The 2010 Amendments to the Uniform Text of Article 9

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I. Introduction

The latest project to revise the uniform text of Uniform Commercial Code (UCC) Article 9 (Secured Transactions) formally began in 2008 when the Uniform Law Commission (ULC) and the American Law Institute (ALI) established a joint Review Committee (JRC) to consider the possible need for such revisions. The vehicle was the JRC rather than a Drafting Committee because no decision had been made on what issues to cover, and because it was intended that no policy issues were to be decided. The scope of the JRC's mandate was to address ambiguities and propose clarifications as needed. There was a stated preference for making changes to Official Comments rather than to the statutory text where possible.

As a result, the 2010 changes to the uniform text of Article 9 (the 2010 Amendments) are not very numerous. Since the state legislatures generally enact only the text of Article 9 (though sometimes with non-uniform amendments) and not the Comments, this article focuses on the 2010 Amendments to that uniform text. However, in some instances the only changes appear in the 2010 changes to the Official Comments; therefore, some attention is directed at these as well. Moreover, the JRC's emphasis on the 2010 Amendments means that the Comments (along with any supplementary, state-specific Comments that may be added, e.g., by state Bar Association legislative review committees) may take on increased importance.

In addition, some changes that were considered but not adopted are noted.

II. The Debtor's Name

A. Individual Debtor's Name on Financing Statement

This is one of the most litigated perfection issues under current Article 9. As a result, the JRC devoted considerable attention to the basic issue of whether the name of the Debtor on the 2010 Amendments is to be provided in the financing statement or to be extracted from the state's records (as permitted by the 1999 Amendments).

If the state has issued more than one driver's license or identification card as described in the revised section 9-503(a)(4), the secured party must use the "most recently issued license or card." If the debtor is a decedent's estate, the financing statement must provide the name of the executor or administrator ("in a separate part of the financing statement") that the collateral is being administered by a personal representative. If the state has issued more than one driver's license or identification card as described in the revised section 9-503(a)(4), the secured party must use the "most recently issued license or card.

B. Name of Registered Organization

Although the 1998 revision of the uniform text of section 9-503 was focused on providing specific requirements for "registered organizations," a few problems in this area still surface. For example, what if the debtor's name as shown in the records of the Secretary of State is different from that in the Articles of Incorporation? Or what if those records are not publicly available, or are available only in truncated form? The 2010 Amendments to section 9-503(a)(1) specify that, if the debtor is a registered organization, the debtor's name on the financing statement is sufficient only if it provides the name that is stated to be the registered organization's name on the public organic record most recently filed with or issued by the registered organization's jurisdiction of organization which purports to state, amend, or restate the registered organization's name.23

This makes clear that the secured party cannot rely on secondary or truncated sources but may rely on a primary source such as a state-issued Certificate or Articles of Incorporation.

C. Trusts

Extensive attention was directed at trusts as debtors. Section 9-503(a)(2) was completely rewritten, to provide that, "for collateral held in a trust that is not a registered organization," the name of the Debtor is that specified in the "organic record" of the trust.24 If no such name is specified, "the name of the settlor or testator,..." In addition, "in a separate part of the financing statement," there must be an indication that the collateral is held in trust, and/or information sufficient to distinguish the trust from other trusts of the same settlor or testator.

The "name of the settlor or testator" is defined as the name specified in the trust's organic record or, if the settlor is a registered organization, the name specified in the organization's organic record.25

III. Other Filing Issues

A. Priority of an Unsecured Filing

Although this issue may seem clear, apparently for some it is not, and there have been arguments that an automatically perfected security interest26 loses the priority based on that perfection if the secured party files an unperfected financing statement. Some members of the JRC indicated a desire to clarify in the Comments that in this circumstance the time of filing is irrelevant to priority, unless the filing came first. However, this change was apparently not deemed necessary and was not included.

B. New Debtor

1. Introduction

This issue received considerable attention, as sections 9-508, 9-316 and 9-326 address issues that can be challenging when presented individually, and even more so in the aggregate. Significant clarifications are provided by the addition of new subsections 9-316(h) and (i) and revisions to section 9-326.

2. Section 9-316(h) and (i)

These new subsections provide that, for collateral held in a trust that is not a registered organization, the secured party's attachment of a security interest within four months after the location of the debtor's name in the financing statement filed in the debtor's prior state before the change is effective to perfect the security interest. Moreover, if the security interest becomes perfected in the debtor's new state before it would have become perfected in the prior state or the expiration of four months after the change (whichever comes first), it remains perfected thereafter in the new state.27 If not, it becomes unperfected and "is deemed never to have been perfected as against a purchaser of the collateral for value."28

If a financing statement naming the original debtor has been correctly filed in the new state, then the secured party's name in the financing statement of the new debtor29 is located in the new state, the financing statement is effective as to collateral owned or acquired by the new debtor.
within four months after the new debtor became subject to the security interest under section 9-305(a), the same extent to the original debtor would be bound.

If the security interest is perfected in the new state before the expiration of that four-month period or the time the security interest would have become perfected in the old state (whichever comes first), it remains perfected thereafter. Thus, a security interest that was unperfected at the end of that period and is thereby deemed "never to have been perfected" as against a purchaser for value.22

These changes clarify perfection issues in circumstances where a debtor or new debtor acquires after-acquired property after the appropriate location of the debtor has changed pursuant to section 9-301. Arguably under current law there is no perfection in this circumstance by reason of a filing in the prior state, unless the secured party files in the new state. The 2010 Amendments at section 9-316(b) and (c) provide a limited perfection for after-acquired property (and collateral owned by the new debtor) during the usual four month grace period.

3. Section 9-326

Section 9-326 is heavily but not completely renumbered. The text is stylistic, for purposes of consistency and clarity. As before, this section provides in essence that a security interest created by a new debtor, perfected by a filing that would be ineffective "but for the application of [section 9-508 or of sections 9-508 and 9-310(b)]" will lose priority as a security interest perfected by some other means.23 Thus, e.g., a security interest perfected against the new debtor by a filing against the original debtor is perfected against the new debtor, pursuant to the four month grace period at section 9-301(c)(1), will be subordinated to a competing security interest in the same collateral perfected directly against the new debtor in the new state.24

However, as before this rule at section 9-326(a) is subject to section 9-326(b), which has only one, nonsubstantive change. Section 9-326(b) provides that the normal priority rules of Article 9 apply to the other security interests described at section 9-326(a). For example, the proposed 2010 Comments explain that a security interest perfected by a new initial financing statement against the new debtor would not be subordinated under section 9-326(a), even if it filed to maintain a perfection against the original debtor pursuant to section 9-508(b).25 Similarly, section 9-326(b) provides that section 9-326(a) does not subordinate a security interest perfected by a filing against the original debtor covering collateral transferred from the original debtor to the new debtor.26

The Comment to revised section 9-326 updates the two examples in the old Comment to further clarify these issues by limiting the examples to same-jurisdiction scenarios.27 The final paragraph of the Comment added as part of the 2010 revisions then explains that the results in those examples do not change if the original and new debtors are located in different states.28

C. Location of Federally-Chartered and Foreign Debtors

1. Federal Entities

The location of the debtor, e.g., for purposes of the choice of law rules for filing and perfection at section 9-301, is determined under section 9-307. Federally-chartered entities are addressed at section 9-307(f). Section 9-307(f)(2) provides that a federally-chartered entity is located in the state that the entity so designates, if federal law permits such designation. The 2010 Amendments add a clause at the end of old section 9-307(f)(2) stipulating that this may not occur by the entity maintaining a main office, home office, or other comparable office.29 Thus, a designation need not state that it is a designation as such.30 This essentially elevates a part of old section 9-307 Comment 5 to the statutory text.31

2. Foreign Corporations

The location of a foreign corporation is governed by section 9-307(c), which has only one, nonsubstantive change. Section 9-307(c) provides that the normal priority rules of Article 9 apply to the other security interests described at section 9-307. For example, the proposed 2010 Comments explain that a security interest perfected by a new initial financing statement against the new debtor would not be subordinated under section 9-306(a), even if it filed to maintain a perfection against the original debtor pursuant to section 9-508(b).32 Similarly, section 9-306(b) provides that section 9-306(a) does not subordinate a security interest perfected by a filing against the original debtor covering collateral transferred from the original debtor to the new debtor.33

The Comment to revised section 9-306 updates the two examples in the old Comment to further clarify these issues by limiting the examples to same-jurisdiction scenarios.34 The final paragraph of the Comment added as part of the 2010 revisions then explains that the results in those examples do not change if the original and new debtors are located in different states.35

D. Assignments of Security Interests

It should be clear that an assignee of a perfected security interest need not re-file (or otherwise re-perfect) in order to maintain and assert the assignee's perfection and priority. Thus, by the time of this issue, at least one court has stumbled on this issue.36 This made the issue an obvious prospect for the JRC to consider. Nonetheless, the JRC did not make any revisions to section 9-310(c). The language seems very clear as is, and it is not apparent that saying more would be helpful. Nor is any change proposed for Comment 4, apparently for the same reason. In the meantime, subsequent courts have not repeated the Clark Consigning errors, so perhaps that problem will go away.

The JRC also decided not to address the issue of "trafficking in financing statements," e.g., where a creditor takes assignment of a financing statement even though there is no security interest or to take advantage of the priority conferred by a future advances clause. This issue was left to the developing case law.37

E. Form of Financing Statements

The statutory model forms that appear at section 9-511 are more general than is true of old Comment 12. The 2010 Amendments. Changes include deletion of the space previously provided for the debtor's Social Security or tax identification number, for privacy reasons. The old Comment 12 stated that the form was expressed as the rights of uniformity, if the states enact the 2010 Amendments (with revised forms) at an uneven rate. But this is a risk that accompanies the use of statutory forms. Your author's expectation is that the differences are likely to be problems in absolutes, but as always will be problems that always will warrant an analysis of the law in the state (or states) where the filing is to be made.38

Additional, related revisions are made to section 9-516(b), which provides a kind of "safe harbor" that allows a financing statement to be considered "filed" (for perfection purposes) if it is properly submitted with all of the specified features. However, these specified features are not included, and the filing office refuses to accept the filing, then [filling does not occur ....] Minor, conforming changes are made at section 9-516(c)(3)(B) and (C), changing references from "correction statement" to "information statement," and from "last name" to "surname." A larger change is made at section 9-516(b)(3)(B), requiring that the filing statement indicate whether the "name provided in the record of the debtor is the name of an individual debtor or an organization ...." Previous language at section 9-516(b)(3)(C), requiring that a financing statement filed against an organization indicate the type of organization, its jurisdiction of organization, or an organizational number, is deleted. A significant part of old Comment 12 at section 9-516, relating to deleted section 9-516(b)(3)(C), is deleted.

F. Location of a Trust

The JRC also decided not to make statutory revisions to address issues relating to the location of a trust. However, a new paragraph was added to Comment 2 (General Rules) for section 9-307 (Location of Debtor). This Comment notes that a common law trust is not an entity as such; rather, it is a relationship between the trustee(s) and beneficiary(ies).39 Therefore, the trust itself is not the debtor as defined in section 9-102.40 Instead, the "debtor" (defined essentially as the owners of the collateral under section 9-102(a)(2)(B)) is the trustee (or trustees) of the trust, in that capacity.41

G. Section 9-518—Claim Concerning Inaccurate or Wrongfully Filed Record

Section 9-518 is revised to change the former term "correction statement" to reference "an information statement." Conforming changes are made throughout section 9-518 and elsewhere in the 2010 Amendments as needed. A new section 9-518(c) is added ("Statement by secured party record"), allowing the secured party of record to file an information statement indicating that a record has been filed (e.g., a termination statement is not authorized under section 9-509(d). Two alternatives are then offered in the 2010 Amendments, for a new section 9-518(c)(1) or (2). Both alternatives essentially require the information statement filed pursuant to section 9-518(c) to: (1) identify the record to which it relates by file number; (2) indicate that it is an information statement; and (3) provide the basis for believing that the record of old section 9-518(b) was a record that was not authorized under section 9-509(d). However, Alternative B additionally requires, for a filing in the real estate mortgage records pursuant to section 9-509(b), that the old section 9-518(c) is renumbered section 9-518(e) and is an unamended existing section (but note that "information statement" as used above).
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Extensive new material is added to section 9-318. Comment 2 to explain these changes. This new material also notes that section 9-318 does not provide a mechanism allowing a secured party to correct an error in its own financing statement.

II. Priority Based on Unattornied Filing

There is an interesting addition to section 9-322, Comment 4 (Competing Perfected Security Interests), explaining how the Article 9 "notice filing" system works. Under the basic, "first-in-time, first-in-right" rule for determining priority, section 9-322(a)(1), a financing statement that is ineffective for perfection when filed (e.g., because there has been no attachment under section 9-203), but subsequently becomes effective (e.g., due to a later attachment), is sufficient for priority as of the date of the filing (even though it was initially ineffective at that time due to a lack of attachment). This encourages earlier filings by parties contemplating a subsequent transaction, because it gives a policy purpose to alerting interested parties of a possible need to inquire about a pending transaction. Revised Comment 4 to section 9-322 points this out, and also notes that the same analysis applies to a financing statement that is initially unattached under section 9-209 but subsequently becomes authorized. The fact that the financing statement was unattachment when filed does not change the analysis or result under section 9-322, and the Comment also notes that the same policy applies to the other Article 9 priority rules.

IV. Repossession and Sale of Collateral

A. Statutory Revision

Issues relating to the repossession and sale of collateral continue to be among the most litigated under Article 9. Nevertheless, the governing law (generally, Article 9 Part 6) is generally quite clear, or at least as close to clear as it is possible to consider. Therefore, the 2010 Amendments include only one (relatively minor) change to the statutory text of Article 9 Part 6 but somewhat more revisions to the Comments. The change to the statutory text is at section 9-607(a)(2), with the addition of language specifying that a secured party with a security interest in a mortgage loan can exercise the debtor's right to nonjudicial foreclosure of the mortgage upon submission of a recordable sworn affidavit stating that a default has occurred "with respect to the obligation secured by the mortgage." This is a modest clarification stating a point that seems obvious. As noted below, revisions to the Comments are more extensive.

II. Private Sales

Questions have arisen as to whether a private sale of a collateral under section 9-605(c)(2) gives the secured party the right to "double dip" by selling collateral to a private buyer and then reselling it to a public buyer. Here, the Comment notes that the situation where the collateral is sold at a private sale to an affiliate of the secured party. Comment 3 to section 9-605 is revised by adding a new paragraph specifying that a private sale of collateral pursuant to section 9-605(c) is equivalent to a "strict foreclosure" (i.e., retention of the collateral by the secured party) and therefore is governed by sections 9-620, 9-621, and 9-622, which require certain notices and consent by the debtor. Thus, the requirements can be waived only pursuant to section 9-626(b)(2) (requiring an agreement entered into and authenticated by the debtor after default).

C. Notice of Disposition Sale

1. Section 9-611

There is no change to the text of section 9-611, but the last sentence of Comment 4 is revised to provide that the foreclosed secured party need not notify other secured parties whose financing statements are difficult to find because, e.g., of changes in the debtor's location or changes due to the requirements for a name that is sufficient as the name of the debtor under section 9-303(a).

In addition, a new Comment 10 (Other Law and Practice) is added to section 9-611, noting that some state or federal laws may require additional notifications. The example cited is for enforcement of a ship mortgage for federally-registered vessels. The new Comment 10 notes that other applicable law may govern the statutory interpretation of such requirements (citing UCC sections 1-103, 1-104 and 9-109(c)(1))

2. Section 9-613

Again, this section is not changed, but a Comment is revised by the addition of a new paragraph. The addition to Comment 2 clarifies that section 9-613 applies to an electronic disposition sale, and that the requirement at section 9-613(1)(E) is satisfied if the notice states the time when the disposition begins and its electronic location (e.g., the Uniform Resource Locator (URL) or other internet address where the disposition can be accessed.

D. Acceptance of Collateral in Satisfaction; Debtor Remedies

Cross-references in Comments 11 and 12 to section 9-620 (governing acceptance of collateral in satisfaction of debt) are changed to reflect new sections in new UCC Article 1, on: variation by agreement (section 1-302); good faith (section 1-304); and the liberal administration of remedies (section 1-305).

Comment 2 to section 9-621 (notice of the secured party's proposal to retain collateral) is revised to make clear that a competing secured party entitled to notice may recover a loss under section 9-621(b) if it only if the required notice was not sent. The text of section 9-625 (remedies for a secured party's failure to comply with Article 9) is revised slightly (though importantly), to change the reference in the heading from the "law of the financing statement jurisdiction" to "consumer goods transactions" to cases where "the...collateral is consumer goods.

V. Other Issues

A. Errors or Omissions in the Initial Financing Statement

Section 9-706 provides that an "initial financing statement" is sufficient to continue the effectiveness of a prior financing statement filed pursuant to the choice of law in Article 9, where that choice of law is obsolete under the 1998 revisions. Comment 2 to section 9-706 is revised to make clear that the rules at section 9-506 (governing errors and omissions that are not seriously misleading) apply equally to initial financing statements.

B. Effective Date

Extensive new material is added at section 9-801 (Effective Date) and in the new Article 9 Part 8. In effect, these provisions carry forward the provisions of old Part 7 that are relevant to the transition to the 2010 Amendments. Sections 9-802 and 9-806 address transition issues relating to revision of the rules governing individual debtor names at revised section 9-503.

An example is provided in Comment 3 to section 9-801, stating that the 2010 Amendments do not render ineffective a filing made properly under prior law, until such time as that filing would become ineffective under prior law. Upon lapse the old filing can be continued by filing a continuation statement, but this requires an amendment of the existing financing statement to conform to the debtor's name to the requirements of revised section 9-503.

The Comment notes that there is no equivalent in the 2010 Amendments to the existing choice of law transition issues created by the 1998 revisions to the uniform text. There is also a Legislative Note to UCC Article 11, noting that Article 11 relates to transition issues in the 1972 uniform text revision, and these issues are now obsolete. The Legislative Note therefore recommends repeal of Article 11.

C. Article 8 Revisions

Comment 13 to section 8-102 (Article 8 definitions) is expanded with the addition of a new paragraph explaining that property is a "security," as maintained in section 9-107, only if records are maintained by or on behalf of the issuer for purposes of registering transfers, and not if the records are maintained merely to register ownership or for other purposes. Nor is it relevant that an issuer has the capability to record transfers ("for such is always the case"), if it has not in fact done so.

This Comment is intended to reject the holding in Highland Capital Management LP v. Schroeder to the contrary, which has been nominated by some observers as one of the worst cases of the decade for holding that promissory notes are securities.

D. Buyers of Commercial Tort Claims

The text of section 9-317(d) is revised slightly (but importantly), in essence to include buyers of commercial tort claims who are not registered buyers for value and without notice who take priority over an unperfected security interest. Previously, section 9-317(d) extended this priority to buyers of "accounts, electronic chattel paper, electronic documents, general intangibles, or investment property." The 2010 Amendments seek to address this by including buyers of "collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certified security..." thereby including buyers of all intangible collateral including commercial tort claims. Comment 6 to section 9-317 is also revised, to make clear that its related reference to various types of intangible collateral is not an exclusive listing. The exclusion of commercial tort claims under current section 9-317(d) is regarded as a typographical error, corrected in the 2010 Amendments.

35. See UCC Article 9 (Note): rec. comm. of 1-2010.
36. Id.
37. Id.
38. UCC Article 9 (Rec. Comm.) of 1-2010.
39. Id.
40. UCC Article 9 (Rec. Comm.) of 1-2010.
41. Id.
42. Whether the rate of interest is included is revised in 2(c), to be included in 2(b).
43. See also the debtor's affidavit at ¶ 3(a)(1).
44. UCC Article 9 (Rec. Comm.) of 1-2010.
45. See the Uniform Commercial Code §§ 9-401, 9-402.
46. Id.
47. The Uniform Commercial Code § 9-302(b).
48. UCC Article 9 (Rec. Comm.) of 1-2010.
49. See the definitions in UCC § 9-302.
50. 1. Id.; 2. Id., sec. 9-401, subd. 9; 3. Id., sec. 9-402, subd. 9; 4. UCC Article 9 (Rec. Comm.) of 1-2010.
51. Id.
Section 9-406(d) provides that a contract provision restricting assignment of the contract for purposes of creating or perfecting a security interest is general and enforceable. Section 9-406(c) is revised to specify that this does not apply to the sale of a payment intangible or promissory note, "other than a sale pursuant to a disposition of collateral under Section 9-620." Section 9-408(a) similarly provides for contractural restrictions on assignment of a promissory note, health-care-insurance receivable or general intangible for the purpose of creating or perfecting a security interest. Section 9-406(b) is revised to state that, under Section 9-620, there is no acceptance of collateral under Section 9-620. A reconciliation of the alternative means of creating electronic chattel paper is provided in Section 9-409(a). The following paragraphs (rephrasing alternative means of creating electronic chattel paper) are删除 as part of the 2010 Amendments. The changes in Section 9-406(c) are made in subsection 5(d), "General intangible: Payment Intangible." The fourth paragraph is extensively revised, noting that a right to payment "is frequently battened by ancillary rights, such as rights arising from contracts, and the lessor’s rights with respect to leased goods." The existing text of the Comment then goes on to specify, in essence, that these rights are part of the payment rights to which they relate, as chattel paper, and are not a separate property interest or type of collateral. The 2010 Amendments to Comment 9-406(c) then add three explanatory sentences providing, i.e., that an assignment of the collateral carries with it ancillary rights (e.g., assignment of a lessor’s right to payment) that transfers the lessor’s rights with respect to the leased goods under Section 2A-525.) Thus, if the lessor’s rights are "evidenced by chattel paper, then an assignment of the lessor’s rights to payment constitutes an assignment of chattel paper." Moreover, an agreement to the contrary may be effective between the parties but does not alter the statutory characterization of the collateral for purposes of Article 9. As to Article 8, the existing Comment 3 states that section 9-104 is derived from section 8-106 and that section 8-106 defines "control" for purposes of investment property. Thus, existing Comment 3 already indicates that section 8-106 does not apply to deposit accounts. The existing Comments to section 9-104 also emphasize a difference between sections 9-104 and 8-106. The latter does not require that a third party "control" agreement be authenticated by the securities intermediary, while section 9-104(a)(2) requires authentication by the debtor, the third party secured creditor, and the bank where the deposit account is maintained. This again indicates that different considerations are involved, indicating that section 8-106 does not apply to deposit accounts. An added example to section 9-104 Comment 3 as part of the 2010 Amendments further illustrates the language issue. The example, which Bank A (where the deposit account is maintained) serves as agent for Bank X, Y, and Z in making a secured loan to the owner of the deposit account. Because Bank A, as agent for Banks X, Y, and Z, is not a secured party under section 9-102(a)(7) and has perfected by control under section 9-104(a)(1), the security interest of Banks X, Y, and Z is also perfected. As to Article 8, the existing Comment 3 states that section 9-104 is derived from section 8-106 and that section 8-106 defines "control" for purposes of investment property. Thus, existing Comment 3 already indicates that section 8-106 does not apply to deposit accounts. The existing Comments to section 9-104 also emphasize a difference between sections 9-104 and 8-106. The latter does not require that a third party "control" agreement be authenticated by the securities intermediary, while section 9-104(a)(2) requires authentication by the debtor, the third party secured creditor, and the bank where the deposit account is maintained. This again indicates that different considerations are involved, indicating that section 8-106 does not apply to deposit accounts. An added example to section 9-104 Comment 3 as part of the 2010 Amendments further illustrates the language issue. The example, which Bank A (where the deposit account is maintained) serves as agent for Bank X, Y, and Z in making a secured loan to the owner of the deposit account. Because Bank A, as agent for Banks X, Y, and Z, is not a secured party under section 9-102(a)(7) and has perfected by control under section 9-104(a)(1), the security interest of Banks X, Y, and Z is also perfected. Like its predecessor at old Comment 4 (from which, as noted, it is derived), the second paragraph of new Comment 3 emphasizes that section 9-105 is "not based on the same concepts as those governing perfection of security interests..." The letter-of-credit rights (Section 9-107)(a), because those rules "are based on existing market practices and legal and regulatory regimes for institutions such as banks and securities intermediaries." The flexible approach of section 9-105 is intended to permit the development of such practices in this broader context.

J. Changes in Debtor’s Name

Section 9-507 covers situations where a financing statement is sufficient when filed, but subsequently becomes seriously misleading (e.g., due to a change in the debtor’s name). It states the general rules that post-filing changes do not impair the effectiveness of the filing, even if the information in the financing statement has become seriously misleading. However, current section 9-507(c) provides that a subsequent change in the debtor’s name that renders the filed financing statement seriously misleading causes the financing statement to become ineffective as to collateral acquired by the debtor more than four months after the change. As to collateral acquired before the end of that four month period, the filing information remains effective despite being rendered seriously misleading by the change. The 2010 Amendments include extensive clarifying revisions to section 9-507(c). Section 9-507(c) as revised provides that a financing statement which becomes insufficient as regards the debtor’s name under section 9-503 is nonetheless effective as to collateral acquired by the debtor before or within four months after the "filed" financing statement becomes seriously misleading.

86. Rev’d 9-107(d).
87. See UCC Article 1 § 1-102(a)(7).
88. See UCC Article 1 § 1-102(a)(7).
89. See UCC Article 1 § 1-102(a)(7).
90. See UCC Article 1 § 1-102(a)(7).
91. See UCC Article 1 § 1-102(a)(7).
92. See UCC Article 1 § 1-102(a)(7).
93. See UCC Article 1 § 1-102(a)(7).
94. See UCC Article 1 § 1-102(a)(7).
95. See UCC Article 1 § 1-102(a)(7).
96. See UCC Article 1 § 1-102(a)(7).
97. See UCC Article 1 § 1-102(a)(7).
98. See UCC Article 1 § 1-102(a)(7).
99. See UCC Article 1 § 1-102(a)(7).
VI. Conclusion

While numerous relatively minor clarifying revisions are scattered throughout the 2010 Amendments (including the Comments), a list of the primary issues considered or addressed as part of the 2010 Amendments could include the following:

- problems with the debtor’s name, as required on the financing statement (especially but not limited to individual debtors);\(^\text{105}\)
- other filing issues;\(^\text{106}\)
- new debtors, especially in conjunction with an interstate transaction;\(^\text{107}\)
- foreign and federal entities;\(^\text{108}\)
- revisions to the uniform model forms;\(^\text{109}\)
- the location of a trust;\(^\text{110}\)
- disposition sales;\(^\text{111}\)
- rejecting the Highland Capital case;\(^\text{112}\)
- clarifications regarding anti-assignment clauses;\(^\text{113}\)
- electronic authentication;\(^\text{114}\)
- the role of agency law as to “control”;\(^\text{115}\)
- control of electronic chattel paper;\(^\text{116}\) and
- certificate of title issues.\(^\text{117}\)

This is not a complete list, as other (primarily technical) amendments to the uniform text and revisions to the Comments have been made (including, e.g., updated cross-references and clarifications).

The 2010 Amendments all can be considered clarifications or logical updates, and should not be considered controversial by any knowledgeable person. Their early and uniform enactment should help to modernize, clarify, and simplify the UCC, our most important and foundational state commercial law, consistent with the well-established goals of the UCC.\(^\text{118}\)

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OCC Proposed Rule...

(Continued from page 72)

such institutions.\(^\text{14}\) Section 1046 of the Dodd-Frank Act specifically amended HOLA to provide that HOLA “does not occupy the field in any area of State law.”\(^\text{15}\) The net effect is to apply the “conflict preemption” standard to federal savings associations.

To implement this change, the Proposed Rule includes a new 12 C.F.R. section 740.106a that references section 1046 of the Dodd-Frank Act and provides that state laws apply to federal savings associations and their subsidiaries to the same extent and in the same manner that those laws apply to national banks and their subsidiaries. A parallel new 12 C.F.R. section 34.6 will be added to Subpart A of 12 C.F.R. Part 34, which centers on real estate lending and appraisals. In the Supplementary Information to the Proposed Rule, the OCC noted that the affected OTS preemption regulations will be repealed.

V. Visitorial Powers and the Enforcement of Preempted State Laws

Section 1047 of the Dodd-Frank Act codifies the holding of chimera v. clearing house ass’n, L.L.C.,\(^\text{16}\) regarding exceptions to the exclusive visitorial powers of the OCC under the National Bank Act. As stated in the Supplementary Information, the OCC has concluded that “under Chimera, a state attorney general may bring an action against a national bank in a court of appropriate jurisdiction to enforce non-preempted state laws, but is restricted in conducting non-judicial investigations or oversight of a national bank.” Section 1047 also amended the HOLA to provide that the same visitorial powers apply to federal savings associations and their subsidiaries, to the same

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\(^{14}\) See 12 C.F.R. § 500.2a (so-called “field” preemption).

\(^{15}\) See Dodd-Frank Act § 1646 (12 U.S.C. § 1465).

\(^{16}\) 159 S. Ct. 2789 (2010).