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JUDICIARY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
131ST LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 59, L.D. 91, “An Act to Adopt the National 2022 Amendments to the Uniform Commercial Code”

Amend the bill by striking out everything after the enacting clause and inserting the following:

'PART A

PREFATORY NOTE

1. **Background.** In 2019, the Uniform Law Commission and The American Law Institute (the Sponsors) appointed a Joint Committee to consider whether changes to the UCC are advisable to accommodate emerging technologies, such as artificial intelligence, distributed ledger technology, and virtual currency. The Joint Committee was initially formed as a study committee, but subsequently was constituted as the Drafting Committee to prepare amendments to the UCC.

The Drafting Committee held 18 meetings from October 2019 to March 2022. It also met with ULC commissioners in advance of the ULC Annual Meetings in 2021 and 2022. Several informal working groups were formed and these groups provided substantial input to the Drafting Committee. More than 300 observers to the Drafting Committee participated in the process. During the process members of the Drafting Committee and observers reached out to industry groups and other stakeholders for input and also participated in many CLE presentations and meetings to educate members of the bar and other interested constituencies.

The work of the Drafting Committee focused primarily on the following areas concerning the UCC: digital assets (controllable electronic records), electronic money, chattel paper, "bundled" or "hybrid" transactions (consisting of the sale or lease of goods together with the sale, lease, or licensing of other property and the provision of services as an integrated transaction), documents of title, payment systems, miscellaneous UCC amendments, and consumer issues.

COMMITTEE AMENDMENT

1 The ALI approved Tentative Draft No. 1 (April 2022) of the Uniform Commercial
2 Code and Emerging Technologies draft, subject to the usual caveats, at its annual meeting
3 in May 2022. The ULC approved the Uniform Commercial Code Amendments (2022)
4 (2022 Amendments) at its annual meeting in July 2022.

5 2. Overview of 2022 Amendments.

6 a. **New UCC Article 12—Controllable electronic records, controllable accounts,
7 controllable payment intangibles.** The 2022 Amendments include a new UCC Article
8 12 that governs the transfer of property rights in certain intangible digital assets
9 ("controllable electronic records") that have been or may be created and may involve the
10 use of new technologies. These assets include, for example, certain types of (non-fiat)
11 virtual currency and nonfungible tokens (NFTs). "Control" of controllable electronic
12 records is a central organizing concept under Article 12. Controllable electronic records are
13 defined to include only those electronic records that can be subjected to control. Control is
14 best understood in a general sense as a functional equivalent of "possession" of a
15 controllable electronic record and a necessary condition for protection as a good faith
16 purchaser for value (a "qualifying purchaser") of a controllable electronic record. Article
17 12 confers an attribute of negotiability on controllable electronic records because a
18 qualifying purchaser takes its interest free of conflicting property claims to the record.

19 Controllable electronic records also provide a mechanism for evidencing certain rights
20 to payment—controllable accounts and controllable payment intangibles. An account
21 debtor (obligor) on such a right to payment agrees to make payments to the person that has
22 control of the controllable electronic record that evidences the right to payment.
23 Assignments and other aspects of these rights to payment are governed by revisions to UCC
24 Article 9, discussed below, as well as Article 12. Because a qualifying purchaser of a
25 controllable account or controllable payment intangible will take free of competing
26 property claims, these rights to payment also would have this attribute of negotiability.
27 Article 12 provides special rules with respect to the payment obligations and conditions of
28 discharge of account debtors on controllable accounts and controllable payment
29 obligations.

30 Article 12 includes a choice-of-law rule for the matters that it covers in connection with
31 transactions in controllable electronic records.

32 b. Secured transactions amendments—UCC Article 9.

33 *Article 12 conforming and other amendments.* The 2022 Amendments include
34 extensive amendments to UCC Article 9. Several of these amendments address security
35 interests in controllable electronic records and in the rights to payment that are embedded
36 in, or tethered to, controllable electronic records—controllable accounts and controllable
37 payment intangibles. Perfection (i.e., essentially, enforceability against third parties) of
38 security interests in these assets may be achieved by a secured party obtaining control of
39 the asset or filing a financing statement in the appropriate jurisdiction’s filing office. A
40 security interest perfected by control has priority over a security interest perfected by filing.
41 The amendments also provide special rules for the law governing perfection and priority
42 for security interests in controllable electronic records, controllable accounts, and
43 controllable payment intangibles. These rules draw on the Article 12 choice-of-law rule.

44 *Chattel paper.* UCC Article 9 affords special treatment to “chattel paper” (e.g.,
45 installment sale contracts and personal property leases). The amendments redefine “chattel

1 paper” and update the relevant Article 9 provisions. The revised definition resolves
2 uncertainty that has arisen under the previous definition and more accurately reflects the
3 distinction between the seller’s or lessor’s right to payment and the record (e.g., installment
4 sale contract or lease) evidencing that right. The revised definition also resolves uncertainty
5 that has arisen when goods are leased as part of a hybrid transaction involving services or
6 non-goods property as well as specific goods. The amendments address additional issues
7 relating to hybrid transactions, mentioned in 2.d., below, and provide an amended
8 definition of “control” of an authoritative electronic copy of a record evidencing chattel
9 paper, which reflects a more accurate and technologically flexible approach than the
10 previous definition.

11 *Money.* The amendments include a revised definition of "money" in Article 1, which
12 applies throughout the UCC unless otherwise provided. They also include amendments that
13 define "electronic money" and provide a definition of "control" of electronic money that
14 tracks the corresponding definition for control of controllable electronic records. Perfection
15 of a security interest in electronic money (a subset of money) as original collateral must be
16 by control, not filing. The amendments provide a revised Article 9 definition of "money"
17 that excludes deposit accounts (which could in the future be adopted by a government as
18 money) and money in an electronic form that cannot be subjected to control. The
19 amendments also update and clarify the take-free rules for transferees of money—both
20 electronic money and tangible money—and transferees of funds from deposit accounts.

21 *Control through another person.* Revisions to the provisions on control in Sections
22 9-104 (control of deposit accounts), 9-105 (control of authoritative electronic copy of
23 record evidencing chattel paper), and 9-105A (control of electronic money) and a
24 conforming modification to Section 8-106(d)(3) (control of security entitlement) address
25 control through the acknowledgment of a person in control. For similar provisions, see
26 Sections 7-106 (control of electronic document of title) and 12-105 (control of controllable
27 electronic record). For a discussion relevant to these revisions, see Section 12-105,
28 Comment 8.

29 *Assignments.* The amendments contain new Article 9 definitions of the terms
30 "assignee" and "assignor," which conform to the descriptions in the pre-2022 official
31 comments.

32 **c. Payments amendments—UCC Articles 3 (negotiable instruments), 4 (bank**
33 **deposits and collections), and 4A (funds transfers).** The amendments include several
34 revisions to Articles 3, 4 and 4A or their official comments. The amendments relate to
35 negotiability, remote deposit capture, statements of account, the scope of Article 4A
36 (definition of payment order), and security procedures. The amendments also replace
37 references to a "writing" with references to a "record." Many of the changes are to the
38 official comments and are intended to further clarify the statutory text.

39 **d. Other emerging technologies-related amendments.** The amendments contain a
40 revised definition of "conspicuous" in Article 1 and a revised and an updated official
41 comment on that term. They also add to Article 1 the standard definition of "electronic"
42 used by the ULC and adopt revised Article 1 definitions of "send" and "sign," which
43 address records other than writings.

44 The amendments also amend Sections 2-102 and 2A-102 and related definitions to
45 clarify the scope of Articles 2 and 2A with respect to hybrid transactions. They also include

1 amendments to several provisions of Articles 2 and 2A to change previous references to a
2 "writing" or "written" communication to refer instead to a "record."

3 The amendments include a revised Section 7-106, defining "control" for electronic
4 documents of title. The revised section retains the general rule and the safe harbor under
5 the previous provision and adds an additional safe harbor along the lines of the revised
6 section on control of chattel paper. The amendments also include revisions to the official
7 comments to several provisions of Articles 7 and 9, in particular to clarify the treatment of
8 nonnegotiable documents of title.

9 Finally, the amendments include several revisions to the official comments to Article
10 8 (investment securities), in particular to make clear that a controllable electronic record
11 may be a "financial asset" credited to a securities account.

12 e. **Miscellaneous amendments.** The Article 1 definition of "person" is amended to
13 include a protected series established under non-UCC law.

14 Amendments to Section 5-116 cure an ambiguity relating to the separate status of bank
15 branches in the former provision and to reject incorrectly decided case law arising from
16 that ambiguity.

17 f. **Official Comments.** The amendments include additional revisions of the official
18 comments to many sections. The amended official comments remove certain references to
19 obsolete and withdrawn UCC provisions and other uniform laws except as may be
20 necessary or useful to explain particular issues.

21 **Maine Comment:**

22 The UCC amendments as adopted by Maine do not include provisions related to
23 electronic money. All references to electronic money in the official comments therefore
24 may be disregarded.

25 **Sec. A-1. 11 MRSA §1-1201, sub-§(10)**, as enacted by PL 2009, c. 325, Pt. A, §2
26 and affected by §4, is amended to read:

27 **(10).** "Conspicuous," with reference to a term, means so written, displayed or
28 presented that, ~~based on the totality of the circumstances,~~ a reasonable person against which
29 it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision
30 for the court. ~~Conspicuous terms include the following:~~

31 ~~(a). A heading in capitals equal to or greater in size than the surrounding text, or in~~
32 ~~contrasting type, font or color to the surrounding text of the same or lesser size; and~~

33 ~~(b). Language in the body of a record or display in larger type than the surrounding~~
34 ~~text, or in contrasting type, font or color to the surrounding text of the same size, or set~~
35 ~~off from surrounding text of the same size by symbols or other marks that call attention~~
36 ~~to the language.~~

37 **Sec. A-2. 11 MRSA §1-1201, sub-§(15)**, as enacted by PL 2009, c. 325, Pt. A, §2
38 and affected by §4, is amended to read:

39 **(15).** "Delivery," with respect to an electronic document of title, means voluntary
40 transfer of control and, with respect to an instrument, a tangible document of title or an
41 authoritative tangible copy of a record evidencing chattel paper, means voluntary transfer
42 of possession.

1 **Sec. A-3. 11 MRSA §1-1201, sub-§(16-A)** is enacted to read:

2 **(16-A).** "Electronic" means relating to technology having electrical, digital, magnetic,
3 wireless, optical, electromagnetic or similar capabilities.

4 **Sec. A-4. 11 MRSA §1-1201, sub-§(21), ¶(c),** as enacted by PL 2009, c. 325, Pt.
5 A, §2 and affected by §4, is amended to read:

6 (c). The person in control, other than pursuant to section 7-1106, of a negotiable
7 electronic document of title.

8 **Sec. A-5. 11 MRSA §1-1201, sub-§(24),** as enacted by PL 2009, c. 325, Pt. A, §2
9 and affected by §4, is amended to read:

10 **(24).** "Money" means a medium of exchange that is currently authorized or adopted
11 by a domestic or foreign government and is not in an electronic form. The term includes a
12 monetary unit of account established by an intergovernmental organization or by agreement
13 between 2 or more countries.

14 **Sec. A-6. 11 MRSA §1-1201, sub-§(27),** as enacted by PL 2009, c. 325, Pt. A, §2
15 and affected by §4, is amended to read:

16 **(27).** "Person" means an individual, corporation, business trust, estate, trust,
17 partnership, limited liability company, association, joint venture, government,
18 governmental subdivision, agency or instrumentality, ~~public corporation~~ or any other legal
19 or commercial entity. "Person" includes a protected series, however denominated, of an
20 entity if the protected series is established under law other than the Uniform Commercial
21 Code that limits, or limits if conditions specified under the law are satisfied, the ability of
22 a creditor of the entity or of any other protected series of the entity to satisfy a claim from
23 assets of the protected series.

24 **Sec. A-7. 11 MRSA §1-1201, sub-§(36),** as enacted by PL 2009, c. 325, Pt. A, §2
25 and affected by §4, is amended to read:

26 **(36).** "Send," in connection with a ~~writing,~~ record or ~~notice notification,~~ means:

27 (a). To deposit in the mail ~~or,~~ deliver for transmission or transmit by any other usual
28 means of communication, with postage or cost of transmission provided for ~~and~~
29 ~~properly addressed and, in the case of an instrument, to an address specified thereon or~~
30 ~~otherwise agreed, or if there be none, addressed~~ to any address reasonable under the
31 circumstances; or

32 (b). ~~In any other way to~~ To cause to be received any the record or notice notification
33 to be received within the time it would have ~~arrived~~ been received if properly sent
34 under paragraph (a).

35 **Sec. A-8. 11 MRSA §1-1201, sub-§(37),** as enacted by PL 2009, c. 325, Pt. A, §2
36 and affected by §4, is repealed.

37 **Sec. A-9. 11 MRSA §1-1201, sub-§(37-A)** is enacted to read:

38 **(37-A).** "Sign" means, with present intent to authenticate or adopt a record:

39 (a). To execute or adopt a tangible symbol; or

40 (b). To attach to or logically associate with the record an electronic symbol, sound or
41 process.

1 "Signed," "signing" and "signature" have corresponding meanings.

2 * * *

3 **Official Comment**

4 * * *

5 3. "Agreement." Derived from former Section 1-201. As used in the Uniform
6 Commercial Code the word is intended to include full recognition of usage of trade, course
7 of dealing, course of performance and the surrounding circumstances as effective parts
8 thereof, and of any agreement permitted under the provisions of the Uniform Commercial
9 Code to displace a stated rule of law. Whether an agreement has legal consequences is
10 determined by applicable provisions of the Uniform Commercial Code and, to the extent
11 provided in Section 1-103, by the law of contracts. Concerning developments in
12 technology, including, for example, contract formation in electronic environments,
13 automated transactions, and electronic agents, see Section 1-103, Comment 2.

14 * * *

15 10. "Conspicuous." Derived from former Section 1-201(10). This definition states the
16 general standard that to be conspicuous a term ought to be noticed by a reasonable person
17 against which the term is to operate. Whether a term is conspicuous is an issue for the court.
18 Subparagraphs (A) and (B) set out several methods for making a term conspicuous.
19 Requiring that a term be conspicuous blends a notice function (the term ought to be noticed)
20 and a planning function (giving guidance to the party relying on the term regarding how
21 that result can be achieved). Although these paragraphs indicate some of the methods for
22 making a term attention-calling, the test is whether attention can reasonably be expected to
23 be called to it. The statutory language should not be construed to permit a result that is
24 inconsistent with that test. Whether the appearance and presentation of a particular term
25 satisfy this standard is determined by reference to the totality of the circumstances and
26 requires a case-by-case analysis.

27 Historically, contract terms were presented in writing, making the use of standards that
28 relate to the size and appearance of type relevant to the determination of conspicuousness.
29 Today terms in a record are frequently communicated electronically. New technologies
30 have created opportunities for terms to be displayed or presented in novel ways, such as by
31 the use of pop-up windows, text balloons, dynamically expanding or dynamically
32 magnifying text, and non-visual elements such as vibrations, to name a few.

33 The definition has been revised in the Uniform Commercial Code Amendments (2022)
34 (2022 Amendments) by deleting the statutory examples relating to the appearance of type
35 and instead indicating in these comments a broader universe of factors that are applicable
36 to both written and electronic presentations. This approach is intended to be both more
37 protective of consumers and more useful to drafters by providing more clarity and
38 flexibility in the methods that may be used to call attention to a term.

39 The attributes of a reasonable person against which a term is to operate can vary
40 depending upon the nature of the transaction and the market in which the transaction
41 occurs. For example, assume that a merchant of goods wishes to enter into a transaction for
42 the sale or lease of goods which does not include an implied warranty of merchantability
43 or fitness for particular purpose. Depending on the particular transaction, the person against

1 which the term excluding implied warranties is to operate may be a large business buyer or
2 lessee, a small business, or a consumer. Similarly, the determination of whether a term is
3 conspicuous may, depending on the context, yield a different conclusion when the term is
4 used in a standard form agreement than when terms of the agreement are the subject of
5 negotiation or discussion.

6 Terms presented in an online record raise issues that differ in some respects from the
7 issues associated with presenting the same terms in a writing. For example, how a term
8 appears depends to some extent on the equipment and settings used by the person presented
9 with the term.

10 The test of whether a term is conspicuous remains constant notwithstanding the
11 different contexts referenced above. A term is conspicuous if its appearance and
12 presentation are such that it ought to be noticed by a reasonable person against which the
13 term is to operate. If the term is in a standard form intended for use in many agreements,
14 the determination of whether the term is conspicuous may be made with reference to typical
15 likely parties to the agreements, taking into account all aspects of the transaction, the range
16 of likely equipment and settings used by such parties, and the education, sophistication,
17 disabilities, and other attributes of such parties. If the term is not in a standard form, the
18 determination of whether it is conspicuous should be made with reference to a reasonable
19 person in the position of the actual person against which it is to operate.

20 Factors relevant to whether a term is conspicuous include, but are not limited to, the
21 following:

22 (i) The use of headings and text that contrast with the surrounding text. For example, a
23 term is likely to be conspicuous if it is introduced by a heading in uppercase letters equal
24 to or greater in size than the surrounding text. Similarly, a term is likely to be conspicuous
25 if set out in language in the body of a record or display in larger type than the surrounding
26 text, or in contrasting type, font, or color to the surrounding text of the same size, or set off
27 from surrounding text of the same size by symbols or other marks that call attention to the
28 language. However, even with those characteristics, for a term to be conspicuous the overall
29 statutory test must always be met. For example, even if in bold, uppercase letters, a term
30 might not be conspicuous if placed among other terms also in bold, uppercase letters so
31 there is no contrast with the surrounding text or if the application of other factors causes
32 the term not to be provided such that a reasonable person against which it is to operate
33 ought to have noticed it.

34 (ii) The placement of the term in the record. A term appearing at, or hyperlinked from,
35 text at the beginning of a record, or near the place where the person against which the term
36 is to operate must signify assent, is more likely to be conspicuous than a term in the middle
37 of a lengthy record absent the use of a method reasonably designed to draw the person’s
38 attention to the term in middle of the record (for example, by providing separate reasonable
39 notice of the term before presenting the record containing the term to the person for assent
40 or forcing the person to stop on a screen highlighting the term during the presentation of
41 the record for assent).

42 (iii) If terms are available only through the use of a hyperlink, in addition to the
43 placement of the hyperlink as described above, factors to be considered include whether
44 there is language drawing attention to the hyperlink and describing its function, and the
45 size and color of the text used for the hyperlink and any related language.

1 (iv) The language of the heading, if any. A misleading heading – such as the heading
2 "Warranty" for a paragraph that contains a disclaimer of warranties – might cause a
3 reasonable person to fail to notice the language that would disclaim warranties, so that the
4 term would not be conspicuous.

5 (v) The effort needed to access the term. The process and flow of the display and
6 presentation is also relevant. For example, a term accessible only by triggering multiple
7 hyperlinks is less likely to be conspicuous than a term accessible from a single hyperlink.

8 (vi) Whether the person against which the term is to operate must separately assent to
9 or acknowledge the term. Obtaining separate assent or acknowledgment of a term is
10 generally sufficient to make the term conspicuous.

11 As noted above, the evolution of technology has led to an evolution in the ways in
12 which terms in an electronic record are displayed or presented. A term displayed or
13 presented in a novel way utilizing emerging technologies is, of course, conspicuous if the
14 effect of the display or presentation is that a reasonable person against which the term is to
15 operate ought to have noticed it.

16 This definition deals only with requirements that a term be conspicuous (or noted
17 conspicuously) that are stated in particular provisions of the Uniform Commercial Code.
18 Other protective doctrines designed to assure that assent is meaningful that are found in
19 law outside the UCC may also apply. See Section 1-103(b).

20 * * *

21 15. "Delivery." Derived from former Section 1-201. The reference to certificated
22 securities has been in a pre-2022 version was deleted in light of the more specific treatment
23 of the matter in Section 8-301. The definition has been also was revised to accommodate
24 electronic documents of title. Control of an electronic document of title is defined in Article
25 7 (Section 7-106). Another revision in the 2022 Amendments conformed the reference to
26 chattel paper to the revised definition of that term and the revised methods of perfection.
27 See Sections 9-102(a)(11) (defining "chattel paper"); 9-314A (perfection by possession and
28 control of chattel paper).

29 16. "Document of title." * * *

30 * * *

31 A document of title may be either tangible or electronic. ~~Tangible Paper~~ documents of
32 ~~title should be construed to mean traditional paper documents.~~ are "tangible documents of
33 title." Electronic documents of title are documents that are stored in an electronic medium
34 ~~instead of in tangible form. The concept of an electronic medium should be construed~~
35 ~~liberally to include electronic, digital, magnetic, optical, electromagnetic, or any other~~
36 ~~current or similar emerging technologies. "Electronic" is defined in paragraph 16A. As to~~
37 ~~reissuing a document of title in an alternative medium, see Article 7, Section 7-105. Control~~
38 ~~for electronic documents of title is defined in Article 7 (Section 7-106).~~

39 16A. "Electronic." The basic nature of most modern technologies and the need for a
40 recognized, single term warrants the use of "electronic" as the defined term, even though
41 not all technologies listed may be technically "electronic" in nature. The definition is
42 intended to be applied broadly as new technologies develop. The term must be construed
43 broadly in light of developing technologies in order to validate commercial transactions

1 regardless of the medium used by the parties to document them. See generally Uniform
2 Electronic Transactions Act, Section 2, Comment 4.

3 * * *

4 20. "Good faith." * * *

5 Over time, however, amendments to the Uniform Commercial Code brought the
6 Article 2 merchant concept of good faith (subjective honesty and objective commercial
7 reasonableness standards of fair dealing) into other Articles. First, Article 2A explicitly
8 incorporated the Article 2 standard. See Section 2A-103(7). Then, other Articles broadened
9 the applicability of that standard by adopting it for all parties rather than just for merchants.
10 See, e.g., Sections 3-103(a)(4), 4A-105(a)(6), 7-102(a)(6), 8-102(a)(10), and 9-102(a)(43).
11 Finally, Articles 2 and 2A were amended so as to apply the standard to non-merchants as
12 well as merchants. See Sections 2-103(1)(j), 2A-103(1)(m). All of these definitions are
13 comprised of two elements-honesty in fact and the observance of reasonable commercial
14 standards of fair dealing. Only revised Article 5 defines continued to define "good faith"
15 solely in terms of subjective honesty, and only Article 6 (in the few states that have not
16 chosen to delete the Article) is without a definition of good faith. * * *

17 * * *

18 21. "Holder." Derived from former Section 1-201. The definition has been reorganized
19 for clarity and amended to provide for electronic negotiable documents of title. The
20 definition excludes persons who have control of an electronic document of title pursuant to
21 Section 7-106(g) through the acknowledgment by a person in control. This ensures that an
22 issuer of a document can ascertain who is entitled to delivery from the document itself or
23 from the system in which the document is recorded, without any obligation to look behind
24 the document or the system to ascertain the identity of an undisclosed principal.

25 * * *

26 24. "Money." Substantively identical to former Section 1-201. The test is that of
27 sanction of government, whether by authorization before issue or adoption afterward,
28 which recognizes the circulating medium as a part of the official currency of that
29 government. The narrow view that money is limited to legal tender is rejected. The
30 definition of "money" applies to the term only as used in the Uniform Commercial Code.
31 The definition does not determine whether an asset constitutes "money" for other purposes.
32 Only something currently authorized or adopted as a medium of exchange by a government
33 can be money. As further elaborated in the second sentence of the definition, adoption by
34 a government may occur through establishment by an intergovernmental organization or
35 pursuant to an agreement between governments. Coins and paper currency previously, but
36 not currently, authorized or adopted as a medium of exchange by a government, and
37 currently owned and traded only for their numismatic or historical value, are not money.

38 An electronic medium of exchange established pursuant to a country's law and that is
39 recorded and transferable in a system that did not exist and did not operate for that medium
40 of exchange before the electronic medium of exchange was authorized or adopted by the
41 country's government also constitutes money. This is so even if ownership is established
42 or maintained through a system not operated by the government. In contrast, an existing
43 medium of exchange created or distributed by one or more private persons is not money

1 solely because the government of one or more countries later authorizes or adopts the pre-
 2 existing medium of exchange.

3 Although the term "money" is used in several articles, the definition is particularly
 4 significant under Article 9. Under the pre-2022 version of this definition, money was
 5 generally understood to include only tangible coins, bills, notes, and the like, although the
 6 statutory text did not explicitly so limit the term. This worked well under Article 9, which
 7 provided that the only method of perfecting a security interest in money as original
 8 collateral was by taking possession of it. See pre-2022 Section 9-312(b)(3). The 2022
 9 revised definition of money in Section 1-201(b)(24) is broader and includes both "tangible
 10 money" and "electronic money" (new defined types of collateral under the 2022 revisions
 11 to Article 9). As under the pre-2022 Article 9, a security interest in tangible money as
 12 original collateral may be perfected only by possession. Section 9-312(b)(3). A security
 13 interest in electronic money as original collateral may be perfected only by control. Section
 14 9 102(a)(31A) (defining "electronic money"); 9-312(b)(4) (perfection by control for
 15 electronic money). Note that the definition of “money” in Section 9-102(a)(54A) is
 16 narrower in two respects than the definition in this section—the Article 9 definition
 17 excludes deposit accounts and money in electronic form that cannot be subjected to control
 18 under Section 9-105A. See Section 9-102(a)(54A).

19 *Examples:* The following examples illustrate the definition of "money."

20 **Example 1:** Nation A enacts legislation authorizing or adopting an existing
 21 cryptocurrency (spitcoin), created on a private blockchain, as a medium of
 22 exchange. Because spitcoin was recorded and transferable in a system that existed
 23 and operated for that cryptocurrency before the electronic record was authorized
 24 or adopted by Nation A, spitcoin does not become "money" under this definition
 25 as a result of Nation A’s legislation.

26 **Example 2:** Nation B creates a new cryptocurrency (beeback) and authorizes or
 27 adopts it as a medium of exchange. Beeback is "money." Beeback is not recorded
 28 and transferable in a system that existed and operated for that cryptocurrency
 29 before the electronic record was authorized or adopted by Nation B.

30 **Example 3:** Nation C enacts legislation authorizing or adopting as a medium of
 31 exchange beeback, the cryptocurrency previously adopted by Nation B in Example
 32 2. Although beeback is recorded and transferable in a system that existed and
 33 operated for beeback before it was authorized or adopted by Nation C, beeback
 34 was *already* money when authorized or adopted by Nation C. Consequently,
 35 beeback is "money." Nation C's action had no relevance or effect on the
 36 characterization of beeback as money.

37 * * *

38 27. "Person." The former definition of this word A previous definition of this term has
 39 been ~~was~~ replaced with the standard definition language used in acts prepared by the
 40 National Conference of Commissioners on Uniform State Laws. A protected series formed
 41 under the Uniform Protected Series Act (2017) is a “person.” See PEB Commentary No.
 42 23, dated February 24, 2021. The Commentary is available at <https://www.ali.org/peb-ucc>.
 43 This definition recognizes the wide range of subjects that can enjoy legal rights and possess
 44 legal duties, including the catchall residual category of "any other legal or commercial
 45 entity." See, e.g., JOHN CHIPMAN GRAY, THE NATURE AND SOURCES OF THE

1 LAW 27 (Roland Gray rev., 2d ed., The MacMillan Co. 1931) ("a 'person' is a subject of
2 legal rights and duties"). For additional authorities, see PEB Commentary No. 23, n. 5. The
3 reference to a "public corporation" in the pre-2022 text of the definition has been deleted
4 as unnecessary and duplicative of other examples in the definition of entities that are
5 persons.

6 The second sentence of the definition provides needed clarity as to the status of a
7 protected series for purposes of the Uniform Commercial Code. See PEB Commentary No.
8 23. Several states have enacted statutes that provide for protected series within a limited
9 liability company or other unincorporated organization. These statutes afford rights and
10 impose duties upon a protected series and generally empower a protected series to conduct
11 its own activities under its own name. The types of protected series that are included as
12 persons under the definition include, but are not limited to, those established under the
13 Uniform Protected Series Act.

14 Providing that a protected series is a "person" for purposes of the enacting state's
15 Uniform Commercial Code will expressly permit a protected series, whether created under
16 the law of the enacting state or of another jurisdiction, to be a "seller" or a "buyer" under
17 Article 2, a "lessor" or a "lessee" under Article 2A, or an "organization." It also permits a
18 protected series to be a "debtor" under Article 9, and, if the law under which the protected
19 series is organized requires a public filing for the protected series to be recognized under
20 that law, a "registered organization" under Article 9.

21 * * *

22 33. "Representative." Derived from former Section 1-201. Reorganized, and form
23 changed from "includes" to "means." Concerning developments in technology, including,
24 for example, contract formation in electronic environments, automated transactions, and
25 electronic agents, see Section 1-103, Comment 2.

26 * * *

27 36. "Send." Derived from former Section 1-201. Compare "notifies". The definition of
28 "send" adopts pre-2022 Section 9-102(a)(75). The explicit statement in the previous text of
29 this definition on the appropriateness of sending to an agreed-upon address or to an
30 "address reasonable under the circumstances" was limited to "the case of an instrument."
31 The definition no longer includes that limitation relating to an instrument. Moreover, it is
32 common for parties to rely on their agreement as to appropriate addresses for purposes of
33 notifications and communications. Nothing in the definition or in the Uniform Commercial
34 Code limits the effectiveness of sending a record or notification to an address that has been
35 agreed upon by affected persons. See generally Sections 1-103 and 1-302.

36 37. "Signed." "Sign." Derived from former Section 1-201. Former Section 1-201
37 referred to "intention to authenticate"; because other articles now use the term
38 "authenticate," the language has been changed to "intention to adopt or accept." The latter
39 formulation is derived from the definition of "authenticate" in Section 9-102(a)(7). This
40 provision refers only to writings, because the term "signed," as used in some articles, refers
41 only to writings. The definition of "sign" adopted in the 2022 Amendments is broad—it
42 encompasses the authentication or adoption of all records, not just writings. The definition
43 replaces the definition of "signed" in pre-2022 texts of this Article. This provision
44 definition also makes it clear that, as the term terms "sign," "signed," is and "signature" are
45 used in the Uniform Commercial Code, a complete signature is not necessary. The A

1 symbol may be printed, ~~stamped~~ stamped, or written on, or electronically attached or
2 associated with, a record;~~it~~ It may be by initials or by thumbprint or by electronic symbol,
3 sound, or process. It may be on any part of ~~the document~~ a writing or other record and in
4 appropriate cases may be found in a billhead or letterhead. No catalog of possible situations
5 can be complete and the court must use common sense and commercial experience in
6 passing upon these matters. The question always is whether the symbol, sound, or process
7 was executed or adopted by the party with present intention to authenticate or adopt or
8 accept the writing record.

9 A "writing," which necessarily is in tangible form, must exist at the time it is signed
10 and must be signed by the execution or adoption of a tangible symbol to qualify as a signed
11 writing. A writing adopted only by use of an electronic symbol, sound, or process would
12 not be a signed writing until and unless it results in a tangible symbol being on or affixed
13 to the writing. Moreover, if an electronic record is electronically signed and subsequently
14 printed in tangible form, the resulting writing would not constitute a signed writing unless
15 and until some action is taken with "present intent to authenticate or adopt" the writing.

16 Concerning developments in technology, including, for example, contract formation in
17 electronic environments, automated transactions, and electronic agents, see also Section 1-
18 103, Comment 2.

19 * * *

20 43. "Written" or "writing." Unchanged from former Section 1-201. Several
21 amendments to the Uniform Commercial Code over the years have replaced the terms
22 "written" and "writing" with the term "record," defined in paragraph (31) and also in some
23 other Articles. Pursuant to the 2022 Amendments, additional references to the terms
24 "writing," "writings," and "written" have been replaced by "record." For example, the 2022
25 revisions to Articles 2 and 2A made these changes in provisions where an affected party
26 may be assumed to have assented to the use of a record that is not a writing. Where
27 references to those terms remain in Articles 2 and 2-A, the use by parties of a record other
28 than a writing may be given effect for purposes of those Articles under law other than the
29 Uniform Commercial Code, such as the Electronic Signatures in Global and National
30 Commerce Act, 15 U.S.C. Section 7001 et seq., and the Uniform Electronic Transactions
31 Act. See Sections 2-207, Comment 8; 2A-102, Comment (g).

32 * * *

33 **Sec. A-10. 11 MRSA §1-1204, first ¶,** as enacted by PL 2009, c. 325, Pt. A, §2
34 and affected by §4, is amended to read:

35 Except as otherwise provided in Articles 3-A, 4 ~~and~~ 5-A and 12, a person gives value
36 for rights if the person acquires them:

37 * * *

38 Official Comment

39 * * *

40 1. ~~All the Historically, most~~ Uniform Acts in the commercial law field ~~(except the~~
41 ~~Uniform Conditional Sales Act)~~ have carried definitions of "value." ~~All those~~ Those
42 definitions provided that value was any consideration sufficient to support a simple

1 contract, including the taking of property in satisfaction of or as security for a pre-existing
2 claim. Subsections (1), (2), and (4) in substance continue the definitions of "value" in the
3 earlier acts. Subsection (3) makes explicit that "value" is also given in a third situation:
4 where a buyer by taking delivery under a pre-existing contract converts a contingent into a
5 fixed obligation.

6 This definition is not applicable to Articles 3 and 4, but the express inclusion of
7 immediately available credit as value follows the separate definitions in those articles. See
8 Sections 4-208, 4-209, 3-303. A bank or other financing agency which in good faith makes
9 advances against property held as collateral becomes a bona fide purchaser of that property
10 even though provision may be made for charge-back in case of trouble. Checking credit is
11 "immediately available" within the meaning of this section if the bank would be subject to
12 an action for slander of credit in case checks drawn against the credit were dishonored, and
13 when a charge-back is not discretionary with the bank, but may only be made when
14 difficulties in collection arise in connection with the specific transaction involved. Article
15 12 adopts the substance of the Article 3 definition. See Section 12-102(a)(4).

16 **Sec. A-11. 11 MRSA §1-1301, sub-§(3)**, as enacted by PL 2009, c. 325, Pt. A, §2
17 and affected by §4, is amended to read:

18 **(3).** If one of the following provisions of the Uniform Commercial Code specifies the
19 applicable law that provision governs and a contrary agreement is effective only to the
20 extent permitted by the law so specified:

- 21 (a). Section 2-402;
22 (b). Sections 2-1105 and 2-1106;
23 (c). Section 4-102;
24 (d). Section 4-1507;
25 (e). Section 5-1116;
26 (f). Section 8-1110; ~~and~~
27 (g). Sections 9-1301 to 9-1307-; and
28 (h). Section 12-107.

29 Official Comment

30 * * *

31 5. Sections 9-301 through 9-307 should be consulted as to the rules for perfection of
32 security interests and agricultural liens and the effect of perfection and nonperfection and
33 priority. In transactions to which the Hague Securities Convention applies, the
34 requirements for foreclosure and the like, the characterization of a transfer as being outright
35 or by way of security, and certain other issues will generally be governed by the law
36 specified in the account agreement. See PEB Commentary No. 19, ~~dated April 11, 2017.~~

37 **Sec. A-12. 11 MRSA §1-1306**, as enacted by PL 2009, c. 325, Pt. A, §2 and affected
38 by §4, is amended to read:

39 **§1-1306. Waiver or renunciation of claim or right after breach**

1 A claim or right arising out of an alleged breach may be discharged in whole or in part
2 without consideration by agreement of the aggrieved party in ~~an authenticated~~ a signed
3 record.

4 **Official Comment**

5 * * *

6 **Changes from former law:** ~~This section changes former law in two respects. First,~~
7 ~~former Former~~ Section 1-107, requiring the "delivery" of a "written waiver or renunciation"
8 merges merged the separate concepts of the aggrieved party's *agreement* to forego rights
9 and the manifestation of that agreement. This section separates those concepts, and
10 explicitly requires agreement of the aggrieved party. ~~Second, the revised section reflects~~
11 ~~developments in electronic commerce by providing for memorialization in an authenticated~~
12 ~~record. In this context, a party may “authenticate” a record by (i) signing a record that is a~~
13 ~~writing or (ii) attaching to or logically associating with a record that is not a writing an~~
14 ~~electronic sound, symbol or process with the present intent to adopt or accept the record.~~
15 Sections 1-201(b)(37) and 9-102(a)(7).

16 1. This section makes consideration unnecessary to the effective renunciation or
17 waiver of rights or claims arising out of an alleged breach of a ~~commercial~~ contract where
18 the agreement effecting such renunciation is memorialized in a record ~~authenticated~~ signed
19 by the aggrieved party. Its provisions, however, must be read in conjunction with the
20 section imposing an obligation of good faith: (Section 1-304).

21 2. Consistent with the revised definition of "sign" in Section 1-201, the cognate term
22 "signed" replaces the reference to "authenticated" in the pre-2022 text of this section.

23 **Sec. A-13. 11 MRSA §2-102** is repealed and the following enacted in its place:

24 **§2-102. Scope; certain security and other transactions excluded from this Article**

25 (1). Unless the context otherwise requires, and except as provided in subsection
26 (3), this Article applies to transactions in goods and, in the case of a hybrid transaction,
27 it applies to the extent provided in subsection (2).

28 (2). In a hybrid transaction:

29 (a). If the aspects of the transaction that relate to the sale of goods do not predominate,
30 only the provisions of this Article that relate primarily to those aspects of the
31 transaction apply and the provisions that relate primarily to the transaction as a whole
32 do not apply.

33 (b). If the aspects of the transaction that relate to the sale of goods predominate, this
34 Article applies to the transaction but does not preclude application in appropriate
35 circumstances of other law to aspects of the transaction that do not relate to the sale of
36 goods.

37 (3). This Article does not:

38 (a). Apply to a transaction that, even though in the form of an unconditional contract
39 to sell or present sale, operates only to create a security interest; or

40 (b). Impair or repeal a statute regulating sales to consumers, farmers or other specified
41 classes of buyers.

1 **Official Comment**

2 * * *

3 **Purposes of Changes and New Matter:**

4 1. To make it clear that: The article leaves substantially unaffected the law relating to
5 purchase money security such as conditional sale or chattel mortgage though it regulates
6 the general sales aspects of such transactions. “Security transaction” is used in the same
7 sense as in the article on Secured Transactions (Article 9). Subsection (3) makes it clear
8 that this Article does not govern aspects of a transaction that, although in the form of a sale
9 or contract to sell, create a security interest. See Sections 1-201(b)(35); 9-109(a)(1). Of
10 course, this Article does apply to any sales aspects of such a transaction.

11 2. Many ordinary transactions involve both a sale of goods and the provision of
12 services, a lease of other goods, or a sale, lease, or license of property other than goods. In
13 its original formulation, Article 2 provided no guidance on whether or to what extent the
14 Article applied to such a hybrid transaction, although by defining a sale" as "the passing of
15 title [to goods] from the seller to the buyer for a price," Section 1-206 arguably regarded
16 such transactions as sales. This section was substantially revised to address hybrid
17 transactions pursuant to the Uniform Commercial Code Amendments (2022) (2022
18 Amendments). See Section 2-106(5) (defining "hybrid transaction").

19 In dealing with the issue of whether and to what extent, under the pre-2022 version of
20 this section, Article 2 applied to hybrid transactions, most courts used some version of a
21 "predominant purpose" test. Under those tests, Article 2 applied either in full or not at all,
22 depending on whether the hybrid transaction, at its inception, was predominantly about the
23 goods. In some cases, courts looked instead to the "gravamen of the claim," applying
24 Article 2 to issues relating to the goods and applying other law to issues relating to other
25 aspects of the transaction. Still other courts used what was sometimes referred to as the
26 "bifurcation approach," under which Article 2 applied to the sale-of-goods aspect of a
27 hybrid transaction and other law applied to the other aspects of the transaction. The
28 bifurcation approach was similar to the gravamen of the claim, but instead of applying all
29 of Article 2 to some, but not all, types of claims relating to a hybrid transaction, it
30 distinguished the provisions in Article 2 that deal with the goods from those that deal with
31 the transaction as a whole, and applied only the former in a hybrid transaction.

32 Subsection (2) codifies aspects of the predominant purpose test and the bifurcation
33 approach, establishing a two-tiered test. If the sale-of-goods aspects of a hybrid transaction
34 predominate, then Article 2 applies. If the other aspects of the hybrid transaction
35 predominate, then the provisions of Article 2 which relate primarily to the sale of goods,
36 as opposed to those that relate to the transaction as a whole, apply. This approach has the
37 benefit, for example, of ensuring that a person acquiring ownership of goods in a
38 transaction in which the sale-of-goods aspects do not predominate is a buyer that benefits
39 from the warranty provisions of this Article and may have a right to recover the goods from
40 the seller and thereby may qualify as a buyer in ordinary course of business under Section
41 1-201(b)(9).

42 3. It is important to note that, in contrast to the frequent reference (under prior case
43 law in many states) to the predominant *purpose* of a hybrid transaction, subsection (2)
44 focuses on which aspect of the transaction predominates without requiring a finding of the
45 "purpose" of either or both parties (although that purpose, when evident, may be a relevant

1 factor in deciding which aspect predominates). The determination of which aspect of a
 2 hybrid transaction predominates is left to the court, which should evaluate each transaction
 3 on a case-by-case basis without the necessity of applying any particular formula. Factors
 4 that may be relevant to that determination include, but are not limited to, the language of
 5 the agreement, the portion of the total price that is attributable to the sale of goods (as to
 6 which an agreed-upon allocation will ordinarily be binding on the parties), the purposes of
 7 the parties in entering into the transaction (when that is ascertainable), and the nature of the
 8 businesses of the parties (such as whether the seller is in the business of selling goods of
 9 that kind). Because the definition of "goods" expressly includes "specially manufactured
 10 goods," services involved in manufacturing goods are normally attributable to the sale-of-
 11 goods aspects of the transaction. Services in designing specially manufactured goods,
 12 however, would not normally be attributable to the sale-of-goods aspects of the transaction.

13 4. If the sale-of-goods aspects of a hybrid transaction predominate, then this Article
 14 applies to the transaction. However, the application of this Article to a hybrid transaction
 15 does not preclude the application of principles of law and equity to supplement the
 16 provisions of this Article, see Section 1-103(b), nor does it preclude, in appropriate
 17 circumstances, the application of other law to the non-sale-of-goods aspects of the
 18 transaction. Whether it is appropriate to apply such other law will depend in part on what
 19 purposes the other law is designed to achieve and whether application of the other law
 20 would be likely to interfere with the application of this Article.

21 **Example 1.** Owner hires Contractor to replace the roof on a structure. As part of
 22 the transaction, Contractor promises to remove the existing shingles and install
 23 new shingles, which Contractor is providing. The transaction is a hybrid
 24 transaction because it involves the passing of title to the new shingles and the
 25 provision of services. If the sale-of-goods aspects of the transaction predominate,
 26 this Article applies to the transaction.

27 **Example 2.** Same facts as in Example 1. Even if the sale-of-goods aspects of the
 28 transaction predominate, other law might apply to the services aspects of the
 29 transaction. For example, if applicable law regulates the provision of roofing
 30 services, such as by requiring the roofer to be licensed, requiring specified
 31 disclosures, requiring or implying a warranty with respect to the quality of services,
 32 or giving the property owner a brief period of time to cancel the contract, such
 33 other law might apply.

34 **Example 3.** In a single transaction, Seller agrees to sell a warehouse full of goods
 35 to Buyer. The transaction includes the goods contained in the warehouse, the
 36 warehouse itself, and the real property on which the warehouse is situated. Assume
 37 the goods aspects of the transaction predominate. The application of this Article to
 38 the transaction does not preclude the application of real property law to the real-
 39 property aspects of the transaction. Accordingly, whether the sale of the real
 40 property complies with the applicable requirements of real property law is
 41 determined by law other than this Article. Other law will also determine whether
 42 consummation of the sale of the real property is a condition to the parties'
 43 obligations to buy and sell the goods.

44 5. If the sale-of-goods aspects of a hybrid transaction do not predominate, under
 45 subsection (2), the provisions of this Article relating primarily to the sale of goods, as
 46 opposed to the transaction as a whole, apply. These provisions include those relating to

1 warranties under Sections 2-312, 2-313, 2-314, 2-315, 2-316, 2-317, 2-318; tender of
2 delivery and risk of loss under Sections 2-503, 2-504, 2-509, 2-510; acceptance, rejection,
3 and cure under Sections 2-508, 2-601, 2-602, 2-603, 2-604, 2-605, 2-606; and remedies for
4 non-delivery of the goods or for tender of nonconforming goods under Sections 2-711,
5 7-712, 7-713, 2-714, 2-715, 2-716. In contrast, the provisions of this Article dealing with
6 the transaction as a whole do not apply. These provisions include those relating to: the
7 requirement of a signed record, Section 2-201; contract formation, Sections 2-204 through
8 2-207; and whether consideration is needed to modify the agreement, Section 2-209.

9 **Example 4.** Owner sends a purchase order to Contractor offering to enter into a
10 contract with Contractor to replace the roof on a structure. The proposed
11 transaction involves Contractor removing the existing shingles and installing new
12 shingles, which Contractor is to provide. Contractor responds with a confirmation
13 purporting to accept but containing additional and different terms. The transaction
14 is a hybrid transaction because it involves the passing of title to the new shingles
15 and the provision of services. If the sale-of-goods aspects of the transaction do not
16 predominate, this Article does not apply to determine whether a contract was
17 formed. That issue is governed by other law.

18 **Example 5.** Under the facts of Example 1, assume that the sale-of-goods aspects
19 of the transaction do not predominate. The agreement provides that the job will be
20 completed by December 31. Due to unforeseen circumstances affecting the
21 availability of supplies and labor, the job is not completed by the agreed-upon
22 deadline. Whether Contractor’s failure to perform on time is excused is determined
23 by general contract law, rather than by this Article (Section 2-615).

24 **Example 6.** Under the facts of Example 1, assume that the sale-of-goods aspects
25 of the transaction do not predominate. A dispute between the parties arises and
26 during litigation one party seeks to admit evidence of usage of trade to supplement
27 or explain the parties' written agreement. If the proffered evidence relates to the
28 sale-of-goods aspects of the transaction, the parol evidence rule in this Article,
29 Section 2-202 applies. If the proffered evidence relates to the other aspects of the
30 transaction or to the transaction as a whole, other law will govern the admissibility
31 of the evidence.

32 **Example 7.** Restaurateur hires Remodeler to remodel Restaurateur's kitchen. The
33 transaction requires Remodeler to supply a new oven meeting detailed
34 specifications, but the services aspects of the transaction predominate. The oven
35 supplied does not meet a minor aspect of those specifications (but does
36 substantially satisfy the specifications as a whole). Whether Restaurateur may
37 reject the oven (or must retain it subject to price adjustment), whether Restaurateur
38 has a right to cover by purchasing a substitute oven, and the measure of
39 Restaurateur's damages for the oven’s nonconformity to the specifications are
40 determined by this Article.

41 **Example 8.** Restaurateur hires Remodeler to remodel Restaurateur's kitchen by a
42 specified completion date. The transaction requires Remodeler to supply a new
43 oven, but the services aspects of the transaction predominate. Remodeler breaches
44 by failing to complete the project by the specified date. The measure of
45 Restaurateur's damages for Remodeler's failure to timely complete the project is
46 not determined by this Article.

1 property other than goods. Thus, none of the separate transactions constitutes a
2 hybrid transaction.

3 **Example 2.** To sell an ongoing business, Seller and Buyer enter into two separate
4 written agreements: (i) a sale of goods and intangible assets used in the business;
5 and (ii) an agreement for Seller to provide consulting services to Buyer for a period
6 of six months, and not to compete with Buyer for a period of one year. The
7 agreement to sell goods and intangible assets creates a hybrid transaction. The
8 agreement for consulting services, a separate transaction, is not a hybrid
9 transaction.

10 Even when contracting parties enter into a single agreement involving both a sale
11 of goods and a sale, lease, or license of other property or the provision of services, the
12 elements of the single agreement may be so independent that they create separate
13 transactions. In that case, no hybrid transaction would exist merely because the
14 separate transactions arose out of the same agreement.

15 **Example 3.** Farmer A and Farmer B sign a written agreement pursuant to which
16 Farmer A will sell a tractor to Farmer B and Farmer A will board and feed Farmer
17 B's cattle until the cattle are sold. The agreement specifies a price for the tractor,
18 which is due upon delivery, and specifies a mechanism for determining the price
19 for Farmer A's services, which is to be paid when the cattle are sold. The parties
20 would have entered into an agreement to buy and sell the tractor even if they had
21 not entered into an agreement to board and feed the cattle, and vice versa. Two
22 separate transactions arise from the single agreement, neither of which is a hybrid
23 transaction. Article 2 applies to the sale of the tractor. Other law applies to the
24 agreement to board and feed the cattle.

25 **Example 4.** In a single record, Landscaper agrees to sell plants to Homeowner and
26 to install the plants on Homeowner's property. The agreement specifies a total price
27 but provides no mechanism for determining what portion of the price is allocable
28 to the sale of plants and what portion is allocable to the installation services.
29 Because the terms of the agreement relating to the sale of goods and those relating
30 to services are not severable, the transaction is a hybrid transaction.

31 **Sec. A-15. 11 MRSA §2-106, sub-§(5)** is enacted to read:

32 **(5). Hybrid transaction.** "Hybrid transaction" means a single transaction involving
33 a sale of goods and:

34 (a). The provision of services;

35 (b). A lease of other goods; or

36 (c). A sale, lease or license of property other than goods.

37 **Sec. A-16. 11 MRSA §2-201, sub-§(1)** is amended to read:

38 **(1).** Except as otherwise provided in this section, a contract for the sale of goods for
39 the price of \$500 or more is not enforceable by way of action or defense unless there is
40 ~~some writing~~ a record sufficient to indicate that a contract for sale has been made between
41 the parties and signed by the party against whom enforcement is sought or by ~~his~~ the party's
42 authorized agent or broker. A ~~writing~~ record is not insufficient because it omits or

1 incorrectly states a term agreed upon but the contract is not enforceable under this
2 subsection beyond the quantity of goods shown in ~~such writing~~ the record.

3 **Sec. A-17. 11 MRSA §2-201, sub-§(2)** is amended to read:

4 (2). Between merchants if within a reasonable time a ~~writing~~ writing record in confirmation
5 of the contract and sufficient against the sender is received and the party receiving it has
6 reason to know its contents, it satisfies the requirements of subsection (1) against ~~such~~ the
7 party unless ~~written~~ notice in a record of objection to its contents is given within 10 days
8 after it is received.

9 * * *

10 Official Comment

11 * * *

12 ~~Purposes of Changes:~~ The changed phraseology of this **Purposes:** This section is
13 intended to make it clear that:

14 1. The required ~~writing~~ writing record need not contain all the material terms of the contract
15 and such material terms as are stated need not be precisely stated. All that is required is that
16 the ~~writing~~ writing record afford a basis for believing that the offered oral evidence rests on a real
17 transaction. It may be written in lead pencil on a scratch pad or another medium. It need
18 not indicate which party is the buyer and which the seller. The only term which must appear
19 is the quantity term which need not be accurately stated but recovery is limited to the
20 amount stated. The price, time and place of payment or delivery, the general quality of the
21 goods, or any particular warranties may all be omitted.

22 Special emphasis must be placed on the permissibility of omitting the price term in
23 view of the insistence of some courts on the express inclusion of this term even where the
24 parties have contracted on the basis of a published price list. In many valid contracts for
25 sale the parties do not mention the price in express terms, the buyer being bound to pay and
26 the seller to accept a reasonable price which the trier of the fact may well be trusted to
27 determine. Again, frequently the price is not mentioned since the parties have based their
28 agreement on a price list or catalogue known to both of them and this list serves as an
29 efficient safeguard against perjury. Finally, "market" prices and valuations that are current
30 in the vicinity constitute a similar check. Thus, if the price is not stated in the ~~memorandum~~
31 record evidencing the contract it can normally be supplied without danger of fraud. Of
32 course, if the "price" consists of goods rather than money the quantity of goods must be
33 stated.

34 Only three definite and invariable requirements as to the ~~memorandum~~ record are made
35 by this subsection. First, it must evidence a contract for the sale of goods; second, it must
36 be "signed", a word which includes any authentication which identifies the party to be
37 charged; and third, it must specify a quantity.

38 * * *

39 3. Between merchants, failure to answer a ~~written confirmation of record confirming~~
40 a contract within ten days of receipt is tantamount to a ~~writing~~ writing record under subsection (2)
41 and is sufficient against both parties under subsection (1). The only effect, however, is to
42 take away from the party who fails to answer the defense of the Statute of Frauds; the

1 burden of persuading the trier of fact that a contract was in fact made orally prior to ~~the~~
2 ~~written confirmation giving a record confirming a contract~~ is unaffected. Compare the
3 effect of a failure to reply under Section 2-207.

4 * * *

5 5. The requirement of "signing" is discussed in ~~the Comment to~~ Section 1-201,
6 Comment 37.

7 6. ~~¶~~ For purposes of subsection (1), it is not necessary that the writing record be
8 delivered to anybody. It need not be signed by both parties but it is, of course, not sufficient
9 against one who has not signed it. Prior to a dispute no one can determine which party's
10 signing of the memorandum may be necessary but from the time of contracting each party
11 should be aware that to him it is signing by the other which is important.

12 7. If the making of a contract is admitted in court, either in a written pleading, by
13 stipulation or by oral statement before the court, no additional writing record is necessary
14 for protection against fraud. Under this section it is no longer possible to admit the contract
15 in court and still treat the Statute as a defense. However, the contract is not thus
16 conclusively established. The admission so made by a party is itself evidential against him
17 of the truth of the facts so admitted and of nothing more; as against the other party, it is not
18 evidential at all.

19 8. In furtherance of medium neutrality, references to "writing" and "written" in the
20 pre-2022 text of this section have been changed to refer to a "record."

21 **Sec. A-18. 11 MRSA §2-202**, as amended by PL 2009, c. 325, Pt. B, §5 and affected
22 by §27, is further amended to read:

23 **§2-202. Final ~~written~~ expression: parol or extrinsic evidence**

24 Terms with respect to which the confirmatory memoranda of the parties agree or ~~which~~
25 that are otherwise set forth in a writing record intended by the parties as a final expression
26 of their agreement with respect to such terms as are included therein may not be
27 contradicted by evidence of any prior agreement or of a contemporaneous oral agreement
28 but may be explained or supplemented:

29 (1). By course of performance, course of dealing or usage of trade (section 1-1303);
30 and

31 (2). By evidence of consistent additional terms unless the court finds the writing
32 record to have been intended also as a complete and exclusive statement of the terms of the
33 agreement.

34 **Official Comment**

35 * * *

36 **Purposes:**

37 1. This section definitely rejects:

38 (a) Any assumption that because a writing record has been worked out which is final
39 on some matters, it is to be taken as including all the matters agreed upon;

40 * * *

1 included on a form supplied by the other party to the transaction by the separate signing of
2 the particular clause which contains the offer. "Signed" here also includes authentication
3 but the reasonableness of the authentication herein allowed must be determined in the light
4 of the purpose of the section. The circumstances surrounding the signing may justify
5 something less than a formal signature or initialing but typically the kind of authentication
6 involved here would consist of a minimum of initialing of the clause involved. A
7 handwritten memorandum on the writer's letterhead purporting in its terms to "confirm" a
8 firm offer already made would be enough to satisfy this section, although not subscribed,
9 since under the circumstances it could not be considered a memorandum of mere
10 negotiation and it would adequately show its own authenticity. Similarly, an authorized
11 telegram will suffice, and this is true even though the original draft contained only a
12 typewritten signature. See generally Section 1-201(b)(37) (defining "sign") and Comment
13 37. However, despite settled courses of dealing or usages of the trade whereby firm offers
14 are made by oral communication and relied upon without more evidence, such offers
15 remain revocable under this Article since authentication by a writing record is the essence
16 of this section.

17 * * *

18 6. In furtherance of medium neutrality, the reference to a "writing" in the pre-2022
19 text of this section has been changed to refer to a "record."

20 * * *

21 **Sec. A-21. 11 MRSA §2-209, sub-§(2)** is amended to read:

22 (2). A signed agreement ~~which that~~ excludes modification or rescission except by a
23 signed writing ~~cannot or other signed record may not~~ be otherwise modified or rescinded,
24 but except as between merchants such a requirement on a form supplied by the merchant
25 must be separately signed by the other party.

26 * * *

27 Official Comment

28 * * *

29 Subsection (2) permits the parties in effect to make their own Statute of Frauds as
30 regards any future modification of the contract by giving effect to a clause in a signed
31 agreement which expressly requires any modification to be by signed writing or other
32 signed record. But note that if a consumer is to be held to such a clause on a form supplied
33 by a merchant it must be separately signed.

34 4. Subsection (4) is intended, despite the provisions of subsections (2) and (3), to
35 prevent contractual provisions excluding modification except by a signed writing record
36 from limiting in other respects the legal effect of the parties' actual later conduct. The effect
37 of such conduct as a waiver is further regulated in subsection (5).

38 5. In furtherance of medium neutrality, the reference to a signed "writing" in the pre-
39 2022 text of this section has been supplemented to refer as well to a signed "record."

40 * * *

41 **Sec. A-22. 11 MRSA §2-1102**, as enacted by PL 1991, c. 805, §4, is repealed and
42 the following enacted in its place:

1 **§2-1102. Scope**

2 1. This Article applies to any transaction, regardless of form, that creates a lease and,
3 in the case of a hybrid lease, it applies to the extent provided in subsection (2).

4 2. In a hybrid lease:

5 (a). If the aspects of the lease that relate to the lease of goods do not predominate:

6 (i) Only the provisions of this Article that relate primarily to those aspects of the
7 transaction apply and the provisions that relate primarily to the transaction as a
8 whole do not apply;

9 (ii) Section 2-1209 applies if the lease is a finance lease; and

10 (iii) Section 2-1407 applies to the promises of the lessee in a finance lease to the
11 extent the promises are consideration for the right to possession and use of the
12 leased goods; and

13 (b). If the aspects of the lease that relate to the lease of goods predominate, this Article
14 applies to the transaction but does not preclude application in appropriate
15 circumstances of other law to aspects of the lease that do not relate to the lease of goods.

16 **Official Comment**

17 * * *

18 **Purposes:**

19 1. * * *

20 To achieve that end it was necessary to provide that this Article applies to any
21 transaction, regardless of form, that creates a lease. Since lease is defined as a transfer of
22 an interest in goods (Section 2A-103(1)(j)) and goods is defined to include fixtures (Section
23 2A-103(1)(h)), application is limited to the extent the transaction relates to goods, including
24 fixtures. Further, since the definition of lease does not include a sale (Section 2-106(1)) or
25 retention or creation of a security interest (Section ~~1-201(37)~~ 1-201(b)(35)), application is
26 further limited; sales and security interests are governed by other Articles of this Act.

27 2. Finally, in In recognition of the diversity of the transactions to be governed, the
28 sophistication of many of the parties to these transactions, and the common law tradition
29 as it applies to the bailment for hire or lease, freedom of contract has been preserved.
30 DeKoven, Proceedings After Default by the Lessee Under a True Lease of Equipment, in
31 1C P. Coogan, W. Hogan, D. Vagts, Secured Transactions Under the Uniform Commercial
32 Code, § 29B.02[2] (1986). Thus, despite the extensive regulatory scheme established by
33 this Article, the parties to a lease will be able to create private rules to govern their
34 transaction. Sections 2A-103(4) and 1-102(3). However, there are special rules in this
35 Article governing consumer leases, as well as other state and federal statutes, that may
36 further limit freedom of contract with respect to consumer leases.

37 3. A court may apply this Article by analogy to any transaction, regardless of form,
38 that creates a lease of personal property other than goods, taking into account the expressed
39 intentions of the parties to the transaction and any differences between a lease of goods and
40 a lease of other property. * * *

1 Further, parties to a transaction creating a lease of personal property other than goods,
2 or a bailment of personal property, may provide by agreement that this Article applies.
3 Upholding the parties' choice is consistent with the spirit of this Article.

4 4. If the lease-of-goods aspects of a hybrid lease do not predominate, under subsection
5 (2)(a)(i) the provisions of this Article which relate primarily to the lease-of-goods aspects
6 of the transaction apply and those that relate primarily to the transaction as a whole do not
7 apply. Under subsection (2)(b), if the lease-of-goods aspects of a hybrid lease predominate,
8 this Article applies to the transaction.

9 5. Relevant factors in determining whether the lease-of-goods aspects of a hybrid lease
10 predominate include the language of the agreement and the portion of the total price that is
11 attributable to the lease of goods, although neither is determinative. An agreed-upon
12 allocation of a portion of the total price to the right to possession and use of the goods is
13 ordinarily binding on the parties, as is an agreement that the transaction includes or does
14 not include a finance lease.

15 6. A finance lease, defined in Section 2A-103(1)(g), may be included in a hybrid lease
16 in which the lease-of-goods aspects of the transaction do not predominate. In such a
17 situation, subsection (2)(a)(ii) makes Section 2A-209 applicable and subsection (2)(a)(iii)
18 addresses the application of Section 2A-407 to the promises made by the lessee under the
19 finance lease. That latter section applies to those promises that are consideration for the
20 lessee's right to possession and use of the leased goods. Whether a promise of a lessee so
21 qualifies is a question of fact but an agreed-upon allocation of a portion of the total price
22 to the right to possession and use of the leased goods is ordinarily binding on the parties.
23 The fact that subsection (2)(a)(ii) and (iii) expressly make Sections 2A-209 and 2A-407
24 applicable if the lease is a finance lease does not prevent application of other provisions of
25 this Article relating to finance leases pursuant to subsection (2)(b).

26 **Example 1.** Lessor and Customer enter into a contract that provides for Lessor to:
27 (i) lease equipment to Customer; and (ii) provide to Customer a variety of
28 maintenance and consulting services. The services aspects of the transaction
29 predominate. Lessor did not select, manufacture, or supply the goods; instead, the
30 goods were selected by Customer, and Lessor acquired the goods from Supplier
31 for the sole purpose of leasing the goods to Customer. Assume that the lease
32 aspects of the transaction involve a finance lease under Section 2A-103(1)(g).
33 Pursuant to subsection (3)(a), Sections 2A-212 and 2A-213 apply. Under those
34 sections, because the lease aspect of the transaction is a finance lease, Lessor makes
35 no implied warranty of merchantability or implied warranty of fitness for particular
36 purpose. Pursuant to subsection (2)(a)(ii), Section 2A-209 applies. Under that
37 section, all warranties made by Supplier to Lessor extend to Customer.

38 **Example 2.** Same facts as Example 1. As consideration for Lessor's obligations
39 under the contract, Customer promises to pay a single monthly fee of a specified
40 amount. The contract does not indicate what portion of the monthly fee is
41 consideration for the services or what portion is consideration for possession and
42 use of the equipment. Section 2A-407 applies to the lessee's promises that are
43 consideration for the lessee's right to possession and use of the equipment. In an
44 action involving the application of Section 2A-407, the determination of what
45 portion of the monthly fee is for the right to possession and use of the equipment
46 is a question of fact.

1 **Example 3.** Same facts as Example 1 except that the lease-of-goods aspects of the
2 transaction predominate. Section 2A-407 applies to all of the lessee's promises
3 under the transaction.

4 7. Even if the lease-of-goods aspects of a hybrid lease predominate and this Article
5 applies to the transaction, the application of this Article to a hybrid lease does not preclude
6 the application of principles of law and equity to supplement the provisions of this Article,
7 see Section 1-103(b), nor does it preclude, in appropriate circumstances, the application of
8 other law to the non-lease-of-goods aspects of the transaction. Whether it is appropriate to
9 apply such other law will depend in part on what purposes the other law is designed to
10 achieve and whether application of the other law would be likely to interfere with the
11 application of this Article.

12 **Example 4.** Same facts as Example 3 (the lease-of-goods aspects of the transaction
13 predominate) except that the lease is not a finance lease. This Article applies to the
14 transaction. Nevertheless, because principles of law and equity also apply unless
15 displaced by particular provisions the Uniform Commercial Code, see Section
16 1-103(b), and this Article does not displace other law relating to whether Lessor's
17 performance of services conforms to the contract, other law determines whether
18 the services conform to the contract.

19 8. The rules of subsections (2)(a) and (2)(b) are essentially gap fillers that apply when
20 the parties' agreement is silent on what legal rules govern the different aspects of their
21 transaction. In general, parties are free to preclude the application of this Article to the
22 aspects of their transaction that are not about the lease of goods. See Section 2-102,
23 Comment 6.

24 **Sec. A-23. 11 MRSA §2-1103, sub-§(1), ¶(h-1)** is enacted to read:

25 (h-1). "Hybrid lease" means a single transaction involving a lease of goods and:

26 (i) The provision of services;

27 (ii) A sale of other goods; or

28 (iii) A sale, lease or license of property other than goods.

29 **Sec. A-24. 11 MRSA §2-1103, sub-§(3)**, as amended by PL 2009, c. 325, Pt. B,
30 §7 and affected by §27, is further amended to read:

31 **(3).**

32 The following definitions in other Articles apply to this Article:

33 "Account." Section 9-1102, subsection (2).

34 "Between merchants." Section 2-104, subsection (3).

35 "Buyer." Section 2-103, subsection (1), paragraph (a).

36 "Chattel paper." Section 9-1102, subsection ~~(4)~~ (11-A).

37 "Consumer goods." Section 9-1102, subsection (23).

38 "Document." Section 9-1102, subsection (30).

39 "Entrusting." Section 2-403, subsection (3).

40 "General intangible." Section 9-1102, subsection (42).

- 1 "Instrument." Section 9-1102, subsection (47).
- 2 "Merchant." Section 2-104, subsection (1).
- 3 "Mortgage." Section 9-1102, subsection (55).
- 4 "Pursuant to commitment." Section 9-1102, subsection (60).
- 5 "Receipt." Section 2-103, subsection (1), paragraph (c).
- 6 "Sale." Section 2-106, subsection (1).
- 7 "Sale on approval." Section 2-326.
- 8 "Sale or return." Section 2-326.
- 9 "Seller." Section 2-103, subsection (1), paragraph (d).

10 **Official Comment**

11 * * *

12 (e) "Consumer lease". * * *

13 * * *

14 This definition focuses on the parties as well as the transaction. If a lease is within this
15 definition, the lessor must be regularly engaged in the business of leasing or selling, and
16 the lessee must be an individual, not an organization; note that a lease to two or more
17 individuals having a common interest through marriage or the like is not excluded as a lease
18 to an organization under Section ~~1-201(28)~~ 1-201(b)(25). The lessee must take the interest
19 primarily for a personal, family or household purpose. If required by the enacting state,
20 total payments under the lease contract, excluding payments for options to renew or buy,
21 cannot exceed the figure designated.

22 (f) "Fault". Section ~~1-201(16)~~ 1-201(b)(17).

23 (g) "Finance Lease". * * *

24 * * *

25 Pursuant to the Uniform Commercial Code Amendments (2022) (2022 Amendments),
26 some references in this Article to the terms "writing," "writings," or "written" have been
27 changed to refer to a "record." These changes are made in provisions where an affected
28 party may be assumed to have assented to the use of a record that is not a writing. For
29 example, Section 2A-201 involves a record signed by an affected party and Section 2A-
30 202 refers to a record intended by parties to be a final expression of their agreement. Where
31 such references remain in this Article, the use by parties of a record other than a writing
32 may be given effect for purposes of this Article under law other than the Uniform
33 Commercial Code, such as the Electronic Signatures in Global and National Commerce
34 Act, 15 U.S.C. Section 7001 et seq., and the Uniform Electronic Transactions Act.

35 * * *

36 (h.1) "Hybrid lease". In some transactions, the transfer of the right to possession and
37 use of goods for a term in return for consideration (i.e., a lease), is part of a larger
38 transaction. The other aspects of the transaction might involve the provision of services, a
39 sale of other goods, or a transfer of rights to property other than goods. Such a transaction

1 is a hybrid lease. Section 2A 102 indicates the extent to which this Article applies to a
2 hybrid lease.

3 A hybrid lease is a single transaction. If contracting parties enter into separate
4 agreements at the same time, each agreement must be evaluated separately to determine if
5 it is a hybrid lease.

6 **Example 1.** Lessor and Customer A enter into a single agreement that provides for
7 Lessor, in return for periodic payments from Customer A, to: (i) lease a
8 photocopier to Customer A for twelve months; (ii) supply all the paper, staples,
9 and toner needed to operate the copier during that period, and (iii) provide routine
10 maintenance and repair services needed to keep the copier operating during that
11 period. The transaction is a hybrid lease because it involves a lease of goods (the
12 copier), a sale of goods (the paper, staples, and toner), and the provision of services.

13 **Example 2.** Lessor and Customer B enter into three separate written agreements at
14 the same time: (i) a lease of a photocopier to Customer B for twelve months; (ii) a
15 contract for Lessor to supply Customer B with all the paper, staples, and toner
16 needed to operate the copier during that period, and (iii) a contract for Lessor to
17 provide routine maintenance and repair services needed to keep the copier
18 operating during that period. Because the parties executed three separate
19 agreements, and the lease does not involve a sale, lease, or license of other property
20 or the provision of services, the lease is not a hybrid lease.

21 Even when contracting parties enter into a single agreement involving both a lease of
22 goods and a sale, lease, or license of other property or the provision of services, the
23 agreement may involve separate transactions and not a single transaction. In that situation,
24 the lease transaction would not be a hybrid lease if the lease of goods is unrelated to the
25 other aspects of the agreement and the terms of the agreement relating to the lease of goods
26 are readily severable from the terms of the agreement relating to the other transactions.

27 **Example 3.** Farmer A and Farmer B sign a written agreement pursuant to which
28 Farmer A will lease a tractor to Farmer B for one year and Farmer B will board
29 and feed Farmer A's cattle until the cattle are sold. The agreement specifies a rental
30 payment for the tractor, which is due monthly, and a mechanism for determining
31 the price for Farmer B's services, which is to be paid when the cattle are sold. The
32 parties would have entered into an agreement to lease the tractor even if they had
33 not entered into an agreement to board and feed the cattle, and vice versa. The
34 transaction is not a hybrid lease. Article 2A applies to the lease of the tractor. Other
35 law applies to the agreement to board and feed the cattle.

36 * * *

37 **Sec. A-25. 11 MRSA §2-1107**, as enacted by PL 1991, c. 805, §4, is amended to
38 read:

39 **§2-1107. Waiver or renunciation of claim or right after default**

40 Any claim or right arising out of an alleged default or breach of warranty may be
41 discharged in whole or in part without consideration by a ~~written~~ waiver or renunciation in
42 a signed and record delivered by the aggrieved party.

43 **Official Comment**

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Changes:

- 1. Revised to reflect leasing practices and terminology. * * *
- 2. In furtherance of medium neutrality, the reference to a signed "written" waiver or renunciation in the pre-2022 text of this section has been changed to refer to a waiver in a signed "record."

Sec. A-26. 11 MRSA §2-1201, sub-§(1), ¶(b), as enacted by PL 1991, c. 805, §4, is amended to read:

(b). There is a writing record, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

Sec. A-27. 11 MRSA §2-1201, sub-§(3), as enacted by PL 1991, c. 805, §4, is amended to read:

(3). A writing record is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subsection (1), paragraph (b) beyond the lease term and the quantity of goods shown in the writing record.

Sec. A-28. 11 MRSA §2-1201, sub-§(5), ¶(a), as enacted by PL 1991, c. 805, §4, is amended to read:

(a). If there is a writing record signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

Official Comment

* * *

Changes:

1. This section is modeled on Section 2-201, with changes to reflect the differences between a lease contract and a contract for the sale of goods. In particular, subsection (1)(b) adds a requirement that the writing record "describe the goods leased and the lease term", borrowing that concept, with revisions, from the provisions of Section 9-203(1)(a). Subsection (2), relying on the statutory analogue in Section 9-110, sets forth the minimum criterion for satisfying that requirement.

2. In furtherance of medium neutrality, the references to a "writing" in the pre-2022 text of this section have been changed to refer to a "record."

* * *

Sec. A-29. 11 MRSA §2-1202, as enacted by PL 1991, c. 805, §4, is amended to read:

§2-1202. Final ~~written~~ expression; parol or extrinsic evidence

Terms with respect to which the confirmatory memoranda of the parties agree or ~~which~~ that are otherwise set forth in a writing record intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be

1 contradicted by evidence of any prior agreement or of a contemporaneous oral agreement
2 but may be explained or supplemented:

3 (1). By course of dealing or usage of trade or by course of performance; and

4 (2). By evidence of consistent additional terms unless the court finds the ~~writing~~
5 record to have been intended also as a complete and exclusive statement of the terms of
6 the agreement.

7 **Official Comment**

8 * * *

9 **Changes:** In furtherance of medium neutrality, the references to a "writing" have been
10 changed to refer to a "record."

11 * * *

12 **Sec. A-30. 11 MRSA §2-1203**, as enacted by PL 1991, c. 805, §4, is amended to
13 read:

14 **§2-1203. Seals inoperative**

15 The affixing of a seal to a ~~writing record~~ evidencing a lease contract or an offer to enter
16 into a lease contract does not render the ~~writing record~~ a sealed instrument and the law with
17 respect to sealed instruments does not apply to the lease contract or offer.

18 **Official Comment**

19 * * *

20 **Changes:** Revised to reflect leasing practices and terminology. In furtherance of
21 medium neutrality, the references to a "writing" have been changed to refer to a "record."

22 * * *

23 **Sec. A-31. 11 MRSA §2-1205**, as enacted by PL 1991, c. 805, §4, is amended to
24 read:

25 **§2-1205. Firm offers**

26 An offer by a merchant to lease goods to or from another person in a signed ~~writing~~
27 record that by its terms gives assurance it will be held open is not revocable, for lack of
28 consideration, during the time stated or, if no time is stated, for a reasonable time, but in
29 no event may the period of irrevocability exceed 3 months. Any such term of assurance on
30 a form supplied by the offeree must be separately signed by the offeror.

31 **Official Comment**

32 * * *

33 **Changes:** Revised to reflect leasing practices and terminology. In furtherance of
34 medium neutrality, the reference to a signed "writing" in the pre-2022 text of this section
35 has been changed to refer to a signed "record."

36 **Sec. A-32. 11 MRSA §2-1208, sub-§(2)**, as enacted by PL 1991, c. 805, §4, is
37 amended to read:

1 (2). A signed lease agreement that excludes modification or rescission except by a
2 signed writing record may not be otherwise modified or rescinded, but, except as between
3 merchants, such a requirement on a form supplied by a merchant must be separately signed
4 by the other party.

5 **Official Comment**

6 * * *

7 **Changes:**

8 1. Revised to reflect leasing practices and terminology, except that the provisions of
9 subsection 2-209(3) were omitted.

10 2. In furtherance of medium neutrality, the reference to a signed "writing" in the pre-
11 2022 text of this section has been changed to refer to a signed "record."

12 * * *

13 **Sec. A-33. 11 MRSA §3-1104, sub-§(1), ¶(c)**, as enacted by PL 1993, c. 293, Pt.
14 A, §2, is amended to read:

15 (c). Does not state any other undertaking or instruction by the person promising or
16 ordering payment to do any act in addition to the payment of money, but the promise
17 or order may contain:

18 (i) An undertaking or power to give, maintain or protect collateral to secure
19 payment;

20 (ii) An authorization or power to the holder to confess judgment or realize on or
21 dispose of collateral; or

22 (iii) A waiver of the benefit of any law intended for the advantage or protection of
23 an obligor;

24 (iv) A term that specifies the law that governs the promise or order; or

25 (v) An undertaking to resolve in a specified forum a dispute concerning the
26 promise or order.

27 **Official Comment**

28 1. The definition of "negotiable instrument" defines the scope of Article 3 since
29 Section 3-102 states: "This Article applies to negotiable instruments." The definition in
30 Section 3-104(a) incorporates other definitions in Article 3. An instrument is either a
31 "promise," defined in Section 3-103(a)(12), or "order," defined in Section 3-103(a)(8). A
32 promise is a written undertaking to pay money signed by the person undertaking to pay.
33 An order is a written instruction to pay money signed by the person giving the instruction.
34 Thus, the term "negotiable instrument" is limited to a signed writing that orders or promises
35 payment of money. "Money" is defined in Section 1-201(b)(24) and is not limited to United
36 States dollars. It also includes a medium of exchange established by a foreign government
37 or monetary units of account established by an intergovernmental organization or by
38 agreement between two or more nations. Five other requirements are stated in Section 3-
39 104(a): First, the promise or order must be "unconditional." The quoted term is explained
40 in Section 3-106. Second, the amount of money must be "a fixed amount . . . with or without

1 interest or other charges described in the promise or order." Section 3-112(b) relates to
 2 "interest." Third, the promise or order must be "payable to bearer or to order." The quoted
 3 phrase is explained in Section 3-109. An exception to this requirement is stated in
 4 subsection (c). Fourth, the promise or order must be payable "on demand or at a definite
 5 time." The quoted phrase is explained in Section 3-108. Fifth, the promise or order may not
 6 state "any other undertaking or instruction by the person promising or ordering payment to
 7 do any act in addition to the payment of money" with ~~three~~ five exceptions. The quoted
 8 phrase is based on the first sentence of N.I.L. Section 5 which is the precursor of "no other
 9 promise, order, obligation or power given by the maker or drawer" appearing in former
 10 Section 3-104(1)(b). The words "instruction" and "undertaking" are used instead of "order"
 11 and "promise" that are used in the N.I.L. formulation because the latter words are defined
 12 terms that include only orders or promises to pay money. The first three exceptions stated
 13 in Section 3-104(a)(3) are based on and are intended to have the same meaning as former
 14 Section 3-112(1)(b), (c), (d), and (e), as well as N.I.L. § 5(1), (2), and (3). The final two
 15 exceptions stated in Section 3-104(a)(3), added pursuant to the Uniform Commercial Code
 16 Amendments (2022), deal with choice-of-law and choice-of-forum clauses. The latter of
 17 these includes an agreement to arbitrate. Subsection (b) states that "instrument" means a
 18 "negotiable instrument." This follows former Section 3-102(1)(e) which treated the two
 19 terms as synonymous.

20 **Sec. A-34. 11 MRSA §3-1105, sub-§(1)**, as enacted by PL 1993, c. 293, Pt. A, §2,
 21 is repealed and the following enacted in its place:

22 **(1).** "Issue" means:

23 (a). The first delivery of an instrument by the maker or drawer, whether to a holder or
 24 nonholder, for the purpose of giving rights on the instrument to any person; or

25 (b). If agreed to by the payee, the first transmission by the drawer to the payee of an
 26 image of an item and information derived from the item that enables the depository
 27 bank to collect the item by transferring or presenting under federal law an electronic
 28 check.

29 **Official Comment**

30 1. Under former Section 3-102(1)(a) "issue" was defined as the first delivery to a
 31 "holder or a remitter" but the term "remitter" was neither defined nor otherwise used. In
 32 revised Article 3, Section 3-105(a) defines "issue" more broadly to include the first
 33 delivery to anyone by the drawer or maker for the purpose of giving rights to anyone on
 34 the instrument. "Delivery" with respect to instruments is defined in Section 1-201(14)
 35 Section 1-201(b)(15) as meaning "voluntary transfer of possession." The reference in
 36 subsection (a)(2) to transmission of an image of an item and information derived from the
 37 item is derived from Section 4-110(a), dealing with electronic presentment.

38 Subsection (a) permits an instrument to be issued by an electronic transmission of an
 39 image of and information derived from the instrument by maker and drawer, rather than by
 40 delivery. Thus, for example, a drawer might, with the permission of the payee, write and
 41 sign a check, take a photograph of the check, send the photograph to the payee for
 42 processing electronically, and destroy the original check. If the electronic image and the
 43 information derived from it can be processed as an "electronic check" under Regulation

1 CC, see 12 C.F.R. § 229.2(ggg), the check is "issued" and hence can be enforced pursuant
2 to this Article.

3 * * *

4 **Sec. A-35. 11 MRSA §3-1401**, as corrected by RR 2011, c. 1, §13, is amended by
5 amending the section headnote to read:

6 **§3-1401. Signature necessary for liability on instrument**

7 **Sec. A-36. 11 MRSA §3-1401, sub-§(2)**, as enacted by PL 1993, c. 293, Pt. A, §2,
8 is repealed.

9 **Official Comment**

10 1. ~~Obligation~~ This section provides the fundamental rule that an obligation on an
11 instrument depends on a signature that is binding on the obligor. The signature may be
12 made by the obligor personally or by an agent or other representative authorized to act for
13 the obligor. Signature by agents and other representatives is covered by Section 3-402. It
14 is not necessary that the name of the obligor appear on the instrument, so long as there is a
15 signature that binds the obligor. ~~Signature includes an indorsement. These obligations~~
16 include those on an "order" (Section 3-103(a)(6)) and a "promise" (Section 3-103(a)(9))
17 and those of an "issuer," "maker," or "drawer" (Sections 3-103(a)(5) and (7), 3-105(c), 3-
18 412, and 3-414), an "acceptor" (Sections 3-409 and 3-413), and an indorser (Sections 3-
19 204(b) and 3-415).

20 2. ~~A signature may be handwritten, typed, printed or made in any other manner. It need~~
21 ~~not be subscribed, and may appear in the body of the instrument, as in the case of "I, John~~
22 ~~Doe, promise to pay ***" without any other signature. It may be made by mark, or even by~~
23 ~~thumbprint. It may be made in any name, including any trade name or assumed name,~~
24 ~~however false and fictitious, which is adopted for the purpose. Parol evidence is admissible~~
25 ~~to identify the signer, and when the signer is identified the signature is effective.~~
26 ~~Indorsement in a name other than that of the indorser is governed by Section 3-204(d).~~
27 ~~Subsection (b) of the pre-2022 text of this section has been deleted as unnecessary in view~~
28 ~~of the 2022 revision of the definition of "sign." See Section 1-201(b)(37) and Comment 37.~~
29 ~~Although former subsection (b) had not proven to be problematic, its deletion eliminates~~
30 ~~any implication that the revised definition of "sign" is inadequate for purposes of this~~
31 ~~Article. For example, former subsection (b) provided examples of the means of making a~~
32 ~~signature with the present intention of authenticating a writing, such as by means of a~~
33 ~~device or machine, by the use of a trade name or assumed name, or by the use of a word,~~
34 ~~mark, or symbol. These means now are encompassed by the broad, general terms of the~~
35 ~~revised definition of "sign." A signature may appear in the body of the instrument, as in the~~
36 ~~case of "I, John Doe, promise to pay ***" without any other signature. It may be made in~~
37 ~~any name, including a name other than a designated payee. However, to be signed an~~
38 ~~instrument (a writing) must exist at the time it is signed by the execution or adoption of a~~
39 ~~tangible symbol on the instrument. The deletion of former subsection (b) effected no~~
40 ~~change in the law.~~

41 ~~This section is not intended to affect any other law requiring a signature by mark to be~~
42 ~~witnessed, or any signature to be otherwise authenticated, or requiring any form of proof.~~

1 record, or notice of which is not received at a time and in a manner affording the bank
2 a reasonable opportunity to act on it before the payment order is accepted.

3 **Sec. A-42. 11 MRSA §4-1202, sub-§(3), ¶(b)**, as enacted by PL 1991, c. 812, §2,
4 is amended to read:

5 (b). The customer expressly agreed in ~~writing~~ a record to be bound by any payment
6 order, whether or not authorized, issued in its name and accepted by the bank in
7 compliance with the bank's obligations under the security procedure chosen by the
8 customer.

9 **Official Comment**

10 1. This section is discussed in the Comment following Section 4A-203.

11 2. In furtherance of medium neutrality, references to "written" and "writing" have been
12 changed to refer to a "evidenced by a record" and "a record." Other 2022 revisions were
13 made for clarification.

14 **Sec. A-43. 11 MRSA §4-1203, sub-§(1), ¶(a)**, as enacted by PL 1991, c. 812, §2,
15 is amended to read:

16 (a). By express ~~written~~ agreement, evidenced by a record, the receiving bank may limit
17 the extent to which it is entitled to enforce or retain payment of the payment order.

18 **Official Comment**

19 * * *

20 3. Subsection (b) of Section 4A-202 is based on the assumption that losses due to
21 fraudulent payment orders can best be avoided by the use of commercially reasonable
22 security procedures, and that the use of such procedures should be encouraged. The
23 subsection is designed to protect both the customer and the receiving bank. A receiving
24 bank needs to be able to rely on objective criteria to determine whether it can safely act on
25 a payment order. Employees of the bank can be trained to "test" a payment order according
26 to the various steps specified in the security procedure. The bank is responsible for the acts
27 of these employees. Subsection (b)(ii) requires the bank to prove that it accepted the
28 payment order in good faith and "in compliance with the bank's obligations under the
29 security procedure." If the fraud was not detected because the bank's employee did not
30 perform the acts required by the security procedure, the bank has not complied. Subsection
31 (b)(ii) also requires the bank to prove that it complied with any agreement or instruction
32 that restricts acceptance of payment orders issued in the name of the customer. If an
33 agreement establishing a security procedure places obligations on both the sender and the
34 receiving bank, the receiving bank need prove only that it complied with the obligations
35 placed on the receiving bank. A customer may want to protect itself by imposing limitations
36 on acceptance of payment orders by the bank. For example, the customer may prohibit the
37 bank from accepting a payment order that is not payable from an authorized account, that
38 exceeds the credit balance in specified accounts of the customer, or that exceeds some other
39 amount. Another limitation may relate to the beneficiary. The customer may provide the
40 bank with a list of authorized beneficiaries and prohibit acceptance of any payment order
41 to a beneficiary not appearing on the list. Such limitations may be incorporated into the
42 security procedure itself or they may be covered by a separate agreement or instruction. In

1 either case, the bank must comply with the limitations if the conditions stated in subsection
 2 (b) are met. Normally limitations on acceptance would be incorporated into an agreement
 3 between the customer and the receiving bank, but in some cases the instruction might be
 4 unilaterally given by the customer. If standing instructions or an agreement state limitations
 5 on the ability of the receiving bank to act, provision must be made for later modification of
 6 the limitations. Normally this would be done by an agreement that specifies particular
 7 procedures to be followed. Thus, subsection (b) states that the receiving bank is not required
 8 to follow an instruction that violates a ~~written~~ an agreement evidenced by a record. The
 9 receiving bank is not bound by an instruction unless it has adequate notice of it. ~~Subsections~~
 10 ~~(25), (26), and (27) of Section 1-201 apply~~ Section 1-202 applies.

11 * * *

12 4. The principal issue that is likely to arise in litigation involving subsection (b) is
 13 whether the security procedure in effect when a fraudulent payment order was accepted
 14 was commercially reasonable. In considering this issue, a court will need to consider the
 15 totality of the security procedure, including each party's obligations under the procedure.
 16 The concept of what is commercially reasonable in a given case is flexible. Verification
 17 entails labor and equipment costs that can vary greatly depending upon the degree of
 18 security that is sought. A customer that transmits very large numbers of payment orders in
 19 very large amounts may desire and may reasonably expect to be provided with state-of-the-
 20 art procedures that provide maximum security. But the expense involved may make use of
 21 a state-of-the-art procedure infeasible for a customer that normally transmits payment
 22 orders infrequently or in relatively low amounts. Another variable is the type of receiving
 23 bank. It is reasonable to require large money center banks to make available state-of-the-
 24 art security procedures. On the other hand, the same requirement may not be reasonable for
 25 a small country bank. A receiving bank might have several security procedures that are
 26 designed to meet the varying needs of different customers. The type of payment order is
 27 another variable. For example, in a wholesale wire transfer, each payment order is normally
 28 transmitted electronically and individually. A testing procedure will be individually applied
 29 to each payment order. In funds transfers to be made by means of an automated clearing
 30 house many payment orders are incorporated into an electronic device such as a magnetic
 31 tape that is physically delivered. Testing of the individual payment orders is not feasible.
 32 Thus, a different kind of security procedure must be adopted to take into account the
 33 different mode of transmission.

34 The issue of whether a particular security procedure is commercially reasonable is a
 35 question of law. Whether the receiving bank complied with the procedure is a question of
 36 fact. It is appropriate to make the finding concerning commercial reasonability a matter of
 37 law because security procedures are likely to be standardized in the banking industry and
 38 a question of law standard leads to more predictability concerning the level of security that
 39 a bank must offer to its customers. The purpose of subsection (b) is to encourage banks to
 40 institute reasonable safeguards against fraud but not to make them insurers against fraud.
 41 A security procedure is not commercially unreasonable simply because another procedure
 42 might have been better or because the judge deciding the question would have opted for a
 43 more stringent procedure. For example, the use of a computer program to detect fraud is
 44 not commercially unreasonable merely because it does not detect all fraud or because
 45 another system or approach might be more successful at detecting fraud. The standard is
 46 not whether the security procedure is the best available. Rather it is whether the procedure

1 is reasonable for the particular customer and the particular bank, which is a lower standard.
 2 What is reasonable for a particular customer requires the court to consider the
 3 circumstances of the customer known to the bank, including the size, type, and frequency
 4 of payment orders normally issued by the customer to the bank. Article 4A does not create
 5 an affirmative obligation on the receiving bank to obtain information about its customer.
 6 However, whatever knowledge the bank does have about the customer is relevant in
 7 determining the commercial reasonableness of the security procedure. On the other hand,
 8 a security procedure that fails to meet prevailing standards of good banking practice
 9 applicable to the particular bank and customer should not be held to be commercially
 10 reasonable. Subsection (c) states factors to be considered by the judge in making the
 11 determination of commercial reasonableness. The reasonableness of a security procedure
 12 is to be determined at the time that a payment order is processed, not at the time the
 13 customer and the bank agree to the security procedure. Accordingly, a security procedure
 14 that was reasonable when agreed to might become unreasonable as technologies emerge,
 15 prevailing practices change, or the bank acquires knowledge about the customer.
 16 Sometimes an informed customer refuses a security procedure that is commercially
 17 reasonable and suitable for that customer and insists on using a higher-risk procedure
 18 because it is more convenient or cheaper. In that case, under the last sentence of subsection
 19 (c), the customer has voluntarily assumed the risk of failure of the procedure and cannot
 20 shift the loss to the bank. But this result follows only if the customer expressly agrees in
 21 writing a record to assume that risk. It is implicit in the last sentence of subsection (c) that
 22 a bank that accedes to the wishes of its customer in this regard is not acting in bad faith by
 23 so doing so long as the customer is made aware of the risk. In all cases, however, a receiving
 24 bank cannot get the benefit of subsection (b) unless it has made available to the customer
 25 a security procedure that is commercially reasonable and suitable for use by that customer.
 26 In most cases, the mutual interest of bank and customer to protect against fraud should lead
 27 to agreement to a security procedure which is commercially reasonable.

28 4A. Subsection (b) generally allows a receiving bank to treat a payment order as
 29 authorized by the customer if the bank accepts the payment order in good faith and in
 30 compliance with the bank's obligations under a commercially reasonable, agreed-upon
 31 security procedure. For this purpose, "good faith" requires the exercise of reasonable
 32 commercial standards of fair dealing, see Section 4A-105(a)(6), not the absence of
 33 negligence. Consequently, the bank has no duty, beyond that to which the bank has agreed,
 34 to investigate suspicious activity or to advise its customer of such activity. However, a bank
 35 that obtains knowledge that a customer's operations have been infiltrated or knowledge that
 36 the customer is the victim of identity fraud might not be acting in good faith if the bank,
 37 without receiving some assurance from the customer that the issue has been remediated,
 38 thereafter accepts a payment order.

39 * * *

40 8. In furtherance of medium neutrality, the reference to "written" in the pre-2022 text
 41 of this section has been changed to refer to "evidenced by a record."

42 **Sec. A-44. 11 MRSA §4-1207, sub-§(3), ¶(b),** as enacted by PL 1991, c. 812, §2,
 43 is amended to read:

44 (b). If the originator is not a bank and proves that the person identified by number was
 45 not entitled to receive payment from the originator, the originator is not obliged to pay

1 its order unless the originator's bank proves that the originator, before acceptance of
2 the originator's order, had notice that payment of a payment order issued by the
3 originator might be made by the beneficiary's bank on the basis of an identifying or
4 bank account number even if it identifies a person different from the named
5 beneficiary. Proof of notice may be made by any admissible evidence. The originator's
6 bank satisfies the burden of proof if it proves that the originator, before the payment
7 order was accepted, signed a ~~writing~~ record stating the information to which the notice
8 relates.

9 **Official Comment**

10 * * *

11 2. * * * "~~Know~~" is "Knowledge" and "knows" are defined in Section ~~1-201(25)~~ 1-
12 202(b) to mean actual knowledge, and Section ~~1-201(27)~~ 1-202(f) states rules for
13 determining when an organization has knowledge of information received by the
14 organization. The time of payment is the pertinent time at which knowledge or lack of
15 knowledge must be determined.

16 * * *

17 4. In furtherance of medium neutrality, the reference to a "writing" in the pre-2022
18 text of this section has been changed to refer to a "record."

19 **Sec. A-45. 11 MRSA §4-1208, sub-§(2), ¶(b)**, as enacted by PL 1991, c. 812, §2,
20 is amended to read:

21 (b). If the sender is not a bank and the receiving bank proves that the sender, before
22 the payment order was accepted, had notice that the receiving bank might rely on the
23 number as the proper identification of the intermediary or beneficiary's bank even if it
24 identifies a person different from the bank identified by name, the rights and
25 obligations of the sender and the receiving bank are governed by paragraph (a), as
26 though the sender were a bank. Proof of notice may be made by any admissible
27 evidence. The receiving bank satisfies the burden of proof if it proves that the sender,
28 before the payment order was accepted, signed a ~~writing~~ record stating the information
29 to which the notice relates.

30 **Official Comment**

31 * * *

32 4. In furtherance of medium neutrality, the reference to a "writing" in the pre-2022
33 text of this section has been changed to refer to a "record."

34 **Sec. A-46. 11 MRSA §4-1210, sub-§(1)**, as enacted by PL 1991, c. 812, §2, is
35 amended to read:

36 (1). A payment order is rejected by the receiving bank by a notice of rejection
37 transmitted to the sender orally, ~~electronically~~ or in ~~writing~~ a record. A notice of rejection
38 need not use any particular words and is sufficient if it indicates that the receiving bank is
39 rejecting the order or will not execute or pay the order. Rejection is effective when the
40 notice is given if transmission is by a means that is reasonable in the circumstances. If
41 notice of rejection is given by a means that is not reasonable, rejection is effective when

1 the notice is received. If an agreement of the sender and receiving bank establishes the
2 means to be used to reject a payment order, any means complying with the agreement is
3 reasonable and any means not complying is not reasonable unless no significant delay in
4 receipt of the notice resulted from the use of the noncomplying means.

5 **Official Comment**

6 * * *

7 2. A payment order to the beneficiary's bank can be accepted by inaction of the bank.
8 Section 4A-209(b)(2) and (3). To prevent acceptance under those provisions it is necessary
9 for the receiving bank to send notice of rejection before acceptance occurs. Subsection (a)
10 of Section 4A-210 states the rule that rejection is accomplished by giving notice of
11 rejection. This incorporates the definitions in Section ~~1-201(26)~~ 1-202(d). * * *

12 3. * * * Subsection (b) obliges the receiving bank to pay interest to the sender as
13 restitution unless the sender receives notice of rejection on the execution date. The time of
14 receipt of notice is determined pursuant to ~~§ 1-201(27)~~ Section 1-202(e) and (f). The rate
15 of interest is stated in Section 4A-506. If the sender receives notice on the day after the
16 execution date, the sender is entitled to one day's interest. If receipt of notice is delayed
17 for more than one day, the sender is entitled to interest for each additional day of delay.

18 * * *

19 5. In furtherance of medium neutrality, the reference to "electronically" in the pre-
20 2022 text of this section has been deleted as unnecessary and the reference to a "writing"
21 in the pre-2022 text has been changed to refer to a "record."

22 **Sec. A-47. 11 MRSA §4-1211, sub-§(1)**, as enacted by PL 1991, c. 812, §2, is
23 amended to read:

24 (1). A communication of the sender of a payment order cancelling or amending the
25 order may be transmitted to the receiving bank orally, ~~electronically~~ or in writing a record.
26 If a security procedure is in effect between the sender and the receiving bank, the
27 communication is not effective to cancel or amend the order unless the communication is
28 verified pursuant to the security procedure or the bank agrees to the cancellation or
29 amendment.

30 **Official Comment**

31 * * *

32 2. Subsection (a) allows a cancellation or amendment of a payment order to be
33 communicated to the receiving bank "orally, ~~electronically~~, or in writing a record." The
34 quoted phrase is consistent with the language of Section 4A-103(a) applicable to payment
35 orders. Cancellations and amendments are normally subject to verification pursuant to
36 security procedures to the same extent as payment orders. Subsection (a) recognizes this
37 fact by providing that in cases in which there is a security procedure in effect between the
38 sender and the receiving bank the bank is not bound by a communication cancelling or
39 amending an order unless verification has been made. This is necessary to protect the bank
40 because under subsection (b) a cancellation or amendment can be effective by unilateral
41 action of the sender. Without verification the bank cannot be sure whether the

1 communication was or was not effective to cancel or amend a previously verified payment
2 order.

3 * * *

4 9. In furtherance of medium neutrality, the reference to "electronically" in the pre-
5 2022 text of this section has been deleted as unnecessary and the reference to a "writing"
6 in the pre-2022 text has been changed to refer to a "record."

7 **Sec. A-48. 11 MRSA §4-1305, sub-§(3)**, as enacted by PL 1991, c. 812, §2, is
8 amended to read:

9 (3). In addition to the amounts payable under subsections (1) and (2), damages,
10 including consequential damages, are recoverable to the extent provided in an express
11 written agreement of the receiving bank, evidenced by a record.

12 **Sec. A-49. 11 MRSA §4-1305, sub-§(4)**, as enacted by PL 1991, c. 812, §2, is
13 amended to read:

14 (4). If a receiving bank fails to execute a payment order it was obliged by express
15 agreement to execute, the receiving bank is liable to the sender for its expenses in the
16 transaction and for incidental expenses and interest losses resulting from the failure to
17 execute. Additional damages, including consequential damages, are recoverable to the
18 extent provided in an express written agreement of the receiving bank, evidenced by a
19 record, but are not otherwise recoverable.

20 **Official Comment**

21 * * *

22 2. * * *

23 * * *

24 Subsection (c) allows the measure of damages in subsection (b) to be increased by an
25 express written agreement of the receiving bank, evidenced by a record. An originator's
26 bank might be willing to assume additional responsibilities and incur additional liability in
27 exchange for a higher fee.

28 3. Subsection (d) governs cases in which a receiving bank has obligated itself by
29 express agreement to accept payment orders of a sender. In the absence of such an
30 agreement there is no obligation by a receiving bank to accept a payment order. Section
31 4A-212. The measure of damages for breach of an agreement to accept a payment order is
32 the same as that stated in subsection (b). As in the case of subsection (b), additional
33 damages, including consequential damages, may be recovered to the extent stated in an
34 express written agreement of the receiving bank, evidenced by a record.

35 4. Reasonable attorney's fees are recoverable only in cases in which damages are
36 limited to statutory damages stated in subsection (a), (b) and (d). If additional damages are
37 recoverable because provided for by an express written agreement, evidenced by a record,
38 attorney's fees are not recoverable. The rationale is that there is no need for statutory
39 attorney's fees in the latter case, because the parties have agreed to a measure of damages
40 which may or may not provide for attorney's fees.

41 * * *

1 that forum. For example, the parties' agreement under Section ~~5-116(e)~~ 5-116(g) would
2 not confer jurisdiction on a probate court to decide a letter of credit case.

3 If the parties choose a forum under subsection ~~(e)~~ (g) and if—because of other law—
4 that forum will not take jurisdiction, the parties' agreement or undertaking should then be
5 construed (for the purpose of forum selection) as though it did not contain a clause choosing
6 a particular forum. That result is necessary to avoid sentencing the parties to eternal
7 purgatory where neither the chosen State nor the State which would have jurisdiction but
8 for the clause will take jurisdiction—the former in disregard of the clause and the latter in
9 honor of the clause.

10 **Sec. A-54. 11 MRSA §7-1102, sub-§(1), ¶(j)**, as enacted by PL 2009, c. 324, Pt.
11 A, §2 and affected by §4, is repealed.

12 **Sec. A-55. 11 MRSA §7-1102, sub-§(1), ¶(k)**, as enacted by PL 2009, c. 324, Pt.
13 A, §2 and affected by §4, is repealed.

14 * * *

15 Official Comment

16 * * *

17 5. ~~The definitions of "record" and "sign" are included to facilitate electronic mediums.~~
18 ~~See comment 9 to Section 9-102 discussing "record" and the comment to amended Section~~
19 ~~2-103 discussing "sign." Pursuant to the Uniform Commercial Code Amendments (2022)~~
20 ~~(2022 Amendments), paragraphs (10) and (11) of subsection (a) have been deleted as~~
21 ~~unnecessary. Section 1-201 includes substantially equivalent definitions of "record" and~~
22 ~~"sign."~~

23 6. * * *

24 In the case of a negotiable document of title, the person entitled is the holder. See
25 Section 1-201(b)(21) (defining "holder"). For a nonnegotiable document of title, the person
26 entitled is the person provided in the terms of the document or instructions under the
27 document. A transferee of a nonnegotiable document to which the document has been
28 delivered acquires the transferee's rights and rights that the transferor had actual authority
29 to convey. Section 7-504(a). However, until but not after the bailee receives notice of a
30 transfer, such a transferee's rights are subject to those of persons identified in Section
31 7-504(b), including "as against the bailee, by good faith dealings of the bailee with the
32 transferor." Moreover, such a transferee is *not* a person entitled under the document unless
33 so provided in the document or in instructions under the document.

34 Article 7 does not explain what constitutes an "instruction under" a nonnegotiable
35 document, but instead leaves it to commercial practice, including usage of trade (Section
36 1-303(c)). In practice the term is generally understood to include a delivery order or other
37 instruction to the bailee, by the person named in the document, to deliver the goods to a
38 transferee of the document or to another person. A delivery order or other instruction under
39 a nonnegotiable document should be distinguished from a mere "notice" or "notification"
40 to the bailee of a transfer or security interest, as contemplated by Sections 7-504(b) and
41 9-312(d)(2). However, an instruction could, functionally, also constitute such a notice.

42 * * *

1 **Sec. A-56. 11 MRSA §7-1106**, as enacted by PL 2009, c. 324, Pt. A, §2 and affected
2 by §4, is amended to read:

3 **§7-1106. Control of electronic document of title**

4 **(1).** A person has control of an electronic document of title if a system employed for
5 evidencing the transfer of interests in the electronic document reliably establishes that
6 person as the person to which the electronic document was issued or transferred.

7 **(2).** A system satisfies subsection (1), and a person ~~is deemed to have~~ has control of
8 an electronic document of title, if the document is created, stored and ~~assigned~~ transferred
9 ~~in such~~ a manner that:

10 (a). A single authoritative copy of the document exists that is unique, identifiable and,
11 except as otherwise provided in paragraphs (d), (e) and (f), unalterable;

12 (b). The authoritative copy identifies the person asserting control as:

13 (i) The person to which the document was issued; or

14 (ii) If the authoritative copy indicates that the document has been transferred, the
15 person to which the document was most recently transferred;

16 (c). The authoritative copy is communicated to and maintained by the person asserting
17 control or its designated custodian;

18 (d). Copies or amendments that add or change an identified ~~assignee~~ transferee of the
19 authoritative copy can be made only with the consent of the person asserting control;

20 (e). Each copy of the authoritative copy and any copy of a copy is readily identifiable
21 as a copy that is not the authoritative copy; and

22 (f). Any amendment of the authoritative copy is readily identifiable as authorized or
23 unauthorized.

24 **(3).** A system satisfies subsection (1), and a person has control of an electronic
25 document of title, if an authoritative electronic copy of the document, a record attached to
26 or logically associated with the electronic copy or a system in which the electronic copy is
27 recorded:

28 (a). Enables the person readily to identify each electronic copy as either an
29 authoritative copy or a nonauthoritative copy;

30 (b). Enables the person readily to identify itself in any way, including by name,
31 identifying number, cryptographic key, office or account number, as the person to
32 which each authoritative electronic copy was issued or transferred; and

33 (c). Gives the person exclusive power, subject to subsection (4), to:

34 (i) Prevent others from adding or changing the person to which each authoritative
35 electronic copy has been issued or transferred; and

36 (ii) Transfer control of each authoritative electronic copy.

37 **(4).** Subject to subsection (5), a power is exclusive under subsection (3), paragraph
38 (c), subparagraphs (i) and (ii) even if:

39 (a). The authoritative electronic copy, a record attached to or logically associated with
40 the authoritative electronic copy or a system in which the authoritative electronic copy

1 is recorded limits the use of the document of title or has a protocol that is programmed
2 to cause a change, including a transfer or loss of control; or

3 (b). The power is shared with another person.

4 (5). A power of a person is not shared with another person under subsection (4),
5 paragraph (b) and the person's power is not exclusive if:

6 (a). The person can exercise the power only if the power also is exercised by the other
7 person; and

8 (b). The other person:

9 (i) Can exercise the power without exercise of the power by the person; or

10 (ii) Is the transferor to the person of an interest in the document of title.

11 (6). If a person has the powers specified in subsection (3), paragraph (c),
12 subparagraphs (i) and (ii), the powers are presumed to be exclusive.

13 (7). A person has control of an electronic document of title if another person, other
14 than the transferor to the person of an interest in the document:

15 (a). Has control of the document and acknowledges that it has control on behalf of the
16 person; or

17 (b). Obtains control of the document after having acknowledged that it will obtain
18 control of the document on behalf of the person.

19 (8). A person that has control under this section is not required to acknowledge that it
20 has control on behalf of another person.

21 (9). If a person acknowledges that it has or will obtain control on behalf of another
22 person, unless the person otherwise agrees or law other than this Article or Article 9-A
23 otherwise provides, the person does not owe any duty to the other person and is not required
24 to confirm the acknowledgment to any other person.

Official Comment

25 * * *

Purpose:

26
27
28 1. The 2022 revision of this section on control of electronic documents of title
29 preserves subsection (a), the general rule, and subsection (b), the "safe harbor" from the
30 pre-2022 section. The minor stylistic revisions are not substantive. The other revisions add
31 a second "safe harbor" in subsection (c), explanatory provisions relating to exclusivity of
32 powers in subsections (d) and (e), a presumption of exclusivity of powers in subsection (f),
33 and a new subsection (g) on control through another person. The requirements for obtaining
34 control under subsection (c) were inspired by Section 12-105 on control of controllable
35 electronic records. See Section 12-105 and Comments.

36 The This section defines "control" for electronic documents of title. Subsections (a)
37 and (b) and derives its rules derive from the Uniform Electronic Transactions Act § Section
38 16 on transferrable records. Unlike under UETA § Section 16, however, a document of
39 title may be reissued in an alternative medium pursuant to Section 7-105. At any point in
40 time in which a document of title is in electronic form, the control concept of this section

1 is relevant. As under UETA § Section 16, the control concept embodied in this section
2 provides the legal framework for developing systems for electronic documents of title.

3 2. Control of an electronic document of title substitutes for the concept of indorsement
4 (for negotiable documents) and possession ~~in the tangible document of title context~~ (for
5 tangible documents of title). See Section 7-501. A person with a tangible document of title
6 delivers the document by voluntarily transferring possession and a person with an
7 electronic document of title delivers the document by voluntarily transferring control.
8 (Delivery is defined in Section 1-201**(b)(15)**).

9 3. Subsection (a) sets forth the general rule that the "system employed for evidencing
10 the transfer of interests in the electronic document reliably establishes that person as the
11 person to which the electronic document was issued or transferred." The key to having a
12 system that satisfies this test is that identity of *the* person to which the document was issued
13 or transferred must be reliably established. Of great importance to the functioning of the
14 control concept under subsection (a), as well as under the safe harbors in subsections (b)
15 and (c), is to be able to demonstrate and identify, at any point in time, the person entitled
16 under the electronic document. For example, a carrier may issue an electronic bill of lading
17 by having the required information in a database that is encrypted and accessible by virtue
18 of a password. If the computer system in which the required information is maintained
19 identifies the person as *the* person to which the electronic bill of lading was issued or
20 transferred, that person has control of the electronic document of title. That identification
21 may be by virtue of passwords or other encryption methods. Registry systems may satisfy
22 this test. For example, see the electronic warehouse receipt system established pursuant to
23 7 C.F.R. Part 735. This Article leaves to the market place the development of sufficient
24 technologies and business practices that will meet the test.

25 An electronic document of title is evidenced by a record consisting of information
26 stored in an electronic medium. See Section 1-201**(b)(16A)** (defining "electronic") and **(31)**
27 (defining "record"). For example, a record in a computer database could be an electronic
28 document of title assuming that it otherwise meets the definition of document of title. To
29 the extent that third parties wish to deal in paper mediums, Section 7-105 provides a
30 mechanism for exiting the electronic environment by having the issuer reissue the
31 document of title in a tangible medium. Thus if a person entitled to enforce an electronic
32 document of title causes the information in the record to be printed onto paper without the
33 issuer's involvement in issuing the document of title pursuant to Section 7-105, that paper
34 is not a document of title.

35 4. Subsection (a) sets forth the general test for control. ~~Subsection~~ Subsections (b) and
36 (c) sets set forth a safe harbor test tests that, if satisfied, results result in control under the
37 general test in subsection (a). The safe harbor in subsection (b) requires the existence of
38 only one authoritative copy of the document but the safe harbor in subsection (c) allows
39 for either a single authoritative copy or multiple authoritative copies.

40 ~~The test in subsection (b) is also used in Section 9-105 although Section 9-105 does~~
41 ~~not include the general test of subsection (a).~~ Under subsection (b), at any point in time, a
42 party should be able to identify the single authoritative copy which is unique and
43 identifiable as the authoritative copy. This does not mean that once created ~~that~~ the
44 authoritative copy need be static and never moved or copied from its original location. To
45 the extent that backup systems exist which result in multiple copies, the key to this idea is
46 that at any point in time, the one authoritative copy needs to be unique and identifiable.

1 Parties may not by contract provide that control exists. The test for control is a factual
 2 test that depends upon whether the general test in subsection (a) or the safe harbor in
 3 subsection (b) is satisfied.

4 5. Article 7 has historically provided for rights under documents of title and rights of
 5 transferees of documents of title as those rights relate to the goods covered by the
 6 document. Third parties may possess or have control of documents of title. While
 7 misfeasance or negligence in failure to transfer or mis delivery of the document by those
 8 third parties may create serious issues, this Article has never dealt with those issues as it
 9 relates to tangible documents of title, preferring to leave those issues to the law of contracts,
 10 agency and tort law. In the electronic document of title regime, ~~third party~~ registry systems
 11 are just beginning to develop. It is very difficult to write rules regulating those third parties
 12 without some definitive sense of how the third party registry systems will be structured.
 13 Systems that are evolving to date tend to be "closed" systems in which all participants must
 14 sign on to the master agreement which provides for rights as against the registry system as
 15 well as rights among the members. In those closed systems, the document of title never
 16 leaves the system so the parties rely upon the master agreement as to rights against the
 17 registry for its failures in dealing with the document. This article contemplates that those
 18 "closed" systems will continue to evolve and that the control mechanism in this statute
 19 provides a method for the participants in the closed system to achieve the benefits of
 20 obtaining control allowed by this article.

21 This article also contemplates that parties will evolve open systems where parties need
 22 not be subject to a master agreement. In an open system a party that is expecting to obtain
 23 rights through an electronic document may not be a party to the master agreement. continue
 24 to evolve. To the extent that open these systems evolve by use of the control ~~concept~~
 25 concepts contained in this section, the law of contracts, agency, and torts as it applies to the
 26 registry's misfeasance or negligence concerning the transfer of control of the electronic
 27 document will allocate the risks and liabilities of the parties as that other law now does so
 28 for third parties who hold tangible documents and fail to deliver the documents.

29 6. The subsection (c) "safe harbor" generally follows Section 12-105 for control of
 30 controllable electronic records as well as revised Section 9-105 on control of chattel paper
 31 evidenced by electronic records. See generally Sections 9-105 and 12-105 and Comments.
 32 It differs from subsection (b), which (as noted above) is based on a "single authoritative
 33 copy" of an electronic document of title and so is unavailable when the relevant record is
 34 maintained on a blockchain or another distributed ledger. The utility of distributed ledger
 35 technology depends on there being multiple authoritative copies of an electronic record. It
 36 is important to note that compliance with the conditions for control in subsection (c) also
 37 would satisfy the conditions provided in subsection (b). However, subsection (b) was
 38 retained out of an abundance of caution and to provide assurances that existing systems for
 39 control of electronic documents of title continue to be viable. The conditions for "control"
 40 in subsection (c) reflect the functions that possession serves with respect to writings, but in
 41 a more accurate and technologically flexible way than do the conditions in subsection (b).

42 7. Under subsection (c), to obtain control of an electronic document of title a person
 43 must be able to identify each electronic copy as authoritative or nonauthoritative and
 44 identify itself as the person to which each authoritative electronic copy has been issued or
 45 transferred. As to the means of identification, see Section 12-105, Comment 7. In addition,
 46 the person must have the exclusive powers, first, to prevent others from adding or changing

1 an identified person to which each authoritative electronic copy has been issued or
 2 transferred and, second, to transfer control of each authoritative copy. However, once it is
 3 established that a person has received those powers, subsection (f) provides a presumption
 4 of exclusivity. Consequently, a person asserting control need not prove exclusivity in order
 5 to make out a *prima facie* case. Application of the presumption will be governed also by
 6 Section 1-206 (effects of a presumption under the UCC) and applicable non-UCC law
 7 (including rules of procedure and evidence). In addition, subsection (d) contains two
 8 qualifications of the term "exclusive" as used in subsection (c)(3). A power can be
 9 "exclusive" under subsection (c)(3) even if one or both of these qualifications apply.

10 Subsection (e) provides that in certain circumstances a power is not shared within the
 11 meaning of subsection (d)(2), the relaxation of the exclusivity requirement provided by
 12 subsection (d)(2) does not apply, and, consequently, a person's power is not exclusive.
 13 Subsection (e) provides that a person does not share an exclusive power with another person
 14 if the person can exercise the power only with the other person's cooperation (subsection
 15 (e)(1)) but the other person either (i) can exercise of the power without the person's
 16 cooperation (subsection (e)(2)(A)) or (ii) is the transferor to the person (transferee) of an
 17 interest in the document of title (subsection (e)(2)(B)). It follows that a person to which
 18 subsection (e) applies does not have control based on its exclusive powers (although it
 19 might have control through another person under subsection (g), discussed below, or if
 20 another person having control is acting as the person's agent). As to the rationale for
 21 disqualifying a transferee (which includes a secured party in a secured transaction) from
 22 the benefit of shared control under subsection (d)(2), as provided in subsection (e)(2)(B),
 23 and for examples of the operation of subsection (e) (in the context of the similar provision
 24 in Section 12-105), see Section 12-105, Comments 5 and 9.

25 8. Subsection (g) provides for a person to obtain control through the control of another
 26 person. It follows revisions to the corresponding provisions for control of a security
 27 entitlement (Section 8-106(d)(3)), control of deposit accounts (Section 9-104(a)(4)),
 28 control of authoritative electronic copies of records evidencing chattel paper (Section 9-
 29 105(g)), control of electronic money (Section 9-105A(e)), and control of controllable
 30 electronic records (Section 12-105(e)). For a brief discussion and background, see Section
 31 12-105, Comment 8. Under subsection (g) for an acknowledgment by another person to be
 32 effective to confer control on a person, the other person making the acknowledgment must
 33 be one "other than the transferor of an interest in the electronic record" to the person. The
 34 rationale for this limitation is discussed in Section 12-105, Comment 9. Control based on
 35 an acknowledgment under subsection (g) by another person having control continues only
 36 while the other person retains control. This result necessarily follows because such control
 37 derives solely from the other person's continued control.

38 Subsections (h) and (i) derive from Section 9-313(f) and (g). Subsection (h) makes
 39 clear that a person that has control under this section has no duty to acknowledge that it has
 40 or will obtain control on behalf of another person. Arrangements for a person to
 41 acknowledge that it has or will obtain control on behalf of another person are not
 42 standardized. Accordingly, subsection (i) leaves to the agreement of the parties and to any
 43 other applicable law (other than this Article or Article 9) any duties of a person that does
 44 acknowledge that it has or will obtain control on behalf of another person and provides that
 45 a person making an acknowledgment is not required to confirm the acknowledgment to
 46 another person. For example, subsection (g) would apply to give control to a person, Alpha,

1 when another person, Beta, has control of each authoritative electronic document of title
2 and acknowledges that it has control on behalf of Alpha. However, under subsection (h),
3 Beta is not required to so acknowledge. And under subsection (i), even if Beta does so
4 acknowledge, Beta owes no duty to Alpha, unless Beta agrees or other law so provides, and
5 Beta is not required to confirm its acknowledgment to any other person.

6 9. This section applies to both negotiable and nonnegotiable electronic documents of
7 title. For negotiable electronic documents of title, "delivery" is a necessary condition for
8 negotiation, and therefore for due negotiation, under Section 7-501(b). "Delivery" of an
9 electronic document of title is defined in Section 1-201(b)(15) as the "voluntary transfer of
10 control." The person in control of a negotiable document, other than pursuant to subsection
11 (g), also is a "holder," as defined in Section 1-201(b)(21)(C). Of course, nonnegotiable
12 documents cannot be negotiated.

13 A security interest in an electronic document of title, whether negotiable or
14 nonnegotiable, may be perfected by control. Section 9-314(a). But perfection of a security
15 interest by control in a nonnegotiable document does not perfect a security interest in goods
16 covered by the document and does not confer on a secured party or other purchaser the
17 status of a person entitled under the document. See Section 7-102(a)(9) (defining "person
18 entitled under the document") and Comment 6. This distinction arises from the differing
19 rights conferred by a negotiable document and a nonnegotiable document. Both types serve
20 as a receipt for the goods delivered to the bailee and a contract of storage (in the case of a
21 warehouse receipt) or contract of carriage (in the case of a bill of lading). However, a
22 negotiable document is also a representation of the goods themselves, whereas a
23 nonnegotiable document confers only the right to receive possession of the goods. (On
24 perfection of security interests in negotiable documents of title and goods covered by
25 negotiable and nonnegotiable documents of title, see generally Section 9-312(a), (c), and
26 (g) and Comment 7.)

27 **Sec. A-57. 11 MRSA §8-1102, sub-§(1), ¶(f)**, as enacted by PL 1997, c. 429, Pt.
28 B, §2, is amended by amending subparagraph (i) to read:

29 (i) Send a signed ~~writing~~ record; or

30 **Sec. A-58. 11 MRSA §8-1102, sub-§(2)**, as enacted by PL 1997, c. 429, Pt. B, §2,
31 is amended to read:

32 **(2).** ~~Other~~ The following definitions applying to in this Article and the sections in
33 which they appear are other Articles apply to this Article:

34	Appropriate person	Section 8-1107
35	Control	Section 8-1106
36	<u>Controllable account</u>	<u>Section 9-1102</u>
37	<u>Controllable electronic record</u>	<u>Section 12-102</u>
38	<u>Controllable payment intangible</u>	<u>Section 9-1102</u>
39	Delivery	Section 8-1301
40	Investment company security	Section 8-1103
41	Issuer	Section 8-1201
42	Overissue	Section 8-1210
43	Protected purchaser	Section 8-1303
44	Securities account	Section 8-1501

Official Comment

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6. "Communicate." The term "communicate" assures that the Article 8 rules will be sufficiently flexible to adapt to changes in information technology. Sending a signed writing always suffices as a communication, but the parties can agree that a different means of transmitting information is to be used. Agreement is defined in Section ~~1-201(3)~~ 1-201(b)(3) as "the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance." Thus, use of an information transmission method might be found to be authorized by agreement, even though the parties have not explicitly so specified in a formal agreement. The term communicate is used in Sections 8-102(a)(7) (definition of entitlement order), 8-102(a)(11) (definition of instruction), and 8-403 (demand that issuer not register transfer). Also in furtherance of medium neutrality, pursuant to the Uniform Commercial Code Amendments (2022) (2022 Amendments) the reference in paragraph (6)(i) to a "signed writing" has been changed to refer to a "signed record."

9. "Financial asset." * * *

* * *

It is not necessary for all of the Part 5 rules to be relevant to a particular financial asset for the relevant property to qualify as a "financial asset" credited to a securities account. Many of the duties set forth in Part 5 will often be relevant to a digital asset such as a "controllable electronic record" (Section 12-102), or a "controllable account" or "controllable payment intangible" (Section 9-102) evidenced by a controllable electronic record, treated as a financial asset credited to a securities account. These duties include the duty to exercise rights as directed by the entitlement holder, comply with the entitlement holder's entitlement orders, and change the position to another form of holding.

If the parties agree to treat a digital asset as a financial asset under Article 8 and the digital asset is in fact held in a securities account for an entitlement holder, the rules applicable to controllable electronic records under Article 12 would not apply to the entitlement holder's security entitlement related to the financial asset. If the financial asset itself is a controllable electronic record, however, then the rules in Article 12 could apply to the securities intermediary's rights with respect to the controllable electronic record if the intermediary holds the asset directly.

* * *

14. "Securities intermediary." A "securities intermediary" is a person that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity. The most common examples of securities intermediaries would be clearing corporations holding securities for their participants, banks acting as securities custodians, and brokers holding securities on behalf of their customers. However, a person need not be such an entity in order to be a securities intermediary. Because a "securities account" is an account to which a financial asset is or may be credited under Section 8-501(a) and the definition of "financial asset" is not limited to securities, a person may be a "securities intermediary" even if that person does not credit "securities" (as defined in Article 8) to the account. Rather, the securities accounts that a securities intermediary maintains may consist exclusively of financial assets described in Section 8-102(a)(9)(ii) and (iii). For example,

1 a cryptocurrency exchange that holds only cryptocurrencies (and not securities) for
2 customers might be a securities intermediary. Clearing corporations are listed separately as
3 a category of securities intermediary in subparagraph (i) even though in most circumstances
4 they would fall within the general definition in subparagraph (ii). The reason is to simplify
5 the analysis of arrangements such as the NSCC-DTC system in which NSCC performs the
6 comparison, clearance, and netting function, while DTC acts as the depository. Because
7 NSCC is a registered clearing agency under the federal securities laws, it is a clearing
8 corporation and hence a securities intermediary under Article 8, regardless of whether it is
9 at any particular time or in any particular aspect of its operations holding securities on
10 behalf of its participants.

11 * * *

12 The definition of securities intermediary includes the requirement that the person in
13 question "in the ordinary course of its business maintain securities accounts for others".
14 This "ordinary course" requirement does not have a fixed quantitative requirement and is
15 determined by the facts of each case. Thus, a person need not necessarily satisfy a specified
16 threshold of activity or necessarily have a minimum number of customers. Law other than
17 the UCC may determine who may legally engage in such a business.

18 * * *

19 18. "Uncertificated security." The term "uncertificated security" means a security that
20 is not represented by a security certificate—i.e., a paper certificate. This is so even if, for
21 example, the organic documents relating to the security refer to it as being "certificated" or
22 refer to the electronic record evidencing the security as an "electronic certificate." For
23 uncertificated securities, there is no need to draw any distinction between the underlying
24 asset and the means by which a direct holder's interest in that asset is evidenced. Compare
25 "certificated security" and "security certificate."

26 As discussed above in Comment 9, a controllable electronic record may be a "financial
27 asset." However, a controllable electronic record is not itself a "security," defined in part
28 in Section 8-102(a)(15) as "an obligation of an issuer or a share, participation, or other
29 interest in an issuer or in property or an enterprise of an issuer." It also is not "a share or
30 similar equity interest," an "investment company security," or "an interest in a partnership
31 or limited liability company." See Section 8-103(a), (b), and (c). Of course, a controllable
32 electronic record might be involved in the issuance and distribution of something that is a
33 security for other, non-Article 8 purposes, including the federal securities laws. For
34 example, a controllable electronic record (perhaps labeled as a "token" or "coin") might
35 provide a mechanism for facilitating investments in such securities. As Section 8-102(d)
36 makes clear, however, characterization under Article 8 does not determine characterization
37 for other purposes. The converse is also true—characterization for other purposes does not
38 determine characterization under Article 8.

39 Although not itself an Article 8 security, a controllable electronic record might play a
40 role in the facilitating transactions in Article 8 securities. The following examples address
41 situations in which controllable electronic records may have such a role as well as situations
42 in which investment property is not involved.

43 **Example 1 (corporate shares: Article 8 uncertificated securities; token as**
44 **instruction).** A Delaware corporation (D Corp) issues shares of stock and
45 **maintains books and records evidencing the registered ownership of the shares.**

1 Because the shares are not represented by security certificates, they are
 2 uncertificated securities. Pursuant to the applicable law and the organic
 3 documentation of D Corp, D Corp creates, or causes to be created, controllable
 4 electronic records (CERs)—"tokens"—to facilitate transfers of the shares. Also
 5 pursuant to that law and documentation, the transfer of control of a token on the
 6 platform on which the token is recorded constitutes an instruction to D Corp, as
 7 issuer, for the transfer of registration of the share(s) represented by the token to the
 8 transferee of control. Following receipt of the instruction upon transfer of control
 9 of a token, D Corp transfers registration of the share(s) on its books and records.
 10 See Sections 8-102(a)(12) (defining "instruction"); 8-401 (duty of issuer to register
 11 transfer). Although Article 12 governs the tokens (as CERs) and the transfer of
 12 control thereof, other law, including Delaware corporate law and Delaware Article
 13 8 (and Article 9 of the relevant jurisdiction, if applicable) governs rights in the
 14 uncertificated securities and the transfer of registration. See Sections 8-110(a); 12-
 15 104(f).

16 **Example 2 (LLC membership interests: Article 8 uncertificated securities;**
 17 **token as instruction).** A Delaware limited liability company (LLC) issues
 18 membership interests that are dealt in or traded on securities exchanges or in
 19 securities markets and which by their terms are securities governed by Article 8.
 20 See Section 8-103(c). LLC maintains books and records evidencing the registered
 21 ownership of the interests. Because the interests are not represented by security
 22 certificates, they are uncertificated securities. Pursuant to the applicable law and
 23 the organic documentation of LLC, LLC creates, or causes to be created,
 24 controllable electronic records (CERs)—"tokens"—to facilitate transfers of the
 25 interests. Also pursuant to that law and documentation, the transfer of control of a
 26 token on the platform on which the token is recorded constitutes an instruction to
 27 LLC, as issuer, for the transfer of registration of the interest(s) represented by the
 28 token to the transferee of control. Following receipt of the instruction upon transfer
 29 of control of a token, LLC transfers registration of the interest(s) on its books and
 30 records. See Sections 8-102(a)(12) (defining "instruction"); 8-401 (duty of issuer
 31 to register transfer). Although Article 12 governs the tokens (as CERs) and the
 32 transfer of control thereof, other law, including Delaware LLC law and Delaware
 33 Article 8 (and Article 9 of the relevant jurisdiction, if applicable), governs rights
 34 in the uncertificated securities and the transfer of registration. See Sections 8-
 35 110(a); 12-104(f).

36 **Example 3 (LLC membership interests not covered by Article 8; interests are**
 37 **general intangibles).** A Delaware limited liability company issues membership
 38 interests that are not securities governed by UCC Article 8 and, consequently, are
 39 not investment property. See Section 8-103(c). Instead, the membership interests
 40 are general intangibles. LLC maintains books and records evidencing ownership
 41 of the interests. Pursuant to the applicable law and the organic documentation of
 42 LLC, LLC creates, or causes to be created, controllable electronic records
 43 (CERs)—"tokens"—to facilitate transfers of the interests. Also pursuant to that law
 44 and documentation, the transfer of control of a token on the platform on which the
 45 token is recorded constitutes a request to LLC, as issuer, for the transfer of the
 46 interest(s) related to the token. Following receipt of the request upon transfer of
 47 control of a token, LLC transfers the interest(s) on its books and records. Although

1 Article 12 governs the tokens (as CERs) and the transfer of control, other law
2 (including Article 9 or the relevant jurisdiction, if applicable, but not Article 8)
3 governs rights in the interests (general intangibles). See Section 12-104(f).

4 Examples 1 and 2 posit that controllable electronic records function as instructions to
5 the issuers. For an analogous example in another context, see Section 4A-104, Comment 3
6 ("An instruction to pay might be a component of a computer program or a transaction
7 protocol intended to execute automatically under specified circumstances."). The central
8 point is that the roles of the controllable electronic records must comply with the organic
9 corporate and LLC laws and documentation as well as the Article 8 regime for
10 uncertificated securities. Although controllable electronic records might be structured to
11 functionally "represent" the underlying uncertificated securities, Article 8 makes no
12 provision for such a "representation" for uncertificated securities (unlike the role of security
13 certificates for certificated securities). Whether it would be possible and feasible to expand
14 the structure contemplated in Examples 1 and 2 so that transfer of control of a controllable
15 electronic record would, *ipso facto*, constitute a transfer of registration on the issuer's books
16 and records would depend on the terms of and compliance with both the underlying organic
17 laws and documentation for the uncertificated securities, the requirements of Article 8, and,
18 where applicable, other law.

19 If the securities issued by D Corp or LLC in Examples 1 and 2 were payment
20 obligations of the issuers that met the definition of "security" in Section 8-102(a)(15)—i.e.,
21 debt securities—the same analysis discussed in those examples as to the applicability and
22 scope of Articles 8 and 12 would apply. However, if the debt obligations were not Article
23 8 securities (as in Example 3) but were obligations of account debtors on controllable
24 accounts or controllable payment intangibles, then the relevant provisions of Articles 9 and
25 12, and not those of Article 8, would apply. See, e.g., Sections 9-107A; 9-306B; 9-314; 12-
26 104(a), (b), and (e) and Comments 6 – 10; Article 12, Prefatory Note 4.

27 **Sec. A-59. 11 MRSA §8-1103, sub-§(8)** is enacted to read:

28 **(8).** A controllable account, controllable electronic record or controllable payment
29 intangible is not a financial asset unless section 8-1102, subsection (1), paragraph (i),
30 subparagraph (iii) applies.

31 **Official Comment**

32 * * *

33 8. Subsection (g) allows a document of title to be a financial asset and thus subject to
34 the indirect holding system rules of Part 5 only to the extent that the intermediary and the
35 person entitled under the document so agree to do so pursuant to Section 8-102(a)(9)(iii).
36 Subsection (h), added pursuant to the 2022 Amendments, adopts the same approach for a
37 controllable account, controllable electronic record, or controllable payment intangible.
38 This is to prevent the inadvertent application of the Part 5 rules to intermediaries who may
39 hold either electronic or tangible documents of title or controllable accounts, controllable
40 electronic records, or controllable payment intangibles.

41 **Sec. A-60. 11 MRSA §8-1106, sub-§(4), ¶(c)**, as enacted by PL 1999, c. 699, Pt.
42 B, §21 and affected by §28, is amended to read:

1 (c). Another person has control of the security entitlement on behalf of the purchaser
2 or, having previously acquired control of the security entitlement, acknowledges that
3 it has control on behalf of the purchaser, other than the transferor to the purchaser of
4 an interest in the security entitlement:

5 (i) Has control of the security entitlement and acknowledges that it has control on
6 behalf of the purchaser; or

7 (ii) Obtains control of the security entitlement after having acknowledged that it
8 will obtain control of the security entitlement on behalf of the purchaser.

9 **Sec. A-61. 11 MRSA §8-1106, sub-§(8)** is enacted to read:

10 (8). A person that has control under this section is not required to acknowledge that it
11 has control on behalf of a purchaser.

12 **Sec. A-62. 11 MRSA §8-1106, sub-§(9)** is enacted to read:

13 (9). If a person acknowledges that it has or will obtain control on behalf of a purchaser,
14 unless the person otherwise agrees or law other than this Article or Article 9-A otherwise
15 provides, the person does not owe any duty to the purchaser and is not required to confirm
16 the acknowledgment to any other person.

17 Official Comment

18 1. The concept of "control" plays a key role in various provisions dealing with the
19 rights of purchasers, including secured parties. See Sections 8-303 (protected purchasers);
20 8-503(e) (purchasers from securities intermediaries); 8-510 (purchasers of security
21 entitlements from entitlement holders); 9-203(b)(3)(D) (attachment of security interests);
22 9-314 (perfection of security interests); 9-328 (priorities among conflicting security
23 interests).

24 Obtaining "control" means that the purchaser has taken whatever steps are necessary,
25 given the manner in which the securities or other financial assets are held, to place itself in
26 a position where it can have the securities or other financial assets sold, without further
27 action by the owner, registered owner, entitlement holder, transferor, or other person with
28 an interest in the securities or other financial assets.

29 * * *

30 4. Subsection (d) specifies the means by which a purchaser can obtain control of a
31 security entitlement. Three mechanisms are possible, analogous to those provided in
32 subsection (c) for uncertificated securities. Under subsection (d)(1), a purchaser has control
33 if it is the entitlement holder. This subsection would apply whether the purchaser holds
34 through the same intermediary that the debtor used, or has the securities position transferred
35 to its own intermediary. Subsection (d)(2) provides that a purchaser has control if the
36 securities intermediary has agreed to act on entitlement orders originated by the purchaser
37 if no further consent by the entitlement holder is required. Under subsection (d)(2), control
38 may be achieved even though the original entitlement holder remains as the entitlement
39 holder. Finally, a purchaser may obtain control under subsection (d)(3) if another person
40 has control and the person acknowledges that it has control on the purchaser's behalf.
41 ~~Control~~ In general, control under subsection (d)(3) parallels the delivery of certificated

1 securities and uncertificated securities under Section 8-301. ~~Of course, the acknowledging~~
2 ~~person cannot be the debtor.~~ See the discussion of subsection (d)(3) in Comment 4A, below.

3 ~~This section~~ Subsection (d) specifies only the minimum requirements that such an
4 arrangement must meet to confer "control" of a security entitlement; the details of the
5 arrangement can be specified by agreement. The arrangement might cover all of the
6 positions in a particular account or subaccount, or only specified positions. There is no
7 requirement that the control party's right to give entitlement orders be exclusive. The
8 arrangement might provide, for example, that only the control party can give entitlement
9 orders, ~~or~~ that either the entitlement holder or the control party can give entitlement orders,
10 that more than one person has unilateral control, or that two or more persons share control.
11 The essential factor is whether a person may originate entitlement orders without further
12 consent of the entitlement holder. See subsection (f).

13 The following examples illustrate the application of subsection (d):

14 * * *

15 Example 9. Debtor grants Alpha Bank a security interest in a security entitlement
16 that includes 1000 shares of XYZ Co. stock that Debtor holds through an account
17 with Able & Co. Beta Bank agrees with Alpha to act as Alpha's collateral agent
18 with respect to the security entitlement. Debtor, Able, and Beta enter into an
19 agreement under which Debtor will continue to receive dividends and distributions,
20 and will continue to have the right to direct dispositions, but Beta also has the right
21 to direct dispositions. Because Able has agreed that it will comply with entitlement
22 orders originated by Beta without further consent by Debtor, Beta has control of
23 the security entitlement (see Example 3). Because Beta has acknowledged that it
24 has control on behalf of Alpha, Alpha also has control under subsection (d)(3). It
25 is not necessary for Able to enter into an agreement directly with Alpha or for Able
26 to be aware of Beta's agency relationship with Alpha.

27 * * *

28 4A. Pursuant to the 2022 Amendments, subsection (d)(3) was revised to conform the
29 provision for control through another person to the corresponding provisions for control of
30 other types of assets. See Section 12-105, Comment 8; see also Sections 7-106(g) (control
31 of electronic document of title); 9-104(a)(4) (control of deposit account); 9-105(g) (control
32 of authoritative electronic copy of a record evidencing chattel paper); 9-105A(e) (control
33 of electronic money). Control based on an acknowledgment under subsection (d)(3) by
34 another person having control continues only while the other person retains control. This
35 result necessarily follows because such control derives solely from the other person's
36 continued control. Under subsection (d)(3), for an acknowledgment to be effective to
37 confer control, it must be made by a person "other than the transferor of an interest in the
38 security entitlement." See Section 12-105, Comment 9 (discussing the rationale for this
39 requirement). Subsections (h) and (i) derive from Section 9-313(f) and (g). Subsection (h)
40 makes clear that a person that has control under this section has no duty to acknowledge
41 that it has or will obtain control on behalf of a purchaser. Arrangements for a person to
42 acknowledge that it has or will obtain control on behalf of another person are not
43 standardized. Accordingly, subsection (i) leaves to the agreement of the parties and to any
44 other applicable law (other than this Article or Article 9) any duties of a person that does
45 acknowledge that it has or will obtain control on behalf of a purchaser and provides that a

1 person making an acknowledgment is not required to confirm the acknowledgment to any
2 other person.

3 * * *

4 **Sec. A-63. 11 MRSA §8-1110, sub-§(7)** is enacted to read:

5 (7). The local law of the issuer's jurisdiction or the securities intermediary's
6 jurisdiction governs a matter or transaction specified in subsection (1) or (2) even if the
7 matter or transaction does not bear any relation to the jurisdiction.

8 **Official Comment**

9 1. * * *

10 * * * See Comments 3 and 5 through 7 below and PEB Commentary No. 19, ~~dated~~
11 ~~April 11, 2017.~~

12 * * *

13 3. * * *

14 Where the Hague Securities Convention applies, the foregoing provisions of an account
15 agreement effectively determine the applicable law only if the intermediary, at the time of
16 the agreement, had an office in the designated jurisdiction (which may be anywhere in the
17 United States if the account agreement specifies a state of the United States) that is engaged
18 in a regular activity of maintaining securities accounts (a "Qualifying Office"). However,
19 because the policy of this section and the Convention is to enable parties to determine, in
20 advance and with certainty, what law will apply to transactions governed by this Article,
21 the validation of the parties' selection of governing law by agreement is not conditioned
22 upon a determination that the jurisdiction whose law is chosen bear a "reasonable relation"
23 to a matter or the transaction. See Subsection (g) makes this explicit. See Comment 5A;
24 see also Section 4A-507; compare Section 1-105(1) (Revised Section 1-301(a)). That is
25 also true with respect to the similar provisions in subsection (d) of this section and in
26 Section 9-305. The remaining paragraphs in subsection (e) and Convention article 5 contain
27 additional default rules for determining the applicable law.

28 * * *

29 5A. Subsection (g) reflects what is stated in Comment 3—that the local law of the
30 issuer's jurisdiction or securities intermediary's jurisdiction governs even if a matter or
31 transaction bears no relation to that jurisdiction. This also is implicit in Section 1-301(c),
32 which provides that the applicable law provided in this section (and other specified
33 provisions) governs.

34 * * *

35 **Sec. A-64. 11 MRSA §8-1303, sub-§(2)**, as enacted by PL 1997, c. 429, Pt. B, §2,
36 is amended to read:

37 **(2).** ~~In addition to acquiring the rights of a purchaser, a~~ A protected purchaser also
38 acquires its interest in the security free of any adverse claim.

39 **Official Comment**

40 * * *

1 2. To qualify as a protected purchaser under subsection (a), a purchaser must give
 2 value, take without notice of any adverse claim, and obtain control. Value is used in the
 3 broad sense defined in Section 1-201(44) 1-204. See also Section 8-116 (securities
 4 intermediary as purchaser for value). Adverse claim is defined in Section 8-102(a)(1).
 5 Section 8-105 specifies whether a purchaser has notice of an adverse claim. Control is
 6 defined in Section 8-106. To qualify as a protected purchaser under subsection (b), there
 7 must be a time at which all of the requirements are satisfied. Thus if a purchaser obtains
 8 notice of an adverse claim before giving value or satisfying the requirements for control,
 9 the purchaser cannot be a protected purchaser. See also Section 8-304(d).

10 The requirement that a protected purchaser obtain control expresses the point that to
 11 qualify for the adverse claim cut-off rule a purchaser must take through a transaction that
 12 is implemented by the appropriate mechanism. By contrast, the rules in Part 2 provide that
 13 any purchaser for value of a security without notice of a defense may take free of the issuer's
 14 defense based on that defense. See Section 8-202.

15 The reference to the acquisition of the rights of a purchaser in the pre-2022 text of
 16 subsection (b) has been deleted. However, because a protected purchaser acquires the rights
 17 of a purchaser under Section 8-302, the revised text does not diminish a protected
 18 purchaser's rights. That revision aligned the text more closely to that of Section 12-104(e)
 19 on the rights of a qualifying purchaser of a controllable electronic record, controllable
 20 account, or controllable payment intangible.

21 * * *

22 Official Comment

23 ~~1. **Source.** This Article supersedes former Uniform Commercial Code (UCC) Article~~
 24 ~~9. As did its predecessor, it provides a comprehensive scheme for the regulation of security~~
 25 ~~interests in personal property and fixtures. For the most part this Article follows the general~~
 26 ~~approach and retains much of the terminology of former Article 9. In addition to describing~~
 27 ~~many aspects of the operation and interpretation of this Article, these Comments explain~~
 28 ~~the material changes that this Article makes to former Article 9. Former Article 9~~
 29 ~~superseded the wide variety of pre-UCC security devices. Unlike the Comments to former~~
 30 ~~Article 9, however, these Comments dwell very little on the pre-UCC state of the law. For~~
 31 ~~that reason, the Comments to former Article 9 will remain of substantial historical value~~
 32 ~~and interest. They also will remain useful in understanding the background and general~~
 33 ~~conceptual approach of this Article.~~

34 Citations to "Bankruptcy Code Section—" in these Comments are to Title 11 of the
 35 United States Code as in effect on July 1, 2010.

36 ~~2. **1. Source, Background, and History.** In 1990, the Permanent Editorial Board for~~
 37 ~~the UCC with the support of its sponsors, The American Law Institute and the National~~
 38 ~~Conference of Commissioners on Uniform State Laws, established a committee to study~~
 39 ~~Uniform Commercial Code (UCC) Article 9 of the UCC. The study committee issued its~~
 40 ~~report as of December 1, 1992, recommending the creation of a drafting committee for the~~
 41 ~~revision of Article 9 and also recommending numerous specific changes to Article 9.~~
 42 ~~Organized in 1993, a drafting committee met fifteen times from 1993 to 1998. This~~
 43 ~~Extensive revisions of this Article was were approved by its sponsors in 1998 (1998~~
 44 ~~Revisions). This The Article was conformed to revised Article 1 in 2001 and to~~

1 amendments to Article 7 in 2003. The sponsors approved amendments to selected sections
2 of this Article in 2010.

3 The 1998 Revisions superseded former Article 9 (pre-1998 Article 9) and, as did their
4 predecessor, provided a comprehensive scheme for the regulation of security interests in
5 personal property and fixtures. For the most part the 1998 Article 9 followed the general
6 approach and retains much of the terminology of pre-1998 Article 9. Comment 3 describes
7 the material changes made by the 1998 Revisions. Pre-1998 Article 9 superseded the wide
8 variety of pre-UCC security devices. Unlike the Comments to pre-1998 Article 9, however,
9 these Comments dwell very little on the pre-UCC state of the law. For that reason, the
10 Comments to pre-1998 Article 9 will remain of substantial historical value and interest.
11 They also will remain useful in understanding the background and general conceptual
12 approach of this Article.

13 Article 9 was again extensively revised in 2022 (2022 Article 9 Revisions) pursuant to
14 the Uniform Commercial Code Amendments (2022) (2022 Amendments). In particular,
15 the 2022 Article 9 Revisions conform and adapt Article 9 to Article 12, covering
16 controllable electronic records and rights to payment that are tethered to controllable
17 electronic records—controllable accounts and controllable payment intangibles. For a brief
18 summary of the 2022 Article 9 Revisions, see Comment 4, below. Except as noted in
19 Comments 3 and 4 below, the 1998 Article 9 remains substantially unchanged following
20 the 2022 Article 9 Revisions.

21 Note also that citations to "Bankruptcy Code Section" in these Comments are to Title
22 11 of the United States Code as in effect on July 1, 2022.

23 **3 2. 1998 Revisions: Reorganization and Renumbering; Captions; Style.** ~~This~~
24 ~~Article reflects a~~ The 1998 Revisions embraced a substantial reorganization of former
25 Article 9 and renumbering of most sections of Article 9, ~~including a new Part 4 deals~~
26 dealing with several aspects of third-party rights and duties that are unrelated to perfection
27 and priority. Some of these were covered by Part 3 of ~~former pre-1998 Article 9. Also~~
28 added was a new Part 5, ~~deals dealing~~ with filing (formerly covered by ~~former pre-1998~~
29 Part 4), and Part 6, ~~deals dealing~~ with default and enforcement (formerly covered by ~~former~~
30 pre-1998 Part 5). Appendix I contains conforming revisions to other articles of the UCC,
31 and Appendix II contains model provisions for production-money priority. This Article
32 The 1998 Revisions also ~~includes include~~ headings for the subsections as an aid to readers.
33 Unlike section captions, which are part of the UCC, see Section 1-107, subsection headings
34 are not a part of the official text itself and have not been approved by the sponsors. Each
35 jurisdiction in which this Article is introduced may consider whether to adopt the headings
36 as a part of the statute and whether to adopt a provision clarifying the effect, if any, to be
37 given to the headings. This Article also has been conformed to current style conventions.

38 **4 3. Summary of 1998 Revisions.** Following is a brief summary of some of the more
39 significant ~~revisions features~~ of the 1998 Revisions of Article 9 ~~that are included in the~~
40 1998 revision of this Article.

41 **a. Scope of Article 9.** This Article expands ~~The 1998 Revisions expanded~~ the scope
42 of Article 9 in several respects.

43 *Deposit accounts.* Section 9-109 includes within this Article's scope deposit accounts
44 as original collateral, except in consumer transactions. ~~Former Pre-1998 Article 9 dealt~~
45 with deposit accounts only as proceeds of other collateral.

1 *Sales of payment intangibles and promissory notes.* Section 9-109 also includes within
2 the scope of this Article most sales of "payment intangibles" (defined in Section 9-102 as
3 general intangibles under which an account debtor's principal obligation is monetary) and
4 "promissory notes" (also defined in Section 9-102). ~~Former Pre-1998~~ Article 9 included
5 sales of accounts and chattel paper, but not sales of payment intangibles or promissory
6 notes. In its inclusion of sales of payment intangibles and promissory notes, this Article
7 continues the drafting convention found in ~~former pre-1998~~ Article 9; ~~it provides that~~ the
8 sale of accounts, chattel paper, payment intangibles, or promissory notes creates a "security
9 interest." The definition of "account" in Section 9-102 also ~~has been~~ was expanded to
10 include various rights to payment that were general intangibles under ~~former pre-1998~~
11 Article 9.

12 * * *

13 *Consignments.* Section 9-109 ~~provides that~~ added "true" consignments—bailments for
14 the purpose of sale by the bailee—~~are security interests covered by~~ to the scope of Article 9,
15 with certain exceptions. See Section 9-102 (defining "consignment"). Currently Under the
16 pre-1998 UCC, many consignments ~~are~~ were subject to Article 9's filing requirements by
17 operation of ~~former pre-1998~~ Section 2-326.

18 *Supporting obligations and property securing rights to payment.* ~~This Article~~ The
19 1998 Revisions also ~~addresses~~ addressed explicitly (i) obligations, such as guaranties and
20 letters of credit, that support payment or performance of collateral such as accounts, chattel
21 paper, and payment intangibles, and (ii) any property (including real property) that secures
22 a right to payment or performance that is subject to an Article 9 security interest. See
23 Sections 9-203, 9-308.

24 *Commercial tort claims.* Section 9-109 expands the scope of Article 9 to include the
25 assignment of commercial tort claims by narrowing the exclusion of tort claims generally.
26 However, ~~this Article continues~~ Article 9 continues to exclude tort claims for bodily injury
27 and other non-business tort claims of a natural person. See Section 9-102 (defining
28 "commercial tort claim").

29 *Transfers by States and governmental units of States.* Section 9-109 narrows the
30 exclusion of transfers by States and their governmental units. ~~It excludes by excluding~~
31 only transfers covered by another statute (other than a statute generally applicable to
32 security interests) to the extent the statute governs the creation, perfection, priority, or
33 enforcement of security interests.

34 *Nonassignable general intangibles, promissory notes, health-care-insurance*
35 *receivables, and letter-of-credit rights.* ~~This Article enables~~ The 1998 Revisions enabled a
36 security interest to attach to letter-of-credit rights, health-care-insurance receivables,
37 promissory notes, and general intangibles, including contracts, permits, licenses, and
38 franchises, notwithstanding a contractual or statutory prohibition against or limitation on
39 assignment. ~~This~~ The revised Article explicitly protects third parties against any adverse
40 effect of the creation or attempted enforcement of the security interest. See Sections 9-
41 408, 9-409.

42 * * *

43 b. **Duties of Secured Party.** ~~This Article provides~~ The 1998 Revisions provided for
44 expanded duties of secured parties.

1 * * *

2 c. **Choice of Law.** The choice-of-law rules included in the 1998 Revisions for the law
3 governing perfection, the effect of perfection or nonperfection, and priority are found in
4 Part 3, Subpart 1 (Sections 9-301 through 9-307). See also Section 9-316.

5 *Where to file: Location of debtor.* ~~This Article changes~~ The 1998 Revisions changed
6 the choice-of-law rule governing perfection (i.e., where to file) for most collateral to the
7 law of the jurisdiction where the debtor is located. See Section 9-301. Under ~~former pre-~~
8 1998 Article 9, the jurisdiction of the debtor's location governed only perfection and
9 priority of a security interest in accounts, general intangibles, mobile goods, and, for
10 purposes of perfection by filing, chattel paper and investment property.

11 *Determining debtor's location.* As a baseline rule, Section 9-307 follows ~~former pre-~~
12 1998 Section 9-103, under which the location of the debtor is the debtor's place of business
13 (or chief executive office, if the debtor has more than one place of business). Section 9-307
14 contains three major exceptions. First, a "registered organization," such as a corporation or
15 limited liability company, is located in the State under whose law the debtor is organized,
16 e.g., a corporate debtor's State of incorporation. Second, an individual debtor is located at
17 his or her principal residence. Third, there are special rules for determining the location of
18 the United States and registered organizations organized under the law of the United States.

19 * * *

20 *Priority.* For tangible collateral such as goods and instruments, Section 9-301 provides
21 that the law applicable to priority and the effect of perfection or nonperfection will remain
22 the law of the jurisdiction where the collateral is located, as under ~~former pre-~~1998 Section
23 9-103 (but without the confusing "last event" test). For intangible collateral, such as
24 accounts, the applicable law for priority ~~will be~~ is that of the jurisdiction in which the debtor
25 is located.

26 * * *

27 *Goods covered by certificates of title; deposit accounts; letter-of-credit rights;*
28 *investment property.* ~~This Article includes~~ The 1998 Revisions to Article 9 included
29 several refinements to the treatment of choice-of-law matters for goods covered by
30 certificates of title. See Section 9-303. ~~It~~ The revision also ~~provides~~ provided special
31 choice-of-law rules, similar to those for investment property under Articles 8 and 9, for
32 deposit accounts (Section 9-304), investment property (Section 9-305), and letter-of-credit
33 rights (Section 9-306).

34 * * *

35 d. **Perfection.** The 1998 revised rules governing perfection of security interests and
36 agricultural liens are found in Part 3, Subpart 2 (Sections 9-308 through 9-316).

37 *Deposit accounts; letter-of-credit rights.* With certain exceptions, ~~this Article provides~~
38 the 1998 Revisions provided that a security interest in a deposit account or a letter-of-credit
39 right may be perfected *only* by the secured party's acquiring "control" of the deposit account
40 or letter-of-credit right. See Sections 9-312, 9-314. Under Section 9-104, a secured party
41 has "control" of a deposit account when, with the consent of the debtor, the secured party
42 obtains the depository bank's agreement to act on the secured party's instructions (including
43 when the secured party becomes the account holder) or when the secured party is itself the
44 depository bank. The control requirements are patterned on Section 8-106, which specifies

1 the requirements for control of certain investment property. Under Section 9-107, "control"
 2 of a letter-of-credit right occurs when the issuer or nominated person consents to an
 3 assignment of proceeds under Section 5-114.

4 Electronic chattel paper and tangible chattel paper definitions deleted in 2022 Article
 5 9 Revisions. Section 9-102 ~~includes of the 1998 Revisions included~~ a new defined term
 6 ~~terms:~~ "electronic chattel paper." paper" and "tangible chattel paper." Electronic chattel
 7 paper is a record or records consisting of information stored in an electronic medium (i.e.,
 8 it is not written). Perfection of a security interest in electronic chattel paper may be by
 9 control or filing. See Sections 9-105 (sui generis definition of control of electronic chattel
 10 paper), 9-312 (perfection by filing), 9-314 (perfection by control). However, the 2022
 11 Article 9 Revisions deleted those terms and modified the definition of "chattel paper" and
 12 the rules for chattel paper evidenced by electronic records, as discussed in Comment 4 and
 13 Section 9-102, Comment 5.b.

14 Investment property. The 1998 Revisions left the perfection requirements for
 15 "investment property" (defined in Section 9-102), including perfection by control under
 16 Section 9-106, ~~remain~~ substantially unchanged. However, a new provision in Section 9-
 17 314 is designed to ensure that a secured party retains control in "repledge" transactions that
 18 are typical in the securities markets.

19 Instruments, agricultural liens, and commercial tort claims. ~~This Article expands The~~
 20 1998 Revisions expanded the types of collateral in which a security interest may be
 21 perfected by filing to include instruments. See Section 9-312. Agricultural Under the
 22 revised Article liens and security interests in commercial tort claims also are perfected by
 23 filing under this Article. See Sections 9-308, 9-310.

24 Sales of payment intangibles and promissory notes. Although ~~former pre-1998 Article~~
 25 9 covered the outright sale of accounts and chattel paper, under the revised Article sales of
 26 most other types of receivables also are financing transactions to which Article 9 should
 27 apply. Accordingly, Section 9-102 expanded the definition of "account" to include many
 28 types of receivables (including "health-care-insurance receivables," defined in Section
 29 9-102) that ~~former pre-1998 Article 9~~ classified as "general intangibles." It thereby subjects
 30 to Article 9's filing system sales of more types of receivables than did ~~former pre-1998~~
 31 Article 9. Certain sales of payment intangibles—primarily bank loan participation
 32 transactions—should not be subject to the Article 9 filing rules. These transactions ~~fall~~ are
 33 placed in a residual category of collateral, "payment intangibles" (general intangibles under
 34 which the account debtor's principal obligation is monetary), the sale of which is exempt
 35 from the filing requirements of Article 9. See Sections 9-102, 9-109, 9-309 (perfection
 36 upon attachment). The perfection rules for sales of promissory notes are the same as those
 37 for sales of payment intangibles.

38 Possessory security interests. Several provisions of 1998 Article 9 address aspects of
 39 security interests involving a secured party or a third party who is in possession of ~~the~~
 40 collateral. In particular, Section 9-313 resolves a number of uncertainties under ~~former~~
 41 pre-1998 Section 9-305. It provides that a security interest in collateral in the possession
 42 of a third party is perfected when the third party acknowledges in ~~an authenticated~~ a signed
 43 record that it holds for the secured party's benefit. Section 9-313 also provides that a third
 44 party need not so acknowledge and that its acknowledgment does not impose any duties on
 45 it, unless it otherwise agrees. A special rule in Section 9-313 provides that if a secured
 46 party already is in possession of collateral, its security interest remains perfected by

1 possession if it delivers the collateral to a third party and the collateral is accompanied by
 2 instructions to hold it for the secured party or to redeliver it to the secured party. Section
 3 9-313 also clarifies the limited circumstances under which a security interest in goods
 4 covered by a certificate of title may be perfected by the secured party's taking possession.

5 *Automatic perfection.* The 1998 Revisions added Section 9-309, which lists various
 6 types of security interests as to which no public-notice step is required for perfection (e.g.,
 7 purchase-money security interests in consumer goods other than automobiles). This
 8 automatic perfection also extends to a transfer of a health-care-insurance receivable *to*
 9 a health-care provider. Those transfers normally will be made by natural persons who
 10 receive health-care services; there is little value in requiring filing for perfection in that
 11 context. Automatic perfection also applies to security interests created by sales of payment
 12 intangibles and promissory notes. Section 9-308 provides that a perfected security interest
 13 in collateral supported by a "supporting obligation" (such as an account supported by a
 14 guaranty) also is a perfected security interest in the supporting obligation, and that a
 15 perfected security interest in an obligation secured by a security interest or lien on property
 16 (e.g., a real-property mortgage) also is a perfected security interest in the security interest
 17 or lien.

18 e. **Priority; Special Rules for Banks and Deposit Accounts.** The rules governing
 19 priority of security interests and agricultural liens under the 1998 Revisions are found in
 20 Part 3, Subpart 3 (Sections 9-317 through 9-342). ~~This~~ The revised Article includes several
 21 new priority rules and some special rules relating to banks and deposit accounts (Sections
 22 9-340 through 9-342).

23 *Purchase-money security interests: General; consumer-goods transactions;*
 24 *inventory.* Section 9-103 substantially rewrites the definition of purchase-money security
 25 interest (PMSI) (although the term is not formally "defined"). The substantive changes,
 26 however, apply only to non-consumer-goods transactions. (Consumer transactions and
 27 consumer-goods transactions are discussed below in Comment 4.j.) For non-consumer-
 28 goods transactions, Section 9-103 makes clear that a security interest in collateral may be
 29 (to some extent) both a PMSI as well as a non-PMSI, in accord with the "dual status" rule
 30 applied by some courts under ~~former~~ pre-1998 Article 9 (thereby rejecting the
 31 "transformation" rule). The revised definition provides an even broader conception of a
 32 PMSI in inventory, yielding a result that accords with private agreements entered into in
 33 response to the uncertainty under ~~former~~ pre-1998 Article 9. It also treats consignments as
 34 purchase-money security interests in inventory. Section 9-324 ~~revises~~ clarifies the PMSI
 35 priority rules, but for the most part without material change in substance. Section 9-324
 36 also clarifies the priority rules for competing PMSIs in the same collateral.

37 *Purchase-money security interests in livestock; agricultural liens.* Section 9-324
 38 provides a special PMSI priority, similar to the inventory PMSI priority rule, for livestock.
 39 Section 9-322 (~~which contains~~ the baseline first-to-file-or-perfect priority rule) also
 40 recognizes special non-Article 9 priority rules for agricultural liens, which can override the
 41 baseline first-in-time rule.

42 *Purchase-money security interests in software.* Section 9-324 contains a new priority
 43 rule for a software purchase-money security interest. (Section 9-102 includes a definition
 44 of "software.") Under Section 9-103, a software PMSI includes a PMSI in software that is
 45 used in goods that are also subject to a PMSI. (~~Note also that the definition of "chattel~~

1 paper" has been also is expanded to include records that evidence a monetary obligation
2 and a security interest in specific goods and software used in the goods.)

3 *Investment property.* The 1998 priority rules for investment property are substantially
4 similar to the priority rules found in ~~former pre-1998~~ Section 9-115, which was added in
5 conjunction with the 1994 revisions to UCC Article 8. Under Section 9-328, if a secured
6 party has control of investment property (Sections 8-106, 9-106), its security interest is
7 senior to a security interest perfected in another manner (e.g., by filing). Also under Section
8 9-328, security interests perfected by control generally rank according to the time that
9 control is obtained or, in the case of a security entitlement or a commodity contract carried
10 in a commodity account, the time when the control arrangement is entered into. ~~This is~~
11 That was a change from former pre-1998 Section 9-115, under which the security interests
12 ranked equally. However, as between a securities intermediary's security interest in a
13 security entitlement that it maintains for the debtor and a security interest held by another
14 secured party, the securities intermediary's security interest is senior.

15 *Deposit accounts.* ~~This Article's~~ The 1998 priority rules applicable to deposit accounts
16 are found in Section 9-327.—~~They and~~ are patterned on and ~~are~~ similar to those for
17 investment property in ~~former pre-1998~~ Section 9-115 and Section 9-328 ~~of this Article~~.
18 Under Section 9-327, if a secured party has control of a deposit account, its security interest
19 is senior to a security interest perfected in another manner (i.e., as cash proceeds). Also
20 under Section 9-327, security interests perfected by control rank according to the time that
21 control is obtained, but as between a depository bank's security interest and one held by
22 another secured party, the depository bank's security interest is senior. A corresponding
23 rule in Section 9-340 makes a depository bank's right of set-off generally senior to a security
24 interest held by another secured party. However, if the other secured party becomes the
25 depository bank's customer with respect to the deposit account, then its security interest is
26 senior to the depository bank's security interest and right of set-off. Sections 9-327, 9-340.

27 *Letter-of-credit rights.* The 1998 priority rules for security interests in letter-of-credit
28 rights are ~~found set out~~ in Section 9-329. They are somewhat analogous to those for deposit
29 accounts. A security interest perfected by control has priority over one perfected in another
30 manner (i.e., as a supporting obligation for the collateral in which a security interest is
31 perfected). Security interests in a letter-of-credit right perfected by control rank according
32 to the time that control is obtained. However, the rights of a transferee beneficiary or a
33 nominated person are independent and superior to the extent provided in Section 5-114.
34 See Section 9-109(c)(4).

35 *Chattel paper and instruments.* Section 9-330 is the 1998 successor to ~~former pre-~~
36 1998 Section 9-308. As under ~~former pre-1998~~ Section 9-308, under the 1998 Revisions
37 differing priority rules apply to purchasers of chattel paper who give new value and take
38 possession (or, in the case of electronic chattel paper, obtain control) of the collateral—
39 depending on whether a conflicting security interest in the collateral is claimed merely as
40 proceeds. The principal change ~~relates~~ related to the role of knowledge and the effect of
41 an indication of a previous assignment of the collateral. 1998 Section 9-330 also ~~affords~~
42 afforded priority to purchasers of instruments who take possession in good faith and
43 without knowledge that the purchase violates the rights of the competing secured party. In
44 addition, to qualify for priority, purchasers of chattel paper, but not of instruments, must
45 purchase in the ordinary course of business. The 2022 Article 9 Revisions eliminated the
46 defined terms "electronic chattel paper" and "tangible chattel paper," revised the definition

1 of "chattel paper" in Section 9-102 and modified the Section 9-330 priority rule
2 accordingly. See Comment 4.b. and Section 9-102, Comment 5.b.

3 *Proceeds.* 1998 Section 9-322 contains new priority rules that clarify when a special
4 priority of a security interest in collateral continues or does not continue with respect to
5 proceeds of the collateral. Other 1998 refinements to the priority rules for proceeds are
6 included in Sections 9-324 (purchase-money security interest priority) and 9-330 (priority
7 of certain purchasers of chattel paper and instruments).

8 *Miscellaneous priority provisions.* ~~This Article also includes~~ The 1998 Revisions to
9 Article 9 also included (i) clarifications of selected good-faith-purchase and similar issues
10 (Sections 9-317, 9-331); (ii) new priority rules to deal with the "double debtor" problem
11 arising when a debtor creates a security interest in collateral acquired by the debtor subject
12 to a security interest created by another person (Section 9-325); (iii) new priority rules to
13 deal with the problems created when a change in corporate structure or the like results in a
14 new entity that has become bound by the original debtor's after-acquired property
15 agreement (Section 9-326); (iv) a provision enabling most transferees of funds from a
16 deposit account or money to take free of a security interest (Section 9-332); (v) substantially
17 rewritten and refined priority rules dealing with accessions and commingled goods
18 (Sections 9-335, 9-336); (vi) revised priority rules for security interests in goods covered
19 by a certificate of title (Section 9-337); and (vii) provisions designed to ensure that security
20 interests in deposit accounts will not extend to most transferees of funds on deposit or
21 payees from deposit accounts and will not otherwise "clog" the payments system (Sections
22 9-341, 9-342).

23 *Model provisions relating to production-money security interests.* Appendix II to ~~this~~
24 ~~Article contains~~ the 1998 Revisions contained model definitions and priority rules relating
25 to "production-money security interests" held by secured parties who give new value used
26 in the production of crops. Because no consensus emerged on the wisdom of these
27 provisions during the drafting process, the sponsors ~~make~~ made no recommendation on
28 whether these model provisions should be enacted.

29 f. **Proceeds.** Revised Section 9-102 ~~contains~~ provides an expanded definition of
30 "proceeds" of collateral, which includes additional rights and property that arise out of
31 collateral, such as distributions on account of collateral and claims arising out of the loss
32 or nonconformity of, defects in, or damage to collateral. ~~The term also includes~~ revised
33 definition of "proceeds" also includes collections on account of "supporting obligations,"
34 such as guarantees.

35 g. **Part 4: Additional Provisions Relating to Third-Party Rights.** New ~~The 1998~~
36 ~~Revisions added a new~~ Part 4 contains that includes several provisions relating to the
37 relationships between certain third parties and the parties to secured transactions. ~~It~~
38 ~~contains~~ Part 4 contains new Sections 9-401 (replacing ~~former~~ pre-1998 Section 9-311)
39 (alienability of debtor's rights), 9-402 (replacing ~~former~~ pre-1998 Section 9-317) (secured
40 party not obligated on debtor's contracts), 9-403 (replacing ~~former~~ pre-1998 Section 9-206)
41 (agreement not to assert defenses against assignee), 9-404, 9-405, and 9-406 (replacing
42 ~~former~~ pre-1998 Section 9-318) (rights acquired by assignee, modification of assigned
43 contract, discharge of account debtor, restrictions on assignment of account, chattel paper,
44 promissory note, or payment intangible ineffective), 9-407 (replacing some provisions of
45 ~~former~~ pre-1998 Section 2A-303) (restrictions on creation or enforcement of security
46 interest in leasehold interest or lessor's residual interest ineffective). ~~It~~ New Part 4 also

1 ~~contains~~ added new Sections 9-408 (restrictions on assignment of promissory notes, health-
 2 care-insurance receivables ineffective, and certain general intangibles ineffective) and 9-
 3 409 (restrictions on assignment of letter-of-credit rights ineffective), ~~which are discussed~~
 4 ~~above~~. See Comment 3.a.

5 h. **Filing.** New Part 5 (~~formerly replacing pre-1998~~ Part 4) of Article 9 ~~has been~~ was
 6 substantially rewritten to simplify the statutory text and to deal with numerous problems of
 7 interpretation and implementation that have arisen over the years.

8 *Medium-neutrality.* ~~This Article~~ Part 5 is "medium-neutral"; that is, it makes clear that
 9 parties may file and otherwise communicate with a filing office by means of records
 10 communicated and stored in media other than on paper.

11 *Identity of person who files a record; authorization.* Part 5 also is largely indifferent as
 12 to the person who effects a filing. Instead, it addresses whose authorization is necessary
 13 for a person to file a record with a filing office. The filing scheme does not contemplate
 14 that the identity of a "filer" will be a part of the searchable records. This approach is
 15 consistent with, and a necessary aspect of, eliminating signatures or other evidence of
 16 authorization from the system (except to the extent that filing offices may choose to employ
 17 authentication procedures in connection with electronic communications). As long as the
 18 appropriate person authorizes the filing, or, in the case of a termination statement, the
 19 debtor is entitled to the termination, it is largely insignificant whether the secured party or
 20 another person files any given record.

21 * * *

22 *Financing statement formal requisites.* The formal requisites for a financing statement
 23 under the 1998 Revisions are set out in Section 9-502. A financing statement must provide
 24 the name of the debtor and the secured party and an indication of the collateral that it covers.
 25 Sections 9-503 and 9-506 address the sufficiency of a name provided on a financing
 26 statement and clarify when a debtor's name is correct and when an incorrect name is
 27 insufficient. Section 9-504 addresses the indication of collateral covered. Under Section
 28 9-504, a super-generic description (e.g., "all assets" or "all personal property") in a
 29 financing statement is a sufficient indication of the collateral. (Note, however, that a super-
 30 generic description is inadequate for purposes of a security agreement. See Sections 9-108,
 31 9-203.) To facilitate electronic filing, this Article does not require that the debtor's
 32 signature or other authorization appear on a financing statement. Instead, it prohibits the
 33 filing of unauthorized financing statements and imposes liability upon those who violate
 34 the prohibition. See Sections 9-509, 9-626.

35 *Filing-office operations.* The 1998 Part 5 ~~contains~~ introduced several provisions
 36 governing filing operations. First, it prohibits the filing office from rejecting an initial
 37 financing statement or other record for a reason other than one of the few that are specified.
 38 See Sections 9-520, 9-516. Second, the filing office is obliged to link all subsequent
 39 records (e.g., assignments, continuation statements, etc.) to the initial financing statement
 40 to which they relate. See Section 9-519. Third, the filing office may delete a financing
 41 statement and related records from the files no earlier than one year after lapse (lapse
 42 normally is five years after the filing date), and then only if a continuation statement has
 43 not been filed. See Sections 9-515, 9-519, 9-522. Thus, a financing statement and related
 44 records would be discovered by a search of the files even after the filing of a termination
 45 statement. This approach helps eliminate filing-office discretion and also eases problems

1 associated with multiple secured parties and multiple partial assignments. Fourth, Part 5
 2 mandates performance standards for filing offices. See Sections 9-519, 9-520, 9-523.
 3 Fifth, it provides for the promulgation of filing-office rules to deal with details best left out
 4 of the statute and requires the filing office to submit periodic reports. See Sections 9-526,
 5 9-527.

6 *Defaulting or missing secured parties and fraudulent filings.* In some areas of the
 7 country, serious problems ~~have had~~ arisen from fraudulent financing statements ~~that are~~
 8 filed against public officials and other persons. ~~This~~ The 1998 Article 9 ~~addresses~~
 9 ~~addressed~~ the fraud problem by providing the opportunity for a debtor to file a termination
 10 statement when a secured party wrongfully refuses or fails to provide a termination
 11 statement. See Section 9-509. This opportunity also addresses the problem of secured
 12 parties that simply disappear through mergers or liquidations. In addition, Section 9-518
 13 ~~affords~~ provides a statutory method by which a debtor who believes that a filed record is
 14 inaccurate or was wrongfully filed may indicate that fact in the files, albeit without
 15 affecting the efficacy, if any, of the challenged record.

16 * * *

17 i. **Default and Enforcement.** Part 6 of the 1998 Revisions to Article 9 extensively
 18 ~~revises~~ revised and replaced ~~former pre-1998~~ Part 5. Provisions relating to enforcement of
 19 consumer-goods transactions and consumer transactions are discussed in Comment 4.j.

20 *Debtor, secondary obligor; waiver.* Section 9-602 clarifies the identity of persons who
 21 have rights and persons to whom a secured party owes specified duties under Part 6. Under
 22 that section, the rights and duties are enjoyed by and run to the "debtor," defined in Section
 23 9-102 to mean any person with a non-lien property interest in collateral, and to any
 24 "obligor." However, with one exception (Section 9-616, as it relates to a consumer
 25 obligor), the rights and duties concerned affect non-debtor obligors only if they are
 26 "secondary obligors." "Secondary obligor" is defined in Section 9-102 to include one who
 27 is secondarily obligated on the secured obligation, e.g., a guarantor, or one who has a right
 28 of recourse against the debtor or another obligor with respect to an obligation secured by
 29 collateral. However, under ~~Section~~ Sections 9-605 and 9-628, the secured party is relieved
 30 from any ~~duty or liability~~ duties and liabilities to any person unless the secured party knows
 31 that the person is a debtor or obligor. (The 2022 Article 9 Revisions have modified Sections
 32 9-605 and 9-628. See 2022 Section 9-605, Comments 2 and 3.) Resolving an issue on which
 33 courts disagreed under ~~former pre-1998~~ Article 9, ~~this Article~~ revised Article 9 generally
 34 prohibits waiver by a secondary obligor of its rights and a secured party's duties under Part
 35 6. See Section 9-602. However, Section 9-624 permits a secondary obligor or debtor to
 36 waive the right to notification of disposition of collateral and, in a non-consumer
 37 transaction, the right to redeem collateral, if the secondary obligor or debtor agrees to do
 38 so after default.

39 *Rights of collection and enforcement of collateral.* Section 9-607 explains in greater
 40 detail than ~~former pre-1998~~ Section 9-502 the rights of a secured party who seeks to collect
 41 or enforce collateral, including accounts, chattel paper, and payment intangibles. It also
 42 sets forth the enforcement rights of a depository bank holding a security interest in a deposit
 43 account maintained with the depository bank. Section 9-607 relates solely to the rights of
 44 a secured party vis-a-vis a debtor with respect to collections and enforcement. It does not
 45 affect the rights or duties of third parties, such as account debtors on collateral, which are

1 addressed elsewhere (e.g., new Section 9-406). Section 9-608 clarifies the manner in which
2 proceeds of collection or enforcement are to be applied.

3 * * *

4 *Rights and duties of secondary obligor.* Section 9-618 provides that a secondary
5 obligor obtains the rights and assumes the duties of a secured party if the secondary obligor
6 receives an assignment of a secured obligation, agrees to assume the secured party's rights
7 and duties upon a transfer to it of collateral, or becomes subrogated to the rights of the
8 secured party with respect to the collateral. The assumption, transfer, or subrogation is not
9 a disposition of collateral under Section 9-610, but it does relieve the former secured party
10 of further duties. ~~Former~~ Pre-1998 Section 9-504(5) did not address whether a secured
11 party was relieved of its duties in this situation.

12 * * *

13 *Strict foreclosure.* Section 9-620, unlike ~~former~~ pre-1998 Section 9-505, permits a
14 secured party to accept collateral in partial satisfaction, as well as full satisfaction, of the
15 obligations secured. This right of strict foreclosure extends to intangible as well as tangible
16 property. Section 9-622 clarifies the effects of an acceptance of collateral on the rights of
17 junior claimants. It rejects the approach taken by some courts—deeming a secured party to
18 have constructively retained collateral in satisfaction of the secured obligations—in the case
19 of a secured party's unreasonable delay in the disposition of collateral. Instead,
20 unreasonable delay is relevant when determining whether a disposition under Section 9-
21 610 is commercially reasonable.

22 * * *

23 j. **Consumer Goods, Consumer-Goods Transactions, and Consumer**
24 **Transactions.** ~~This Article~~ The 1998 Revisions (including the accompanying conforming
25 revisions (see Appendix I)) ~~includes~~ included several special rules for "consumer goods,"
26 "consumer transactions," and "consumer-goods transactions." Each term is defined in
27 Section 9-102.

28 (i) Revised Sections 2-502 and 2-716 provide a buyer of consumer goods with
29 enhanced rights to possession of the goods, thereby accelerating and enhancing the
30 opportunity to achieve "buyer in ordinary course of business" status under Section 1-
31 201.

32 (ii) Section 9-103(e) (allocation of payments for determining extent of purchase-money
33 status), (f) (purchase-money status not affected by cross-collateralization, refinancing,
34 restructuring, or the like), and (g) (secured party has burden of establishing extent of
35 purchase-money status) do not apply to consumer-goods transactions. ~~Sections~~ Section
36 9-103 also provides that the limitation of those provisions to transactions other than
37 consumer-goods transactions leaves to the courts the proper rules for consumer-goods
38 transactions and prohibits the courts from drawing inferences from that limitation.

39 * * *

40 (ix) Section 9-620 prohibits partial strict foreclosure with respect to consumer goods
41 collateral and, unless the debtor agrees to waive the requirement in ~~an authenticated a~~
42 signed record after default, in certain cases requires the secured party to dispose of
43 consumer goods collateral which has been repossessed.

1 * * *

2 k. **Good Faith.** ~~Section 9-102 contains~~ The 1998 Revisions added in Section 9-102 a
3 new definition of "good faith" that ~~includes~~ included not only "honesty in fact" but also
4 "the observance of reasonable commercial standards of fair dealing." ~~The definition is~~
5 ~~similar to the ones adopted in connection with other, recently completed revisions of the~~
6 ~~UCC. That definition was deleted by the conforming amendments to the 2001 revision of~~
7 ~~Article 1 as unnecessary, given the revised definition in Section 1-201(b)(20).~~

8 l. **Transition Provisions.** ~~Part 7 (Sections 9-701 through 9-709) contains transition~~
9 ~~provisions. Transition from former Article 9 to this Article will be particularly challenging~~
10 ~~in view of its expanded scope, its modification of choice-of-law rules for perfection and~~
11 ~~priority, and its expansion of the methods of perfection. Amendment approved by the~~
12 ~~Permanent Editorial Board for Uniform Commercial Code December 31, 2001.~~
13 ~~[Reserved.]~~

14 m. **Conforming and Related Amendments to Other UCC Articles.** Appendix I to
15 the 1998 Revisions ~~contains~~ contained several revisions to the provisions and Comments
16 of other UCC articles. For the most part ~~the~~ those revisions are explained in the Comments
17 to the ~~proposed revisions~~ 1998 Revisions. Cross-references in other UCC articles to
18 sections of Article 9 ~~also have been revised.~~

19 *Article 1.* Revised Section 1-201 ~~contains~~ provides revisions to the definitions of
20 "buyer in ordinary course of business," "purchaser," and "security interest."

21 *Articles 2 and 2A.* Sections 2-210, 2-326, 2-502, 2-716, 2A-303, and 2A-307 ~~have~~
22 ~~been~~ are revised to address the intersection between Articles 2 and 2A and Article 9.

23 * * *

24 *Article 8.* Revisions to Section 8-106, which deals with "control" of securities and
25 security entitlements, conform it to Section 8-302, which deals with "delivery." Revisions
26 to Section 8-110, which deals with a "securities intermediary's jurisdiction," conform it to
27 the revised treatment of a "commodity intermediary's jurisdiction" in Section 9-305.
28 Sections 8-301 and 8-302 ~~have been~~ are revised for clarification. Section 8-510 ~~has been~~
29 is revised to conform it to the revised priority rules of Section 9-328. Several Comments
30 in Article 8 ~~also have been~~ are revised.

31 4. **Summary of 2022 Article 9 Revisions.** Following is a brief summary of some of
32 the more significant revisions that are included in the 2022 Article 9 Revisions. The 2022
33 amendments to Article 9 are extensive. Many of the amendments are necessary to conform
34 Article 9 to new Article 12, which (along with its Comments) should be read along with
35 the Article 9 amendments and Comments. Other material amendments include those
36 relating to chattel paper and money, among other matters.

37 a. **Article 12-Related Revisions.** Article 12-related amendments to Article 9 include
38 the addition of two new kinds of collateral under Article 9: controllable account (a subset
39 of account) and controllable payment intangible (a subset of payment intangible, which is
40 a subset of general intangible). A controllable account or controllable payment intangible
41 is created when the account or payment intangible is evidenced by a controllable electronic
42 record (defined in Section 12-102(a)(1), and a subset of general intangible), which results
43 if the account debtor obligated on the account or payment intangible has agreed to pay the
44 person in control of the controllable electronic record. Perfection of a security interest in a

1 controllable electronic record, controllable account, or controllable payment intangible
2 may be by control or by filing a financing statement. Control of a controllable electronic
3 record is determined under Section 12-105. Control of a controllable account or
4 controllable payment intangible is achieved by obtaining control of the controllable
5 electronic record that evidences the account or payment intangible. Section 9-107A(b). A
6 security interest in a controllable account, controllable electronic record, or controllable
7 payment intangible which is perfected by control has priority over a security interest held
8 by a secured party that does not have control. Section 9-326A.

9 As is the case for secured parties protected by take-free rules under other articles, the
10 rights of a secured party that takes free of competing property interests under Section 12-
11 104(e) or that is protected from certain actions under Section 12-104(g), as a qualifying
12 purchaser of a controllable account, controllable electronic record, or controllable payment
13 intangible, are respected under Article 9. Section 9-331.

14 The law of the controllable electronic record's jurisdiction under Section 12-107
15 governs perfection by control and priority of a security interest in a controllable account,
16 controllable electronic record, or controllable payment intangible. Section 9-306B(a). The
17 law of the jurisdiction in which a debtor is located governs perfection by filing (but not
18 priority) for such collateral. Section 9-306B(b).

19 The 2022 Article 9 Revisions also contain several other Article 12-related conforming
20 amendments to Article 9.

21 **b. Chattel Paper-Related Amendments.** These amendments primarily address two
22 issues that have arisen under the pre-2022 Article 9 with respect to transactions in chattel
23 paper.

24 First, the definition of "chattel paper" created uncertainty in "bundled" or "hybrid"
25 transactions in which monetary obligations exist not only under a lease of goods but also
26 with respect to other property and services relating to the leased goods. Frequently, the
27 value of the non-goods aspect of a transaction is substantially greater than the value of the
28 lessee's rights under the lease of goods. Uncertainty existed among those who finance
29 chattel paper and other rights to payment as to whether these transactions give rise to chattel
30 paper. The revisions resolve this issue by treating only those transactions whose
31 predominant purpose was to give the obligor (lessee) the right to possession and use of the
32 goods as giving rise to "chattel paper." Some similar issues arise in connection with chattel
33 paper that includes a security interest securing specific goods. See Section 9-102,
34 Comment 5.b.

35 Second, the pre-2022 statutory distinction between "tangible chattel paper" and
36 "electronic chattel paper" caused practical problems. As to tangible chattel paper (i.e.,
37 evidenced by writings), problems arose in the case of multiple originals of writings and
38 situations in which separate writings covered different components of chattel paper.
39 Official comments issued in connection with the 1998 Revisions addressed, but did not
40 entirely resolve, these issues. As to electronic chattel paper, the safe harbor for control was
41 based on a "single authoritative copy" of the chattel paper. Moreover, in some situations
42 tangible chattel paper is converted to electronic form and electronic chattel paper is
43 converted to tangible form. Additional uncertainty existed when one or more records
44 comprised one or more authoritative tangible copies of the records that evidenced the right

1 to payment and rights in related property and one or more authoritative electronic copies
2 of those records also existed.

3 The 2022 Article 9 Revisions provide a single rule, under which a security interest in
4 chattel paper can be perfected by taking possession of the authoritative tangible copies, if
5 any, and obtaining control of the electronic authoritative copies, if any. This single rule
6 addresses cases where some records evidencing chattel paper are electronic and some are
7 tangible or where a record in one medium is replaced by a record in another.

8 The 2022 Article 9 Revisions also define chattel paper more accurately, as the right to
9 payment of a monetary obligation that is secured by a security interest in specific goods or
10 owed under a lease of specific goods, if the right to payment and interest in the goods are
11 evidenced by a record.

12 Finally, the 2022 Article 9 Revisions provide a new choice-of-law rule for perfection
13 and priority of security interests in chattel paper that is evidenced by authoritative
14 electronic copies of records or by such electronic copies and authoritative tangible copies.
15 For such chattel paper, Section 9-306A provides that perfection by control and possession
16 of authoritative copies and priority are governed by the law of the "chattel paper's
17 jurisdiction," based loosely on Sections 8-110 and 9-305. For chattel paper evidenced only
18 by authoritative tangible copies, Section 9-306A(d) provides that perfection by possession
19 and priority are governed by the law of the location of the authoritative tangible copies.
20 Perfection by filing continues to be governed by the law of the location of the debtor for
21 all chattel paper.

22 **c. Money-Related Amendments.**

23 Section 1-201(b)(24) defines "money" as including "a medium of exchange currently
24 authorized or adopted by a domestic or foreign government" There is no way of
25 knowing how money in an intangible form might develop, but there are indications that
26 some countries might authorize or adopt intangible tokens as a medium of exchange and
27 others might authorize or adopt deposit accounts with a central bank as money. (These
28 tokens or accounts sometimes are referred to as central bank digital currency or CBDC.)
29 For many purposes, there is no need for the UCC to distinguish among types of money. For
30 Article 9 purposes, however, distinctions must be drawn. Only tangible money is
31 susceptible of perfection by possession. And the steps needed for perfection by control with
32 respect to intangible tokens, such as controllable electronic records, will not work for
33 deposit accounts with a central bank, and vice versa. For this reason, the revisions provide
34 an Article 9 definition of "money" that is narrower than the Article 1 definition. The Article
35 9 definition expressly excludes deposit accounts (but not CBDC that is a token). Thus,
36 "electronic money," defined in Section 9-102 as "money in an electronic form," would not
37 include deposit accounts. The Article 9 definition of "money" also excludes money in an
38 electronic form that cannot be subjected to control under Section 9-105A.

39 The Article 9 provisions governing "deposit accounts" would remain suitable for
40 accounts with a central bank, even if a government has adopted these accounts as money.
41 The revisions leave Article 9's treatment of deposit accounts largely unchanged. Under the
42 revisions, a security interest in electronic money as original collateral can be perfected only
43 by control. The requirements for obtaining control of electronic money under Section 9-
44 105A are essentially the same as those for obtaining control of a controllable electronic
45 record under Article 12.

1 The 2022 Article 9 Revisions also make changes to Section 9-332, the take-free rules
2 for transferees of money, including the addition of a new rule applicable to electronic
3 money, and transferees of funds from deposit accounts.

4 d. **Transitional Rules.** Article A to the 2022 Amendments provides important
5 transitional rules. These rules are designed to protect the expectations of parties to
6 transactions entered into before the effective date of a state's enactment of the revisions.
7 They also provide for an adequate period of time for parties to pre-effective date
8 transactions to make adjustments so as to preserve certain pre-effective date priorities.

9 **Sec. A-65. 11 MRSA §9-1102, sub-§(2)**, as enacted by PL 1999, c. 699, Pt. A, §2
10 and affected §4, is amended to read:

11 **(2).** "Account," except as used in "account for," "account statement," "account to,"
12 "commodity account" in subsection (14), "customer's account," "deposit account" in
13 subsection (29), "on account of" and "statement of account," means a right to payment of
14 a monetary obligation, whether or not earned by performance:

- 15 (a). For property that has been or is to be sold, leased, licensed, assigned or otherwise
16 disposed of;
- 17 (b). For services rendered or to be rendered;
- 18 (c). For a policy of insurance issued or to be issued;
- 19 (d). For a secondary obligation incurred or to be incurred;
- 20 (e). For energy provided or to be provided;
- 21 (f). For the use or hire of a vessel under a charter or other contract;
- 22 (g). Arising out of the use of a credit or charge card or information contained on or for
23 use with the card; or
- 24 (h). As winnings in a lottery or other game of chance operated or sponsored by a state,
25 governmental unit of a state or person licensed or authorized to operate the game by a
26 state or governmental unit of a state.

27 "Account" includes controllable accounts and health-care-insurance receivables.
28 "Account" does not include: ~~rights to payment evidenced by chattel paper or an instrument;~~
29 commercial tort claims; deposit accounts; investment property; letter-of-credit rights or
30 letters of credit; ~~or~~ rights to payment for money or funds advanced or sold, other than rights
31 arising out of the use of a credit or charge card or information contained on or for use with
32 the card; or rights to payment evidenced by an instrument.

33 **Sec. A-66. 11 MRSA §9-1102, sub-§(3)**, as enacted by PL 1999, c. 699, Pt. A, §2
34 and affected by §4, is amended to read:

35 **(3).** "Account debtor" means a person obligated on an account, chattel paper or general
36 intangible. "Account debtor" does not include persons obligated to pay a negotiable
37 instrument, even if the negotiable instrument constitutes part of evidences chattel paper.

38 **Sec. A-67. 11 MRSA §9-1102, sub-§(4), ¶(a)**, as enacted by PL 1999, c. 699, Pt.
39 A, §2 and affected by §4, is amended to read:

- 40 (a). ~~Authenticated~~ Signed by a secured party;

1 **Sec. A-68. 11 MRSA §9-1102, sub-§(7)**, as corrected by RR 2013, c. 1, §21, is
2 repealed.

3 **Sec. A-69. 11 MRSA §9-1102, sub-§(7-A)** is enacted to read:

4 **(7-A).** "Assignee," except as used in "assignee for benefit of creditors," means a
5 person:

6 (a). In whose favor a security interest that secures an obligation is created or provided
7 for under a security agreement, whether or not the obligation is outstanding; or

8 (b). To which an account, chattel paper, payment intangible or promissory note has
9 been sold. "Assignee" includes a person to which a security interest has been
10 transferred by a secured party.

11 **Sec. A-70. 11 MRSA §9-1102, sub-§(7-B)** is enacted to read:

12 **(7-B).** "Assignor" means a person that:

13 (a). Under a security agreement creates or provides for a security interest that secures
14 an obligation; or

15 (b). Sells an account, chattel paper, payment intangible or promissory note.

16 "Assignor" includes a secured party that has transferred a security interest to another
17 person.

18 **Sec. A-71. 11 MRSA §9-1102, sub-§(11)**, as enacted by PL 1999, c. 699, Pt. A,
19 §2 and affected by §4, is repealed.

20 **Sec. A-72. 11 MRSA §9-1102, sub-§(11-A)** is enacted to read:

21 **(11-A).** "Chattel paper" means:

22 (a). A right to payment of a monetary obligation secured by specific goods, if the right
23 to payment and security agreement are evidenced by a record; or

24 (b). A right to payment of a monetary obligation owed by a lessee under a lease
25 agreement with respect to specific goods, and a monetary obligation owed by the lessee
26 in connection with the transaction giving rise to the lease, if:

27 (i) The right to payment and lease agreement are evidenced by a record; and

28 (ii) The predominant purpose of the transaction giving rise to the lease was to give
29 the lessee the right to possession and use of the goods.

30 "Chattel paper" does not include a right to payment arising out of a charter or other contract
31 involving the use or hire of a vessel or a right to payment arising out of the use of a credit
32 or charge card or information contained on or for use with the card.

33 **Sec. A-73. 11 MRSA §9-1102, sub-§(27-A)** is enacted to read:

34 **(27-A).** "Controllable account" means an account evidenced by a controllable
35 electronic record that provides that the account debtor undertakes to pay the person that has
36 control under section 12-105 of the controllable electronic record.

37 **Sec. A-74. 11 MRSA §9-1102, sub-§(27-B)** is enacted to read:

1 **(27-B).** "Controllable payment intangible" means a payment intangible evidenced by
2 a controllable electronic record that provides that the account debtor undertakes to pay the
3 person that has control under section 12-105 of the controllable electronic record.

4 **Sec. A-75. 11 MRSA §9-1102, sub-§(31),** as enacted by PL 1999, c. 699, Pt. A,
5 §2 and affected by §4, is repealed.

6 **Sec. A-76. 11 MRSA §9-1102, sub-§(42),** as enacted by PL 1999, c. 699, Pt. A,
7 §2 and affected by §4, is amended to read:

8 **(42).** "General intangible" means any personal property, including things in action,
9 other than accounts, chattel paper, commercial tort claims, deposit accounts, documents,
10 goods, instruments, investment property, letter-of-credit rights, letters of credit, money; and
11 oil, gas or other minerals before extraction. "General intangible" includes controllable
12 electronic records, payment intangibles and software.

13 **Sec. A-77. 11 MRSA §9-1102, sub-§(47),** as enacted by PL 1999, c. 699, Pt. A,
14 §2 and affected §4, is amended to read:

15 **(47).** "Instrument" means a negotiable instrument or any other writing that evidences
16 a right to the payment of a monetary obligation, is not itself a security agreement or lease
17 and is of a type that in the ordinary course of business is transferred by delivery with any
18 necessary indorsement or assignment. "Instrument" does not include:

19 (a). Investment property;

20 (b). Letters of credit; or

21 (c). Writings that evidence a right to payment arising out of the use of a credit or charge
22 card or information contained on or for use with the card; or

23 (d). Writings that evidence chattel paper.

24 **Sec. A-78. 11 MRSA §9-1102, sub-§(54-A)** is enacted to read:

25 **(54-A).** "Money" has the same meaning as in section 1-1201, subsection (24), but
26 does not include a deposit account.

27 **Sec. A-79. 11 MRSA §9-1102, sub-§(61),** as enacted by PL 1999, c. 699, Pt. A,
28 §2 and affected by §4, is amended to read:

29 **(61).** "Payment intangible" means a general intangible under which the account
30 debtor's principal obligation is a monetary obligation. "Payment intangible" includes a
31 controllable payment intangible.

32 **Sec. A-80. 11 MRSA §9-1102, sub-§(66),** as enacted by PL 1999, c. 699, Pt. A,
33 §2 and affected by, §4, is amended to read:

34 **(66).** "Proposal" means a record ~~authenticated~~ signed by a secured party that includes
35 the terms on which the secured party is willing to accept collateral in full or partial
36 satisfaction of the obligation it secures pursuant to sections 9-1620, 9-1621 and 9-1622.

37 **Sec. A-81. 11 MRSA §9-1102, sub-§(74),** as enacted by PL 1999, c. 699, Pt. A,
38 §2 and affected by §4, is repealed.

39 **Sec. A-82. 11 MRSA §9-1102, sub-§(78),** as enacted by PL 1999, c. 699, Pt. A,
40 §2 and affected by §4, is repealed.

1 **Sec. A-83. 11 MRSA §9-1102, sub-§(80), ¶(d)**, as amended by PL 2013, c. 317,
2 Pt. A, §8, is further amended by amending the first blocked paragraph to read:

3 "Control" as provided in section 7-1106 and the following definitions in other
4 Articles apply to this Article:

5	"Applicant"	Section 5-1102.
6	"Beneficiary"	Section 5-1102.
7	"Broker"	Section 8-1102.
8	"Certificated security"	Section 8-1102.
9	"Check"	Section 3-1104.
10	"Clearing corporation"	Section 8-1102.
11	"Contract for sale"	Section 2-106.
12	<u>"Controllable electronic record"</u>	<u>Section 12-102.</u>
13	"Customer"	Section 4-104.
14	"Entitlement holder"	Section 8-1102.
15	"Financial asset"	Section 8-1102.
16	"Holder in due course"	Section 3-1302.
17	"Issuer" (with respect to a letter of 18 credit or letter-of-credit right)	Section 5-1102.
19	"Issuer" (with respect to a security)	Section 8-1201.
20	"Issuer" (with respect to documents of 21 title)	Section 7-1102.
22	"Lease"	Section 2-1103.
23	"Lease agreement"	Section 2-1103.
24	"Lease contract"	Section 2-1103.
25	"Leasehold interest"	Section 2-1103.
26	"Lessee"	Section 2-1103.
27	"Lessee in ordinary course of 28 business"	Section 2-1103.
29	"Lessor"	Section 2-1103.
30	"Lessor's residual interest"	Section 2-1103.
31	"Letter of credit"	Section 5-1102.
32	"Merchant"	Section 2-104.
33	"Negotiable instrument"	Section 3-1104.
34	"Nominated person"	Section 5-1102.
35	"Note"	Section 3-1104.
36	"Proceeds of a letter of credit"	Section 5-114.
37	<u>"Protected purchaser"</u>	<u>Section 8-1303.</u>
38	"Prove"	Section 3-1103.
39	<u>"Qualifying purchaser"</u>	<u>Section 12-102.</u>
40	"Sale"	Section 2-106.
41	"Securities account"	Section 8-1501.
42	"Securities intermediary"	Section 8-1102.
43	"Security"	Section 8-1102.
44	"Security certificate"	Section 8-1102.
45	"Security entitlement"	Section 8-1102.
46	"Uncertificated security"	Section 8-1102.

Official Comment

1
2 1. **Source.** All terms that are defined in Article 9 and used in more than one section
3 are consolidated in this section. Note that the definition of "security interest" is found in
4 Section 1-201, not in this Article, ~~and has been revised. See Appendix I.~~ Many of the
5 definitions in this section ~~are new; many others~~ derive from those in ~~former pre-1998~~
6 Section 9-105. ~~The following Comments also indicate other sections of former Article 9~~
7 ~~that defined (or explained) terms. Other definitions were added by the 1998 Revisions or~~
8 ~~modified or added by the 2022 Article 9 Revisions.~~

9 2. **Parties to Secured Transactions.**

10 a. **"Debtor"; "Obligor"; "Secondary Obligor."** Determining whether a person was
11 a "debtor" under ~~former pre-1998~~ Section 9-105(1)(d) required a close examination of the
12 context in which the term was used. To reduce the need for this examination, ~~this Article~~
13 ~~redefines the 1998 Revisions redefined~~ "debtor" and ~~adds~~ added new defined terms,
14 "secondary obligor" and "obligor." In the context of Part 6 (default and enforcement), these
15 definitions distinguish among three classes of persons: (i) those persons who may have a
16 stake in the proper enforcement of a security interest by virtue of their non-lien property
17 interest (typically, an ownership interest) in the collateral, (ii) those persons who may have
18 a stake in the proper enforcement of the security interest because of their obligation to pay
19 the secured debt, and (iii) those persons who have an obligation to pay the secured debt but
20 have no stake in the proper enforcement of the security interest. Persons in the first class
21 are debtors. Persons in the second class are secondary obligors if any portion of the
22 obligation is secondary or if the obligor has a right of recourse against the debtor or another
23 obligor with respect to an obligation secured by collateral. One must consult the law of
24 suretyship to determine whether an obligation is secondary. The Restatement (3d),
25 Suretyship and Guaranty § 1 (1996), contains a useful explanation of the concept. Obligor
26 in the third class are neither debtors nor secondary obligors. With one exception (Section
27 9-616, as it relates to a consumer obligor), the rights and duties provided by Part 6 affect
28 non-debtor obligors only if they are "secondary obligors."

29 By including in the definition of "debtor" all persons with a property interest (other
30 than a security interest in or other lien on collateral), the definition includes transferees of
31 collateral, whether or not the secured party knows of the transfer or the transferee's identity.
32 Exculpatory provisions in Part 6 protect the secured party in that circumstance. See
33 Sections 9-605 and 9-628. The definition renders unnecessary ~~former pre-1998~~ Section 9-
34 112, which governed situations in which collateral was not owned by the debtor. The
35 definition also includes a "consignee," as defined in this section, as well as a seller of
36 accounts, chattel paper, payment intangibles, or promissory notes.

37 * * *

38 If a security interest is granted by a protected series of a limited liability company
39 formed, for example, under the Uniform Protected Series Act (2017), the debtor is the
40 protected series. See PEB Commentary No. 23, ~~dated February 24, 2021. The Commentary~~
41 ~~is available at <https://www.ali.org/peb-uee>.~~ The 2022 definition of "person" in Section 1 -
42 201(b)(27) includes a protected series.

43 b. **"Secured Party." * * ***

44 * * *

1 **b.1. "Assignee"; "Assignor."** Instead of referring to a "debtor," "secured party," and
 2 "security interest," all of which are defined terms, several provisions of Article 9, including
 3 Part 4, refer to the "assignment" or the "transfer" of property interests and some refer to an
 4 "assignor," "assignee," or "assigned contract." None of those terms are defined in the UCC.
 5 Some courts have read the undefined terms in an unduly narrow way. In 2020, the
 6 Permanent Editorial Board for the UCC issued a Commentary clarifying the meanings of
 7 these terms and amended the official comments accordingly. PEB Commentary No. 21.
 8 This Article generally follows common usage by using the terms "assignment" and "assign"
 9 to refer to transfers of rights to payment, claims, and liens and other security interests. It
 10 generally uses the term "transfer" to refer to other transfers of interests in property. Except
 11 when used in connection with a letter-of-credit transaction (see Section 9-107, Comment
 12 4), no significance should be placed on the use of one term or the other. Depending on the
 13 substance of the transaction, each term as used in this Article refers to the assignment or
 14 transfer of an outright ownership interest or to the assignment or transfer of a limited
 15 interest, such as a security interest, or both.

16 The 2022 Article 9 Revisions added new definitions of "assignee" and "assignor."
 17 Paragraph 7A defines "assignee" as a person in whose favor a security interest securing an
 18 obligation is created or to which an account, chattel paper, a payment intangible, or a
 19 promissory note has been sold. Paragraph 7B defines "assignor" as creating a security
 20 interest securing an obligation or that sells an account, chattel paper, a payment intangible,
 21 or a promissory note. These definitions incorporate the essence of the 2020 PEB
 22 Commentary into the statutory text. The definitions also specify that an "assignor" includes
 23 a secured party that transfers a security interest to another person and an "assignee" includes
 24 a person to which a security interest has been transferred by a secured party. By their terms,
 25 the defined terms "assignee" and "assignor" contemplate assignments in particular
 26 contexts. However, several references in this article to "assigned," "assignment" and
 27 "assignee" include transfers in broader contexts than those addressed in the defined terms.
 28 See, e.g., subsection (a)(2) ("assigned," in definition of "account") and (a)(47)
 29 ("assignment," in definition of "instrument") and Sections 9-109, 9-408, 9-409, and 9-519.

30 Absent a contrary agreement, an assignee obtains the rights and powers of an assignor
 31 as against an account debtor on assigned collateral (e.g., under Section 9-406) and as
 32 between the assignee and the assignor (debtor) (e.g., under Section 9-607). See also
 33 Restatement (Second) of Contracts § 317(1) (1981) (emphasis added):

34 An assignment of a right is a manifestation of the assignor's intention to transfer it *by*
 35 *virtue of which* the assignor's right to performance by the obligor is extinguished in
 36 whole or in part and *the assignee acquires a right to such performance.*

37 Several provisions of this Article and its official comments also refer to the "transfer"
 38 of property interests. Although that term and its cognates are not defined, depending on
 39 the context it may include an "assignment." Moreover, a transfer of property is not limited
 40 to transactions of "purchase" and may include the transfer of a limited interest. See also
 41 Section 9-332, Comment 2A.

42 * * *

43 **3. Definitions Relating to Creation of a Security Interest.**

44 a. **"Collateral."** As under former pre-1998 Section 9-105, "collateral" is the property
 45 subject to a security interest and includes accounts, ~~and~~ chattel paper, payment intangibles,

1 ~~and promissory notes that have been sold. It has been expanded in this Article. The 1998~~
2 ~~Revisions expanded the term now explicitly includes to include~~ proceeds subject to a
3 security interest. ~~It also reflects the~~ and also broadened the scope of the Article. ~~It includes~~
4 to include as collateral property subject to an agricultural lien as well as payment
5 intangibles and promissory notes that have been sold.

6 b. **"Security Agreement."** The definition of "security agreement" is substantially the
7 same as under ~~former pre-1998~~ Section 9-105—an agreement that creates or provides for a
8 security interest. However, the term frequently was used colloquially in ~~former pre-1998~~
9 Article 9 to refer to the document or writing that contained a debtor's security agreement.
10 ~~This Article eliminates~~ The 1998 Article 9 eliminated that usage, reserving the term for the
11 more precise meaning specified in the definition.

12 * * *

13 4. Goods-Related Definitions.

14 a. **"Goods"; "Consumer Goods"; "Equipment"; "Farm Products"; "Farming**
15 **Operation"; "Inventory."** The definition of "goods" is substantially the same as the
16 definition in ~~former pre-1998~~ Section 9-105. This Article also retains the four
17 mutually-exclusive "types" of collateral that consist of goods: "consumer goods,"
18 "equipment," "farm products," and "inventory." The revisions are primarily for
19 clarification.

20 The classes of goods are mutually exclusive. For example, the same property cannot
21 simultaneously be both equipment and inventory. In borderline cases—a physician's car or
22 a farmer's truck that might be either consumer goods or equipment—the principal use to
23 which the property is put is determinative. Goods can fall into different classes at different
24 times. For example, a radio may be inventory in the hands of a dealer and consumer goods
25 in the hands of a consumer. As under ~~former pre-1998~~ Article 9, goods are "equipment" if
26 they do not fall into another category.

27 The definition of "consumer goods" follows ~~former pre-1998~~ Section 9-109. The
28 classification turns on whether the debtor uses or bought the goods for use "primarily for
29 personal, family, or household purposes."

30 Goods are inventory if they are leased by a lessor or held by a person for sale or lease.
31 The revised definition of "inventory" makes clear that the term includes goods leased by
32 the debtor to others as well as goods held for lease. (The same result should have obtained
33 under the ~~former pre-1998~~ definition.) Goods to be furnished or furnished under a service
34 contract, raw materials, and work in process also are inventory. Implicit in the definition
35 is the criterion that the sales or leases are or will be in the ordinary course of business. For
36 example, machinery used in manufacturing is equipment, not inventory, even though it is
37 the policy of the debtor to sell machinery when it becomes obsolete or worn. Inventory
38 also includes goods that are consumed in a business (e.g., fuel used in operations). In
39 general, goods used in a business are equipment if they are fixed assets or have, as
40 identifiable units, a relatively long period of use, but are inventory, even though not held
41 for sale or lease, if they are used up or consumed in a short period of time in producing a
42 product or providing a service.

43 * * *

1 Crops, livestock, and their products cease to be "farm products" when the debtor ceases
 2 to be engaged in farming operations with respect to them. If, for example, they come into
 3 the possession of a marketing agency for sale or distribution or of a manufacturer or
 4 processor as raw materials, they become inventory. Products of crops or livestock, even
 5 though they remain in the possession of a person engaged in farming operations, lose their
 6 status as farm products if they are subjected to a manufacturing process. What is and what
 7 is not a manufacturing ~~operation~~ process is not specified in this Article. At one end of the
 8 spectrum, some processes are so closely connected with farming—such as pasteurizing milk
 9 or boiling sap to produce maple syrup or sugar—that they would not constitute
 10 manufacturing. On the other hand an extensive canning operation would be manufacturing.
 11 Once farm products have been subjected to a manufacturing ~~operation~~ process, they
 12 normally become inventory.

13 * * *

14 c. **"As-Extracted Collateral."** Under this Article, oil, gas, and other minerals that
 15 have not been extracted from the ground are treated as real property, to which this Article
 16 does not apply. Upon extraction, minerals become personal property (goods) and eligible
 17 to be collateral under this Article. See the definition of "goods," which excludes "oil, gas,
 18 and other minerals before extraction." To take account of financing practices reflecting the
 19 shift from real to personal property, this Article contains special rules for perfecting
 20 security interests in minerals which attach upon extraction and in accounts resulting from
 21 the sale of minerals at the wellhead or minehead. See, e.g., Sections 9-301(4) (law
 22 governing perfection and priority); 9-501 (place of filing), 9-502 (contents of financing
 23 statement), 9-519 (indexing of records). The ~~new~~ term; "as-extracted collateral," added by
 24 the 1998 Revisions, refers to the minerals and related accounts to which the special rules
 25 apply. The term "at the wellhead" encompasses arrangements based on a sale of the
 26 ~~produce~~ product (goods) at the moment that it issues from the ground and is measured,
 27 without technical distinctions as to whether title passes at the "Christmas tree" of a well,
 28 the far side of a gathering tank, or at some other point. The term "at the minehead" is
 29 comparable.

30 The following examples explain the operation of these provisions.

31 **Example 5:** Debtor owns an interest in oil that is to be extracted. To secure
 32 Debtor's obligations to Lender, Debtor enters into ~~an authenticated~~ a signed
 33 agreement granting Lender an interest in the oil. Although Lender may acquire an
 34 interest in the oil under real-property law, Lender does not acquire a security
 35 interest under this Article until the oil becomes personal property, i.e., until it is
 36 extracted and becomes "goods" to which this Article applies. Because Debtor had
 37 an interest in the oil before extraction and Lender's security interest attached to the
 38 oil as extracted, the oil is "as-extracted collateral."

39 **Example 6:** Debtor owns an interest in oil that is to be extracted and contracts to
 40 sell the oil to Buyer at the wellhead. In ~~an authenticated~~ a signed agreement,
 41 Debtor agrees to sell to Lender the right to payment from Buyer. This right to
 42 payment is an account that constitutes "as-extracted collateral." If Lender then
 43 resells the account to Financer, Financer acquires a security interest. However,
 44 inasmuch as the debtor-seller in that transaction, Lender, had no interest in the oil
 45 before extraction, Financer's collateral (the account it owns) is not "as-extracted
 46 collateral."

1 * * *

2 **5.Receivables-related Definitions.**

3 a. **"Account"; "Health-Care-Insurance Receivable"; "As-Extracted Collateral."**

4 The definition of "account" has been expanded and reformulated. It is no longer limited to
5 rights to payment relating to goods or services. Many categories of rights to payment that
6 were classified as general intangibles under ~~former~~ pre-1998 Article 9 are accounts under
7 this Article. Thus, if they are sold, a financing statement must be filed to perfect the buyer's
8 interest in them. As used in the definition of "account," a right to payment "arising out of
9 the use of a credit or charge card or information contained on or for use with the card" is
10 the right of a card issuer to payment from its cardholder. A credit-card or charge-card
11 transaction may give rise to other rights to payments; however, those other rights do not
12 "arise out of the use" of the card or information contained on or for use with the card.
13 Among the types of property that are expressly excluded from the definition of account is
14 "a right to payment for money or funds advanced or sold." ~~As defined in Section 1-201,~~
15 ~~"money" is limited essentially to currency.~~ As used in the exclusion from the definition of
16 "account," ~~however,~~ "funds" is a broader concept than money (although the term is not
17 defined). For example, when a bank-lender credits a borrower's deposit account for the
18 amount of a loan, the bank's advance of funds is not a transaction giving rise to an account.
19 The 2022 Article 9 Revisions amended the definition of "money" in Section 1-201(b)(24)
20 and added a new, more narrow, definition of "money" in Section 9-102(a)(54A). See
21 Comment 12A.

22 * * *

23 The 2022 Article 9 Revisions amended the definition of "account" to reflect the 2022
24 revised definition of "chattel paper," discussed in Comment 5.b. The revised definition of
25 "account" also includes some additional exceptions that accommodate the use of the term
26 "account" in other provisions. These new exceptions were implicit in the former definition.
27 Moreover, the exceptions for the defined terms "commodity account" and "deposit
28 account" implicitly apply to all uses of those terms in this Article.

29 b. **~~"Chattel Paper"; "Electronic Chattel Paper"; "Tangible Chattel Paper."~~**

30 ~~"Chattel paper" consists of a monetary obligation together with a security interest in or a~~
31 ~~lease of specific goods if the obligation and security interest or lease are evidenced by "a~~
32 ~~record or records."~~ The definition has been expanded from that found in ~~former~~ Article 9
33 to include records that evidence a monetary obligation and a security interest in specific
34 goods and software used in the goods, a security interest in specific goods and license of
35 software used in the goods, or a lease of specific goods and license of software used in the
36 goods. The expanded definition covers transactions in which the debtor's or lessee's
37 monetary obligation includes amounts owed with respect to software used in the goods.
38 The monetary obligation with respect to the software need not be owed under a license
39 from the secured party or lessor, and the secured party or lessor need not be a party to the
40 license transaction itself. Among the types of monetary obligations that are included in
41 "chattel paper" are amounts that have been advanced by the secured party or lessor to enable
42 the debtor or lessee to acquire or obtain financing for a license of the software used in the
43 goods. The definition also makes clear that rights to payment arising out of credit-card
44 transactions are not chattel paper. "Chattel paper" consists of a monetary obligation that is
45 either secured by specific goods or arises in connection with a lease of specific goods, in
46 each case if the obligation and security interest or lease is evidenced by a record. The

1 monetary obligation itself need not be related to the goods. For example, a loan secured by
2 specific goods and evidenced by one or more records creates chattel paper regardless of the
3 purpose of the loan.

4 Rights to payment arising out of ~~Charters~~ charters of vessels or the use of credit or
5 charge cards are expressly excluded from the definition of chattel paper; they are accounts.
6 The term "charter" as used in this section includes bareboat charters, time charters,
7 successive voyage charters, contracts of affreightment, contracts of carriage, and all other
8 arrangements for the use of vessels. ~~Under former Section 9-105, only if the evidence of~~
9 ~~an obligation consisted of "a writing or writings" could an obligation qualify as chattel~~
10 ~~paper. In this Article, traditional, written chattel paper is included in the definition of~~
11 ~~"tangible chattel paper." "Electronic chattel paper" is chattel paper that is stored in an~~
12 ~~electronic medium instead of in tangible form.~~

13 The concept of an electronic medium should be construed liberally to include electrical,
14 digital, magnetic, optical, electromagnetic, or any other current or similar emerging
15 technologies.

16 What distinguishes chattel paper from other rights to payment is the fact that creditor
17 has an interest in specific goods to enforce the right to payment. For example, the fact that
18 a secured party also has an interest in other property does not prevent the right to payment
19 from being chattel paper, provided that the specific goods are the primary collateral.

20 **Example 8.** To secure a loan, Borrower grants Lender a security interest in a
21 specified item of equipment and a deposit account. The loan and the security
22 interest are evidenced by one or more records. The right to payment is chattel
23 paper, assuming the equipment is the primary collateral.

24 In Example 8, the inclusion of some incidental collateral, such as a deposit account,
25 does not prevent characterization of the right to payment as chattel paper. Another typical
26 example would be the inclusion of after-acquired replacement parts to be installed on the
27 specific goods. On the other hand, to be chattel paper, a right to payment must be
28 accompanied by a security interest in *specific* goods or a lease of *specific* goods. A right to
29 payment secured by a security interest in rotating collateral is not chattel paper.

30 **Example 9.** To secure a loan, Borrower grants Lender a security interest in all of
31 Borrower's existing and after-acquired inventory. The loan and the security interest
32 are evidenced by one or more records. The right to payment is not chattel paper.

33 **Example 10.** To secure a loan, Borrower grants Lender a security interest in a
34 specifically described item of equipment, which is not the primary collateral, and
35 also in all of Borrower's existing and after-acquired equipment. The loan and the
36 security interest are evidenced by one or more records. The right to payment is not
37 chattel paper.

38 Example 9 is the easy case because no "specific goods" are identified. As to Example
39 10, it is true that the monetary obligation is secured by "specific goods" and the definition
40 of chattel paper does not specify that the obligation must be secured *only* by specific goods.
41 However, if the right to payment in Example 10 were to be characterized as chattel paper,
42 it would be possible to convert virtually any monetary obligation evidenced by records and
43 secured by any collateral into chattel paper merely by including as collateral a specific item
44 of goods (whether inventory, equipment, consumer goods, or farm products). The special

1 rules for chattel paper contemplate that specific goods are the primary collateral, even if
2 some incidental property also might be included. If additional goods or other property are
3 included and the specific goods are not the primary collateral, then classification as chattel
4 paper would not be appropriate. Of course, there may be close cases. In those situations,
5 parties should take appropriate precautions.

6 A right to payment arising from a lease of specific goods gives rise to chattel paper
7 only if the predominant purpose of the transaction is to provide the lessee the right to
8 possession and use of the goods. Therefore, under paragraph (11)(B)(ii), when a lease of
9 specific goods is combined with an obligation to provide or right to receive other property
10 or services, the resulting right to payment will be chattel paper only if the goods aspect of
11 the transaction predominates.

12 **Example 11.** Customer and Car Dealer enter into a transaction, evidenced by one
13 or more records, pursuant to which, in exchange for a payment of \$2,000 per
14 month: (i) Customer is entitled to possession of a specific vehicle for 36 months;
15 (ii) Car Dealer will provide round-the-clock monitoring of the vehicle's location
16 and condition, and alert authorities to provide road-side assistance in the event of
17 a malfunction or accident; and (iii) Car Dealer will, from time to time, remotely
18 update the vehicle's operating system. The value of the right to possess and use the
19 vehicle is significantly greater than the value of the monitoring service and updates.
20 Because the goods aspect of the transaction predominates, under paragraph
21 (11)(B)(ii) Customer's monetary obligation, including the portion attributable to
22 Car Dealer's obligation to provide monitoring and updates, constitutes chattel
23 paper.

24 **Example 12.** Customer and Cableco enter into a transaction, evidenced by one or
25 more records, pursuant to which, in exchange for a payment of \$200 per month,
26 Cableco will provide Customer with specified television programming and a
27 device needed to access the programming (a "lease" of the device). If the
28 components of the transaction were priced separately, the price for the
29 programming would be substantially more than the price for possession and use of
30 the device. Because the goods aspect of this transaction does not predominate,
31 under paragraph (11)(B)(ii) Customer's monetary obligation does not constitute
32 chattel paper.

33 The 2022 revision to the definition of chattel paper omits the references to "software
34 used in the goods" and a "license of software used in the goods" as superfluous, inasmuch
35 as there is no reason to single out software. Other types of property may secure an
36 obligation or be included in a transaction involving a lease, as discussed above. See also
37 Sections 2-102 (scope of Article 2); 2-106(5) (defining "hybrid transaction"); 2A-102
38 (scope of Article 2A); 2A-103(1)(h.1) (definition of "hybrid lease"). These references were
39 omitted from the definition of chattel paper for clarification and did not result in any change
40 in the scope of the definition.

41 The 2022 revision to the definition of "chattel paper" also changed the language from
42 "a record or records that evidence a monetary obligation" to "a right to payment of a
43 monetary obligation evidenced by a record." This semantic change was for clarification
44 purposes only; it does not imply a change in meaning. Chattel paper is and has always been
45 a right to payment of a monetary obligation. Because the revised definition is based on the
46 obligation, rather than the record, the definition no longer includes the following statement,

1 which was included in the previous definition: "If a transaction is evidenced by records that
 2 include an instrument or series of instruments, the group of records taken together
 3 constitutes chattel paper." The omission of that statement also does not imply a change in
 4 meaning, except that writings evidencing chattel paper are excluded from the definition of
 5 "instrument" under Section 9-102(a)(47). Although the definition refers to "a record,"
 6 chattel paper can be evidenced by one or more records because, under Section 1-106, unless
 7 the statutory context otherwise requires, words in the singular number include the plural.

8 Finally, the revised definition of "chattel paper" and the approach to perfection of a
 9 security interest by possession and control under Section 9-314A have eliminated the need
 10 to have separate definitions of "electronic chattel paper" and "tangible chattel paper" in
 11 Section 9-102. Consequently, those definitions have been deleted.

12 c. **"Instrument"; "Promissory Note."** The definition of "instrument" includes a
 13 negotiable instrument. As under ~~former~~ pre-1998 Section 9-105, it also includes any other
 14 right to payment of a monetary obligation that is evidenced by a writing of a type that in
 15 ordinary course of business is transferred by delivery (and, if necessary, an indorsement or
 16 assignment). The 2022 revised definition of "instrument" explicitly excludes a writing that
 17 evidences a right to payment that is chattel paper. This revision clarifies and makes explicit
 18 the understanding before the revision that an obligation on an instrument that evidences
 19 chattel paper is to be treated (e.g., under Section 9-330) as an obligation on chattel paper
 20 and not on an instrument. ~~Except in the case of chattel paper~~ With that exception, the fact
 21 that an instrument is secured by a security interest or encumbrance on property does not
 22 change the character of the instrument as such or convert the combination of the instrument
 23 and collateral into a separate classification of personal property. The definition also makes
 24 clear that rights to payment arising out of credit-card transactions are not instruments. The
 25 definition of "promissory note," added in the 1998 Revisions, is new, was necessitated by
 26 the inclusion of sales of promissory notes within the scope of Article 9. It explicitly
 27 excludes obligations arising out of "orders" to pay (e.g., checks) as opposed to "promises"
 28 to pay. See Section 3-104. Under the 2022 Article 9 Revisions, Sections 9-406(d) and 9-
 29 408(g) adopt a modified meaning of "promissory note" as that term is used in Sections 9-
 30 406(d) and 9-408(a) through (d). See Comment 5.h.; see also Sections 9-406, Comment 5;
 31 9-408, Comment 11.

32 d. **"General Intangible"; "Payment Intangible."** "General intangible" is the
 33 residual category of personal property, including things in action, that is not included in the
 34 other defined types of collateral. Examples are various categories of intellectual property
 35 and the right to payment of a loan of funds that is not evidenced by chattel paper or an
 36 instrument. As used in the definition of "general intangible," "things in action" includes
 37 rights that arise under a license of intellectual property, including the right to exploit the
 38 intellectual property without liability for infringement. The definition has been revised was
 39 revised in 1998 to exclude commercial tort claims, deposit accounts, and letter-of-credit
 40 rights. Each of the three is a separate type of collateral. One important consequence of
 41 this exclusion is that tortfeasors (commercial tort claims), banks (deposit accounts), and
 42 persons obligated on letters of credit (letter-of-credit rights) are not "account debtors"
 43 having the rights and obligations set forth in Sections 9-404, 9-405, and 9-406. In
 44 particular, tortfeasors, banks, and persons obligated on letters of credit are not obligated to
 45 pay an assignee (secured party) upon receipt of the notification described in Section 9-

1 404(a). See Comment 5.h. Another important consequence relates to the adequacy of the
2 description in the security agreement. See Section 9-108.

3 "Payment intangible" is a subset of the definition of "general intangible" The sale of a
4 payment intangible is subject to this Article. See Section 9-109(a)(3). Virtually any
5 intangible right could give rise to a right to payment of money once one hypothesizes, for
6 example, that the account debtor is in breach of its obligation. The term "payment
7 intangible," however, embraces only those general intangibles "under which the account
8 debtor's *principal* obligation is a monetary obligation." (Emphasis added.) A debtor's right
9 to payment from another person of amounts received by the other person on the debtor's
10 behalf, including the right of a merchant in a credit-card, debit-card, prepaid-card, or other
11 payment-card transaction to payment of amounts received by its bank from the card system
12 in settlement of the transaction, is a "payment intangible." (In contrast, the right of a credit-
13 card issuer to payment arising out of the use of a credit card is an "account.") If a bank is
14 the obligor on a monetary obligation not evidenced by an instrument or chattel paper, the
15 obligation or the right to payment of the obligation may be a deposit account, an account,
16 a payment intangible, or another type of collateral depending on the facts and
17 circumstances. Of course, the classification of a monetary obligation or a right to payment
18 of the obligation for purposes of this Article would not necessarily affect the application of
19 laws regulating, for example, banking, securities, commodities, money transmission, and
20 taxation.

21 * * *

22 **d.1. "Controllable Account"; "Controllable Payment Intangible."** Article 9
23 affords special treatment for security interests in controllable accounts and controllable
24 payment intangibles, i.e., those accounts and payment intangibles that are evidenced by a
25 controllable electronic record and as to which the account debtor (obligor) undertakes to
26 pay the person having control of the controllable electronic record. Of course, a person
27 would be an account debtor only if it were actually obligated on the account or payment
28 intangible evidenced by the controllable electronic record. Although the definitions refer
29 to a controllable electronic record that "provides" for an account debtor's undertaking, an
30 account debtor's promise to pay normally would arise and be evidenced apart from the
31 controllable electronic record itself. However, the definitions contemplate that a
32 controllable electronic record evidencing an account or payment intangible (or an
33 associated record) would indicate in some fashion an account debtor's obligation and that
34 the controllable electronic record evidences the account or payment intangible. If a bank is
35 the obligor on a monetary obligation payable to the person in control of a controllable
36 electronic record, the obligation or the right to payment of the obligation may be a deposit
37 account, a controllable account, a controllable payment intangible, or another type of
38 collateral depending on the facts and circumstances. The classification of a monetary
39 obligation or a right to payment of the obligation for purposes of this Article would not
40 necessarily affect the application of laws regulating, for example, banking, securities,
41 commodities, money transmission, and taxation.

42 An undertaking to pay the "person that has control" means an undertaking to pay the
43 person that has control at the time payment is made. However, an undertaking to pay Smith,
44 even though Smith happens to have control of the relevant controllable electronic record at
45 the time the undertaking was made, is not an undertaking to pay the person that has control.

1 The special treatment for controllable accounts and controllable payment intangibles
2 includes the following:

3 1. Perfection of a security interest in a controllable account or controllable payment
4 intangible can be achieved by filing a financing statement or by obtaining control of the
5 controllable electronic record that evidences the controllable account or controllable
6 payment intangible. Sections 9-312(a); 9-314(a); 9-107A(b).

7 2. A security interest in a controllable electronic record, controllable account, or
8 controllable payment intangible that is perfected by control has priority over a conflicting
9 security interest that is perfected by another method. Section 9-326A.

10 3. The benefit of the take-free and no-action rules for qualifying purchasers (including
11 secured parties) of controllable electronic records also extends to qualifying purchasers of
12 controllable accounts and controllable payment intangibles, whether or not the qualifying
13 purchaser also purchases the related controllable electronic record. See Section 12-104(a)
14 and Comments 5 through 8.

15 * * *

16 g. **"Commercial Tort Claim."** ~~This term is new.~~ A tort claim may serve as original
17 collateral under this Article only if it is a "commercial tort claim." See Section 9-109(d).
18 Although security interests in commercial tort claims are within its scope, this Article does
19 not override other applicable law restricting the assignability of a tort claim. See Section
20 9-401. A security interest in a tort claim also may exist under this Article if the claim is
21 proceeds of other collateral. See Section 9-204(b.1) and Comment 4A.

22 h. **"Account Debtor."** An "account debtor" is a person obligated on an account,
23 chattel paper, or general intangible. The account debtor's obligation often is a monetary
24 obligation; however, this is not always the case. For example, if a franchisee uses its rights
25 under a franchise agreement (a general intangible) as collateral, then the franchisor is an
26 "account debtor." As a general matter, Article 3, and not Article 9, governs obligations on
27 negotiable instruments. Accordingly, the definition of "account debtor" excludes obligors
28 on negotiable instruments constituting part of chattel paper. The principal effect of this
29 change from the definition in ~~former pre-1998~~ Article 9 is that the rules in Sections 9-403,
30 9-404, 9-405, and 9-406, dealing with the rights of an assignee and duties of an account
31 debtor, do not apply to an assignment of chattel paper in which the obligation to pay is
32 evidenced by a negotiable instrument. (Section 9-406(d), however, does apply to
33 ~~promissory notes, including negotiable promissory notes~~ a negotiable instrument that is a
34 "promissory note," as that term is used in the 2022 revision of subsection (d). See Comment
35 5.c.) Rather, the assignee's rights of an assignee of a negotiable instrument are governed by
36 Article 3. Similarly, the duties of an obligor on a nonnegotiable instrument are governed
37 by non-Article 9 law unless the nonnegotiable instrument is a part of chattel paper, in which
38 case the obligor is an account debtor.

39 The definition of "account debtor" was revised in 2022 to add the modifier "negotiable"
40 to the second reference to "instrument," making it clear that an obligor on a negotiable
41 instrument is not an account debtor. This amendment (which is intended to clarify and not
42 to change the meaning of the definition) is useful because the definition of "instrument"
43 has been revised to exclude writings that evidence chattel paper. However, the definition

1 of "negotiable instrument" in Section 1-201 continues to apply under Article 9. See Section
2 9-102(a)(47) and (b); Comment 5.c. Of course, a record or records evidencing chattel paper
3 must evidence either a security agreement or lease agreement in addition to a right to
4 payment of a monetary obligation.

5 * * *

6 **6. Investment-Property-Related Definitions: "Commodity Account";**
7 **"Commodity Contract"; "Commodity Customer"; "Commodity Intermediary";**
8 **"Investment Property."** These definitions are substantially the same as the corresponding
9 definitions in ~~former pre-1998~~ Section 9-115. "Investment property" includes securities,
10 both certificated and uncertificated, securities accounts, security entitlements, commodity
11 accounts, and commodity contracts. The term investment property includes a "securities
12 account" in order to facilitate transactions in which a debtor wishes to create a security
13 interest in all of the investment positions held through a particular account rather than in
14 particular positions carried in the account. ~~Former Pre-1998~~ Section 9-115 was added in
15 conjunction with Revised Article 8 and contained a variety of rules applicable to security
16 interests in investment property. ~~These rules have been~~ The 1998 Revisions relocated these
17 rules to the appropriate sections of Article 9. See, e.g., Sections 9-203 (attachment), 9-314
18 (perfection by control), 9-328 (priority).

19 The terms "security," "security entitlement," and related terms are defined in Section
20 8-102, and the term "securities account" is defined in Section 8-501. The terms
21 "commodity account," "commodity contract," "commodity customer," and "commodity
22 intermediary" are defined in this section. Commodity contracts are not "securities" or
23 "financial assets" under Article 8. See Section 8-103(f). Thus, the relationship between
24 commodity intermediaries and commodity customers is not governed by the indirect-
25 holding-system rules of Part 5 of Article 8. For securities, Article 9 contains rules on
26 security interests, and Article 8 contains rules on the rights of transferees, including secured
27 parties, on such matters as the rights of a transferee if the transfer was itself wrongful and
28 gives rise to an adverse claim. For commodity contracts, Article 9 establishes rules on
29 security interests, but questions relating to commodity contracts of the sort dealt with in
30 Article 8 for securities are left to other law.

31 * * *

32 **7. Consumer-Related Definitions: "Consumer Debtor"; "Consumer Goods";**
33 **"Consumer-goods transaction"; "Consumer Obligor"; "Consumer Transaction."**
34 The definition of "consumer goods" (discussed above) is substantially the same as the
35 definition in ~~former pre-1998~~ Section 9-109. The 1998 Revisions added the definitions of
36 "consumer debtor," "consumer obligor," "consumer-goods transaction," and "consumer
37 transaction" ~~have been added~~ in connection with various ~~new (and old)~~ 1998 and pre-1998
38 consumer-related provisions and to designate certain provisions that are inapplicable in
39 consumer transactions.

40 * * *104

41 **8. Filing-Related Definitions: "Continuation Statement"; "File Number";**
42 **"Filing Office"; "Filing-office Rule"; "Financing Statement"; "Fixture Filing";**
43 **"Manufactured-Home Transaction"; "New Debtor"; "Original Debtor"; "Public-**
44 **Finance Transaction"; "Termination Statement"; "Transmitting Utility." * * ***

1 The definition of "transmitting utility" ~~has been revised to embrace~~ embraces the
 2 business of transmitting communications generally to take account of new and future types
 3 of communications technology. The term designates a special class of debtors for whom
 4 separate filing rules are provided in Part 5, thereby obviating the many local fixture filings
 5 that would be necessary under the rules of Section 9-501 for a far-flung public-utility
 6 debtor. A transmitting utility will not necessarily be regulated by or operating as such in a
 7 jurisdiction where fixtures are located. For example, a utility might own transmission lines
 8 in a jurisdiction, although the utility generates no power and has no customers in the
 9 jurisdiction. Of course, the definition applies only for purposes of this Article and not for
 10 purposes of any other law, regulation, or rule.

11 9. Definitions Relating to Medium Neutrality.

12 a. **"Record."** ~~In many, but not all, instances, general~~ the term "record" replaces the
 13 term "writing" and "written." A "record" includes information that is in intangible form
 14 (e.g., electronically stored) as well as tangible form (e.g., written on paper). Section 9-
 15 102(a)(70). Given the rapid development and commercial adoption of modern
 16 communication and storage technologies, requirements that documents or communications
 17 be "written," "in writing," or otherwise in tangible form do not necessarily reflect or aid
 18 commercial practices.

19 A "record" need not be permanent or indestructible, but the term does not include any
 20 oral or other communication that is not stored or preserved by any means. The information
 21 must be stored on paper or in some other medium. Information that has not been retained
 22 other than through human memory does not qualify as a record. Examples of modern
 23 technologies commercially used to communicate or store information include, but are not
 24 limited to, magnetic media, optical discs, digital voice messaging systems, electronic mail,
 25 audio tapes, and photographic media, as well as paper. "Record" is an inclusive term that
 26 includes all of these methods of storing or communicating information. Any "writing" is a
 27 record. A record may be ~~authenticated~~ signed. See Comment 9.b. A record may be created
 28 without the knowledge or intent of a particular person.

29 * * *

30 b. **"Authenticate"; "Sign"; "Communicate"; "Send."** ~~The terms defined term~~
 31 "authenticate" has been deleted in the 2022 Article 9 Revisions. That term and
 32 "authenticated" were generally replace used in Article 9 instead of "sign" and "signed."
 33 "Authenticated" replaces and broadens the definition of "signed." ~~However, the 2022~~
 34 revised definition of "sign" in Section 1-201, to encompass encompasses authentication of
 35 all records, not just writings. Accordingly, "sign" and "signed" are now used in Article 9.
 36 (References to ~~authentication~~ signing of, e.g., an agreement, demand, or notification mean,
 37 of course, ~~authentication~~ signing of a record containing an agreement, demand, or
 38 notification.) The terms "communicate" and "send" also contemplate the possibility of
 39 communication by nonwritten media. These definitions include the act of transmitting both
 40 tangible and intangible records. ~~The 2022 Amendments deleted the definition of "send"~~
 41 ~~replaces, for purposes of this Article, the corresponding term in Section 1-201. The~~
 42 ~~reference to "usual means of communication" in that definition contemplates an inquiry~~
 43 ~~into the appropriateness of the method of transmission used in the particular circumstances~~
 44 ~~involved in this section and added a corresponding definition to Section 1-201, replacing~~
 45 ~~the pre-2022 definition in that section.~~

1 **10. Scope-Related Definitions.**

2 a. **Expanded Scope of Article: "Agricultural Lien"; "Consignment"; "Payment**
3 **Intangible"; "Promissory Note."** These new definitions reflect the expanded scope of
4 1998 Article 9, as provided in Section 9-109(a).

5 b. **Reduced Scope of Exclusions: "Governmental Unit"; "Health-Care-Insurance**
6 **Receivable"; "Commercial Tort Claims."** These new definitions reflect the reduced
7 scope of the 1998 exclusions, provided in Section 9-109(c) and (d), of transfers by
8 governmental debtors and assignments of interests in insurance policies and commercial
9 tort claims.

10 **11. Choice-of-Law-Related Definitions: "Certificate of Title"; "Governmental**
11 **Unit"; "Jurisdiction of Organization"; "Public Organic Record;" "Registered**
12 **Organization"; "State."** These new definitions reflect the changes in the law governing
13 perfection and priority of security interests and agricultural liens provided in Part 3, Subpart
14 1 of the 1998 Revisions.

15 * * *

16 **12. Deposit-Account-Related Definitions: "Deposit Account"; "Bank."** The 1998
17 revised definition of "deposit account" incorporates the definition of "bank," which is new.
18 The new definition derives from the definitions of "bank" in Sections 4-105(1) and 4A-
19 105(a)(2), which focus on whether the organization is "engaged in the business of banking."

20 Deposit accounts evidenced by Article 9 "instruments" are excluded from the term
21 "deposit account." In contrast, ~~former~~ pre-1998 Section 9-105 excluded from the definition
22 "an account evidenced by a certificate of deposit." The revised definition clarifies the
23 proper treatment of nonnegotiable or uncertificated certificates of deposit. Under the
24 definition, an uncertificated certificate of deposit would be a deposit account (assuming
25 there is no writing evidencing the bank's obligation to pay) whereas a nonnegotiable
26 certificate of deposit would be a deposit account only if it is not an "instrument" as defined
27 in this section (a question that turns on whether the nonnegotiable certificate of deposit is
28 "of a type that in ordinary course of business is transferred by delivery with any necessary
29 indorsement or assignment.")

30 A deposit account evidenced by an instrument is subject to the rules applicable to
31 instruments generally. As a consequence, a security interest in such an instrument cannot
32 be perfected by "control" (see Section 9-104), and the special priority rules applicable to
33 deposit accounts (see Sections 9-327 and 9-340) do not apply. If a bank is the obligor on a
34 monetary obligation not evidenced by an instrument or chattel paper, the obligation or the
35 right to payment of the obligation may be a deposit account, an account, a payment
36 intangible, or another type of collateral depending on the facts and circumstances. Of
37 course, the classification of a monetary obligation or a right to payment of the obligation
38 for purposes of this Article would not necessarily affect the application of laws regulating,
39 for example, banking, securities, commodities, money transmission, and taxation.

40 * * *

41 **12A. Money-Related Definitions and Terms: "Money"; "Electronic Money";**
42 **"Tangible Money"; "Funds"; "Monetary Obligation."** The Article 9 definition of
43 "money" in subsection (a)(54A), added by the 2022 Article 9 Revisions, is a subset of the
44 definition of "money" as defined in Section 1-201(b)(24). It follows that cryptocurrencies,

1 such as bitcoin, that are not "money" as defined in Section 1-201 because they were in
 2 existence and used before adoption by a government, also are not Article 9 money. An
 3 obligation to pay in such cryptocurrencies would not be an account, chattel paper, or a
 4 payment intangible or an obligation on an instrument because the obligation would not be
 5 a "monetary obligation" or an obligation to pay money. One purpose of the Article 9
 6 definition is to ensure that even if some deposit accounts were to become "money" as
 7 defined in Article 1, the provisions relating to perfection and priority for security interests
 8 in deposit accounts, and not those for money, will apply to that collateral. Some countries
 9 may authorize or adopt deposit accounts with a central bank as a form of "money." See
 10 Section 9-101, Comment 4.c. However, the Article 9 provisions governing "deposit
 11 accounts" would remain suitable for such accounts with a central bank, even if a
 12 government has adopted these accounts as money. The 2022 Article 9 Revisions leave
 13 Article 9's treatment of deposit accounts largely unchanged. However, for purposes of
 14 Article 9 and in the interest of clarity, the definition of "money" in Section 9-102(a)(31A)
 15 excludes deposit accounts. Under this definition, deposit accounts would not be money for
 16 Article 9 purposes even if they were to become money under the Article 1 definition.
 17 Another purpose of the Article 9 definition of "money" is to exclude from that definition
 18 money (as defined in Section 1-201(b)(24)) in an electronic form that cannot be subjected
 19 to control under Section 9-105A. Such property would be a general intangible, governed
 20 by the perfection and priority rules for that type of collateral.

21 Some countries may authorize or adopt intangible tokens as a medium of exchange that
 22 would be "money" as defined in both Article 1 and Article 9. See Section 9-101, Comment
 23 4.c. Such intangible tokens would be "electronic money," as defined in Section 9-
 24 102(a)(31A). A security interest in electronic money as original collateral can be perfected
 25 only by control. Sections 9-312(b)(4); 9-314; 9-105A. The requirements for obtaining
 26 control of electronic money are essentially the same as those for obtaining control of a
 27 controllable electronic record under Article 12. Sections 9-105A; 12-105. The definition
 28 of "tangible money" in Section 9-102(a)(79A) uses the word "tangible" with its normal
 29 meaning (as something that has physical or corporeal existence, such as goods).

30 "Monetary obligation" as used in the Uniform Commercial Code (including in Article
 31 9) is not a defined term. The term contemplates an obligation to pay "money" as defined in
 32 Section 1-201(b)(24). Consequently, for example, a right to payment of money in an
 33 electronic form that cannot be subjected to control, excluded from the Article 9 definition
 34 of "money" in subsection (a)(54A), would be a monetary obligation. It follows that such a
 35 right to payment could be an account, chattel paper, a payment intangible, or an
 36 instrument—including a negotiable instrument, which is defined to include a promise to
 37 pay "money" as the term is defined in Section 1-201. See Section 3-104(a) (defining
 38 "negotiable instrument"). Also, the term "funds" (like "monetary obligation," an undefined
 39 term), as used in the Uniform Commercial Code includes a right to payment of money as
 40 defined in Section 1-201(b)(24). As mentioned above, because cryptocurrencies such as
 41 bitcoin are not "money" as defined in Section 1-201 (unless they were not in existence and
 42 used before adoption by a government), a cryptocurrency or an obligation to pay in
 43 cryptocurrency would not be a "monetary obligation" or "funds."

44 13. **Proceeds-Related Definitions: "Cash Proceeds"; "Noncash Proceeds";**
 45 **"Proceeds."** The revised definition of "proceeds" expands expanded the definition beyond

1 that contained in ~~former~~ pre-1998 Section 9-306 and resolves ambiguities in the former
2 section definition.

3 a. **Distributions on Account of Collateral.** The phrase "whatever is collected on, or
4 distributed on account of, collateral," in subparagraph (B), is broad enough to cover cash
5 or stock dividends distributed on account of securities or other investment property that is
6 original collateral. Compare ~~former~~ pre-1998 Section 9-306 ("Any payments or
7 distributions made with respect to investment property collateral are proceeds."). This
8 section rejects the holding of *Hastie v. FDIC*, 2 F.3d 1042 (10th Cir. 1993) (postpetition
9 cash dividends on stock subject to a prepetition pledge are not "proceeds" under
10 Bankruptcy Code Section 552(b)), to the extent the holding relies on the Article 9 definition
11 of "proceeds."

12 * * *

13 d. **Proceeds Received by Person Who Did Not Create Security Interest.** When
14 collateral is sold subject to a security interest and the buyer then resells the collateral, a
15 question arose under ~~former~~ pre-1998 Article 9 concerning whether the "debtor" had
16 "received" what the buyer received on resale and, therefore, whether those receipts were
17 "proceeds" under ~~former~~ pre-1998 Section 9-306(2). This Article contains no requirement
18 that property be "received" by the debtor for the property to qualify as proceeds. It is
19 necessary only that the property be traceable, directly or indirectly, to the original collateral.

20 e. **Cash Proceeds and Noncash Proceeds.** The definition of "cash proceeds" is
21 substantially the same as the corresponding definition in ~~former~~ pre-1998 Section 9-306.
22 The phrase "and the like" covers property that is functionally equivalent to "money, checks,
23 or deposit accounts," such as some money-market accounts that are securities or part of
24 securities entitlements. Proceeds other than cash proceeds are noncash proceeds.

25 f. **Forks and Airdrops for Controllable Electronic Records.** Sometimes there
26 occurs a change in the software (code) of a system (sometimes referred to as a "protocol"
27 or "platform") in which a controllable electronic record is recorded. When such a change
28 occurs in a blockchain platform, the blockchain may remain intact, no new blockchain may
29 result, and the change sometimes is colloquially referred to as a "soft fork." If, instead, such
30 a change results in a new, separate blockchain that exists alongside the original blockchain
31 and a new controllable electronic record is created, the change is sometimes referred to as
32 a "hard fork." But the terms "fork," "soft fork," and "hard fork" are ambiguous and not used
33 consistently. Even in a hard fork situation the pre-fork controllable electronic record
34 typically would remain intact (although its value might be affected). A person in control of
35 the original record may not automatically obtain control of a new record. Additional steps
36 may be required for the person in control of the original record to obtain control of the new
37 record.

38 Depending on the nature and structure of the fork, a new controllable electronic record
39 arising under a hard fork may be property "distributed on account of" the original record or
40 "rights arising out of" the original record, thereby constituting proceeds of the original
41 record under subparagraph (B) or (C), or both, of the definition of "proceeds." If the new
42 record is identifiable "proceeds," then the rules on attachment, perfection, priority under
43 Sections 9-203(f), 9-315, and 9-322 would apply. If a security interest in the original record
44 is perfected by control, the creation of the new record in connection with a hard fork
45 typically results in the secured party obtaining control (or having the opportunity to obtain

1 control) of the new record. If that is not the case and perfection of the security interest in
2 the original record is only by control, however, then perfection would continue in the new
3 record only until the 21st day after the security interest attaches to the new record, unless
4 one of the exceptions under subsection (d) applies. Section 9-315(c), (d). For this reason, a
5 secured party may wish also to perfect its security interest by filing so that the perfection
6 would continue thereafter in any proceeds under Section 9-315(d)(1). A secured party that
7 does so may, to ensure the priority of its perfected security interest, also wish to consider
8 obtaining a release or subordination from any earlier filed secured party whose financing
9 statement covers the same type of property. Even if that is achieved, a security interest in
10 the record that is perfected by control (even if control is later obtained) would have priority
11 over a security interest perfected only by filing. Section 9-326A.

12 New controllable electronic records also may be provided to persons in control of
13 existing records by way of an "airdrop" that does not involve a fork in an existing
14 blockchain. Depending on the circumstances, these new records may or may not be
15 proceeds of the existing, original record.

16 If the original record were a financial asset credited to a securities account, the new
17 record might become proceeds of a security entitlement for the reasons described above.
18 Concerning the duties, if any, of a securities intermediary with respect to such a
19 distribution, see Section 8-505, Comment 4.

20 This discussion focuses on forks and airdrops related to controllable electronic records
21 in the context of blockchain technology, the prevailing relevant technology in 2022. In
22 determining whether property may be proceeds of collateral in the contexts of other and
23 future technologies, the principles and policies reflected in this discussion should be
24 considered.

25 **14. Consignment-Related Definitions: "Consignee"; "Consignment";**
26 **"Consignor."** The definition of "consignment," added by the 1998 Revisions, excludes,
27 in subparagraphs (B) and (C), transactions for which filing would be inappropriate or of
28 insufficient benefit to justify the costs. A consignment excluded from the application of
29 this Article by one of those subparagraphs may still be a true consignment; however, it is
30 governed by non-Article 9 law. The definition also excludes, in subparagraph (D), what
31 have been called "consignments intended for security." These "consignments" are not
32 bailments but secured transactions. Accordingly, all of Article 9 applies to them. See
33 Sections 1-201(b)(35), 9-109(a)(1). The "consignor" is the person who delivers goods to
34 the "consignee" in a consignment.

35 * * *

36 Under clause (iii) of subparagraph (A), a transaction is not an Article 9 "consignment"
37 if the consignee is "generally known by its creditors to be substantially engaged in selling
38 the goods of others." Clause (iii) does not apply solely because a particular competing
39 claimant knows that the goods are held on consignment. See PEB Commentary No. 20;
40 dated January 24, 2019.

41 **15. "Accounting."** This definition describes the record and information that a debtor
42 is entitled to request under Section 9-210. Consistent with the revised definition of "sign"
43 in Section 1-201, the cognate term "signed" replaces the reference to "authenticated" in the
44 pre-2022 text of this definition.

1 * * *

2 17. **"Encumbrance"; "Mortgage."** The definitions of "encumbrance" and
3 "mortgage" are unchanged in substance from the corresponding definitions in ~~former pre-~~
4 1998 Section 9-105. They are used primarily in the special real-property-related priority
5 and other provisions relating to crops, fixtures, and accessions.

6 18. **"Fixtures."** This definition is unchanged in substance from the corresponding
7 definition in ~~former pre-1998~~ Section 9-313. See Section 9-334 (priority of security
8 interests in fixtures and crops).

9 19. **"Good Faith."** ~~This Article expands the definition of "good faith" to include "the~~
10 ~~observance of reasonable commercial standards of fair dealing." The definition in this~~
11 ~~section applies when the term is used in this Article, and the same concept applies in the~~
12 ~~context of this Article for purposes of the obligation of good faith imposed by Section 1-~~
13 ~~203. See subsection (e). The definition of "good faith" added by the 1998 Revisions, which~~
14 ~~incorporated the concept of "reasonable commercial standards of fair dealing," was deleted~~
15 ~~by the conforming amendments to the 2001 revision of Article 1. The definition is~~
16 unnecessary given the revised definition in Section 1-201(b)(20).

17 20. **"Lien Creditor."** This definition is unchanged in substance from the
18 corresponding definition in ~~former pre-1998~~ Section 9-301.

19 21. **"New Value."** ~~This Article deletes~~ The 1998 Revisions deleted former pre-1998
20 Section 9-108. Its broad formulation of new value, which embraced the taking of after-
21 acquired collateral for a pre-existing claim, was unnecessary, counterintuitive, and
22 ineffective for its original purpose of sheltering after-acquired collateral from attack as a
23 voidable preference in bankruptcy. The new definition of "new value" derives from
24 Bankruptcy Code Section 547(a). The term is used with respect to temporary perfection of
25 security interests in instruments, certificated securities, or negotiable documents under
26 Section 9-312(e) and with respect to chattel paper priority in Section 9-330.

27 * * *

28 23. **"Proposal."** This definition describes a record that is sufficient to propose to
29 retain collateral in full or partial satisfaction of a secured obligation. See Sections 9-620,
30 9-621, 9-622. Consistent with the revised definition of "sign" in Section 1-201, the 2022
31 revision of the definition adopts the cognate term "signed" to replace the term
32 "authenticated" used in the pre-2022 text.

33 24. **"Pursuant to Commitment."** This definition is unchanged in substance from the
34 corresponding definition in ~~former pre-1998~~ Section 9-105. It is used in connection with
35 special priority rules applicable to future advances. See Section 9-323.

36 * * *

37 26. **Terminology: "Assignment" and "Transfer."** ~~In numerous provisions, this~~
38 ~~Article refers to the "assignment" or the "transfer" of property interests. These terms and~~
39 ~~their derivatives are not defined. This Article generally follows common usage by using~~
40 ~~the terms "assignment" and "assign" to refer to transfers of rights to payment, claims, and~~
41 ~~liens and other security interests. It generally uses the term "transfer" to refer to other~~
42 ~~transfers of interests in property. Except when used in connection with a letter of credit~~
43 ~~transaction (see Section 9-107, Comment 4), no significance should be placed on the use~~
44 ~~of one term or the other. Depending on the substance of the transaction, each term as used~~

1 in this Article refers to the assignment or transfer of an outright ownership interest or to the
2 assignment or transfer of a limited interest, such as a security interest, or both.

3 **Sec. A-84. 11 MRSA §9-1104, sub-§(1)**, as enacted by PL 1999, c. 699, Pt. A, §2
4 and affected by §4, is amended to read:

5 (1). A secured party has control of a deposit account if:

6 (a). The secured party is the bank with which the deposit account is maintained;

7 (b). The debtor, secured party and bank have agreed in ~~an authenticated~~ a signed record
8 that the bank will comply with instructions originated by the secured party directing
9 disposition of the funds in the deposit account without further consent by the debtor;
10 ~~or~~

11 (c). The secured party becomes the bank's customer with respect to the deposit
12 account; or

13 (d). Another person, other than the debtor:

14 (i) Has control of the deposit account and acknowledges that it has control on
15 behalf of the secured party; or

16 (ii) Obtains control of the deposit account after having acknowledged that it will
17 obtain control of the deposit account on behalf of the secured party.

18 Official Comment

19 1. **Source.** ~~New; derived~~ Derived from Section 8-106.

20 2. **Why "Control" Matters.** This section explains the concept of "control" of a
21 deposit account. "Control" under this section may serve two functions. First, "control . . .
22 pursuant to the debtor's agreement" may substitute for ~~an authenticated~~ a signed security
23 agreement as an element of attachment. See Section 9-203(b)(3)(D). Second, when a
24 deposit account is taken as original collateral, the only method of perfection is obtaining
25 control under this section. See Section 9-312(b)(1).

26 3. **Requirements for "Control: In General."** * * *

27 * * *

28 Under subsection (a)(2), a secured party may obtain control by obtaining the bank's
29 ~~authenticated~~ signed agreement that it will comply with the secured party's instructions
30 without further consent by the debtor. The analogous provision in Section 8-106 does not
31 require that the agreement be ~~authenticated~~ signed. An agreement to comply with the
32 secured party's instructions suffices for "control" of a deposit account under this section
33 even if the bank's agreement is subject to specified conditions, e.g., that the secured party's
34 instructions are accompanied by a certification that the debtor is in default. (Of course, if
35 the condition is the *debtor's* further consent, the statute explicitly provides that the
36 agreement would *not* confer control.) See ~~revised~~ Section 8-106, Comment 7.

37 * * *

38 4. **Control on behalf of another person.** Subsection (a)(4) provides for a secured
39 party to obtain control of a deposit account by virtue of the acknowledgment by another
40 person, other than the debtor, in control of the deposit account. It generally follows

1 revisions to the corresponding provisions for control of electronic documents of title
2 (Section 7-106(g)), control of a security entitlement (8-106(d)), control of an electronic
3 copy of a record evidencing chattel paper (Section 9-105(g)), control of electronic money
4 (Section 9-105A(e)), and control of controllable electronic records (Section 12-105(e)). For
5 a brief discussion, see Section 12-105, Comments 8 and 9.

6 An acknowledgment by a person in control under subsection (a)(4) would not impose
7 any duties on the bank with which the deposit account is maintained. Indeed, the bank may
8 have no knowledge or involvement whatsoever with a control person's acknowledgment
9 under that subsection. On the other hand, subsection (a)(4) should not be construed to
10 permit the bank with which the deposit account is maintained to short-circuit subsection
11 (a)(2), which provides for control through a control agreement among the debtor, the bank,
12 and the control person. However, it would be possible for the bank, acting in a capacity
13 other than as the depository bank (for example, as a secured party) to acknowledge that it
14 has control on behalf of another purchaser under subsection (a)(4).

15 Section 9-107B(a) makes clear that a person that has control under this section has no
16 duty to acknowledge that it has or will obtain control on behalf of another person.
17 Arrangements for a person to acknowledge that it has or will obtain control on behalf of
18 another person are not standardized. Accordingly, Section 9-107B(b) leaves to the
19 agreement of the parties and to any other applicable law any duties of a person that does
20 acknowledge that it has or will obtain control on behalf of another person and provides that
21 a person making an acknowledgment is not required to confirm the acknowledgment to
22 another person.

23 **Sec. A-85. 11 MRSA §9-1105**, as amended by PL 2013, c. 317, Pt. A, §§9 to 11, is
24 repealed.

25 **Sec. A-86. 11 MRSA §9-1105-A** is enacted to read:

26 **§9-1105-A. Control of electronic copy of record evidencing chattel paper**

27 (1). A purchaser has control of an authoritative electronic copy of a record evidencing
28 chattel paper if a system employed for evidencing the assignment of interests in the chattel
29 paper reliably establishes the purchaser as the person to which the authoritative electronic
30 copy was assigned.

31 (2). A system satisfies subsection (1) if the record or records evidencing the chattel
32 paper are created, stored and assigned in a manner such that:

33 (a). A single authoritative copy of the record or records exists that is unique,
34 identifiable and, except as otherwise provided in paragraphs (d), (e) and (f),
35 unalterable;

36 (b). The authoritative copy identifies the purchaser as the assignee of the record or
37 records;

38 (c). The authoritative copy is communicated to and maintained by the purchaser or its
39 designated custodian;

40 (d). Copies or amendments that add or change an identified assignee of the
41 authoritative copy can be made only with the consent of the purchaser;

42 (e). Each copy of the authoritative copy and any copy of a copy is readily identifiable
43 as a copy that is not the authoritative copy; and

1 (f). Any amendment of the authoritative copy is readily identifiable as authorized or
2 unauthorized.

3 (3). A system satisfies subsection (1), and a purchaser has control of an authoritative
4 electronic copy of a record evidencing chattel paper, if the electronic copy, a record
5 attached to or logically associated with the electronic copy or a system in which the
6 electronic copy is recorded:

7 (a). Enables the purchaser readily to identify each electronic copy as either an
8 authoritative copy or a nonauthoritative copy;

9 (b). Enables the purchaser readily to identify itself in any way, including by name,
10 identifying number, cryptographic key, office or account number, as the assignee of
11 the authoritative electronic copy; and

12 (c). Gives the purchaser exclusive power, subject to subsection (4), to:

13 (i) Prevent others from adding or changing an identified assignee of the
14 authoritative electronic copy; and

15 (ii) Transfer control of the authoritative electronic copy.

16 (4). Subject to subsection (5), a power is exclusive under subsection (3), paragraph
17 (c), subparagraphs (i) and (ii) even if:

18 (a). The authoritative electronic copy, a record attached to or logically associated with
19 the authoritative electronic copy or a system in which the authoritative electronic copy
20 is recorded limits the use of the authoritative electronic copy or has a protocol that is
21 programmed to cause a change, including a transfer or loss of control; or

22 (b). The power is shared with another person.

23 (5). A power of a purchaser is not shared with another person under subsection (4),
24 paragraph (b) and the purchaser's power is not exclusive if:

25 (a). The purchaser can exercise the power only if the power also is exercised by the
26 other person; and

27 (b). The other person:

28 (i) Can exercise the power without exercise of the power by the purchaser; or

29 (ii) Is the transferor to the purchaser of an interest in the chattel paper.

30 (6). If a purchaser has the powers specified in subsection (3), paragraph (c),
31 subparagraphs (i) and (ii), the powers are presumed to be exclusive.

32 (7). A purchaser has control of an authoritative electronic copy of a record evidencing
33 chattel paper if another person, other than the transferor to the purchaser of an interest in
34 the chattel paper:

35 (a). Has control of the authoritative electronic copy and acknowledges that it has
36 control on behalf of the purchaser; or

37 (b). Obtains control of the authoritative electronic copy after having acknowledged
38 that it will obtain control of the electronic copy on behalf of the purchaser.

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Official Comment

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~~1. **Source.** New.~~

~~2. **"Control" of Electronic Chattel Paper.** This Article covers security interests in "electronic chattel paper," a new term defined in Section 9-102. This section governs how "control" of electronic chattel paper may be obtained. Subsection (a), which derives from Section 16 of the Uniform Electronic Transactions Act, sets forth the general test for control. Subsection (b) sets forth a safe harbor test that, if satisfied, establishes control under the general test in subsection (a).~~

~~A secured party's control of electronic chattel paper (i) may substitute for an authenticated security agreement for purposes of attachment under Section 9-203, (ii) is a method of perfection under Section 9-314, and (iii) is a condition for obtaining special, non-temporal priority under Section 9-330. Because electronic chattel paper cannot be transferred, assigned, or possessed in the same manner as tangible chattel paper, a special definition of control is necessary. In descriptive terms, this section provides that control of electronic chattel paper is the functional equivalent of possession of "tangible chattel paper" (a term also defined in Section 9-102).~~

~~3. **Development of Control Systems.** This Article leaves to the marketplace the development of systems and procedures, through a combination of suitable technologies and business practices, for dealing with control of electronic chattel paper in a commercial context. Systems that evolve for control of electronic chattel paper may or may not involve a third party custodian of the relevant records. As under UETA, a system must be shown to reliably establish that the secured party is the assignee of the chattel paper. Reliability is a high standard and encompasses the general principles of uniqueness, identifiability, and unalterability found in subsection (b) without setting forth specific guidelines as to how these principles must be achieved. However, the standards applied to determine whether a party is in control of electronic chattel paper should not be more stringent than the standards now applied to determine whether a party is in possession of tangible chattel paper. For example, just as a secured party does not lose possession of tangible chattel paper merely by virtue of the possibility that a person acting on its behalf *could* wrongfully redeliver the chattel paper to the debtor, so control of electronic chattel paper would not be defeated by the possibility that the secured party's interest *could* be subverted by the wrongful conduct of a person (such as a custodian) acting on its behalf.~~

~~This section and the concept of control of electronic chattel paper are not based on the same concepts as are control of deposit accounts (Section 9-104), security entitlements, a type of investment property (Section 9-106), and letter of credit rights (Section 9-107). The rules for control of those types of collateral are based on existing market practices and legal and regulatory regimes for institutions such as banks and securities intermediaries. Analogous practices for electronic chattel paper are developing nonetheless. The flexible approach adopted by this section, moreover, should not impede the development of these practices and, eventually, legal and regulatory regimes, which may become analogous to those for, e.g., investment property.~~

~~4. **"Authoritative Copy" of Electronic Chattel Paper.** One requirement for establishing control under subsection (b) is that a particular copy be an "authoritative copy." Although other copies may exist, they must be distinguished from the authoritative copy. This may be achieved, for example, through the methods of authentication that are used or by business practices involving the marking of any additional copies. When tangible chattel paper is converted to electronic chattel paper, in order to establish that a copy of the~~

1 ~~electronic chattel paper is the authoritative copy it may be necessary to show that the~~
2 ~~tangible chattel paper no longer exists or has been permanently marked to indicate that it~~
3 ~~is not the authoritative copy.~~

4 1. **The Functions of Control.** A secured party can perfect a security interest in chattel
5 paper by filing. See Section 9-312(a). Alternatively, a secured party can perfect a security
6 interest in chattel paper by taking possession of all authoritative tangible copies of the
7 record evidencing the chattel paper and obtaining control of all authoritative electronic
8 copies of the record evidencing chattel paper. Section 9-314A. Possession and control also
9 are conditions for achieving priority under Section 9-330(a), (b), and (c). A secured party's
10 possession or control of chattel paper also may substitute for a signed security agreement
11 for purposes of attachment under Section 9-203.

12 2. **Conditions for Obtaining Control: In General.** This section provides the
13 requirements for obtaining control of chattel paper. As explained in the comment to the
14 definition of "chattel paper," the definitions of "electronic chattel paper" and "tangible
15 chattel paper" have been deleted as unnecessary. See Section 9-102, Comment 5.b.

16 Subsections (a) and (b) are substantially unchanged under the 2022 Article 9 Revisions.
17 Subsection (a), which derives from Section 16 of the Uniform Electronic Transactions Act,
18 sets forth the general test for control. (The amendments to subsection (a) primarily reflect
19 the changes to the definition of chattel paper in Section 9-102.) Subsections (b) and (c) set
20 forth safe harbor tests that, if satisfied, establish control under the general test in subsection
21 (a). *It is important to note that compliance with the conditions for control in subsection (c)*
22 *would satisfy the conditions provided in subsection (b).* However, subsection (b) has been
23 retained out of an abundance of caution and to provide assurances of the continuing
24 viability of pre-2022 systems for control of chattel paper evidenced by electronic records.

25 3. **Development of Control Systems and Application of Subsection (b).** This
26 Article leaves to the marketplace the development of systems and procedures, through a
27 combination of suitable technologies and business practices, for dealing with control of
28 chattel paper in a commercial context. As under UETA and under the general standard for
29 control under subsection (a), for control under subsection (b), as supplemented by
30 subsection (g), a system must be shown to reliably establish that the secured party is the
31 assignee of the chattel paper. Reliability is a high standard and encompasses the general
32 principle of identifiability of an assignee of an authoritative copy as found in subsection
33 (b), but without setting forth specific guidelines as to how compliance with this principle
34 must be achieved. Under subsection (b), at any point in time, a party should be able to
35 identify the single authoritative copy of the record or records evidencing the chattel paper
36 which is unique and identifiable as the authoritative copy. This does not mean that once
37 created the authoritative copy need be static and never moved or copied from its original
38 location. To the extent that backup systems exist which result in multiple copies, the key
39 to this idea is that at any point in time, the one authoritative copy needs to be unique and
40 identifiable. However, the standards applied to determine whether a party is in control of
41 chattel paper should not be more stringent than the pre-2022 standards applied to determine
42 whether a party is in possession of tangible chattel paper. For example, just as a secured
43 party does not lose possession of tangible chattel paper merely by virtue of the possibility
44 that a person acting on its behalf *could* wrongfully redeliver the chattel paper to the debtor,
45 so control of chattel paper evidenced by an electronic copy of a record or records would

1 not be defeated by the possibility that the secured party's control *could* be subverted by the
2 wrongful conduct of a person (such as a custodian) acting on its behalf.

3 4. **Subsection (c) Safe Harbor: In General.** The subsection (c) "safe harbor"
4 generally follows Section 12-105 for control of controllable electronic records. See
5 generally Section 12-105 and Comments. It differs from subsection (b), which (as
6 explained above) is based on a "single authoritative copy" of an electronic record or
7 records. Subsection (b) would be inapplicable when the relevant record is maintained on a
8 blockchain or another distributed ledger. The utility of distributed ledger technology
9 depends on there being multiple authoritative copies of a record. However, as with
10 subsection (b), control under subsection (c) also meets the high standard of reliability under
11 subsection (a) as to the identifiability of an assignee of authoritative copies. The conditions
12 for "control" in subsection (c) are meant to reflect the functions that possession serves with
13 respect to writings, but in a more accurate and technologically flexible way than does the
14 definition in subsection (b).

15 Subsection (c), as supplemented by subsections (d) through (g), sets forth the
16 requirements for a purchaser to have "control of an authoritative electronic copy of a record
17 evidencing chattel paper." However, for purposes of perfection of a security interest in the
18 chattel paper under Section 9-314A and qualification for non-temporal priority under
19 Section 9-330, the purchaser must obtain control of *each* authoritative electronic copy (i.e.,
20 *all* of the copies) of a record evidencing the chattel paper and take possession of each
21 tangible copy (if any) of the record evidencing the chattel paper.

22 5. **Control of Electronic Copy of Record Evidencing Chattel Paper under**
23 **Subsection (c).** Under subsection (c), to obtain control of an electronic copy of a record
24 evidencing chattel paper a purchaser must be able to identify each electronic copy as
25 authoritative or nonauthoritative and identify itself as the assignee of the authoritative copy.
26 As to the means of identification, see Section 12-105, Comment 7. In addition, the
27 purchaser must have the exclusive power to prevent others from adding or changing an
28 identified assignee and to transfer control of the authoritative copy. However, once it is
29 established that a person has received those powers, subsection (f) provides a presumption
30 of exclusivity. Consequently, a person asserting control need not prove exclusivity in order
31 to make out a *prima facie* case. Application of the presumption will be governed also by
32 Section 1-206 (effects of a presumption under the UCC) and applicable non-UCC law
33 (including rules of procedure and evidence). See generally Section 12-105, Comment 5.
34 Subsection (d) contains two qualifications of the term "exclusive" as used in subsection
35 (c)(3). A power can be "exclusive" under subsection (c)(3) even if one or both of these
36 qualifications apply.

37 Subsection (e) provides that in certain circumstances a power is not shared within the
38 meaning of subsection (d)(2), the relaxation of the exclusivity requirement provided by
39 subsection (d)(2) does not apply, and, consequently, a purchaser's power is not exclusive.
40 Subsection (e) provides that a purchaser does not share an exclusive power with another
41 person if the purchaser can exercise the power only with the other person's cooperation
42 (subsection (e)(1)) but the other person either (i) can exercise the power without the
43 purchaser's cooperation (subsection (e)(2)(A)) or (ii) is the transferor to the purchaser of an
44 interest in the chattel paper (subsection (e)(2)(B)). It follows that a purchaser to which
45 subsection (e) applies does not have control based on its exclusive powers (although it
46 might have control through another person under subsection (g), discussed below, or if

1 another person having control is acting as the person's agent). As to the rationale for
 2 disqualifying a purchaser (which includes a secured party in a secured transaction) from
 3 sharing powers with a transferor to the purchaser, as provided in subsection (e)(2)(B), and
 4 from the benefit of shared control under subsection (d)(2), and for examples of the
 5 operation of subsection (e) (in the context of the similar provision in Section 12-105), see
 6 Section 12-105, Comments 5 and 9.

7 **6. Control Through Another Person.** Subsection (g) provides for a purchaser to
 8 obtain control of an electronic copy by virtue of the acknowledgment by another person in
 9 control of the electronic copy. It follows revisions to the corresponding provisions for
 10 control of electronic documents of title (Section 7-106(g)), control of a security entitlement
 11 (Section 8-106(d)(3)), control of deposit accounts (Section 9-104(a)(4)), control of
 12 electronic money (Section 9-105A(e)), and control of controllable electronic records
 13 (Section 12-105(e)). For a brief discussion, see Section 12-105, Comment 8. For an
 14 acknowledgment by another person to be effective to confer control on a purchaser under
 15 subsection (g), the other person making the acknowledgment must be one "other than the
 16 transferor to the purchaser of an interest in the chattel paper." The rationale for this
 17 limitation is discussed in Section 12-105, Comment 9.

18 Section 9-107B(a) makes clear that a person that has control under this section has no
 19 duty to acknowledge that it has or will obtain control on behalf of another person.
 20 Arrangements for a person to acknowledge that it has or will obtain control on behalf of
 21 another person are not standardized. Accordingly, Section 9-107B(b) leaves to the
 22 agreement of the parties and to any other applicable law any duties of a person that does
 23 acknowledge that it has or will obtain control on behalf of another person and provides that
 24 a person making an acknowledgment is not required to confirm the acknowledgment to
 25 another person. For example, subsection (g) would apply to give control to a person, Alpha,
 26 when another person, Beta, has control of each authoritative electronic copy of a record
 27 evidencing chattel paper and acknowledges that it has control on behalf of Alpha.
 28 However, under Section 9-107B(a), Beta is not required to so acknowledge. And under
 29 Section 9-107B(b), even if Beta does so acknowledge, Beta owes no duty to Alpha unless
 30 Beta agrees or other law so provides and Beta is not required to confirm its
 31 acknowledgment to any other person.

32 **7. References to "Secured Party" Changed to "Purchaser."** References to a
 33 "secured party" in the pre-2022 text of this section have been changed to refer to a
 34 "purchaser." This change aligns the text with the priority rules of Section 9-330(a), (b), and
 35 (c).

36 **Official Comment**

37 **1. "Control" of Electronic Money: In General.** A security interest in electronic
 38 money as original collateral may be perfected only by control pursuant to this section.
 39 Section 9-312(b)(4). These requirements for obtaining control generally track those in
 40 Section 12-105 for controllable electronic records. See generally Section 12-105,
 41 Comments.

42 **2. Control on Behalf of Another Person.** Subsection (e) provides for a person to
 43 obtain control of electronic money by virtue of the acknowledgment by another person in
 44 control of the electronic money. It follows revisions to the corresponding provisions for
 45 control of electronic documents of title (Section 7-106(g)), control of a security entitlement

1 (Section 8-106(d)(3)), control of deposit accounts (Section 9-104(a)(4)), control of an
2 electronic copy of a record evidencing chattel paper (Section 9-105(g)), and control of
3 controllable electronic records (Section 12-105(e)). For a brief discussion, see Section 12-
4 105, Comment 8.

5 Section 9-107B(a) makes clear that a person that has control under this section has no
6 duty to acknowledge that it has or will obtain control on behalf of another person.
7 Arrangements for a person to acknowledge that it has or will obtain control on behalf of
8 another person are not standardized. Accordingly, Section 9-107B(b) leaves to the
9 agreement of the parties and to any other applicable law any duties of a person that does
10 acknowledge that it has or will obtain control on behalf of another person and provides that
11 a person making an acknowledgment is not required to confirm the acknowledgment to
12 another person.

13 **Sec. A-87. 11 MRSA §9-1107-A is enacted to read:**

14 **§9-1107-A. Control of controllable electronic record, controllable account or**
15 **controllable payment intangible**

16 (1). A secured party has control of a controllable electronic record as provided in
17 section 12-105.

18 (2). A secured party has control of a controllable account or controllable payment
19 intangible if the secured party has control of the controllable electronic record that
20 evidences the controllable account or controllable payment intangible.

21 **Official Comment**

22 **1. Perfection by Control or Filing and Priority for Controllable Electronic**
23 **Records.** Perfection by filing and perfection by control are alternative methods of
24 perfection for a controllable electronic record. See Sections 9-312, 9-314. Under this
25 section, a secured party has control of a controllable electronic record as provided in
26 Section 12-105. Under Section 9-326A, a security interest in a controllable electronic
27 record that is perfected by control has priority over a security interest perfected by another
28 method.

29 **2. Perfection by Control or Filing and Priority for Controllable Account or**
30 **Controllable Payment Intangible.** Perfection by filing and perfection by control also are
31 alternative methods of perfection for a controllable account or controllable payment
32 intangible. See Sections 9-312, 9-314. Under this section, a secured party would obtain
33 control of a controllable account or controllable payment intangible by obtaining control
34 of the controllable electronic record that evidences the controllable account or controllable
35 payment intangible. Under Section 9-326A, a security interest in a controllable account or
36 controllable payment intangible that is perfected by control has priority over a security
37 interest perfected by another method.

38 By definition, a controllable account would be an Article 9 "account," and a
39 controllable payment intangible would be an Article 9 "payment intangible." Section 9-
40 102. The fact that an account or payment intangible is a controllable account or controllable
41 payment intangible does not affect a secured party's alternative of perfection by filing.
42 Moreover, that fact does not affect the applicability of other provisions of Article 9,
43 including the provisions governing an account debtor's agreement not to assert defenses

1 (Section 9-403) and the statutory overrides of legal and contractual restrictions on the
2 assignability of accounts and payment intangibles (Sections 9-406 and 9-408).

3 **Sec. A-88. 11 MRSA §9-1107-B** is enacted to read:

4 **§9-1107-B. No requirement to acknowledge or confirm; no duties**

5 (1). A person that has control under section 9-1104 or 9-1105-A is not required to
6 acknowledge that it has control on behalf of another person.

7 (2). If a person acknowledges that it has or will obtain control on behalf of another
8 person, unless the person otherwise agrees or law other than this Article otherwise provides,
9 the person does not owe any duty to the other person and is not required to confirm the
10 acknowledgment to any other person.

11 **Official Comment**

12 **1. Source.** Section 9-107B derives from Sections 8-106(g) and 9-313(f) and (g).

13 **2. Purpose.** Subsection (a) makes clear that a person that has control under the
14 specified sections has no duty to acknowledge that it has or will obtain control on behalf of
15 another person. Arrangements for a person to acknowledge that it has control on behalf of
16 another person are not standardized. Accordingly, subsection (b) leaves to the agreement
17 of the parties and to any other applicable law any duties of a person that does acknowledge
18 that it has or will obtain control on behalf of any other person.

19 **Sec. A-89. 11 MRSA §9-1203, sub-§(2), ¶(c),** as amended by PL 2009, c. 324,
20 Pt. B, §29 and affected by §48, is further amended to read:

21 (c). One of the following conditions is met:

22 (i) The debtor has ~~authenticated~~ signed a security agreement that provides a
23 description of the collateral and, if the security interest covers timber to be cut, a
24 description of the land concerned;

25 (ii) The collateral is not a certificated security and is in the possession of the
26 secured party under section 9-1313 pursuant to the debtor's security agreement;

27 (iii) The collateral is a certificated security in registered form and the security
28 certificate has been delivered to the secured party under section ~~8-1302~~ 8-1301
29 pursuant to the debtor's security agreement; ~~or~~

30 (iv) The collateral is controllable accounts, controllable electronic records,
31 controllable payment intangibles, deposit accounts, electronic chattel paper
32 electronic documents, investment property, or letter-of-credit rights or electronic
33 documents, and the secured party has control under sections section 7-1106,
34 9-1104, ~~9-1105~~ 9-1105-A, 9-1106 or, 9-1107 or 9-1107-A pursuant to the debtor's
35 security agreement; ~~or~~

36 (v) The collateral is chattel paper and the secured party has possession and
37 control under section 9-1314-A pursuant to the debtor's security agreement.

38 **Official Comment**

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1 **3. Security Agreement; Signed.** Under subsection (b)(3), enforceability requires the
 2 debtor's security agreement and compliance with an evidentiary requirement in the nature
 3 of a Statute of Frauds. Paragraph (3)(A) represents the most basic of the evidentiary
 4 alternatives, under which the debtor must ~~authenticate~~ sign a security agreement that
 5 provides a description of the collateral. Under Section 9-102, a "security agreement" is "an
 6 agreement that creates or provides for a security interest." Neither that definition nor the
 7 requirement of paragraph (3)(A) rejects the deeply rooted doctrine that a bill of sale,
 8 although absolute in form, may be shown in fact to have been given as security. Under this
 9 Article, as under prior law, a debtor may show by parol evidence that a transfer purporting
 10 to be absolute was in fact for security. Similarly, a self-styled "lease" may serve as a
 11 security agreement if the agreement creates a security interest. See Section 1-203
 12 (distinguishing security interest from lease). Consistent with the revised definition of "sign"
 13 in Section 1-201, the cognate terms "signed" and "signing" replace the references to
 14 "authenticated" and "authentication" in the pre-2022 text of this Section.

15 **4. Possession, Delivery, or Control Pursuant to Security Agreement.** The other
 16 alternatives in subsection (b)(3) dispense with the requirement of ~~an authenticated~~ a signed
 17 security agreement and provide alternative evidentiary tests. Under paragraph (3)(B), the
 18 secured party's possession substitutes for the debtor's ~~authentication~~ signed security
 19 agreement under paragraph (3)(A) if the secured party's possession is "pursuant to the
 20 debtor's security agreement." That phrase refers to the debtor's agreement to the secured
 21 party's possession ~~for the purpose of creating in connection with the creation of~~ a security
 22 interest. The phrase should not be confused with the phrase "debtor has ~~authenticated~~
 23 signed a security agreement," used in paragraph (3)(A), which contemplates the debtor's
 24 ~~authentication~~ signing of a record. In the unlikely event that possession is obtained without
 25 the debtor's agreement, possession would not suffice as a substitute for ~~an authenticated~~ a
 26 signed security agreement. However, once the security interest has become enforceable
 27 and has attached, it is not impaired by the fact that the secured party's possession is
 28 maintained without the agreement of a subsequent debtor (e.g., a transferee). Possession
 29 as contemplated by Section 9-313 is possession for purposes of subsection (b)(3)(B), even
 30 though it may not constitute possession "pursuant to the debtor's agreement" and
 31 consequently might not serve as a substitute for ~~an authenticated~~ a signed security
 32 agreement under subsection (b)(3)(A). Subsection (b)(3)(C) provides that delivery of a
 33 certificated security to the secured party under Section 8-301 pursuant to the debtor's
 34 security agreement is sufficient as a substitute for ~~an authenticated~~ a signed security
 35 agreement. Similarly, under subsection (b)(3)(D), control of controllable accounts,
 36 controllable electronic records, controllable payment intangibles, deposit accounts,
 37 electronic documents, electronic money, investment property, a deposit account, electronic
 38 ~~chattel paper, or a letter-of-credit right, or electronic documents rights~~ satisfies the
 39 evidentiary test if control is pursuant to the debtor's security agreement, and under
 40 subsection (b)(3)(E), possession and control of chattel paper under Section 9-314A satisfies
 41 the evidentiary test if pursuant to the debtor's security agreement.

42 * * *

43 **8. Proceeds and Supporting Obligations.** Under subsection (f), attachment of a
 44 security interest in original collateral also is attachment of a security interest in identifiable
 45 proceeds as provided in Section 9-315(a)(2). It is not necessary for a security agreement to
 46 mention "proceeds" or otherwise to describe collateral consisting of proceeds. See also

1 Section 9-108, Comment 5. Also under subsection (f), a security interest in a "supporting
2 obligation" (defined in Section 9-102) automatically follows from a security interest in the
3 underlying, supported collateral. This result was implicit under ~~former~~ pre-1998 Article 9.
4 Implicit in subsection (f) is the principle that the secured party's interest in a supporting
5 obligation extends to the supporting obligation only to the extent that it supports the
6 collateral in which the secured party has a security interest. Complex issues may arise,
7 however, if a supporting obligation supports many separate obligations of a particular
8 account debtor and if the supported obligations are separately assigned as security to
9 several secured parties. The problems may be exacerbated if a supporting obligation is
10 limited to an aggregate amount that is less than the aggregate amount of the obligations it
11 supports. This Article does not contain provisions dealing with competing claims to a
12 limited supporting obligation. As under ~~former~~ pre-1998 Article 9, other law, including
13 the law of suretyship, and the agreements of the parties will control.

14 * * *

15 **Sec. A-90. 11 MRSA §9-1204, sub-§(2)**, as enacted by PL 1999, c. 699, Pt. A, §2
16 and affected by §4, is amended to read:

17 (2). A Subject to subsection (2-A), a security interest does not attach under a term
18 constituting an after-acquired property clause to:

19 (a). Consumer goods, other than an accession when given as additional security, unless
20 the debtor acquires rights in them within 10 days after the secured party gives value;
21 or

22 (b). A commercial tort claim.

23 **Sec. A-91. 11 MRSA §9-1204, sub-§(2-A)** is enacted to read:

24 **(2-A).** Subsection (2) does not prevent a security interest from attaching:

25 (a). To consumer goods as proceeds under section 9-1315, subsection (1) or
26 commingled goods under section 9-1336, subsection (3);

27 (b). To a commercial tort claim as proceeds under section 9-1315, subsection (1); or

28 (c). Under an after-acquired property clause to property that is proceeds of
29 consumer goods or a commercial tort claim.

30 Official Comment

31 * * *

32 3. **After-Acquired Consumer Goods.** Subsection (b)(1) makes ineffective an after-
33 acquired property clause covering consumer goods (defined in Section 9-109 9-
34 102(a)(23)), except as accessions (see Section 9-335), acquired more than 10 days after the
35 secured party gives value. Subsection (b)(1) is unchanged in substance from the
36 corresponding provision in ~~former~~ pre-1998 Section 9-204(2). However, a term granting a
37 security interest in consumer goods that will be purchase-money collateral in the
38 transaction is not "a term constituting an after-acquired property clause." Consequently,
39 subsection (b)(1) does not prevent the security interest from attaching to the purchase-
40 money collateral even if the collateral is not an accession and the debtor acquires rights in
41 the collateral more than 10 days after the secured party gives value.

1 4. **Commercial Tort Claims.** Subsection (b)(2) provides that an after-acquired
2 property clause in a security agreement does not reach future commercial tort claims. In
3 order for a security interest in a tort claim as original collateral to attach, the claim must be
4 in existence when the security agreement is ~~authenticated~~ signed. In addition, the security
5 agreement must describe the tort claim with greater specificity than simply "all tort claims."
6 See Section 9-108(e).

7 **4A. Proceeds and Commingled Goods.** Subsection (b.1) clarifies and makes explicit
8 what is implicit in the pre-2022 text of subsection (b). Subsection (b) does not prevent a
9 security interest from attaching to consumer goods as proceeds or as commingled goods,
10 to commercial tort claims as proceeds, or under an after-acquired property clause to
11 proceeds of consumer goods or commercial tort claims. This clarification corrects and
12 rejects the erroneous holdings of several cases addressing commercial tort claims that are
13 proceeds. As to proceeds, this result also follows from Section 9-203(f).

14 * * *

15 **Sec. A-92. 11 MRSA §9-1207, sub-§(3),** as amended by PL 2009, c. 324, Pt. B,
16 §30 and affected by §48, is further amended to read:

17 **(3).** Except as otherwise provided in subsection (4), a secured party having possession
18 of collateral or control of collateral under section 7-1106, 9-1104, ~~9-1105~~ 9-1105-A,
19 9-1106 or 9-1107 or 9-1107-A:

20 (a). May hold as additional security any proceeds, except money or funds, received
21 from the collateral;

22 (b). Shall apply money or funds received from the collateral to reduce the secured
23 obligation, unless remitted to the debtor; and

24 (c). May create a security interest in the collateral.

25 **Sec. A-93. 11 MRSA §9-1208, sub-§(2),** as amended by PL 2009, c. 324, Pt. B,
26 §31-33 and affected by §48, is further amended to read:

27 **(2).** Within 20 days after receiving ~~an authenticated~~ a signed demand by the debtor:

28 (a). A secured party having control of a deposit account under section 9-1104,
29 subsection (1), paragraph (b) shall send to the bank with which the deposit account is
30 maintained ~~an authenticated statement~~ a signed record that releases the bank from any
31 further obligation to comply with instructions originated by the secured party;

32 (b). A secured party having control of a deposit account under section 9-1104,
33 subsection (1), paragraph (c) shall:

34 (i) Pay the debtor the balance on deposit in the deposit account; or

35 (ii) Transfer the balance on deposit into a deposit account in the debtor's name;

36 ~~(c). A secured party, other than a buyer, having control of electronic chattel paper~~
37 ~~under section 9-1105 shall:~~

38 ~~(i) Communicate the authoritative copy of the electronic chattel paper to the debtor~~
39 ~~or its designated custodian;~~

40 ~~(ii) If the debtor designates a custodian that is the designated custodian with which~~
41 ~~the authoritative copy of the electronic chattel paper is maintained for the secured~~

1 ~~party, communicate to the custodian an authenticated record releasing the~~
2 ~~designated custodian from any further obligation to comply with instructions~~
3 ~~originated by the secured party and instructing the custodian to comply with~~
4 ~~instructions originated by the debtor; and~~

5 ~~(iii) Take appropriate action to enable the debtor or its designated custodian to~~
6 ~~make copies of or revisions to the authoritative copy that add or change an~~
7 ~~identified assignee of the authoritative copy without the consent of the secured~~
8 ~~party;~~

9 (c-1). A secured party, other than a buyer, having control under section 9-1105-A of
10 an authoritative electronic copy of a record evidencing chattel paper shall transfer
11 control of the electronic copy to the debtor or a person designated by the debtor;

12 (d). A secured party having control of investment property under section 8-1106,
13 subsection (4), paragraph (b) or 9-1106, subsection (2) shall send to the securities
14 intermediary or commodity intermediary with which the security entitlement or
15 commodity contract is maintained ~~an authenticated~~ a signed record that releases the
16 securities intermediary or commodity intermediary from any further obligation to
17 comply with entitlement orders or directions originated by the secured party;

18 (e). A secured party having control of a letter-of-credit right under section 9-1107 shall
19 send to each person having an unfulfilled obligation to pay or deliver proceeds of the
20 letter of credit to the secured party ~~an authenticated~~ a signed release from any further
21 obligation to pay or deliver proceeds of the letter of credit to the secured party; ~~and~~

22 (f). A secured party having control of an electronic document shall:

23 ~~(1) Give control of the electronic document to the debtor or its designated~~
24 ~~custodian;~~

25 ~~(2) If the debtor designates a custodian that is the designated custodian with which~~
26 ~~the authoritative copy of the electronic document is maintained for the secured~~
27 ~~party, communicate to the custodian an authenticated record releasing the~~
28 ~~designated custodian from any further obligation to comply with instructions~~
29 ~~originated by the secured party and instructing the custodian to comply with~~
30 ~~instructions originated by the debtor; and~~

31 ~~(3) Take appropriate action to enable the debtor or its designated custodian to~~
32 ~~make copies of or revisions to the authoritative copy that add or change an~~
33 ~~identified assignee of the authoritative copy without the consent of the secured~~
34 ~~party.~~

35 (f-1). A secured party having control under section 7-1106 of an authoritative
36 electronic copy of an electronic document shall transfer control of the electronic copy
37 to the debtor or a person designated by the debtor; and

38 (g). A secured party having control under section 12-105 of a controllable electronic
39 record, other than a buyer of a controllable account or controllable payment intangible
40 evidenced by the controllable electronic record, shall transfer control of the
41 controllable electronic record to the debtor or a person designated by the debtor.

42 **Official Comment**

1 * * *

2 2. **Scope and Purpose.** This section imposes duties on a secured party who has control
3 of a deposit account, an electronic copy of a record evidencing chattel paper, investment
4 property, a letter-of-credit right, or an electronic documents document of title, electronic
5 money, or a controllable electronic record. The duty to terminate the secured party's control
6 is analogous to the duty to file a termination statement, imposed by Section 9-513. Under
7 subsection (a), it applies only when there is no outstanding secured obligation and the
8 secured party is not committed to give value. The requirements of this section can be varied
9 by agreement under Section 1-102(3). For example, a debtor could by contract agree that
10 the secured party may comply with subsection (b) by releasing control more than 10 days
11 after demand. Also, duties under this section should not be read to conflict with the terms
12 of the collateral itself. For example, if the collateral is a time deposit account, subsection
13 (b)(2) should not require a secured party with control to make an early withdrawal of the
14 funds (assuming that were possible) in order to pay them over to the debtor or put them in
15 an account in the debtor's name.

16 Note that subsection (b)(8) addresses secured parties that have control of a controllable
17 electronic record. That control may have been obtained for the purpose of perfecting a
18 security interest in a controllable account or controllable payment intangible evidenced by
19 the controllable electronic record, even if the secured party did not have a security interest
20 in the controllable electronic record itself.

21 This section does not explicitly impose duties on a secured party whose control is based
22 on the acknowledgment under Section 7-106(g), 9-104(a)(4), or 9-105A(e) or under 9-
23 107A and 12-105(e) by another person having control. Such a secured party would have
24 control only while the other, acknowledging person retains control. This result necessarily
25 follows because such a secured party's control derives solely from the other person's
26 continued control. See, e.g., Section 9-314, Comment 2. Upon compliance with this section
27 by an acknowledging person having control, the control of a person having control through
28 such person's acknowledgment would cease.

29 * * *

30 5. **"Signed" Replaces "Authenticated."** Consistent with the revised definition of
31 "sign" in Section 1-201, the cognate term "signed" replaces references to "authenticated"
32 in the pre-2022 text of this section.

33 **Sec. A-94. 11 MRSA §9-1209, sub-§(2),** as enacted by PL 1999, c. 699, Pt. A, §2
34 and affected by §4, is amended to read:

35 (2). Within 20 days after receiving ~~an authenticated~~ a signed demand by the debtor, a
36 secured party shall send to an account debtor that has received notification under section
37 9-1406, subsection (1) or section 12-106, subsection (2) of an assignment to the secured
38 party as assignee under section 9-1406, subsection (1) an authenticated a signed record that
39 releases the account debtor from any further obligation to the secured party.

40 **Official Comment**

41 * * *

1 **3. "Signed" Replaces "Authenticated."** Consistent with the revised definition of
2 "sign" in Section 1-201, the cognate term "signed" replaces references to "authenticated"
3 in the pre-2022 text of this section.

4 **Sec. A-95. 11 MRSA §9-1210**, as enacted by PL 1999, c. 699, Pt. A, §2 and affected
5 by §4, is amended to read:

6 **§9-1210. Request for accounting; request regarding list of collateral or statement of**
7 **account**

8 **(1).** In this section:

9 (a). "Request" means a record of a type described in paragraph (b), (c) or (d);

10 (b). "Request for an accounting" means a record ~~authenticated~~ signed by a debtor
11 requesting that the recipient provide an accounting of the unpaid obligations secured
12 by collateral and reasonably identifying the transaction or relationship that is the
13 subject of the request;

14 (c). "Request regarding a list of collateral" means a record ~~authenticated~~ signed by a
15 debtor requesting that the recipient approve or correct a list of what the debtor believes
16 to be the collateral securing an obligation and reasonably identifying the transaction or
17 relationship that is the subject of the request; and

18 (d). "Request regarding a statement of account" means a record ~~authenticated~~ signed
19 by a debtor requesting that the recipient approve or correct a statement indicating what
20 the debtor believes to be the aggregate amount of unpaid obligations secured by
21 collateral as of a specified date and reasonably identifying the transaction or
22 relationship that is the subject of the request.

23 **(2).** Subject to subsections (3), (4), (5) and (6), a secured party, other than a buyer of
24 accounts, chattel paper, payment intangibles or promissory notes or a consignor, shall
25 comply with a request within 20 days after receipt:

26 (a). In the case of a request for an accounting, by ~~authenticating~~ signing and sending
27 to the debtor an accounting; and

28 (b). In the case of a request regarding a list of collateral or a request regarding a
29 statement of account, by ~~authenticating~~ signing and sending to the debtor an approval
30 or correction.

31 **(3).** A secured party that claims a security interest in all of a particular type of
32 collateral owned by the debtor may comply with a request regarding a list of collateral by
33 sending to the debtor ~~an authenticated~~ a signed record including a statement to that effect
34 within 20 days after receipt.

35 **(4).** A person that receives a request regarding a list of collateral, claims no interest
36 in the collateral when it receives the request and claimed an interest in the collateral at an
37 earlier time shall comply with the request within 20 days after receipt by sending to the
38 debtor ~~an authenticated~~ a signed record:

39 (a). Disclaiming any interest in the collateral; and

40 (b). If known to the recipient, providing the name and mailing address of any assignee
41 of or successor to the recipient's security interest in the collateral.

1 (5). A person that receives a request for an accounting or a request regarding a
2 statement of account, claims no interest in the obligations when it receives the request and
3 claimed an interest in the obligations at an earlier time shall comply with the request within
4 20 days after receipt by sending to the debtor ~~an authenticated~~ a signed record:

5 (a). Disclaiming any interest in the obligations; and

6 (b). If known to the recipient, providing the name and mailing address of any assignee
7 of or successor to the recipient's interest in the obligations.

8 (6). A debtor is entitled without charge to one response to a request under this section
9 during any 6-month period. The secured party may require payment of a charge not
10 exceeding \$25 for each additional response.

11 Official Comment

12 * * *

13 8. "Signed" and "Signing" Replaces "Authenticated" and "Authenticating."
14 Consistent with the revised definition of "sign" in Section 1-201, the cognate terms
15 "signed" and "signing" replace references to "authenticated" and "authenticating" in the
16 pre-2022 text of this section.

17 **Sec. A-96. 11 MRSA §9-1301, first ¶**, as enacted by PL 1999, c. 699, Pt. A, §2
18 and affected by §4, is amended to read:

19 Except as otherwise provided in sections 9-1303 ~~through 9-1306~~ to 9-1306-B, the
20 following rules determine the law governing perfection, the effect of perfection or
21 nonperfection and the priority of a security interest in collateral.

22 **Sec. A-97. 11 MRSA §9-1301, sub-§(3)**, as amended by PL 2009, c. 324, Pt. B,
23 §34 and affected by §48, is further amended to read:

24 (3). Except as otherwise provided in subsection (4), while ~~tangible negotiable~~ tangible
25 documents, goods, instruments, or money ~~or tangible chattel paper~~ is located in a
26 jurisdiction, the local law of that jurisdiction governs:

27 (a). Perfection of a security interest in the goods by filing a fixture filing;

28 (b). Perfection of a security interest in timber to be cut; and

29 (c). The effect of perfection or nonperfection and the priority of a nonpossessory
30 security interest in the collateral.

31 Official Comment

32 * * *

33 2. **Scope of This Subpart.** * * * In transactions to which the Hague Securities
34 Convention applies, the requirements for foreclosure and the like, the characterization of a
35 transfer as being outright or by way of security, and certain other issues will generally be
36 governed by the law specified in the account agreement. See PEB Commentary No. 19;
37 ~~dated April 11, 2017~~. And, another jurisdiction's law may govern other third-party matters
38 addressed in this Article. See Section 9-401, Comment 3.

39 * * *

1 **6. No Relation of Transaction to Issuer's, Securities Intermediary's, or**
2 **Commodity Intermediary's Jurisdiction Required.** As to subsection (a)(5), see Section
3 8-110, Comment 5A.

4 **Sec. A-100. 11 MRSA §9-1306-A** is enacted to read:

5 **§9-1306-A. Law governing perfection and priority of security interests in chattel**
6 **paper**

7 (1). Except as provided in subsection (4), if chattel paper is evidenced only by an
8 authoritative electronic copy of the chattel paper or is evidenced by an authoritative
9 electronic copy and an authoritative tangible copy, the local law of the chattel paper's
10 jurisdiction governs perfection, the effect of perfection or nonperfection and the priority of
11 a security interest in the chattel paper, even if the transaction does not bear any relation to
12 the chattel paper's jurisdiction.

13 (2). The following rules determine the chattel paper's jurisdiction under this section.

14 (a). If the authoritative electronic copy of the record evidencing chattel paper, or a
15 record attached to or logically associated with the electronic copy and readily available
16 for review, expressly provides that a particular jurisdiction is the chattel paper's
17 jurisdiction for purposes of this part, this Article or the Uniform Commercial Code,
18 that jurisdiction is the chattel paper's jurisdiction.

19 (b). If paragraph (a) does not apply and the rules of the system in which the
20 authoritative electronic copy is recorded are readily available for review and expressly
21 provide that a particular jurisdiction is the chattel paper's jurisdiction for purposes of
22 this part, this Article or the Uniform Commercial Code, that jurisdiction is the chattel
23 paper's jurisdiction.

24 (c). If paragraphs (a) and (b) do not apply and the authoritative electronic copy, or a
25 record attached to or logically associated with the electronic copy and readily available
26 for review, expressly provides that the chattel paper is governed by the law of a
27 particular jurisdiction, that jurisdiction is the chattel paper's jurisdiction.

28 (d). If paragraphs (a), (b) and (c) do not apply and the rules of the system in which the
29 authoritative electronic copy is recorded are readily available for review and expressly
30 provide that the chattel paper or the system is governed by the law of a particular
31 jurisdiction, that jurisdiction is the chattel paper's jurisdiction.

32 (e). If paragraphs (a) to (d) do not apply, the chattel paper's jurisdiction is the
33 jurisdiction in which the debtor is located.

34 (3). If an authoritative tangible copy of a record evidences chattel paper and the chattel
35 paper is not evidenced by an authoritative electronic copy, while the authoritative tangible
36 copy of the record evidencing chattel paper is located in a jurisdiction, the local law of that
37 jurisdiction governs:

38 (a). Perfection of a security interest in the chattel paper by possession under section
39 9-1314-A; and

40 (b). The effect of perfection or nonperfection and the priority of a security interest in
41 the chattel paper.

1 However, assuming the secured party is in possession of all the tangible copies, even if the
2 copies are located in more than one jurisdiction the situation is unlikely to be problematic.

3 6. **Perfection by filing.** Subsection (d) provides that the local law of the jurisdiction
4 where the debtor is located governs perfection by filing for all chattel paper.

5 **Sec. A-101. 11 MRSA §9-1306-B** is enacted to read:

6 **§9-1306-B. Law governing perfection and priority of security interests in controllable**
7 **accounts, controllable electronic records and controllable payment**
8 **intangibles**

9 (1). Except as provided in subsection (2), the local law of the controllable electronic
10 record's jurisdiction specified in section 12-107, subsection 3, paragraphs (c) and (d)
11 governs perfection, the effect of perfection or nonperfection and the priority of a security
12 interest in a controllable electronic record and a security interest in a controllable account
13 or controllable payment intangible evidenced by the controllable electronic record.

14 (2). The local law of the jurisdiction in which the debtor is located governs:

15 (a). Perfection of a security interest in a controllable account, controllable electronic
16 record or controllable payment intangible by filing; and

17 (b). Automatic perfection of a security interest in a controllable payment intangible
18 created by a sale of the controllable payment intangible.

19 **Official Comment**

20 1. **Perfection by control and priority.** Subsection (a) deals with perfection of a
21 security interest in a controllable account, controllable electronic record, or controllable
22 payment intangible other than by filing—i.e., perfection by control under Section 12-105—
23 and priority. For these purposes the governing law is that of the controllable electronic
24 record's jurisdiction under Section 12-107(c) and (d).

25 2. **Perfection by filing.** Under subsection (b) the local law of the jurisdiction of the
26 debtor's location governs perfection of a security interest in a controllable account,
27 controllable electronic record, or controllable payment intangible by filing (but not priority,
28 as to which subsection (a) would apply). Because controllable electronic records are
29 general intangibles and controllable accounts and controllable payment intangibles are
30 subsets of accounts and payment intangibles, this provision does not change prior law.

31 **Sec. A-102. 11 MRSA §9-1310, sub-§(2), ¶(h)**, as amended by PL 2009, c. 324,
32 Pt. B, §36 and affected by §48, is further amended to read:

33 (h). In controllable accounts, controllable electronic records, controllable payment
34 intangibles, deposit accounts, ~~electronic chattel paper~~, electronic documents,
35 investment property or letter-of-credit rights that is perfected by control under section
36 9-1314;

37 **Sec. A-103. 11 MRSA §9-1310, sub-§(2), ¶(h-1)** is enacted to read:

38 (h-1). In chattel paper that is perfected by possession and control under section
39 9-1314-A;

40 **Official Comment**

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3. **Exemptions from Filing.** Subsection (b) lists the security interests for which filing is not required as a condition of perfection, because they are perfected automatically upon attachment (subsections (b)(2) and (b)(9)) or upon the occurrence of another event (subsections (b)(1), (b)(5), and (b)(9)), because they are perfected under the law of another jurisdiction (subsection (b)(10)), or because they are perfected by another method, such as by the secured party's taking possession or control (subsections (b)(3), (b)(4), (b)(5), (b)(6), (b)(7), and (b)(8), and (b)(8.1)). * * *

Sec. A-104. 11 MRSA §9-1312, as amended by PL 2009, c. 324, Pt. B, §37 and affected by §48, is further amended by amending the section headnote to read:

§9-1312. Perfection of security interests in chattel paper, controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, negotiable documents, goods covered by documents, instruments, investment property, letter-of-credit rights and money; perfection by permissive filing; temporary perfection without filing or transfer of possession

Sec. A-105. 11 MRSA §9-1312, sub-§(1), as enacted by PL 1999, c. 699, Pt. A, §2 and affected by §4, is amended to read:

(1). A security interest in chattel paper, ~~negotiable documents~~ controllable accounts, controllable electronic records, controllable payment intangibles, instruments ~~or~~ investment property or negotiable documents may be perfected by filing.

Sec. A-106. 11 MRSA §9-1312, sub-§(5), as amended by PL 2009, c. 324, Pt. B, §37 and affected by §48, is further amended to read:

(5). A security interest in certificated securities, negotiable documents or instruments is perfected without filing or the taking of possession or control for a period of 20 days from the time it attaches to the extent that it arises for new value given under ~~an~~ authenticated a signed security agreement.

Official Comment

* * *

4A. Controllable Accounts, Controllable Electronic Records, and Controllable Payment Intangibles. Consistent with the treatment of chattel paper, instruments, investment property, and negotiable documents, under subsection (a) a security interest in controllable accounts, controllable electronic records, and controllable payment intangibles may be perfected by filing. A security interest in that collateral also may be perfected by control. Section 9-314.

* * *

6A. Money. Under subsection (b)(3), a security interest in tangible money may be perfected only by possession under Section 9-313. Similarly, under subsection (b)(4), a security interest in electronic money may be perfected only by control under Section 9-314.

7. Goods Covered by Document of Title. * * *

* * *

1 Subsection (d) takes a different approach to the problem of goods covered by a
 2 nonnegotiable document. Here, title to the goods is not looked on as being locked up in the
 3 document. For example, a transferee that takes delivery of a nonnegotiable document
 4 receives, under Section 7-504(a), "the title and rights" of the transferor, but the transferee
 5 would not thereby become a "person entitled under the document" with a right to receive
 6 delivery of the goods from the bailee. ~~and the~~ The secured party may perfect its security
 7 interest directly in the goods by filing as to them. The subsection provides two other
 8 methods of perfection: issuance of the document in the secured party's name (as consignee
 9 of a straight bill of lading or the person to whom delivery would be made under a non-
 10 negotiable warehouse receipt) and receipt of notification of the secured party's interest by
 11 the bailee. Issuance (or reissuance) of the nonnegotiable document in the secured party's
 12 name would allow the secured party to become a "person entitled under the document."
 13 However, the bailee's receipt of notification would not confer on the secured party the status
 14 of a person entitled unless the notification resulted from an instruction under the document.
 15 See Section 7-102(a)(9) (defining "person entitled under the document") and Comment 6.
 16 Perfection under subsection (d) occurs when the bailee receives notification of the secured
 17 party's interest in the goods, regardless of who sends the notification. Receipt of notification
 18 is effective to perfect, regardless of whether the bailee responds. Unlike ~~former pre-1998~~
 19 Section 9-304(3), from which it derives, subsection (d) does not apply to goods in the
 20 possession of a bailee who has not issued a document of title. Section 9-313(c) covers that
 21 case and provides that perfection by possession as to goods not covered by a document
 22 requires the bailee's acknowledgment.

23 Subsection (a) makes clear that a security interest in negotiable documents (and other
 24 collateral mentioned there) may be perfected by filing, but it makes no mention of
 25 nonnegotiable documents. However, under the general rule of Section 9-310, a security
 26 interest in a nonnegotiable document can be perfected by filing. A security interest in an
 27 electronic document, negotiable or nonnegotiable, can be perfected by control under
 28 Section 7-106. Section 9-314(a). But a security interest in a nonnegotiable tangible
 29 document cannot be perfected by possession. Section 9-313(a). Although a perfected
 30 security interest in a nonnegotiable document might provide useful benefits for the secured
 31 party, it would not perfect a security interest in the goods. And by perfecting a security
 32 interest in the nonnegotiable document the secured party would not thereby become a
 33 "person entitled under the document." Indeed, unless the secured party also took delivery
 34 of the document (i.e., possession or control under Section 1-201(b)(15)), it would not obtain
 35 the rights of a transferee under Section 7-504(a).

36 8. **Temporary Perfection Without Having First Otherwise Perfected.** Subsection
 37 (e) follows ~~former pre-1998~~ Section 9-304(4) in giving perfected status to security interests
 38 in certificated securities, instruments, and negotiable documents for a short period (reduced
 39 from 21 to 20 days, which is the time period generally applicable in this Article), although
 40 there has been no filing and the collateral is in the debtor's possession or control. The 20-
 41 day temporary perfection runs from the date of attachment. There is no limitation on the
 42 purpose for which the debtor is in possession, but the secured party must have given "new
 43 value" (defined in Section 9-102) under ~~an authenticated~~ a signed security agreement.

44 * * *

1 Perfection by possession of chattel paper evidenced by an authoritative tangible record
2 (formerly defined as "tangible chattel paper") has been removed from this section. Instead,
3 perfection by possession and control of chattel paper is governed by Section 9-314A.

4 * * *

5 **4. Goods in Possession of Third Party: Perfection.** * * *

6 Notification of a third person does not suffice to perfect under Section 9-313(c).
7 Rather, perfection does not occur unless the third person ~~authenticates~~ signs an
8 acknowledgment that it holds possession of the collateral for the secured party's benefit.
9 Compare Section 9-312(d), under which receipt of notification of the security party's
10 interest by a bailee holding goods covered by a nonnegotiable document is sufficient to
11 perfect, even if the bailee does not acknowledge receipt of the notification. A third person
12 may acknowledge that it will hold for the secured party's benefit goods to be received in
13 the future. Under these circumstances, perfection by possession occurs when the third
14 person obtains possession of the goods.

15 * * *

16 **5. No Relation Back; time of perfection and continuation of perfection.** Former
17 Section 9-305 provided that a security interest is perfected by possession from the time
18 possession is taken "without a relation back." As the Comment to ~~former pre-1998~~ Section
19 9-305 observed, the relation-back theory, under which the taking of possession was deemed
20 to relate back to the date of the original security agreement, has had little vitality since the
21 1938 revision of the Federal Bankruptcy Act. The theory is inconsistent with ~~former pre-~~
22 1998 Article 9 and with this Article. See Section 9-313(d). Accordingly, this Article deletes
23 the quoted phrase as unnecessary. ~~Where~~ Under subsection (d), where a pledge (perfection
24 by possession) transaction is contemplated, perfection dates only from the time possession
25 is taken, ~~although a security interest may attach, unperfected.~~ The only exceptions to this
26 rule are the short, 20-day periods of perfection provided in Section 9-312(e), (f), and (g),
27 during which a debtor may have possession of specified collateral in which there is a
28 perfected security interest. Also under subsection (d), perfection continues only while the
29 secured party retains possession. However, if a secured party's possession is based on an
30 acknowledgment under Section 9-313(c) by another person in possession, the secured party
31 remains perfected by possession only while the other person retains possession. This result
32 necessarily follows because such a secured party's possession derives solely from the other
33 person's continued possession.

34 * * *

35 **9. Delivery to Third Party by Secured Party.** ~~New subsections~~ Subsections (h) and
36 (i) address the practice of mortgage warehouse lenders. These lenders typically send
37 mortgage notes to prospective purchasers under cover of letters advising the prospective
38 purchasers that the lenders hold security interests in the notes. These lenders relied on
39 notification to maintain perfection under ~~former pre-1998~~ 9-305. Requiring them to obtain
40 ~~authenticated~~ signed acknowledgments from each prospective purchaser under subsection
41 (c) could be unduly burdensome and disruptive of established practices. Under subsection
42 (h), when a secured party in possession itself delivers the collateral to a third party,
43 instructions to the third party would be sufficient to maintain perfection by possession; an
44 acknowledgment would not be necessary. Under subsection (i), the secured party does not
45 relinquish possession by making a delivery under subsection (h), even if the delivery

1 violates the rights of the debtor. That subsection also makes clear that a person to whom
2 collateral is delivered under subsection (h) does not owe any duty to the secured party and
3 is not required to confirm the delivery to another person unless the person otherwise agrees
4 or law other than this Article provides otherwise.

5 **10. "Signs" and "Signed" Replaces "Authenticates" and "Authenticated."**
6 Consistent with the revised definition of "sign" in Section 1-201, the cognate terms "signs"
7 and "signed" replace the references to "authenticates" and "authenticated" in the pre-2022
8 text of this section.

9 **Sec. A-110. 11 MRSA §9-1314**, as amended by PL 2009, c. 324, Pt. B, §§39 and
10 40 and affected by §48, is further amended to read:

11 **§9-1314. Perfection by control**

12 (1). A security interest in ~~investment property, deposit accounts, letter-of-credit rights,~~
13 ~~electronic chattel paper or electronic documents~~ controllable accounts, controllable
14 electronic records, controllable payment intangibles, deposit accounts, electronic
15 documents, investment property or letter-of-credit rights may be perfected by control of the
16 collateral under section 7-1106, 9-1104, ~~9-1105, 9-1106 or 9-1107~~ or 9-1107-A.

17 (2). A security interest in ~~deposit accounts, electronic chattel paper, letter-of-credit~~
18 ~~rights or electronic documents~~ controllable accounts, controllable electronic records,
19 controllable payment intangibles, deposit accounts, electronic documents or letter-of-credit
20 rights is perfected by control under section 7-1106, 9-1104, ~~9-1105 or 9-1107~~ when or
21 9-1107-A not earlier than the time the secured party obtains control and remains perfected
22 by control only while the secured party retains control.

23 (3). A security interest in investment property is perfected by control under section
24 9-1106 ~~from~~ not earlier than the time the secured party obtains control and remains
25 perfected by control until:

26 (a). The secured party does not have control; and

27 (b). One of the following occurs:

28 (i) If the collateral is a certificated security, the debtor has or acquires possession
29 of the security certificate;

30 (ii) If the collateral is an uncertificated security, the issuer has registered or
31 registers the debtor as the registered owner; or

32 (iii) If the collateral is a security entitlement, the debtor is or becomes the
33 entitlement holder.

34 **Official Comment**

35 * * *

36 2. **Control.** This section provides for perfection by control with respect to ~~investment~~
37 ~~property, deposit accounts,~~ controllable accounts, controllable electronic records,
38 controllable payment intangibles, deposit accounts, electronic documents, electronic
39 money, investment property, and letter-of-credit rights, ~~electronic chattel paper, and~~
40 ~~electronic documents.~~ For explanations of Concerning how a secured party takes control
41 of these types of collateral, see Sections 7-106, 9-104, 9-105A, through 9-107, and 9-107A,

1 and ~~Section 7-106~~ Comments. Subsection (b) explains when a security interest is perfected
2 by control and how long a security interest remains perfected by control. Like Section 9-
3 313(d) and for the same reasons, subsection (b) makes no reference to the doctrine of
4 "relation back." See Section 9-313, Comment 5. As to an electronic document that is
5 reissued in a tangible medium, (see Section 7-105), a secured party that is perfected by
6 control in the electronic document should file as to the document before relinquishing
7 control in order to maintain continuous perfection in the document. See Section 9-308. If a
8 secured party's control is based on an acknowledgment under Section 7-106(g), 9-
9 104(a)(4), or 9-105A(e) or under 9-107A and 12-105(e) by another person having control,
10 the secured party remains perfected by control only while the other person retains control.
11 This result necessarily follows because such a secured party's control derives solely from
12 the other person's continued control.

13 Perfection by control of chattel paper evidenced by an authoritative electronic record
14 (formerly defined as "electronic chattel paper") has been removed from this section.
15 Instead, perfection by possession and control of chattel paper is governed by Section 9-
16 314A.

17 3. **Investment Property.** Subsection (c) provides a special rule for investment
18 property. Once a secured party has control, its security interest remains perfected by control
19 until the secured party ceases to have control and the debtor receives possession of
20 collateral that is a certificated security, becomes the registered owner of collateral that is
21 an uncertificated security, or becomes the entitlement holder of collateral that is a security
22 entitlement. The result is particularly important in the "repledge" context. See Section 9-
23 207, Comment 5. In a transaction in which a secured party who has control grants a security
24 interest in investment property or sells outright the investment property, by virtue of the
25 debtor's consent or applicable legal rules, a purchaser from the secured party typically will
26 cut off the debtor's rights in the investment property or be immune from the debtor's claims.
27 See Section 9-207, Comments 5 and 6. If the investment property is a security, the debtor
28 normally would retain no interest in the security following the purchase from the secured
29 party, and a claim of the debtor against the secured party for redemption (Section 9-623)
30 or otherwise with respect to the security would be a purely personal claim.

31 If the investment property transferred by the secured party is a financial asset in which
32 the debtor had a security entitlement credited to a securities account maintained with the
33 secured party as a securities intermediary, the debtor's claim against the secured party could
34 arise as a part of its securities account notwithstanding its personal nature. (This claim
35 would be analogous to a "credit balance" in the securities account, which is a component
36 of the securities account even though it is a personal claim against the intermediary.) In the
37 case in which the debtor may retain an interest in investment property notwithstanding a
38 repledge or sale by the secured party, subsection (c) makes clear that the security interest
39 will remain perfected by control. Notwithstanding subsection (c), if a secured party's
40 control is based on an acknowledgment under Section 8-106(d)(3) by another person
41 having control, the secured party remains perfected by control only while the other person
42 retains control. This result necessarily follows because such a secured party's control
43 derives solely from the other person's continued control. Although Section 8-106(d)(3) was
44 amended by the 2022 Article 9 Revisions, this result also applied to a secured party in
45 control under pre-2022 subsection (d)(3).

1 **3A. Shared control between debtor and secured party (and other transferor and**
 2 **transferee) and control through another person.** Sections 7-106 (control of electronic
 3 documents), 9-105 (control of authoritative electronic records evidencing chattel paper), 9-
 4 105A (control of electronic money), and 12-105 (control of controllable electronic records,
 5 on which control of controllable accounts and controllable payment intangibles under
 6 Section 9-107A depends) contemplate the possibility that both a debtor and a secured party
 7 may have control of the relevant collateral by sharing an exclusive power. Such shared
 8 control between a debtor and secured party does not necessarily impair perfection of a
 9 security interest under this section or Section 9-314A. On shared exclusive powers, see
 10 generally Section 12-105, Comment 5. However, if a secured party can exercise a power
 11 only if the power is exercised also by the debtor, the power would not be shared and,
 12 consequently, the secured party would not have control based on the exclusive power. This
 13 result follows from Section 12-105(c) and corresponding subsections in the other
 14 provisions on control cited above. Under Section 12-105(c), because a debtor would be a
 15 "transferor of an interest" in a controllable electronic record or a controllable account or
 16 payment intangible evidenced by the record, the debtor's "blocking power" (i.e., the secured
 17 party can exercise the power only if the debtor also exercises the power) with respect to the
 18 secured party's exercise of the power would disqualify the secured party from sharing (and,
 19 consequently, enjoying) the exclusive power and perfection by control based on exclusive
 20 powers. Similarly, a purchaser in that situation would be disqualified from having control
 21 and thereby from enjoying the status and benefits of a qualifying purchaser (Section 12-
 22 102(a)(2)) under Section 12-104(e) and (g) if the purchaser takes from a transferor of an
 23 interest and the transferor has such a blocking power (whether or not the transferor is a
 24 debtor).

25 Section 12-105(e) contains a similar limitation in connection with control through
 26 another person. An acknowledging person must be one "other than the transferor of an
 27 interest in the electronic record." The same or a similar limitation is found in the other
 28 provisions relating to control through another person. See Sections 7-106(g) (control of
 29 electronic document of title); 8-106(d)(3) (control of a security entitlement); 9-104(a)(4)
 30 (control of deposit accounts); 9-105(g) (control of authoritative electronic copy of record
 31 evidencing chattel paper); 9-105A(e) (control of electronic money).

32 For a discussion of the rationale for these limitations on sharing exclusive control and
 33 control through another person, see Section 12-105, Comment 9.

34 * * *

35 **Sec. A-111. 11 MRSA §9-1314-A** is enacted to read:

36 **§9-1314-A. Perfection by possession and control of chattel paper**

37 **(1).** A secured party may perfect a security interest in chattel paper by taking
 38 possession of each authoritative tangible copy of the record evidencing the chattel paper
 39 and obtaining control of each authoritative electronic copy of the electronic record
 40 evidencing the chattel paper.

41 **(2).** A security interest is perfected under subsection (1) not earlier than the time the
 42 secured party takes possession and obtains control and remains perfected under subsection
 43 (1) only while the secured party retains possession and control.

1 party's possession or control derives solely from the other person's continued possession or
2 control.

3 3. **Applicability of Section 9-313.** Subsection (c) makes specified subsections of
4 Section 9-313 applicable to possession of authoritative tangible copies of records
5 evidencing chattel paper.

6 4. **Shared control.** As to the sharing of powers over an authoritative electronic copy
7 of a record evidencing chattel paper (see Section 9-105(c)(2)) by a debtor and a secured
8 party (or by another transferor and transferee) and control through another person (see
9 Section 9-105(g)), see Sections 9-314, Comment 3A; 12-105, Comment 9.

10 **Sec. A-112. 11 MRSA §9-1316, sub-§(1)**, as enacted by PL 1999, c. 699, Pt. A,
11 §2 and affected by §4, is amended to read:

12 **(1).** A security interest perfected pursuant to the law of the jurisdiction designated in
13 section 9-1301, subsection (1) ~~or~~, section 9-1305, subsection (3), section 9-1306-A,
14 subsection (4) or section 9-1306-B, subsection (2) remains perfected until the earliest of:

- 15 (a). The time perfection would have ceased under the law of that jurisdiction;
- 16 (b). The expiration of 4 months after a change of the debtor's location to another
17 jurisdiction;
- 18 (c). The expiration of one year after a transfer of collateral to a person that thereby
19 becomes a debtor and is located in another jurisdiction; or
- 20 (d). The expiration of one year after a new debtor located in another jurisdiction
21 becomes bound under section 9-1203, subsection (4).

22 **Sec. A-113. 11 MRSA §9-1316, sub-§(6)**, as enacted by PL 1999, c. 699, Pt. A,
23 §2 and affected by §4, is amended to read:

24 **(6).** A security interest in chattel paper, controllable accounts, controllable electronic
25 records, controllable payment intangibles, deposit accounts, letter-of-credit rights or
26 investment property that is perfected under the law of the chattel paper's jurisdiction, the
27 controllable electronic record's jurisdiction, the bank's jurisdiction, the issuer's jurisdiction,
28 a nominated person's jurisdiction, the securities intermediary's jurisdiction or the
29 commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

- 30 (a). The time the security interest would have become unperfected under the law of
31 that jurisdiction; or
- 32 (b). The expiration of 4 months after a change of the applicable jurisdiction to another
33 jurisdiction.

34 **Official Comment**

35 * * *

36 **4. Possessory Security Interests.** Subsection (c) deals with continued perfection of
37 possessory security interests. It applies not only to security interests perfected solely by
38 the secured party's having taken possession of the collateral. It also applies to security
39 interests perfected by a method that includes as an element of perfection the secured party's
40 having taken possession, such as perfection by taking delivery of a certificated security in
41 registered form, see Section 9-313(a), ~~and~~ perfection by obtaining control over a

1 certified security—See, see Section 9-314(a), and perfection by taking possession of and
2 control over authoritative copies of records evidencing chattel paper, see Section 9-
3 314A(a).

4 * * *

5 **6. Controllable Accounts, Controllable Electronic Records, Controllable**
6 **Payment Intangibles, Chattel Paper, Deposit Accounts, Letter-of-Credit Rights, and**
7 **Investment Property.** Subsections (f) and (g) address changes in the jurisdiction of a
8 bank, controllable electronic record, chattel paper, issuer of an uncertificated security,
9 issuer of or nominated person under a letter of credit, securities intermediary, and
10 commodity intermediary. The provisions are analogous to those of subsections (a) and (b).

11 * * *

12 **Sec. A-114. 11 MRSA §9-1317, sub-§(2),** as amended by PL 2013, c. 317, Pt. A,
13 §15, is further amended to read:

14 (2). Except as otherwise provided in subsection (5), a buyer, other than a secured
15 party, of ~~tangible chattel paper, tangible documents,~~ goods, instruments, tangible
16 documents or a certificated security takes free of a security interest or agricultural lien if
17 the buyer gives value and receives delivery of the collateral without knowledge of the
18 security interest or agricultural lien and before it is perfected.

19 **Sec. A-115. 11 MRSA §9-1317, sub-§(4),** as amended by PL 2013, c. 317, Pt. A,
20 §16, is further amended to read:

21 (4). A Subject to subsections (6) to (9), a licensee of a general intangible or a buyer,
22 other than a secured party, of collateral other than ~~tangible chattel paper, tangible~~
23 ~~documents,~~ goods, instruments, tangible documents or a certificated security takes free of
24 a security interest if the licensee or buyer gives value without knowledge of the security
25 interest and before it is perfected.

26 **Sec. A-116. 11 MRSA §9-1317, sub-§(6)** is enacted to read:

27 (6). A buyer, other than a secured party, of chattel paper takes free of a security interest
28 if, without knowledge of the security interest and before it is perfected, the buyer gives
29 value and:

30 (a). Receives delivery of each authoritative tangible copy of the record evidencing the
31 chattel paper; and

32 (b). If each authoritative electronic copy of the record evidencing the chattel paper can
33 be subjected to control under section 9-1105-A, obtains control of each authoritative
34 electronic copy.

35 **Sec. A-117. 11 MRSA §9-1317, sub-§(7)** is enacted to read:

36 (7). A buyer of an electronic document takes free of a security interest if, without
37 knowledge of the security interest and before it is perfected, the buyer gives value and, if
38 each authoritative electronic copy of the document can be subjected to control under section
39 7-1106, obtains control of each authoritative electronic copy.

40 **Sec. A-118. 11 MRSA §9-1317, sub-§(8)** is enacted to read:

1 paper and, if the chattel paper can be subjected to control, the buyer obtains control of each
2 authoritative electronic copy.

3 Although chattel paper has been removed from subsection (b), the phrase "other than a
4 secured party" has been retained because buyers of instruments that are promissory notes,
5 but not buyers of other instruments, are secured parties. See Sections 9-109(a)(3) (Article
6 9 applies to a sale of a promissory note); 1-201(b)(35) (defining "security interest" to
7 include the interest of a buyer of a promissory note).

8 The rule of subsection (b) obviously is not appropriate where the collateral consists of
9 intangibles and there is no representative piece of paper whose physical delivery is the only
10 or the customary method of transfer or no means of taking control of the collateral as a
11 functional equivalent of a delivery. Therefore, with respect to such intangibles (including
12 accounts other than controllable accounts, ~~electronic chattel paper,~~ electronic documents
13 not subject to control, general intangibles other than controllable payment intangibles, and
14 investment property other than certificated securities), subsection (d) gives priority to any
15 buyer who gives value without knowledge, and before perfection, of the security interest.
16 Buyers of electronic money also are excluded from the application of subsection (d)
17 because transferees of electronic money which obtain control take free of security interests
18 under Section 9-332(c), which provides a standard more generous to transferees than
19 subsection (d). A licensee of a general intangible takes free of an unperfected security
20 interest in the general intangible under the same circumstances (to the extent of the
21 licensee's rights under the license). Note that a licensee of a general intangible in ordinary
22 course of business takes rights under a nonexclusive license free of security interests
23 created by the licensor, even if perfected. See Section 9-321.

24 Unless Section 9-109 excludes the transaction from this Article, a buyer of accounts,
25 ~~chattel paper,~~ payment intangibles, or promissory notes is a "secured party" (defined in
26 Section 9-102), and ~~subsections (b) and (d) do~~ subsection (d) does not determine priority
27 of the security interest created by the sale. Rather, the priority rules generally applicable
28 to competing security interests apply. See, e.g., Section 9-322.

29 **6A. [Buyers of Electronic Documents, Controllable Electronic Records,**
30 **Controllable Accounts, and Controllable Payment Intangibles.]** Subsection (g)
31 provides a take-free rule for electronic documents, subsection (h) so provides for
32 controllable electronic records, and subsection (i) so provides for controllable accounts and
33 controllable payment intangibles. Subsection (g) conditions the take-free rule on the buyer
34 obtaining control of authoritative electronic copies of the document only if the authoritative
35 electronic copies can be subjected to control. Subsection (h) conditions the take-free rule
36 for a buyer of a controllable electronic record on the buyer's obtaining control of the
37 electronic record. Similarly, under subsection (i), the take-free rule for a buyer, other than
38 a secured party, of a controllable account or controllable payment intangible is conditioned
39 on the buyer's obtaining control of the account or payment intangible. Although in general
40 a buyer of an account or a payment intangible is a secured party, there are limited
41 exceptions. See Sections 1-201(b)(35) ("security interest" includes interest of buyer of
42 accounts or payment intangibles); 9-109(d)(4) (inapplicability of Article 9 to sale of
43 accounts or payment intangibles as a part of the sale of a business).

44 * * *

1 (b). The purchase-money secured party sends ~~an authenticated~~ a signed notification to
2 the holder of the conflicting security interest;

3 **Official Comment**

4 14. "Signed" Replaces "Authenticated." Consistent with the revised definition of
5 "sign" in Section 1-201, the cognate term "signed" replaces the references to
6 "authenticated" in the pre-2022 text of this section.

7 **Sec. A-124. 11 MRSA §9-1326-A** is enacted to read:

8 **§9-1326-A. Priority of security interest in controllable account, controllable**
9 **electronic record and controllable payment intangible**

10 A security interest in a controllable account, controllable electronic record or
11 controllable payment intangible held by a secured party having control of the account,
12 electronic record or payment intangible has priority over a conflicting security interest held
13 by a secured party that does not have control.

14 **Official Comment**

15 1. [Control priority.] This section adopts an approach to priority in controllable
16 accounts, controllable electronic records, and controllable payment intangibles that is
17 similar to the approach of Sections 9-327 (deposit accounts) and 9-328 (investment
18 property): A security interest perfected by control has priority over conflicting security
19 interests that are not perfected by control.

20 2. [Multiple persons having control.] This section does not apply if more than one
21 secured party has control of a controllable account, controllable electronic record, or
22 controllable payment intangible, which may occur through shared control or a person in
23 control acknowledging that it has control on behalf of another person. See Section 12-
24 105(b)(2) (shared control), (e) (control through another person). In those situations, the
25 residual first-to-file-or-perfect rule of Section 9-322(a)(1) would apply. However, affected
26 persons may believe that the application of that first-in-time rule is not appropriate in some
27 circumstances.

28 **Example:** A person (A) has a security interest in a controllable electronic record
29 perfected by control (other than through an acknowledgment by another person
30 under Section 12—105(e)) and A acknowledges that it has control on behalf of
31 another person (B). B has a security interest perfected by a financing statement
32 filed before A obtained control. Under Section 9-322(a) (the first-to-file-or-perfect
33 rule), by obtaining control through A's acknowledgment B's security interest would
34 have priority over A's previously senior security interest. To avoid that result, A
35 might insist on B's subordination as a condition to A's acknowledgment. See
36 Section 9-339 (subordination by agreement). In cases of multiple persons having
37 control, it will be important for interested persons to adjust priorities by agreement,
38 when appropriate. See also Section 12-105, Comment 5.

39 A secured party that relies on perfection by control resulting from the acknowledgment
40 of another person under Section 12-105(e) need not prove a formal agency relationship
41 with the acknowledging person. This is a principal rationale underlying the various
42 provisions in Articles 7, 8, 9, and 12 which provide for a person to obtain control through

1 another person's control and acknowledgment. However, a person obtaining control
2 through an acknowledgment necessarily must rely on the integrity of the acknowledging
3 person. In the case of perfection by control in the Example, the acknowledging person
4 presumably also has control for the benefit of the debtor. The secured party's (B 's) control,
5 and perfection, depends on the acknowledging person's (A's) continued control. The
6 secured party's (B's) perfection would be lost if the acknowledging person (A) were to lose
7 or give up control, as by transferring control to the debtor or any other person. See, e.g.,
8 Section 9-314, Comment 2.

9 An acknowledging person also might serially acknowledge over time that it holds for
10 the benefit of multiple purchasers (secured parties or buyers). Putting aside perfection by
11 filing as in the Example, secured parties so perfected would have priority based on priority
12 of timing of control under Section 9-322(a). However, a transfer of control by the
13 acknowledging person to a qualifying purchaser, or an acknowledgment by that the person
14 that it has control on behalf of a buyer or secured party that is a qualifying purchaser, would
15 allow the qualifying purchaser to take free of (or have priority over) earlier security
16 interests or other interests. It follows that a first-to-control priority rule for security interests
17 would not protect a secured party having control through another person's acknowledgment
18 from having its interest cut off or subordinated by a later-in-time qualifying purchaser.
19 Such a "first-to-control" priority rule would be illusory inasmuch as purchasers relying on
20 control through another person's acknowledgment would have no reliable method of
21 determining priority over subsequent transferees other than reliance on the acknowledging
22 person's integrity.

23 **Sec. A-125. 11 MRSA §9-1330, sub-§(1)**, as enacted by PL 1999, c. 699, Pt. A,
24 §2 and affected by §4, is amended to read:

25 **(1).** A purchaser of chattel paper has priority over a security interest in the chattel
26 paper that is claimed merely as proceeds of inventory subject to a security interest if:

27 (a). In good faith and in the ordinary course of the purchaser's business, the purchaser
28 gives new value ~~and~~, takes possession of each authoritative tangible copy of the record
29 evidencing the chattel paper ~~or~~ and obtains control of under section 9-1105-A of each
30 authoritative electronic copy of the record evidencing the chattel paper ~~under section~~
31 9-1105; and

32 (b). The ~~chattel paper does~~ authoritative copies of the record evidencing the chattel
33 paper do not indicate that it the chattel paper has been assigned to an identified assignee
34 other than the purchaser.

35 **Sec. A-126. 11 MRSA §9-1330, sub-§(2)**, as enacted by PL 1999, c. 699, Pt. A,
36 §2 and affected by §4, is amended to read:

37 **(2).** A purchaser of chattel paper has priority over a security interest in the chattel
38 paper that is claimed other than merely as proceeds of inventory subject to a security
39 interest if the purchaser gives new value ~~and~~, takes possession of each authoritative tangible
40 copy of the record evidencing the chattel paper ~~or~~ and obtains control of under section
41 9-1105-A of each authoritative electronic copy of the record evidencing the chattel paper
42 under section 9-1105 in good faith, in the ordinary course of the purchaser's business and
43 without knowledge that the purchase violates the rights of the secured party.

1 9-314A. In determining which of several related records constitutes chattel paper and thus
 2 is relevant to possession or control, the form of the records is irrelevant. Rather, the
 3 ~~touchstone is whether possession or control of the record would afford the possession-and-~~
 4 ~~control requirement is based on the premise that it affords public notice contemplated by~~
 5 ~~the possession and control requirements.~~ For example, because possession or control of an
 6 amendment extending the term of a lease would not afford the contemplated public notice,
 7 the amendment would not constitute a record evidencing chattel paper regardless of
 8 whether the amendment is in tangible form and the lease is in electronic form, the
 9 amendment is electronic and the lease is tangible, the amendment and lease are both
 10 tangible, or the amendment and lease are both electronic.

11 Two common practices have raised particular concerns with respect to the possession
 12 requirement. First, in some cases the parties create more than one copy or counterpart of
 13 chattel paper evidencing a single secured obligation or lease. This practice raises questions
 14 as to which counterpart is the "original" and whether it is necessary for a purchaser to take
 15 possession of all counterparts in order to "take possession" of the chattel paper. Second,
 16 parties sometimes enter into a single "master" agreement. The master agreement
 17 contemplates that the parties will enter into separate "schedules" from time to time, each
 18 evidencing chattel paper. Must a purchaser of an obligation or lease evidenced by a single
 19 schedule also take possession of the record evidencing the master agreement as well as the
 20 record evidencing the schedule in order to "take possession" of each authoritative tangible
 21 copy of the record evidencing the chattel paper"?

22 The problem raised by the first practice is easily solved. The parties may in the terms
 23 of their agreement and by designation on the chattel paper identify only one counterpart as
 24 the original, authoritative tangible copy of the chattel paper for purposes of taking the
 25 ~~possession of the chattel paper requirement.~~ Concerns about the second practice also are
 26 easily solved by careful drafting. Each schedule should provide that it incorporates the
 27 terms of the master agreement, not the other way around. This will make it clear that each
 28 schedule is a "stand alone" document.

29 A secured party may wish to convert tangible chattel paper evidenced by authoritative
 30 tangible copies to electronic chattel paper evidenced by electronic copies and vice versa.
 31 The priority of a security interest in chattel paper under subsection (a) or (b) may be
 32 preserved, even if the form of the chattel paper changes. The principle implied in the
 33 preceding paragraph, i.e., that not every copy of chattel paper is relevant, applies to
 34 "control" as well as to "possession." When there are multiple copies of chattel paper, a
 35 secured party may take "possession" or obtain "control" of the chattel paper if it acts with
 36 respect to the copy or copies that are reliably identified as the authoritative copy or copies
 37 ~~that are relevant for purposes of possession or control.~~ Concerning the identification of
 38 copies as authoritative or nonauthoritative, see Section 9-105(c) and Comment 3. ~~This~~
 39 ~~principle applies as well to chattel paper that has been converted from one form to another,~~
 40 ~~even if the relevant copies are not the "original" chattel paper.~~

41 **5. Chattel Paper Claimed Merely as Proceeds.** ~~Subsection (a) revises the rule in~~
 42 ~~former Section 9-308(b) to eliminate reference to what the purchaser knows. Instead Under~~
 43 subsection (a), a purchaser who meets the possession-or-control possession-and-control,
 44 good faith, ordinary course, and new value requirements takes priority over a competing
 45 security interest claimed merely as proceeds of inventory unless the authoritative copies of
 46 the record evidencing the chattel paper ~~itself indicates~~ indicate that ~~it~~ the chattel paper has

1 been assigned to an identified assignee other than the purchaser. Thus subsection (a)
 2 recognizes the common practice of placing a "legend" on chattel paper to indicate that it
 3 has been assigned. This approach, under which the chattel paper purchaser who gives new
 4 value in ordinary course can rely on possession and control of unlegended, ~~tangible~~ chattel
 5 paper without any concern for other facts that it may know, comports with the expectations
 6 of both inventory and chattel paper financiers.

7 **6. Chattel Paper Claimed Other Than Merely as Proceeds.** ~~Subsection (b)~~
 8 ~~eliminates the requirement that the purchaser take without knowledge that the "specific~~
 9 ~~paper" is subject to the security interest and substitutes for it the requirement that the~~
 10 ~~purchaser take~~ Under subsection (b), a purchaser who meets the possession-and-control,
 11 good faith, ordinary course, and new value requirements takes priority over a competing
 12 security interest claimed other than merely as proceeds of inventory if it takes "without
 13 knowledge that the purchase violates the rights of the secured party." This standard derives
 14 from the definition of "buyer in ordinary course of business" in Section 1-201(b)(9). The
 15 source of the purchaser's knowledge is irrelevant. Note, however, that "knowledge" means
 16 "actual knowledge." Section 1-202(b).

17 In contrast to a junior secured party in accounts, who may be required in some special
 18 circumstances to undertake a search under the "good faith" requirement, see Comment 5 to
 19 Section 9-331, a purchaser of chattel paper under this section is not required as a matter of
 20 good faith to make a search in order to determine the existence of prior security interests.
 21 There may be circumstances where the purchaser undertakes a search nevertheless, either
 22 on its own volition or because other considerations make it advisable to do so, e.g., where
 23 the purchaser also is purchasing accounts. Without more, a purchaser of chattel paper who
 24 has seen a financing statement covering the chattel paper or who knows that the chattel
 25 paper is encumbered with a security interest, does not have knowledge that its purchase
 26 violates the secured party's rights. However, if a purchaser sees a statement in a financing
 27 statement to the effect that a purchase of chattel paper from the debtor would violate the
 28 rights of the filed secured party, the purchaser would have such knowledge. Likewise,
 29 under ~~new~~ subsection (f), if the authoritative copies of the chattel paper ~~itself indicates~~
 30 indicate that it the chattel paper had been assigned to an identified secured party other than
 31 the purchaser, the purchaser would have wrongful knowledge for purposes of subsection
 32 (b), thereby preventing the purchaser from qualifying for priority under that subsection,
 33 even if the purchaser did not have actual knowledge. In the case of authoritative tangible
 34 copies of a record evidencing chattel paper, the indication normally would consist of a
 35 written legend on the copies ~~chattel paper~~. In the case of authoritative electronic copies of
 36 the record evidencing chattel paper, this Article leaves to developing market and
 37 technological practices the manner in which the ~~chattel paper~~ copies would indicate an
 38 assignment.

39 Subsections (a) and (f) each refer to the possibility that authoritative copies of records
 40 evidencing chattel paper may indicate that the chattel paper has been assigned to an
 41 identified assignee. Those subsections should be read and interpreted in a manner
 42 consistent with Section 9-105 on control of authoritative electronic copies of records
 43 evidencing chattel paper. Accordingly, references in subsections (a) and (f) to an indication
 44 in a record evidencing chattel paper also embrace, for authoritative electronic copies of
 45 such records, records attached to or logically associated with the authoritative electronic

1 copies and systems in which the authoritative electronic copies are recorded. See Section
2 9-105(c) and (d)(1).

3 **7. Instruments. * * ***

4 * * *

5 The rule in subsection (d) is similar to the rules in subsections (a) and (b), which govern
6 priority in chattel paper. The observations in Comment 6 concerning the requirement of
7 good faith and the phrase "without knowledge that the purchase violates the rights of the
8 secured party" party," including the operation of subsection (f) if an instrument indicates
9 that it has been assigned to an identified secured party, apply equally to purchasers of
10 instruments. However, unlike a purchaser of chattel paper, to qualify for priority under ~~this~~
11 section subsection (d) a purchaser of an instrument need only give "value" as defined in
12 Section ~~1-201~~ 1-204; it need not give "new value." Also, the purchaser need not purchase
13 the instrument in the ordinary course of its business.

14 * * *

15 **10. Assignment of Non-Lease Chattel Paper.**

16 * * *

17 b. **Dealer's Outright Sale of Chattel Paper to SP-2.** Article 9 also applies to a
18 transaction whereby SP-2 buys the chattel paper in an outright sale transaction without
19 recourse against Dealer. Sections ~~1-201(37)~~ 1-201(b)(35), 9-109(a). Although Dealer does
20 not, in such a transaction, retain any residual ownership interest in the chattel paper, the
21 chattel paper constitutes proceeds of the goods to which SP-1's security interest will attach
22 and continue following the sale of the goods. Section 9-315(a). Even though Dealer has
23 not retained any interest in the chattel paper, as discussed above BIOCOP subsequently
24 may return the goods to Dealer under circumstances whereby Dealer reacquires an interest
25 in the goods. The priority contest between SP-1 and SP-2 will be resolved as discussed
26 above; Section 9-330 makes no distinction among purchasers of chattel paper on the basis
27 of whether the purchaser is an outright buyer of chattel paper or one whose security interest
28 secures an obligation of Dealer.

29 **11. Assignment of Lease Chattel Paper.** As defined in Section 9-102, "chattel paper"
30 includes not only ~~writings that evidence security interests in rights to payment secured by~~
31 ~~specific goods but also those that evidence rights to payment owed by a lessee under a true~~
32 leases lease of goods.

33 * * *

34 **Sec. A-128. 11 MRSA §9-1331**, as amended by PL 2001, c. 471, Pt. B, §4 and
35 affected by §5, is further amended to read:

36 **§9-1331. Priority of rights of purchasers of instruments controllable accounts,**
37 **controllable electronic records, controllable payment intangibles, documents,**
38 **instruments and securities under other Articles; priority of interests in**
39 **financial assets and security entitlements and protection against assertion of**
40 **claim under Article 8 Articles 8-A and 12**

41 **(1).** This Article does not limit the rights of a holder in due course of a negotiable
42 instrument, a holder to which a negotiable document of title has been duly negotiated or, a
43 protected purchaser of a security or a qualifying purchaser of a controllable account.

1 controllable electronic record or controllable payment intangible. These holders or
2 purchasers take priority over an earlier security interest, even if perfected, to the extent
3 provided in Articles 3-A, ~~7~~ 7-A, ~~8-A~~ and ~~8~~ 12.

4 (2). This Article does not limit the rights of or impose liability on a person to the
5 extent that the person is protected against the assertion of a claim under Article ~~8~~ 8-A or
6 12.

7 (3). Filing under this Article does not constitute notice of a claim or defense to the
8 holders, or purchasers, or persons described in subsections (1) and (2).

9 **Official Comment**

10 * * *

11 3. * * *

12 The state-law Uniform Electronic Transactions Act (UETA) and the federal Electronic
13 Signature in Global and National Commerce Act, 15 U.S.C. §§ 7001 et seq. (E-SIGN),
14 provide certain rules for records referred to and defined as "transferable records." See
15 UETA Section 16 and E-SIGN, 15 U.S.C. § 7021. When certain conditions have been met,
16 those acts confer on a person the status of a "holder" (as defined in 1-201(b)(21), formerly
17 Section 1-201(20)) of an "equivalent record" under pre-1998 Section 9-308 (now, in part,
18 Section 9-330) and the rights and defenses of a "purchaser" under that section, among other
19 effects. E-SIGN also refers to the rights and defenses of a purchaser under Section 9-330.
20 As a matter of the application of the Uniform Commercial Code, those are not the only
21 sections of the Uniform Commercial Code that would logically be affected by UETA and
22 E-SIGN. For example, the rights of a holder in due course under Section 9-331(a) would
23 also be covered by the application of those acts, when the conditions for applicability have
24 been satisfied.

25 * * *

26 **Sec. A-129. 11 MRSA §9-1332**, as enacted by PL 1999, c. 699, Pt. A, §2 and
27 affected by §4, is amended to read:

28 **§9-1332. Transfer of money; transfer of funds from deposit account**

29 (1). A transferee of money takes the money free of a security interest ~~unless the~~
30 ~~transferee acts~~ if the transferee receives possession of the money without acting in collusion
31 with the debtor in violating the rights of the secured party.

32 (2). A transferee of funds from a deposit account takes the funds free of a security
33 interest in the deposit account ~~unless the transferee acts~~ if the transferee receives the funds
34 without acting in collusion with the debtor in violating the rights of the secured party.

35 **Official Comment**

36 * * *

37 2. **Scope of this Section.** This section affords broad protection ~~to~~ for transferees ~~who~~
38 ~~take of money and of funds from a deposit account and to those who take money. to take~~
39 free of a security interest.

1 **2A. Meaning of "Transfer."** The term "transferee" is not defined; however, the
 2 debtor itself is not a transferee. Thus this section does not cover the case in which a debtor
 3 withdraws money (currency) from its deposit account or the case in which a bank debits an
 4 encumbered account and credits another account it maintains for the debtor.

5 A "transfer" of property occurs when the transferee has obtained a property interest in
 6 the relevant property. See Section 9-102, Comment 2.b.1 ("Several provisions of this
 7 Article and its official comments also refer to the 'transfer' of *property* interests." (emphasis
 8 added)). Other law determines when the transferee has acquired a property interest. See
 9 Section 9-408, Comment 3 ("Other law determines whether a debtor has a property interest
 10 ('rights in the collateral') and the nature of that interest."). Although the terms "transfer"
 11 and "transferee" are not defined in the UCC, the term "transfer" is broader in scope than
 12 "purchase," which requires taking in a "voluntary transaction creating an interest in
 13 property." Section 1-201(b)(29). For example, "transfer" includes an involuntary transfer
 14 such as the acquisition of a judicial lien by a lien creditor. See Section 9-102(a)(52)
 15 (defining "lien creditor"). However, many references to a "transfer" in the UCC and official
 16 comments relate to a voluntary transfer to a purchaser, as indicated by the context.

17 **2B. Transferees of Tangible Money.** Subsection (a) conditions the take-free rule
 18 on the transferee's receipt of possession of tangible money. This reflects what had always
 19 been assumed under the pre-2022 text—that a transfer of an interest in tangible money
 20 which is not accompanied by a physical transfer of possession would not impair the rights
 21 of third parties.

22 **2C. Transferees of Funds from Deposit Account.** Subsection (b) reflects the
 23 corresponding change for a transfer of funds from a deposit account. To qualify for the
 24 take-free protection under subsection (b), the transferee must "receive[] the funds without
 25 acting in collusion . . ." The amendments to subsections (a) and (b) clarify what was implicit
 26 under the original text. Although "funds" is not defined in the UCC, if deposit accounts
 27 with a central bank or another bank were to become money, as defined in Section 1-
 28 201(b)(24), transfers from such deposit accounts would be covered by subsection (b) and
 29 not subsection (c) (discussed in Comment 2.D.). See Section 9-102(a)(54A) (defining
 30 "money," for purposes of Article 9, to exclude deposit accounts).

31 * * *

32 **Example 2:** Debtor maintains a deposit account with Bank A. The deposit account
 33 is subject to a perfected security interest in favor of Lender. At Bank B's
 34 suggestion, Debtor moves the funds from the account at Bank A to Debtor's deposit
 35 account with Bank B. Unless Bank B acted in collusion with Debtor in violating
 36 Lender's rights, Bank B takes the funds (the credits running in favor of Bank B)
 37 free from Lender's security interest. See subsection (b). However, inasmuch as
 38 the deposit account maintained with Bank B constitutes the proceeds of the deposit
 39 account at Bank A, Lender's security interest would attach to that account as
 40 proceeds. See Section 9-315.

41 Subsection (b) also would apply if, in ~~the example~~ these examples, Bank A debited
 42 Debtor's deposit account in exchange for the issuance of Bank A's cashier's check. Lender's
 43 security interest would attach to the cashier's check as proceeds of the deposit account, and
 44 the rules applicable to instruments would govern any competing claims to the cashier's
 45 check. See, e.g., Sections 3-306, 9-322, 9-330, 9-331.

1 If Debtor withdraws ~~money (currency)~~ funds from an encumbered deposit account,
 2 receives the funds in the form of tangible money, and transfers the money to a third party,
 3 then subsection (a), to the extent not displaced by federal law relating to money, applies to
 4 the transfer. It contains substantially the same rule as subsection (b).

5 Subsection (b) applies to *transfers of funds from* a deposit account; it does not apply to
 6 *transfers of the deposit account* itself or of an interest therein. Because a deposit account is
 7 a monetary obligation (debt) of the depository bank to its depositor, a transfer of the deposit
 8 account itself does not transfer the funds credited to the deposit account. For example, this
 9 section does not apply to the creation of a security interest in a deposit account. Competing
 10 claims to the deposit account itself are dealt with by other Article 9 priority rules. See
 11 Sections 9-317(a), 9-327, 9-340, 9-341. Similarly, a corporate merger normally would not
 12 result in a transfer of funds from a deposit account. Rather, it might result in a transfer of
 13 the deposit account itself. If so, the normal rules applicable to transferred collateral would
 14 apply; this section would not.

15 The depositor's creditors (whether secured parties or lien creditors) do not have any
 16 interest in any funds (or any other assets of the depository bank) as a result of having an
 17 interest in the deposit account (the right to payment of the bank's obligation). Consequently,
 18 a transferee of funds that takes free of a security interest under subsection (b) does so
 19 whether the security interest in the deposit account from which the funds were transferred
 20 arises as original collateral or as proceeds.

21 A transferee of an interest in the deposit account, such as a garnishing lien creditor,
 22 does not take free of a security interest in a deposit account under subsection (b). A
 23 transferee takes free under subsection (b) only upon the actual receipt of funds from the
 24 deposit account. The proper construction of subsection (b) rejects cases that treat
 25 garnishment of a deposit account as an immediate transfer of funds or an interest in funds
 26 credited to the deposit account.

27 The last event that provides a recovery for a creditor in a garnishment action virtually
 28 always would be a transfer of funds from a deposit account. However, this does not mean
 29 that a perfected security interest will always be cut off by a garnishing creditor. By
 30 intervening in the garnishment proceeding to assert its senior security interest before funds
 31 are disbursed, the secured party might assert and retain its priority. However, the relevant
 32 procedural law may not provide the secured party with adequate advance notice. In some
 33 cases, a control agreement that perfects a security interest in the deposit account may
 34 require the garnished bank to provide prompt notice to the secured party. But not all control
 35 agreements will so provide. Moreover, the secured party's priority is not absolute. See, e.g.,
 36 Section 9-401, Comment 6 (explaining that the equitable doctrine of marshaling may be
 37 appropriate in the case of a lien creditor's interest in collateral when a senior secured party
 38 is oversecured).

39 **2D. Transferees of Electronic Money.** Because "electronic money" is new, no pattern
 40 of past practices or understandings exists. However, subsection (c) provides a take-free
 41 rule for electronic money that complements subsection (a) by conditioning the take-free
 42 rule on the transferee's obtaining control.

43 **2E. Temporal Aspect of Collusion Test.** For a transferee to take free of a security
 44 interest under this section the transferee must receive delivery of tangible money, receive
 45 funds from a deposit account, or obtain control of electronic money without acting in

1 collusion. Whether the transferee is acting without collusion is determined as of the time
2 of delivery to the transferee or receipt of funds or obtaining control by the transferee.

3 * * *

4 4. **"Bad Actors."** To deal with the question of the "bad actor," this section borrows
5 "collusion" language from Article 8. See, e.g., Sections 8-115, 8-503(e). This is the most
6 protective (i.e., least stringent) of the various standards now found in the UCC. Compare,
7 e.g., Section 1-201(b)(9) ("without knowledge that the sale violates the rights of another
8 person," in the definition of "buyer in ordinary course of business"); Section 1-201(b)(20)
9 (defining "good faith" as "honesty in fact and the observance of reasonable commercial
10 standards of fair dealing"); Section 3-302(a)(2)(v) ("without notice of any claim").

11 * * *

12 **Sec. A-130. 11 MRSA §9-1334, sub-§(6), ¶(a)**, as enacted by PL 1999, c. 699,
13 Pt. A, §2 and affected by §4, is amended to read:

14 (a). The encumbrancer or owner has, in ~~an authenticated~~ a signed record, consented to
15 the security interest or disclaimed an interest in the goods as fixtures; or

16 Official Comment

17 * * *

18 13. "Signed" Replaces "Authenticated." Consistent with the revised definition
19 of "sign" in Section 1-201, the cognate term "signed" replaces the reference to
20 "authenticated" in the pre-2022 text of this section.

21 **Sec. A-131. 11 MRSA §9-1338, sub-§(2)**, as amended by PL 2009, c. 324, Pt. B,
22 §43 and affected by §48, is repealed and the following enacted in its place:

23 (2). A purchaser, other than a secured party, of the collateral takes free of the security
24 interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect
25 information, the purchaser gives value and:

26 (a). In the case of tangible documents, goods, instruments or a security certificate,
27 receives possession or delivery of the collateral and:

28 (b). In the case of chattel paper, takes possession of each authoritative tangible copy
29 of the record evidencing the chattel paper and obtains control of each authoritative
30 electronic copy of the electronic record evidencing the chattel paper.

31 **Sec. A-132. 11 MRSA §9-1341, first ¶**, as enacted by PL 1999, c. 699, Pt. A, §2
32 and affected by §4, is amended to read:

33 Except as otherwise provided in section 9-1340, subsection (3), and unless the bank
34 otherwise agrees in ~~an authenticated~~ a signed record, a bank's rights and duties with respect
35 to a deposit account maintained with the bank are not terminated, suspended or modified
36 by:

37 **Sec. A-133. 11 MRSA §9-1403, sub-§(1)**, as enacted by PL 1999, c. 699, Pt. A,
38 §2 and affected by §4, is amended to read:

39 **(1).** In this section, "value" has the meaning provided in section ~~3-303~~ 3-1303,
40 subsection (1).

- 1 (a). If it does not reasonably identify the rights assigned;
- 2 (b). To the extent that an agreement between an account debtor and a seller of a
3 payment intangible limits the account debtor's duty to pay a person other than the seller
4 and the limitation is effective under law other than this Article; or
- 5 (c). At the option of an account debtor, if the notification notifies the account debtor
6 to make less than the full amount of any installment or other periodic payment to the
7 assignee, even if:
- 8 (i) Only a portion of the account, chattel paper or payment intangible has been
9 assigned to that assignee;
- 10 (ii) A portion has been assigned to another assignee; or
- 11 (iii) The account debtor knows that the assignment to that assignee is limited.
- 12 **(3).** Subject to ~~subsection~~ subsections (8) and (10), if requested by the account debtor,
13 an assignee shall seasonably furnish reasonable proof that the assignment has been made.
14 Unless the assignee complies, the account debtor may discharge its obligation by paying
15 the assignor, even if the account debtor has received a notification under subsection (1).
- 16 **(4).** Except as otherwise provided in subsection (5) and sections 2-1303 and 9-1407,
17 and subject to subsection (8), a term in an agreement between an account debtor and an
18 assignor or in a promissory note is ineffective to the extent that it:
- 19 (a). Prohibits, restricts or requires the consent of the account debtor or person obligated
20 on the promissory note to the assignment or transfer of, or the creation, attachment,
21 perfection or enforcement of a security interest in, the account, chattel paper, payment
22 intangible or promissory note; or
- 23 (b). Provides that the assignment or transfer or the creation, attachment, perfection or
24 enforcement of the security interest may give rise to a default, breach, right of
25 recoupment, claim, defense, termination, right of termination or remedy under the
26 account, chattel paper, payment intangible or promissory note.
- 27 For the purposes of this subsection, "promissory note" includes a negotiable instrument that
28 evidences chattel paper.
- 29 **(5).** Subsection (4) does not apply to the sale of a payment intangible or promissory
30 note other than a sale pursuant to a disposition under section 9-1610 or an acceptance of
31 collateral under section 9-1620.
- 32 **(6).** Except as otherwise provided in sections 2-1303 and 9-1407 and subject to
33 subsections (8) and (9), a rule of law, statute, or regulation that prohibits, restricts or
34 requires the consent of a government, governmental body or official, or account debtor to
35 the assignment or transfer of, or creation of a security interest in, an account or chattel
36 paper is ineffective to the extent that the rule of law, statute or regulation:
- 37 (a). Prohibits, restricts or requires the consent of the government, governmental body
38 or official, or account debtor to the assignment or transfer of, or the creation,
39 attachment, perfection or enforcement of a security interest in the account or chattel
40 paper; or
- 41 (b). Provides that the assignment or transfer or the creation, attachment, perfection or
42 enforcement of the security interest may give rise to a default, breach, right of

1 recoupment, claim, defense, termination, right of termination or remedy under the
2 account or chattel paper.

3 (7). Subject to ~~subsection (8)~~ subsections (8) and (10), an account debtor may not
4 waive or vary its option under subsection (2), paragraph (c).

5 (8). This section is subject to law other than this Article that establishes a different
6 rule for an account debtor who is an individual and who incurred the obligation primarily
7 for personal, family or household purposes.

8 (9). This section does not apply to an assignment of a health-care-insurance
9 receivable.

10 (10). Subsections (1), (2), (3) and (7) do not apply to a controllable account or
11 controllable payment intangible.

12 Official Comment

13 * * *

14 2. **Account Debtor's Right to Pay Assignor Until Notification.** Subsection (a)
15 provides the general rule concerning an account debtor's right to pay the assignor until the
16 account debtor receives appropriate notification. The revision makes clear that once the
17 account debtor receives the notification, the account debtor cannot discharge its obligation
18 by paying the assignor. It also makes explicit that payment to the assignor before
19 notification, or payment to the assignee after notification, discharges the obligation. No
20 change in meaning from ~~former pre-1998~~ Section 9-318 is intended. Nothing in this section
21 conditions the effectiveness of a notification on the identity of the person who gives it. An
22 account debtor that doubts whether the right to payment has been assigned may avail itself
23 of the procedures in subsection (c). See Comment 4. As to the rights and powers of an
24 assignee generally, see Section 9-102(a)(7A) (defining "assignee"), (7B) (defining
25 "assignor"), and Comment 2.b.1.

26 An effective notification under subsection (a) must be ~~authenticated~~ signed. This
27 requirement normally could be satisfied by sending notification on the notifying person's
28 letterhead or on a form on which the notifying person's name appears. In each case the
29 printed name would be a symbol adopted by the notifying person for the purpose of
30 identifying the person and adopting the notification. See Section ~~9-102~~ 1-201(b)(37)
31 (defining "~~authenticate~~" "sign").

32 * * *

33 5. **Contractual Restrictions on Assignment.** ~~Former Pre-1998~~ Section 9-318(4)
34 rendered ineffective an agreement between an account debtor and an assignor which
35 prohibited assignment of an account (whether outright or to secure an obligation) or
36 prohibited a security assignment of a general intangible for the payment of money due or
37 to become due. Subsection (d) essentially follows ~~former pre-1998~~ Section 9-318(4), but
38 expands the rule of free assignability to chattel paper (subject to Sections 2A-303 and 9-
39 407) and promissory notes and explicitly overrides both restrictions and prohibitions of
40 assignment. The policies underlying the ineffectiveness of contractual restrictions under
41 this section build on common-law developments that essentially have eliminated legal
42 restrictions on assignments of rights to payment as security and other assignments of rights

1 to payment such as accounts and chattel paper. Any that might linger for accounts and
2 chattel paper are addressed by new subsection (f). See Comment 6.

3 The first sentence of subsection (d) ensures that the subsection applies to a negotiable
4 instrument that would be a promissory note but for (i) the exclusion of writings that
5 evidence chattel paper from the definition of "instrument" (Section 9-102(a)(47), as revised
6 in 2022) and (ii) the definition of "promissory note" (Section 9-102(a)(65)) as a subset of
7 "instrument." That sentence also ensures that subsection (d) applies to an obligor on such
8 a negotiable instrument, even though the obligor is not an "account debtor" (Section 9-
9 102(a)(3)). The sentence restores the scope of subsection (d) to apply to all obligations and
10 obligors on chattel paper, as was the case prior to the revision of the definition of
11 "instrument".

12 * * *

13 **10. Inapplicability to Certain Ownership Interests.** ~~This section does~~ Subsection
14 (k) provides that subsections (d), (f), and (j) do not apply to a security interest in an
15 ownership interest in a limited liability company, limited partnership, or general
16 partnership, regardless of the name of the interest and whether the interest: (i) pertains to
17 economic rights, governance rights, or both; (ii) arises under: (a) an operating agreement,
18 the applicable limited liability company act, or both; or (b) a partnership agreement, the
19 applicable partnership act, or both; or (iii) is owned by: (a) a member of a company or
20 transferee or assignee of a member; or (b) a partner or a transferee or assignee of a partner;
21 or (iv) comprises contractual, property, other rights, or some combination thereof.
22 Ownership interests referred to in subsection (k) include interests in a series of a limited
23 liability company, limited partnership, or general partnership, if the series is a "person"
24 (Section 1-201(b)(27)).

25 **11. Controllable Accounts and Controllable payment intangibles.** For controllable
26 accounts and controllable payment intangibles, subsection (l) recognizes that subsections
27 (a), (b), (c) and (g) are replaced by analogous provisions in Section 12-106.

28 **12. "Signed" Replaces "Authenticated."** Consistent with the revised definition of
29 "sign" in Section 1-201, the cognate term "signed" replaces the reference to "authenticated"
30 in the pre-2022 text of this section.

31 **Sec. A-138. 11 MRSA §9-1408, sub-§(5)** is enacted to read:

32 **(5).** For the purposes of this section, "promissory note" includes a negotiable
33 instrument that evidences chattel paper.

34 Official Comment

35 * * *

36 **11.** Subsection (g) ensures that this section applies to a negotiable instrument that
37 would be a promissory note but for (i) the exclusion of writings that evidence chattel paper
38 from the definition of "instrument" (Section 9-102(a)(47), as revised in 2022) and (ii) the
39 definition of "promissory note" (Section 9-102(a)(65)) as a subset of "instrument." See
40 Section 9-406, Comment 5.

41 **Sec. A-139. 11 MRSA §9-1509, sub-§(1), ¶(a),** as enacted by PL 1999, c. 699,
42 Pt. A, §2 and affected by §4, is amended to read:

1 (a). The debtor authorizes the filing in ~~an authenticated~~ a signed record or pursuant to
2 subsection (2) or (3); or

3 **Sec. A-140. 11 MRSA §9-1509, sub-§(2)**, as enacted by PL 1999, c. 699, Pt. A,
4 §2 and affected by §4, is amended to read:

5 (2). By ~~authenticating~~ signing or becoming bound as debtor by a security agreement,
6 a debtor or new debtor authorizes the filing of an initial financing statement, and an
7 amendment, covering:

8 (a). The collateral described in the security agreement; and

9 (b). Property that becomes collateral under section 9-1315, subsection (1), paragraph
10 (b), whether or not the security agreement expressly covers proceeds.

11 **Official Comment**

12 * * *

13 3. **Unauthorized Filings.** Records filed in the filing office do not require signatures
14 for their effectiveness. Subsection (a)(1) substitutes for the debtor's signature on a
15 financing statement the requirement that the debtor authorize in ~~an authenticated~~ a signed
16 record the filing of an initial financing statement or an amendment that adds collateral.
17 Also, under subsection (a)(1), if an amendment adds a debtor, the debtor who is added must
18 authorize the amendment. A person who files an unauthorized record in violation of
19 subsection (a)(1) is liable under Section 9-625(b) and (e) for actual and statutory damages.
20 Of course, a filed financing statement is ineffective to perfect a security interest if the filing
21 is not authorized. See Section 9-510(a). Law other than this Article, including the law
22 with respect to ratification of past acts, generally determines whether a person has the
23 requisite authority to file a record under this section. See Sections 1-103, 9-502, Comment
24 3. This Article applies to other issues, such as the priority of a security interest perfected
25 by the filing of a financing statement. See Section 9-322, Comment 4. *Amendment*
26 *approved by the Permanent Editorial Board for Uniform Commercial Code December 31,*
27 *2001.*

28 4. **Ipsa Facto Authorization.** Under subsection (b), the ~~authentication~~ signing of a
29 security agreement *ipso facto* constitutes the debtor's authorization of the filing of a
30 financing statement covering the collateral described in the security agreement. The
31 secured party need not obtain a separate authorization. Similarly, a new debtor's becoming
32 bound by a security agreement *ipso facto* constitutes the new debtor's authorization of the
33 filing of a financing statement covering the collateral described in the security agreement
34 by which the new debtor has become bound. And, under subsection (c), the acquisition of
35 collateral in which a security interest continues after disposition under Section 9-315(a)(1)
36 *ipso facto* constitutes an authorization to file an initial financing statement against the
37 person who acquired the collateral. The authorization to file an initial financing statement
38 also constitutes an authorization to file a record covering actual proceeds of the original
39 collateral, even if the security agreement is silent as to proceeds.

40 **Example 1:** Debtor ~~authenticates~~ signs a security agreement creating a security
41 interest in Debtor's inventory in favor of Secured Party. Secured Party files a
42 financing statement covering inventory and accounts. The financing statement is
43 authorized insofar as it covers inventory and unauthorized insofar as it covers

1 accounts. (Note, however, that the financing statement will be effective to perfect
 2 a security interest in accounts constituting proceeds of the inventory to the same
 3 extent as a financing statement covering only inventory.)

4 **Example 2:** Debtor ~~authenticates~~ signs a security agreement creating a security
 5 interest in Debtor's inventory in favor of Secured Party. Secured Party files a
 6 financing statement covering inventory. Debtor sells some inventory, deposits the
 7 buyer's payment into a deposit account, and withdraws the funds to purchase
 8 equipment. As long as the equipment can be traced to the inventory, the security
 9 interest continues in the equipment. See Section 9-315(a)(2). However, because
 10 the equipment was acquired with cash proceeds, the financing statement becomes
 11 ineffective to perfect the security interest in the equipment on the 21st day after the
 12 security interest attaches to the equipment unless Secured Party continues
 13 perfection beyond the 20-day period by filing a financing statement against the
 14 equipment or amending the filed financing statement to cover equipment. See
 15 Section 9-315(d). Debtor's ~~authentication~~ signing of the security agreement
 16 authorizes the filing of an initial financing statement or amendment covering the
 17 equipment, which is "property that becomes collateral under Section 9-315(a)(2)."
 18 See Section 9-509(b)(2).

19 * * *

20 6. **Amendments; Termination Statements Authorized by Debtor.** Most
 21 amendments may not be filed unless the secured party of record, as determined under
 22 Section 9-511, authorizes the filing. See subsection (d)(1). However, under subsection
 23 (d)(2), the authorization of the secured party of record is not required for the filing of a
 24 termination statement if the secured party of record failed to send or file a termination
 25 statement as required by Section 9-513, the debtor authorizes it to be filed, and the
 26 termination statement so indicates. An authorization to file a record under subsection (d) is
 27 effective even if the authorization is not in an ~~authenticated~~ a signed record. Compare
 28 subsection (a)(1). However, both the person filing the record and the person giving the
 29 authorization may wish to obtain and retain a record indicating that the filing was
 30 authorized.

31 * * *

32 **9. "Signed" and "Signing" Replace "Authenticated" and "Authenticating."**
 33 Consistent with the revised definition of "sign" in Section 1-201, the cognate terms
 34 "signed" and "signing" replace the references to "authenticated" and "authenticating" in the
 35 pre-2022 text of this section.

36 **Sec. A-141. 11 MRSA §9-1513, sub-§(2), ¶(b),** as enacted by PL 1999, c. 699,
 37 Pt. A, §2 and affected by §4, is amended to read:

38 (b). If earlier, within 20 days after the secured party receives an ~~authenticated~~ a signed
 39 demand from a debtor.

40 **Sec. A-142. 11 MRSA §9-1513, sub-§(3),** as enacted by PL 1999, c. 699, Pt. A,
 41 §2 and affected by §4, is amended to read:

42 (3). In cases not governed by subsection (1), within 20 days after a secured party
 43 receives an ~~authenticated~~ a signed demand from a debtor, the secured party shall cause the
 44 secured party of record for a financing statement to send to the debtor a termination

1 statement for the financing statement or file the termination statement in the filing office
2 if:

3 (a). Except in the case of a financing statement covering accounts or chattel paper that
4 has been sold or goods that are the subject of a consignment, there is no obligation
5 secured by the collateral covered by the financing statement and no commitment to
6 make an advance, incur an obligation or otherwise give value;

7 (b). The financing statement covers accounts or chattel paper that has been sold but as
8 to which the account debtor or other person obligated has discharged its obligation;

9 (c). The financing statement covers goods that were the subject of a consignment to
10 the debtor but are not in the debtor's possession; or

11 (d). The debtor did not authorize the filing of the initial financing statement.

12 Official Comment

13 * * *

14 2. Duty to File or Send. * * *

15 * * *

16 References to a "termination statement" in this section and in Part 5 generally should
17 be interpreted functionally, based on the purposes of the termination. A termination
18 statement includes any amendment that meets the definition of that term by containing an
19 indication that the amendment "is a termination statement" or that the identified financing
20 statement "is no longer effective." Section 9-102(a)(80). The amendment may terminate
21 the effectiveness of a financing statement in whole or in part. For example, if a person did
22 not authorize the filing of a financing statement against it as debtor, under subsection (a)(2)
23 and (c)(4) the person may demand that the financing statement be terminated *as to that*
24 *person*, even if the financing statement remains of record and effective as to one or more
25 other persons named as debtors in the financing statement. Such a termination statement
26 may take the form of an amendment that deletes the person as a debtor. Similarly, if a
27 person authorized the filing of a financing statement as to some collateral but not as to other
28 property identified as collateral on the financing statement, the person may demand that
29 the financing statement be terminated *as to the unauthorized identified collateral*, even if
30 the financing statement remains of record and effective as to other identified collateral.
31 Such a termination statement may take the form of an amendment that deletes the
32 unauthorized identified collateral from coverage of the financing statement. Even if such
33 amendments do not indicate explicitly that they are termination statements, they would
34 nonetheless indicate that the financing statement "is no longer effective" to the extent
35 specified and fall within the definition of "termination statement."

36 3. **"Bogus" Filings.** A secured party's duty to send a termination statement arises
37 when the secured party "receives" ~~an authenticated~~ a signed demand from the debtor. In
38 the case of an unauthorized financing statement, the person named as debtor in the
39 financing statement may have no relationship with the named secured party and no reason
40 to know the secured party's address. Inasmuch as the address in the financing statement is
41 "held out by [the person named as secured party in the financing statement] as the place for
42 receipt of such communications [i.e., communications relating to security interests]," the
43 putative secured party is deemed to have "received" a notification delivered to that address.

1 See Section 1-202(e). If a termination statement is not forthcoming, the person named as
2 debtor itself may authorize the filing of a termination statement, which will be effective if
3 it indicates that the person authorized it to be filed. See Sections 9-509(d)(2), ~~9-510(e)~~ 9-
4 510(a).

5 * * *

6 6. "Signed" Replaces "Authenticated." Consistent with the revised definition of
7 "sign" in Section 1-201, the cognate term "signed" replaces the references to
8 "authenticated" in the pre-2022 text of this section.

9 **Sec. A-143. 11 MRSA §9-1601, sub-§(2)**, as amended by PL 2009, c. 324, Pt. B,
10 §44 and affected by §48, is further amended to read:

11 (2). A secured party in possession of collateral or control of collateral under section
12 7-1106, 9-1104, ~~9-1105~~ 9-1105-A, 9-1106 ~~or~~, 9-1107 or 9-1107-A has the rights and duties
13 provided in section 9-1207.

14 **Sec. A-144. 11 MRSA §9-1605**, as enacted by PL 1999, c. 699, Pt. A, §2 and
15 affected by §4, is amended to read:

16 **§9-1605. Unknown debtor or secondary obligor**

17 A Except as provided in this section, a secured party does not owe a duty based on its
18 status as secured party:

19 (1). To a person that is a debtor or obligor unless the secured party knows:

20 (a). That the person is a debtor or obligor;

21 (b). The identity of the person; and

22 (c). How to communicate with the person; or

23 (2). To a secured party or lienholder that has filed a financing statement against a
24 person unless the secured party knows:

25 (a). That the person is a debtor; and

26 (b). The identity of the person.

27 A secured party owes a duty based on its status as a secured party to a person if, at the
28 time the secured party obtains control of collateral that is a controllable account,
29 controllable electronic record or controllable payment intangible or at the time the security
30 interest attaches to the collateral, whichever is later, the person is a debtor or obligor and
31 the secured party knows that the information in subsection (1), paragraph (a), (b) or (c)
32 relating to the person is not provided by the collateral, a record attached to or logically
33 associated with the collateral or the system in which the collateral is recorded.

34 **Official Comment**

35 * * *

36 2. **Duties to Unknown Persons and Limitation of Liability.** This section
37 relieves a secured party from duties owed to a debtor or obligor if the secured party does
38 not know about the debtor or obligor. Similarly, it relieves a secured party from duties
39 owed to a secured party or lienholder who has filed a financing statement against the debtor
40 if the secured party does not know about the debtor. Section 9-628(a) and (b) provide

1 analogous limitations of liability. For example, a secured party may be unaware that the
2 original debtor has sold the collateral subject to the security interest and that the new owner
3 has become the debtor. If so, the secured party owes no duty to the new owner (debtor) or
4 to a secured party who has filed a financing statement against the new owner. ~~This section~~
5 ~~should be read in conjunction with the exculpatory provisions in Section 9-628.~~ Note that
6 this section relieves a secured party not only from duties arising under this Article but also
7 from duties arising under other law by virtue of the secured party's status as such under this
8 Article, unless the other law otherwise provides.

9 This section should be read in conjunction with the limitations on liability contained in
10 the exculpatory provisions in subsections (a), (b), and (c) of Section 9-628. Without this
11 group of provisions, a secured party could incur liability to unknown persons and under
12 circumstances that would not allow the secured party to protect itself. The broadened
13 definition of the term "debtor" underscores the need for these provisions. For example, as
14 noted above, a debtor may dispose of collateral subject to a security interest, resulting in
15 the transferee becoming a debtor, but the secured party may have no knowledge of the
16 disposition or that the transferee has become a debtor. In that situation the secured party
17 will have no means of giving notice to or accounting to the transferee debtor. Sections 9-
18 605 and 9-628 contemplate such situations by relieving the secured party of its duties to
19 the debtor and limiting the secured party's liability to the debtor.

20 **3. Exceptions to Relief from Duties and Limitation of Liability.** In some cases,
21 lenders may extend secured credit without knowing, or having the ability to discover, the
22 identity of their borrowers. Pre-2022 Sections 9-605(a) and 9-628(a) and (b) would excuse
23 these secured parties from having duties to their debtors and obligors, including, for
24 example, the duty to notify the debtor or secondary obligor before disposing of the
25 collateral and the duty to account to the debtor for any surplus arising from a disposition,
26 and would limit the secured parties' liability to their debtors and obligors. In many cases
27 these debtors and obligors may be aware that their identities are unknown to their secured
28 parties. By failing to make their identities and contact information known, these debtors
29 and obligors may be impairing the ability of their secured parties to comply with their duties
30 under Article 9. However, such debtor complicity notwithstanding, if secured parties were
31 relieved of their duties in these circumstances, it would conflict with the policy of Section
32 9-602, which prohibits a waiver or variance of many rights of debtors and obligors and
33 duties of secured parties.

34 Sections 9-605(b) and 9-628(f) reflect the policy that a secured party should not be free
35 to avoid statutory duties or absolve itself from liability to a debtor or obligor when the
36 secured party knows that the collateral, records attached to or logically associated with the
37 collateral, and the system in which the collateral is recorded do not provide the secured
38 party with the information necessary to fulfill its statutory duties. As discussed in the
39 following paragraph, the secured party's knowledge that it may not be able to comply with
40 its duties enables the secured party to protect itself from being in breach of these duties. (A
41 person has knowledge of or knows a fact if it has "actual knowledge." Section 1-202(b).)
42 The exceptions from the exculpatory protections otherwise afforded to secured parties are
43 determined by the secured party's knowledge at the later of the time the secured party
44 obtains control of a controllable account, controllable electronic record, or controllable
45 payment intangible or the time that the security interest attaches to the collateral.

1 (2). Except as otherwise provided in subsection (4), a secured party that disposes of
2 collateral under section 9-1610 shall send to the persons specified in subsection (3) a
3 reasonable ~~authenticated~~ signed notification of disposition.

4 **Sec. A-148. 11 MRSA §9-1611, sub-§(3)**, as enacted by PL 1999, c. 699, Pt. A,
5 §2 and affected by §4, is amended to read:

6 (3). To comply with subsection (2), the secured party shall send ~~an authenticated~~ a
7 signed notification of disposition to:

8 (a). The debtor;

9 (b). Any secondary obligor; and

10 (c). If the collateral is other than consumer goods:

11 (i) Any other person from which the secured party has received, before the
12 notification date, ~~an authenticated~~ a signed notification of a claim of an interest in
13 the collateral;

14 (ii) Any other secured party or lienholder that, 10 days before the notification date,
15 held a security interest in or other lien on the collateral perfected by the filing of a
16 financing statement that:

17 (A) Identified the collateral;

18 (B) Was indexed under the debtor's name as of that date; and

19 (C) Was filed in the appropriate office in which to file a financing statement
20 against the debtor covering the collateral as of that date; and

21 (iii) Any other secured party that, 10 days before the notification date, held a
22 security interest in the collateral perfected by compliance with a statute, regulation
23 or treaty described in section 9-1311, subsection (1).

24 **Sec. A-149. 11 MRSA §9-1611, sub-§(5), ¶(b)**, as enacted by PL 1999, c. 699,
25 Pt. A, §2 and affected by §4, is amended by amending subparagraph (ii) to read:

26 (ii) Received a response to the request for information and sent ~~an authenticated~~ a
27 signed notification of disposition to each secured party or other lienholder named
28 in that response whose financing statement covered the collateral.

29 Official Comment

30 * * *

31 2. **Reasonable Notification.** This section requires a secured party who wishes to
32 dispose of collateral under Section 9-610 to send "a reasonable ~~authenticated~~ signed
33 notification of disposition" to specified interested persons, subject to certain exceptions.
34 The notification must be reasonable as to the manner in which it is sent, its timeliness (i.e.,
35 a reasonable time before the disposition is to take place), and its content. See Sections 9-
36 612 (timeliness of notification), 9-613 (contents of notification generally), 9-614 (contents
37 of notification in consumer-goods transactions).

38 * * *

39 5. **Authentication Signature Requirement.** Subsections (b), and (c), and (e)
40 explicitly provide that a ~~notification of disposition~~ notifications must be "authenticated."

1 "signed." Some cases read ~~former~~ pre-1998 Section 9-504(3) as validating oral notification.
2 Consistent with the revised definition of "sign" in Section 1-201, the cognate term "signed"
3 replaces the references to "authenticated" in the pre-2022 text of this section.

4 * * *

5 **7. Recognized Market; Perishable Collateral.** ~~New subsection~~ Subsection (d) makes
6 it clear that there is no obligation to give notification of a disposition in the case of
7 perishable collateral or collateral customarily sold on a recognized market (e.g., marketable
8 securities). ~~Former Section 9-504(3) might be read (incorrectly) to relieve the secured party~~
9 ~~from its duty to notify a debtor but not from its duty to notify other secured parties in~~
10 ~~connection with dispositions of such collateral.~~ As to what constitutes a recognized market,
11 see Section 9-610, Comment 9.

12 * * *

13 **9. Waiver.** A debtor or secondary obligor may waive the right to notification under
14 this section only by a post-default ~~authenticated~~ signed agreement. See Section 9-624(a).

15 * * *

16 **Sec. A-150. 11 MRSA §9-1613, sub-§(5),** as enacted by PL 1999, c. 699, Pt. A,
17 §2 and affected by §4, is amended to read:

18 **(5).** The following form of notification or the form appearing in section 9-1614,
19 subsection (3), when completed, in accordance with the instructions in subsection (6) and
20 section 9-1614, subsection (3-A), each provides sufficient information:

21 **NOTIFICATION OF DISPOSITION OF COLLATERAL**

22
23 To: [Name of debtor, obligor or other person to
24 which the notification is sent]
25 From: [Name, address, and telephone number of
26 secured party]
27 Name of Debtor(s): _____ [Include only if debtor(s) not
28 addressee]

29 [For a public disposition:]

30 We will sell [or lease or license, as applicable] the [describe collateral] [to the highest
31 qualified bidder] in public as follows:

32 Day and Date: _____

33 Time: _____

34 Place: _____

35
36 [For a private disposition:]

37 We will sell [or lease or license, as applicable] the [describe collateral] privately
38 sometime after [day and date].

Official Comment

* * *

2. **Contents of Notification.** To comply with the "reasonable authenticated signed notification" requirement of Section 9-611(b), the contents of a notification must be reasonable. * * *

* * *

3. [Style Changes in Safe-Harbor Form and Medium Neutrality] No change in substance is intended by the changes in style to the form provided in paragraph (5) of the pre-2022 text of this section. However, the presentation and explanation of how to use the form has been simplified and clarified.

Sec. A-152. 11 MRSA §9-1614, sub-§(3), as enacted by PL 1999, c. 699, Pt. A, §2 and affected by §4, is amended to read:

(3). The following form of notification, when completed in accordance with the instructions in subsection (3-A), provides sufficient information.

~~[Name and or addresses of intended recipient]~~

~~[Date]~~

~~NOTICE OF OUR PLAN TO SELL PROPERTY~~

~~[Name and address of any obligor who is also a debtor]~~

~~Subject: [Identification of Transaction]~~

~~We have your [describe collateral] because you broke promises in our agreement.~~

~~[For a public disposition:]~~

~~We will sell [describe collateral] at public sale. A sale could include a lease or license. The sale will be held as follows:~~

~~Date: _____~~

~~Time: _____~~

~~Place: _____~~

~~You may attend the sale and bring bidders if you want.~~

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~~{For a private disposition:}~~

~~We will sell [describe collateral] at private sale sometime after [date]. A sale could include a lease or license.~~

~~The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the difference. If we get more money than you owe, you will get the extra money unless we must pay it to someone else.~~

~~You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at [telephone number].~~

~~If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at [telephone number] [or write us at [secured party's address]] and request a written explanation.~~

~~If you need more information about the sale, call us at [telephone number] [or write us at [secured party's address]].~~

~~We are sending this notice to the following other people who have an interest in [describe collateral] or who owe money under your agreement.~~

~~{Names of all other debtors and obligors, if any}~~

{End of Form}

(Name and address of secured party)

(Date)

NOTICE OF OUR PLAN TO SELL PROPERTY

(Name and address of any obligor who is also a debtor)

Subject: (Identify transaction)

We have your (describe collateral), because you broke promises in our agreement.

{1} We will sell (describe collateral) at public sale. A sale could include a lease or license. The sale will be held as follows:

(Date)

1 (Time)

2 (Place)

3 You may attend the sale and bring bidders if you want.

4 {2} We will sell (describe collateral) at private sale sometime after (date). A sale could
5 include a lease or license.

6 {3} The money that we get from the sale, after paying our costs, will reduce the amount
7 you owe. If we get less money than you owe, you (will or will not, as applicable) still owe
8 us the difference. If we get more money than you owe, you will get the extra money, unless
9 we must pay it to someone else.

10 {4} You can get the property back at any time before we sell it by paying us the full
11 amount you owe, not just the past due payments, including our expenses. To learn the exact
12 amount you must pay, call us at (telephone number).

13 {5} If you want us to explain to you in (writing) (writing or in (description of electronic
14 record)) (description of electronic record) how we have figured the amount that you owe
15 us, {6} call us at (telephone number) (or) (write us at (secured party's address)) (or contact
16 us by (description of electronic communication method)) {7} and request (a written
17 explanation) (a written explanation or an explanation in (description of electronic record))
18 (an explanation in (description of electronic record)).

19 {8} We will charge you \$ (amount) for the explanation if we sent you another written
20 explanation of the amount you owe us within the last six months.

21 {9} If you need more information about the sale (call us at (telephone number)) (or)
22 (write us at (secured party's address)) (or contact us by (description of electronic
23 communication method)).

24 {10} We are sending this notice to the following other people who have an interest in
25 (describe collateral) or who owe money under your agreement:

26 (Names of all other debtors and obligors, if any)

27 **[End of Form]**

28 **Sec. A-153. 11 MRSA §9-1614, sub-§(3-A)** is enacted to read:

29 **(3-A).** The following instructions apply to the form of notification in subsection (3).

30 (a). The instructions in this subsection refer to the numbers in braces before items in
31 the form of notification in subsection (3). Do not include the numbers or braces in the
32 notification. The numbers and braces are used only for the purpose of these
33 instructions.

34 (b). Include and complete either item {1}, if the notification relates to a public
35 disposition of the collateral, or item {2}, if the notification relates to a private
36 disposition of the collateral.

37 (c). Include and complete items {3}, {4}, {5}, {6} and {7}.

38 (d). In item {5}, include and complete any one of the 3 alternative methods for the
39 explanation: writing, writing or electronic record or electronic record.

1 (e). In item {6}, include the telephone number. In addition, the sender may include
2 and complete either or both of the 2 additional alternative methods of communication,
3 writing or electronic communication, for the recipient of the notification to
4 communicate with the sender. Neither of the two additional methods of communication
5 is required to be included.

6 (f). In item {7}, include and complete the method or methods for the explanation,
7 writing, writing or electronic record or electronic record, included in item {5}.

8 (g). Include and complete item {8} only if a written explanation is included in item
9 {5} as a method for communicating the explanation and the sender will charge the
10 recipient for another written explanation.

11 (h). In item {9}, include either the telephone number or the address or both the
12 telephone number and the address. In addition, the sender may include and complete
13 the additional method of communication, electronic communication, for the recipient
14 of the notification to communicate with the sender. The additional method of electronic
15 communication is not required to be included.

16 (i). If item {10} does not apply, insert "None" after "agreement:".

Official Comment

17 * * *

18
19 4. [Style Changes in Safe-Harbor Form and Medium Neutrality] No change in
20 substance is intended by the changes in style to the form provided in paragraph (3) of the
21 pre-2022 text of this section, except that in furtherance of medium neutrality references to
22 "electronic record" and "electronic communication method" have been added to the form.
23 However, the presentation and explanation of how to use the form has been simplified and
24 clarified.

25 **Sec. A-154. 11 MRSA §9-1615, sub-§(1), ¶(c)**, as enacted by PL 1999, c. 699,
26 Pt. A, §2 and affected by §4, is amended by amending subparagraph (i) to read:

27 (i) The secured party receives from the holder of the subordinate security interest
28 or other lien ~~an authenticated~~ a signed demand for proceeds before distribution of
29 the proceeds is completed; and

30 **Sec. A-155. 11 MRSA §9-1615, sub-§(1), ¶(d)**, as enacted by PL 1999, c. 699,
31 Pt. A, §2 and affected by §4, is amended to read:

32 (d). A secured party that is a consignor of the collateral if the secured party receives
33 from the consignor ~~an authenticated~~ a signed demand for proceeds before distribution
34 of the proceeds is completed.

Official Comment

35 * * *

36
37 8. "Signed" Replaces "Authenticated." Consistent with the revised definition of
38 "sign" in Section 1-201, the cognate term "signed" replaces the reference to "authenticated"
39 in the pre-2022 text of this section.

1 **Sec. A-156. 11 MRSA §9-1616, sub-§(1)**, as enacted by PL 1999, c. 699, Pt. A,
2 §2 and affected by §4, is amended to read:

3 **(1).** In this section:

4 (a). "Explanation" means a ~~writing~~ record that:

5 (i) States the amount of the surplus or deficiency;

6 (ii) Provides an explanation in accordance with subsection (3) of how the secured
7 party calculated the surplus or deficiency;

8 (iii) States, if applicable, that future debits, credits, charges including additional
9 credit service charges or interest, rebates and expenses may affect the amount of
10 the surplus or deficiency; and

11 (iv) Provides a telephone number or mailing address from which additional
12 information concerning the transaction is available; and

13 (b). "Request" means a record:

14 (i) ~~Authenticated~~ Signed by a debtor or consumer obligor;

15 (ii) Requesting that the recipient provide an explanation; and

16 (iii) Sent after disposition of the collateral under section 9-1610.

17 **Sec. A-157. 11 MRSA §9-1616, sub-§(2), ¶(a)**, as enacted by PL 1999, c. 699,
18 Pt. A, §2 and affected by §4, is amended by amending subparagraph (i) to read:

19 (i) Before or when the secured party accounts to the debtor and pays any surplus
20 or first makes ~~written~~ demand in a record on the consumer obligor after the
21 disposition for payment of the deficiency; and

22 **Sec. A-158. 11 MRSA §9-1616, sub-§(3)**, as enacted by PL 1999, c. 699, Pt. A,
23 §2 and affected by §4, is amended to read:

24 **(3).** To comply with subsection (1), paragraph (a), subparagraph (ii), ~~a writing an~~
25 explanation must provide the following information in the following order:

26 (a). The aggregate amount of obligations secured by the security interest under which
27 the disposition was made and, if the amount reflects a rebate of unearned interest or
28 credit service charge, an indication of that fact, calculated as of a specified date:

29 (i) If the secured party takes or receives possession of the collateral after default,
30 not more than 35 days before the secured party takes or receives possession; or

31 (ii) If the secured party takes or receives possession of the collateral before default
32 or does not take possession of the collateral, not more than 35 days before the
33 disposition;

34 (b). The amount of proceeds of the disposition;

35 (c). The aggregate amount of the obligations after deducting the amount of proceeds;

36 (d). The amount, in the aggregate or by type, and types of expenses, including expenses
37 of retaking, holding, preparing for disposition, processing and disposing of the
38 collateral, and attorney's fees secured by the collateral that are known to the secured
39 party and relate to the current disposition;

1 (e). The amount, in the aggregate or by type, and types of credits, including rebates of
2 interest or credit service charges, to which the obligor is known to be entitled and that
3 are not reflected in the amount in paragraph (a); and

4 (f). The amount of the surplus or deficiency.

5 **Official Comment**

6 * * *

7 **2. Duty to Send Information Concerning Surplus or Deficiency.** This section
8 reflects the view that, in every consumer-goods transaction, the debtor or obligor is entitled
9 to know the amount of a surplus or deficiency and the basis upon which the surplus or
10 deficiency was calculated. Under subsection (b)(1), a secured party is obligated to provide
11 this information (an "explanation," defined in subsection (a)(1)) no later than the time that
12 it accounts for and pays a surplus or the time of its first ~~written attempt~~ demand in a record
13 in an attempt to collect the deficiency. The obligor need not make a request for an
14 accounting in order to receive an explanation. A secured party who does not attempt to
15 collect a deficiency in ~~writing~~ a demand in a record or account for and pay a surplus has no
16 obligation to send an explanation under subsection (b)(1) and, consequently, cannot be
17 liable for noncompliance.

18 A debtor or secondary obligor need not wait until the secured party commences ~~written~~
19 collection efforts in a demand in a record in order to receive an explanation of how a
20 deficiency or surplus was calculated. Subsection (b)(1)(B) obliges the secured party to send
21 an explanation within 14 days after it receives a "request" (defined in subsection (a)(2)).

22 * * *

23 **5. "Signed" Replaces "Authenticated"; Medium Neutrality.** Consistent with the
24 revised definition of "sign" in Section 1-201, the cognate term "signed" replaces the
25 reference to "authenticated" in the pre-2022 text of this section. In furtherance of medium
26 neutrality, the reference in the pre-2022 text of this section to a "written demand" has been
27 replaced by a reference to a "demand in a record" and the reference to a "writing" has been
28 replaced by a reference to a "record."

29 **Sec. A-159. 11 MRSA §9-1619, sub-§(1)**, as enacted by PL 1999, c. 699, Pt. A,
30 §2 and affected by §4, is amended to read:

31 **(1).** In this section, "transfer statement" means a record ~~authenticated~~ signed by a
32 secured party stating:

33 (a). That the debtor has defaulted in connection with an obligation secured by specified
34 collateral;

35 (b). That the secured party has exercised its post-default remedies with respect to the
36 collateral;

37 (c). That, by reason of the exercise, a transferee has acquired the rights of the debtor
38 in the collateral; and

39 (d). The name and mailing address of the secured party, debtor and transferee.

40 **Official Comment**

1 * * *

2 **4. "Signed" Replaces "Authenticated."** Consistent with the revised definition of
3 "sign" in Section 1-201, the cognate term "signed" replaces the reference to "authenticated"
4 in the pre-2022 text of this section.

5 **Sec. A-160. 11 MRSA §9-1620, sub-§(1), ¶(b),** as enacted by PL 1999, c. 699,
6 Pt. A, §2 and affected by §4, is amended to read:

7 (b). The secured party does not receive, within the time set forth in subsection (4), a
8 notification of objection to the proposal ~~authenticated~~ signed by:

9 (i) A person to which the secured party was required to send a proposal under
10 section 9-1621; or

11 (ii) Any other person, other than the debtor, holding an interest in the collateral
12 subordinate to the security interest that is the subject of the proposal;

13 **Sec. A-161. 11 MRSA §9-1620, sub-§(2), ¶(a),** as enacted by PL 1999, c. 699,
14 Pt. A, §2 and affected by §4, is amended to read:

15 (a). The secured party consents to the acceptance in ~~an authenticated~~ a signed record
16 or sends a proposal to the debtor; and

17 **Sec. A-162. 11 MRSA §9-1620, sub-§(3),** as enacted by PL 1999, c. 699, Pt. A,
18 §2 and affected by §4, is amended to read:

19 **(3).** For purposes of this section:

20 (a). A debtor consents to an acceptance of collateral in partial satisfaction of the
21 obligation it secures only if the debtor agrees to the terms of the acceptance in a record
22 ~~authenticated~~ signed after default; and

23 (b). A debtor consents to an acceptance of collateral in full satisfaction of the
24 obligation it secures only if the debtor agrees to the terms of the acceptance in a record
25 ~~authenticated~~ signed after default or the secured party:

26 (i) Sends to the debtor after default a proposal that is unconditional or subject only
27 to a condition that collateral not in the possession of the secured party be preserved
28 or maintained;

29 (ii) In the proposal, proposes to accept collateral in full satisfaction of the
30 obligation it secures; and

31 (iii) Does not receive a notification of objection ~~authenticated~~ signed by the debtor
32 within 20 days after the proposal is sent.

33 **Sec. A-163. 11 MRSA §9-1620, sub-§(6), ¶(b),** as enacted by PL 1999, c. 699,
34 Pt. A, §2 and affected by §4, is amended to read:

35 (b). Within any longer period to which the debtor and all secondary obligors have
36 agreed in an agreement to that effect entered into and ~~authenticated~~ signed after default.

37 **Official Comment**

38 * * *

1 3. **Conditions to Effective Acceptance.** Subsection (a) contains the conditions
2 necessary to the effectiveness of an acceptance of collateral. Subsection (a)(1) requires the
3 debtor's consent. Under subsections (c)(1) and (c)(2), the debtor may consent by agreeing
4 to the acceptance in writing after default. Subsection (c)(2) contains an alternative method
5 by which to satisfy the debtor's-consent condition in subsection (a)(1). It follows the
6 proposal-and-objection model found in ~~former~~ pre-1998 Section 9-505: The debtor
7 consents if the secured party sends a proposal to the debtor and does not receive an
8 objection within 20 days. Under subsection (c)(1), however, that silence is not deemed to
9 be consent with respect to acceptances in partial satisfaction. Thus, a secured party who
10 wishes to conduct a "partial strict foreclosure" must obtain the debtor's agreement in a
11 record ~~authenticated~~ a signed after default. In all other respects, the conditions necessary
12 to an effective partial strict foreclosure are the same as those governing acceptance of
13 collateral in full satisfaction. (But see subsection (g), prohibiting partial strict foreclosure
14 of a security interest in consumer transactions.)

15 * * *

16 4. **Proposals.** Section 9-102 defines the term "proposal." It is necessary to send a
17 "proposal" to the debtor only if the debtor does not agree to an acceptance in ~~an~~
18 ~~authenticated~~ a signed record as described in subsection (c)(1) or (c)(2). Section 9-621(a)
19 determines whether it is necessary to send a proposal to third parties. A proposal need not
20 take any particular form as long as it sets forth the terms under which the secured party is
21 willing to accept collateral in satisfaction. A proposal to accept collateral should specify
22 the amount (or a means of calculating the amount, such as by including a per diem accrual
23 figure) of the secured obligations to be satisfied, state the conditions (if any) under which
24 the proposal may be revoked, and describe any other applicable conditions. Note, however,
25 that a conditional proposal generally requires the debtor's agreement in order to take effect.
26 See subsection (c).

27 5. **Secured Party's Agreement; No "Constructive" Strict Foreclosure.** The
28 conditions of subsection (a) relate to actual or implied consent by the debtor and any
29 secondary obligor or holder of a junior security interest or lien. To ensure that the debtor
30 cannot unilaterally cause an acceptance of collateral, subsection (b) provides that
31 compliance with these conditions is necessary but not sufficient to cause an acceptance of
32 collateral. Rather, under subsection (b), acceptance does not occur unless, in addition, the
33 secured party consents to the acceptance in ~~an authenticated~~ a signed record or sends to the
34 debtor a proposal. For this reason, a mere delay in collection or disposition of collateral
35 does not constitute a "constructive" strict foreclosure. Instead, delay is a factor relating to
36 whether the secured party acted in a commercially reasonable manner for purposes of
37 Section 9-607 or 9-610. A debtor's voluntary surrender of collateral to a secured party and
38 the secured party's acceptance of possession of the collateral does not, of itself, necessarily
39 raise an implication that the secured party intends or is proposing to accept the collateral in
40 satisfaction of the secured obligation under this section.

41 * * *

42 10. **Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes.** If the
43 collateral is accounts, chattel paper, payment intangibles, or promissory notes, then a
44 secured party's acceptance of the collateral in satisfaction of secured obligations would
45 constitute a sale to the secured party. That sale normally would give rise to a new security
46 interest (the ownership interest) under Sections ~~4-201(37)~~ 1-201(b)(35) and 9-109. In the

1 case of accounts and chattel paper, the new security interest would remain perfected by a
2 filing that was effective to perfect the secured party's original security interest. In the case
3 of payment intangibles or promissory notes, the security interest would be perfected when
4 it attaches. See Section 9-309. However, the procedures for acceptance of collateral under
5 this section satisfy all necessary formalities and a new security agreement ~~authenticated~~
6 signed by the debtor would not be necessary.

7 * * *

8 13. "Signed" Replaces "Authenticated." Consistent with the revised definition of
9 "sign" in Section 1-201, the cognate term "signed" replaces the references to
10 "authenticated" in the pre-2022 text of this section.

11 **Sec. A-164. 11 MRSA §9-1621, sub-§(1), ¶(a)**, as enacted by PL 1999, c. 699,
12 Pt. A, §2 and affected by §4, is amended to read:

13 (a). Any person from which the secured party has received, before the debtor consented
14 to the acceptance, ~~an authenticated~~ a signed notification of a claim of an interest in the
15 collateral;

16 Official Comment

17 * * *

18 3. "Signed" Replaces "Authenticated." Consistent with the revised definition of
19 "sign" in Section 1-201, the cognate term "signed" replaces the reference to "authenticated"
20 in the pre-2022 text of this section.

21 **Sec. A-165. 11 MRSA §9-1624**, as enacted by PL 1999, c. 699, Pt. A, §2 and
22 affected by §4, is amended to read:

23 §9-1624. Waiver

24 (1). A debtor or secondary obligor may waive the right to notification of disposition
25 of collateral under section 9-1611 only by an agreement to that effect entered into and
26 ~~authenticated~~ signed after default.

27 (2). A debtor may waive the right to require disposition of collateral under section
28 9-1620, subsection (5) only by an agreement to that effect entered into and ~~authenticated~~
29 signed after default.

30 (3). Except in a consumer-goods transaction, a debtor or secondary obligor may waive
31 the right to redeem collateral under section 9-1623 only by an agreement to that effect
32 entered into and ~~authenticated~~ signed after default.

33 Official Comment

34 * * *

35 3. "Signed" Replaces "Authenticated." Consistent with the revised definition of
36 "sign" in Section 1-201, the cognate term "signed" replaces the references to
37 "authenticated" in the pre-2022 text of this section.

38 **Sec. A-166. 11 MRSA §9-1628, sub-§(1)**, as enacted by PL 1999, c. 699, Pt. A,
39 §2 and affected by §4, is amended to read:

1 (1). ~~Unless~~ Subject to subsection (6), unless a secured party knows that a person is a
2 debtor or obligor, knows the identity of the person and knows how to communicate with
3 the person:

4 (a). The secured party is not liable to the person or to a secured party or lienholder that
5 has filed a financing statement against the person for failure to comply with this Article;
6 and

7 (b). The secured party's failure to comply with this Article does not affect the liability
8 of the person for a deficiency.

9 **Sec. A-167. 11 MRSA §9-1628, sub-§(2)**, as enacted by PL 1999, c. 699, Pt. A,
10 §2 and affected by §4, is amended to read:

11 (2). ~~A~~ Subject to subsection (6), a secured party is not liable because of its status as
12 secured party:

13 (a). To a person that is a debtor or obligor, unless the secured party knows:

14 (i) That the person is a debtor or obligor;

15 (ii) The identity of the person; and

16 (iii) How to communicate with the person; or

17 (b). To a secured party or lienholder that has filed a financing statement against a
18 person, unless the secured party knows:

19 (i) That the person is a debtor; and

20 (ii) The identity of the person.

21 **Sec. A-168. 11 MRSA §9-1628, sub-§(6)** is enacted to read:

22 (6). Subsections (1) and (2) do not apply to limit the liability of a secured party to a
23 person if, at the time the secured party obtains control of collateral that is a controllable
24 account, controllable electronic record or controllable payment intangible or at the time the
25 security interest attaches to the collateral, whichever is later:

26 (a). The person is a debtor or obligor; and

27 (b). The secured party knows that the information in subsection (2), paragraph (a),
28 subparagraph (i), (ii) or (iii) relating to the person is not provided by the collateral, a
29 record attached to or logically associated with the collateral or the system in which the
30 collateral is recorded.

31 Official Comment

32 * * *

33 2. **Exculpatory Provisions.** ~~Subsections (a), (b), and (c) contain exculpatory~~
34 ~~provisions that should be read in conjunction with Section 9-605 and Comments. Without~~
35 ~~this group of provisions, a secured party could incur liability to unknown persons and under~~
36 ~~circumstances that would not allow the secured party to protect itself. The broadened~~
37 ~~definition of the term "debtor" underscores the need for these provisions. With respect to~~
38 ~~subsection (f), see Section 9-605, Comments 2 and 3.~~

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PART B

PREFATORY NOTE to Article 12

1. **Introduction to Controllable Electronic Records.** Article 12, which deals with controllable electronic records, and the conforming amendments to Articles 1 and 9, in particular, are a major part of the effort to adapt the UCC to emerging technologies as they might affect electronic commerce.

Article 12 creates a legal regime that is meant to apply more broadly than to electronic (intangible) assets that are created using existing technologies such as distributed ledger technology (DLT), including blockchain technology, which records transactions in bitcoin and other digital assets. It also aspires to apply to electronic assets that may be created using technologies that have yet to be developed, or even imagined.

The adoption of DLT has underscored two important trends in electronic commerce. First, people have begun to assign economic value to some electronic records that bear no relationship to extrinsic rights and interests. For example, without any law or legally enforceable agreement, people around the world have agreed to treat virtual currencies such as bitcoin (or, more precisely "transaction outputs" generated by the Bitcoin protocol) as a medium of exchange and store of value. Second, people are using the creation or transfer of electronic records to transfer rights to receive payment, rights to receive performance of other obligations (e.g., services or delivery of goods), and other rights and interests in personal and real property.

These trends will inevitably result in disputes among claimants to electronic records and their related rights and other benefits. Uncertainty as to the criteria for resolving these claims creates commercial risk. The magnitude of these risks will grow as these trends continue.

As explained in more detail below, Article 12 is designed to reduce these risks by providing legal rules governing the transfer—both outright and for security—of interests in some, but not all, electronic records (controllable electronic records). These rules specify certain rights in a controllable electronic record that a purchaser would acquire. Many systems for transferring controllable electronic records are pseudonymous, so that the transferee of a controllable electronic record may be unable to verify the identity of the transferor or the source of the transferor's title. Accordingly, the Article 12 rules would make controllable electronic records negotiable, in the sense that a qualifying good faith purchaser for value could take a controllable electronic record free of third-party claims of a property interest in the controllable electronic record.

Experience with DLT and other records-management systems has established some general functions required for electronic records to serve as an effective and reliable means of transferring economic value.

The electronic record must have some "use" or benefit that one person can enjoy and can exclude all others from enjoying, e.g., the power to "spend" a bitcoin (or, more precisely, the power to include an unspent transaction output (a UTXO) in a message that the Bitcoin protocol will record to its blockchain).

1 A person must be able to transfer to another person this exclusive power to use and the
2 exclusive power to transfer the electronic record. To remain exclusive, the transfer
3 must divest the transferor of the power to use the electronic record.

4 A person must be able to demonstrate to others that the person has the power to use
5 and transfer control of the electronic record.

6 As discussed in the Comments to Section 12-105, these functions form the basis of the
7 Article 12 concept of control. To receive the benefits of negotiability and take free of third-
8 party claims of a property interest in a controllable electronic record, a person must have
9 control of the controllable electronic record. In addition, control serves as a method of
10 perfection of a security interest in a controllable electronic record and as a condition for
11 achieving a non-temporal priority of a security interest. In this context, it may be useful to
12 think of control as the functional analogue of possession of tangible personal property such
13 as goods. Note that the concept of control allows for certain exceptions to the exclusivity
14 of powers.

15 Article 12 governs certain rights (primarily property rights) of transacting parties and
16 other persons that might be affected by the transactions. Article 12 does not govern assets
17 other than controllable electronic records except, in coordination with Article 9,
18 controllable accounts and controllable payment intangibles evidenced by controllable
19 electronic records (discussed below). Like the UCC in general, Article 12 is not a regulatory
20 statute. The fact that an asset is or is not a controllable electronic record under the UCC
21 would not necessarily affect the application of laws regulating, for example, banking,
22 securities, commodities, money transmission, and taxation.

23 2. Scope of Article 12.

24 Article 12 applies to controllable electronic records. Controllable electronic records are
25 a subset of what often are referred to as digital assets. Article 12 is designed to work for
26 both technologies that are known and those that may be developed in the future. Whether
27 an asset is a controllable electronic record (and therefore within the scope of Article 12)
28 depends on whether the characteristics of the asset and the protocols of any system on
29 which the asset is recorded make it suitable for the application of Article 12's substantive
30 rules. The nature of electronic commerce is constantly changing. For this reason, the
31 technology on which an asset depends, the type of asset, and the prevailing use of the asset
32 should all be irrelevant to whether the asset is a controllable electronic record.

33 To determine whether Article 12 applies to a particular asset, for example, bitcoin, one
34 must determine whether the asset falls within the definition of controllable electronic
35 record. A controllable electronic record is a record, as the UCC defines the term. A record
36 is information that is retrievable in perceivable form. Section 1-201(b)(31) (defining
37 "record"). A controllable electronic record is a record that is stored in an electronic medium
38 and that can be subjected to control, as defined in Section 12-105. Sections 1-201(b)(16A)
39 (defining "electronic"); 12-102(a)(1) (defining "controllable electronic record"). An
40 electronic record that cannot be subjected to control under Section 12-105 is outside the
41 scope of Article 12. As already mentioned, Article 12 addresses primarily certain property
42 rights in controllable electronic records. Of course, that an electronic record is not subject
43 to control does not imply that it does not have commercial utility. Businesses generate and
44 sell or license large quantities of electronic records that do not require the attributes of
45 negotiability that Article 12 affords to controllable electronic records.

1 The meaning of control in the UCC depends on the type of property involved. See
2 Sections 7-106 (electronic documents of title); 8-106 (four different types of investment
3 property, each with a different definition of "control"); 9-104 (deposit accounts); 9-105
4 (chattel paper); 9-105A (electronic money). The Comments to Section 12-105 explain the
5 requirements for obtaining control of a controllable electronic record. For present purposes
6 of exposition, it is sufficient to think of bitcoin and other virtual currencies as prototypical
7 controllable electronic records. The provisions under other law that govern control and
8 other matters for other types of electronic records (some of which are modified by these
9 amendments) are not addressed by Article 12.

10 **3. Substantive Provisions of Article 12.**

11 The principal function of Article 12 is to specify certain rights of a purchaser of a
12 controllable electronic record. A purchaser is a person that acquires an interest in property
13 by a voluntary transaction, such as a sale. Section 1-201(b)(29) (defining "purchase"), (30)
14 (defining "purchaser"). Purchasers include both buyers and secured parties. Law other than
15 Article 12 would determine whether a person acquires any rights in a controllable electronic
16 record and so would be eligible to be a purchaser. Section 12-104(c).

17 Section 12-104 adopts the "shelter" principle, under which a purchaser of a controllable
18 electronic record acquires whatever rights the transferor had or had power to transfer.
19 Section 12-104(d). A similar rule appears in Articles 2, 3, 7, and 8. See Sections 2-403(1)
20 (goods); 3-203(b) (negotiable instruments); 7-504(a) (documents of title); 8-302(a)
21 (certificated and uncertificated securities).

22 The ability to take a controllable electronic record free of third-party property claims
23 appears to be necessary for a controllable electronic record to have commercial utility. As
24 is the case with Articles 2, 3, 7, and 9, Article 12 would facilitate commerce by affording
25 to certain good-faith purchasers for value (buyers as well as secured parties) greater rights
26 than their transferors had or had power to transfer. (Article 8 also provides for certain
27 purchasers for value to take greater rights than their transferors had, but does not contain
28 an explicit good-faith requirement. See Section 8-303.) Article 12 refers to these purchasers
29 as qualifying purchasers. Qualifying purchasers are purchasers that obtain control of a
30 controllable electronic record for value, in good faith, and without notice of any claim of a
31 property interest in the controllable electronic record. Section 12-102(a)(2). Like a holder
32 in due course of a negotiable instrument, a qualifying purchaser of a controllable electronic
33 record takes the controllable electronic record free of property claims. Section 12-104(e).

34 Consider an example in which B contracts to buy bitcoin from S.

35 Law other than Article 12 generally would determine whether S is the owner of the
36 bitcoin.

37 Law other than Article 12 would resolve issues concerning the formation of the contract
38 of sale between B and S and the obligations of the parties under the contract.

39 Except to the extent provided by Article 12, law other than Article 12 would determine
40 what steps are necessary for B to acquire rights in the bitcoin.

41 By acquiring rights in the bitcoin by sale, B would become a purchaser of the bitcoin
42 within the meaning of UCC Article 1.

1 Article 12 provides that if B becomes a purchaser, B will acquire whatever rights S had
2 or had power to transfer. As a general matter, law other than Article 12 would define these
3 rights. B would acquire these rights regardless of whether B obtained control of the bitcoin.

4 In this example, law other than Article 12 includes UCC Article 9, which determines
5 the steps necessary for a security interest to attach to a controllable electronic record. More
6 generally, Article 9 governs any conflict between Article 9 and Article 12. Section 12-
7 103(a).

8 Now assume that O is the owner of the bitcoin and that S is a hacker, who acquired
9 control of the bitcoin illegally from O.

10 Just as a buyer of goods can obtain possession from a seller that has no rights in the
11 goods, B can obtain control of the bitcoin, even if S "stole" it from O.

12 If B obtains control of the bitcoin for value, in good faith, and without notice of any
13 claim of a property interest, B would be a qualifying purchaser.

14 Even if B would not have acquired any rights in the bitcoin under non-Article 12 law
15 (for example, because S, a "thief," had no rights to give), as an Article 12 qualifying
16 purchaser, B would acquire the bitcoin free of all claims of a property interest in the bitcoin.
17 S's control of the bitcoin gave S the power to transfer rights to a qualifying purchaser, such
18 as B. Even if O could locate B, B would defeat O's claim of ownership and own the bitcoin
19 free and clear. (The same result would obtain if B bought a negotiable instrument from a
20 thief under circumstances where B became a holder in due course. This distinguishes
21 "negotiable" property from property such as goods, as to which a buyer from a thief
22 normally obtains no rights.)

23 **4. Rights or Property Linked to a Controllable Electronic Record.**

24 **a. General Rules.**

25 Recall that a controllable electronic record is a record, i.e., information. Some records
26 have what one might call "inherent value" solely because the market treats them as having
27 value. Bitcoin would be an example of such a record. Bitcoin can be exchanged (sold) for
28 cash or other valuable assets. Or, the owner of bitcoin can hold the bitcoin as an investment.

29 The value of many records, however, is as evidence of the rights of the parties to a
30 transaction or of the rights of a party in other property. In these situations, it is essential to
31 differentiate between the record and the rights that are evidenced by the record.

32 Suppose, for example, that S and B enter into a written contract for the sale of 100 air
33 purifiers. The contract provides that at a specified time in the future, S is to deliver the
34 goods and B is to pay for them. B may sell (assign) to P the right to receive delivery of the
35 goods from S. P has acquired a valuable asset, i.e., the right to receive delivery.

36 In contrast, if B sells to P only the paper (record) on which the contract is written, P
37 might or might not acquire the right to delivery of the goods, depending on whether
38 applicable law treats the sale of the paper as an assignment of the right to delivery (as can
39 be the case with a negotiable document of title under UCC Article 7). P would become the
40 owner of the paper in any event, but the paper itself may be of little value.

41 If the contract for the sale of air purifiers were electronic rather than written, the same
42 analysis would apply. The right evidenced by the electronic record (i.e., B's right to receive
43 delivery from S) would be the valuable asset, not the record itself.

1 Suppose that the contract of sale between B and S is evidenced by a controllable
2 electronic record that B sells to P. Under Section 12-104(d), P would acquire all rights in
3 the controllable electronic record that the transferor (B) had or had power to transfer. If P
4 obtains control of the controllable electronic record for value, in good faith, and without
5 notice of any claim of a property right in the controllable electronic record, P will become
6 a qualifying purchaser and, as such, would acquire its rights in the controllable electronic
7 record free of any claim of a property right under Section 12-104.

8 But the controllable electronic record itself may or may not be a valuable asset. In this
9 example, unlike bitcoin, the record would have value to P only if by virtue of acquiring
10 rights in the controllable electronic record, P would also acquire the right to receive
11 delivery of the goods from S.

12 Except to the extent provided by Article 12, that Article leaves to other law the question
13 whether P's acquisition of rights in the controllable electronic record gives P the right to
14 receive delivery of the goods. Section 12-104(f). We would typically expect that under
15 other law P would not acquire the right to receive the goods merely by acquiring rights in
16 the controllable electronic record, any more than P would have acquired the right to receive
17 the goods if the record were in paper form, the paper were physically delivered to P, and P
18 acquired rights in the paper.

19 Suppose, however, that other law does provide that, by acquiring the controllable
20 electronic record, P would acquire the right to receive delivery of the goods from S.
21 Suppose also that P becomes a qualifying purchaser of the controllable electronic record.
22 As we have seen, as a qualifying purchaser, P would take its rights in the controllable
23 electronic record free of property claims. But even though under non-Article 12 law P
24 would (as posited) acquire the right to receive delivery of the goods, P would not acquire
25 that right free of property claims unless non-Article 12 law also were to provide otherwise.
26 Section 12-104(f).

27 **b. Exceptions: Controllable Accounts and Controllable Payment Intangibles.**

28 As a general rule, Article 12 applies to records and not to rights evidenced by records
29 (or to rights that records are purported to evidence). And, in general, law other than Article
30 12 would govern what steps must be taken or conditions must be satisfied for a person to
31 acquire an interest in a controllable electronic record and the rights, if any, that the person
32 acquires in other property (including a right to payment or performance of an obligation)
33 as a result of acquiring an interest in the record. This "other" law includes UCC Article 9.

34 Article 12 provides an important exception to this general rule. The exception concerns
35 rights to payment (specifically, accounts and payment intangibles) that are evidenced by a
36 controllable electronic record and as to which the obligor (account debtor) undertakes to
37 pay the person that has control of the controllable electronic record. These rights to
38 payment are referred to as "controllable accounts" and "controllable payment intangibles."
39 See Section 9-102(a)(27A) (defining "controllable account") and (27B) (defining
40 "controllable payment intangible"). A qualifying purchaser of a controllable account or
41 controllable payment intangible takes free of property claims and is protected from certain
42 actions. See Section 12-104(a) through (e), (g), and (h), and Comments 6 through 10. As
43 to the feasibility and rationale for this exception for controllable accounts and controllable
44 payment intangibles, see Section 12-104, Comments 9 and 10.

1 account, an electronic copy of a record evidencing chattel paper, an electronic
2 document of title, investment property, a transferable record or an electronic record
3 that is a medium of exchange currently authorized or adopted by a domestic or foreign
4 government and is not a medium of exchange that was recorded or transferable in a
5 system that existed and operated for a medium of exchange before the medium of
6 exchange was authorized or adopted by the government.

7 (b). "Qualifying purchaser" means a purchaser of a controllable electronic record or
8 an interest in a controllable electronic record that obtains control of the controllable
9 electronic record for value, in good faith, and without notice of a claim of a property
10 right in the controllable electronic record.

11 (c). "Transferable record" has the same meaning as in:

12 (i) 15 United States Code, Section 7021(a)(1); or

13 (ii) Title 10, section 9416, subsection 1.

14 (d). "Value" has the same meaning provided in section 3-1303, subsection (1), as if
15 references in that subsection to an "instrument" were references to a controllable
16 account, controllable electronic record or controllable payment intangible.

17 (2). The definitions in Article 9-A of "account debtor," "controllable account,"
18 "controllable payment intangible," "chattel paper," "deposit account" and "investment
19 property" apply to this Article.

20 (3). Article 1-A contains general definitions and principles of construction and
21 interpretation applicable throughout this Article.

22 **Official Comment**

23 1. **Source.** Subsection (a)(2), defining "qualifying purchaser," derives from Section 3-
24 302(a)(2), which defines "holder in due course" of a negotiable instrument.

25 2. **"Controllable electronic record."** To be a "controllable electronic record" (CER)
26 within the scope of Article 12, an electronic record must be susceptible of control under
27 Section 12-105. Unlike "transferable records" under the Electronic Signatures in Global
28 and National Commerce Act (E-SIGN) or a "transferable record" under the Uniform
29 Electronic Transactions Act (UETA), a record can be a CER under Article 12 in the absence
30 of an agreement to that effect.

31 This definition uses the term "record," defined in Section 1-201 to include "information
32 that is stored in an electronic or other medium and is retrievable in perceivable form." The
33 term "electronic" also is defined in Section 1-201. These broad definitions of "record" and
34 "electronic" necessarily produce an expansive meaning of "electronic record." An
35 electronic record would include, for example, music stored on compact disks, email
36 messages, digital photos, personal and other information stored on a social media platform,
37 and all types of databases stored on in an electronic medium. But most of these electronic
38 records typically would not fall within the definition of a CER in subsection (a)(1), which
39 includes only those electronic records "that can be subjected to control under Section 12-
40 105." See generally Prefatory Note 2.

41 Consider, for example, a so-called "page" on a social media platform. Generalizations
42 about social media/social networking platforms are difficult and these systems no doubt

1 will continue to evolve. But these platforms typically involve licensing arrangements with
2 users that do not permit the users (or anyone) to acquire the exclusive powers contemplated
3 by the definition of "control" in Section 12-105. Consequently, these electronic records are
4 not controllable electronic records as defined.

5 The provisions of Article 12 also do not apply to certain specified types of electronic
6 records, and the definition has been limited accordingly. For example, the definition does
7 not include a "transferable record" under E-SIGN or UETA. It also does not include
8 "investment property," as defined in Section 9-102(a)(49). For this reason, the rights of an
9 entitlement holder in a controllable electronic record that is a financial asset with respect
10 to which the entitlement holder has a security entitlement are excluded from the definition
11 (although the entitlement holder's securities intermediary may hold directly an interest in a
12 controllable electronic record that it has credited to a securities account). See Sections 8-
13 102(a)(9) (defining "financial asset"), (a)(14) (defining "securities intermediary"), (a)(17)
14 (defining "security entitlement"), and Comment 9; 9-102(a)(49) (defining "investment
15 property"). See also Section 8-103(h), clarifying that a controllable electronic record is not
16 a "financial asset" except pursuant to Section 8-102(a)(9)(iii).

17 A controllable electronic record is not itself a "security," defined in part in Section 8-
18 102(a)(15) as "an obligation of an issuer or a share, participation, or other interest in an
19 issuer or in property or an enterprise of an issuer." It also is not "a share or similar equity
20 interest," an "investment company security," or "an interest in a partnership or limited
21 liability company." See Section 8-103(a), (b), and (c). For a discussion of the roles that
22 controllable electronic records may play in transactions involving uncertificated securities,
23 see Section 8-102, Comment 18.

24 **3. "Qualifying purchaser."** The conditions for becoming a qualifying purchaser were
25 drawn from Article 3. More specifically, the conditions for becoming a qualifying
26 purchaser were drawn from Section 3-302(a)(2), which defines "holder in due course" of a
27 negotiable instrument. Among these conditions is that a person take the instrument "for
28 value." See subsection (a)(4) (defining "value") and Comment 5. To meet the requirements
29 for a qualifying purchaser under subsection (a)(2) there must be a time at which all of the
30 requirements are satisfied. For example, if a purchaser obtains notice of a claim of a
31 property right before giving value or satisfying the requirements for control, the purchaser
32 cannot be a qualifying purchaser.

33 Under Section 12-104(a), not only a purchaser of a controllable electronic record but
34 also a purchaser of a controllable account or controllable payment intangible may be a
35 qualifying purchaser. Moreover, a purchaser of a controllable account or a controllable
36 payment intangible may be a qualifying purchaser even if the purchaser does not also
37 purchase the controllable electronic record that evidences the account or payment
38 intangible. For example, a secured party having a security interest in all of a debtor's
39 accounts and payment intangibles would be a purchaser of those rights to payment, which
40 would include the debtor's controllable accounts and payment intangibles. If the secured
41 party were to obtain control of the debtor's controllable account or payment intangible, it
42 would become a qualifying purchaser if it also met the other conditions for that status.
43 However, to obtain control of the controllable account or controllable payment intangible,
44 a requirement for qualifying purchaser status, the purchaser must obtain control of the
45 controllable electronic record evidencing the controllable account or controllable payment

1 intangible. Section 12-104(b); see also Section 9-107A. A person need not be a purchaser,
2 however, to obtain control of a controllable electronic record.

3 4. "Transferable record." This definition facilitates the exclusion of transferable
4 records from the definition of controllable electronic record.

5 5. "Value." This definition adopts the concept of value in Section 3-303, which is
6 narrower than the generally applicable concept in Section 1-204. Comment 10 to Section
7 12-104 explains the difference between the two concepts.

8 **§12-103. Relation to Article 9-A and consumer laws**

9 (1). If there is conflict between this Article and Article 9-A, Article 9-A governs.

10 (2). A transaction subject to this Article is subject to any applicable rule of law that
11 establishes a different rule for consumers, including Title 9-A, Title 30-A, chapter 183,
12 subchapter 6 and Title 32, chapter 109-A.

13 **Official Comment**

14 Source. Subsection (a) follows Section 3-102(b). Notwithstanding subsection (a), as is
15 the case with respect to Article 3, Article 9 explicitly defers to Article 12 in some instances.
16 See, e.g., Section 9-331. Subsection (b) is copied from Section 9-201(b). To the extent that
17 Article 9 contains provisions described in subsection (b), subsections (a) and (b) are not
18 mutually exclusive.

19 **§12-104. Rights in controllable account, controllable electronic record and**
20 **controllable payment intangible**

21 (1). This section applies to the acquisition and purchase of rights in a controllable
22 account or controllable payment intangible, including the rights and benefits under
23 subsections (3), (4), (5), (6) and (7) of a purchaser and qualifying purchaser, in the same
24 manner as this section applies to a controllable electronic record.

25 (2). To determine whether a purchaser of a controllable account or a controllable
26 payment intangible is a qualifying purchaser, the purchaser obtains control of the account
27 or payment intangible if it obtains control of the controllable electronic record that
28 evidences the account or payment intangible.

29 (3). Except as provided in this section, law other than this Article determines whether
30 a person acquires a right in a controllable electronic record and the right the person acquires.

31 (4). A purchaser of a controllable electronic record acquires all rights in the
32 controllable electronic record that the transferor had or had power to transfer, except that a
33 purchaser of a limited interest in a controllable electronic record acquires rights only to the
34 extent of the interest purchased.

35 (5). A qualifying purchaser acquires its rights in a controllable electronic record free
36 of a claim of a property right in the controllable electronic record.

37 (6). Except as provided in subsections (1) and (5) for a controllable account and a
38 controllable payment intangible or law other than this Article, a qualifying purchaser takes
39 a right to payment, right to performance or other interest in property evidenced by the
40 controllable electronic record subject to a claim of a property right in the right to payment,
41 right to performance or other interest in property.

1 subsection (d) (i.e., the shelter principle, discussed below in Comment 4).
 2 However, even if B did not acquire rights under other law, if B met the
 3 requirements for a qualifying purchaser, its rights would be determined by
 4 subsections (e) and (g). See Comments 7 and 8, below.

5 The "law other than this article" that may apply to the transfer of rights in a controllable
 6 electronic record under subsection (c) includes UCC Article 9. Section 9-203 would apply,
 7 for example, to determine whether a purported secured party acquired an enforceable
 8 security interest in a controllable electronic record.

9 **4. Purchaser and transferor under subsection (d): shelter principle and resulting**
 10 **controllable electronic records.** Subsection (d) sets forth the familiar "shelter" principle,
 11 under which a purchaser of a controllable electronic record acquires whatever rights the
 12 transferor had or had power to transfer. However, in some cases the controllable electronic
 13 record that is acquired by the purchaser will not be the "same" controllable electronic record
 14 that was transferred by the transferor. Such a transfer might involve the elimination of a
 15 "transferred" controllable electronic record and the resulting and corresponding derivative
 16 creation and acquisition of a new controllable electronic record. An example of such a
 17 resulting controllable electronic record is the unspent transaction output (UTXO) generated
 18 by a transaction in bitcoin. The Bitcoin protocol operates by allowing users to "spend" their
 19 UTXOs to create one or more new UTXOs for the same amount of bitcoin, so each transfer
 20 produces new UTXOs controlled by the transferees (one of which may be the transferor—
 21 spender—of the bitcoin). Subsection (d) should be construed broadly to encompass such
 22 transfers and resulting derivative controllable electronic records acquired by a purchaser.
 23 Because subsection (d) addresses the rights of a purchaser in the "purchased" asset and not
 24 the "transferred" asset, this construction is wholly consistent with the statutory text.

25 Notwithstanding the broad subsection (d) shelter principle, which provides that a
 26 purchaser acquires "all rights" of the transferor, those rights are subject to the reach of
 27 Section 1-304. Under that section a contract or duty under the UCC imposes an overarching
 28 "obligation of good faith in its performance and enforcement." Section 1-304. In this
 29 context, "performance and enforcement" include the exercise of rights under the UCC, such
 30 as the rights conferred on a purchaser by the subsection (d) shelter principle. See Section
 31 1-304, Comment 2. For example, consider a qualifying purchaser of a controllable
 32 electronic record, controllable account, or controllable payment intangible who then sells
 33 that asset to a person who is not a qualifying purchaser. If the second purchaser had
 34 previously engaged in fraudulent or illegal activity in connection with the purchased asset
 35 or an asset to which the purchased asset is attributable, the purchaser's exercise of rights
 36 under subsection (d) as to the purchased asset may be in breach of its obligation of good
 37 faith. Section 3-203(b) states this result directly with respect to a transferee of a negotiable
 38 instrument if the transferee previously engaged in fraud or illegality with respect to the
 39 same instrument. Section 3-203(b). The same result would apply under subsection (d).
 40 Subsection (d) relies on the application of the general obligation of good faith under Section
 41 1-304 to reach the appropriate result. However, unlike negotiable instruments, many
 42 controllable electronic records are fungible. For this reason, in some cases it might not be
 43 possible to establish that an acquired controllable electronic record has a sufficient nexus
 44 with a transferee's earlier fraud or illegality.

45 **5. Nonpurchaser having control.** Under Section 12-105, a person may have control
 46 of a controllable electronic record even if the person has no property interest in the

1 controllable electronic record. A person that has control of, but no property interest in, a
2 controllable electronic record would not be a purchaser of the controllable electronic record
3 and so would not be eligible to be a qualifying purchaser under this section.

4 **Example 2:** Debtor granted to Secured Party a security interest in all Debtor's
5 existing and after-acquired accounts, chattel paper, and payment intangibles.
6 Secured Party perfected its security interest in a specific controllable account by
7 obtaining control of the controllable electronic record that evidences the
8 controllable account. See Section 9-107A.

9 Because Debtor's security agreement does not cover controllable electronic
10 records, Secured Party would have no interest in the controllable electronic record.
11 Accordingly, Secured Party would not be a purchaser of the controllable electronic
12 record. However, as a purchaser of the controllable accounts and controllable
13 payment intangibles, Secured Party could benefit from the take-free rule in
14 subsection (e) (discussed in Comment 7).

15 **6. Distinction between controllable electronic record and controllable account or**
16 **controllable payment intangible evidenced by the controllable electronic record.** Even
17 though a controllable electronic record evidences a controllable account or controllable
18 payment intangible, the controllable electronic record is distinct from the account or
19 payment intangible that it evidences. The account or payment intangible is connected with
20 (or "tethered" to) the electronic record by virtue of the relevant account debtor's obligation
21 to pay the person in control of the controllable electronic record. Moreover, control of the
22 controllable account or payment intangible is achieved only by obtaining control of the
23 controllable electronic record that evidences the account or payment intangible. Example
24 2 explains that a purchaser may obtain a property interest in the controllable account or
25 controllable payment intangible even if it does not acquire any interest in the controllable
26 electronic record that evidences the account or payment intangible. (On the other hand,
27 merely obtaining control of a controllable electronic record does not result in the
28 acquisition of an interest in the record.) This approach is intended to avoid a trap for the
29 unwary purchaser that obtains an interest in the account or payment intangible (which is
30 the asset that has stand-alone value) but might fail to acquire an interest in the related
31 controllable electronic record. However, good practice may encourage a purchaser to
32 acquire an interest in the controllable electronic record as well, which would eliminate any
33 potential confusion.

34 **7. The take-free rule.** Subsection (e) makes controllable electronic records and, under
35 subsection (a), controllable accounts and controllable payment intangibles, highly
36 negotiable. Subsection (e) derives from Section 3-306, under which a holder in due course
37 takes a negotiable instrument free of a claim of a property right in the instrument. A
38 qualifying purchaser of a controllable electronic record, controllable account, or
39 controllable payment intangible takes free of all claims of a property right in the purchased
40 controllable electronic record, account, or payment intangible.

41 **Example 3:** Hacker, a thief, "steals" and obtains control of a controllable
42 electronic record. Hacker then sells the controllable electronic record to Buyer,
43 who obtains control and otherwise meets the requirements for a qualifying
44 purchaser (by obtaining control and purchasing for value, in good faith, and
45 without notice of a claim of a property right).

1 As a general matter, law other than Article 12 would determine whether any
 2 particular transaction creates a property interest in a controllable electronic record.
 3 Section 12-104(c). However, even if under other applicable law Hacker has no
 4 rights in, and no right to transfer, the "stolen" controllable electronic record,
 5 subsection (e) enables Buyer, a qualifying purchaser, to take the controllable
 6 electronic record (or any purchased controllable account or controllable payment
 7 intangible evidenced by the controllable electronic record) free of claims of a
 8 property right—including that of the rightful owner.

9 As Example 3 illustrates, a person in control of a controllable electronic record, such
 10 as Hacker, has the power, even if not the right, to transfer rights in the record to a qualifying
 11 purchaser. Of course, if the qualifying purchaser is a secured party whose security interest
 12 secures an obligation, the purchaser would take free of the conflicting property right only
 13 to the extent of the obligation secured. See Section 12-104(d) (purchaser of a limited
 14 interest); cf. Section 3-302(e). Moreover, even if a secured party were not a qualifying
 15 purchaser of a controllable electronic record, controllable account, or controllable payment
 16 intangible, its security interest in the collateral over which it obtained control would,
 17 however, have priority over a conflicting security interest that was perfected by a method
 18 other than control. Section 9-326A.

19 **8.Subsection (g)—the "no-action" rule.** Subsection (g) applies in the situation
 20 (explained in Comment 4) in which the "resulting" controllable electronic record (or
 21 controllable account or controllable payment intangible) purchased by a qualifying
 22 purchaser is not the "same" record, account, or payment intangible that was transferred. In
 23 such a situation, a person claiming a property right in the transferred asset may assert a
 24 claim against a purchaser of the "resulting" asset even though the claimant is *not* asserting
 25 a claim of a *property right* in the purchased asset. If the claim is based on both the
 26 purchaser's purchase of the acquired asset and the claimant's claim of a property right in
 27 the transferred asset, subsection (g) protects the qualifying purchaser from liability to the
 28 claimant based on any theory. The qualifying purchaser's protection from the assertion of
 29 such a claim does not depend on any proof that the purchased asset is somehow "traceable"
 30 to the transferred asset.

31 If instead, such a claimant were to assert a claim based on a property right in the
 32 purchased asset, then the qualifying purchaser would take free of that claim under
 33 subsection (e). Subsection (e) applies whether or not the acquired asset is the same asset
 34 that was transferred.

35 **9. "Tethered" assets.** Certain controllable electronic records may carry with them
 36 rights to other assets, for example, goods or rights to payment. By its terms, the take-free
 37 rule in subsection (e) applies to controllable electronic records (and, under subsection (a),
 38 controllable accounts and controllable payment intangibles evidenced by a controllable
 39 electronic record). One might argue that the inclusion of controllable accounts and
 40 controllable payment intangibles in the scope of subsection (e) is unnecessary. By taking a
 41 controllable electronic record free of property claims, the argument would be that a person
 42 takes not only the controllable electronic record itself but also all rights that are "carried"
 43 in the controllable electronic record free and clear.

44 *Subsection (f) defeats that argument.* It limits the application of the take-free rule in
 45 subsection (e) to controllable electronic records and, through the application of subsection
 46 (a), controllable accounts and controllable payment intangibles evidenced by a controllable

1 electronic record. Under subsection (f), except as provided in subsections (a) and (e), a
2 qualifying purchaser takes rights to payment (other than controllable accounts and
3 controllable payment intangibles), rights to performance, and interests in property that are
4 evidenced by a controllable electronic record subject to third-party property claims, unless
5 law other than Article 12 provides to the contrary. The reference in subsection (f) to "law
6 other than this article" contemplates that another article of the UCC might provide a
7 contrary rule for some types of property that might be tethered to a controllable electronic
8 record.

9 The treatment of controllable accounts and controllable payment intangibles in Articles
10 9 and 12 is feasible because Article 9 already provides the legal framework for assignments
11 of accounts and payment intangibles. In addition, because accounts and payment
12 intangibles are rights to payment of monetary obligations, tethering of an account or
13 payment intangible to a controllable electronic record is straightforward. The account
14 debtor is obligated to pay the person that has control of the relevant controllable electronic
15 record (subject to the qualifications imposed by Section 12-106).

16 **10. Creating the functional equivalent of a negotiable instrument.** Two defining
17 characteristics of an Article 3 negotiable instrument are that a holder in due course (i) takes
18 free of claims of a property or possessory right to the instrument (Section 3-306) and (ii)
19 takes free of most defenses and claims in recoupment (Section 3-305). Article 3 applies
20 only to written instruments. Article 12 and the revisions to Article 9 provide a method for
21 reaching a similar result with respect to controllable accounts and controllable payment
22 intangibles.

23 As regards the first characteristic, a qualifying purchaser could acquire the controllable
24 account or controllable payment intangible free of any claim of a property interest. As
25 regards the second characteristic, the definition of "qualifying purchaser" omits some of
26 the conditions for becoming a holder in due course. For example, to qualify as a holder in
27 due course, a holder must take "without notice that any party has a defense or claim in
28 recoupment" Section 3-302(a)(2)(vi). A controllable electronic record is information:
29 there are no parties to a controllable electronic record. However, there are parties to a
30 controllable account or controllable payment intangible. Accordingly, Sections 9-404 and
31 9-403 would determine whether a purchaser of the controllable account or controllable
32 payment intangible takes free of a defense. Section 9-403 ordinarily would give effect to
33 the account debtor's agreement not to assert claims or defenses.

34 Section 9-403 adopts the meaning of value in Section 3-303, as does Article 12. The
35 concept of value in Section 3-303 is narrower than the concept in Section 1-204, which
36 applies generally to UCC transactions. Under Section 1-204, a person gives value for rights
37 if the person acquires them in return for a promise. However, under Section 3-303, if a
38 negotiable instrument is issued or transferred for a promise of performance, the instrument
39 is transferred for value only to the extent that the promise has been performed.

40 **§12-105. Control of controllable electronic record**

41 (1). A person has control of a controllable electronic record if the electronic record, a
42 record attached to or logically associated with the electronic record or a system in which
43 the electronic record is recorded:

44 (a). Gives the person:

- 1 (i) Power to avail itself of substantially all the benefit from the electronic record;
2 and
- 3 (ii) Exclusive power, subject to subsection (2), to:
- 4 (A) Prevent others from availing themselves of substantially all the benefit
5 from the electronic record; and
- 6 (B) Transfer control of the electronic record to another person or cause another
7 person to obtain control of another controllable electronic record as a result of
8 the transfer of the electronic record; and
- 9 (b). Enables the person readily to identify itself in any way, including by name,
10 identifying number, cryptographic key, office or account number, as having the powers
11 specified in paragraph (a).
- 12 (2). Subject to subsection (3), a power is exclusive under subsection (1), paragraph
13 (a), subparagraph (ii), divisions (A) and (B) even if:
- 14 (a). The controllable electronic record, a record attached to or logically associated with
15 the electronic record or a system in which the electronic record is recorded limits the
16 use of the electronic record or has a protocol that is programmed to cause a change,
17 including a transfer or loss of control or a modification of benefits afforded by the
18 electronic record; or
- 19 (b). The power is shared with another person.
- 20 (3). A power of a person is not shared with another person under subsection (2),
21 paragraph (b) and the person's power is not exclusive if:
- 22 (a). The person can exercise the power only if the power also is exercised by the other
23 person; and
- 24 (b). The other person:
- 25 (i) Can exercise the power without exercise of the power by the person; or
- 26 (ii) Is the transferor to the person of an interest in the controllable electronic record
27 or a controllable account or controllable payment intangible evidenced by the
28 controllable electronic record.
- 29 (4). If a person has the powers specified in subsection (1), paragraph (a), subparagraph
30 (ii), divisions (A) and (B), the powers are presumed to be exclusive.
- 31 (5). A person has control of a controllable electronic record if another person, other
32 than the transferor to the person of an interest in the controllable electronic record or a
33 controllable account or controllable payment intangible evidenced by the controllable
34 electronic record:
- 35 (a). Has control of the electronic record and acknowledges that it has control on behalf
36 of the person; or
- 37 (b). Obtains control of the electronic record after having acknowledged that it will
38 obtain control of the electronic record on behalf of the person.
- 39 (6). A person that has control under this section is not required to acknowledge that it
40 has control on behalf of another person.

1 3. **"Benefit."** Subsection (a)(1)(A) and (a)(1)(B)(i) condition control of a controllable
2 electronic record on a person's relationship to the benefit of the controllable electronic
3 record.

4 As used in this section, the "benefit" of a controllable electronic record refers to the
5 rights that are afforded by the controllable electronic record and the uses to which the
6 controllable electronic record can be put. These, in turn, depend on the characteristics of
7 the controllable electronic record in question. For example, the benefit afforded by control
8 of a bitcoin is that it can be held or disposed of (sold or spent). And control of a controllable
9 electronic record evidencing a controllable account or controllable payment intangible
10 affords the benefit of the right to collect from the account debtor (obligor).

11 The system in which a controllable electronic record is recorded may limit the benefit
12 from the controllable electronic record that is available to those who interact with the
13 system. In determining whether a person has the power to avail itself of substantially all
14 the benefit from a controllable electronic record under subsection (a)(1)(A), or to prevent
15 others from availing themselves of substantially all the benefit from a controllable
16 electronic record under subsection (a)(1)(B)(i), only the benefit that the system makes
17 available (subject to the system's inherent limitations) should be considered.

18 4. **Power to retrieve information.** By definition, the information constituting an
19 electronic record must be "retrievable in perceivable form." Section 1-201(b)(31) (defining
20 "record"). The power to retrieve the record in perceivable form is included in the benefit of
21 a controllable electronic record. "Perceivable form" means that the contents of the record
22 are intelligible; the ability to perceive the indecipherable jumble of an encrypted record
23 does not give a person the power to retrieve the record in perceivable form.

24 To have control of a controllable electronic record under subsection (a)(1)(A), a person
25 must have at least the nonexclusive power to avail itself of this benefit. If a person also has
26 the exclusive power to decrypt the encrypted record, the person will have the exclusive
27 power to prevent others from availing themselves of substantially all the benefit from the
28 controllable electronic record and thereby will satisfy the condition in subsection
29 (a)(1)(B)(i).

30 5. **Exclusive powers.** Unlike the power in subsection (a)(1)(A), the powers in
31 subsection (a)(1)(B)(i) and (a)(1)(B)(ii) must be held exclusively by the person claiming
32 control in order to establish control. However, once it is established that a person has
33 received those powers, subsection (d) provides a presumption of exclusivity. Consequently,
34 a person asserting control need not prove exclusivity in order to make out a prima facie
35 case. Application of the presumption will be governed also by Section 1-206 (effects of a
36 presumption under the UCC) and applicable non-UCC law (including rules of procedure
37 and evidence). In addition, subsection (b) contains two qualifications of the term
38 "exclusive" as used in subsection (a)(1)(B). A power can be "exclusive" under subsection
39 (a)(1)(B) even if one or both of these qualifications apply.

40 Subsection (b)(1) takes account of the fact that the powers of a purchaser of a
41 controllable electronic record necessarily are subject to the attributes of the controllable
42 electronic record, records associated with the controllable electronic record, and the
43 protocols of any system in which the controllable electronic record is recorded. For
44 example, a transfer of control resulting from a program that is a part of a system's protocol
45 is inherent in the controllable electronic record and does not impair the exclusivity of the

1 power of the person in control of the record. Subsection (b)(1) also contemplates that the
2 potential for the system to otherwise modify (or even destroy) controllable electronic
3 records would not impair the exclusivity.

4 **Example 1:** Pursuant to the governance apparatus of a system (Propofolium) for a
5 cryptocurrency (propofol), an upgrade to the system was made that modified the
6 consensus mechanism for determining the effectiveness of transfers of propofols
7 within the system. Although this change did not divest any holder of propofols of
8 its control, it prospectively modified the system for all propofols. The adoption of
9 this change and the potential for such a change (or any other change) are functions
10 of the attributes of the system and, consequently, of all propofols. Neither this
11 change nor such potential impaired the exclusivity, for purposes of subsection
12 (a)(1)(B), of the powers of a person in control of propofols.

13 Subsection (b)(2) allows for a power to be shared with another person without
14 impairing the exclusivity of the power. One effect of subsection (b)(2) is that, under a multi-
15 signature (multi-sig) agreement, any person that is readily identifiable under subsection
16 (a)(2) and shares the relevant power would be eligible to have control, even if the action of
17 another person is a condition for the exercise of the power. For example, a person in control
18 may agree that another person's action on the relevant system would be required to effect a
19 transfer of control without impairing the requisite exclusivity.

20 **Example 2:** Pursuant to a multi-sig arrangement, control of propofols (in the
21 system described in Example 1) is shared by Campbell, Elizabeth, Mia, and
22 Natasha. Under the multi-sig arrangement, the exercise of powers over the
23 propofols requires action by three of the four persons having control. None of the
24 participants acting alone has the power to exercise the relevant powers. Subsection
25 (b)(2) makes clear that all four participants have control over the propofols and
26 exclusivity is not impaired by the shared control under the multi-sig arrangement.

27 Although all four persons in Example 2 have control, that may leave many questions
28 as to the rights of the four as among themselves. For example, if more than one of the four
29 were secured parties, it would be important for them to settle by agreement issues such as
30 relative priorities and enforcement rights. Similar situations can arise in other contexts and
31 with respect to other types of collateral.

32 A multi-sig arrangement for a controllable electronic record, such as that described in
33 Example 2, may provide enhanced security. For example, if the power of one participant is
34 compromised by a "hacker," the required actions by the other participants would prevent
35 the hacker from exercising unauthorized power over the record. Although the hacker might
36 possess the power along with the remaining multi-sig participants, those participants would
37 continue to have control. A multi-sig structure also may protect against the misuse of a
38 record by ensuring that actions by multiple persons are required for exercising power over
39 the record.

40 Subsection (c) provides that in certain circumstances a power is not shared within the
41 meaning of subsection (b)(2), the relaxation of the exclusivity requirement provided by
42 subsection (b)(2) does not apply, and, consequently, a person's power is not exclusive.
43 Subsection (c) provides that a person does not share an exclusive power with another person
44 if the person can exercise the power only with the other person's cooperation (subsection
45 (c)(1)) but the other person either (i) can exercise the power without the person's

1 cooperation (subsection (c)(2)(A)) or (ii) is the transferor to the person (transferee) of an
2 interest in the controllable electronic record or a controllable account or controllable
3 payment intangible evidenced by the controllable electronic record (subsection (c)(2)(B)).
4 It follows that a person to which subsection (c) applies does not have control based on its
5 exclusive powers (although it might have control through another person under subsection
6 (e), discussed below, or if another person having control is acting as the person's agent).

7 Comment 9 addresses the rationale for disqualifying the transferee from a transferor
8 under subsection (c)(2)(B) from the benefit of sharing a power under subsection (b)(2).

9 The following examples illustrate the application of subsection (c):

10 **Example 3:** Under a multi-sig arrangement, exercise by any two of Campbell,
11 Elizabeth, and Mia is required to exercise a power with respect to a controllable
12 electronic record (CER). None of the three can exercise a power without the
13 cooperation of another, so all three have control because they share the power.
14 Even if Campbell were the transferor of the CER to Elizabeth, Elizabeth's power
15 is shared, and therefore treated as exclusive, because Campbell cannot block
16 Elizabeth's exercise of the power if Mia acts with Elizabeth. It follows that
17 subsection (c)(1) does not apply, subsection (b)(2) does apply, and Elizabeth shares
18 the power with Campbell. (The same result would apply with respect to Mia's
19 power if Campbell were the transferor of the CER to Mia.)

20 **Example 4:** Under a multi-sig arrangement, exercise by both Campbell and
21 Elizabeth are required to exercise a power, so subsection (c)(1) applies with respect
22 to each person. However, neither Campbell nor Elizabeth can exercise the power
23 without cooperation of the other and neither is the transferor to the other, so
24 subsection (c)(2)(A) and (2)(B) does not apply with respect to either person. It
25 follows that Campbell and Elizabeth each share the power.

26 **Example 5:** The facts are the same as in Example 4, but Campbell is the transferor
27 of an interest in the CER to Elizabeth. Elizabeth does not share the power with
28 Campbell and Elizabeth's power is not exclusive because subsection (c)(1) and
29 (2)(B) applies.

30 **Example 6:** Under a multi-sig arrangement, Mia or Natasha can exercise a power
31 only with the exercise by Campbell, but Campbell can exercise the power
32 unilaterally without the exercise by either Mia or Natasha. Neither Mia nor
33 Natasha shares the power with Campbell because subsection (c)(1) and (2)(A)
34 apply, so neither Mia's nor Natasha's power is treated as exclusive. Campbell's
35 power is exclusive in fact and Campbell need not rely on subsection (b)(2) for
36 shared power.

37 **Example 7:** Under a multi-sig arrangement, Mia can exercise a power only with
38 exercise by Elizabeth or Natasha, but Elizabeth and Natasha each can exercise the
39 power unilaterally without the exercise by the other or by Mia. Elizabeth and
40 Natasha share the power, but Mia does not share the power with Elizabeth or
41 Natasha. Mia's power is not exclusive because subsection (c)(1) and (2)(A)
42 applies.

43 Although the presumption in subsection (d) is not expressly made subject to subsection
44 (c), it is functionally so. Under Section 1-206, once evidence is introduced that subsection

1 (c) applies and that, accordingly, a person relying on the presumption cannot rely on the
2 relaxation of the exclusivity requirement provided by subsection (b)(2), the presumption
3 would no longer apply.

4 6. **Transfer of control.** The power to transfer control of a controllable electronic
5 record under subsection (a)(1)(B)(ii) includes the power to cause another person to obtain
6 control of another derivative and resulting controllable electronic record that results from
7 the transfer of the controllable electronic record. See Section 12-104, Comment 4.

8 7. **Readily identify itself.** Subsection (a)(2) provides that a person does not have
9 control of a controllable electronic record unless the controllable electronic record, a record
10 attached to or logically associated with the controllable electronic record, or any system in
11 which the controllable electronic record is recorded enables the person readily to identify
12 itself as the person having the requisite powers. The identification need not be by a "name,"
13 but also may be by "identifying number, cryptographic key, office, or account number"—
14 language derived from Section 3-110(c). The reference to "office" means a public office.
15 See Section 3-110, Comment 3. This subsection does not obligate a person to identify itself
16 as having control. However, to prove that it has control, a person would need to prove that
17 the relevant records or any system in which the controllable electronic record is recorded
18 readily identifies the person as such. Consistent with the subsection (d) presumption of
19 exclusivity, proof that a person has the powers specified in section (a)(1) does not require
20 proof of exclusivity—i.e., proof of a negative (that no one else has such powers). The
21 means of identification mentioned in subsection (a)(2) derive from Section 3-110(c).
22 Subsection (a)(2) adds "cryptographic key" as an example of a way in which a person may
23 be identified.

24 8. **Control through another person.** Neither Article 12 nor any other provision of the
25 UCC would restrict or render ineffective any agreement of a person in control of a
26 controllable electronic record to hold control on behalf of another person. This result is
27 implicit from subsection (b)(2) dealing with sharing of control. It also would follow under
28 principles of agency. But such an arrangement should be effective regardless of any agency
29 or fiduciary relationship.

30 This concept is expressly addressed in Section 8-106(d)(3), on control of a security
31 entitlement, which achieves perfection of a security interest under Sections 9-106(a) and
32 9-314(a). It also applies to perfection by possession under Section 9-313(c) if a person other
33 than the debtor or the secured party (or the secured party's agent) is in possession of
34 collateral. Under those provisions, however, effectiveness is conditioned in some
35 circumstances on an "acknowledgment" by the person in control or possession. Under
36 Section 9-313(c) the acknowledgment must be in a signed record. These provisions appear
37 to derive from practices involving bailees of tangible property, such as goods, chattel paper,
38 and certificated securities. See Section 9-313, Comment 4.

39 Subsection (e) likewise provides for control by a person through another person's
40 acknowledgment that it has control on behalf of the person. Subsection (e) is patterned on
41 Section 9-313(c), but like Section 8-106(d)(3), subsection (e) omits the requirement in
42 Section 9-313(c) that an acknowledgment be made in a signed record. Although best
43 practices might suggest the wisdom of relying on a signed record to evidence such an
44 acknowledgment, subsection (e) would permit proof by other means. Under subsection (e)
45 for an acknowledgment by another person to be effective to confer control on a person, the
46 other person making the acknowledgment must be one "other than the transferor of an

1 interest in the electronic record" to the person. The rationale for this limitation is discussed
2 in Comment 9. Control based on an acknowledgment under subsection (e) by another
3 person having control continues only while the other person retains control. This result
4 necessarily follows because such control derives solely from the other person's continued
5 control.

6 The combined operation of subsections (b)(2) and (e) ensure that the continuance of
7 various existing practices would not prevent or cause the loss of control. For example, a
8 person in control may wish to grant another person the power to approve or disapprove a
9 transfer of control on the system. Alternatively, a person in control may wish to permit a
10 system administrator, the system itself, or a prearranged operation to transfer control to
11 another person under specified conditions without participation by the person in control.
12 And, of course, a person in control may wish to delegate the power to transfer control to an
13 agent or fiduciary.

14 Provisions substantially similar to subsection (e) are included in Section 7-106 (control
15 of electronic documents of title), Section 8-106(d)(3) (control of security entitlement), 9-
16 104 (control of deposit accounts), 9-105 (control of authoritative electronic copies of
17 records evidencing chattel paper), and 9-105A (control of electronic money).

18 **9. Shared powers under subsection (b)(2) and control through another person**
19 **under subsection (e):** Limitations related to transferors and transferees of interests in
20 controllable electronic records. Subsection (c)(2)(B) disqualifies a transferee (which
21 includes a secured party in a secured transaction) of an interest in a controllable electronic
22 record (or controllable account or controllable payment intangible) from the benefit of a
23 shared power under subsection (b)(2) when the transferor retains a blocking power (i.e.,
24 when the transferee cannot exercise the power unless the transferor also exercises the
25 power). In similar fashion, under subsection (e), an acknowledgment by a transferor of an
26 interest in a controllable electronic record (or controllable account or controllable payment
27 intangible) that the transferor has control for the benefit of a person is ineffective to confer
28 control on the person. Each of these limitations is premised on the view that the transferor
29 has not been divested sufficiently of its powers over the relevant controllable electronic
30 record so as to warrant treating the transferee as a secured party having a security interest
31 perfected by control or as having the requisite control to be a qualifying purchaser.

32 Subsection (c)(1) and (c)(2)(B) contemplates that the transferor has retained a blocking
33 power over the transferee's exercise of a power. Subsection (e) contemplates that the
34 transferor remains in control and has merely acknowledged that its control is for the
35 transferee's benefit and that the acknowledgment is ineffective to confer control on the
36 transferee. Although the concept of shared control is newly introduced in the UCC, holding
37 possession or control for another is not. Section 9-313(c) expressly provides in this context
38 that an acknowledging person having possession of goods must be a person "other than the
39 debtor" for a secured party to take possession through the acknowledging person. The
40 official comments to Section 8-106 are to the same effect in the context of control of a
41 security entitlement. See Section 8-106(d)(3), Comment 4A and pre-2022 Comment 4. The
42 same policy that underpins the inapplicability of this method of control to an
43 acknowledgment by a debtor applies as well to a transferor that is not an Article 9 debtor.
44 Control is intended to be a proxy for and a functional equivalent of the transfer of physical
45 possession of goods. In general, a person can obtain control through control by an agent,
46 but under subsection (e) an acknowledgment by a debtor or transferor (even "as agent")

1 that acknowledges control on behalf of a secured party or other transferee would be
2 ineffective. This corresponds to the policy underlying Section 9-313 that "the debtor cannot
3 qualify as an agent for the secured party for purposes of the secured party's taking
4 possession." Section 9-313, Comment 3.

5 Notwithstanding these limitations, they would not impair the continued perfection by
6 control upon a secured party's assignment of a perfected-by-control security interest in a
7 controllable electronic record to a successor secured party. The following example
8 illustrates.

9 **Example 8:** Debtor (D) buys a CER and obtains control. D then grants a security
10 interest in the CER to Secured Party A (SPA) to secure D's obligation to SPA and
11 transfers to SPA control of the CER (not pursuant to shared control with D or
12 pursuant to subsection (e)). SPA then assigns to Secured Party B (SPB) the secured
13 obligation owed by D to SPA.

14 As to perfection of the security interest granted by D, perfection by control is not
15 affected even if SPA retains powers over the CER (as between SPA and SPB) following
16 the assignment to SPB. The security interest remains perfected. This is consistent with the
17 policy underlying 9-310(c)—an assignment of a security interest should not require the
18 assignee to refile or take an assignment of record of a filed financing statement in favor of
19 the assignor for protection against a debtor's creditors and transferees.

20 The economic interest being assigned by SPA to SPB in Example 8 is primarily the
21 right to payment or performance of the obligation of D that is secured by the CER. If the
22 transfer of the secured obligation by SPA to SPB itself creates a security interest securing
23 an obligation (e.g., owed by SPA to SPB), then SPB should perfect the security interest
24 granted by SPA (which is distinct from the security interest in the CER granted by D and
25 assigned by SPA to SPB). The method of perfection will depend on the nature of the
26 secured obligation—the type of collateral—being assigned. Is the right to payment an
27 instrument, an account, or a payment intangible? Or is performance of the secured
28 obligation pursuant to another type of general intangible? SPB should file a financing
29 statement against SPA, as debtor, or take possession of the instrument, if applicable.
30 However, as to the underlying collateral securing the assigned obligation—the CER—
31 attachment and perfection of SPB's security interest in the obligation of D owed to SPA
32 would also constitute attachment and perfection as to the security interest in the CER
33 securing that obligation. Sections 9-203(g); 9-308(e); see also 1 Restatement (Second) of
34 Contracts § 340, Comment b ("b. Security follows the debt. Where a secured claim is
35 assigned, the collateral is ordinarily assigned as well.").

36 If the transfer by SPA to SPB is an outright transfer (a sale) of an account, a payment
37 intangible, or a promissory note, the transfer creates a security interest and the analysis in
38 the preceding paragraph applies (except that the security interest arising from the sale of a
39 payment intangible or promissory note is automatically perfected under Section 9-
40 309(a)(3) and (4)). If the transfer is a sale of another type of general intangible or
41 instrument that is secured by the CER, then non-Article 9 law applies to the transfer.
42 However, the same result may occur under the common-law rule that the collateral (the
43 CER) follows a secured obligation that is transferred. See Sections 9-203, Comment 9; 9-
44 308, Comment 6.

1 For obvious business reasons, SPB may not wish to allow SPA to remain in control of
2 the CER and may require SPA to transfer control to it as a condition to the transaction.
3 Alternatively, SPB may obtain control through sharing powers with SPA or through SPA's
4 acknowledgment pursuant to subsection (e). It is true that SPA's assignment to SPB of D's
5 secured obligation carried with it the collateral—the CER—securing the obligation. But
6 such a derivative acquisition (through the operation of Sections 9-203(g) and 9-308(e)) by
7 SPB would not be a transfer by SPA of "an interest in" the CER within the meaning of the
8 limitations imposed in subsections (c)(2)(B) or (e). The operation of these rules, providing
9 that collateral follows the transfer of a secured obligation, are based on the premise that
10 any necessary public notice provided in connection with the assignment of the obligation
11 provides, in turn, sufficient public notice with respect to the underlying collateral. It follows
12 that the policy to be implemented by subsections (c)(2)(B) and (e) is not implicated by such
13 an assignment.

14 **10. No requirement to acknowledge, no duties, and no requirement to confirm**
15 **acknowledgment.** Subsections (f) and (g) derive from Section 9-313(f) and (g). Subsection
16 (f) makes clear that a person that has control under this section has no duty to acknowledge
17 that it has or will obtain control on behalf of another person. Arrangements for a person to
18 acknowledge that it has or will obtain control on behalf of another person are not
19 standardized. Accordingly, subsection (g) leaves to the agreement of the parties and to any
20 other applicable law (other than this Article or Article 9) any duties of a person that does
21 acknowledge that it has or will obtain control on behalf of another person and provides that
22 a person making an acknowledgment is not required to confirm the acknowledgment to
23 another person.

24 For example, subsection (e) would apply to give control to a person, Alpha, when
25 another person, Beta, has control of a controllable electronic record and
26 acknowledges that it has control on behalf of Alpha. However, under subsection
27 (f), Beta is not required to so acknowledge. And under subsection (g), even if Beta
28 does so acknowledge, Beta owes no duty to Alpha unless Beta agrees or other law
29 so provides, and Beta is not required to confirm its acknowledgment to any other
30 person.

31 **§12-106. Discharge of account debtor on controllable account or controllable**
32 **payment intangible**

33 **(1).** An account debtor on a controllable account or controllable payment intangible
34 may discharge its obligation by paying:

35 **(a).** The person having control of the controllable electronic record that evidences the
36 controllable account or controllable payment intangible; or

37 **(b).** Except as provided in subsection (2), a person that formerly had control of the
38 controllable electronic record.

39 **(2).** Subject to subsection (4), the account debtor may not discharge its obligation by
40 paying a person that formerly had control of the controllable electronic record if the account
41 debtor receives a notification that:

42 **(a).** Is signed by a person that formerly had control or the person to which control was
43 transferred;

44 **(b).** Reasonably identifies the controllable account or controllable payment intangible;

- 1 (c). Notifies the account debtor that control of the controllable electronic record that
2 evidences the controllable account or controllable payment intangible was transferred;
- 3 (d). Identifies the transferee, in any reasonable way, including by name, identifying
4 number, cryptographic key, office or account number; and
- 5 (e). Provides a commercially reasonable method by which the account debtor is to pay
6 the transferee.
- 7 (3). After receipt of a notification that complies with subsection (2), the account debtor
8 may discharge its obligation by paying in accordance with the notification and may not
9 discharge the obligation by paying a person that formerly had control.
- 10 (4). Subject to subsection (8), notification is ineffective under subsection (2):
- 11 (a). Unless, before the notification is sent, the account debtor and the person that, at
12 that time, had control of the controllable electronic record that evidences the
13 controllable account or controllable payment intangible agree in a signed record to a
14 commercially reasonable method by which a person may furnish reasonable proof that
15 control has been transferred;
- 16 (b). To the extent an agreement between the account debtor and seller of a payment
17 intangible limits the account debtor's duty to pay a person other than the seller and the
18 limitation is effective under law other than this Article; or
- 19 (c). At the option of the account debtor, if the notification notifies the account debtor
20 to:
- 21 (i) Divide a payment;
- 22 (ii) Make less than the full amount of an installment or other periodic payment; or
- 23 (iii) Pay any part of a payment by more than one method or to more than one
24 person.
- 25 (5). Subject to subsection (8), if requested by the account debtor, the person giving
26 the notification under subsection (2) seasonably shall furnish reasonable proof, using the
27 method in the agreement referred to in subsection (4), paragraph (a), that control of the
28 controllable electronic record has been transferred. Unless the person complies with the
29 request, the account debtor may discharge its obligation by paying a person that formerly
30 had control, even if the account debtor has received a notification under subsection (2).
- 31 (6). A person furnishes reasonable proof under subsection (5) that control has been
32 transferred if the person demonstrates, using the method in the agreement referred to in
33 subsection (4), paragraph (a), that the transferee has the power to:
- 34 (a). Avail itself of substantially all the benefit from the controllable electronic record;
- 35 (b). Prevent others from availing themselves of substantially all the benefit from the
36 controllable electronic record; and
- 37 (c). Transfer the powers specified in paragraphs (a) and (b) to another person.
- 38 (7). Subject to subsection (8), an account debtor may not waive or vary its rights under
39 subsection (4), paragraph (a) and subsection (5) or its option under subsection (4),
40 paragraph (c).

1 assignment under Section 9-406 typically make payments in accordance with the notice.
2 Recognizing that an account debtor may be uncertain whether a notification is legitimate,
3 Section 9-406 affords to an account debtor the right to request proof that the account or
4 payment intangible was assigned. See generally, Section 9-406, Comment 4.

5 Subsection (e) contains a similar provision. On the account debtor's request, the person
6 giving the notification must seasonably furnish reasonable proof that control of the
7 controllable electronic record has been transferred. If the person does not comply with the
8 request, the account debtor may ignore the notification and discharge its obligation by
9 paying a person formerly in control.

10 "Reasonable proof" requires evidence that would be understood by a typical account
11 debtor to whom it is proffered as demonstrating to a reasonably high probability that control
12 of the controllable electronic record has been transferred to the transferee. Subsection (f)
13 provides a safe harbor for providing reasonable proof. It enables a person to satisfy the
14 account debtor's request by demonstrating that the transferee has the power to avail itself
15 of substantially all the benefit from the controllable electronic record, to prevent others
16 from availing themselves of substantially all the benefit from the controllable electronic
17 record, and to transfer these powers to another person. This demonstration would not
18 necessarily prove that a person actually has control of a controllable electronic record
19 because it need not show that the transferee held the last two powers exclusively.
20 Nevertheless, such a demonstration would constitute "reasonable proof" under subsection
21 (f). A person that has control should have little difficulty providing this proof, as a person
22 cannot have control unless it can readily identify itself as having the requisite powers. See
23 Section 12-105(a)(2). Reasonable proof that is seasonably furnished by a person other than
24 the person that gave the notification would constitute compliance with the account debtor's
25 request.

26 Subsection (e) requires that reasonable proof be provided "using the agreed method."
27 Subsection (f) requires that a person use "the agreed method" to demonstrate that the
28 transferee has the specified powers. "Agreed method" refers to the commercially
29 reasonable method to which the parties agreed, in a signed record, before the notification
30 was sent. If parties did not so agree, the notification is ineffective under subsection (d)(1).

31 An account debtor may agree to participate in a system providing for the control of
32 controllable accounts or controllable payment intangibles. If the system is programmed to
33 provide for notification to the account debtor upon the transfer of control, the account
34 debtor's agreement and the operation of the system may satisfy the requirements of
35 subsections (d)(1), (e), and (f).

36 4. **Additional considerations for account debtors.** The requirement in subsection (e)
37 that reasonable proof be furnished using the "agreed method" provides considerable
38 protection for account debtors upon receipt of a notification of assignment and making a
39 request for proof. There are, however, other considerations that are of importance to
40 account debtors but are beyond the scope of the frameworks provided by Articles 9 and 12.
41 One such consideration is the potential involvement of pseudonymous payees, which may
42 raise issues such as compliance with anti-money laundering regulations and sanctions
43 compliance. These are examples of issues that a well-structured program for controllable
44 accounts and controllable payment intangibles might address.

1 **5. Relationship to Section 9-406.** Section 9-406 governs the discharge of the
2 obligation of an account debtor. Section 9-406 carves out of its scope transactions to the
3 extent covered by this section. See Section 9-406(1).

4 **§12-107. Governing law**

5 **(1).** Except as provided in subsection (2), the local law of a controllable electronic
6 record's jurisdiction governs a matter covered by this Article.

7 **(2).** For a controllable electronic record that evidences a controllable account or
8 controllable payment intangible, the local law of the controllable electronic record's
9 jurisdiction governs a matter covered by section 12-106 unless an effective agreement
10 determines that the local law of another jurisdiction governs.

11 **(3).** The following rules determine a controllable electronic record's jurisdiction under
12 this section.

13 **(a).** If the controllable electronic record, or a record attached to or logically associated
14 with the controllable electronic record and readily available for review, expressly
15 provides that a particular jurisdiction is the controllable electronic record's jurisdiction
16 for purposes of this Article or the Uniform Commercial Code, that jurisdiction is the
17 controllable electronic record's jurisdiction.

18 **(b).** If paragraph (a) does not apply and the rules of the system in which the controllable
19 electronic record is recorded are readily available for review and expressly provide that
20 a particular jurisdiction is the controllable electronic record's jurisdiction for purposes
21 of this Article or the Uniform Commercial Code, that jurisdiction is the controllable
22 electronic record's jurisdiction.

23 **(c).** If paragraphs (a) and (b) do not apply and the controllable electronic record, or a
24 record attached to or logically associated with the controllable electronic record and
25 readily available for review, expressly provides that the controllable electronic record
26 is governed by the law of a particular jurisdiction, that jurisdiction is the controllable
27 electronic record's jurisdiction.

28 **(d).** If paragraphs (a), (b) and (c) do not apply and the rules of the system in which the
29 controllable electronic record is recorded are readily available for review and expressly
30 provide that the controllable electronic record or the system is governed by the law of
31 a particular jurisdiction, that jurisdiction is the controllable electronic record's
32 jurisdiction.

33 **(e).** If paragraphs (a) to (d) do not apply, the controllable electronic record's
34 jurisdiction is the District of Columbia.

35 **(4).** If subsection (3), paragraph (e) applies and Article 12 is not in effect in the District
36 of Columbia without material modification, the governing law for a matter covered by this
37 Article is the law of the District of Columbia as though Article 12 were in effect in the
38 District of Columbia without material modification. For the purposes of this subsection,
39 "Article 12" means Article 12 of Uniform Commercial Code Amendments (2022).

40 **(5).** To the extent subsections (1) and (2) provide that the local law of the controllable
41 electronic record's jurisdiction governs a matter covered by this Article, that law governs
42 even if the matter or a transaction to which the matter relates does not bear any relation to
43 the controllable electronic record's jurisdiction.

1 matters other than those covered by Section 12-106 (for example, an agreement that all
 2 obligations of the account debtor are governed by the laws of State X).

3 **5. Determination of controllable electronic record's jurisdiction.** The basic rule
 4 that the law of a controllable electronic record's jurisdiction governs the matters covered
 5 by Article 12 may be viewed as a rough proxy for the traditional role of the location of
 6 tangible asset (e.g., goods) in determining the applicable law (*lex rei sitae*). Drawing on
 7 the analogous provisions in Sections 8-110 and 9-305 in the context of a security
 8 entitlement or securities account or a commodity contract or commodity account, under
 9 subsection (c) it is the controllable electronic record itself, records attached thereto or
 10 associated therewith, or the system in which the controllable electronic record is recorded
 11 that determines the controllable electronic record's jurisdiction and, thereby, the governing
 12 law. Subsection (c) provides a "waterfall" of rules based on provisions that identify a
 13 particular jurisdiction as the controllable electronic record's jurisdiction or alternatively that
 14 provide the governing law for a controllable electronic record or the system in which the
 15 record is recorded. As to subsection (e), see Section 8-110, Comment 5A.

16 Paragraphs (1) through (4) of the subsection (c) waterfall each relies on information
 17 available from a controllable electronic record, an attached or logically associated record,
 18 or rules of a system in which the record is recorded. A controllable electronic record's
 19 jurisdiction is determined by one of these sources that "expressly provide[s]" that a
 20 jurisdiction is the controllable electronic record's jurisdiction or that a particular
 21 jurisdiction's law is the governing law. These paragraphs refer to attached or logically
 22 associated records or system rules that are "readily available." They also assume that the
 23 controllable electronic record is itself readily available to anyone choosing to deal with the
 24 record. These provisions are based on the assumption that the relevant express provision
 25 will be available to an interested person without the imposition of unreasonable burdens.

26 **6. Bottom of the waterfall: District of Columbia.** Many controllable electronic
 27 records, attached or logically associated records, and systems in which controllable
 28 electronic records are recorded that exist at the time of the 2022 Amendments do not
 29 identify the "controllable electronic record's jurisdiction" or the governing law (some
 30 permitted systems being exceptions). (It is anticipated that, upon widespread adoption
 31 of Article 12 and accompanying amendments, systems will adapt and the first four elements
 32 of the waterfall will become more generally applicable for identifying a controllable
 33 electronic record's jurisdiction.) Consequently, subsection (c)(5) addresses an issue that
 34 does not normally exist in the context of Sections 8-110 and 9-305. It might be thought that
 35 the logical choice for the residual rule for designating the controllable electronic record's
 36 jurisdiction at bottom of the waterfall would be, the location of the debtor. That approach
 37 would follow the role of the location of a debtor under Sections 9-301 and 9-307. However,
 38 that location may not readily be determined by parties to a transaction, primarily because
 39 in many cases involving controllable electronic records the transferor is not known to or
 40 easily discoverable by a purchaser. See Prefatory Note 1 to Article 12. Consequently,
 41 Subsection (c)(5) resolves this issue by providing that the controllable electronic record's
 42 jurisdiction is the District of Columbia.

43 **7. District of Columbia as controllable electronic record's jurisdiction.** The
 44 designation of the District of Columbia as the controllable electronic record's jurisdiction
 45 follows Section 9-307(c), which designates the District of Columbia as the location of a
 46 debtor that otherwise would be located in a jurisdiction whose law does not provide for a

1 generally applicable system of public notice (such a filing or registration) for
 2 nonpossessory security interests. This designation also assumes that the District of
 3 Columbia will have adopted Article 12 and the conforming amendments to Articles 1 and
 4 9 in substantially the uniform version—i.e., without material modification of the official
 5 text. This is a plausible assumption based on the history of adoptions in that jurisdiction.
 6 Because the controllable electronic record's jurisdiction does not govern perfection of a
 7 security interest by filing, the designation of the District of Columbia at the bottom of the
 8 waterfall will not confer on that jurisdiction any economic benefits of fees for filing of
 9 financing statements. See Section 9-306B(b). Subsection (d) addresses the unlikely
 10 situation that the District of Columbia does not adopt Article 12 without material
 11 modification of the official text or later adopts materially non-uniform amendments.
 12 Subsection (d) is patterned loosely (but as closely as feasible) on the TRADES Regulations,
 13 31 CFR § 357.11(e), for U.S. Treasury securities.

14 The term "Article 12" is defined in subsection (d) as the officially promulgated 2022
 15 version of Article 12 and conforming amendments. In determining whether the District of
 16 Columbia has enacted Article 12 without material modification, a court or other tribunal
 17 should consider the materiality of any provision in the context of the issue or issues before
 18 it. A modification of a provision that would be material in another context should be
 19 disregarded if it has no bearing on the issue or issues before the tribunal. In connection with
 20 any future revision of the Article 12 official text, it will be important for transitional
 21 provisions to address the situations in which the District of Columbia may or may not have
 22 adopted the revised official text.

23 8. **Relevant time for determination of governing law.** Subsection (f) provides that
 24 the rights of purchasers are governed by the applicable law as of the time of purchase. Note
 25 that Sections 8-110 and 9-305 do not contain an analogous rule with respect to a securities
 26 intermediary's jurisdiction. However, Section 8-110(c) does provide a similar rule for the
 27 delivery of a security certificate and adverse claims. As to the timing of the determination
 28 of the governing law for other issues under Article 12, such as the rights and duties of
 29 account debtors under Section 12-106, the section does not specify a time. As with most
 30 statutory provisions relating to governing law, courts are free to determine the appropriate
 31 relevant time taking into account the relevant facts and the nature of the issues involved.

32 **PART C**

33 **PREFATORY NOTE to Article 15—Transitional Provisions**

34 The Uniform Commercial Code Amendments (2022) (2022 Amendments) pose special
 35 challenges. The amendments add a new Article 12, covering new classes of property, and
 36 provide extensive revisions to Article 9. They also include amendments to every other UCC
 37 article (save Article 6). Earlier transitional provisions do not provide an adequate template
 38 for addressing such a broad set of amendments. However, this article draws substantially
 39 on Article 9, Part 7, the transitional provisions applicable to the 1998 Article 9 Revisions.
 40 In particular, the substantial amendments to Article 9 and the new Article 12 contained in
 41 the 2022 Amendments require that special attention be given to post-effective date
 42 perfection and priority issues.

43 A uniform law as complex as the 2022 Amendments necessarily gives rise to difficult
 44 problems and uncertainties during the transition to the new law. As is customary for

1 uniform laws, these amendments are based on the general assumption that all States will
2 have enacted substantially identical versions. While always important, uniformity is
3 particularly important to the success of these amendments, especially those to Article 9 and
4 the new Article 12 and conforming amendments to other articles relating to each.

5 Article 9, Part 7, provided that several material changes in the law would be given
6 effect one year after a "uniform" effective date. (As it turned out, all but a few states enacted
7 the 1998 Article 9 Revisions with the uniform effective date.). However, for practical
8 reasons many states may wish to provide an effective date for this act that is consistent with
9 their usual timing for effectiveness of legislation. Consequently, this article does not
10 provide for a uniform effective date but does provide for a uniform adjustment date
11 (Adjustment Date), which is July 1, 2025, on which several material provisions (in
12 particular, new priority rules that would override pre-effective-date established priorities)
13 would apply. However, if the uniform Adjustment Date would be less than one year after
14 the effective date for a state's adoption of these amendments, then the state should adopt an
15 Adjustment Date that is one year after the state's effective date. The minimum of a one-
16 year period between the effective date and the Adjustment Date is important. It is intended
17 primarily to provide sufficient time for a person to achieve perfection or priority of a
18 security interest under the 2022 Amendments following the effective date, or for a person
19 with an established priority in property to protect its priority before the priority might
20 otherwise be lost on the Adjustment Date.

21 The law, other than the Uniform Commercial Code, of a state adopting the 2022
22 Amendments determines the time of day on the state's effective date on which the
23 amendments take effect.

24 **Sec. C-1. 11 MRSA Art. 15** is enacted to read:

25 **ARTICLE 15**

26 **TRANSITIONAL PROVISIONS**

27 **PART 1**

28 **GENERAL PROVISIONS AND DEFINITIONS**

29 **§15-101. Short title**

30 This Article may be cited as "the Transitional Provisions for Uniform Commercial
31 Code Amendments (2022)."

32 **§15-102. Definitions**

33 **(1).** For the purposes of this Article, unless the context otherwise indicates, the
34 following terms have the following meanings.

35 **(a).** "Adjustment date" means July 1, 2026.

36 **(b).** "Article 12" means Article 12 of the Uniform Commercial Code.

37 **(c).** "Article 12 property" means a controllable account, controllable electronic record
38 or controllable payment intangible.

1 (2). The following definitions in other Articles of the Uniform Commercial Code
2 apply to this Article:

3 (a). "Controllable account," section 9-1102;

4 (b). "Controllable electronic record," section 12-102;

5 (c). "Controllable payment intangible," section 9-1102; and

6 (d). "Financing statement," section 9-1102.

7 (3). Article 1-A contains general definitions and principles of construction and
8 interpretation applicable throughout this Article.

9 **Official Comment**

10 **Subsection headings.** Subsection headings are not a part of the official text itself and
11 have not been approved by the sponsors.

12 **PART 2**

13 **GENERAL TRANSITIONAL PROVISION**

14 **§15-201. Savings clause**

15 Except as provided in part 3, a transaction validly entered into before July 1, 2025 and
16 the rights, duties and interests flowing from the transaction remain valid thereafter and may
17 be terminated, completed, consummated or enforced as required or permitted by law other
18 than the Uniform Commercial Code or, if applicable, the Uniform Commercial Code in
19 effect prior to July 1, 2025.

20 **Comment**

21 1. **Source.** This Section is drawn from pre-2022 Section 10-102(2) (now withdrawn).

22 2. **In general: Prospective application.** This section is a savings clause that provides
23 in general for the prospective application of the 2022 Amendments and the preservation of
24 the validity of pre-effective-date transactions and the rights, duties, and interests flowing
25 from those transactions. Part 3 provides important exceptions to this prospective
26 application for Articles 9 and new Article 12.

27 3. **Prospective application: Examples.**

28 "Conspicuous." 2022 section 1-201(b)(10) provides a revised definition of "conspicuous"
29 and revised Comment 10 provides extensive new commentary. The revised definition
30 applies to a record that becomes a part of the relevant transaction after the effective date.

31 "Hybrid transaction" and "hybrid lease." The 2022 revisions of Sections 2-102 and 2A-
32 102 address a sale of goods that is a part of a "hybrid transaction" and a lease of goods that
33 is part of a "hybrid lease." See Sections 2-106(5) (defining "hybrid transaction") and 2A-
34 103(1)(h.1) (defining "hybrid lease"). These revisions apply to transactions entered into
35 after the effective date.

36 4. **Revisions reflecting continuation of pre-effective-date precedents.** Several
37 revisions are intended to clarify and reaffirm understandings of pre-effective-date

1 interpretations of the Uniform Commercial Code and are intended to modify some pre-
2 effective-date judicial interpretations. Examples include (i) the amendment to Section 3-
3 104, which clarifies that neither a choice-of-law nor a choice-of-forum clause prevents a
4 promise from being a negotiable instrument, (ii) the amendments to Section 4A-201, which
5 indicate that a security procedure may impose an obligation on both the receiving bank and
6 the customer and may involve the use of symbols, sounds, or biometrics, (iii) the clarifying
7 revision of Section 5-116, (iv) the new definitions of "assignee" and "assignor" in Section
8 9-102(a)(7A) and (7B), and (v) clarification in Section 9-204(b.1) as to the attachment of
9 a security interest in consumer goods as proceeds or commingled goods and in a
10 commercial tort claim as proceeds. However, this transitional rule will be important in
11 situations in which the controlling pre-effective-date case law is not consistent with the
12 amended provisions.

13 **PART 3**

14 **TRANSITIONAL PROVISIONS FOR ARTICLES 9-A AND 12**

15 **§15-301. Savings clause**

16 (1). Except as provided in this part, Article 9-A as in effect on July 1, 2025 and Article
17 12 apply to a transaction, lien or other interest in property, even if the transaction, lien or
18 interest was entered into, created or acquired before July 1, 2025.

19 (2). Except as provided in subsection (3) and sections 15-302 to 15-306:

20 (a). A transaction, lien or interest in property that was validly entered into, created or
21 transferred before July 1, 2025 and was not governed by the Uniform Commercial
22 Code, but would be subject to Article 9-A as in effect on July 1, 2025 or Article 12 if
23 it had been entered into, created or transferred on or after July 1, 2025, including the
24 rights, duties and interests flowing from the transaction, lien or interest, remains valid
25 on and after July 1, 2025; and

26 (b). The transaction, lien or interest may be terminated, completed, consummated and
27 enforced as required or permitted by this Title as in effect on July 1, 2025 or by the law
28 that would apply prior to July 1, 2025.

29 (3). The provisions of this Title that take effect July 1, 2025 do not affect an action,
30 case or proceeding commenced before July 1, 2025.

31 **Comment**

32 1. **Source.** This section derives from Section 9-702.

33 2. **Pre-effective-date transactions, liens, and interests.** Subsection (a) contains the
34 general rule that Article 9 as amended by this act (2022 Article 9) and Article 12 generally
35 apply to transactions, liens (including security interests), and interests in property, even if
36 entered into, created, or acquired before the effective date. Thus, for example, secured
37 transactions entered into under Article 9 before amendment by this act (as used in these
38 official comments to Article A, "pre-2022 Article 9") must be terminated, completed,
39 consummated, and enforced under this act. However, other provisions in this part provide
40 exceptions to this general rule.

1 an appropriate method of perfection for that collateral under both versions of
2 Article 9.

3 Other examples of methods of perfection under pre-2022 Article 9 that also would achieve
4 perfection under 2022 Article 9 include filing a financing statement and perfection by
5 control in electronic documents under pre-2022 and amended Section 7-106, in chattel
6 paper under pre-2022 Section 9-105, and in chattel paper evidenced by authoritative
7 electronic records under 2022 Section 9-105.

8 **3. Security interests enforceable and perfected under pre-2022 Article 9 but**
9 **unenforceable or unperfected under 2022 Article 9.** Subsection (b) deals with security
10 interests that are enforceable and perfected under pre-2022 Article 9 immediately before
11 this act takes effect but do not satisfy the requirements for enforceability (attachment) or
12 perfection under 2022 Article 9. These security interests are perfected security interests
13 until the earlier of the time perfection would have ceased under the law in effect
14 immediately before this act takes effect and the adjustment date. If the security interest
15 satisfies the requirements for attachment and perfection within that period, the security
16 interest remains continuously perfected thereafter. If the security interest satisfies only the
17 requirements for attachment within that period, the security interest becomes unperfected
18 on the adjustment date.

19 **Example 2:** A pre-effective-date security agreement signed by Debtor in favor of
20 Secured Party covers, among other things, "all money . . . and general intangibles
21 now owned or hereafter acquired." Secured Party filed a proper financing statement
22 in the appropriate filing office covering "All personal property." Debtor owns
23 electronic money, spitcoin, issued by the government of El Cuspidouro. Under pre-
24 2022 Article 9 the electronic money might be characterized as a general intangible
25 if "money" were to be construed (at least for purposes of Article 9) to include only
26 tangible money as to which perfection is possible only by possession. See pre-2022
27 Section 9-312(b)(3). Alternatively, even if the spitcoin is money, perfection might
28 be possible by filing under the baseline rule of Section 9-310, inasmuch as the
29 spitcoin (an intangible) cannot be possessed. Assume, therefore, that under pre-
30 2022 Article 9 Secured Party's security interest in the spitcoin is perfected by filing.
31 Assume also that spitcoin can be subjected to control under Section 9-105A. As to
32 the spitcoin owned by the debtor before the effective date, under subsection (b) the
33 security interest would remain perfected until the adjustment date but would
34 become unperfected under 2022 Article 9 on the adjustment date unless earlier
35 perfected by control. This is so because a security interest in electronic money that
36 can be subject to control under Section 9-105A, such as spitcoin, may be perfected
37 only by control under 2022 Article 9. Sections 9-312(b)(4); 9-314(a). The security
38 interest in any spitcoin acquired by the debtor after the effective date would be
39 unperfected until the secured party obtains control.

40 **Example 3:** Secured Party has a pre-effective-date security interest in a security
41 entitlement perfected by control pursuant to Sections 9-106 and 8-106(d)(3), based
42 on control held by Kontroal Phreeque LLC (KP) on behalf of Secured Party. Even
43 in the highly unlikely event that following the effective date the secured party could
44 not prove that KP acknowledged its control on behalf of the secured party in
45 conformity with 2022 Section 8-106(d)(3), its security interest would nevertheless
46 remain perfected beyond the adjustment date. Perfection by control for a security

1 entitlement under Section 9-106 depends on control under 8-106 and, under
2 Section A-301(a), Part 3 of this article, including subsection (b), does not apply to
3 transactions under Article 8 because Section A-301(a) applies only to Articles 9
4 and 12. The rules under pre-effective date Article 8 continue to apply to the pre-
5 effective date transaction. As to financial assets acquired and becoming a part of
6 the security entitlement after the effective date, however, 2022 Articles 8 and 9
7 would apply. Secured Party could perfect its security interest in those financial
8 assets through a complying acknowledgment by KP or by filing. This means for a
9 securities account involving active trading, for example, the secured party should
10 ensure compliance with the 2022 Article 8 control requirements at or before the
11 effective date so as to ensure perfection in post-effective date-acquired financial
12 assets.

13 **4. Interpretation of pre-effective-date security agreements.** Section 9-102 defines
14 "security agreement" as "an agreement that creates or provides for a security interest."
15 Under Section 1-201(b)(3), an "agreement" is a "bargain of the parties in fact." If parties to
16 a pre-effective-date security agreement describe the collateral by using a term defined in
17 pre-2022 Article 9 in one way and defined in 2022 Article 9 in another way, in most cases
18 it should be presumed that the bargain of the parties contemplated the meaning of the term
19 under pre-2022 Article 9. Definitions of terms relating to collateral which have been
20 amended in 2022 Article 9 are "account," "chattel paper," "instrument," "money," and
21 "general intangible." A different result might be appropriate, for example, if a security
22 agreement explicitly contemplated future changes in the Article 9 definitions of types of
23 collateral—for example, "'Accounts' means 'accounts' as defined in the Uniform
24 Commercial Code Article 9 of [State X], *as that definition may be amended from time to*
25 *time.*" Whether a different interpretive approach is appropriate in any given case depends
26 on the bargain of the parties, as determined by applying ordinary principles of contract law.

27 **§15-303. Security interest unperfected before effective date**

28 A security interest that is enforceable immediately before July 1, 2025 but is
29 unperfected at that time:

30 (1). Remains an enforceable security interest until the adjustment date;

31 (2). Remains enforceable thereafter if the security interest becomes enforceable under
32 section 9-1203, as in effect on July 1, 2025, on July 1, 2025 or before the adjustment date;
33 and

34 (3). Becomes perfected:

35 (a). Without further action, on July 1, 2025 if the requirements for perfection under
36 this Title as in effect on July 1, 2025 are satisfied before or at that time; or

37 (b). When the requirements for perfection under this Title are satisfied if the
38 requirements are satisfied after that time.

39 **Official Comment**

40 **1. Source.** This Section derives from Section 9-704.

41 **2. Pre-effective-date enforceable but unperfected security interests.** This section
42 deals with security interests that are enforceable but unperfected (i.e., subordinate to the
43 rights of a person who becomes a lien creditor) under pre-2022 Article 9 or other applicable

1 law immediately before this act takes effect. These security interests remain enforceable
 2 until the adjustment date, and thereafter if the appropriate steps for attachment under 2022
 3 Article 9 are taken before the adjustment date. See Section A-304(c) (This section's
 4 treatment of enforceability is the same as that of Section A-302.) The security interest
 5 becomes a perfected security interest on the effective date if, at that time, the security
 6 interest satisfies the requirements for perfection (which include the requirements for
 7 attachment) under 2022 Article 9. If the security interest does not satisfy the requirements
 8 for perfection until sometime thereafter, it becomes a perfected security interest at that later
 9 time.

10 **Example 1:** Prior to the effective date Debtor obtained a loan from Secured Party
 11 and signed a security agreement covering "all cryptocurrencies now owned or
 12 hereafter acquired." The security interest attached to various cryptocurrencies
 13 owned by Debtor, including 1,000 happicoins held by debtor on the happicoins
 14 blockchain platform. Debtor then transferred the 1,000 happicoins to Secured Party
 15 on the blockchain. Although the happicoins are general intangibles, Secured Party
 16 failed to file a financing statement necessary to perfect its security interest under
 17 pre-2022 Article 9.

18 Under 2022 Article 9, the happicoins would be controllable electronic records and
 19 the transfer of the happicoins to Secured Party would give Secured Party "control"
 20 of the happicoins as provided in Section 12-105. Before 2022 Article 9 (i.e.,
 21 including 2022 Sections 9-107A and 9-314) and Article 12 became effective,
 22 Secured Party's security interest was unperfected as noted above. Upon the
 23 effective date, however, the security interest became perfected by control as a result
 24 of the pre-effective-date transfer of control to Secured Party.

25 **Example 2.** Prior to the effective date Debtor obtained a loan from Secured Party
 26 and signed a security agreement covering certain specified deposit accounts and
 27 "all documents and chattel paper now owned or hereafter acquired by Debtor." The
 28 security interest attached to the deposit accounts and to various documents and
 29 chattel paper owned by Debtor. Persons in control of certain electronic chattel
 30 paper, electronic documents, and deposit accounts included in the collateral
 31 acknowledged that they had control of that collateral on behalf of Secured Party.
 32 Assuming that an agency relationship cannot be established between these
 33 acknowledging persons and Secured Party, it is perhaps arguable that Secured
 34 Party's security interest in the relevant collateral was unperfected because Secured
 35 Party did not have control under pre-2022 Sections 7-106, 9-104, and 9-105.
 36 However, because the pre-effective-date acknowledgments would give Secured
 37 Party control under the relevant 2022 sections, its security interest, even if not
 38 perfected pre-effective date, became perfected by control on the effective date.

39 **§15-304. Effectiveness of actions taken before July 1, 2025**

40 **(1).** If action, other than the filing of a financing statement, is taken before July 1,
 41 2025 and the action would have resulted in perfection of the security interest had the
 42 security interest become enforceable before July 1, 2025, the action is effective to perfect
 43 a security interest that attaches under this Title as in effect on July 1, 2025 before the
 44 adjustment date. An attached security interest becomes unperfected on the adjustment date
 45 unless the security interest becomes a perfected security interest under this Title as in effect
 46 on July 1, 2025 before the adjustment date.

1 right to payment was chattel paper because it was a lease of specific goods, even
2 though the transaction also covered, and the lessee's monetary obligation also
3 related to, various other assets and various services. Because the filed financing
4 statement covered only accounts, the security interest in the chattel paper was
5 unperfected. Under 2022 Article 9, however, the right to payment was an
6 "account," and not chattel paper, assuming that the lessee's right to possession and
7 use of the goods was not "the predominant purpose of the transaction." Section 9-
8 102(a)(11)(B)(ii). On that assumption, upon the effective date the security interest
9 became perfected by the pre-effective-date filed financing statement covering
10 accounts.

11 **5. Enforceability of security interest: unenforceable security interest made**
12 **enforceable.**

13 **Example 3.** Under the facts of Example 1, Section A-303, Comment 2, instead of
14 signing a security agreement Debtor agreed orally to grant to Secured Party a
15 security interest in the happicoins. It follows that under pre-2022 Article 9 Secured
16 Party's security interest was unenforceable and did not attach to the happicoins for
17 want of a signed security agreement. Pre-2022 Section 9-203(b)(3)(A). However,
18 upon the effective date of 2022 Article 9, Secured Party had control of the
19 happicoins under 2022 Article 9. Sections 12-105. At that time the security interest
20 became enforceable and attached under Sections 9-107A and 9-203(b)(3)(D) and
21 also was perfected by control.

22 **§15-305. Priority**

23 **(1).** Subject to subsections (2) and (3), this Title as in effect on July 1, 2025 determines
24 the priority of conflicting claims to collateral.

25 **(2).** Subject to subsection (3), if the priorities of claims to collateral were established
26 before July 1, 2025, Article 9-A as in effect before July 1, 2025 determines priority.

27 **(3).** On the adjustment date, to the extent the priorities determined by Article 9-A as
28 in effect after July 1, 2025 modify the priorities established before July 1, 2025, the
29 priorities of claims to Article 12 property established before July 1, 2025 cease to apply.

30 **Official Comment**

31 **1. Source.** This section derives from Section 9-709.

32 **2. Law governing priority and established priorities.** Ordinarily, 2022 Article 9
33 determines the priority of conflicting claims to collateral under subsection (a). However,
34 when the relative priorities of the claims were established before the effective date, pre-
35 2022 Article 9 governs under subsection (b). Subsection (c) provides an exception to
36 subsection (b).

37 **Example 1.** In 2021, prior to the effective date, Debtor obtained a loan from
38 Secured Party and signed a security agreement covering "all cryptocurrency and
39 money now owned or hereafter acquired." The security interest attached to various
40 cryptocurrencies owned by Debtor, including 1,000 happicoins held by Debtor on
41 the happicoins blockchain platform. Secured Party promptly filed a financing
42 statement covering "all general intangibles, including cryptocurrencies." In 2022,
43 also prior to the effective date, Debtor obtained a loan from Lender and signed a

1 security agreement covering "all cryptocurrency." Although the happicoins are
 2 general intangibles, Lender failed to file a financing statement. Because the
 3 priorities of the claims were established before the effective date, pre-2022 Article
 4 9 governs. Secured Party's perfected security interest has priority over Lender's
 5 unperfected security interest under pre-2022 Section 9-322(a)(2).

6 **Example 2.** The facts are the same as in Example 1, except that Debtor transferred
 7 control of the 1,000 happicoins to Lender on the blockchain in 2022 before the
 8 effective date. Because Lender failed to file a financing statement and control was
 9 not a method of perfection under pre-2022 Article 9, Lender's security interest was
 10 unperfected immediately prior to the effective date. However, because under 2022
 11 Article 9 the happicoins are controllable electronic records and Lender has
 12 "control" of the happicoins under Section 12-105, Lender's security interest
 13 became perfected on the effective date. Nevertheless, because the priorities of
 14 Secured Party's and Lender's security interests were established before the effective
 15 date, Secured Party's security interest continues to have priority after the effective
 16 date. (However, see Example 4 for the shift of priority on the adjustment date.)

17 **Example 3.** The facts are the same as in Example 1, except that in 2023, after the
 18 effective date, Debtor transferred control of the 1,000 happicoins to Lender on the
 19 blockchain. Under 2022 Article 9, the happicoins were controllable electronic
 20 records and the transfer of control of the happicoins gave Lender "control" of the
 21 happicoins as provided in Section 12-105. The affirmative step of transferring
 22 control established anew the relative priority of the conflicting claims after the
 23 effective date. 2022 Article 9 determines priority and Lender's security interest has
 24 priority under Section 9-326A (without any deferral until the adjustment date).
 25 Moreover, Lender also may have priority over other property claims as a qualifying
 26 purchaser under Section 12-104(e).

27 One consequence of the rule on established priorities in subsection (b) is that the mere
 28 taking effect of this act does not of itself adversely affect the priority of conflicting claims
 29 to collateral, as Example 2 illustrates. However, as Example 3 illustrates, relative priorities
 30 that are "established" before the effective date do not necessarily remain unchanged
 31 following the effective date. Of course, unlike priority contests among security interests,
 32 some priorities are established permanently, for example, the rights of a buyer of property
 33 who took free of a security interest under pre-2022 Article 9.

34 **3. Modification of established priorities on adjustment date.**

35 Subsection (c) provides an exception to the respect that subsection (b) affords to pre-
 36 effective-date established priorities, but only for security interests in Article 12 property—
 37 controllable accounts, controllable electronic records, and controllable payment
 38 intangibles—and electronic money.

39 **Example 4.** The facts are the same as in Example 2. Lender's security interest
 40 became perfected by control on the effective date, Secured Party's established
 41 priority continued to apply under subsection (b). Under subsection (c), however,
 42 on the adjustment date the priorities shifted. Secured Party's established priority
 43 ceased to apply and Lender's perfection by control gave Lender priority under 2022
 44 Section 9-326A.

45 **4. Transfers of collateral after the effective date.**

1 **Example 5.** The facts are the same as in Example 2. In 2023, after the effective
 2 date, Debtor acquired an additional 500 happicoins. The security interests of both
 3 Secured Party and Lender attached to the happicoins pursuant to the after-acquired
 4 property clauses in their respective security agreements. Secured Party's security
 5 interest was perfected by its earlier financing statement filing. Lender then
 6 perfected its security interest by Debtor's transfer of control of the happicoins to
 7 Lender. Lender's security interest in the additional happicoins perfected by control
 8 gave Lender priority as to those happicoins under Section 9-326A. Unlike the
 9 situation in Example 2, however, as to the newly acquired happicoins the priorities
 10 were not established prior to the effective date. Before the effective date neither
 11 creditor could have had a "perfected" security interest in happicoins in which
 12 Debtor had not yet acquired rights.

13 **Example 6.** The facts are the same as in Example 1. In 2023, after the effective
 14 date, Debtor transferred 750 spitcoins, an electronic money, to Beier. Beier then
 15 obtained control of the spitcoins under Section 9-105A. Secured Party's security
 16 interest in the spitcoins, which were either money not capable of being possessed
 17 or general intangibles under pre-2022 Article 9, are assumed to be perfected by
 18 filing. See Section A-302, Comment 3, Example 2. Because there was no wrongful
 19 collusion with Debtor (indeed, Beier had no knowledge or notice of Secured Party's
 20 security interest), Beier took the spitcoin free of Secured Party's security interest
 21 under Section 9-332(c).

22 **§15-306. Priority of claims when priority rules of Article 9-A do not apply**

23 (1). Subject to subsections (2) and (3), Article 12 determines the priority of conflicting
 24 claims to Article 12 property when the priority rules of Article 9-A as in effect on July 1,
 25 2025 do not apply.

26 (2). Subject to subsection (3), when the priority rules of Article 9-A as in effect on
 27 July 1, 2025 do not apply and the priorities of claims to Article 12 property were established
 28 before July 1, 2025, law other than Article 12 determines priority.

29 (3). When the priority rules of Article 9-A as in effect on July 1, 2025 do not apply,
 30 to the extent the priorities determined by this Title as in effect on July 1, 2025 modify the
 31 priorities established before July 1, 2025, the priorities of claims to Article 12 property
 32 established before July 1, 2025 cease to apply on the adjustment date.

33 **Official Comment**

34 1. **Source.** This section derives from Section 9-709 and, in part, from Section 8-510.

35 2. **Applicability of this section to Article 12 property.** Although this section applies
 36 to Article 12 property (controllable accounts, controllable electronic records, and
 37 controllable payment intangibles) when the priority rules of Article 9 do not apply, it
 38 applies primarily to controllable electronic records. Its application to controllable accounts
 39 and controllable payment intangibles is quite limited because Article 9 applies to most sales
 40 of accounts and payment intangibles (as well as to the use of that property to secure an
 41 obligation). Section 9-109(a)(3). There is a very limited exclusion from the scope of Article
 42 9 for a sale of accounts and payment intangibles in connection with a sale of the business
 43 out of which they arose. Section 9-109(d)(4).

1 **3. Law governing priority and established priorities.** Ordinarily, when the priority
2 rules of Article 9 do not apply, Article 12 determines the priority of conflicting claims to
3 Article 12 property under subsection (a). However, when the relative priorities of the claims
4 were established before the effective date, under subsection (b) law other than Article 12
5 governs. Subsection (c) provides an exception to subsection (b).

6 **4. Law governing priority and established priorities.**

7 **Example 1.** In 2021, prior to the effective date, Aiko owned 500 happicoins (a
8 cryptocurrency consisting of controllable electronic records) over which Aiko had
9 control (within the meaning of Section 12-105, which was not yet effective) on the
10 happicoins blockchain. In December 2021 Aiko sold the 500 happicoins to Barbara
11 for \$10,000 cash. Aiko provided Barbara with a signed memorandum
12 acknowledging the sale and Aiko's receipt of the purchase price and agreeing to
13 hold the happicoins for Barbara pending Barbara's further instructions.

14 In January 2022 (also prior to the effective date), Aiko sold the same 500
15 happicoins to Molly for \$12,000 cash. Aiko provided Molly with a signed
16 memorandum similar to the one Aiko had provided to Barbara. Assume that, under
17 the non-Uniform Commercial Code applicable law, Barbara remained the owner
18 of the happicoins and under that law Molly obtained no interest in the happicoins
19 pursuant to the purported sale because Aiko had retained no interest and had
20 nothing to transfer to Molly. Because the priorities of the claims of Aiko, Barbara,
21 and Molly were established before the effective date, under subsection (a) those
22 priorities remained in effect after the effective date and Barbara remains the owner
23 of the happicoins.

24 **Example 2.** The facts are the same as in Example 1, except that *before* the effective
25 date, Aiko transferred control of the happicoins to Molly on the happicoins
26 blockchain. Again, assume that under the non-Uniform Commercial Code
27 applicable law that transfer of control had no legal effect. After the effective date
28 the relative priorities are unchanged from those described in Example 1 because
29 the relative priorities were established before the effective date and subsection (b)
30 applies.

31 **Example 3.** The facts are the same as in Example 1, except that *after* the effective
32 date, Aiko transferred control of the happicoins to Molly on the happicoins
33 blockchain. Under Article 12, the happicoins were controllable electronic records
34 and the transfer of control of the happicoins gave Molly "control" of the happicoins
35 as provided in Section 12-105. Because (it is assumed) Molly met the requirements
36 for a "qualifying purchaser" under Section 12-104(e), Molly acquired the
37 happicoins free of Barbara's property claim. The affirmative step of transferring
38 control after the effective date established anew the relative priority of the
39 conflicting claims after the effective date. Under Section A-301(a), Article 12
40 applies to the pre-effective-date transactions and property interests and subsection
41 (a) of this section applies.

42 **5. Modification of established priorities on adjustment date.** Subsection (c)
43 provides an exception to the respect that subsection (b) affords to pre-effective-date
44 established priorities.

