treatment as compared to real estate lenders, credit card companies, etc.

It was noted that the cumulative result could be that an Article 9 creditor who makes a minor, technical and harmless error would be liable for the section 9-507 penalty and the debtor's attorney fees, potentially a total "penalty" well exceeding any actual damages or even the amount of the loan. There is no element of deterrence where these errors are innocent and inadvertent, and harmless.

This is an approach reminiscent of the much-criticized Fair Debt Collection
Practices Act, which has allowed aggressive plaintiff's counsel to reap sizable rewards based on technical and harmless missteps by creditor counsel.

3. Attorney Fees

The consumer issues Committee recommends reciprocity for attorney fees, so that a prevailing debtor could recover attorney fees if the contract allows this for the creditor. Bob Zadek questioned whether the reciprocal attorney fee provision should be in the UCC, arguing that it is a good idea but should be provided in a statute of universal applicability relating to, for example, real estate and unsecured consumer lending as well as Article 9 transactions. Gail Hillebrandt responded that consumer attorney fees are needed in Article 9 because of the "turf off" approach of Article 9 and the need to finance consumer protection litigation. Ms. Hillebrandt distributed a list of federal statutes allowing recovery of prevailing party attorney fees, but it was noted that most of these statutes involve actual damages while the section 9-507 statute combined with attorney fees could provide large penalties to creditors and windfalls for consumers (and their counsel) based on harmless and technical errors.

The Drafting Committee voted unan- mously in favor of the proposed reciprocal attorney fee provision.

C. Absolute Bar

The Consumer Issues Subcommittee Report recommends a choice of two alternatives: (1) no change, as described adopting a rebuttable presumption rule subject to any statute or decision establishing a different rule in consumer transactions; or (2) include in section 9-507 of such a bracketed provision giving jurisdictions the option to adopt an absolute bar in consumer transactions. The Subcommittee expressed a preference for the first alternative. It was noted that the first alternative refers to the courts when the second refers it to the legislature.

Ed Heiser noted that this is not a strictly consumer issue—it arises more frequently in the commercial context, and has equal applicability to both consumer and commercial transactions. It also represents yet another statutory penalty. Gail Hillebrandt argued that codification of the rebuttable presumption rule should be accompanied by elimination of the "offset" language at section 9-507, since otherwise the creditor might be tempted to increase the deficiency as an offset to the statutory penalty.

The proposal to codify the rebuttable presumption rule for commercial transactions while leaving consumer transactions to judicial or legislative state determination was approved by the Drafting Committee. As between the alternatives in the Subcommittee Report, the Drafting Committee voted against adopting the first alternative, which would essentially defer to state judicial or legislative discretion to adopt a rule other than rebuttable presumption. The Drafting Committee then voted to include in brackets the option of adopting an absolute bar rule in consumer transactions (the second alternative). The effect would be to adopt a rebuttable presumption rule for commercial transactions while telling the state legislature it has the option to provide an absolute bar (or some other rule) for consumer transactions.

William Solomon argued that the same approach should be followed with regard to the statutory penalty, allowing states to require a consumer to prove actual damages as a prerequisite to recovering the section 9-507 statutory penalty. This was rejected.

D. Bona Fide Error Rule

Brad Smith argued for a good faith or bona fide error exception to the absolute bar and statutory penalty rules. Professor Bebchuk noted the complexities that such a rule would add, and that Article 9 now contains no such rule. Don Rapson argued that proper procedure respecting reasonable commercial standards should be specified as the basis for a bona fide error defense to liability for harmless technical errors. Gail Hillebrandt argued that this was not needed, and would introduce difficult issues of commercial reasonableness.

Ed Heiser noted that the current proposal would change the legal landscape by coupling large statutory penalties with attorney fees in no-damages cases. To reject a bona fide error defense would make this regime even more unfair. In response, consumer advocates argued that an error should be compensable regardless of the consumer.

It was noted that this is a "strict compliance" standard, as common in federal regulatory law, as contrasted with the "liberal application" tradition of the UCC.

A proposal to include a bona fide error defense was approved by the Drafting Committee.

E. Deficiency After Foreclosure Sale to Affiliated Party

The consumer issues Committee Report proposed no statutory limits on sales to affiliated parties, but recommended a comment suggesting that higher scrutiny of the price received in such a sale is appropriate.

F. Statutory Right to Reinstatement

The consumer issues Committee Report proposed a statutory right to reinstate for consumers if the debtor has repaid 60% or more of the principal amount of the debt. This would allow a defaulting consumer, who has unsuccessfully tried to evade repossession, a second opportunity to hide the collateral or otherwise frustrate repossession.

The apparent theory of the 60% test is that the debtor will have equity in the collateral by that stage in the loan term or at least will have an economic interest after paying that much on the loan.

Your author has made the point that in many cases there will be no or negative equity due to the rapid decline in value of much consumer collateral. William Solomon noted a statement in the consumer issues Report suggesting that a creditor should be allowed to avoid reinstatement by going to court to show that it is undersold (so as to indicate that the consumer has no equity and the creditor's position could be impaired by further use and possible damage to the collateral). Professor Bebchuk noted that this is not in the Report but was left to the Reporters for consideration.

The statutory right of reinstatement was then approved by the Drafting Committee, without the creditor safeguard urged by Mr. Solomon.

There was further discussion as to the reasons behind the 60% trigger point for the right of reinstatement. Upon inquiry during the June 1996 meeting, Professor Bebchuk alleged that a portion of the 60% of the loan principal the debtor is likely to have an equity or economic interest in the collateral that deserves protection. It seemed to raise eyebrows when you author suggested that in many cases this will not be true, because most consumer collateral depreciates in value faster than the loan amortizes.

Nonetheless, your author's experience is that repossessed collateral is frequently worth less than the amount of the loan, due to poor condition, normal depreciation, or other factors. In addition, many repossessed consumer goods are of such great difficulty and only after efforts by the debtor to delay or even prevent the repossession. If a debtor with a record of damaging or hiding the collateral in order to protect it, has an absolute right to demand return of the collateral after a repossession, the secured party's position is likely to be unnecessarily impaired.

Perhaps this will not be a significant problem in practice, and some of the creditor representates on the Consumer Issues Subcommittee apparently concluded that this was a compromise that needed to be made for political purposes. Your author has no quarrel with this judgment, but there should be no pretense that the 60% test is the result of a scientific analysis or empirical study. Nor should the risk to consumer lenders be unders rated—once it is enacted and the word spreads, "difficult" consumer debts with no equity or prospects for further payment will be demanding return of repossessed collateral.

The fact that there is a similar 60% test (see section 9-207) cited as further support for the proposed right of reinstatement, however, is not clear. Perhaps it is the section 9-205 provision on the statutory right of reinstatement, which would be unique in terms of forcing a lender to re-enter a credit relationship with a defaulting and possibly hostile debtor.

G. Refinance of Purchase Money Debt

Some cases have held that refinance of a purchase money loan is not de novo so as to disallow purchase money status. The 1996 drafts of proposed Article 9 generally reject this view and recognize the "real sale" rule when a purchase money loan is refinanced by the original creditor.

Consumer representatives object to this if the context of consumer transactions. The consumer issues Report favors application of the current draft to consumer transactions, with a comment noting that as state law this would not be binding on bankruptcy courts. A significant part of the problem arises from the Bankruptcy Code section 522(d) avoidance of nonpossessory, non-purchase money security interests. Judge Hillman argued that bankruptcy courts should not be led to adopt a different rule from the UCC rule. Professor Mooney noted that there are significant issues involved under state law, i.e., the difference between automatic perfection and nonperfection, quite aside from the bankruptcy issues.

Michael Ferry argued that if the Sub committee recommendation is approved, this would be a mandatory accounting methodology to separate the purchase money and nonpurchase money parts of the loan. He also argued that refinance loans should not be favored in law, and that the bankruptcy risk is not an important factor to creditors in extending refinance loans. He argued that Bankruptcy Code section 522(d) collateral should be excluded from the UCC definition of purchase money transaction. Professor Bebchuk noted that the section 9-205 provision on refinance to the consumer right of reinstatement would be unique in terms of forcing a lender to re-enter a credit relationship with a defaulting and possibly hostile debtor.

H. Prohibition of Small Deficiencies

A prohibition on deficiency judgments in small dollar transactions was considered and rejected in the consumer issues Report. David McMahon argued in favor of such a prohibition, even if it resulted in higher interest rates in consumer transactions.

The Drafting Committee voted to accept the recommendation in the Report.
I. Contents of the Notice of Regional Fair Trade Commission Order

1. Statutory Safe Harbor for Time of Notice
2. Parties’ Ability to Fix Standards
3. Foreclosure of Marketable Securities

The Drafting Committee accepted the recommendations in the consumer issues report on these issues, with minimal discussion, as a general matter, preparatory to drafting specific provisions. However, Ed Reiser argued that the requirement that payroll or reinstatement figures always be given in writing should be re-considered as unnecessary and ponderous, and that such information should be required only if requested as under current section 9-206. The consumer representatives agreed.

II. Limitations on Waiver of Defenses Clauses—Section 9-206

Current section 9-206 waives defaulting accountants subject to certain limits. The consumer representatives urged incorporation of the Federal Trade Commission Renter in Due Course Rule. The Consumer Issues Subcommittee decided against adding this to the UCC, on grounds that inclusion would add to the force of federal law and would create further confusion.

III. Insurance Issues

Professor Mooney noted that there has been a consensus that some finance-related insurance issues should be included in the Article 9 revisions.

He reviewed a series of the basic insurance-related issues under consideration. He also noted the basic public issue: Are consumers and society better served by including insurance issues in Article 9 or in order, for example, to facilitate consumer borrowing and provide an orderly body of governing law, or should consumer borrowings be discouraged and reinforced legal uncertainties thereby increasing the risks and costs for all involved? There was a surprising amount of support for the latter approach.

The Drafting Committee voted tentatively to expand the scope of Article 9 to cover insurance collateral generally, subject to limited exceptions, but the vote was split and several Drafting Committee members were not present. After further discussion this vote was reversed, with the Drafting Committee favoring a general exclusion of insurance subject to specific inclusions for limited purposes.

IV. Post-Sale Notice of Deficiency

Don Rapson described his proposal to require that the secured party send a notice to the debtor, describing the results of the sale of collateral and the basis for the deficiency. The consequences of violating the requirement would be actual damages and prejudice of a deficiency judgment. In subsequent discussion it was also emphasized that additional collateral could be sold without the notice.

William Solomon questioned why another notice should be required in such cases, regardless of need. He noted that debtors seeking this information could be protected without imposing a requirement on all creditors to send large volumes of unneeded notices. He argued that harmless and technical violations would be a basis for liability under the Federal Fair Debt Collection Practices Act (FDCPA). It did not seem to be fully understood by all of those present that the penalty provisions of the FDCPA would apply to this notice, as it was consistently argued in the discussions that no sanction would be applied for violations, except actual damages and bar of a deficiency (the latter could be cured by sending the notice). Your author pointed out again the FDCPA issues previously mentioned by William Solomon, but the response was that this would not apply directly to creditors. But clearly it could create another trap for creditor attorneys and perhaps derivatively for creditors as well. Some members of the Drafting Committee expressed concern about this complication.

Don Rapson’s motion to require sending a notice describing the deficiency was then defeated in a close vote. Ed Smith then made a substitute motion that section 9-208 be expanded to provide a post-sale notice of the debtor’s right to information about the deficiency upon request. Gail Hillebrandt countered that this notice (of a right to an accounting) should be required in the first post-sale communication. Ed Smith declined to amend his motion. Harry Sigman queried whether the defeat of Don Rapson’s motion resurrected the provision of the current draft at section 9-504(m) providing a similar rule for consumers. Professor Harris responded that this was not the case, and that the section 9-504(m) issue was being referred to the Consumer Issues Subcommittee. Professor Peter Winship questioned whether a failure to include the notice proposed by Ed Smith would trigger statutory penalties and render the notice of sale invalid, creating another trap for attorneys. The consensus was that the notice would be boiler-plate language easily inserted. The motion to include the proposed notice was defeated unanimously.

After extensive discussion of the many implications of this issue, the Drafting Committee voted to delete the proposed revisions at section 9-114 as unnecessary, and instead to include an Official Comment stating that the same result is appropriate under the current law. Professor Mooney indicated that section 9-114(b) of the 1996 Annual Meeting draft will likely be moved largely intact to an Official Comment. It was noted that this takes the position that a rule that is currently implicit, and would have been made explicit by the 1996 Annual Meeting Draft, and makes it “expressly implicit” by inclusion in a Comment.

V. Sellers of Accounts and Chattel Paper—Proposed Section 9-114

This proposal would allow a seller of accounts or chattel paper, theoretically divested of title, to nonetheless grant a security interest in the accounts or chattel paper to a secured party who would have priority over the earlier buyer if the secured party was the first to perfect. The mechanism is to provide at proposed section 9-114(b) that the seller of accounts or chattel paper retains rights in the collateral sufficient to attach and perfect a security interest in the collateral until the buyer perfects as required by sections 9-102 and 9-302. As a result, if there is a sale of accounts or chattel paper covered by section 9-114 under section 9-102 and subject to a perfection requirement under section 9-302, and the buyer makes subsequent payments by failing to file, the buyer would be subject to a subsequent creditor who lends against the accounts or chattel paper and is the first to perfect.

Harry Sigman and Professor Benfield expressed a preference for simply stating this result, without using the concept of attachment to create a conceptual basis for the result. The concern was that a conceptual solution runs a greater risk of unforeseen consequences regarding other issues.

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VI. Cash Proceeds

Proposed section 9-502(c) provides that a junior secured party who receives cash proceeds belonging to a senior secured party in good faith and without knowledge that the payment violates the rights of the senior party, is not subject to the rights of the senior party. This problem is generally not clear, but was severely criticized by creditors at the June 1996 meeting of the Drafting Committee, who argued that this rule in due course type rule, based on subjective factors, has no place in an Article 9 priority dispute between secured parties. It was also agreed that this would create an exception to the filing and priority rules of Article 9, with no compelling reason. The Drafting Committee voted on whether to retain this provision was evenly split. Harry Sigman then moved to delete proposed section 9-502(c) and re affirm PDB Commentary No. 7 and current section 9-309, retaining current law to the extent consistent with negotiable instruments law and the rules on holder in due course in UCC Article 3. B was noted that the high standard of good faith at UCC section 3-403(4)(a) narrows the scope of this rule. This motion passed unanimously upon a vote of the Drafting Committee. This essentially limits the protection of a junior claimant to one who qualifies as a holder in due course.

VII. Bankruptcy “Carve-Out” for Unsecured Creditors

Elizabeth Warren, Leo Gottlieb Professor of Law at Harvard Law School and Reporzer for the National Bankruptcy Review Commission, provided to the Article 9 Drafting Committee a memorandum describing suggested revisions to Article 9 in response to its request. The memorandum was submitted to the Drafting Committee and the National Bankruptcy Review Commission. It was noted also that the proposal drafters were interested in hearing comments from others in the bankruptcy field.

The Drafting Committee discussed the proposal, and agreed that the proposal was needed because the Article 9 Drafting Committee is expanding the scope and efficiency of Article 9 so as to deprive nonconsensual lien creditors of their property rights and that the proposal currently is not ready for consideration.

Professor Warners’ Memo was discussed, and the Drafting Committee agreed to draft a separate section which would be flexible enough to accommodate a variety of bankruptcy schemes.
would increase declarations of default and Article 9 enforcement actions, as secured parties would be prone to declare default any time a lien was filed. Professor Farriss noted that the expansion of Article 9 has been overestimated, with only a limited expansion approved to date. But Jeff Turner noted that there are also objections to the covering of the efficacy of Article 9, on grounds that improvements in this law will improve the position of secured parties. But the consensus was that these changes would result in only marginal changes in the position of secured parties overall, and that the retooling of improvements in the law will benefit both lenders, borrowers and the economy as a whole.

The consensus was that Professor Warren’s proposal was not the appropriate approach to the perceived problems, and the proposal was unanimously rejected by the Drafting Committee.

VIII. Deposit Amounts

A. Commercial Deposit Accounts

Don Rapson began the discussion by describing concerns that the proposed revisions would make it very difficult for a third party lender to achieve perfection as to a bank account, because it would be necessary to get permission from the bank. Mr. Rapson noted that it would be possible for the third party lender to achieve “control” of the bank account, but that this would mean that the borrower/depositor would have no right to withdraw the funds. Mr. Rapson explained that the rule would have “the virtue of providing understandable rules governing the attachment, perfection, and priority of security interests in deposit accounts in contrast to the present rules which are often uncertain or non-existent.” However, he urged that all interested parties be aware of the implications of this change and its possible impact on commercial borrowers.

Erin Leikis noted that even though a third party could protect itself under the new rule by opening a lender account for deposit of borrower proceeds, the transaction costs would be considerably higher than the current rule of tracing proceeds. The current rule to trace proceeds is at risk in the proposed revisions, which would change current law in most states by shifting priority to the bank in a dispute between a proceeds claim and the bank’s right of set off. Jeff Turner also noted that debtors may object to having their sales proceeds deposited in a “blocked account” controlled by the lender.

There was a consensus on the Drafting Committee that nonmonetary deposit accounts should be included in Article 9, and that proposed section 9-117 (allowing a secured party to perfect by having “control” as defined at section 9-117(a)) represents the optimal approach. Certain priority issues regarding control, proceeds and set off were deferred.

B. Consumer Deposit Accounts

Consumer deposits were then discussed. Professor Benfield described the conclusion of the Consumer Issues Subgroup that consumer deposit accounts should be included subject to two requirements: (1) The security interest is not perfected unless the debtor loses access to the account; and (2) the secured party’s claim to the debtor has lost access to the account.

Commercial lenders then argued that consumer accounts should be excluded, on grounds that the consumer issues and protections will add unneeded complexity and controversy to Article 9. Consumer representatives also argued that consumer accounts should not be subject to Article 9 security interests. This discussion reflected a coalescing of interests between commercial lenders and consumer advocates, tending to deprive consumer lenders of access to clear and simple rules in Article 9 in order to gain acceptability of the proposals for improved rules governing commercial transactions.

The Reporters expressed concern that the recommendation that the lender "make clear" to the consumer the effects of the security interest could create drafting problems in view of consumer advocate desires to have consumers not understand what they read and sign. Neil Cohen reminded the group that new rules for consumer accounts may be needed as banking moves from passbook toward electronic banking, to replace the traditional common law rules that have worked well in the past but may impede consumer access to low cost credit in an electronic world. Gail Hillebrand noted that a primary concern is that lenders may not understand the new rule, sometimes proposing an additional collateral in unrelated transactions, but bank representatives argued that deposit account rules are important to consumers as an independent source of credit, and clarification of the applicable rules is needed.

The Drafting Committee then voted to exclude consumer accounts from Article 9.

C. Choice of Law

Proposed section 9-103(d)(2)(A) Alternative B would allow the bank and debtor to determine by agreement the choice of the depository institution’s jurisdiction in order to identify the applicable law for purposes of security interests in deposit accounts. Proposed section 9-103(d)(2)(C) Alternative B would be worded slightly differently. A vote of the Drafting Committee favored Alternative A.

IX. Payment and Discharge

Revised UCC Article 3 evidences a policy decision that payment to a party at the time of payment entitled to enforce a negotiable instrument (e.g., a prior holder of the instrument) should not discharge the liability of the obligor even if the instrument is now owned or held by a mere assignee who does not have the rights of a holder. Therefore, for example, if a maker pays a former holder after that holder has transferred the instrument to a third party, the maker is not discharged from liability and remains liable to the party entitled to enforce the instrument.

Article 9 section 9-318 provides for payment to an assignee not in possession, upon notice to the account debtor, suggesting a possible conflict between sections 3-201 and 9-318. Professor Linda Rusch noted that a debtor might pay an assignee under section 9-318, then find that the holder has negotiated or otherwise transferred the instrument to a new holder who might refuse to pay the additional payment from the debtor, as holder in due course, with immunity to the personal defense of payment and discharge. The same problem could proceed under sections 3-201 and 3-601 where the payment to the assignee is made after transfer to a new party entitled to enforce the instrument.

Currently it appears that section 9-318 trumps Article 3, so as to allow the Article 9 assignee to demand payment. But this does not resolve the issue of the account debtor’s subsequent liability under Article 3, leaving such a debtor with some uncertainty. It was also noted that section 9-318 may displace the Article 3 right of the debtor to demand exhibit of the instrument and a notation of receipt of payment. Moreover, creditors now assert the inchoate right to exercise notice on the assignee or prior holder to preserve notice or to otherwise protect the debtor against double liability.

The Reporters agreed to consider and address these issues.

X. Conclusion

A tendency of some commercial lending representatives to make concessions regarding consumer protection issues that the instrument is now owned or held by a mere assignee who does not have the rights of a holder. Therefore, for example, if a maker pays a former holder after that holder has transferred the instrument to a third party, the maker is not discharged from liability and remains liable to the party entitled to enforce the instrument.

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The Reporters agreed to consider and address these issues.

A possible candidate for this treatment is the proposed retention of the statutory penalty at section 9-307 in conjunction with a series of new technical requirements in Article 9 Part 5 and the proposed proposal to allow recovery of consumer attorney fees in most cases. This combination could result in recovery of large statutory penalties and recoveries of late fees on the basis of minor, harmless, and technical errors. As noted supra, experience with a similar regime of statutory penalties and attorney fees for minor errors under the federal Fair Debt Collection Practices Act may be relevant. This experience, coupled with a larger number of "plaintiff's counsel" seeking large awards for harmless errors as a excuse to coerce settlements in numerous industries. Arguably such practices would yield few benefits for consumers, instead primarily enriching plaintiff's attorneys at the expense of higher credit costs and reduced credit availability for society at large. States should consider whether they want to introduce such a regime into Article 9.

As compared to current law, which changes, the Drafting Committee voted to include a proposed bona fide error defense. However, such a defense has been largely ineffective in FDCPA cases, and is likely to be less useful than is intended and expected by those who are familiar with the FDCPA. The proposed bona fide error defense does, however, offer the prospect for assertion of additional legal arguments (and therefore more proactive litigation) in Article 9 enforcement cases. Perhaps there is an inherent propens-ity among any group of attorneys to flood the rulemaking process with questions, and it must be admitted that a bona fide error defense is better than none at all. But state legislative review conferences
committees may wish to consider whether a system of statutory penalties for harmless errors, coupled with recovery of plaintiffs’ attorney fees and a nebulous bona fide error defense, is consistent with the basic purposes of Article 9.

Of course, all of these proposals remain tentative, and perhaps the Article 9 Drafting Committee will yet act to ameliorate the problems represented by some of the recommendations in the Consumer Issues Subcommittee Report. If not, the states may wish to consider some of the specialized consumer rules to be optional, as candidates for individual consideration and possible deletion during the Article 9 state legislative review and enactment process.

CORRECTION—REGULATION D

The article on Payment System Issues—UCC Article 4A: Regulations J, S, and D in the previous issue of the Quarterly Report stated that Federal Reserve Board Regulation D was last revised in 1983. However, the Federal Reserve Board annually reviews and considers revision of Regulation D. For example, Regulation D was revised in 1995 to adjust the dollar amounts used to determine the applicable tranche requirements. While not representing a substantive change, these revisions do affect the applicability of the various reporting requirements. The 1995 changes are noted below.

On November 24, 1995 Regulation D was amended, so:

1. Decrease the amount of transaction accounts subject to the 3% reserve requirement, from $54 million to $32 million of net transaction accounts (the “low reserve tranche requirement”). More recently, this has been reduced to $49.3 million, effective December 17, 1996.

2. Increase from $4.2 million to $4.3 million the amount of reservable liabilities of each depository institution that are subject to a zero percent requirement. More recently, this was increased to $4.4 million, effective December 17, 1996.

3. Increase from $55.4 million to $57 million the cutoff level used to determine the reservable liabilities exemption for purposes of determining the frequency of deposit reporting for nonexempt institutions (those institutions with total reservable liabilities exceeding the amount exempted from reserve requirements). This was raised to $59.3 million, effective December 17, 1996. For exempt institutions the cutoff level for determining the frequency of deposit reporting was raised in 1995 from $45.1 million to $46.4 million. This was recently raised to $48.2 million, effective December 17, 1996. (Exempt institutions are those with total reservable liabilities not exceeding the amount exempted from the reserve requirements.)

As a result, nonexempt institutions with deposits of $57 million or more report weekly, while nonexempt institutions with deposits under $57 million may report quarterly, in both cases on form F-2900. Institutions with deposits of $46.4 million or more report quarterly on form F-2910a, and exempt institutions with deposits of less than $46.4 million report annually on form F-2910a.

The 1995 changes were effective December 19, 1995. As noted, the 1996 changes were effective December 17, 1996.

STATUS REPORT: THE CONFERENCE ON CONSUMER FINANCE LAW

The Conference on Consumer Finance Law is a non-profit institute organized in 1926 by leading members of the American Bar Association (ABA) and the financial services industry, to provide educational services, publications, and research relating to consumer, commercial, and financial services law.

The Conference is now in its 71st year, and the 50th year of publication of its journal, the Consumer Finance Law Quarterly Report. In addition to publishing this journal, the Conference conducts meetings and programs in conjunction with the ABA Annual Meeting and the Spring meeting of the ABA Section of Business Law. The Conference also publishes books and sponsors national institutes and regional continuing education programs.

The Conference is participating in the current effort to revise Uniform Commercial Code Article 9, which covers lending transactions secured by personal property. This law revision effort has been underway for approximately three years and is expected to be concluded in 1998. The Conference also participates in other law reform efforts, and is expected to independently study and analyze proposals due next year from the National Bankruptcy Review Commission. If you are interested in any of these projects and would like to contribute to the work of the Conference in any of these areas of law, please contact the Editor of the Quarterly Report.

The Conference is a national organization with members in every state and a Governing Committee representing every region of the country. There are also overseas members in a number of different countries. Most members are lawyers, academics, judges, regulators, consumer advocates or financial services executives. All viewpoints are welcomed and expression of divergent views is encouraged. The Conference encourages submission of unsolicited manuscripts for publication in the Quarterly Report, and invites those who disagree with published articles to respond in writing for publication.

The Conference is supervised by a Governing Committee that establishes Conference policies and directs the activities of the Conference. It numbers approximately 45 persons. Membership on the Governing Committee is by invitation only and requires election by the members of the Governing Committee. The Conference is funded primarily by membership dues and subscriptions to the Quarterly Report, plus small private donations. The editorial offices of the Conference are located at Oklahoma City University School of Law.

Further information about the Conference is available from the Editor of the Quarterly Report.