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2010 revisions to Article 9 of the Uniform Commercial Code

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The Uniform Law Commission and American Law Institute have approved the first significant changes to Article 9 of the Uniform Commercial Code (the UCC) since the sweeping revisions in 1998. In drafting the 2010 Amendments (the Amendments), the sponsoring organizations sought to leave the existing statutory language unchanged whenever possible. Instead, they focused on clarifying ambiguities and addressing practical issues by "surgical" additions and deletions to the text and changes to the Official Comments. The following are certain Amendments which have important implications for commercial lenders.

Among the most significant, and certainly the most talked-about, Amendments are those governing the sufficiency of a debtor's name on a financing statement. If the debtor is an entity, UCC Â§9-503(a) currently provides that the debtor's name is the one indicated on the public record of the jurisdiction of organization. Because public record is an undefined term, this provision has created uncertainty. The Amendments instead use the term "public organic record," which is defined to include records available for public inspection that were filed with, or issued by, a state to form the entity. Thus, public organic records include certificates of incorporation and organization, but not certificates of good standing or legal existence. Under revised Â§9-503(a)(1), a debtor's name is (i) that stated on the public organic record (ii) most recently filed with, or issued by, the jurisdiction of organization (iii) which purports to state the name. For example, if the title line of the most recently filed certificate of incorporation reads "ABC Corp.," but Article 1 states the name of the corporation to be "ABC Corporation," the later should appear on the financing statement.

If the debtor is an individual, the UCC currently provides no specific guidance for name sufficiency. Because this was such a hotly debated topic, the Amendments offer two alternatives from which states will choose. Alternative A, the "Only if" option, provides that if a debtor has an unexpired driver's license (or other state i.d.), a financing statement is sufficient only if it provides the name of the individual indicated on such license or i.d. If (and only if) the debtor does not have such documentation, the financing statement may use the debtor's first personal name and surname. Alternative B, the "Safe Harbor" option, offers a safe harbor if a financing statement provides either (a) the debtor's individual name as determined by state law, (b) the debtor's surname and first personal name, or (c) the name on an unexpired driver's license (or other state i.d.). Thus, under both options, the name on an unexpired driver's license (or other state i.d.) would suffice.

Other significant revisions are those proposed under UCC Â§9-316(h) and (i). Currently UCC Â§9-316 provides that a security interest that is perfected at the time a debtor changes its location remains temporarily perfected for four months after the move. The current law does not, however, provide for temporary automatic perfection of a security interest in collateral first-acquired within such four month period. The Amendments add new subsections (h) and (i) to Â§9-316, which provide for temporary automatic perfection of a security interest in collateral first-acquired with the

four months after, either, the original debtor moves (subsection h), or a new debtor in another jurisdiction becomes bound by the original financial statement, e.g. by merger (subsection i), so long as the original financing statement would have otherwise been effective to perfect the security interest. However, pursuant to UCC Â§9-326, a security interest in assets of a new debtor perfected solely by subsection (i) would be subordinate to a security interest perfected by other means (including by another filing).

The Amendments also include an important clarification, or really confirmation, to UCC Â§9-104 relative to control of deposit accounts. The proposed revision to Official Comment 3 confirms that a lead bank in a syndicated lending transaction, which has been granted a security interest in the deposit account for the benefit of itself and the lenders and serves as depository bank, has a perfected security interest in the deposit account without any further agreement. Additionally, the Amendments simplify the financing statement by eliminating the requirement that the debtor's (1) type of organization, (2) jurisdiction of organization, and (3) organizational identification number be provided, and include revised national forms.

These and other Amendments are under consideration by state legislatures nationwide. The Amendments have a nationwide effective date of July 1, 2013, however several states including Connecticut and Rhode Island have already enacted them.

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