

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 2245

H.P. 1601

House of Representatives, May 27, 1999

An Act to Adopt the Model Revised Article 9 Secured Transactions.

Submitted by the Secretary of State pursuant to Joint Rule 204.
Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative THOMPSON of Naples.
Cosponsored by Senator LONGLEY of Waldo.

2 **Be it enacted by the People of the State of Maine as follows:**

4 **PART A**

6 **Sec. A-1. 11 MRSA art. 9, as amended, is repealed.**

8 **Sec. A-2. 11 MRSA art. 9-A is enacted to read:**

10 **Article 9-A**

12 **TRANSACTIONS**

14 **PART 1**

16 **GENERAL PROVISIONS**

18 **SUBPART 1**

20 **SHORT TITLE, DEFINITIONS AND GENERAL CONCEPTS**

22 **§9-1101. Short title**

24 This Article may be cited as "Uniform Commercial
26 Code-Secured Transactions."

28 **Official Comment**

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 Former Article 9 superseded the wide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

Citations to "Bankruptcy Code Section ____" in these
Comments are to Title 11 of the United States Code as in effect
on December 31, 1998.

2. Background and History. In 1990, the Permanent
Editorial Board for the UCC with the support of its sponsors, The

2 American Law Institute and the National Conference of
Commissioners on Uniform State Laws, established a committee to
4 study Article 9 of the UCC. The study committee issued its
report as of December 1, 1992, recommending the creation of a
6 drafting committee for the revision of Article 9 and also
recommending numerous specific changes to Article 9. Organized
in 1993, a drafting committee met fifteen times from 1993 to
8 1998. This Article was approved by its sponsors in 1998.

10 3. Reorganization and Renumbering; Captions; Style. This
Article reflects a substantial reorganization of former Article 9
12 and renumbering of most sections. New Part 4 deals with several
aspects of third-party rights and duties that are unrelated to
14 perfection and priority. Some of these were covered by Part 3 of
former Article 9. Part 5 deals with filing (covered by former
16 Part 4) and Part 6 deals with default and enforcement (covered by
former Part 5). Appendix I contains conforming revisions to
18 other Articles of the UCC, and Appendix II contains model
provisions for production-money priority.

20 This Article also includes headings for the subsections as
22 an aid to readers. Unlike section captions, which are part of
the UCC, see Section 1-109, subsection headings are not a part of
24 the official text itself and have not been approved by the
sponsors. Each jurisdiction in which this Article is introduced
26 may consider whether to adopt the headings as a part of the
statute and whether to adopt a provision clarifying the effect,
28 if any, to be given to the headings. This Article also has been
conformed to current style conventions.

30 4. Summary of Revisions. Following is a brief summary of
32 some of the more significant revisions of Article 9 that are
included in this Article.

34 a. Scope of Article 9. This Article expands the scope of
36 Article 9 in several respects.

38 Deposit accounts. Section 9-109 [Maine cite section 9-1109]
includes within this Article's scope deposit accounts as original
40 collateral, except in consumer transactions. Former Article 9
dealt with deposit accounts only as proceeds of other collateral.

42 Sales of payment intangibles and promissory notes. Section
44 9-109 [Maine cite section 9-1109] also includes within the scope
of this Article most sales of "payment intangibles" (defined in
46 Section 9-102 [Maine cite section 9-1102] as general intangibles
under which an account debtor's principal obligation is monetary)
48 and "promissory notes" (also defined in Section 9-102 [Maine cite
section 9-1102]). Former Article 9 included sales of accounts
50 and chattel paper, but not sales of payment intangibles or

2 promissory notes. In its inclusion of sales of payment
3 intangibles and promissory notes, this Article continues the
4 drafting convention found in former Article 9; it provides that
5 the sale of accounts, chattel paper, payment intangibles, or
6 promissory notes creates a "security interest." The definition
7 of "account" in Section 9-102 [Maine cite section 9-1102] also
8 has been expanded to include various rights to payment that were
9 general intangibles under former Article 9.

10 Health-care-insurance receivables. Section 9-109 [Maine
11 cite section 9-1109] narrows Article 9's exclusion of transfers
12 of interests in insurance policies by carving out of the
13 exclusion "health-care-insurance receivables" (defined in Section
14 9-102 [Maine cite section 9-1102]). A health-care-insurance
15 receivable is included within the definition of "account" in
16 Section 9-102 [Maine cite section 9-1102].

18 Nonpossessory statutory agricultural liens. Section 9-109
19 [Maine cite section 9-1109] also brings nonpossessory statutory
20 agricultural liens within the scope of Article 9 [Maine cite
21 Article 9-A].

22 Consignments. Section 9-109 [Maine cite section 9-1109]
23 provides that "true" consignments--bailments for the purpose of
24 sale by the bailee--are security interests covered by Article 9
25 [Maine cite Article 9-A], with certain exceptions. See Section
26 9-102 [Maine cite section 9-1102] (defining "consignment").
27 Currently, many consignments are subject to Article 9's filing
28 requirements by operation of former Section 2326.

30 Supporting obligations and property securing rights to
31 payment. This Article also addresses explicitly (i) obligations,
32 such as guaranties and letters of credit, that support payment or
33 performance of collateral such as accounts, chattel paper, and
34 payment intangibles, and (ii) any property (including real
35 property) that secures a right to payment or performance that is
36 subject to an Article 9 security interest. See Sections 9-203,
37 9-308 [Maine cite sections 9-1203, 9-1308].

40 Commercial tort claims. Section 9-109 [Maine cite section
41 9-1109] expands the scope of Article 9 [Maine cite Article 9-A]
42 to include the assignment of commercial tort claims by narrowing
43 the exclusion of tort claims generally. However, this Article
44 continues to exclude tort claims for bodily injury and other
45 non-business tort claims of a natural person. See Section 9-102
46 [Maine cite section 9-1102] (defining "commercial tort claim").

48 Transfers by States and governmental units of States.
49 Section 9-109 [Maine cite section 9-1109] narrows the exclusion
50 of transfers by States and their governmental units. It excludes

2 only transfers covered by another statute (other than a statute
generally applicable to security interests) to the extent the
4 statute governs the creation, perfection, priority, or
enforcement of security interests.

6 Nonassignable general intangibles, promissory notes,
health-care-insurance receivables, and letter-of-credit rights.
8 This Article enables a security interest to attach to
letter-of-credit rights, health-care-insurance receivables,
10 promissory notes, and general intangibles, including contracts,
permits, licenses, and franchises, notwithstanding a contractual
12 or statutory prohibition against or limitation on assignment.
This Article explicitly protects third parties against any
14 adverse effect of the creation or attempted enforcement of the
security interest. See Sections 9-408, 9-409 [Maine cite
16 sections 9-1408 and 9-1409].

18 Subject to Sections 9-408 and 9-409 [Maine cite sections
9-1408 and 9-1409] and two other exceptions (Sections 9-406
20 [Maine cite section 9-1406], concerning accounts, chattel paper,
and payment intangibles, and 9-407 [Maine cite section 9-1407],
22 concerning interests in leased goods), Section 9-401 [Maine cite
section 9-1401] establishes a baseline rule that the inclusion of
24 transactions and collateral within the scope of Article 9 [Maine
cite Article 9-A] has no effect on non-Article 9 law dealing with
26 the alienability or inalienability of property. For example, if
a commercial tort claim is nonassignable under other applicable
28 law, the fact that a security interest in the claim is within the
scope of Article 9 [Maine cite Article 9-A] does not override the
30 other applicable law's effective prohibition of assignment.

32 b. Duties of Secured Party. This Article provides for
expanded duties of secured parties.
34

36 Release of control. Section 9-208 [Maine cite 9-1208]
imposes upon a secured party having control of a deposit account,
investment property, or a letter-of-credit right the duty to
38 release control when there is no secured obligation and no
commitment to give value. Section 9-209 [Maine cite section
40 9-1209] contains analogous provisions when an account debtor has
been notified to pay a secured party.
42

44 Information. Section 9-210 [Maine cite section 9-1210]
expands a secured party's duties to provide the debtor with
information concerning collateral and the obligations that it
46 secures.

48 Default and enforcement. Part 6 also includes some
additional duties of secured parties in connection with default
50 and enforcement. See, e.g., Section 9-616 [Maine cite section

2 9-1616] (duty to explain calculation of deficiency or surplus in
a consumer-goods transaction).

4 c. Choice of Law. The choice-of-law rules for the law
governing perfection, the effect of perfection or
6 nonperfection, and priority are found in Part 3, Subpart 1
(Sections 9-301 through 9-307 [Maine cite sections 9-1301 to
8 9-1307]). See also Section 9-316 [Maine cite section
9-1316].

10
12 Where to file: Location of debtor. This Article changes
the choice-of-law rule governing perfection (i.e., where to file)
14 for most collateral to the law of the jurisdiction where the
debtor is located. See Section 9-301 [Maine cite section
9-1301]. Under former Article 9, the jurisdiction of the
16 debtor's location governed only perfection and priority of a
security interest in accounts, general intangibles, mobile goods,
18 and, for purposes of perfection by filing, chattel paper and
investment property.

20
22 Determining debtor's location. As a baseline rule, Section
9-307 [Maine cite section 9-1307] follows former Section 9-103,
24 under which the location of the debtor is the debtor's place of
business (or chief executive office, if the debtor has more than
one place of business). Section 9-307 [Maine cite section
26 9-1307] contains three major exceptions. First, a "registered
organization," such as a corporation or limited liability
28 company, is located in the State under whose law the debtor is
organized, e.g., a corporate debtor's State of incorporation.
30 Second, an individual debtor is located at his or her principal
residence. Third, there are special rules for determining the
32 location of the United States and registered organizations
organized under the law of the United States.

34
36 Location of non-U.S. debtors. If, applying the foregoing
rules, a debtor is located in a jurisdiction whose law does not
38 require public notice as a condition of perfection of a
nonpossessory security interest, the entity is deemed located in
the District of Columbia. See Section 9-307 [Maine cite section
40 9-1307]. Thus, to the extent that this Article applies to
non-U.S. debtors, perfection could be accomplished in many cases
42 by a domestic filing.

44 Priority. For tangible collateral such as goods and
instruments, Section 9-301 [Maine cite section 9-1301] provides
46 that the law applicable to priority and the effect of perfection
or nonperfection will remain the law of the jurisdiction where
48 the collateral is located, as under former Section 9-103 (but
without the confusing "last event" test). For intangible

2 collateral, such as accounts, the applicable law for priority
will be that of the jurisdiction in which the debtor is located.

4 Possessory security interests; agricultural liens.
6 Perfection, the effect of perfection or nonperfection, and
priority of a possessory security interest or an agricultural
8 lien are governed by the law of the jurisdiction where the
collateral subject to the security interest or lien is located.
10 See Sections 9-301, 9-302 [Maine cite sections 9-1301, 9-1302].

12 Goods covered by certificates of title; deposit accounts;
letter-of-credit rights; investment property. This Article
14 includes several refinements to the treatment of choice-of-law
matters for goods covered by certificates of title. See Section
16 9-303 [Maine cite section 9-1303]. It also provides special
choice-of-law rules, similar to those for investment property
18 under current Articles 8 and 9, for deposit accounts (Section
9-304) [Maine cite section 9-1304], investment property (Section
20 9-305) [Maine cite section 9-1305], and letter-of-credit rights
(Section 9-306) [Maine cite section 9-1306].

22 Change in applicable law. Section 9-316 [Maine cite section
24 9-1316] addresses perfection following a change in applicable law.

26 d. Perfection. The rules governing perfection of security
interests and agricultural liens are found in Part 3,
28 Subpart 2 (Sections 9-308 through 9-316) [Maine cite sections
9-1308 to 9-1316].

30 Deposit accounts; letter-of-credit rights. With certain
32 exceptions, this Article provides that a security interest in a
deposit account or a letter-of-credit right may be perfected only
34 by the secured party's acquiring "control" of the deposit account
or letter-of-credit right. See Sections 9-312, 9-314 [Maine cite
36 sections 9-1312, 9-1314]. Under Section 9-104 [Maine cite
section 9-1104], a secured party has "control" of a deposit
38 account when, with the consent of the debtor, the secured party
obtains the depository bank's agreement to act on the secured
40 party's instructions (including when the secured party becomes
the account holder) or when the secured party is itself the
42 depository bank. The control requirements are patterned on
Section 8-106, which specifies the requirements for control of
44 investment property. Under Section 9-107 [Maine cite section
9-1107], "control" of a letter-of-credit right occurs when the
46 issuer or nominated person consents to an assignment of proceeds
under Section 5-114.

48 Electronic chattel paper. Section 9-102 [Maine cite section
50 9-1102] includes a new defined term: "electronic chattel
paper." Electronic chattel paper is a record or records

2 consisting of information stored in an electronic medium (i.e.,
it is not written). Perfection of a security interest in
4 electronic chattel paper may be by control or filing. See
Sections 9-105 [Maine cite section 9-1105] (sui generis
6 definition of control of electronic chattel paper), 9-312 [Maine
cite section 9-1312] (perfection by filing), 9-314 [Maine cite
section 9-1314] (perfection by control).

8
Investment property. The perfection requirements for
10 "investment property" (defined in Section 9-102) [Maine cite
section 9-1102], including perfection by control under Section
12 9-106 [Maine cite section 9-1106], remain substantially
unchanged. However, a new provision in Section 9-314 [Maine cite
14 section 9-1314] is designed to ensure that a secured party
retains control in "repledge" transactions that are typical in
16 the securities markets.

18 Instruments, agricultural liens, and commercial tort
claims. This Article expands the types of collateral in which a
20 security interest may be perfected by filing to include
instruments. See Section 9-312 [Maine cite section 9-1312].
22 Agricultural liens and security interests in commercial tort
claims also are perfected by filing, under this Article. See
24 Sections 9-308, 9-310 [Maine cite sections 9-1308, 9-310].

26 Sales of payment intangibles and promissory notes.
Although former Article 9 covered the outright sale of accounts
28 and chattel paper, sales of most other types of receivables also
are financing transactions to which Article 9 [Maine cite Article
30 9-A] should apply. Accordingly, Section 9-102 [Maine cite
section 9-1102] expands the definition of "account" to include
32 many types of receivables (including "health-care-insurance
receivables," defined in Section 9-102) [Maine cite section
34 9-1102] that former Article 9 classified as "general
intangibles." It thereby subjects to Article 9's [Maine cite
36 Article 9-A] filing system sales of more types of receivables
than did former Article 9. Certain sales of payment
38 intangibles--primarily bank loan participation
transactions--should not be subject to the Article 9 [Maine cite
40 Article 9-A] filing rules. These transactions fall in a residual
category of collateral, "payment intangibles" (general
42 intangibles under which the account debtor's principal obligation
is monetary), the sale of which is exempt from the filing
44 requirements of Article 9 [Maine cite Article 9-A]. See Sections
9-102, 9-109, 9-309 [Maine cite sections 9-1102, 9-1109, 9-1309]
46 (perfection upon attachment). The perfection rules for sales of
promissory notes are the same as those for sales of payment
48 intangibles.

2 Possessory security interests. Several provisions of
3 this Article address aspects of security interests involving a
4 secured party or a third party who is in possession of the
5 collateral. In particular, Section 9-313 [Maine cite section
6 9-1313] resolves a number of uncertainties under former Section
7 9-305. It provides that a security interest in collateral in the
8 possession of a third party is perfected when the third party
9 acknowledges in an authenticated record that it holds for the
10 secured party's benefit. Section 9-313 [Maine cite section
11 9-1313] also provides that a third party need not so acknowledge
12 and that its acknowledgment does not impose any duties on it,
13 unless it otherwise agrees. A special rule in Section 9-313
14 [Maine cite section 9-1313] provides that if a secured party
15 already is in possession of collateral, its security interest
16 remains perfected by possession if it delivers the collateral to
17 a third party and the collateral is accompanied by instructions
18 to hold it for the secured party or to redeliver it to the
19 secured party. Section 9-313 [Maine cite section 9-1313] also
20 clarifies the limited circumstances under which a security
21 interest in goods covered by a certificate of title may be
22 perfected by the secured party's taking possession.

23 Automatic perfection. Section 9-309 [Maine cite section
24 9-1309] lists various types of security interests as to which no
25 public-notice step is required for perfection (e.g.,
26 purchase-money security interests in consumer goods other than
27 automobiles). This automatic perfection also extends to a
28 transfer of a health-care-insurance receivable to a health-care
29 provider. Those transfers normally will be made by natural
30 persons who receive health-care services; there is little value
31 in requiring filing for perfection in that context. Automatic
32 perfection also applies to security interests created by sales of
33 payment intangibles and promissory notes. Section 9-308 [Maine
34 cite section 9-1308] provides that a perfected security interest
35 in collateral supported by a "supporting obligation" (such as an
36 account supported by a guaranty) also is a perfected security
37 interest in the supporting obligation, and that a perfected
38 security interest in an obligation secured by a security interest
39 or lien on property (e.g., a real-property mortgage) also is a
40 perfected security interest in the security interest or lien.

41 e. Priority; Special Rules for Banks and Deposit Accounts.
42 The rules governing priority of security interests and
43 agricultural liens are found in Part 3, Subpart 3 (Sections
44 9-317 through 9-342) [Maine cite sections 9-1317 to
45 9-1342]. This Article includes several new priority rules
46 and some special rules relating to banks and deposit
47 accounts (Sections 9-340 through 9-342) [Maine cite sections
48 9-1340 to 9-1342].
49

50

2 Purchase-money security interests: General; consumer-goods
3 transactions; inventory. Section 9-103 [Maine cite section
4 9-1103] substantially rewrites the definition of purchase-money
5 security interest (PMSI) (although the term is not formally
6 "defined"). The substantive changes, however, apply only to
7 non-consumer-goods transactions. (Consumer transactions and
8 consumer-goods transactions are discussed below in Comment 4.j.)
9 For non-consumer-goods transactions, Section 9-103 [Maine cite
10 section 9-1103] makes clear that a security interest in
11 collateral may be (to some extent) both a PMSI as well as a
12 non-PMSI, in accord with the "dual status" rule applied by some
13 courts under former Article 9 (thereby rejecting the
14 "transformation" rule). The definition provides an even broader
15 conception of a PMSI in inventory, yielding a result that accords
16 with private agreements entered into in response to the
17 uncertainty under former Article 9. It also treats consignments
18 as purchase-money security interests in inventory. Section 9-324
19 [Maine cite section 9-1324] revises the PMSI priority rules, but
20 for the most part without material change in substance. Section
21 9-324 [Maine cite section 9-1324] also clarifies the priority
22 rules for competing PMSIs in the same collateral.

23 Purchase-money security interests in livestock; agricultural
24 liens. Section 9-324 [Maine cite section 9-1324] provides a
25 special PMSI priority, similar to the inventory PMSI priority
26 rule, for livestock. Section 9-322 [Maine cite section 9-1322]
27 (which contains the baseline first-to-file-or-perfect priority
28 rule) also recognizes special non-Article 9 priority rules for
29 agricultural liens, which can override the baseline first-in-time
30 rule.

31 Purchase-money security interests in software. Section
32 9-324 [Maine cite section 9-1324] contains a new priority rule
33 for a software purchase-money security interest. (Section 9-102
34 [Maine cite section 9-1102] includes a definition of
35 "software.") Under Section 9-103 [Maine cite section 9-1102], a
36 software PMSI includes a PMSI in software that is used in goods
37 that are also subject to a PMSI. (Note also that the definition
38 of "chattel paper" has been expanded to include records that
39 evidence a monetary obligation and a security interest in
40 specific goods and software used in the goods.)
41

42 Investment property. The priority rules for investment
43 property are substantially similar to the priority rules found in
44 former Section 9-115 [Maine cite section 9-1115], which was added
45 in conjunction with the 1994 revisions to UCC Article 8. Under
46 Section 9-328 [Maine cite section 9-1328], if a secured party has
47 control of investment property (Sections 8-106, 9-106) [Maine
48 cite section 9-1106], its security interest is senior to a
49 security interest perfected in another manner (e.g., by filing).
50

2 Also under Section 9-328 [Maine cite section 9-1328], security
interests perfected by control generally rank according to the
4 time that control is obtained or, in the case of a security
entitlement or a commodity contract carried in a commodity
6 account, the time when the control arrangement is entered into.
This is a change from former Section 9-115, under which the
8 security interests ranked equally. However, as between a
securities intermediary's security interest in a security
10 entitlement that it maintains for the debtor and a security
interest held by another secured party, the securities
intermediary's security interest is senior.

12
14 Deposit accounts. This Article's priority rules applicable
to deposit accounts are found in Section 9-327 [Maine cite
section 9-1327]. They are patterned on and are similar to those
16 for investment property in former Section 9-115 and Section 9-328
of this Article. Under Section 9-327 [Maine cite section
18 9-1327], if a secured party has control of a deposit account, its
security interest is senior to a security interest perfected in
20 another manner (i.e., as cash proceeds). Also under Section
9-327 [Maine cite section 9-1327], security interests perfected
22 by control rank according to the time that control is obtained,
but as between a depository bank's security interest and one held
24 by another secured party, the depository bank's security interest
is senior. A corresponding rule in Section 9-340 [Maine cite
26 section 9-1340] makes a depository bank's right of set-off
generally senior to a security interest held by another secured
28 party. However, if the other secured party becomes the
depository bank's customer with respect to the deposit account,
30 then its security interest is senior to the depository bank's
security interest and right of set-off. Sections 9-327, 9-340
32 [Maine cite sections 9-1327, 9-1340].

34 Letter-of-credit rights. The priority rules for security
interests in letter-of-credit rights are found in Section 9-329
36 [Maine cite section 9-1329]. They are somewhat analogous to
those for deposit accounts. A security interest perfected by
38 control has priority over one perfected in another manner (i.e.,
as a supporting obligation for the collateral in which a security
40 interest is perfected). Security interests in a letter-of-credit
right perfected by control rank according to the time that
42 control is obtained. However, the rights of a transferee
beneficiary or a nominated person are independent and superior to
44 the extent provided in Section 5-114. See Section 9-109(c)(4)
[Maine cite section 9-1109, subsection (3), paragraph (d)].

46
48 Chattel paper and instruments. Section 9-330 [Maine cite
section 9-1330] is the successor to former Section 9-308. As
under former Section 9-308, differing priority rules apply to
50 purchasers of chattel paper who give new value and take

2 possession (or, in the case of electronic chattel paper, obtain
control) of the collateral depending on whether a conflicting
4 security interest in the collateral is claimed merely as
proceeds. The principal change relates to the role of knowledge
6 and the effect of an indication of a previous assignment of the
collateral. Section 9-330 [Maine cite section 9-1330] also
8 affords priority to purchasers of instruments who take possession
in good faith and without knowledge that the purchase violates
10 the rights of the competing secured party. In addition, to
qualify for priority, purchasers of chattel paper, but not of
instruments, must purchase in the ordinary course of business.

12
14 Proceeds. Section 9-322 [Maine cite section 9-1322]
contains new priority rules that clarify when a special priority
16 of a security interest in collateral continues or does not
continue with respect to proceeds of the collateral. Other
18 refinements to the priority rules for proceeds are included in
Sections 9-324 [Maine cite section 9-1324] (purchase-money
20 security interest priority) and 9-330 [Maine cite section 9-1330]
(priority of certain purchasers of chattel paper and instruments).

22 Miscellaneous priority provisions. This Article also
24 includes (i) clarifications of selected good-faith-purchase and
similar issues (Sections 9-317, 9-331) [Maine cite sections
26 9-1317, 9-1331]; (ii) new priority rules to deal with the "double
debtor" problem arising when a debtor creates a security interest
28 in collateral acquired by the debtor subject to a security
interest created by another person (Section 9-325) [Maine cite
30 section 9-1325]; (iii) new priority rules to deal with the
problems created when a change in corporate structure or the like
32 results in a new entity that has become bound by the original
debtor's after-acquired property agreement (Section 9-326) [Maine
34 cite section 9-1326]; (iv) a provision enabling most transferees
of funds from a deposit account or money to take free of a
36 security interest (Section 9-332) [Maine cite section 9-1332];
(v) substantially rewritten and refined priority rules dealing
38 with accessions and commingled goods (Sections 9-335, 9-336)
[Maine cite sections 9-1335, 9-1336]; (vi) revised priority rules
40 for security interests in goods covered by a certificate of title
(Section 9-337) [Maine cite section 9-1337]; and (vii) provisions
42 designed to ensure that security interests in deposit accounts
will not extend to most transferees of funds on deposit or payees
44 from deposit accounts and will not otherwise "clog" the payments
system (Sections 9-341, 9-342) [Maine cite sections 9-1341,
9-1342].

46
48 Model provisions relating to production-money security
interests. Appendix II to this Article contains model
50 definitions and priority rules relating to "production-money
security interests" held by secured parties who give new value

2 used in the production of crops. Because no consensus emerged on
the wisdom of these provisions during the drafting process, the
sponsors make no recommendation on whether these model provisions
4 should be enacted.

6 f. Proceeds. Section 9-102 [Maine cite section 9-1102]
contains an expanded definition of "proceeds" of collateral
8 which includes additional rights and property that arise out
of collateral, such as distributions on account of
10 collateral and claims arising out of the loss or
nonconformity of, defects in, or damage to collateral. The
12 term also includes collections on account of "supporting
obligations," such as guarantees.

14 g. Part 4: Additional Provisions Relating to Third-Party
Rights. New Part 4 contains several provisions relating to
16 the relationships between certain third parties and the
parties to secured transactions. It contains new Sections
18 9-401 [Maine cite section 9-1401] (replacing former Section
9-311) (alienability of debtor's rights), 9-402 [Maine cite
20 section 9-1402] (replacing former Section 9-317) (secured
party not obligated on debtor's contracts), 9-403 [Maine
22 cite section 9-1403] (replacing former Section 9-206)
(agreement not to assert defenses against assignee), 9-404,
24 9-405, and 9-406 [Maine cite sections 9-1404, 9-1405 and
9-1406] (replacing former Section 9-318) (rights acquired by
26 assignee, modification of assigned contract, discharge of
account debtor, restrictions on assignment of account,
28 chattel paper, promissory note, or payment intangible
ineffective), 9-407 [Maine cite section 9-1407] (replacing
30 some provisions of former Section 2A-303) (restrictions on
creation or enforcement of security interest in leasehold
32 interest or lessor's residual interest ineffective). It
also contains new Sections 9-408 [Maine cite section 9-1408]
34 (restrictions on assignment of promissory notes,
36 health-care-insurance receivables ineffective, and certain
general intangibles ineffective) and 9-409 [Maine cite
38 section 9-1409] (restrictions on assignment of
letter-of-credit rights ineffective), which are discussed
40 above.

42 h. Filing. Part 5 (formerly Part 4) of Article 9 [Maine
cite Article 9-A] has been substantially rewritten to
44 simplify the statutory text and to deal with numerous
problems of interpretation and implementation that have
46 arisen over the years.

48 Medium-neutrality. This Article is "medium-neutral"; that
is, it makes clear that parties may file and otherwise

2 communicate with a filing office by means of records communicated
and stored in media other than on paper.

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

18
20 Section 9-509 [Maine cite section 9-1509] collects in one
place most of the rules that determine when a record may be
22 filed. In general, the debtor's authorization is required for
the filing of an initial financing statement or an amendment that
24 adds collateral. With one further exception, a secured party of
record's authorization is required for the filing of other
26 amendments. The exception arises if a secured party has failed
to provide a termination statement that is required because there
28 is no outstanding secured obligation or commitment to give
value. In that situation, a debtor is authorized to file a
30 termination statement indicating that it has been filed by the
debtor.

32 Financing statement formal requisites. The formal
requisites for a financing statement are set out in Section 9-502
34 [Maine cite section 9-1502]. A financing statement must provide
the name of the debtor and the secured party and an indication of
36 the collateral that it covers. Sections 9-503 and 9-506 [Maine
cite sections 9-1503, 9-1506] address the sufficiency of a name
38 provided on a financing statement and clarify when a debtor's
name is correct and when an incorrect name is insufficient.
40 Section 9-504 addresses the indication of collateral covered.
Under Section 9-504 [Maine cite section 9-1504], a super-generic
42 description (e.g., "all assets" or "all personal property") in a
financing statement is a sufficient indication of the
44 collateral. (Note, however, that a super-generic description is
inadequate for purposes of a security agreement. See Sections
46 9-108, 9-203.) [Maine cite sections 9-1108, 9-1203] To facilitate
electronic filing, this Article does not require that the
48 debtor's signature or other authorization appear on a financing
statement. Instead, it prohibits the filing of unauthorized
50 financing statements and imposes liability upon those who violate

2 the prohibition. See Sections 9-509, 9-626 [Maine cite sections
3 9-1509, 9-1626].

4 Filing-office operations. Part 5 contains several
5 provisions governing filing operations. First, it prohibits the
6 filing office from rejecting an initial financing statement or
7 other record for a reason other than one of the few that are
8 specified. See Sections 9-520, 9-516 [Maine cite sections
9 9-1520, 9-1516]. Second, the filing office is obliged to link
10 all subsequent records (e.g., assignments, continuation
11 statements, etc.) to the initial financing statement to which
12 they relate. See Section 9-519 [Maine cite section 9-1519].
13 Third, the filing office may delete a financing statement and
14 related records from the files no earlier than one year after
15 lapse (lapse normally is five years after the filing date), and
16 then only if a continuation statement has not been filed. See
17 Sections 9-515, 9-519, 9-522 [Maine cite sections 9-1515, 9-1519,
18 9-1522]. Thus, a financing statement and related records would
19 be discovered by a search of the files even after the filing of a
20 termination statement. This approach helps eliminate
21 filing-office discretion and also eases problems associated with
22 multiple secured parties and multiple partial assignments.
23 Fourth, Part 5 mandates performance standards for filing
24 offices. See Sections 9-519, 9-520, 9-523 [Maine cite sections
25 9-1519, 9-1520, 9-1523]. Fifth, it provides for the promulgation
26 of filing-office rules to deal with details best left out of the
27 statute and requires the filing office to submit periodic
28 reports. See Sections 9-526, 9-527 [Maine cite sections 9-1526,
29 9-1527].

30 Correction of records: Defaulting or missing secured
31 parties and fraudulent filings. In some areas of the country,
32 serious problems have arisen from fraudulent financing statements
33 that are filed against public officials and other persons. This
34 Article addresses the fraud problem by providing the opportunity
35 for a debtor to file a termination statement when a secured party
36 wrongfully refuses or fails to provide a termination statement.
37 See Section 9-509 [Maine cite section 9-1509]. This opportunity
38 also addresses the problem of secured parties that simply
39 disappear through mergers or liquidations. In addition, Section
40 9518 [Maine cite section 9-1518] affords a statutory method by
41 which a debtor who believes that a filed record is inaccurate or
42 was wrongfully filed may indicate that fact in the files by
43 filing a correction statement, albeit without affecting the
44 efficacy, if any, of the challenged record.

45 Extended period of effectiveness for certain financing
46 statements. Section 9-515 [Maine cite section 9-1515] contains
47 an exception to the usual rule that financing statements are
48 effective for five years unless a continuation statement is filed
49

2 to continue the effectiveness for another five years. Under that
3 section, an initial financing statement filed in connection with
4 a "public-finance transaction" or a "manufactured-home
5 transaction" (terms defined in Section 9-102) [Maine cite section
6 9-1102] is effective for 30 years.

7 National form of financing statement and related forms.
8 Section 9-521 [Maine cite section 9-1521] provides for uniform,
9 national written forms of financing statements and related
10 written records that must be accepted by a filing office that
11 accepts written records.

12
13 i. Default and Enforcement. Part 6 of Article 9 [Maine
14 cite Article 9-A] extensively revises former Part 5.
15 Provisions relating to enforcement of consumer-goods
16 transactions and consumer transactions are discussed in
17 Comment 4.j.

18 Debtor, secondary obligor; waiver. Section 9-602 [Maine
19 cite section 9-1602] clarifies the identity of persons who have
20 rights and persons to whom a secured party owes specified duties
21 under Part 6. Under that section, the rights and duties are
22 enjoyed by and run to the "debtor," defined in Section 9-102
23 [Maine cite section 9-1102] to mean any person with a non-lien
24 property interest in collateral, and to any "obligor." However,
25 with one exception (Section 9-616 [Maine cite section 9-1616], as
26 it relates to a consumer obligor), the rights and duties
27 concerned affect non-debtor obligors only if they are "secondary
28 obligors." "Secondary obligor" is defined in Section 9-102
29 [Maine cite section 9-1102] to include one who is secondarily
30 obligated on the secured obligation, e.g., a guarantor, or one
31 who has a right of recourse against the debtor or another obligor
32 with respect to an obligation secured by collateral. However,
33 under Section 9-628 [Maine cite section 9-1628], the secured
34 party is relieved from any duty or liability to any person unless
35 the secured party knows that the person is a debtor or obligor.
36 Resolving an issue on which courts disagreed under former Article
37 9, this Article generally prohibits waiver by a secondary obligor
38 of its rights and a secured party's duties under Part 6. See
39 Section 9-602 [Maine cite section 9-1602]. However, Section
40 9-624 [Maine cite section 9-1624] permits a secondary obligor or
41 debtor to waive the right to notification of disposition of
42 collateral and, in a non-consumer transaction, the right to
43 redeem collateral, if the secondary obligor or debtor agrees to
44 do so after default.

45 Rights of collection and enforcement of collateral. Section
46 9-607 [Maine cite section 9-1607] explains in greater detail than
47 former 9-502 the rights of a secured party who seeks to collect
48 or enforce collateral, including accounts, chattel paper, and
49

2 payment intangibles. It also sets forth the enforcement rights
of a depository bank holding a security interest in a deposit
4 account maintained with the depository bank. Section 9-607
[Maine cite section 9-1607] relates solely to the rights of a
6 secured party vis-a-vis a debtor with respect to collections and
enforcement. It does not affect the rights or duties of third
8 parties, such as account debtors on collateral, which are
addressed elsewhere (e.g., Section 9-406) [Maine cite section
10 9-1406]. Section 9-608 [Maine cite section 9-1608] clarifies the
manner in which proceeds of collection or enforcement are to be
applied.

12
Disposition of collateral: Warranties of title. Section
14 9-610 [Maine cite section 9-1610] imposes on a secured party who
disposes of collateral the warranties of title, quiet possession,
16 and the like that are otherwise applicable under other law. It
also provides rules for the exclusion or modification of those
18 warranties.

20 Disposition of collateral: Notification, application
of proceeds, surplus and deficiency, other effects. Section
22 9-611 [Maine cite section 9-1611] requires a secured party to
give notification of a disposition of collateral to other secured
24 parties and lienholders who have filed financing statements
against the debtor covering the collateral. (That duty was
26 eliminated by the 1972 revisions to Article 9.) However, that
section relieves the secured party from that duty when the
28 secured party undertakes a search of the records and a report of
the results is unreasonably delayed. Section 9-613 [Maine cite
30 section 9-1613], which applies only to non-consumer transactions,
specifies the contents of a sufficient notification of
32 disposition and provides that a notification sent 10 days or more
before the earliest time for disposition is sent within a
34 reasonable time. Section 9-615 [Maine cite section 9-1615]
addresses the application of proceeds of disposition, the
36 entitlement of a debtor to any surplus, and the liability of an
obligor for any deficiency. Section 9-619 [Maine cite section
38 9-1619] clarifies the effects of a disposition by a secured
party, including the rights of transferees of the collateral.

40
Rights and duties of secondary obligor. Section 9-618
42 [Maine cite section 9-1618] provides that a secondary obligor
obtains the rights and assumes the duties of a secured party if
44 the secondary obligor receives an assignment of a secured
obligation, agrees to assume the secured party's rights and
46 duties upon a transfer to it of collateral, or becomes subrogated
to the rights of the secured party with respect to the
48 collateral. The assumption, transfer, or subrogation is not a
disposition of collateral under Section 9-610 [Maine cite section
50 9-1610], but it does relieve the former secured party of further

2 duties. Former Section 9-504(5) did not address whether a
secured party was relieved of its duties in this situation.

4 Transfer of record or legal title. Section 9-619 [Maine
cite section 9-1619] contains a new provision making clear that a
6 transfer of record or legal title to a secured party is not of
itself a disposition under Part 6. This rule applies regardless
8 of the circumstances under which the transfer of title occurs.

10 Strict foreclosure. Section 9-620 [Maine cite section
9-1620], unlike former Section 9-505, permits a secured party to
12 accept collateral in partial satisfaction, as well as full
satisfaction, of the obligations secured. This right of strict
14 foreclosure extends to intangible as well as tangible property.
Section 9-622 [Maine cite section 9-1622] clarifies the effects
16 of an acceptance of collateral on the rights of junior
claimants. It rejects the approach taken by some courts--deeming
18 a secured party to have constructively retained collateral in
satisfaction of the secured obligations--in the case of a secured
20 party's unreasonable delay in the disposition of collateral.
Instead, unreasonable delay is relevant when determining whether
22 a disposition under Section 9-610 [Maine cite section 9-1610] is
commercially reasonable.

24 Effect of noncompliance: "Rebuttable presumption" test.
26 Section 9-626 [Maine cite section 9-1626] adopts the "rebuttable
presumption" test for the failure of a secured party to proceed
28 in accordance with certain provisions of Part 6. (As discussed
in Comment 4.j., the test does not necessarily apply to consumer
30 transactions.) Under this approach, the deficiency claim of a
noncomplying secured party is calculated by crediting the obligor
32 with the greater of the actual net proceeds of a disposition and
the amount of net proceeds that would have been realized if the
34 disposition had been conducted in accordance with Part 6 (e.g.,
in a commercially reasonable manner). For non-consumer
36 transactions, Section 9-626 [Maine cite section 9-1626] rejects
the "absolute bar" test that some courts have imposed; that
38 approach bars a noncomplying secured party from recovering any
deficiency, regardless of the loss (if any) the debtor suffered
40 as a consequence of the noncompliance.

42 "Low-price" dispositions: Calculation of deficiency and
surplus. Section 9-615(f) [Maine cite section 9-1615, subsection
44 (6)] addresses the problem of procedurally regular dispositions
that fetch a low price. Subsection (f) [Maine cite subsection
46 (6)] provides a special method for calculating a deficiency if
the proceeds of a disposition of collateral to a secured party, a
48 person related to the secured party, or a secondary obligor are
"significantly below the range of proceeds that a complying
50 disposition to a person other than the secured party, a person

2 related to the secured party, or a secondary obligor would have
brought." ("Person related to" is defined in Section 9-102
4 [Maine cite section 9-1102].) In these situations there is
reason to suspect that there may be inadequate incentives to
6 obtain a better price. Consequently, instead of calculating a
deficiency (or surplus) based on the actual net proceeds, the
8 deficiency (or surplus) would be calculated based on the proceeds
that would have been received in a disposition to person other
10 than the secured party, a person related to the secured party, or
a secondary obligor.

12 j. Consumer Goods, Consumer-Goods Transactions, and
Consumer Transactions. This Article (including the
14 accompanying conforming revisions (see Appendix I)) includes
several special rules for "consumer goods," "consumer
16 transactions," and "consumer-goods transactions." Each term
is defined in Section 9-102 [Maine cite section 9-1102].

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

24 (ii) Section 9-103(e) [Maine cite section 9-1103,
26 subsection (5)] (allocation of payments for determining
extent of purchase-money status), (f) [Maine cite
28 subsection (6)] (purchase-money status not affected by
cross-collateralization, refinancing, restructuring, or
30 the like), and (g) [Maine cite subsection (7)] (secured
party has burden of establishing extent of
32 purchase-money status) do not apply to consumer-goods
transactions. Sections 9-103 [Maine cite section
34 9-1103] also provides that the limitation of those
provisions to transactions other than consumer-goods
36 transactions leaves to the courts the proper rules for
consumer-goods transactions and prohibits the courts
38 from drawing inferences from that limitation.

40 (iii) Section 9-108 [Maine cite section 9-1108]
provides that in a consumer transaction a description
42 of consumer goods, a security entitlement, securities
account, or commodity account "only by [UCC-defined]
44 type of collateral" is not a sufficient collateral
description in a security agreement.

46 (iv) Sections 9-403 and 9-404 [Maine cite sections
48 9-1403 and 9-1404] make effective the Federal Trade
Commission's anti-holder-in-due-course rule (when

2 applicable), 16 C.F.R. Part 433, even in the absence of
the required legend.

4 (v) The 10-day safe-harbor for notification of a
6 disposition provided by Section 9-612 [Maine cite
section 9-1612] does not apply in a consumer
8 transaction.

10 (vi) Section 9-613 [Maine cite section 9-1613]
(contents and form of notice of disposition) does not
12 apply to a consumer-goods transaction.

14 (vii) Section 9-614 [Maine cite section 9-1614]
contains special requirements for the contents of a
16 notification of disposition and a safe-harbor, "plain
English" form of notification, for consumer-goods
18 transactions.

20 (viii) Section 9-616 [Maine cite section 9-1616]
requires a secured party in a consumer-goods
22 transaction to provide a debtor with a notification of
how it calculated a deficiency at the time it first
24 undertakes to collect a deficiency.

26 (ix) Section 9-620 [Maine cite section 9-1620]
prohibits partial strict foreclosure with respect to
28 consumer goods collateral and, unless the debtor agrees
to waive the requirement in an authenticated record
30 after default, in certain cases requires the secured
party to dispose of consumer goods collateral which has
32 been repossessed.

34 (x) Section 9-626 [Maine cite section 9-1626]
("rebuttable presumption" rule) does not apply to a
36 consumer transaction. Section 9-626 [Maine cite
section 9-1626] also provides that its limitation to
38 transactions other than consumer transactions leaves to
the courts the proper rules for consumer transactions
40 and prohibits the courts from drawing inferences from
that limitation.

42 k. Good Faith. Section 9-102 [Maine cite section 9-1102]
contains a new definition of "good faith" that includes not
44 only "honesty in fact" but also "the observance of
reasonable commercial standards of fair dealing." The
46 definition is similar to the ones adopted in connection with
other, recently completed revisions of the UCC.

48 1. Transition Provisions. Part 7 (Sections 9-701 through
50 9-707) [Maine cite sections 9-1701 to 9-1707] contains

2 transition provisions. Transition from former Article 9 to
3 this Article will be particularly challenging in view of its
4 expanded scope, its modification of choice-of-law rules for
5 perfection and priority, and its expansion of the methods of
6 perfection.

7 m. Conforming and Related Amendments to Other UCC
8 Articles. Appendix I contains several proposed revisions to
9 the provisions and Comments of other UCC Articles. For the
10 most part the revisions are explained in the Comments to the
11 proposed revisions. Cross-references in other UCC Articles
12 to sections of Article 9 [Maine cite Article 9-A] also have
13 been revised.

14 Article 1. Revised Section 1-201 contains revisions to the
15 definitions of "buyer in ordinary course of business,"
16 "purchaser," and "security interest."

17 Articles 2 and 2A. Sections 2-210, 2-326, 2-502, 2-716,
18 2A-303, and 2A-307 have been revised to address the intersection
19 between Articles 2 and 2A and Article 9.

20 Article 5. New Section 5-118 is patterned on Section 4210.
21 It provides for a security interest in documents presented under
22 a letter of credit in favor of the issuer and a nominated person
23 on the letter of credit.

24 Article 8. Revisions to Section 8-106, which deals with
25 "control" of securities and security entitlements, conform it to
26 Section 8-302, which deals with "delivery." Revisions to Section
27 8-110, which deals with a "securities intermediary's
28 jurisdiction," conform it to the revised treatment of a
29 "commodity intermediary's jurisdiction" in Section 9-305 [Maine
30 cite section 9-1305]. Sections 8-301 and 8302 have been revised
31 for clarification. Section 8-510 has been revised to conform it
32 to the revised priority rules of Section 9-328 [Maine cite
33 section 9-1328]. Several Comments in Article 8 also have been
34 revised.

35 **§9-1102. Definitions and index of definitions**

36 As used in this Article, unless the context otherwise
37 indicates, the following terms have the following meanings.

38 (1) "Accession" means goods that are physically united with
39 other goods in such a manner that the identity of the original
40 goods is not lost.

2 (2) "Account," except as used in "account for," means a
3 right to payment of a monetary obligation, whether or not earned
4 by performance:

5 (a) For property that has been or is to be sold, leased,
6 licensed, assigned or otherwise disposed of:

7 (b) For services rendered or to be rendered:

8 (c) For a policy of insurance issued or to be issued:

9 (d) For a secondary obligation incurred or to be incurred:

10 (e) For energy provided or to be provided:

11 (f) For the use or hire of a vessel under a charter or
12 other contract:

13 (g) Arising out of the use of a credit or charge card or
14 information contained on or for use with the card; or

15 (h) As winnings in a lottery or other game of chance
16 operated or sponsored by a state, governmental unit of a
17 state or person licensed or authorized to operate the game
18 by a state or governmental unit of a state.

19 "Account" includes health-care-insurance receivables. "Account"
20 does not include: rights to payment evidenced by chattel paper or
21 an instrument; commercial tort claims; deposit accounts;
22 investment property; letter-of-credit rights or letters of
23 credit; or rights to payment for money or funds advanced or sold,
24 other than rights arising out of the use of a credit or charge
25 card or information contained on or for use with the card.

26 (3) "Account debtor" means a person obligated on an
27 account, chattel paper or general intangible. "Account debtor"
28 does not include persons obligated to pay a negotiable
29 instrument, even if the instrument constitutes part of chattel
30 paper.

31 (4) "Accounting," except as used in "accounting for," means
32 a record:

33 (a) Authenticated by a secured party:

34 (b) Indicating the aggregate unpaid secured obligations as
35 of a date not more than 35 days earlier or 35 days later
36 than the date of the record; and

2 (c) Identifying the components of the obligations in
reasonable detail.

4 (5) "Agricultural lien" means an interest, other than a
security interest, in farm products:

6 (a) That secures payment or performance of an obligation
8 for:

10 (i) Goods or services furnished in connection with a
12 debtor's farming operation; or

14 (ii) Rent on real property leased by a debtor in
16 connection with its farming operation;

16 (b) That is created by statute in favor of a person that:

18 (i) In the ordinary course of its business furnished
20 goods or services to a debtor in connection with a
22 debtor's farming operation; or

24 (ii) Leased real property to a debtor in connection
26 with the debtor's farming operation; and

26 (c) Whose effectiveness does not depend on the person's
28 possession of the personal property.

28 (6) "As-extracted collateral" means:

30 (a) Oil, gas or other minerals that are subject to a
32 security interest that:

34 (i) Is created by a debtor having an interest in the
36 minerals before extraction; and

38 (ii) Attaches to the minerals as extracted; or

40 (b) Accounts arising out of the sale at the wellhead or
42 minehead of oil, gas or other minerals in which the debtor
44 had an interest before extraction.

44 (7) "Authenticate" means:

46 (a) To sign; or

48 (b) To execute or otherwise adopt a symbol or encrypt or
50 similarly process a record in whole or in part with the
present intent of the authenticating person to identify the
person and adopt or accept a record.

2 (8) "Bank" means an organization that is engaged in the
3 business of banking. "Bank" includes savings banks, savings and
4 loan associations, credit unions and trust companies.

6 (9) "Cash proceeds" means proceeds that are money, checks,
7 deposit accounts or the like.

8 (10) "Certificate of title" means a certificate of title
9 with respect to which a statute provides for the security
10 interest in question to be indicated on the certificate as a
11 condition or result of the security interest's obtaining priority
12 over the rights of a lien creditor with respect to the collateral.

14 (11) "Chattel paper" means a record or records that
15 evidence both a monetary obligation and a security interest in
16 specific goods, a security interest in specific goods and
17 software used in the goods or a lease of specific goods.
18 "chattel paper" does not include charters or other contracts
19 involving the use or hire of a vessel. If a transaction is
20 evidenced both by a security agreement or lease and by an
21 instrument or series of instruments, the group of records taken
22 together constitutes chattel paper.

24 (12) "Collateral" means the property subject to a security
25 interest or agricultural lien. "Collateral" includes:

26 (a) Proceeds to which a security interest attaches;

28 (b) Accounts, chattel paper, payment intangibles and
30 promissory notes that have been sold; and

32 (c) Goods that are the subject of a consignment.

34 (13) "Commercial tort claim" means a claim arising in tort
35 with respect to which:

36 (a) The claimant is an organization; or

38 (b) The claimant is an individual and the claim:

40 (i) Arose in the course of the claimant's business or
42 profession; and

44 (ii) Does not include damages arising out of personal
45 injury to or the death of an individual.

46 (14) "Commodity account" means an account maintained by a
47 commodity intermediary in which a commodity contract is carried
48 for a commodity customer.

50

2 (15) "Commodity contract" means a commodity futures
3 contract, an option on a commodity futures contract, a commodity
4 option or another contract if the contract or option is:

5 (a) Traded on or subject to the rules of a board of trade
6 that has been designated as a contract market for such a
7 contract pursuant to federal commodities laws; or

8 (b) Traded on a foreign commodity board of trade, exchange
9 or market and is carried on the books of a commodity
10 intermediary for a commodity customer.

11 (16) "Commodity customer" means a person for which a
12 commodity intermediary carries a commodity contract on its books.

13 (17) "Commodity intermediary" means a person that:

14 (a) Is registered as a futures commission merchant under
15 federal commodities law; or

16 (b) In the ordinary course of its business provides
17 clearance or settlement services for a board of trade that
18 has been designated as a contract market pursuant to federal
19 commodities law.

20 (18) "Communicate" means:

21 (a) To send a written or other tangible record;

22 (b) To transmit a record by any means agreed upon by the
23 persons sending and receiving the record; or

24 (c) In the case of transmission of a record to or by a
25 filing office, to transmit a record by any means prescribed
26 by filing-office rule.

27 (19) "Consignee" means a merchant to which goods are
28 delivered in a consignment.

29 (20) "Consignment" means a transaction, regardless of its
30 form, in which a person delivers goods to a merchant for the
31 purpose of sale and:

32 (a) The merchant:

33 (i) Deals in goods of that kind under a name other
34 than the name of the person making delivery;

35 (ii) Is not an auctioneer; and

36

2 (iii) Is not generally known by its creditors to be
 substantially engaged in selling the goods of others;

4 (b) With respect to each delivery, the aggregate value of
 the goods is \$1,000 or more at the time of delivery;

6 (c) The goods are not consumer goods immediately before
8 delivery; and

10 (d) The transaction does not create a security interest
 that secures an obligation.

12 (21) "Consignor" means a person that delivers goods to a
14 consignee in a consignment.

16 (22) "Consumer debtor" means a debtor in a consumer
 transaction.

18 (23) "Consumer goods" means goods that are used or bought
20 for use primarily for personal, family or household purposes.

22 (24) "Consumer-goods transaction" means a consumer
 transaction in which:

24 (a) An individual incurs an obligation primarily for
26 personal, family or household purposes; and

28 (b) A security interest in consumer goods secures the
 obligation.

30 (25) "Consumer obligor" means an obligor who is an
32 individual who incurred the obligation as part of a transaction
34 entered into primarily for personal, family or household purposes.

(26) "Consumer transaction" means a transaction in which:

36 (a) An individual incurs an obligation primarily for
38 personal, family or household purposes;

40 (b) A security interest secures the obligation; and

42 (c) The collateral is held or acquired primarily for
44 personal, family or household purposes.

"Consumer transaction" includes consumer-goods transactions.

46 (27) "Continuation statement" means an amendment of a
48 financing statement that:

- 2 (a) Identifies by its file number the initial financing
statement to which it relates; and
- 4 (b) Indicates that it is a continuation statement for, or
that it is filed to continue the effectiveness of, the
6 identified financing statement.
- 8 (28) "Debtor" means:
- 10 (a) A person having an interest, other than a security
interest or other lien, in the collateral, whether or not
12 the person is an obligor;
- 14 (b) A seller of accounts, chattel paper, payment
intangibles or promissory notes; or
- 16 (c) A consignee.
- 18 (29) "Deposit account" means a demand, time, savings,
20 passbook or similar account maintained with a bank. "Deposit
account" does not include investment property or accounts
22 evidenced by an instrument.
- 24 (30) "Document" means a document of title or a receipt of
the type described in section 7-201, subsection (2).
- 26 (31) "Electronic chattel paper" means chattel paper
28 evidenced by a record or records consisting of information stored
in an electronic medium.
- 30 (32) "Encumbrance" means a right, other than an ownership
32 interest, in real property. "Encumbrance" includes mortgages and
other liens on real property.
- 34 (33) "Equipment" means goods other than inventory, farm
36 products or consumer goods.
- 38 (34) "Farm products" means goods, other than standing
40 timber, with respect to which the debtor is engaged in a farming
operation and that are:
- 42 (a) Crops grown, growing or to be grown, including:
- 44 (i) Crops produced on trees, vines and bushes; and
- 46 (ii) Aquatic goods produced in aquacultural operations;
- 48 (b) Livestock, born or unborn, including aquatic goods
produced in aquacultural operations;
- 50

- 2 (c) Supplies used or produced in a farming operation; or
- 4 (d) Products of crops or livestock in their unmanufactured
states.
- 6 (35) "Farming operation" means raising, cultivating,
propagating, fattening, grazing or any other farming, livestock
8 or aquacultural operation.
- 10 (36) "File number" means the number assigned to an initial
financing statement pursuant to section 9-1519, subsection (1).
- 12
- 14 (37) "Filing office" means an office designated in section
9-1501 as the place to file a financing statement.
- 16 (38) "Filing-office rule" means a rule adopted pursuant to
section 9-1526.
- 18
- 20 (39) "Financing statement" means a record or records
composed of an initial financing statement and any filed record
22 relating to the initial financing statement.
- 24 (40) "Fixture filing" means the filing of a financing
statement covering goods that are or are to become fixtures and
26 satisfying section 9-1502, subsections (1) and (2). "Fixture
filing" includes the filing of a financing statement covering
28 goods of a transmitting utility that are or are to become
fixtures.
- 30 (41) "Fixtures" means goods that have become so related to
particular real property that an interest in them arises under
32 real property law.
- 34 (42) "General intangible" means any personal property,
including things in action, other than accounts, chattel paper,
36 commercial tort claims, deposit accounts, documents, goods,
instruments, investment property, letter-of-credit rights,
38 letters of credit, money, and oil, gas or other minerals before
extraction. "General intangible" includes payment intangibles
40 and software.
- 42 (43) "Good faith" means honesty in fact and the observance
of reasonable commercial standards of fair dealing.
- 44
- 46 (44) "Goods" means all things that are movable when a
security interest attaches. "Goods" includes:
- 48 (a) Fixtures;

2 (b) Standing timber that is to be cut and removed under a conveyance or contract for sale;

4 (c) The unborn young of animals;

6 (d) Crops grown, growing or to be grown, even if the crops are produced on trees, vines or bushes; and

8 (e) Manufactured homes.

10 "Goods" also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if the program is associated with the goods in such a manner that it customarily is considered part of the goods; or by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods.

18 "Goods" does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. "Goods" also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas or other minerals before extraction.

26 (45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality or other unit of the government of the United States, a state or a foreign country. "Governmental unit" includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

34 (46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance that is a right to payment of a monetary obligation for health-care goods or services provided.

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

46 (a) Investment property;

48 (b) Letters of credit; or

50

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

5 (48) "Inventory" means goods, other than farm products,
6 that:

7 (a) Are leased by a person as lessor;

8 (b) Are held by a person for sale or lease or to be
9 furnished under a contract of service;

10 (c) Are furnished by a person under a contract of service;
11 or

12 (d) Consist of raw materials, work in process or materials
13 used or consumed in a business.

14 (49) "Investment property" means a security, whether
15 certificated or uncertificated, security entitlement, securities
16 account, commodity contract or commodity account.

17 (50) "Jurisdiction of organization," with respect to a
18 registered organization, means the jurisdiction under whose law
19 the organization is organized.

20 (51) "Letter-of-credit right" means a right to payment or
21 performance under a letter of credit, whether or not the
22 beneficiary has demanded or is at the time entitled to demand
23 payment or performance. "Letter-of-credit right" does not
24 include the right of a beneficiary to demand payment or
25 performance under a letter of credit.

26 (52) "Lien creditor" means:

27 (a) A creditor that has acquired a lien on the property
28 involved by attachment, levy or the like;

29 (b) An assignee for benefit of creditors from the time of
30 assignment;

31 (c) A trustee in bankruptcy from the date of the filing of
32 the petition; or

33 (d) A receiver in equity from the time of appointment.

34 (53) "Manufactured home" means a structure, transportable
35 in one or more sections, that, in the traveling mode, is 8 body
36 feet or more in width or 40 body feet or more in length or, when
37 erected on site, is 320 or more square feet and that is built on
38 erected on site, is 320 or more square feet and that is built on

2 a permanent chassis and designed to be used as a dwelling with or
3 without a permanent foundation when connected to the required
4 utilities. "Manufactured home" includes the plumbing, heating,
5 air-conditioning and electrical systems contained in the
6 structure. "Manufactured home" includes any structure that meets
7 all of the requirements of this subsection except the size
8 requirements and with respect to which the manufacturer
9 voluntarily files a certification required by the United States
10 Secretary of Housing and Urban Development and complies with the
11 standards established under 42 United States Code.

12 (54) "Manufactured-home transaction" means a secured
13 transaction:

14
15 (a) That creates a purchase-money security interest in a
16 manufactured home, other than a manufactured home held as
17 inventory; or

18
19 (b) In which a manufactured home, other than a manufactured
20 home held as inventory, is the primary collateral.

21
22 (55) "Mortgage" means a consensual interest in real
23 property, including fixtures, that secures payment or performance
24 of an obligation.

25
26 (56) "New debtor" means a person that becomes bound as
27 debtor under section 9-1203, subsection (4) by a security
28 agreement previously entered into by another person.

29
30 (57) "New value" means:

31
32 (a) Money;

33
34 (b) Money's worth in property, services or new credit; or

35
36 (c) Release by a transferee of an interest in property
37 previously transferred to the transferee.

38
39 "New value" does not include an obligation substituted for
40 another obligation.

41
42 (58) "Noncash proceeds" means proceeds other than cash
43 proceeds.

44
45 (59) "Obligor" means a person that, with respect to an
46 obligation secured by a security interest in or an agricultural
47 lien on the collateral:

48
49 (a) Owes payment or other performance of the obligation;
50

2 (b) Has provided property other than the collateral to
secure payment or other performance of the obligation; or

4 (c) Is otherwise accountable in whole or in part for
payment or other performance of the obligation.

6
8 "Obligor" does not include issuers or nominated persons under a
letter of credit.

10 (60) "Original debtor" means a person that as debtor
entered into a security agreement to which a new debtor has
12 become bound under section 9-1203, subsection (4).

14 (61) "Payment intangible" means a general intangible under
which the account debtor's principal obligation is a monetary
16 obligation.

18 (62) "Person related to," with respect to an individual,
means:

20 (a) The spouse of the individual;

22 (b) A brother, brother-in-law, sister or sister-in-law of
24 the individual;

26 (c) An ancestor or lineal descendant of the individual or
of the individual's spouse; or

28 (d) Any other relative, by blood or marriage, of the
30 individual or the individual's spouse who shares the same
home with the individual.

32 (63) "Person related to," with respect to an organization,
34 means:

36 (a) A person directly or indirectly controlling, controlled
by or under common control with the organization;

38 (b) An officer or director of, or a person performing
40 similar functions with respect to, the organization;

42 (c) An officer or director of, or a person performing
similar functions with respect to, a person described in
44 paragraph (a);

46 (d) The spouse of an individual described in paragraph (a),
(b) or (c); or

48

2 (e) An individual who is related by blood or marriage to an
3 individual described in paragraph (a), (b), (c) or (d) and
4 shares the same home with the individual.

6 (64) "Proceeds" means the following property:

8 (a) Whatever is acquired upon the sale, lease, license,
9 exchange or other disposition of collateral;

10 (b) Whatever is collected on or distributed on account of
11 collateral;

12 (c) Rights arising out of collateral;

14 (d) To the extent of the value of collateral, claims
15 arising out of the loss, nonconformity or interference with
16 the use of, defects or infringement of rights in or damage
17 to the collateral; or

18 (e) To the extent of the value of collateral and to the
19 extent payable to the debtor or the secured party, insurance
20 payable by reason of the loss or nonconformity of, defects
21 or infringement of rights in or damage to the collateral.

22 (65) "Promissory note" means an instrument that evidences a
23 promise to pay a monetary obligation, does not evidence an order
24 to pay and does not contain an acknowledgment by a bank that the
25 bank has received for deposit a sum of money or funds.

26 (66) "Proposal" means a record authenticated by a secured
27 party that includes the terms on which the secured party is
28 willing to accept collateral in full or partial satisfaction of
29 the obligation it secures pursuant to sections 9-1620, 9-1621 and
30 9-1622.

31 (67) "Public-finance transaction" means a secured
32 transaction in connection with which:

33 (a) Debt securities are issued;

34 (b) All or a portion of the securities issued have an
35 initial stated maturity of at least 20 years; and

36 (c) The debtor, obligor, secured party, account debtor or
37 other person obligated on collateral, the assignor or
38 assignee of a secured obligation or the assignor or assignee
39 of a security interest is a state or a governmental unit of
40 a state.

2 (68) "Pursuant to commitment," with respect to an advance
3 made or other value given by a secured party, means pursuant to
4 the secured party's obligation, whether or not a subsequent event
5 of default or other event not within the secured party's control
6 has relieved or may relieve the secured party from its obligation.

7 (69) "Record," except as used in "for record," "of record,"
8 "record or legal title" and "record owner," means information
9 that is inscribed on a tangible medium or that is stored in an
10 electronic or other medium and is retrievable in perceivable form.

11 (70) "Registered organization" means an organization
12 organized solely under the law of a single state or of the United
13 States and as to which the state or the United States must
14 maintain a public record showing the organization to have been
15 organized.

16 (71) "Secondary obligor" means an obligor to the extent
17 that:

18 (a) The obligor's obligation is secondary; or

19 (b) The obligor has a right of recourse with respect to an
20 obligation secured by collateral against the debtor, another
21 obligor or property of either.

22 (72) "Secured party" means:

23 (a) A person in whose favor a security interest is created
24 or provided for under a security agreement, whether or not
25 any obligation to be secured is outstanding;

26 (b) A person that holds an agricultural lien;

27 (c) A consignor;

28 (d) A person to which accounts, chattel paper, payment
29 intangibles or promissory notes have been sold;

30 (e) A trustee, indenture trustee, agent, collateral agent
31 or other representative in whose favor a security interest
32 or agricultural lien is created or provided for; or

33 (f) A person that holds a security interest arising under
34 section 2-401, 2-505, 2-711, subsection (3), 2-508,
35 subsection (5), 4-210, or 5-118.

36 (73) "Security agreement" means an agreement that creates
37 or provides for a security interest.

2 (74) "Send," in connection with a record or notification,
3 means:

4 (a) To deposit in the mail, deliver for transmission or
5 transmit by any other usual means of communication, with
6 postage or cost of transmission provided, addressed to any
7 address reasonable under the circumstances; or

8 (b) To cause to be received within the time that it would
9 have been received if properly sent under paragraph (a).

10 (75) "Software" means a computer program and any supporting
11 information provided in connection with a transaction relating to
12 the program. "Software" does not include a computer program that
13 is included in the definition of goods.

14 (76) "State" means a state of the United States, the
15 District of Columbia, Puerto Rico, the United States Virgin
16 Islands or any territory or insular possession subject to the
17 jurisdiction of the United States.

18 (77) "Supporting obligation" means a letter-of-credit right
19 or secondary obligation that supports the payment or performance
20 of an account, chattel paper, a document, a general intangible,
21 an instrument or investment property.

22 (78) "Tangible chattel paper" means chattel paper evidenced
23 by a record or records consisting of information that is
24 inscribed on a tangible medium.

25 (79) "Termination statement" means an amendment of a
26 financing statement that:

27 (a) Identifies, by its file number, the initial financing
28 statement to which it relates; and

29 (b) Indicates either that it is a termination statement or
30 that the identified financing statement is no longer
31 effective.

32 (80) "Transmitting utility" means a person primarily
33 engaged in the business of:

34 (a) Operating a railroad, subway, street railway or trolley
35 bus;

36 (b) Transmitting communications electrically,
37 electromagnetically or by light;

38 (c) Transmitting goods by pipeline or sewer; or
39

2	<u>(d) Transmitting or producing and transmitting electricity,</u>	
	<u>steam, gas or water.</u>	
4		
6	<u>The following definitions in other Articles apply to this</u>	
	<u>Article:</u>	
8	<u>"Applicant"</u>	<u>Section 5-1102.</u>
10	<u>"Beneficiary"</u>	<u>Section 5-1102.</u>
12	<u>"Broker"</u>	<u>Section 8-1102.</u>
14	<u>"Certificated security"</u>	<u>Section 8-1102.</u>
16	<u>"Check"</u>	<u>Section 3-1104.</u>
18	<u>"Clearing corporation"</u>	<u>Section 8-1102.</u>
20	<u>"Contract for sale"</u>	<u>Section 2-106.</u>
22	<u>"Customer"</u>	<u>Section 4-104.</u>
24	<u>"Entitlement holder"</u>	<u>Section 8-1102.</u>
26	<u>"Financial asset"</u>	<u>Section 8-1102.</u>
28	<u>"Holder in due course"</u>	<u>Section 3-1302.</u>
30	<u>"Issuer" (with respect to a letter of</u>	
	<u>credit or letter-of-credit right)</u>	<u>Section 5-1102.</u>
32	<u>"Issuer" (with respect to a security)</u>	<u>Section 8-1201.</u>
34	<u>"Lease"</u>	<u>Section 2-1103.</u>
36	<u>"Lease agreement"</u>	<u>Section 2-1103.</u>
38	<u>"Lease contract"</u>	<u>Section 2-1103.</u>
40	<u>"Leasehold interest"</u>	<u>Section 2-1103.</u>
42	<u>"Lessee"</u>	<u>Section 2-1103.</u>
44	<u>"Lessee in ordinary course of business"</u>	<u>Section 2-1103.</u>
46	<u>"Lessor"</u>	<u>Section 2-1103.</u>
48	<u>"Lessor's residual interest"</u>	<u>Section 2-1103.</u>
50		

2	<u>"Letter of credit"</u>	<u>Section 5-1102.</u>
4	<u>"Merchant"</u>	<u>Section 2-104.</u>
6	<u>"Negotiable instrument"</u>	<u>Section 3-1104.</u>
8	<u>"Nominated person"</u>	<u>Section 5-1102.</u>
10	<u>"Note"</u>	<u>Section 3-1104.</u>
12	<u>"Proceeds of a letter of credit"</u>	<u>Section 5-114.</u>
14	<u>"Prove"</u>	<u>Section 3-1103.</u>
16	<u>"Sale"</u>	<u>Section 2-106.</u>
18	<u>"Securities account"</u>	<u>Section 8-1501.</u>
20	<u>"Securities intermediary"</u>	<u>Section 8-1102.</u>
22	<u>"Security"</u>	<u>Section 8-1102.</u>
24	<u>"Security certificate"</u>	<u>Section 8-1102.</u>
26	<u>"Security entitlement"</u>	<u>Section 8-1102.</u>
28	<u>"Uncertificated security"</u>	<u>Section 8-1102.</u>
30	<u>Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.</u>	

Official Comment

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1. Source. All terms that are defined in Article 9 [Maine cite Article 9-A] and used in more than one section are consolidated in this section. Note that the definition of "security interest" is found in Section 1-201, not in this Article, and has been revised. See Appendix I. Many of the definitions in this section are new; many others derive from those in former Section 9105. The following Comments also indicate other sections of former Article 9 that defined (or explained) terms.

46

2. Parties to Secured Transactions.

48
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a. "Debtor"; "Obligor"; "Secondary Obligor." Determining whether a person was a "debtor" under former Section 9-105(1)(d) required a close examination of the context in which the term was used. To reduce the need for this

2 examination, this Article redefines "debtor" and adds new
3 defined terms, "secondary obligor" and "obligor." In the
4 context of Part 6 (default and enforcement), these
5 definitions distinguish among three classes of persons: (i)
6 those persons who may have a stake in the proper enforcement
7 of a security interest by virtue of their non-lien property
8 interest (typically, an ownership interest) in the
9 collateral, (ii) those persons who may have a stake in the
10 proper enforcement of the security interest because of their
11 obligation to pay the secured debt, and (iii) those persons
12 who have an obligation to pay the secured debt but have no
13 stake in the proper enforcement of the security interest.
14 Persons in the first class are debtors. Persons in the
15 second class are secondary obligors if any portion of the
16 obligation is secondary or if the obligor has a right of
17 recourse against the debtor or another obligor with respect
18 to an obligation secured by collateral. One must consult
19 the law of suretyship to determine whether an obligation is
20 secondary. The Restatement (3d), Suretyship and Guaranty §
21 1 (1996), contains a useful explanation of the concept.
22 Obligors in the third class are neither debtors nor
23 secondary obligors. With one exception (Section 9-616
24 [Maine cite section 9-1616], as it relates to a consumer
25 obligor), the rights and duties in provided by Part 6 affect
26 non-debtor obligors only if they are "secondary obligors."

27 By including in the definition of "debtor" all persons with
28 a property interest (other than a security interest in or other
29 lien on collateral), the definition includes transferees of
30 collateral, whether or not the secured party knows of the
31 transfer or the transferee's identity. Exculpatory provisions in
32 Part 6 protect the secured party in that circumstance. See
33 Sections 9-605 and 9-628 [Maine cite sections 9-1605 and
34 9-1628]. The definition renders unnecessary former Section
35 9-112, which governed situations in which collateral was not
36 owned by the debtor. The definition also includes a "consignee,"
37 as defined in this section, as well as a seller of accounts,
38 chattel paper, payment intangibles, or promissory notes.

39 Secured parties and other lienholders are excluded from the
40 definition of "debtor" because the interests of those parties
41 normally derive from and encumber a debtor's interest. However,
42 if in a separate secured transaction a secured party grants, as
43 debtor, a security interest in its own interest (i.e., its
44 security interest and any obligation that it secures), the
45 secured party is a debtor in that transaction. This typically
46 occurs when a secured party with a security interest in specific
47 goods assigns chattel paper.

48 Consider the following examples:
49

2 Example 1: Behnfeltdt borrows money and grants a security
interest in her Miata to secure the debt. Behnfeltdt is a debtor
4 and an obligor.

6 Example 2: Behnfeltdt borrows money and grants a security
interest in her Miata to secure the debt. Bruno co-signs a
8 negotiable note as maker. As before, Behnfeltdt is the debtor and
an obligor. As an accommodation party (see Section 3-419), Bruno
10 is a secondary obligor. Bruno has this status even if the note
states that her obligation is a primary obligation and that she
12 waives all suretyship defenses.

14 Example 3: Behnfeltdt borrows money on an unsecured basis.
Bruno co-signs the note and grants a security interest in her
16 Honda to secure her obligation. Inasmuch as Behnfeltdt does not
have a property interest in the Honda, Behnfeltdt is not a
18 debtor. Having granted the security interest, Bruno is the
debtor. Because Behnfeltdt is a principal obligor, she is not a
20 secondary obligor. Whatever the outcome of enforcement of the
security interest against the Honda or Bruno's secondary
22 obligation, Bruno will look to Behnfeltdt for her losses. The
enforcement will not affect Behnfeltdt's aggregate obligations.
24

 When the principal obligor (borrower) and the secondary
26 obligor (surety) each has granted a security interest in
different collateral, the status of each is determined by the
28 collateral involved.

30 Example 4: Behnfeltdt borrows money and grants a security
interest in her Miata to secure the debt. Bruno co-signs the
32 note and grants a security interest in her Honda to secure her
obligation. When the secured party enforces the security
34 interest in Behnfeltdt's Miata, Behnfeltdt is the debtor, and Bruno
is a secondary obligor. When the secured party enforces the
36 security interest in the Honda, Bruno is the "debtor." As in
Example 3, Behnfeltdt is an obligor, but not a secondary obligor.
38

 b. "Secured Party." The secured party is the person in
40 whose favor the security interest has been created, as
determined by reference to the security agreement. This
42 definition controls, among other things, which person has
the duties and potential liability that Part 6 imposes upon
44 a secured party. The definition of "secured party" also
includes a "consignee," a person to which accounts, chattel
46 paper, payment intangibles, or promissory notes have been
sold, and the holder of an agricultural lien.
48

 The definition of "secured party" clarifies the status of
50 various types of representatives. Consider, for example, a

2 multi-bank facility under which Bank A, Bank B, and Bank C are
3 lenders and Bank A serves as the collateral agent. If the
4 security interest is granted to the banks, then they are the
5 secured parties. If the security interest is granted to Bank A
6 as collateral agent, then Bank A is the secured party.

7 c. Other Parties. A "consumer obligor" is defined as the
8 obligor in a consumer transaction. Definitions of "new
9 debtor" and "original debtor" are used in the special rules
10 found in Sections 9-326 and 9-508 [Maine cite sections
11 9-1326 and 9-1508].

12 3. Definitions Relating to Creation of a Security Interest.

13 a. "Collateral." As under former Section 9-105,
14 "collateral" is the property subject to a security interest
15 and includes accounts and chattel paper that have been
16 sold. It has been expanded in this Article. The term now
17 explicitly includes proceeds subject to a security
18 interest. It also reflects the broadened scope of the
19 Article. It includes property subject to an agricultural
20 lien as well as payment intangibles and promissory notes
21 that have been sold.

22 b. "Security Agreement." The definition of "security
23 agreement" is substantially the same as under former Section
24 9105—an agreement that creates or provides for a security
25 interest. However, the term frequently was used
26 colloquially in former Article 9 to refer to the document or
27 writing that contained a debtor's security agreement. This
28 Article eliminates that usage, reserving the term for the
29 more precise meaning specified in the definition.

30 Whether an agreement creates a security interest depends not
31 on whether the parties intend that the law characterize the
32 transaction as a security interest but rather on whether the
33 transaction falls within the definition of "security interest" in
34 Section 1-201. Thus, an agreement that the parties characterize
35 as a "lease" of goods may be a "security agreement,"
36 notwithstanding the parties' stated intention that the law treat
37 the transaction as a lease and not as a secured transaction.

38 4. Goods-Related Definitions.

39 a. "Goods"; "Consumer Goods"; "Equipment"; "Farm
40 Products"; "Farming Operation"; "Inventory." The
41 definition of "goods" is substantially the same as the
42 definition in former Section 9-105. This Article also
43 retains the four mutually-exclusive "types" of collateral
44 that consist of goods: "consumer goods," "equipment,"
45

2 "farm products," and "inventory." The revisions are
primarily for clarification.

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

14 The definition of "consumer goods" follows former Section
16 9-109. The classification turns on whether the debtor uses or
bought the goods for use "primarily for personal, family, or
18 household purposes."

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

38 Goods are "farm products" if the debtor is engaged in
40 farming operations with respect to the goods. Animals in a herd
of livestock are covered whether the debtor acquires them by
42 purchase or as a result of natural increase. Products of crops
or livestock remain farm products as long as they have not been
44 subjected to a manufacturing process. The terms "crops" and
"livestock" are not defined. The new definition of "farming
46 operations" is for clarification only.

48 Crops, livestock, and their products cease to be "farm
products" when the debtor ceases to be engaged in farming
50 operations with respect to them. If, for example, they come into

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

15
16 The revised definition of "farm products" clarifies the
17 distinction between crops and standing timber and makes clear
18 that aquatic goods produced in aquacultural operations may be
19 either crops or livestock. Although aquatic goods that are
20 vegetable in nature often would be crops and those that are
21 animal would be livestock, this Article leaves the courts free to
22 classify the goods on a case-by-case basis. See Section 9-324
[Maine cite section 9-1324], Comment 11.

23 b. "Accession"; "Manufactured Home"; "Manufactured-Home
24 Transaction." Other specialized definitions of goods
25 include "accession" (see the special priority and
26 enforcement rules in Section 9-335) [Maine cite section
27 9-1335], and "manufactured home" (see Section 9-515 [Maine
28 cite section 9-1515], permitting a financing statement in a
29 "manufactured-home transaction" to be effective for 30
30 years). The definition of "manufactured home" borrows from
31 the federal Manufactured Housing Act, 42 U.S.C. §§ 5401 et
32 seq., and is intended to have the same meaning.

33 c. "As-Extracted Collateral." Under this Article, oil,
34 gas, and other minerals that have not been extracted from
35 the ground are treated as real property, to which this
36 Article does not apply. Upon extraction, minerals become
37 personal property (goods) and eligible to be collateral
38 under this Article. See the definition of "goods," which
39 excludes "oil, gas, and other minerals before extraction."
40 To take account of financing practices reflecting the shift
41 from real to personal property, this Article contains
42 special rules for perfecting security interests in minerals
43 which attach upon extraction and in accounts resulting from
44 the sale of minerals at the wellhead or minehead. See,
45 e.g., Sections 9-301(6) [Maine cite section 9-1301,
46 subsection (6)] (law governing perfection and priority);
47 9-501 [Maine cite section 9-1501] (place of filing), 9-502
48 [Maine cite section 9-1502] (contents of financing
49
50

2 statement), 9-519 [Maine cite section 9-1519] (indexing of
records). The new term, "as-extracted collateral," refers
4 to the minerals and related accounts to which the special
rules apply. The term "at the wellhead" encompasses
6 arrangements based on a sale of the produce at the moment
that it issues from the ground and is measured, without
8 technical distinctions as to whether title passes at the
"Christmas tree" of a well, the far side of a gathering
10 tank, or at some other point. The term "at . . . the
minehead" is comparable.

12 The following examples explain the operation of these
provisions.

14
16 Example 5: Debtor owns an interest in oil that is to be
extracted. To secure Debtor's obligations to Lender, Debtor
18 enters into an authenticated agreement granting Lender an
interest in the oil. Although Lender may acquire an interest in
20 the oil under real-property law, Lender does not acquire a
security interest under this Article until the oil becomes
22 personal property, i.e., until it is extracted and becomes "goods"
to which this Article applies. Because Debtor had an interest in
24 the oil before extraction and Lender's security interest attached
to the oil as extracted, the oil is "as-extracted collateral."

26 Example 6: Debtor owns an interest in oil that is to be
extracted and contracts to sell the oil to Buyer at the
28 wellhead. In an authenticated agreement, Debtor agrees to sell
to Lender the right to payment from Buyer. This right to payment
30 is an account that constitutes "as-extracted collateral." If
Lender then resells the account to Financer, Financer acquires a
32 security interest. However, inasmuch as the debtor-seller in
that transaction, Lender, had no interest in the oil before
34 extraction, Financer's collateral (the account it owns) is not
"as-extracted collateral."

36
38 Example 7: Under the facts of Example 6, before extraction,
Buyer grants a security interest in the oil to Bank. Although
40 Bank's security interest attaches when the oil is extracted,
Bank's security interest is not in "as-extracted collateral,"
42 inasmuch as its debtor, Buyer, did not have an interest in the
oil before extraction.

44 5. Receivables-related Definitions.

46 a. "Account"; "Health-Care-Insurance Receivable";
"As-Extracted Collateral." The definition of "account" has
48 been expanded and reformulated. It is no longer limited to
rights to payment relating to goods or services. Many
50 categories of rights to payment that were classified as

2 general intangibles under former Article 9 are accounts
under this Article. Thus, if they are sold, a financing
4 statement must be filed to perfect the buyer's interest in
them. Among the types of property that are expressly
6 excluded from the definition is "a right to payment for
money or funds advanced or sold." As defined in Section
8 1-201, "money" is limited essentially to currency. As used
in the exclusion from the definition of "account," however,
"funds" is a broader concept (although the term is not
10 defined). For example, when a bank-lender credits a
borrower's deposit account for the amount of a loan, the
12 bank's advance of funds is not a transaction giving rise to
an account.

14
The definition of "health-care-insurance receivable" is
16 new. It is a subset of the definition of "account." However,
the rules generally applicable to account debtors on accounts do
18 not apply to insurers obligated on health-care-insurance
receivables. See Sections 9-404(e), 9-405(d), 9-406(i)[Maine
20 cite section 9-1404, subsection (5), section 9-1405, subsection
(4), section 9-1406, subsection (9)].

22
Note that certain accounts also are "as-extracted
24 collateral." See Comment 4.c., Examples 6 and 7.

26 b. "Chattel Paper"; "Electronic Chattel Paper"; "Tangible
Chattel Paper." "Chattel paper" consists of a monetary
28 obligation together with a security interest in or a lease
of specific goods if the obligation and security interest or
30 lease are evidenced by "a record or records." The
definition has been expanded from that found in former
32 Article 9 to include records that evidence a monetary
obligation and a security interest in specific goods and
34 software used in the goods. Charters of vessels are
expressly excluded from the definition of chattel paper;
36 they are accounts. The term "charter" as used in this
section includes bareboat charters, time charters,
38 successive voyage charters, contracts of affreightment,
contracts of carriage, and all other arrangements for the
40 use of vessels. Under former Section 9-105, only if the
evidence of an obligation consisted of "a writing or
42 writings" could an obligation qualify as chattel paper. In
this Article, traditional, written chattel paper is included
44 in the definition of "tangible chattel paper." "Electronic
chattel paper" is chattel paper that is stored in an
46 electronic medium instead of in tangible form. The concept
of an electronic medium should be construed liberally to
48 include electrical, digital, magnetic, optical,
electromagnetic, or any other current or similar emerging
50 technologies.

2 The definition of electronic chattel paper does not dictate
4 that it be created in any particular fashion. For example, a
6 record consisting of a tangible writing may be converted to
8 electronic form (e.g., by creating electronic images of a signed
 writing). Or, records may be initially created and executed in
 electronic form (e.g., a lessee might authenticate an electronic
 record of a lease that is then stored in electronic form). In
 either case the resulting records are electronic chattel paper.

10
12 c. "Instrument"; "Promissory Note." The definition of
14 "instrument" includes a negotiable instrument. As under
16 former Section 9-105, it also includes any other right to
18 payment of a monetary obligation that is evidenced by a
20 writing of a type that in ordinary course of business is
22 transferred by delivery (and, if necessary, an indorsement
24 or assignment). Except in the case of chattel paper, the
26 fact that an instrument is secured by a security interest or
28 encumbrance on property does not change the character of the
30 instrument as such or convert the combination of the
 instrument and collateral into a separate classification of
 personal property. The definition makes clear that rights
 to payment arising out of credit-card transactions are not
 instruments. The definition of "promissory note" is new,
 necessitated by the inclusion of sales of promissory notes
 within the scope of Article 9 [Maine cite Article 9-A]. It
 explicitly excludes obligations arising out of "orders" to
 pay (e.g., checks) as opposed to "promises" to pay. See
 Section 3-104.

32 d. "General Intangible"; "Payment Intangible." "General
34 intangible" is the residual category of personal property,
36 including things in action, that is not included in the
38 other defined types of collateral. Examples are various
40 categories of intellectual property and the right to payment
42 of a loan of funds that is not evidenced by chattel paper or
44 an instrument. The definition has been revised to exclude
46 commercial tort claims, deposit accounts, and
48 letter-of-credit rights. Each of the three is a separate
50 type of collateral. One important consequence of this
 exclusion is that tortfeasors (commercial tort claims),
 banks (deposit accounts), and persons obligated on letters
 of credit (letter-or-credit rights) are not "account
 debtors" having the rights and obligations set forth in
 Sections 9-404, 9-405, and 9-406 [Maine cite sections
 9-1404, 9-1405, 9-1406]. In particular, tortfeasors, banks,
 and persons obligated on letters of credit are not obligated
 to pay an assignee (secured party) upon receipt of the
 notification described in Section 9-404(a) [Maine cite
 section 9-1404, subsection (1)]. See Comment 5.h. Another

2 important consequence relates to the adequacy of the
description in the security agreement. See Section 9-108
4 [Maine cite section 9-1108].

6 "Payment intangible" is a subset of the definition of
"general intangible." The sale of a payment intangible is
subject to this Article. See Section 9-109(a)(3) [Maine cite
8 section 9-1109, subsection (1), paragraph (c)]. Virtually any
intangible right could give rise to a right to payment of money
10 once one hypothesizes, for example, that the account debtor is in
breach of its obligation. The term "payment intangible,"
12 however, embraces only those general intangibles "under which the
account debtor's principal obligation is a monetary obligation."
14 (Emphasis added.)

16 In classifying intangible collateral, a court should begin
by identifying the particular rights that have been assigned.
18 The account debtor (promisor) under a particular contract may owe
several types of monetary obligations as well as other,
20 nonmonetary obligations. If the promisee's right to payment of
money is assigned separately, the right is an account or payment
22 intangible, depending on how the account debtor's obligation
arose. When all the promisee's rights are assigned together, an
24 account, a payment intangible, and a general intangible all may
be involved, depending on the nature of the rights.

26 A right to the payment of money is frequently buttressed by
28 ancillary covenants, such as covenants in a purchase agreement,
note, or mortgage requiring insurance on the collateral or
30 forbidding removal of the collateral, or covenants to preserve
the creditworthiness of the promisor, such as covenants
32 restricting dividends and the like. This Article does not treat
these ancillary rights separately from the rights to payment to
34 which they relate. For example, attachment and perfection of an
assignment of a right to payment of a monetary obligation,
36 whether it be an account or payment intangible, also carries
these ancillary rights.

38 Every "payment intangible" is also a "general intangible."
40 Likewise, "software" is a "general intangible" for purposes of
this Article. See Comment 25. Accordingly, except as otherwise
42 provided, statutory provisions applicable to general intangibles
apply to payment intangibles and software.

44 e. "Letter-of-Credit Right." The term "letter-of-credit
46 right" embraces the rights to payment and performance under
a letter of credit (defined in Section 5-102). However, it
48 does not include a beneficiary's right to demand payment or
performance. Transfer of those rights to a transferee
50 beneficiary is governed by Article 5. See Sections 9-107

2 [Maine cite section 9-1107], Comment 4, and 9-329 [Maine
cite section 9-1329], Comments 3 and 4.

4 f. "Supporting Obligation." This new term covers the most
6 common types of credit enhancements-suretyship obligations
8 (including guarantees) and letter-of-credit rights that
10 support one of the types of collateral specified in the
12 definition. As explained in Comment 2.a., suretyship law
14 determines whether an obligation is "secondary" for purposes
16 of this definition. Section 9-109 generally excludes from
18 this Article transfers of interests in insurance policies.
20 However, the regulation of a secondary obligation as an
insurance product does not necessarily mean that it is a
"policy of insurance" for purposes of the exclusion in
Section 9-109 [Maine cite section 9-1109]. Thus, this
Article may cover a secondary obligation (as a supporting
obligations), even if the obligation is issued by a
regulated insurance company and the obligation is subject to
regulation as an "insurance" product.

22 This Article contains rules explicitly governing attachment,
24 perfection, and priority of security interests in supporting
26 obligations. See Sections 9-203, 9-308, 9-310, and 9-322 [Maine
cite sections 9-1203, 9-1308, 9-1310 and 9-1322]. These
provisions reflect the principle that a supporting obligation is
an incident of the collateral it supports.

28 Collections of or other distributions under a supporting
30 obligations are "proceeds" of the supported collateral as well as
32 "proceeds" of the supporting obligation itself. See Section
34 9-102 [Maine cite section 9-1102] (defining "proceeds") and
36 Comment 13.b. As such, the collections and distributions are
38 subject to the priority rules applicable to proceeds generally.
40 See Section 9-322 [Maine cite section 9-1322]. However, under
42 the special rule governing security interests in a
letter-of-credit right, a secured party's failure to obtain
control (Section 9-107) [Maine cite section 9-1107] of a
letter-of-credit right supporting collateral may leave its
security interest exposed to a priming interest of a party who
does take control. See Section 9-329 [Maine cite section 9-1329]
(security interest in a letter-of-credit right perfected by
control has priority over a conflicting security interest).

44 g. "Commercial Tort Claim." This term is new. A tort
46 claim may serve as original collateral under this Article
48 only if it is a "commercial tort claim." See Section
50 9-109(d) [Maine cite section 9-1109, subsection (4)].
Although security interests in commercial tort claims are
within its scope, this Article does not override other
applicable law restricting the assignability of a tort

2 claim. See Section 9-401 [Maine cite section 9-1401]. A
security interest in a tort claim also may exist under this
Article if the claim is proceeds of other collateral.

4
6 h. "Account Debtor." An "account debtor" is a person
obligated on an account, chattel paper, or general
8 intangible. The account debtor's obligation often is a
monetary obligation; however, this is not always the case.
10 For example, if a franchisee uses its rights under a
franchise agreement (a general intangible) as collateral,
12 then the franchisor is an "account debtor." As a general
matter, Article 3, and not Article 9 [Maine cite Article
14 9-A], governs obligations on negotiable instruments.
Accordingly, the definition of "account debtor" excludes
16 obligors on negotiable instruments constituting part of
chattel paper. The principal effect of this change from the
18 definition in former Article 9 is that the rules in Sections
9-403, 9-404, 9-405, and 9-406 [Maine cite sections 9-1403,
20 9-1404, 9-1405, 9-1406], dealing with the rights of an
assignee and duties of an account debtor, do not apply to an
22 assignment of chattel paper in which the obligation to pay
is evidenced by a negotiable instrument. (Section 9-406(d)
24 [Maine cite section 9-1406, subsection (4)], however, does
apply to promissory notes, including negotiable promissory
26 notes.) Rather, the assignee's rights are governed by
Article 3. Similarly, the duties of an obligor on a
28 nonnegotiable instrument are governed by non-Article 9 law
unless the nonnegotiable instrument is a part of chattel
paper, in which case the obligor is an account debtor.

30
32 i. Receivables Under Government Entitlement Programs. This
Article does not contain a defined term that encompasses
34 specifically rights to payment or performance under the many
and varied government entitlement programs. Depending on
36 the nature of a right under a program, it could be an
account, a payment intangible, a general intangible other
38 than a payment intangible, or another type of collateral.
The right also might be proceeds of collateral (e.g., crops).

40 6. Investment-Property-Related Definitions: "Commodity
Account"; "Commodity Contract"; "Commodity Customer"; "Commodity
42 Intermediary"; "Investment Property." These definitions are
substantially the same as the corresponding definitions in former
44 Section 9-115. "Investment property" includes securities, both
certificated and uncertificated, securities accounts, security
46 entitlements, commodity accounts, and commodity contracts. The
term investment property includes a "securities account" in order
48 to facilitate transactions in which a debtor wishes to create a
security interest in all of the investment positions held through
50 a particular account rather than in particular positions carried

2 in the account. Former Section 9-115 was added in conjunction
4 with Revised Article 8 and contained a variety of rules
6 applicable to security interests in investment property. These
8 rules have been relocated to the appropriate sections of Article
9 [Maine cite Article 9-A]. See, e.g., Sections 9-203 [Maine
cite section 9-1203] (attachment), 9-314 [Maine cite section
9-1314] (perfection by control), 9-328 [Maine cite section
9-1328] (priority).

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

28 The indirect-holding-system rules of Article 8 are
30 sufficiently flexible to be applied to new developments in the
32 securities and financial markets, where that is appropriate.
Accordingly, the definition of "commodity contract" is narrowly
34 drafted to ensure that it does not operate as an obstacle to the
36 application of the Article 8 indirect-holding-system rules to new
products. The term "commodity contract" covers those contracts
38 that are traded on or subject to the rules of a designated
contract market and foreign commodity contracts that are carried
40 on the books of American commodity intermediaries. The effect of
42 this definition is that the category of commodity contracts that
are excluded from Article 8 but governed by Article 9 [Maine cite
Article 9-A] is essentially the same as the category of contracts
that fall within the exclusive regulatory jurisdiction of the
federal Commodity Futures Trading Commission.

44 Commodity contracts are different from securities or other
46 financial assets. A person who enters into a commodity futures
48 contract is not buying an asset having a certain value and
50 holding it in anticipation of increase in value. Rather the
person is entering into a contract to buy or sell a commodity at
set price for delivery at a future time. That contract may
become advantageous or disadvantageous as the price of the

2 commodity fluctuates during the term of the contract. The rules
of the commodity exchanges require that the contracts be marked
4 to market on a daily basis; that is, the customer pays or
receives any increment attributable to that day's price change.
6 Because commodity customers may incur obligations on their
contracts, they are required to provide collateral at the outset,
8 known as "original margin," and may be required to provide
additional amounts, known as "variation margin," during the term
of the contract.

10
12 The most likely setting in which a person would want to take
a security interest in a commodity contract is where a lender who
14 is advancing funds to finance an inventory of a physical
commodity requires the borrower to enter into a commodity
16 contract as a hedge against the risk of decline in the value of
the commodity. The lender will want to take a security interest
18 in both the commodity itself and the hedging commodity contract.
Typically, such arrangements are structured as security interests
20 in the entire commodity account in which the borrower carries the
hedging contracts, rather than in individual contracts.

22 One important effect of including commodity contracts and
commodity accounts in Article 9 [Maine cite Article 9-A] is to
24 provide a clearer legal structure for the analysis of the rights
of commodity clearing organizations against their participants
26 and futures commission merchants against their customers. The
rules and agreements of commodity clearing organizations
28 generally provide that the clearing organization has the right to
liquidate any participant's positions in order to satisfy
30 obligations of the participant to the clearing corporation.
Similarly, agreements between futures commission merchants and
32 their customers generally provide that the futures commission
merchant has the right to liquidate a customer's positions in
34 order to satisfy obligations of the customer to the futures
commission merchant.

36
38 The main property that a commodity intermediary holds as
collateral for the obligations that the commodity customer may
40 incur under its commodity contracts is not other commodity
contracts carried by the customer but the other property that the
42 customer has posted as margin. Typically, this property will be
securities. The commodity intermediary's security interest in
44 such securities is governed by the rules of this Article on
security interests in securities, not the rules on security
interests in commodity contracts or commodity accounts.

46
48 Although there are significant analytic and regulatory
differences between commodities and securities, the development
of commodity contracts on financial products in the past few
50 decades has resulted in a system in which the commodity markets

2 and securities markets are closely linked. The rules on security
interests in commodity contracts and commodity accounts provide a
4 structure that may be essential in times of stress in the
financial markets. Suppose, for example that a firm has a
6 position in a securities market that is hedged by a position in a
commodity market, so that payments that the firm is obligated to
8 make with respect to the securities position will be covered by
the receipt of funds from the commodity position. Depending upon
10 the settlement cycles of the different markets, it is possible
that the firm could find itself in a position where it is
12 obligated to make the payment with respect to the securities
position before it receives the matching funds from the commodity
14 position. If cross-margining arrangements have not been
developed between the two markets, the firm may need to borrow
16 funds temporarily to make the earlier payment. The rules on
security interests in investment property would facilitate the
18 use of positions in one market as collateral for loans needed to
cover obligations in the other market.

20 7. Consumer-Related Definitions: "Consumer Debtor";
"Consumer Goods"; "Consumer-goods transaction"; "Consumer
22 Obligor"; "Consumer Transaction." The definition of "consumer
goods" (discussed above) is substantially the same as the
24 definition in former Section 9-109 [Maine cite section 9-1109].
The definitions of "consumer debtor," "consumer obligor,"
26 "consumer-goods transaction," and "consumer transaction" have
been added in connection with various new (and old)
28 consumer-related provisions and to designate certain provisions
that are inapplicable in consumer transactions.

30 "Consumer-goods transaction" is a subset of "consumer
32 transaction." Under each definition, both the obligation secured
and the collateral must have a personal, family, or household
34 purpose. However, "mixed" business and personal transactions
also may be characterized as a consumer-goods transaction or
36 consumer transaction. Subparagraph (A) [Maine cite paragraph
(a)] of the definition of consumer-goods transactions and clause
38 (i) [Maine cite paragraph (a)] of the definition of consumer
transaction are primary purposes tests. Under these tests, it is
40 necessary to determine the primary purpose of the obligation or
obligations secured. Subparagraph (B) [Maine cite paragraph (b)]
42 and clause (iii) [Maine cite paragraph (c)] of these definitions
are satisfied if any of the collateral is consumer goods, in the
44 case of a consumer-goods transaction, or "is held or acquired
primarily for personal, family, or household purposes," in the
46 case of a consumer transaction. The fact that some of the
obligations secured or some of the collateral for the obligation
48 does not satisfy the tests (e.g., some of the collateral is
acquired for a business purpose) does not prevent a transaction

from being a "consumer transaction" or "consumer-goods transaction."

8. Filing-Related Definitions: "Continuation Statement"; "File Number"; "Filing Office"; "Filing-office Rule"; "Financing Statement"; "Fixture Filing"; "Manufactured-Home Transaction"; "New Debtor"; "Original Debtor"; "Public-Finance Transaction"; "Termination Statement"; "Transmitting Utility." These definitions are used exclusively or primarily in the filing-related provisions in Part 5. Most are self-explanatory and are discussed in the Comments to Part 5. A financing statement filed in a manufactured-home transaction or a public-finance transaction may remain effective for 30 years instead of the 5 years applicable to other financing statements. See Section 9-515(b) [Maine cite section 9-1515, subsection (2)]. The definitions relating to medium neutrality also are significant for the filing provisions. See Comment 9.

The definition of "transmitting utility" has been revised to embrace the business of transmitting communications generally to take account of new and future types of communications technology. The term designates a special class of debtors for whom separate filing rules are provided in Part 5, thereby obviating the many local fixture filings that would be necessary under the rules of Section 9-501 [Maine cite section 9-1501] for a farflung public-utility debtor. A transmitting utility will not necessarily be regulated by or operating as such in a jurisdiction where fixtures are located. For example, a utility might own transmission lines in a jurisdiction, although the utility generates no power and has no customers in the jurisdiction.

9. Definitions Relating to Medium Neutrality.

a. "Record." In many, but not all, instances, the term "record" replaces the term "writing" and "written." A "record" includes information that is in intangible form (e.g., electronically stored) as well as tangible form (e.g., written on paper). Given the rapid development and commercial adoption of modern communication and storage technologies, requirements that documents or communications be "written," "in writing," or otherwise in tangible form do not necessarily reflect or aid commercial practices.

A "record" need not be permanent or indestructible, but the term does not include any oral or other communication that is not stored or preserved by any means. The information must be stored on paper or in some other medium. Information that has not been retained other than through human memory does not qualify as a record. Examples of current technologies commercially used to

2 communicate or store information include, but are not limited to,
3 magnetic media, optical discs, digital voice messaging systems,
4 electronic mail, audio tapes, and photographic media, as well as
5 paper. "Record" is an inclusive term that includes all of these
6 methods of storing or communicating information. Any "writing"
7 is a record. A record may be authenticated. See Comment 9.b. A
8 record may be created without the knowledge or intent of a
particular person.

10 Like the terms "written" or "in writing," the term "record"
11 does not establish the purposes, permitted uses, or legal effect
12 that a record may have under any particular provision of law.
13 Whatever is filed in the Article 9 [Maine cite Article 9-A]
14 filing system, including financing statements, continuation
15 statements, and termination statements, whether transmitted in
16 tangible or intangible form, would fall within the definition.
17 However, in some instances, statutes or filing-office rules may
18 require that a paper record be filed. In such cases, even if
19 this Article permits the filing of an electronic record,
20 compliance with those statutes or rules is necessary. Similarly,
21 a filer must comply with a statute or rule that requires a
22 particular type of encoding or formatting for an electronic
23 record.

24 This Article sometimes uses the terms "for record," "of
25 record," "record or legal title," and "record owner." Some of
26 these are terms traditionally used in real-property law. The
27 definition of "record" in this Article now explicitly excepts
28 these usages from the defined term. Also, this Article refers to
29 a record that is filed or recorded in real-property recording
30 systems to record a mortgage as a "record of a mortgage." This
31 usage recognizes that the defined term "mortgage" means an
32 interest in real property; it does not mean the record that
33 evidences, or is filed or recorded with respect to, the mortgage.

36 b. "Authenticate"; "Communicate"; "Send." The terms
37 "authenticate" and "authenticated" generally replace "sign"
38 and "signed." "Authenticated" replaces and broadens the
39 definition of "signed," in Section 1-201, to encompass
40 authentication of all records, not just writings.
41 (References to authentication of, e.g., an agreement,
42 demand, or notification mean, of course, authentication of a
43 record containing an agreement, demand, or notification.)
44 The terms "communicate" and "send" also contemplate the
45 possibility of communication by nonwritten media. These
46 definitions include the act of transmitting both tangible
47 and intangible records. The definition of "send" replaces,
48 for purposes of this Article, the corresponding term in
49 Section 1-201. The reference to "usual means of
50 communication" in that definition contemplates an inquiry

2 into the appropriateness of the method of transmission used
in the particular circumstances involved.

4 10. Scope-Related Definitions.

6 a. Expanded Scope of Article: "Agricultural Lien";
"Consignment"; "Payment Intangible"; "Promissory Note."
8 These new definitions reflect the expanded scope of Article
9 [Maine cite Article 9-A], as provided in Section 9-109(a)
10 [Maine cite section 9-1109, subsection (1)].

12 b. Reduced Scope of Exclusions: "Governmental Unit";
"Health-Care-Insurance Receivable"; "Commercial Tort
14 Claims." These new definitions reflect the reduced scope of
the exclusions, provided in Section 9-109(c) and (d) [Maine
16 cite section 9-1109, subsections (3) and (4)], of transfers
by governmental debtors and assignments of interests in
18 insurance policies and commercial tort claims.

20 11. Choice-of-Law-Related Definitions: "Certificate of
Title"; "Governmental Unit"; "Jurisdiction of Organization";
22 "Registered Organization"; "State." These new definitions
reflect the changes in the law governing perfection and priority
24 of security interests and agricultural liens provided in Part 3,
Subpart 1.

26
28 Not every organization that may provide information about
itself in the public records is a "registered organization." For
example, a general partnership is not a "registered
30 organization," even if it files a statement of partnership
authority under Section 303 of the Uniform Partnership Act (1994)
32 or an assumed name ("dba") certificate. This is because the
State under whose law the partnership is organized is not
34 required to maintain a public record showing that the partnership
has been organized. In contrast, corporations, limited liability
36 companies, and limited partnerships are "registered
organizations."

38
40 12. Deposit-Account-Related Definitions: "Deposit
Account"; "Bank." The revised definition of "deposit account"
incorporates the definition of "bank," which is new. The
42 definition derives from the definitions of "bank" in Sections
4-105(1) and 4A-105(a)(2), which focus on whether the
44 organization is "engaged in the business of banking."

46 Deposit accounts evidenced by Article 9 [Maine cite Article
9-A] "instruments" are excluded from the term "deposit account."
48 In contrast, former Section 9-105 excluded from the former
definition "an account evidenced by a certificate of deposit."
50 The revised definition clarifies the proper treatment of

2 nonnegotiable or uncertificated certificates of deposit. Under
the definition, an uncertificated certificate of deposit would be
4 a deposit account (assuming there is no writing evidencing the
bank's obligation to pay) whereas a nonnegotiable certificate of
6 deposit would be a deposit account only if it is not an
"instrument" as defined in this section (a question that turns on
8 whether the nonnegotiable certificate of deposit is "of a type
that in ordinary course of business is transferred by delivery
with any necessary indorsement or assignment.")

10
12 A deposit account evidenced by an instrument is subject to
the rules applicable to instruments generally. As a consequence,
14 a security interest in such an instrument cannot be perfected by
"control" (see Section 9-104 [Maine cite section 9-1104]), and
16 the special priority rules applicable to deposit accounts (see
Sections 9-327 and 9-340 [Maine cite sections 9-1327 and 9-1340])
do not apply.

18
20 The term "deposit account" does not include "investment
property," such as securities and security entitlements. Thus,
22 the term also does not include shares in a money-market mutual
fund, even if the shares are redeemable by check.

24 13. Proceeds-Related Definitions: "Cash Proceeds";
"Noncash Proceeds"; "Proceeds." The revised definition of
26 "proceeds" expands the definition beyond that contained in former
Section 9-306 [Maine cite section 9-1306] and resolves
28 ambiguities in the former section.

30 a. Distributions on Account of Collateral. The phrase
"whatever is collected on, or distributed on account of,
32 collateral," in subparagraph (B) [Maine cite paragraph (6)],
is broad enough to cover cash or stock dividends distributed
34 on account of securities or other investment property that
is original collateral. Compare former Section 9-306 ("Any
36 payments or distributions made with respect to investment
property collateral are proceeds."). This section rejects
38 the holding of *Hastie v. FDIC*, 2 F.3d 1042 (10th Cir. 1993)
(postpetition cash dividends on stock subject to a
40 prepetition pledge are not "proceeds" under Bankruptcy Code
Section 552(b)), to the extent the holding relies on the
42 Article 9 [Maine cite Article 9-A] definition of "proceeds."

44 b. Distributions on Account of Supporting Obligations.
Under subparagraph (B) [Maine cite paragraph (6)],
46 collections on and distributions on account of collateral
consisting of various credit-support arrangements
48 ("supporting obligations," as defined in Section 9-102)
[Maine cite section 9-1102] also are proceeds.
50 Consequently, they are afforded treatment identical to

2 proceeds collected from or distributed by the obligor on the
underlying (supported) right to payment or other
4 collateral. Proceeds of supporting obligations also are
proceeds of the underlying rights to payment or other
collateral.

6
c. Proceeds of Proceeds. The definition of "proceeds" no
8 longer provides that proceeds of proceeds are themselves
proceeds. That idea is expressed in the revised definition
10 of "collateral" in Section 9-102 [Maine cite section
9-1102]. No change in meaning is intended.

12
d. Proceeds Received by Person Who Did Not Create Security
14 Interest. When collateral is sold subject to a security
interest and the buyer then resells the collateral, a
16 question arose under former Article 9 concerning whether the
"debtor" had "received" what the buyer received on resale
18 and, therefore, whether those receipts were "proceeds" under
former Section 9-306(2). This Article contains no
20 requirement that property be "received" by the debtor for
the property to qualify as proceeds. It is necessary only
22 that the property be traceable, directly or indirectly, to
the original collateral.

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

34 14. Consignment-Related Definitions: "Consignee";
"Consignment"; "Consignor." The definition of "consignment"
36 excludes, in subparagraphs (B) and (C) [Maine cite paragraphs (b)
and (c)], transactions for which filing would be inappropriate or
38 of insufficient benefit to justify the costs. A consignment
excluded from the application of this Article by one of those
40 subparagraphs may still be a true consignment; however, it is
governed by non-Article 9 law. The definition also excludes, in
42 subparagraph (D) [Maine cite paragraph (d)], what have been
called "consignments intended for security." These
44 "consignments" are not bailments but secured transactions.
Accordingly, all of Article 9 [Maine cite Article 9-A] applies to
46 them. See Sections 1-201(37), 9-109(a)(1) [Maine cite section
9-1109, subsection (1), paragraph (a)]. The "consignor" is the
48 person who delivers goods to the "consignee" in a consignment.

2 The definition of "consignment" requires that the goods be
delivered "to a merchant for the purpose of sale." If the goods
4 are delivered for another purpose as well, such as milling or
processing, the transaction is a consignment nonetheless because
6 a purpose of the delivery is "sale." On the other hand, if a
merchant-processor-bailee will not be selling the goods itself
but will be delivering to buyers to which the owner-bailor agreed
8 to sell the goods, the transaction would not be a consignment.

10 15. "Accounting." This definition describes the record and
information that a debtor is entitled to request under Section
12 9-210 [Maine cite section 9-1210].

14 16. "Document." The definition of "document" is unchanged
in substance from the corresponding definitions in former Section
16 9-105. See Section 1-201(15) and Comment 15.

18 17. "Encumbrance"; "Mortgage." The definitions of
"encumbrance" and "mortgage" are unchanged in substance from the
20 corresponding definitions in former Section 9-105 [Maine cite
section 9-1105]. They are used primarily in the special
22 real-property-related priority and other provisions relating to
crops, fixtures, and accessions.
24

26 18. "Fixtures." This definition is unchanged in substance
from the corresponding definition in former Section 9313. See
Section 9-334 [Maine cite section 9-1334] (priority of security
28 interests in fixtures and crops).

30 19. "Good Faith." This Article expands the definition of
"good faith" to include "the observance of reasonable commercial
32 standards of fair dealing." The definition in this section
applies when the term is used in this Article, and the same
34 concept applies in the context of this Article for purposes of
the obligation of good faith imposed by Section 1-203. See
36 subsection (c) [Maine cite subsection (3)].

38 20. "Lien Creditor" This definition is unchanged in
substance from the corresponding definition in former Section
40 9-301.

42 21. "New Value." This Article deletes former Section
9108. Its broad formulation of new value, which embraced the
44 taking of after-acquired collateral for a pre-existing claim, was
unnecessary, counterintuitive, and ineffective for its original
46 purpose of sheltering after-acquired collateral from attack as a
voidable preference in bankruptcy. The new definition derives
48 from Bankruptcy Code Section 547(a). The term is used with
respect to temporary perfection of security interests in
50 instruments, certificated securities, or negotiable documents

2 under Section 9-312(e) [Maine cite section 9-1312, subsection
(5)] and with respect to chattel paper priority in Section 9-330
4 [Maine cite section 9-1330].

6 22. "Person Related To." Section 9-615 [Maine cite section
9-1615] provides a special method for calculating a deficiency or
8 surplus when "the secured party, a person related to the secured
party, or a secondary obligor" acquires the collateral at a
10 foreclosure disposition. Separate definitions of the term are
provided with respect to an individual secured party and with
12 respect to a secured party that is an organization. The
definitions are patterned on the corresponding definition in
Section 1.301(32) of the Uniform Consumer Credit Code (1974).

14 23. "Proposal." This definition describes a record that is
16 sufficient to propose to retain collateral in full or partial
satisfaction of a secured obligation. See Sections 9-620, 9-621,
18 9-622 [Maine cite sections 9-1620, 9-1621, 9-1622].

20 24. "Pursuant to Commitment." This definition is unchanged
in substance from the corresponding definition in former Section
22 9105. It is used in connection with special priority rules
applicable to future advances. See Section 9-323 [Maine cite
24 section 9-1323].

26 25. "Software." The definition of "software" is used in
connection with the priority rules applicable to purchase-money
28 security interests. See Sections 9-103, 9-324 [Maine cite
sections 9-1103, 9-1324]. Software, like a payment intangible,
30 is a type of general intangible for purposes of this Article.

32 26. Terminology: "Assignment" and "Transfer." In numerous
provisions, this Article refers to the "assignment" or the
34 "transfer" of property interests. These terms and their
derivatives are not defined. This Article generally follows
36 common usage by using the terms "assignment" and "assign" to
refer to transfers of rights to payment, claims, and liens and
38 other security interests. It generally uses the term "transfer"
to refer to other transfers of interests in property. Except
40 when used in connection with a letter-of-credit transaction (see
Section 9-107 [Maine cite section 9-1107], Comment 4), no
42 significance should be placed on the use of one term or the
other. Depending on the context, each term may refer to the
44 assignment or transfer of an outright ownership interest or to
the assignment or transfer of a limited interest, such as a
46 security interest.

48 **§9-1103. Purchase-money security interest; application of**
50 **payments; burden of establishing**

2 (1) As used in this section, unless the context otherwise
3 indicates, the following terms have the following meanings.

4 (a) "Purchase-money collateral" means goods or software
5 that secures a purchase-money obligation incurred with
6 respect to that collateral; and

7 (b) "Purchase-money obligation" means an obligation of an
8 obligor incurred as all or part of the price of the
9 collateral or for value given to enable the debtor to
10 acquire rights in or the use of the collateral if the value
11 is in fact so used.

12 (2) A security interest in goods is a purchase-money
13 security interest:

14 (a) To the extent that the goods are purchase-money
15 collateral with respect to that security interest:

16 (b) If the security interest is in inventory that is or was
17 purchase-money collateral, also to the extent that the
18 security interest secures a purchase-money obligation
19 incurred with respect to other inventory in which the
20 secured party holds or held a purchase-money security
21 interest; and

22 (c) Also to the extent that the security interest secures a
23 purchase-money obligation incurred with respect to software
24 in which the secured party holds or held a purchase-money
25 security interest.

26 (3) A security interest in software is a purchase-money
27 security interest to the extent that the security interest also
28 secures a purchase-money obligation incurred with respect to
29 goods in which the secured party holds or held a purchase-money
30 security interest if:

31 (a) The debtor acquired its interest in the software in an
32 integrated transaction in which it acquired an interest in
33 the goods; and

34 (b) The debtor acquired its interest in the software for
35 the principal purpose of using the software in the goods.

36 (4) The security interest of a consignor in goods that are
37 the subject of a consignment is a purchase-money security
38 interest in inventory.

39 (5) In a transaction other than a consumer-goods
40 transaction, if the extent to which a security interest is a

2 purchase-money security interest depends on the application of a
3 payment to a particular obligation, the payment must be applied:

4 (a) In accordance with any reasonable method of application
5 to which the parties agree;

6
7 (b) In the absence of the parties' agreement to a
8 reasonable method, in accordance with any intention of the
9 obligor manifested at or before the time of payment; or

10
11 (c) In the absence of an agreement to a reasonable method
12 and a timely manifestation of the obligor's intention, in
13 the following order:

14 (i) To obligations that are not secured; and

15
16 (ii) If more than one obligation is secured, to
17 obligations secured by purchase-money security
18 interests in the order in which those obligations were
19 incurred.

20
21 (6) In a transaction other than a consumer-goods
22 transaction, a purchase-money security interest does not lose its
23 status as such, even if:

24
25 (a) The purchase-money collateral also secures an
26 obligation that is not a purchase-money obligation;

27
28 (b) Collateral that is not purchase-money collateral also
29 secures the purchase-money obligation; or

30
31 (c) The purchase-money obligation has been renewed,
32 refinanced, consolidated or restructured.

33
34 (7) In a transaction other than a consumer-goods
35 transaction, a secured party claiming a purchase-money security
36 interest has the burden of establishing the extent to which the
37 security interest is a purchase-money security interest.

38
39 (8) The limitation of the rules in subsections (5), (6) and
40 (7) to transactions other than consumer-goods transactions is
41 intended to leave to the court the determination of the proper
42 rules in consumer-goods transactions. The court may not infer
43 from that limitation the nature of the proper rule in
44 consumer-goods transactions and may continue to apply established
45 approaches.

46
47 **Official Comment**

48
49 1. Source. Former Section 9107.

2 2. Scope of This Section. Under Section 9-309(1) [Maine
4 cite section 9-1309, subsection (1)], a purchase-money security
6 provide special priority rules for purchase-money security
8 interests in a variety of contexts. This section explains when a
security interest enjoys purchase-money status.

10 3. "Purchase-Money Collateral"; "Purchase-Money
12 Obligation"; "Purchase-Money Security Interest." Subsection (a)
14 [Maine cite subsection (1)] defines "purchase-money collateral"
16 and "purchase-money obligation." These terms are essential to
18 the description of what constitutes a purchase-money security
interest under subsection (b) [Maine cite subsection (2)]. As
used in subsection (a)(2) [Maine cite subsection (1), paragraph
(b)], the definition of "purchase-money obligation," the "price"
of collateral or the "value given to enable" includes obligations
for expenses incurred in connection with acquiring rights in the
collateral, sales taxes, duties, finance charges, interest,
freight charges, costs of storage in transit, demurrage,
administrative charges, expenses of collection and enforcement,
attorney's fees, and other similar obligations.

24 The concept of "purchase-money security interest" requires a
26 close nexus between the acquisition of collateral and the secured
obligation. Thus, a security interest does not qualify as a
28 purchase-money security interest if a debtor acquires property on
unsecured credit and subsequently creates the security interest
30 to secure the purchase price.

32 4. Cross-Collateralization of Purchase-Money Security
34 Interests in Inventory. Subsection (b)(2) [Maine cite subsection
(2), paragraph (b)] deals with the problem of
36 cross-collateralized purchase-money security interests in
inventory. Consider a simple example:

38 Example: Seller (S) sells an item of inventory (Item-1) to
Debtor (D), retaining a security interest in Item-1 to secure
40 Item-1's price and all other obligations, existing and future, of
D to S. S then sells another item of inventory to D (Item-2),
42 again retaining a security interest in Item-2 to secure Item-2's
price as well as all other obligations of D to S. D then pays to
44 S Item-1's price. D then sells Item-2 to a buyer in ordinary
course of business, who takes Item-2 free of S's security
46 interest.

48 Under subsection (b)(2) [Maine cite subsection (2), paragraph
50 (b)], S's security interest in Item-1 securing Item-2's unpaid
price would be a purchase-money security interest. This is so

2 because S has a purchase-money security interest in Item-1,
Item-1 secures the price of (a "purchase-money obligation
4 incurred with respect to") Item-2 ("other inventory"), and Item-2
itself was subject to a purchase-money security interest. Note
6 that, to the extent Item-1 secures the price of Item-2, S's
security interest in Item-1 would not be a purchase-money
8 security interest under subsection (b)(1) [Maine cite subsection
(2), paragraph (a)]. The security interest in Item-1 is a
purchase-money security interest under subsection (b)(1) [Maine
10 cite subsection (2), paragraph (a)] only to the extent that
Item-1 is "purchase-money collateral," i.e., only to the extent
12 that Item-1 "secures a purchase-money obligation incurred with
respect to that collateral" (i.e., Item-1). See subsection
14 (a)(1) [Maine cite subsection (1), paragraph (a)].

16 5. Purchase-Money Security Interests in Goods and
Software. Subsections (b) and (c) [Maine cite subsections (2)
18 and (3)] limit purchase-money security interests to security
interests in goods, including fixtures, and software. Otherwise,
20 no change in meaning from former Section 9-107 is intended. The
second sentence of former Section 9-115(5)(f) made the
22 purchase-money priority rule (former Section 9-312(4))
inapplicable to investment property. This section's limitation
24 makes that provision unnecessary.

26 Subsection (c) [Maine cite subsection (3)] describes the
limited circumstances under which a security interest in goods
28 may be accompanied by a purchase-money security interest in
software. The software must be acquired by the debtor in a
30 transaction integrated with the transaction in which the debtor
acquired the goods, and the debtor must acquire the software for
32 the principal purpose of using the software in the goods.
"Software" is defined in Section 9-102 [Maine cite section
34 9-1102].

36 6. Consignments. Under former Section 9114, the priority
of the consignor's interest is similar to that of a
38 purchase-money security interest. Subsection (d) [Maine cite
subsection (4)] achieves this result more directly, by defining
40 the interest of a "consignor," defined in Section 9-102 [Maine
cite section 9-1102], to be a purchase-money security interest in
42 inventory for purposes of this Article. This drafting convention
obviates any need to set forth special priority rules applicable
44 to the interest of a consignor. Rather, the priority of the
consignor's interest as against the rights of lien creditors of
46 the consignee, competing secured parties, and purchasers of the
goods from the consignee can be determined by reference to the
48 priority rules generally applicable to inventory, such as
Sections 9-317, 9-320, 9-322, and 9-324 [Maine cite sections
50 9-1317, 9-1320, 9-1322 and 9-1324]. For other purposes,

including the rights and duties of the consignor and consignee as
2 between themselves, the consignor would remain the owner of goods
under a bailment arrangement with the consignee. See Section
4 9-319 [Maine cite section 9-1319].

6 7. Provisions Applicable Only to Non-Consumer-Goods
Transactions.

8
a. "Dual-Status" Rule. For transactions other than
10 consumer-goods transactions, this Article approves what some
cases have called the "dual-status" rule, under which a
12 security interest may be a purchase-money security interest
to some extent and a non-purchase-money security interest to
14 some extent. (Concerning consumer-goods transactions, see
subsection (h) [Maine cite subsection (8)] and Comment 8.)
16 Some courts have found this rule to be explicit or implicit
in the words "to the extent," found in former Section 9-107
18 and continued in subsections (b)(1) and (b)(2) [Maine cite
subsection (2), paragraphs (a) and (b)]. The rule is made
20 explicit in subsection (e) [Maine cite subsection (5)]. For
non-consumer-goods transactions, this Article rejects the
22 "transformation" rule adopted by some cases, under which any
cross-collateralization, refinancing, or the like destroys
24 the purchase-money status entirely.

26 Consider, for example, what happens when a \$10,000 loan
secured by a purchase-money security interest is refinanced by
28 the original lender, and, as part of the transaction, the debtor
borrows an additional \$2,000 secured by the collateral.
30 Subsection (f) [Maine cite subsection (6)] resolves any doubt
that the security interest remains a purchase-money security
32 interest. Under subsection (b) [Maine cite subsection (2)],
however, it enjoys purchase-money status only to the extent of
34 \$10,000.

36 b. Allocation of Payments. Continuing with the example, if
the debtor makes a \$1,000 payment on the \$12,000 obligation,
38 then one must determine the extent to which the security
interest remains a purchase-money security interest—\$9,000
40 or \$10,000. Subsection (e)(1) [Maine cite subsection (5),
paragraph (a)] expresses the overriding principle,
42 applicable in cases other than consumer-goods transactions,
for determining the extent to which a security interest is a
44 purchase-money security interest under these circumstances:
freedom of contract, as limited by principle of
46 reasonableness. An unconscionable method of application,
for example, is not a reasonable one and so would not be
48 given effect under subsection (e)(1) [Maine cite subsection
(5), paragraph (a)]. In the absence of agreement,
50 subsection (e)(2) [Maine cite subsection (5), paragraph (b)]

2 permits the obligor to determine how payments should be
3 allocated. If the obligor fails to manifest its intention,
4 obligations that are not secured will be paid first. (As
5 used in this Article, the concept of "obligations that are
6 not secured" means obligations for which the debtor has not
7 created a security interest. This concept is different from
8 and should not be confused with the concept of an "unsecured
9 claim" as it appears in Bankruptcy Code Section 506(a).)
10 The obligor may prefer this approach, because unsecured debt
11 is likely to carry a higher interest rate than secured
12 debt. A creditor who would prefer to be secured rather than
unsecured also would prefer this approach.

14 After the unsecured debt is paid, payments are to be applied
15 first toward the obligations secured by purchase-money security
16 interests. In the event that there is more than one such
17 obligation, payments first received are to be applied to
18 obligations first incurred. See subsection (e)(3) [Maine cite
19 subsection (5), paragraph (c)]. Once these obligations are paid,
20 there are no purchase-money security interests and no additional
21 allocation rules are needed.

22 Subsection (f) [Maine cite subsection (6)] buttresses the
23 dual-status rule by making it clear that (in a transaction other
24 than a consumer-goods transaction) cross-collateralization and
25 renewals, refinancings, and restructurings do not cause a
26 purchase-money security interest to lose its status as such. The
27 statutory terms "renewed," "refinanced," and "restructured" are
28 not defined. Whether the terms encompass a particular
29 transaction depends upon whether, under the particular facts, the
30 purchase-money character of the security interest fairly can be
31 said to survive. Each term contemplates that an identifiable
32 portion of the purchase-money obligation could be traced to the
33 new obligation resulting from a renewal, refinancing, or
34 restructuring.

36 c. Burden of Proof. As is the case when the extent of a
37 security interest is in issue, under subsection (g) [Maine
38 cite subsection (7)] the secured party claiming a
39 purchase-money security interest in a transaction other than
40 a consumer-goods transaction has the burden of establishing
41 whether the security interest retains its purchase-money
42 status. This is so whether the determination is to be made
43 following a renewal, refinancing, or restructuring or
44 otherwise.

46 8. Consumer-Goods Transactions; Characterization Under
47 Other Law. Under subsection (h) [Maine cite subsection (8)], the
48 limitation of subsections (e), (f), and (g) [Maine cite
49 subsections (5), (6) and (7)] to transactions other than a
50

2 consumer-goods transactions leaves to the court the determination
of the proper rules in consumer-goods transactions. Subsection
4 (h) [Maine cite subsection (8)] also instructs the court not to
draw any inference from this limitation as to the proper rules
6 for consumer-goods transactions and leaves the court free to
continue to apply established approaches to those transactions.

8 This section addresses only whether a security interest is a
"purchase-money security interest" under this Article, primarily
10 for purposes of perfection and priority. See, e.g., Sections
9-317, 9-324 [Maine cite sections 9-1317, 9-1324]. In
12 particular, its adoption of the dual-status rule, allocation of
payments rules, and burden of proof standards for
14 non-consumer-goods transactions is not intended to affect or
influence characterizations under other statutes. Whether a
16 security interest is a "purchase-money security interest" under
other law is determined by that law. For example, decisions
18 under Bankruptcy Code Section 522(f) have applied both the
dual-status and the transformation rules. The Bankruptcy Code
20 does not expressly adopt the state law definition of
"purchase-money security interest." Where federal law does not
22 defer to this Article, this Article does not, and could not,
determine a question of federal law.

24 **§9-1103-A. Production-money crops; production-money**
26 **obligation; production-money security interest;**
28 **burden of establishing**

30 (1) A security interest in crops is a production-money
security interest to the extent that the crops are
production-money crops.

32 (2) If the extent to which a security interest is a
34 production-money security interest depends on the application of
a payment to a particular obligation, the payment must be applied;

36 (a) In accordance with any reasonable method of application
38 to which the parties agree;

40 (b) In the absence of the parties' agreement to a
42 reasonable method, in accordance with any intention of the
obligor manifested at or before the time of payment; or

44 (c) In the absence of an agreement to a reasonable method
46 and a timely manifestation of the obligor's intention, in
the following order:

48 (i) To obligations that are not secured; and

2 Under subsection (a)(3) [Maine cite subsection (1),
paragraph (c)], a secured party may obtain control by becoming
4 the bank's "customer," as defined in Section 4-104. As the
customer, the secured party would enjoy the right (but not
6 necessarily the exclusive right) to withdraw funds from, or
close, the deposit account. See Sections 4-401(a), 4-403(a).

8 Although the arrangements giving rise to control may
themselves prevent, or may enable the secured party at its
10 discretion to prevent, the debtor from reaching the funds on
deposit, subsection (b) [Maine cite subsection (2)] makes clear
12 that the debtor's ability to reach the funds is not inconsistent
with "control."

14 Perfection by control is not available for bank accounts
16 evidenced by an instrument (e.g., certain certificates of
deposit), which by definition are "instruments" and not "deposit
18 accounts." See Section 9-102 [Maine cite section 9-1102]
(defining "deposit account" and "instrument").

20 **§9-1105. Control of electronic chattel paper**

22 A secured party has control of electronic chattel paper if
24 the record or records comprising the chattel paper are created,
stored and assigned in such a manner that:

26 (1) A single authoritative copy of the record or records
28 exists that is unique, identifiable and, except as otherwise
provided in subsections (4), (5) and (6), unalterable;

30 (2) The authoritative copy identifies the secured party as
32 the assignee of the record or records;

34 (3) The authoritative copy is communicated to and
maintained by the secured party or its designated custodian;

36 (4) Copies or revisions that add or change an identified
38 assignee of the authoritative copy can be made only with the
participation of the secured party;

40 (5) Each copy of the authoritative copy and any copy of a
42 copy is readily identifiable as a copy that is not the
authoritative copy; and

44 (6) Any revision of the authoritative copy is readily
46 identifiable as an authorized or unauthorized revision.

48 **Official Comment**

50 1. Source. New.

2 2. "Control" of Electronic Chattel Paper. This Article
3 covers security interests in "electronic chattel paper," a new
4 term defined in Section 9-102 [Maine cite section 9-1102]. This
5 section governs how "control" of electronic chattel paper may be
6 obtained. A secured party's control of electronic chattel paper
7 (i) may substitute for an authenticated security agreement for
8 purposes of attachment under Section 9-203 [Maine cite section
9-1203], (ii) is a method of perfection under Section 9-314
10 [Maine cite section 9-1314], and (iii) is a condition for
11 obtaining special, non-temporal priority under Section 9-330
12 [Maine cite section 9-1330]. Because electronic chattel paper
13 cannot be transferred, assigned, or possessed in the same manner
14 as tangible chattel paper, a special definition of control is
15 necessary. In descriptive terms, this section provides that
16 control of electronic chattel paper is the functional equivalent
17 of possession of "tangible chattel paper" (a term also defined in
18 Section 9-102) [Maine cite section 9-1102].

19 3. "Authoritative Copy" of Electronic Chattel Paper. One
20 requirement for establishing control is that a particular copy be
21 an "authoritative copy." Although other copies may exist, they
22 must be distinguished from the authoritative copy. This may be
23 achieved, for example, through the methods of authentication that
24 are used or by business practices involving the marking of any
25 additional copies. When tangible chattel paper is converted to
26 electronic chattel paper, in order to establish that a copy of
27 the electronic chattel paper is the authoritative copy it may be
28 necessary to show that the tangible chattel paper no longer
29 exists or has been permanently marked to indicate that it is not
30 the authoritative copy.
31

32 4. Development of Control Systems. This Article leaves to
33 the marketplace the development of systems and procedures,
34 through a combination of suitable technologies and business
35 practices, for dealing with control of electronic chattel paper
36 in a commercial context. However, achieving control under this
37 section requires more than the agreement of interested persons
38 that the elements of control are satisfied. For example,
39 paragraph (4) [Maine cite paragraph (d)] contemplates that
40 control requires that it be a physical impossibility (or
41 sufficiently unlikely or implausible so as to approach practical
42 impossibility) to add or change an identified assignee without
43 the participation of the secured party (or its authorized
44 representative). It would not be enough for the assignor merely
45 to agree that it will not change the identified assignee without
46 the assignee-secured party's consent. However, the standards
47 applied to determine whether a party is in control of electronic
48 chattel paper should not be more stringent than the standards now
49 applied to determine whether a party is in possession of tangible
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2 chattel paper. Control of electronic chattel paper contemplates
3 systems or procedures such that the secured party must take some
4 action (either directly or through its designated custodian) to
5 effect a change or addition to the authoritative copy. But just
6 as a secured party does not lose possession of tangible chattel
7 paper merely by virtue of the possibility that a person acting on
8 its behalf could wrongfully redeliver the chattel paper to the
9 debtor, so control of electronic chattel paper would not be
10 defeated by the possibility that the secured party's interest
11 could be subverted by the wrongful conduct of a person (such as a
12 custodian) acting on its behalf.

13
14 Systems that evolve for control of electronic chattel paper
15 may or may not involve a third party custodian of the relevant
16 records. However, this section and the concept of control of
17 electronic chattel paper are not based on the same concepts as
18 are control of deposit accounts (Section 9-104) [Maine cite
19 section 9-1104], security entitlements, a type of investment
20 property (Section 9-106) [Maine cite section 9-1106], and
21 letter-of-credit rights (Section 9-107) [Maine cite section
22 9-1107]. The rules for control of that collateral are based on
23 existing market practices and legal and regulatory regimes for
24 institutions such as banks and securities intermediaries.
25 Analogous practices for electronic chattel paper are developing
26 nonetheless. The flexible approach adopted by this section,
27 moreover, should not impede the development of these practices
28 and, eventually, legal and regulatory regimes, which may become
29 analogous to those for, e.g., investment property.

30 **§9-1106. Control of investment property**

31 (1) A person has control of a certificated security,
32 uncertificated security or security entitlement as provided in
33 section 8-1106.

34
35 (2) A secured party has control of a commodity contract if:

36
37 (a) The secured party is the commodity intermediary with
38 which the commodity contract is carried; or

39
40 (b) The commodity customer, secured party and commodity
41 intermediary have agreed that the commodity intermediary
42 will apply any value distributed on account of the commodity
43 contract as directed by the secured party without further
44 consent by the commodity customer.

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47 (3) A secured party having control of all security
48 entitlements or commodity contracts carried in a securities
49 account or commodity account has control over the securities
50 account or commodity account.

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Official Comment

1. Source. Former Section 9-115(e).

2. "Control" Under Article 8. For an explanation of "control" of securities and certain other investment property, see Section 8-106, Comments 4 and 7.

3. "Control" of Commodity Contracts. This section, as did former Section 9-115(1)(e), contains provisions relating to control of commodity contracts which are analogous to those in Section 8-106 for other types of investment property.

4. Securities Accounts and Commodity Accounts. For drafting convenience, control with respect to a securities account or commodity account is defined in terms of obtaining control over the security entitlements or commodity contracts. Of course, an agreement that provides that (without further consent of the debtor) the securities intermediary or commodity intermediary will honor instructions from the secured party concerning a securities account or commodity account described as such is sufficient. Such an agreement necessarily implies that the intermediary will honor instructions concerning all security entitlements or commodity contracts carried in the account and thus affords the secured party control of all the security entitlements or commodity contracts.

§9-1107. Control of letter-of-credit right

A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under section 5-1114, subsection (c) or other applicable law or practice.

Official Comment

1. Source. New.

2. "Control" of Letter-of-Credit Right. Whether a secured party has control of a letter-of-credit right may determine the secured party's priority as against competing secured parties. See Section 9-329 [Maine cite section 9-1329]. This section provides that a secured party acquires control of a letter-of-credit right by receiving an assignment if the secured party obtains the consent of the issuer or any nominated person, such as a confirmer or negotiating bank, under Section 5-114 or other applicable law or practice. Because both issuers and

2 nominated persons may give or be obligated to give value under a
letter of credit, this section contemplates that a secured party
4 obtains control of a letter-of-credit right with respect to the
issuer or a particular nominated person only to the extent that
6 the issuer or that nominated person consents to the assignment.
For example, if a secured party obtains control to the extent of
8 an issuer's obligation but fails to obtain the consent of a
nominated person, the secured party does not have control to the
10 extent that the nominated person gives value. In many cases the
person or persons who will give value under a letter of credit
12 will be clear from its terms. In other cases, prudence may
suggest obtaining consent from more than one person. The details
14 of the consenting issuer's or nominated person's duties to pay or
otherwise render performance to the secured party are left to the
agreement of the parties.

16
3. "Proceeds of a Letter of Credit." Section 5-114 follows
18 traditional banking terminology by referring to a letter of
credit beneficiary's assignment of its right to receive payment
20 thereunder as an assignment of the "proceeds of a letter of
credit." However, as the seller of goods can assign its right to
22 receive payment (an "account") before it has been earned by
delivering the goods to the buyer, so the beneficiary of a letter
24 of credit can assign its contingent right to payment before the
letter of credit has been honored. See Section 5-114(b). If the
26 assignment creates a security interest, the security interest can
be perfected at the time it is created. An assignment of,
28 including the creation of a security interest in, a
letter-of-credit right is an assignment of a present interest.

30
4. "Transfer" vs. "Assignment." Letter-of-credit law and
32 practice distinguish the "transfer" of a letter of credit from an
"assignment." Under a transfer, the transferee itself becomes
34 the beneficiary and acquires the right to draw. Whether a new,
substitute credit is issued or the issuer advises the transferee
36 of its status as such, the transfer constitutes a novation under
which the transferee is the new, substituted beneficiary (but
38 only to the extent of the transfer, in the case of a partial
transfer).

40
Section 5-114(e) provides that the rights of a transferee
42 beneficiary or nominated person are independent of the
beneficiary's assignment of the proceeds of a letter of credit
44 and are superior to the assignee's right to the proceeds. For
this reason, transfer does not appear in this Article as a means
46 of control or perfection. Section 9-109(c)(4) [Maine cite
section 9-1109, subsection (3), paragraph (d)] recognizes the
48 independent and superior rights of a transferee beneficiary under
Section 5-114(e); this Article does not apply to the rights of a

transferee beneficiary or nominated person to the extent that those rights are independent and superior under Section 5-114.

5. Supporting Obligation: Automatic Attachment and Perfection. A letter-of-credit right is a type of "supporting obligation," as defined in Section 9-102 [Maine cite section 9-1102]. Under Sections 9-203 and 9-308 [Maine cite sections 9-1203 and 9-1308], a security interest in a letter-of-credit right automatically attaches and is automatically perfected if the security interest in the supported obligation is a perfected security interest. However, unless the secured party has control of the letter-of-credit right or itself becomes a transferee beneficiary, it cannot obtain any rights against the issuer or a nominated person under Article 5. Consequently, as a practical matter, the secured party's rights would be limited to its ability to locate and identify proceeds distributed by the issuer or nominated person under the letter of credit.

§9-1108. Sufficiency of description

(1) Except as otherwise provided in subsections (3), (4) and (5), a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(2) Except as otherwise provided in subsection (4), a description of collateral reasonably identifies the collateral if it identifies the collateral by:

(a) Specific listing;

(b) Category;

(c) Except as otherwise provided in subsection (5), a type of collateral defined in this Title;

(d) Quantity;

(e) Computational or allocational formula or procedure; or

(f) Except as otherwise provided in subsection (3), any other method, if the identity of the collateral is objectively determinable.

(3) A description of collateral as "all the debtor's assets" or "all the debtor's personal property" or using words of similar import does not reasonably identify the collateral.

2 to include after-acquired collateral if the agreement does not
explicitly so provide. This question is one of contract
4 interpretation and is not susceptible to a statutory rule (other
than a rule to the effect that it is a question of contract
6 interpretation). Accordingly, this section contains no reference
to descriptions of after-acquired collateral.

8 4. Investment Property. Under subsection (d) [Maine cite
subsection (4)], the use of the wrong Article 8 terminology does
10 not render a description invalid (e.g., a security agreement
intended to cover a debtor's "security entitlements" is
12 sufficient if it refers to the debtor's "securities"). Note also
that given the broad definition of "securities account" in
14 Section 8-501, a security interest in a securities account also
includes all other rights of the debtor against the securities
16 intermediary arising out of the securities account. For example,
a security interest in a securities account would include credit
18 balances due to the debtor from the securities intermediary,
whether or not they are proceeds of a security entitlement.
20 Moreover, describing collateral as a securities account is a
simple way of describing all of the security entitlements carried
22 in the account.

24 5. Consumer Investment Property; Commercial Tort Claims.
Subsection (e) [Maine cite subsection (5)] requires greater
26 specificity of description in order to prevent debtors from
inadvertently encumbering certain property. Subsection (e)
28 [Maine cite subsection (5)] requires that a description by
defined "type" of collateral alone of a commercial tort claim or,
30 in a consumer transaction, of a security entitlement, securities
account, or commodity account, is not sufficient. For example,
32 "all existing and after-acquired investment property" or "all
existing and after-acquired security entitlements," without more,
34 would be insufficient in a consumer transaction to describe a
security entitlement, securities account, or commodity account.
36 The reference to "only by type" in subsection (e) [Maine cite
subsection (5)] means that a description is sufficient if it
38 satisfies subsection (a) [Maine cite subsection (1)] and contains
a descriptive component beyond the "type" alone. Moreover, if
40 the collateral consists of a securities account or commodity
account, a description of the account is sufficient to cover all
42 existing and future security entitlements or commodity contracts
carried in the account. See Section 9-203(h), (i) [Maine cite
44 section 9-1203, subsections (8) and (9)].

46 Under Section 9-204 [Maine cite section 9-1204], an
after-acquired collateral clause in a security agreement will not
48 reach future commercial tort claims. It follows that when an
effective security agreement covering a commercial tort claim is
50 entered into the claim already will exist. Subsection (e) [Maine

2 cite subsection (5)] does not require a description to be
3 specific. For example, a description such as "all tort claims
4 arising out of the explosion of debtor's factory" would suffice,
5 even if the exact amount of the claim, the theory on which it may
6 be based, and the identity of the tortfeasor(s) are not
described. (Indeed, those facts may not be known at the time.)

8 **SUBPART 2**

10 **APPLICABILITY OF Article**

12 **§9-1109. Scope**

14 (1) Except as otherwise provided in subsections (3) and
15 (4), this Article applies to:

16 (a) A transaction, regardless of its form, that creates a
17 security interest in personal property or fixtures by
18 contract;

19 (b) An agricultural lien;

20 (c) A sale of accounts, chattel paper, payment intangibles
21 or promissory notes;

22 (d) A consignment;

23 (e) A security interest arising under section 2-401, 2-505,
24 2-711, subsection (3) or 2-1508, subsection (5), as provided
25 in section 9-1110; and

26 (f) A security interest arising under section 4-210 or
27 5-1118.

28 (2) The application of this Article to a security interest
29 in a secured obligation is not affected by the fact that the
30 obligation is itself secured by a transaction or interest to
31 which this Article does not apply.

32 (3) This Article does not apply to the extent that:

33 (a) A statute, regulation or treaty of the United States
34 preempts this Article;

35 (b) Another statute of this State expressly governs the
36 creation, perfection, priority or enforcement of a security
37 interest created by this State or a governmental unit of
38 this State;

- 2 (c) A statute of another state, a foreign country or a
4 governmental unit of another state or a foreign country,
6 other than a statute generally applicable to security
 interests, expressly governs creation, perfection, priority
 or enforcement of a security interest created by the state,
 country or governmental unit; or
- 8 (d) The rights of a transferee beneficiary or nominated
10 person under a letter of credit are independent and superior
 under section 5-1114.
- 12 (4) This Article does not apply to:
- 14 (a) A landlord's lien, other than an agricultural lien;
- 16 (b) A lien, other than an agricultural lien, given by
18 statute or other rule of law for services or materials, but
 section 9-1333 applies with respect to priority of the lien;
- 20 (c) An assignment of a claim for wages, salary or other
22 compensation of an employee;
- 24 (d) A sale of accounts, chattel paper, payment intangibles
 or promissory notes as part of a sale of the business out of
26 which they arose;
- 28 (e) An assignment of accounts, chattel paper, payment
 intangibles or promissory notes that is for the purpose of
30 collection only;
- 32 (f) An assignment of a right to payment under a contract to
 an assignee that is also obligated to perform under the
34 contract;
- 36 (g) An assignment of a single account, payment intangible
 or promissory note to an assignee in full or partial
38 satisfaction of a preexisting indebtedness;
- 40 (h) A transfer of an interest in or an assignment of a
 claim under a policy of insurance, other than an assignment
42 by or to a health-care provider of a health-care-insurance
 receivable and any subsequent assignment of the right to
44 payment, but sections 9-1315 and 9-1322 apply with respect
 to proceeds and priorities in proceeds;
- 46 (i) An assignment of a right represented by a judgment,
 other than a judgment taken on a right to payment that was
48 collateral;
- 50 (j) A right of recoupment or setoff, but:

2 this Article to cover agricultural liens, as defined in section
9-102 [Maine cite section 9-1102].

4 4. Sales of Accounts, Chattel Paper, Payment Intangibles,
6 Promissory Notes, and Other Receivables. Under subsection (a)(3)
[Maine cite subsection (1), paragraph (c)], as under former
8 Section 9-102, this Article applies to sales of accounts and
chattel paper. This approach generally has been successful in
10 avoiding difficult problems of distinguishing between
transactions in which a receivable secures an obligation and
12 those in which the receivable has been sold outright. In many
commercial financing transactions the distinction is blurred.

14 Subsection (a)(3) [Maine cite subsection (1), paragraph (c)]
expands the scope of this Article by including the sale of a
16 "payment intangible" (defined in Section 9-102 [Maine cite
section 9-1102] as "a general intangible under which the account
18 debtor's principal obligation is a monetary obligation") and a
"promissory note" (also defined in Section 9-102) [Maine cite
20 section 9-1102]. To a considerable extent, this Article affords
these transactions treatment identical to that given sales of
22 accounts and chattel paper. In some respects, however, sales of
payment intangibles and promissory notes are treated differently
24 from sales of other receivables. See, e.g., Sections 9-309
[Maine cite section 9-1309] (automatic perfection upon
26 attachment), 9-408 [Maine cite section 9-1408] (effect of
restrictions on assignment). By virtue of the expanded
28 definition of "account" (defined in Section 9-102) [Maine cite
section 9-1102], this Article now covers sales of (and other
30 security interests in) "health-care-insurance receivables" (also
defined in Section 9-102) [Maine cite section 9-1102]. Although
32 this Article occasionally distinguishes between outright sales of
receivables and sales that secure an obligation, neither this
34 Article nor the definition of "security interest" (Section
1-201(37)) delineates how a particular transaction is to be
36 classified. That issue is left to the courts.

38 5. Transfer of Ownership in Sales of Receivables. A "sale"
of an account, chattel paper, a promissory note, or a payment
40 intangible includes a sale of a right in the receivable, such as
a sale of a participation interest. The term also includes the
42 sale of an enforcement right. For example, a "[p]erson entitled
to enforce" a negotiable promissory note (Section 3-301) may sell
44 its ownership rights in the instrument. See Section 3-203,
Comment 1 ("Ownership rights in instruments may be determined by
46 principles of the law of property, independent of Article 3,
which do not depend upon whether the instrument was transferred
48 under Section 3-203."). Also, the right under Section 3-309 to
enforce a lost, destroyed, or stolen negotiable promissory note
50 may be sold to a purchaser who could enforce that right by

2 causing the seller to provide the proof required under that
3 section. This Article rejects decisions reaching a contrary
4 result, e.g., *Dennis Joslin Co. v. Robinson Broadcasting*, 977 F.
5 Supp. 491 (D.D.C. 1997).

6 Nothing in this section or any other provision of Article 9
7 [Maine cite Article 9-A] prevents the transfer of full and
8 complete ownership of an account, chattel paper, an instrument,
9 or a payment intangible in a transaction of sale. However, as
10 mentioned in Comment 4, neither this Article nor the definition
11 of "security interest" in Section 1-201 provides rules for
12 distinguishing sales transactions from those that create a
13 security interest securing an obligation. This Article applies
14 to both types of transactions. The principal effect of this
15 coverage is to apply this Article's perfection and priority rules
16 to these sales transactions. Use of terminology such as
17 "security interest," "debtor," and "collateral" is merely a
18 drafting convention adopted to reach this end, and its use has no
19 relevance to distinguishing sales from other transactions. See
20 PEB Commentary No. 14.

21 Following a debtor's outright sale and transfer of ownership
22 of a receivable, the debtor-seller retains no legal or equitable
23 rights in the receivable that has been sold. See Section
24 9-318(a) [Maine cite section 9-1318, subsection (1)]. This is so
25 whether or not the buyer's security interest is perfected. (A
26 security interest arising from the sale of a promissory note or
27 payment intangible is perfected upon attachment without further
28 action. See Section 9-309 [Maine cite section 9-1309].)
29 However, if the buyer's interest in accounts or chattel paper is
30 unperfected, a subsequent lien creditor, perfected secured party,
31 or qualified buyer can reach the sold receivable and achieve
32 priority over (or take free of) the buyer's unperfected security
33 interest under Section 9-317 [Maine cite section 9-1317]. This
34 is so not because the seller of a receivable retains rights in
35 the property sold; it does not. Nor is this so because the
36 seller of a receivable is a "debtor" and the buyer of a
37 receivable is a "secured party" under this Article (they are).
38 It is so for the simple reason that Sections 9-318(b), 9-317, and
39 9-322 [Maine cite section 9-1318, subsection (2), section 9-1317
40 and section 9-1322] make it so, as did former Sections 9-301 and
41 9-312 [Maine cite sections 9-1301 and 9-1312]. Because the
42 buyer's security interest is unperfected, for purposes of
43 determining the rights of creditors of and purchasers for value
44 from the debtor-seller, under Section 9-318(b) [Maine cite
45 section 9-1318, subsection (2)] the debtor-seller is deemed to
46 have the rights and title it sold. Section 9-317 [Maine cite
47 section 9-1317] subjects the buyer's unperfected interest in
48 accounts and chattel paper to that of the debtor-seller's lien
49 creditor and other persons who qualify under that section.
50

2 6. Consignments. Subsection (a)(4) [Maine cite subsection
3 (1), paragraph (d)] is new. This Article applies to every
4 "consignment." The term, defined in Section 9-102 [Maine cite
5 section 9-1102], includes many but not all "true" consignments
6 (i.e., bailments for the purpose of sale). If a transaction is
7 a "sale or return," as defined in revised Section 2-326, it is
8 not a "consignment." In a "sale or return" transaction, the
9 buyer becomes the owner of the goods, and the seller may obtain
10 an enforceable security interest in the goods only by satisfying
11 the requirements of Section 9-203 [Maine cite section 9-1203].
12

13 Under common law, creditors of a bailee were unable to reach
14 the interest of the bailor (in the case of a consignment, the
15 consignor-owner). Like former Section 2-326 and former Article
16 9, this Article changes the common-law result; however, it does
17 so in a different manner. For purposes of determining the rights
18 and interests of third-party creditors of, and purchasers of the
19 goods from, the consignee, but not for other purposes, such as
20 remedies of the consignor, the consignee is deemed to acquire
21 under this Article whatever rights and title the consignor had or
22 had power to transfer. See Section 9-319 [Maine cite section
23 9-1319]. The interest of a consignor is defined to be a security
24 interest under revised Section 1-201(37), more specifically, a
25 purchase-money security interest in the consignee's inventory.
26 See Section 9-103(d) [Maine cite section 9-1103, subsection
27 (4)]. Thus, the rules pertaining to lien creditors, buyers, and
28 attachment, perfection, and priority of competing security
29 interests apply to consigned goods. The relationship between the
30 consignor and consignee is left to other law. Consignors also
31 have no duties under Part 6. See Section 9-601(g) [Maine cite
32 section 9-1601, subsection (7)].

33 Sometimes parties characterize transactions that secure an
34 obligation (other than the bailee's obligation to returned bailed
35 goods) as "consignments." These transactions are not
36 "consignments" as contemplated by Section 9-109(a)(4) [Maine cite
37 section 9-1109, subsection (1), paragraph (d)]. See Section
38 9-102 [Maine cite section 9-1102]. This Article applies also to
39 these transactions, by virtue of Section 9-109(a)(1) [Maine cite
40 section 9-1109, subsection (1), paragraph (a)]. They create a
41 security interest within the meaning of the first sentence of
42 Section 1-201(37).
43

44 This Article does not apply to bailments for sale that fall
45 outside the definition of "consignment" in Section 9-102 [Maine
46 cite section 9-1102] and that do not create a security interest
47 that secures an obligation.
48

2 7. Security Interest in Obligation Secured by Non-Article 9
3 Transaction. Subsection (b) [Maine cite subsection (2)] is
4 unchanged in substance from former Section 9-102(3) [Maine cite
5 section 9-1102, subsection (3)]. The following example provides
6 an illustration.

7 Example 1: O borrows \$10,000 from M and secures its
8 repayment obligation, evidenced by a promissory note, by granting
9 to M a mortgage on O's land. This Article does not apply to the
10 creation of the real-property mortgage. However, if M sells the
11 promissory note to X or gives a security interest in the note to
12 secure M's own obligation to X, this Article applies to the
13 security interest thereby created in favor of X. The security
14 interest in the promissory note is covered by this Article even
15 though the note is secured by a real-property mortgage. Also,
16 X's security interest in the note gives X an attached security
17 interest in the mortgage lien that secures the note and, if the
18 security interest in the note is perfected, the security interest
19 in the mortgage lien likewise is perfected. See Sections 9-203,
20 9-308 [Maine cite sections 9-1203, 9-1308].

21 It also follows from subsection (b) [Maine cite subsection (2)]
22 that an attempt to obtain or perfect a security interest in a
23 secured obligation by complying with non-Article 9 law, as by an
24 assignment of record of a real-property mortgage, would be
25 ineffective. Finally, it is implicit from subsection (b) [Maine
26 cite subsection (2)] that one cannot obtain a security interest
27 in a lien, such as a mortgage on real property, that is not also
28 coupled with an equally effective security interest in the
29 secured obligation. This Article rejects cases such as *In re*
30 *Maryville Savings & Loan Corp.*, 743 F.2d 413 (6th Cir. 1984),
31 clarified on reconsideration, 760 F.2d 119 (1985).

32 8. Federal Preemption. Former Section 9-104(a) [Maine cite
33 section 9-1104, subsection (1)] excluded from Article 9 [Maine
34 cite Article 9-A] "a security interest subject to any statute of
35 the United States, to the extent that such statute governs the
36 rights of parties to and third parties affected by transactions
37 in particular types of property." Some (erroneously) read the
38 former section to suggest that Article 9 sometimes deferred to
39 federal law even when federal law did not preempt Article 9.
40 Subsection (c)(1) [Maine cite subsection (3), paragraph (a)]
41 recognizes explicitly that this Article defers to federal law
42 only when and to the extent that it must-i.e., when federal law
43 preempts it.

44 9. Governmental Debtors. Former Section 9104(e) excluded
45 transfers by governmental debtors. It has been revised and
46 replaced by the exclusions in new paragraphs (2) and (3) of
47 subsection (c) [Maine cite paragraphs (b) and (c) of subsection
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2 (3)]. These paragraphs reflect the view that Article 9 [Maine
4 cite Article 9-A] should apply to security interests created by a
6 State, foreign country, or a "governmental unit" (defined in
8 Section 9-102) [Maine cite section 9-1102] of either except to
10 the extent that another statute governs the issue in question.
12 Under paragraph (2) [Maine cite paragraph (b)], this Article
14 defers to all statutes of the forum State. (A forum cannot
determine whether it should consult the choice-of-law rules in
the forum's UCC unless it first determines that its UCC applies
to the transaction before it.) Paragraph (3) [Maine cite
paragraph (c)] defers to statutes of another State or a foreign
country only to the extent that those statutes contain rules
applicable specifically to security interests created by the
governmental unit in question.

16 Example 2: A New Jersey state commission creates a security
18 interest in favor of a New York bank. The validity of the
20 security interest is litigated in New York. The relevant
22 security agreement provides that it is governed by New York law.
24 To the extent that a New Jersey statute contains rules peculiar
26 to creation of security interests by governmental units
28 generally, to creation of security interests by state
30 commissions, or to creation of security interests by this
particular state commission, then that law will govern. On the
other hand, to the extent that New Jersey law provides that
security interests created by governmental units, state
commissions, or this state commission are governed by the law
generally applicable to secured transactions (i.e., New Jersey's
Article 9), then New York's Article 9 will govern.

32 Example 3: An airline that is an instrumentality of a
34 foreign country creates a security interest in favor of a New
36 York bank. The analysis used in the previous example would apply
38 here. That is, if the matter is litigated in New York, New York
law would govern except to the extent that the foreign country
enacted a statute applicable to security interests created by
governmental units generally or by the airline specifically.

40 The fact that New York law applies does not necessarily mean
42 that perfection is accomplished by filing in New York. Rather,
44 it means that the court should apply New York's Article 9,
46 including its choice-of-law provisions. Under New York's Section
9-301, perfection is governed by the law of the jurisdiction in
which the debtor is located. Section 9-307 determines the
debtor's location for choice-of-law purposes.

48 If a transaction does not bear an appropriate relation to
50 the forum State, then that State's Article 9 [Maine cite Article
9-A] will not apply, regardless of whether the transaction would
be excluded by paragraph (3) [Maine cite paragraph (c)].

2 Example 4: A Belgian governmental unit grants a security
3 interest in its equipment to a Swiss secured party. The
4 equipment is located in Belgium. A dispute arises and, for some
5 reason, an action is brought in a New Mexico state court.
6 Inasmuch as the transaction bears no "appropriate relation" to
7 New Mexico, New Mexico's UCC, including its Article 9, is
8 inapplicable. See Section 1-105(1). New Mexico's Section
9-109(c) on excluded transactions should not come into play.
10 Even if the parties agreed that New Mexico law would govern, the
11 parties' agreement would not be effective because the transaction
12 does not bear a "reasonable relation" to New Mexico. See Section
13 1-105(1).

14
15 Conversely, Article 9 [Maine cite Article 9-A] will come
16 into play only if the litigation arises in a UCC jurisdiction or
17 if a foreign choice-of-law rule leads a foreign court to apply
18 the law of a UCC jurisdiction. For example, if issues concerning
19 a security interest granted by a foreign airline to a New York
20 bank are litigated overseas, the court may be bound to apply the
21 law of the debtor's jurisdiction and not New York's Article 9.

22
23 10. Certain Statutory and Common-Law Liens; Interests in
24 Real Property. With few exceptions (nonconsensual agricultural
25 liens being one), this Article applies only to consensual
26 security interests in personal property. Following former
27 Section 9-104(b) and (j), paragraphs (1) and (11) of subsection
28 (d) [Maine cite paragraphs (a) and (k) of subsection (4)] exclude
29 landlord's liens and leases and most other interests in or liens
30 on real property. These exclusions generally reiterate the
31 limitations on coverage (i.e., "by contract," "in personal
32 property and fixtures") made explicit in subsection (a)(1) [Maine
33 cite subsection (1), paragraph (a)]. Similarly, most
34 jurisdictions provide special liens to suppliers of many types of
35 services and materials, either by statute or by common law. With
36 the exception of agricultural liens, it is not necessary for this
37 Article to provide general codification of this lien structure,
38 which is determined in large part by local conditions and which
39 is far removed from ordinary commercial financing. As under
40 former Section 9-104(c), subsection (d)(2) [Maine cite subsection
41 (4), paragraph (b)] excludes these suppliers' liens (other than
42 agricultural liens) from this Article. However, Section 9-333
43 [Maine cite section 9-1333] provides a rule for determining
44 priorities between certain possessory suppliers' liens and
45 security interests covered by this Article.

46
47 11. Wage and Similar Claims. As under former Section
48 9-104(d), subsection (d)(3) [Maine cite subsection (4), paragraph
49 (c)] excludes assignments of claims for wages and the like from
50 this Article. These assignments present important social issues

2 that other law addresses. The Federal Trade Commission has ruled
4 that, with some exceptions, the taking of an assignment of wages
6 or other earnings is an unfair act or practice under the Federal
Trade Commission Act. See 16 C.F.R. Part 444. State statutes
also may regulate such assignments.

8 12. Certain Sales and Assignments of Receivables;
Judgments. In general this Article covers security interests in
10 (including sales of) accounts, chattel paper, payment
12 intangibles, and promissory notes. Paragraphs (4), (5), (6), and
(7) of subsection (d) [Maine cite paragraphs (d), (e), (f) and
14 (g) of subsection (4)] exclude from the Article certain sales and
assignments of receivables that, by their nature, do not concern
16 commercial financing transactions. These paragraphs add to the
exclusions in former Section 9-104(f) analogous sales and
18 assignments of payment intangibles and promissory notes. For
similar reasons, subsection (d)(9) [Maine cite subsection (4),
20 paragraph (i)] retains the exclusion of assignments of judgments
under former Section 9-104(h) (other than judgments taken on a
right to payment that itself was collateral under this Article).

22 13. Insurance. Subsection (d)(8) [Maine cite subsection
24 (4), paragraph (h)] narrows somewhat the broad exclusion of
interests in insurance policies under former Section 9-104(g)
[Maine cite section 9-1104, subsection (7)]. This Article now
26 covers assignments by or to a health-care provider of
"health-care-insurance receivables" (defined in Section 9-102)
28 [Maine cite section 9-1102].

30 14. Set-Off. Subsection (d)(10) [Maine cite subsection
32 (4), paragraph (j)] adds two exceptions to the general exclusion
of set-off rights from Article 9 under former Section 9-104(i).
34 The first takes account of new Section 9-340 [Maine cite section
9-1340], which regulates the effectiveness of a set-off against a
deposit account that stands as collateral. The second recognizes
36 Section 9-404 [Maine cite section 9-1404], which affords the
obligor on an account, chattel paper, or general intangible the
38 right to raise claims and defenses against an assignee (secured
party).

40 15. Tort Claims. Subsection (d)(12) [Maine cite subsection
42 (4), paragraph (l)] narrows somewhat the broad exclusion of
transfers of tort claims under former Section 9-104(k). This
44 Article now applies to assignments of "commercial tort claims"
(defined in Section 9-102) [Maine cite section 9-1102] as well as
46 to security interests in tort claims that constitute proceeds of
other collateral (e.g., a right to payment for negligent
48 destruction of the debtor's inventory). Note that once a claim
arising in tort has been settled and reduced to a contractual
50 obligation to pay (as in, but not limited to, a structured

2 settlement) the right to payment becomes a payment intangible and
ceases to be a claim arising in tort.

4 This Article contains two special rules governing creation
of a security interest in tort claims. First, a description of
6 collateral in a security agreement as "all tort claims" is
insufficient to meet the requirement for attachment. See Section
8 9-108(e) [Maine cite section 9-1108, subsection (5)]. Second, no
security interest attaches under an after-acquired property
10 clause to a tort claim. See Section 9-204(b) [Maine cite section
9-1204, subsection (2)]. In addition, this Article does not
12 determine whom the tortfeasor must pay to discharge its
obligation. Inasmuch as a tortfeasor is not an "account debtor,"
14 the rules governing waiver of defenses and discharge of an
obligation by an obligor (Sections 9-403, 9-404, 9-405, and
16 9-406) [Maine cite sections 9-1403, 9-1404, 9-1405 and 9-1406]
are inapplicable to tort-claim collateral.

18
20 16. Deposit Accounts. Except in consumer transactions,
deposit accounts may be taken as original collateral under this
Article. Under former Section 9-104(1), deposit accounts were
22 excluded as original collateral, leaving security interests in
deposit accounts to be governed by the common law. The common
24 law is nonuniform, often difficult to discover and comprehend,
and frequently costly to implement. As a consequence, debtors
26 who wished to use deposit accounts as collateral sometimes were
precluded from doing so as a practical matter. By excluding
28 deposit accounts from the Article's scope as original collateral
in consumer transactions, subsection (d)(13) [Maine cite
30 subsection (4), paragraph (m)] leaves those transactions to law
other than this Article. However, in both consumer and
32 non-consumer transactions, sections 9-315 and 9-322 [Maine cite
sections 9-1315 and 9-1322] apply to deposit accounts as proceeds
34 and with respect to priorities in proceeds.

36 This Article contains several safeguards to protect debtors
against inadvertently encumbering deposit accounts and to reduce
38 the likelihood that a secured party will realize a windfall from
a debtor's deposit accounts. For example, because "deposit
40 account" is a separate type of collateral, a security agreement
covering general intangibles will not adequately describe deposit
42 accounts. Rather, a security agreement must reasonably identify
the deposit accounts that are the subject of a security interest,
44 e.g., by using the term "deposit accounts." See Section 9-108
[Maine cite section 9-1108]. To perfect a security interest in a
46 deposit account as original collateral, a secured party (other
than the bank with which the deposit account is maintained) must
48 obtain "control" of the account either by obtaining the bank's
authenticated agreement or by becoming the bank's customer with
50 respect to the deposit account. See Sections 9-312(b)(1), 9-104

2 [Maine cite section 9-1312, subsection (2), paragraph (a) and
section 9-1104]. Either of these steps requires the debtor's
consent.

4
6 This Article also contains new rules that determine which
State's law governs perfection and priority of a security
8 interest in a deposit account (Section 9-304) [Maine cite section
9-1304], priority of conflicting security interests in and
10 set-off rights against a deposit account (Sections 9-327, 9-340)
[Maine cite sections 9-1327, 9-1340], the rights of transferees
of funds from an encumbered deposit account (Section 9-332)
12 [Maine cite section 9-1332], the obligations of the bank (Section
9-341) [Maine cite section 9-1341], enforcement of security
14 interests in a deposit account (Section 9-607(c)) [Maine cite
section 9-1607, subsection (3)], and the duty of a secured party
16 to terminate control of a deposit account (Section 9-208(b))
[Maine cite section 9-1208, subsection (2)].

18 **§9-1110. Security interests arising under Article 2 or 2-A**

20 A security interest arising under section 2-401, 2-505,
22 2-711, subsection (3), or 2-1508, subsection (5) is subject to
24 this Article. However, until the debtor obtains possession of
the goods:

26 (1) The security interest is enforceable, even if section
28 9-1203, subsection (2), paragraph (c) has not been satisfied;

30 (2) Filing is not required to perfect the security interest;

32 (3) The rights of the secured party after default by the
debtor are governed by Article 2 or 2-A; and

34 (4) The security interest has priority over a conflicting
36 security interest created by the debtor.

38 **Official Comments**

40 1. Source. Former Section 9-113.

42 2. Background. Former Section 9-113, from which this
section derives, referred generally to security interests
44 "arising solely under the Article on Sales (Article 2) or the
Article on Leases (Article 2A)." Views differed as to the
46 precise scope of that section. In contrast, Section 9-110 [Maine
cite section 9-1110] specifies the security interests to which it
48 applies.

50 3. Security Interests Under Articles 2 and 2A. Section
2-505 explains how a seller of goods may reserve a security

2 interest in them. Section 2-401 indicates that a reservation of
3 title by the seller of goods, despite delivery to the buyer, is
4 limited to reservation of a security interest. As did former
5 Article 9, this Article governs a security interest arising
6 solely under one of those sections; however, until the buyer
7 obtains possession of the goods, the security interest is
8 enforceable even in the absence of a security agreement, filing
9 is not necessary to perfect the security interest, and the
10 seller-secured party's rights on the buyer's default are governed
11 by Article 2.

12 Sections 2-711(3) and 2A-508(5) create a security interest
13 in favor of a buyer or lessee in possession of goods that were
14 rightfully rejected or as to which acceptance was justifiably
15 revoked. As did former Article 9, this Article governs a
16 security interest arising solely under one of those sections;
17 however, until the seller or lessor obtains possession of the
18 goods, the security interest is enforceable even in the absence
19 of a security agreement, filing is not necessary to perfect the
20 security interest, and the secured party's (buyer's or lessee's)
21 rights on the debtor's (seller's or lessor's) default are
22 governed by Article 2 or 2A, as the case may be.

24 4. Priority. This section adds to former Section 9-113 a
25 priority rule. Until the debtor obtains possession of the goods,
26 a security interest arising under one of the specified sections
27 of Article 2 or 2A has priority over conflicting security
28 interests created by the debtor. Thus, a security interest
29 arising under Section 2-401 or 2-505 has priority over a
30 conflicting security interest in the buyer's after-acquired
31 goods, even if the goods in question are inventory. Arguably,
32 the same result would obtain under Section 9-322 [Maine cite
33 section 9-1322], but even if it would not, a purchase-money-like
34 priority is appropriate. Similarly, a security interest under
35 Section 2-711(3) or 2A-508(5) has priority over security
36 interests claimed by the seller's or lessor's secured lender.
37 This result is appropriate, inasmuch as the payments giving rise
38 to the debt secured by the Article 2 or 2A security interest are
39 likely to be included among the lender's proceeds.

40 Example: Seller owns equipment subject to a security
41 interest created by Seller in favor of Lender. Buyer pays for
42 the equipment, accepts the goods, and then justifiably revokes
43 acceptance. As long as Seller does not recover possession of the
44 equipment, Buyer's security interest under Section 2711(3) is
45 senior to that of Lender.

48 In the event that a security interest referred to in this
49 section conflicts with a security interest that is created by a
50 person other than the debtor, Section 9-325 [Maine cite section

2 9-1325] applies. Thus, if Lender's security interest in the
3 example was created not by Seller but by the person from whom
4 Seller acquired the goods, Section 9-325 [Maine cite section
5 9-1325] would govern.

6 5. Relationship to Other Rights and Remedies Under Articles
7 2 and 2A. This Article does not specifically address the
8 conflict between (i) a security interest created by a buyer or
9 lessee and (ii) the seller's or lessor's right to withhold
10 delivery under Section 2-702(1), 2-703(a), or 2A-525, the
11 seller's or lessor's right to stop delivery under Section 2-705
12 or 2A-526, or the seller's right to reclaim under Section
13 2-507(2) or 2-702(2). These conflicts are governed by the first
14 sentence of Section 2-403(1), under which the buyer's secured
15 party obtains no greater rights in the goods than the buyer had
16 or had power to convey, or Section 2A-307(1), under which
17 creditors of the lessee take subject to the lease contract.

18
19 **PART 2**

20
21 **EFFECTIVENESS OF SECURITY AGREEMENT;**
22 **ATTACHMENT OF SECURITY INTEREST;**
23 **RIGHTS OF PARTIES TO SECURITY AGREEMENT**

24
25 **SUBPART 1**

26
27 **EFFECTIVENESS AND ATTACHMENT**

28 **§9-1201. General effectiveness of security agreement**

29
30 (1) Except as otherwise provided in this Title, a security
31 agreement is effective according to its terms between the
32 parties, against purchasers of the collateral and against
33 creditors.

34
35 (2) A transaction subject to this Article is subject to
36 provisions of Title 9-A, or to Title 30-A, sections 3960 to
37 3964-A.

38
39 (3) In case of conflict between this Article and a rule of
40 law, statute or rule described in subsection (2), the rule of
41 law, statute or rule controls. Failure to comply with a statute
42 or rule described in subsection (2) has only the effect the
43 statute or rule specifies.

44
45 (4) This Article does not:

46
47 (a) Validate any rate, charge, agreement or practice that
48 violates a rule of law, statute or rule described in
49 subsection (2); or
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Official Comment

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1. Source. Former Section 9-202.

2. Title Immaterial. The rights and duties of parties to a secured transaction and affected third parties are provided in this Article without reference to the location of "title" to the collateral. For example, the characteristics of a security interest that secures the purchase price of goods are the same whether the secured party appears to have retained title or the debtor appears to have obtained title and then conveyed title or a lien to the secured party.

3. When Title Matters.

a. Under This Article. This section explicitly acknowledges two circumstances in which the effect of certain Article 9 [Maine cite Article 9-A] provisions turns on ownership (title). First, in some respects sales of accounts, chattel paper, payment intangibles, and promissory notes receive special treatment. See, e.g., Sections 9-207(a), 9-210(b), 9-615(e) [Maine cite section 9-1207, subsection (1), section 9-1210, subsection (2), section 9-1615, subsection (5)]. Buyers of receivables under former Article 9 were treated specially, as well. See, e.g., former Section 9502(2). Second, the remedies of a consignor under a true consignment and, for the most part, the remedies of a buyer of accounts, chattel paper, payment intangibles, or promissory notes are determined by other law and not by Part 6. See Section 9601(g) [Maine cite section 9-1601, subsection (7)].

b. Under Other Law. This Article does not determine which line of interpretation (e.g., title theory or lien theory, retained title or conveyed title) should be followed in cases in which the applicability of another rule of law depends upon who has title. If, for example, a revenue law imposes a tax on the "legal" owner of goods or if a corporation law makes a vote of the stockholders prerequisite to a corporation "giving" a security interest but not if it acquires property "subject" to a security interest, this Article does not attempt to define whether the secured party is a "legal" owner or whether the transaction "gives" a security interest for the purpose of such laws. Other rules of law or the agreement of the parties determines the location and source of title for those purposes.

§9-1203. Attachment and enforceability of security interest;

proceeds; supporting obligations; formal requisites

2
4 (1) A security interest attaches to collateral when it
6 becomes enforceable against the debtor with respect to the
8 collateral, unless an agreement expressly postpones the time of
10 attachment.

12 (2) Except as otherwise provided in subsections (3) through
14 (9), a security interest is enforceable against the debtor and
16 3rd parties with respect to the collateral only if:

18 (a) Value has been given;

20 (b) The debtor has rights in the collateral or the power to
22 transfer rights in the collateral to a secured party; and

24 (c) One of the following conditions is met:

26 (i) The debtor has authenticated a security agreement
28 that provides a description of the collateral and, if
30 the security interest covers timber to be cut, a
32 description of the land concerned;

34 (ii) The collateral is not a certificated security and
36 is in the possession of the secured party under section
38 9-1313 pursuant to the debtor's security agreement;

40 (iii) The collateral is a certificated security in
42 registered form and the security certificate has been
44 delivered to the secured party under section 8-1302
46 pursuant to the debtor's security agreement; or

48 (iv) The collateral is deposit accounts, electronic
chattel paper, investment property, or letter-of-credit
rights, and the secured party has control under
sections 9-1104, 9-1105, 9-1106 or 9-1107 pursuant to
the debtor's security agreement.

(3) Subsection (2) is subject to section 4-210 on the
security interest of a collecting bank, section 5-1118 on the
security interest of a letter-of-credit issuer or nominated
person, section 9-1110 on a security interest arising under
Article 2 or 2-A, and section 9-1206 on security interests in
investment property.

(4) A person becomes bound as debtor by a security
agreement entered into by another person if, by operation of law
other than this Article or by contract:

2 (a) The security agreement becomes effective to create a
3 security interest in the person's property; or

4 (b) The person becomes generally obligated for the
5 obligations of the other person, including the obligation
6 secured under the security agreement, and acquires or
7 succeeds to all or substantially all of the assets of the
8 other person.

10 (5) If a new debtor becomes bound as debtor by a security
11 agreement entered into by another person:

12 (a) The agreement satisfies subsection (2), paragraph (c)
13 with respect to existing or after-acquired property of the
14 new debtor to the extent the property is described in the
15 agreement; and

16 (b) Another agreement is not necessary to make a security
17 interest in the property enforceable.

18 (6) The attachment of a security interest in collateral
19 gives the secured party the rights to proceeds provided by
20 section 9-1315 and is also attachment of a security interest in a
21 supporting obligation for the collateral.

22 (7) The attachment of a security interest in a right to
23 payment or performance secured by a security interest or other
24 lien on personal or real property is also attachment of a
25 security interest in the security interest, mortgage or other
26 lien.

27 (8) The attachment of a security interest in a securities
28 account is also attachment of a security interest in the security
29 entitlements carried in the securities account.

30 (9) The attachment of a security interest in a commodity
31 account is also attachment of a security interest in the
32 commodity contracts carried in the commodity account.

34
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38
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42 **Official Comment**

44 1. Source. Former Sections 9-203, 9-115(2), (6).

46 2. Creation, Attachment, and Enforceability. Subsection
47 (a) [Maine cite subsection (1)] states the general rule that a
48 security interest attaches to collateral only when it becomes
49 enforceable against the debtor. Subsection (b) [Maine cite
50 subsection (2)] specifies the circumstances under which a
security interest becomes enforceable. Subsection (b) [Maine

2 cite subsection (2)] states three basic prerequisites to the
existence of a security interest: value (paragraph (1) [Maine
cite paragraph (a)]), rights or power to transfer rights in
4 collateral (paragraph (2) [Maine cite paragraph (b)]), and
agreement plus satisfaction of an evidentiary requirement
6 (paragraph (3) [Maine cite paragraph (c)]). When all of these
elements exist, a security interest becomes enforceable between
8 the parties and attaches under subsection (a) [Maine cite
subsection (1)]. Subsection (c) [Maine cite subsection (3)]
10 identifies certain exceptions to the general rule of subsection
(b) [Maine cite subsection (2)].

12
14 3. Security Agreement; Authentication. Under subsection
(b)(3) [Maine cite subsection (2)], enforceability requires the
debtor's security agreement and compliance with an evidentiary
16 requirement in the nature of a Statute of Frauds. Paragraph
(3)(A) [Maine cite paragraph (c), subparagraph (i)] represents
18 the most basic of the evidentiary alternatives, under which the
debtor must authenticate a security agreement that provides a
description of the collateral. Under Section 9-102 [Maine cite
20 section 9-1102], a "security agreement" is "an agreement that
creates or provides for a security interest." Neither that
22 definition nor the requirement of paragraph (3)(A) [Maine cite
paragraph (c), subparagraph (i)] rejects the deeply rooted
24 doctrine that a bill of sale, although absolute in form, may be
shown in fact to have been given as security. Under this
26 Article, as under prior law, a debtor may show by parol evidence
that a transfer purporting to be absolute was in fact for
28 security. Similarly, a self-styled "lease" may serve as a
security agreement if the agreement creates a security interest.
30 See Section 1-201(37) (distinguishing security interest from
lease).

34 4. Possession, Delivery, or Control Pursuant to Security
Agreement. The other alternatives in subsection (b)(3) [Maine
36 cite subsection (2), paragraph (c)] dispense with the requirement
of an authenticated security agreement and provide alternative
38 evidentiary tests. Under paragraph (3)(B) [Maine cite paragraph
(c), subparagraph (ii)], the secured party's possession
40 substitutes for the debtor's authentication under paragraph
(3)(A) [Maine cite paragraph (c), subparagraph (i)] if the
42 secured party's possession is "pursuant to the debtor's security
agreement." That phrase refers to the debtor's agreement to the
44 secured party's possession for the purpose of creating a security
interest. The phrase should not be confused with the phrase
46 "debtor has authenticated a security agreement," used in
paragraph (3)(A) [Maine cite paragraph (c), subparagraph (i)],
48 which contemplates the debtor's authentication of a record. In
the unlikely event that possession is obtained without the
50 debtor's agreement, possession would not suffice as a substitute

2 for an authenticated security agreement. However, once the
3 security interest has become enforceable and has attached, it is
4 not impaired by the fact that the secured party's possession is
5 maintained without the agreement of a subsequent debtor (e.g., a
6 transferee). Possession as contemplated by Section 9-313 [Maine
7 cite section 9-1313] is possession for purposes of subsection
8 (b)(3)(B) [Maine cite subsection (2), paragraph (c), subparagraph
9 (ii)], even though it may not constitute possession "pursuant to
10 the debtor's agreement" and consequently might not serve as a
11 substitute for an authenticated security agreement under
12 subsection (b)(3)(A) [Maine cite subsection (2), paragraph (c),
13 subparagraph (i)]. Subsection (b)(3)(C) [Maine cite subsection
14 (2), paragraph (c), subparagraph (iii)] provides that delivery of
15 a certificated security to the secured party under Section 8-301
16 [Maine cite section 8-1302] pursuant to the debtor's security
17 agreement is sufficient as a substitute for an authenticated
18 security agreement. Similarly, under subsection (b)(3)(D) [Maine
19 cite subsection (2), paragraph (c), subparagraph (iv)], control
20 of investment property, a deposit account, electronic chattel
21 paper, or a letter-of-credit right satisfies the evidentiary test
22 if control is pursuant to the debtor's security agreement.

23
24 5. Collateral Covered by Other Statute or Treaty. One
25 evidentiary purpose of the formal requisites stated in subsection
26 (b) [Maine cite subsection (2)] is to minimize the possibility of
27 future disputes as to the terms of a security agreement (e.g., as
28 to the property that stands as collateral for the obligation
29 secured). One should distinguish the evidentiary functions of
30 the formal requisites of attachment and enforceability (such as
31 the requirement that a security agreement contain a description
32 of the collateral) from the more limited goals of "notice filing"
33 for financing statements under Part 5, explained in Section 9-502
34 [Maine cite section 9-1502], Comment 2. When perfection is
35 achieved by compliance with the requirements of a statute or
36 treaty described in Section 9-311(a) [Maine cite section 9-1311,
37 subsection (1)], such as a federal recording act or a
38 certificate-of-title statute, the manner of describing the
39 collateral in a registry imposed by the statute or treaty may or
40 may not be adequate for purposes of this section and Section
41 9-108 [Maine cite section 9-1108]. However, the description
42 contained in the security agreement, not the description in a
43 public registry or on a certificate of title, controls for
44 purposes of this section.

45
46 6. Debtor's Rights; Debtor's Power to Transfer Rights.
47 Subsection (b)(2) [Maine cite subsection (2), paragraph (b)]
48 conditions attachment on the debtor's having "rights in the
49 collateral or the power to transfer rights in the collateral to a
50 secured party." A debtor's limited rights in collateral, short
of full ownership, are sufficient for a security interest to

2 attach. However, in accordance with basic personal property
conveyancing principles, the baseline rule is that a security
4 interest attaches only to whatever rights a debtor may have,
broad or limited as those rights may be.

6 Certain exceptions to the baseline rule enable a debtor to
transfer, and a security interest to attach to, greater rights
8 than the debtor has. See Part 3, Subpart 3 (priority rules).
The phrase, "or the power to transfer rights in the collateral to
10 a secured party," accommodates those exceptions. In some cases,
a debtor may have power to transfer another person's rights only
12 to a class of transferees that excludes secured parties. See,
e.g., Section 2-403(2) (giving certain merchants power to
14 transfer an entruster's rights to a buyer in ordinary course of
business). Under those circumstances, the debtor would not have
16 the power to create a security interest in the other person's
rights, and the condition in subsection (b)(2) [Maine cite
18 subsection (2), paragraph (b)] would not be satisfied.

20 7. New Debtors. Subsection (e) [Maine cite subsection (5)]
makes clear that the enforceability requirements of subsection
22 (b)(3) [Maine cite subsection (2), paragraph (c)] are met when a
new debtor becomes bound under an original debtor's security
24 agreement. If a new debtor becomes bound as debtor by a security
agreement entered into by another person, the security agreement
26 satisfies the requirement of subsection (b)(3) [Maine cite
subsection (2), paragraph (c)] as to the existing and
28 after-acquired property of the new debtor to the extent the
property is described in the agreement.

30 Subsection (d) [Maine cite subsection (4)] explains when a
32 new debtor becomes bound. Persons who become bound under
paragraph (2) [Maine cite paragraph (b)] are limited to those who
34 both become primarily liable for the original debtor's
obligations and succeed to (or acquire) its assets. Thus, the
36 paragraph excludes sureties and other secondary obligors as well
as persons who become obligated through veil piercing and other
38 non-successorship doctrines. In many cases, paragraph (2) [Maine
cite paragraph (b)] will exclude successors to the assets and
40 liabilities of a division of a debtor. See also Section 9-508
[Maine cite section 9-1508], Comment 3.

42 8. Supporting Obligations. Under subsection (f) [Maine
44 cite subsection (6)], a security interest in a "supporting
obligation" (defined in Section 9-102 [Maine cite section
46 9-1102]) automatically follows from a security interest in the
underlying, supported collateral. This result was implicit under
48 former Article 9. Implicit in subsection (f) [Maine cite
subsection (6)] is the principle that the secured party's
50 interest in a supporting obligation extends to the supporting

2 obligation only to the extent that it supports the collateral in
4 which the secured party has a security interest. Complex issues
6 may arise, however, if a supporting obligation supports many
8 separate obligations of a particular account debtor and if the
10 supported obligations are separately assigned as security to
12 several secured parties. The problems may be exacerbated if a
supporting obligation is limited to an aggregate amount that is
less than the aggregate amount of the obligations it supports.
This Article does not contain provisions dealing with competing
claims to a limited supporting obligation. As under former
Article 9, the law of suretyship and the agreements of the
parties will control.

14 9. Collateral Follows Right to Payment or Performance.
16 Subsection (g) [Maine cite subsection (7)] codifies the
18 common-law rule that a transfer of an obligation secured by a
20 security interest or other lien on personal or real property also
22 transfers the security interest or lien. See Restatement (3d),
Property (Mortgages) § 5.4(a) (1997). See also Section 9-308(e)
[Maine cite section 9-1308, subsection (5)] (analogous rule for
perfection).

24 10. Investment Property. Subsections (h) and (i) [Maine
26 cite subsections (8) and (9)] make clear that attachment of a
28 security interest in a securities account or commodity account is
also attachment in security entitlements or commodity contracts
carried in the accounts.

30 **§9-1204. After-acquired property; future advances**

32 (1) Except as otherwise provided in subsection (2), a
security agreement may create or provide for a security interest
in after-acquired collateral.

34 (2) A security interest does not attach under a term
36 constituting an after-acquired property clause to:

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

42 (b) A commercial tort claim.

44 (3) A security agreement may provide that collateral
46 secures, or that accounts, chattel paper, payment intangibles or
promissory notes are sold in connection with future advances or
48 other value whether or not the advances or value are given
pursuant to commitment.

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Official Comment

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1. Source. Former Section 9-204.

2. After-acquired Property; Continuing General Lien. Subsection (a) [Maine cite subsection (1)] makes clear that a security interest arising by virtue of an after acquired property clause is no less valid than a security interest in collateral in which the debtor has rights at the time value is given. A security interest in after-acquired property is not merely an "equitable" interest; no further action by the secured party--such as a supplemental agreement covering the new collateral--is required. This section adopts the principle of a "continuing general lien" or "floating lien." It validates a security interest in the debtor's existing and (upon acquisition) future assets, even though the debtor has liberty to use or dispose of collateral without being required to account for proceeds or substitute new collateral. See Section 9-205 [Maine cite section 9-1205]. Subsection (a) [Maine cite subsection (1)], together with subsection (c) [Maine cite subsection (3)], also validates "crosscollateral" clauses under which collateral acquired at any time secures advances whenever made.

3. After-Acquired Consumer Goods. Subsection (b)(1) [Maine cite subsection (2), paragraph (a)] makes ineffective an after-acquired property clause covering consumer goods (defined in Section 9-109) [Maine cite section 9-1102], except as accessions (see Section 9-335) [Maine cite section 9-1335], acquired more than ten days after the secured party gives value. Subsection (b)(1) [Maine cite subsection (2), paragraph (a)] is unchanged in substance from the corresponding provision in former Section 9-204(2).

4. Commercial Tort Claims. Subsection (b)(2) [Maine cite subsection (2), paragraph (b)] provides that an after-acquired property clause in a security agreement does not reach future commercial tort claims. In order for a security interest in a tort claim to attach, the claim must be in existence when the security agreement is authenticated. In addition, the security agreement must describe the tort claim with greater specificity than simply "all tort claims." See Section 9-108(e) [Maine cite section 9-1108, subsection (5)].

5. Future Advances; Obligations Secured. Under subsection (c) [Maine cite subsection (3)] collateral may secure future as well as past or present advances if the security agreement so provides. This is in line with the policy of this Article toward security interests in after-acquired property under subsection (a) [Maine cite subsection (1)]. Indeed, the parties are free to agree that a security interest secures any obligation

2 whatsoever. Determining the obligations secured by collateral is
3 solely a matter of construing the parties' agreement under
4 applicable law. This Article rejects the holdings of cases
5 decided under former Article 9 that applied other tests, such as
6 whether a future advance or other subsequently incurred
7 obligation was of the same or a similar type or class as earlier
8 advances and obligations secured by the collateral.

10 6. Sales of Receivables. Subsections (a) and (c) [Maine
11 cite subsections (1) and (3)] expressly validate after-acquired
12 property and future advance clauses not only when the transaction
13 is for security purposes but also when the transaction is the
14 sale of accounts, chattel paper, payment intangibles, or
15 promissory notes. This result was implicit under former Article
16 9.

18 7. Financing Statements. The effect of after-acquired
19 property and future advance clauses as components of a security
20 agreement should not be confused with the requirements applicable
21 to financing statements under this Article's system of perfection
22 by notice filing. The references to after-acquired property
23 clauses and future advance clauses in this section are limited to
24 security agreements. There is no need to refer to after-acquired
25 property or future advances or other obligations secured in a
26 financing statement. See Section 9-502 [Maine cite section
27 9-1502], Comment 2.

28 **§9-1205. Use or disposition of collateral permissible**

30 (1) A security interest is not invalid or fraudulent
31 against creditors solely because:

32 (a) The debtor has the right or ability to:

34 (i) Use, commingle or dispose of all or part of the
35 collateral, including returned or repossessed goods;

38 (ii) Collect, compromise, enforce or otherwise deal
39 with collateral;

40 (iii) Accept the return of collateral or make
41 repossessions; or

44 (iv) Use, commingle or dispose of proceeds; or

46 (b) The secured party fails to require the debtor to account
47 for proceeds or replace collateral.

48 (2) This section does not relax the requirements of
49 possession if attachment, perfection or enforcement of a security
50 interest.

interest depends upon possession of the collateral by the secured party.

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Official Comment

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1. Source. Former Section 9-205.

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2. Validity of Unrestricted "Floating Lien." This Article expressly validates the "floating lien" on shifting collateral. See Sections 9-201, 9-204 [Maine cite section 9-1201, section 9-1204] and Comment 2. This section provides that a security interest is not invalid or fraudulent by reason of the debtor's liberty to dispose of the collateral without being required to account to the secured party for proceeds or substitute new collateral. As did former Section 9-205, this section repeals the rule of *Benedict v. Ratner*, 268 U.S. 353 (1925), and other cases which held such arrangements void as a matter of law because the debtor was given unfettered dominion or control over collateral. The *Benedict* rule did not effectively discourage or eliminate security transactions in inventory and receivables. Instead, it forced financing arrangements to be selfliquidating. Although this section repeals *Benedict*, the filing and other perfection requirements (see Part 3, Subpart 2, and Part 5) provide for public notice that overcomes any potential misleading effects of a debtor's use and control of collateral. Moreover, nothing in this section prevents the debtor and secured party from agreeing to procedures by which the secured party polices or monitors collateral or to restrictions on the debtor's dominion. However, this Article leaves these matters to agreement based on business considerations, not on legal requirements.

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3. Possessory Security Interests. Subsection (b) [Maine cite subsection (2)] makes clear that this section does not relax the requirements for perfection by possession under Section 9-315 [Maine cite section 9-1315]. If a secured party allows the debtor access to and control over collateral its security interest may be or become unperfected.

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4. Permissible Freedom for Debtor to Enforce Collateral. Former Section 9-205 referred to a debtor's "liberty . . . to collect or compromise accounts or chattel paper." This section recognizes the broader rights of a debtor to "enforce," as well as to "collect" and "compromise" collateral. This section's reference to collecting, compromising, and enforcing "collateral" instead of "accounts or chattel paper" contemplates the many other types of collateral that a debtor may wish to "collect, compromise, or enforce": e.g., deposit accounts, documents, general intangibles, instruments, investment property, and letter-of-credit rights.

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2 **§9-1206. Security interest arising in purchase or delivery**
3 **of financial asset**

4 (1) A security interest in favor of a securities
5 intermediary attaches to a person's security entitlement if:

6 (a) The person buys a financial asset through the securities
7 intermediary in a transaction in which the person is
8 obligated to pay the purchase price to the securities
9 intermediary at the time of the purchase; and

10 (b) The securities intermediary credits the financial asset
11 to the buyer's securities account before the buyer pays the
12 securities intermediary.

13 (2) The security interest described in subsection (1)
14 secures the person's obligation to pay for the financial asset.

15 (3) A security interest in favor of a person that delivers
16 a certificated security or other financial asset represented by a
17 writing attaches to the security or other financial asset if:

18 (a) The security or other financial asset:

19 (i) In the ordinary course of business is transferred
20 by delivery with any necessary indorsement or
21 assignment; and

22 (ii) Is delivered under an agreement between persons
23 in the business of dealing with such securities or
24 financial assets; and

25 (b) The agreement calls for delivery against payment.

26 (4) The security interest described in subsection (3)
27 secures the obligation to make payment for the delivery.

28 **Official Comment**

29 1. Source. Former 9-116.

30 2. Codification of "Broker's Lien." Depending upon a
31 securities intermediary's arrangements with its entitlement
32 holders, the securities intermediary may treat the entitlement
33 holder as entitled to financial assets before the entitlement
34 holder has actually made payment for them. For example, many
35 brokers permit retail customers to pay for financial assets by
36 check. The broker may not receive final payment of the check
37 until several days after the broker has credited the customer's
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2 securities account for the financial assets. Thus, the customer
3 will have acquired a security entitlement prior to payment.
4 Subsection (a) [Maine cite subsection (1)] provides that, in such
5 circumstances, the securities intermediary has a security
6 interest in the entitlement holder's security entitlement. Under
7 subsection (b) [Maine cite subsection (2)] the security interest
8 secures the customer's obligation to pay for the financial asset
9 in question. Subsections (a) and (b) [Maine cite subsections (1)
10 and (2)] codify and adapt to the indirect holding system the
11 so-called "broker's lien," which has long been recognized. See
12 Restatement, Security § 12.

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14 3. Financial Assets Delivered Against Payment. Subsection
15 (c) [Maine cite subsection (3)] creates a security interest in
16 favor of persons who deliver certificated securities or other
17 financial assets in physical form, such as money market
18 instruments, if the agreed payment is not received. In some
19 arrangements for settlement of transactions in physical financial
20 assets, the seller's securities custodian will deliver physical
21 certificates to the buyer's securities custodian and receive a
22 time-stamped delivery receipt. The buyer's securities custodian
23 will examine the certificate to ensure that it is in good order,
24 and that the delivery matches a trade in which the buyer has
25 instructed the seller to deliver to that custodian. If all is in
26 order, the receiving custodian will settle with the delivering
27 custodian through whatever funds settlement system has been
28 agreed upon or is used by custom and usage in that market. The
29 understanding of the trade, however, is that the delivery is
30 conditioned upon payment, so that if payment is not made for any
31 reason, the security will be returned to the deliverer.
32 Subsection (c) [Maine cite subsection (3)] clarifies the rights
33 of persons making deliveries in such circumstances. It provides
34 the person making delivery with a security interest in the
35 securities or other financial assets; under subsection (d) [Maine
36 cite subsection (4)], the security interest secures the seller's
37 right to receive payment for the delivery. Section 8-301 [Maine
38 cite section 8-1301] specifies when delivery of a certificated
39 security occurs; that section should be applied as well to other
40 financial assets as well for purposes of this section.

41
42 4. Automatic Attachment and Perfection. Subsections (a)
43 and (c) [Maine cite subsections (1) and (3)] refer to attachment
44 of a security interest. Attachment under this section has the
45 same incidents (enforceability, right to proceeds, etc.) as
46 attachment under Section 9-203 [Maine cite section 9-1203]. This
47 section overrides the general attachment rules in Section 9-203.
48 See Section 9-203(c) [Maine cite section 9-1203, subsection
49 (3)]. A securities intermediary's security interest under
50 subsection (a) [Maine cite subsection (1)] is perfected by
control without further action. See Section 8-106 [Maine cite

2 section 8-1106] (control); 9-314 [Maine cite section 9-1314]
(perfection). Security interests arising under subsection (c)
4 [Maine cite subsection (3)] are automatically perfected. See
Section 9-309(9) [Maine cite section 9-1309, subsection (9)].

6
8 **SUBPART 2**

10 **RIGHTS AND DUTIES**

12 **§9-1207. Rights and duties of secured party having possession
or control of collateral**

14 (1) Except as otherwise provided in subsection (4), a
16 secured party shall use reasonable care in the custody and
18 preservation of collateral in the secured party's possession. In
the case of chattel paper or an instrument, reasonable care
includes taking necessary steps to preserve rights against prior
parties unless otherwise agreed.

20 (2) Except as otherwise provided in subsection (4), if a
22 secured party has possession of collateral:

24 (a) Reasonable expenses, including the cost of insurance
26 and payment of taxes or other charges, incurred in the
28 custody, preservation, use or operation of the collateral,
are chargeable to the debtor and are secured by the
collateral;

30 (b) The risk of accidental loss or damage is on the debtor
32 to the extent of a deficiency in any effective insurance
coverage;

34 (c) The secured party shall keep the collateral
36 identifiable, but fungible collateral may be commingled; and

38 (d) The secured party may use or operate the collateral;

40 (i) For the purpose of preserving the collateral or
its value;

42 (ii) As permitted by an order of a court having
44 competent jurisdiction; or

46 (iii) Except in the case of consumer goods, in the
manner and to the extent agreed by the debtor.

48 (3) Except as otherwise provided in subsection (4), a
50 secured party having possession of collateral or control of
collateral under section 9-1104, 9-1105, 9-1106 or 9-1107:

- 2 (a) May hold as additional security any proceeds, except
3 money or funds, received from the collateral;
4
5 (b) Shall apply money or funds received from the collateral
6 to reduce the secured obligation, unless remitted to the
7 debtor; and
8
9 (c) May create a security interest in the collateral.
10
11 (4) If the secured party is a buyer of accounts, chattel
12 paper, payment intangibles or promissory notes or a consignor:
13
14 (a) Subsection (1) does not apply unless the secured party
15 is entitled under an agreement:
16
17 (i) To charge back uncollected collateral; or
18
19 (ii) Otherwise to full or limited recourse against the
20 debtor or a secondary obligor based on the nonpayment
21 or other default of an account debtor or other obligor
22 on the collateral; and
23
24 (5) Subsections (2) and (3) do not apply.

26
27 **Official Comment**

- 28 1. Source. Former Section 9-207.
29
30 2. Duty of Care for Collateral in Secured Party's
31 Possession. Like former section 9-207, subsection (a) [Maine
32 cite subsection (1)] imposes a duty of care, similar to that
33 imposed on a pledgee at common law, on a secured party in
34 possession of collateral. See Restatement, Security §§ 17, 18.
35 In many cases a secured party in possession of collateral may
36 satisfy this duty by notifying the debtor of action that should
37 be taken and allowing the debtor to take the action itself. If
38 the secured party itself takes action, its reasonable expenses
39 may be added to the secured obligation. The revised definitions
40 of "collateral," "debtor," and "secured party" in Section 9-102
41 [Maine cite 9-1102] make this section applicable to collateral
42 subject to an agricultural lien if the collateral is in the
43 lienholder's possession. Under Section 1-102 the duty to
44 exercise reasonable care may not be disclaimed by agreement,
45 although under that section the parties remain free to determine
46 by agreement standards that are not manifestly unreasonable as to
47 what constitutes reasonable care. Unless otherwise agreed, for a
48 secured party in possession of chattel paper or an instrument,
49 reasonable care includes the preservation of rights against prior
50

2 parties. The secured party's right to have instruments or
documents indorsed or transferred to it or its order is dealt
4 with in the relevant sections of Articles 3, 7, and 8. See
Sections 3-201 [Maine cite section 3-1201], 7-506, 8-304(d)
6 [Maine cite section 8-1304, subsection (4)].

8 3. Specific Rules When Secured Party in Possession or
Control of Collateral. Subsections (b) and (c) [Maine cite
10 subsections (2) and (3)] provide rules following common-law
precedents which apply unless the parties otherwise agree. The
12 rules in subsection (b) [Maine cite subsection (2)] apply to
typical issues that may arise while a secured party is in
14 possession of collateral, including expenses, insurance, and
taxes, risk of loss or damage, identifiable and fungible
16 collateral, and use or operation of collateral. Subsection (c)
[Maine cite subsection (3)] contains rules that apply in certain
18 circumstances that may arise when a secured party is in either
possession or control of collateral. These circumstances include
20 the secured party's receiving proceeds from the collateral and
the secured party's creation of a security interest in the
22 collateral.

24 4. Applicability Following Default. This section applies
when the secured party has possession of collateral either before
or after default. See Sections 9-601(b), 9-609 [Maine cite
26 section 9-1601, subsection 2, section 9-1609]. Subsection
(b)(4)(C) [Maine cite subsection (2) paragraph (d) subparagraph
28 (iii)] limits agreements concerning the use or operation of
collateral to collateral other than consumer goods. Under
30 Section 9-602(1) [Maine cite section 9-1602, subsection (1)], a
debtor cannot waive or vary that limitation.
32

34 5. "Repledges" and Right of Redemption. Subsection (c)(3)
[Maine cite subsection (3), paragraph (c)] eliminates the
36 qualification in former Section 9-207 to the effect that the
terms of a "repledge" may not "impair" a debtor's "right to
redeem" collateral. The change is primarily for clarification.
38 There is no basis on which to draw from subsection (c)(3) [Maine
cite subsection (3), paragraph (c)] any inference concerning the
40 debtor's right to redeem the collateral. The debtor enjoys that
right under Section 9-621 [Maine cite section 9-1621]; this
42 section need not address it. For example, if the collateral is a
negotiable note that the secured party (SP-1) repledges to SP-2,
44 nothing in this section suggests that the debtor (D) does not
retain the right to redeem the note upon payment to SP-1 of all
46 obligations secured by the note. But, as explained below, the
debtor's unimpaired right to redeem as against the debtor's
48 original secured party nevertheless may not be enforceable as
against the new secured party.
50

2 In resolving questions that arise from the creation of a
4 security interest by SP-1, one must take care to distinguish D's
6 rights against SP-1 from D's rights against SP-2. Once D
8 discharges the secured obligation, D becomes entitled to the
note; SP-1 has no legal basis upon which to withhold it. If, as
a practical matter, SP-1 is unable to return the note because
SP-2 holds it as collateral for SP-1's unpaid debt, then SP-1 is
liable to D under the law of conversion.

10 Whether SP-2 would be liable to D depends on the relative
12 priority of SP-2's security interest and D's interest. By
14 permitting SP-1 to create a security interest in the collateral
(repledge), subsection (c)(3) [Maine cite subsection (3),
16 paragraph (c)] provides a statutory power for SP-1 to give SP-2 a
18 security interest (subject, of course, to any agreement by SP-1
20 not to give a security interest). In the vast majority of cases
where repledge rights are significant, the security interest of
22 the second secured party, SP-2 in the example, will be senior to
24 the debtor's interest. By virtue of the debtor's consent or
26 applicable legal rules, SP-2 typically would cut off D's rights
in investment property or be immune from D's claims. See
28 Sections 9-331 [Maine cite section 9-1331], 3-306 [Maine cite
section 3-1306] (holder in due course), 8-303 [Maine cite section
30 8-1303] (protected purchaser), 8-502 [Maine cite section 8-1502]
(acquisition of a security entitlement), 8-503(e) [Maine cite
32 section 8-1503 subsection (5)] (action by entitlement holder).
Moreover, the expectations and business practices in some
34 markets, such as the securities markets, are such that D's
36 consent to SP-2's taking free of D's rights inheres in D's
creation of SP-1's security interest which gives rise to SP-1's
38 power under this section. In these situations, D would have no
right to recover the collateral or recover damages from SP-2.
Nevertheless, D would have a damage claim against SP-1 if SP-1
had given a security interest to SP-2 in breach of its agreement
with D. Moreover, if SP-2's security interest secures an amount
that is less than the amount secured by SP-1's security interest
(granted by D), then D's exercise of its right to redeem would
provide value sufficient to discharge SP-1's obligations to SP-2.

40 For the most part this section does not change the law under
42 former Section 9-207, although eliminating the reference to the
debtor's right of redemption may alter the secured party's right
44 to repledge in one respect. Former Section 9-207 could have been
46 read to limit the secured party's statutory right to repledge
collateral to repledge transactions in which the collateral did
48 not secure a greater obligation than that of the original
debtor. Inasmuch as this is a matter normally dealt with by
50 agreement between the debtor and secured party, any change would
appear to have little practical effect.

2 6. "Repledges" of Investment Property. The following
3 example will aid the discussion of "repledges" of investment
4 property.

5 Example. Debtor grants Alpha Bank a security interest in a
6 security entitlement that includes 1000 shares of XYZ Co. stock
7 that Debtor holds through an account with Able & Co. Alpha does
8 not have an account with Able. Alpha uses Beta Bank as its
9 securities custodian. Debtor instructs Able to transfer the
10 shares to Beta, for the account of Alpha, and Able does so. Beta
11 then credits Alpha's account. Alpha has control of the security
12 entitlement for the 1000 shares under Section 8-106(d)[Maine cite
13 section 8-1106, subsection (4)]. (These are the facts of Example
14 2, Section 8-106 [Maine cite section 8-1106], Comment 4.)
15 Although, as between Debtor and Alpha, Debtor may have become the
16 beneficial owner of the new securities entitlement with Beta,
17 Beta has agreed to act on Alpha's entitlement orders because, as
18 between Beta and Alpha, Alpha has become the entitlement holder.

19 Next, Alpha grants Gamma Bank a security interest in the
20 security entitlement with Beta that includes the 1000 shares of
21 XYZ Co. stock. In order to afford Gamma control of the
22 entitlement, Alpha instructs Beta to transfer the stock to
23 Gamma's custodian, Delta Bank, which credits Gamma's account for
24 1000 shares. At this point Gamma holds its securities
25 entitlement for its benefit as well as that of its debtor,
26 Alpha. Alpha's derivative rights also are for the benefit of
27 Debtor.
28

29 In many, probably most, situations and at any particular
30 point in time, it will be impossible for Debtor or Alpha to
31 "trace" Alpha's "repledge" to any particular securities
32 entitlement or financial asset of Gamma or anyone else. Debtor
33 would retain, of course, a right to redeem the collateral from
34 Alpha upon satisfaction of the secured obligation. However, in
35 the absence of a traceable interest, Debtor would retain only a
36 personal claim against Alpha in the event Alpha failed to restore
37 the security entitlement to Debtor. Moreover, even in the
38 unlikely event that Debtor could trace a property interest, in
39 the context of the financial markets, normally the operation of
40 this section, Debtor's explicit agreement to permit Alpha to
41 create a senior security interest, or legal rules permitting
42 Gamma to cut off Debtor's rights or become immune from Debtor's
43 claims would effectively subordinate Debtor's interest to the
44 holder of a security interest created by Alpha. And, under the
45 shelter principle, all subsequent transferees would obtain
46 interests to which Debtor's interest also would be subordinate.
47

48 7. Buyers of Chattel Paper and Other Receivables;
49 Consignors. This section has been revised to reflect the fact
50

2 that a seller of accounts, chattel paper, payment intangibles, or
4 promissory notes retains no interest in the collateral and so is
6 not disadvantaged by the secured party's noncompliance with the
8 requirements of this section. Accordingly, subsection (d) [Maine
10 cite subsection (4)] provides that subsection (a) [Maine cite
12 subsection (1)] applies only to security interests that secure an
14 obligation and to sales of receivables in which the buyer has
16 recourse against the debtor. (Of course, a buyer of accounts or
18 payment intangibles could not have "possession" of original
20 collateral, but might have possession of proceeds, such as
22 promissory notes or checks.) The meaning of "recourse" in this
24 respect is limited to recourse arising out of the account
debtor's failure to pay or other default.

16 Subsection (d) [Maine cite subsection (4)] makes subsections
18 (b) and (c) [Maine cite subsections (2) and (3)] inapplicable to
20 buyers of accounts, chattel paper, payment intangibles, or
22 promissory notes and consignors. Of course, there is no reason
24 to believe that a buyer of receivables or a consignor could not,
for example, create a security interest or otherwise transfer an
interest in the collateral, regardless of who has possession of
the collateral. However, this section leaves the rights of those
owners to law other than Article 9 [Maine cite Article 9-A].

26 **§9-1208. Additional duties of secured party having control**
28 **of collateral**

30 (1) This section applies to cases in which there is no
32 outstanding secured obligation and the secured party is not
committed to make advances, incur obligations or otherwise give
value.

34 (2) Within 10 days after receiving an authenticated demand
36 by the debtor:

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

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

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

chattel paper, investment property, or a letter-of-credit right.
2 The duty to terminate the secured party's control is analogous to
the duty to file a termination statement, imposed by Section
4 9-513 [Maine cite section 9-1513]. Under subsection (a) [Maine
cite subsection (1)], it applies only when there is no
6 outstanding secured obligation and the secured party is not
committed to give value. The requirements of this section can be
8 varied by agreement under Section 1-102(3). For example, a
debtor could by contract agree that the secured party may release
10 its control of investment property under subsection (a)(1) [Maine
cite subsection (1), paragraph (a)] more than three days
12 following demand. Also, duties under this section should not be
read to conflict with the terms of the collateral itself. For
14 example, if the collateral is a time deposit account, subsection
(b)(3) [Maine cite subsection (2), paragraph (c)] should not
16 require a secured party with control to make an early withdrawal
of the funds (assuming that were possible) in order to pay them
18 over to the debtor or put them in an account in the debtor's name.

20 3. Remedy for Failure to Relinquish Control. If a secured
party fails to comply with the requirements of subsection (b)
22 [Maine cite subsection (2)], the debtor has the remedy set forth
in Section 9-625(e) [Maine cite section 9-1625, subsection (5)].
24 This remedy is identical to that applicable to failure to provide
or file a termination statement under Section 9-513 [Maine cite
26 section 9-1513].

28 4. Duty to Relinquish Possession. Although Section 9-207
[Maine cite section 9-1207] addresses directly the duties of a
30 secured party in possession of collateral, that section does not
require the secured party to relinquish possession when the
32 secured party ceases to hold a security interest. Under common
law, absent agreement to the contrary, the failure to relinquish
34 possession of collateral upon satisfaction of the secured
obligation would constitute a conversion. Inasmuch as problems
36 apparently have not surfaced in the absence of statutory duties
under former Article 9 and the common-law duty appears to have
38 been sufficient, this Article does not impose a statutory duty to
relinquish possession.

40 **§9-1209. Duties of secured party if account debtor has been**
42 **notified of assignment**

44 (1) Except as otherwise provided in subsection (3), this
46 section applies if:

48 (a) There is no outstanding secured obligation; and

50 (b) The secured party is not committed to make advances,
incur obligations or otherwise give value.

2 the collateral securing an obligation and reasonably
3 identifying the transaction or relationship that is the
4 subject of the request; and

6 (d) "Request regarding a statement of account" means a
7 record authenticated by a debtor requesting that the
8 recipient approve or correct a statement indicating what the
9 debtor believes to be the aggregate amount of unpaid
10 obligations secured by collateral as of a specified date and
11 reasonably identifying the transaction or relationship that
12 is the subject of the request.

14 (2) Subject to subsections (3), (4), (5) and (6), a secured
15 party, other than a buyer of accounts, chattel paper, payment
16 intangibles or promissory notes or a consignor, shall comply with
17 a request within 14 days after receipt:

18 (a) In the case of a request for an accounting, by
19 authenticating and sending to the debtor an accounting; and

20 (b) In the case of a request regarding a list of collateral
21 or a request regarding a statement of account, by
22 authenticating and sending to the debtor an approval or
23 correction.

26 (3) A secured party that claims a security interest in all
27 of a particular type of collateral owned by the debtor may comply
28 with a request regarding a list of collateral by sending to the
29 debtor an authenticated record including a statement to that
30 effect within 14 days after receipt.

32 (4) A person that receives a request regarding a list of
33 collateral, claims no interest in the collateral when it receives
34 the request and claimed an interest in the collateral at an
35 earlier time shall comply with the request within 14 days after
36 receipt by sending to the debtor an authenticated record:

38 (a) Disclaiming any interest in the collateral; and

40 (b) If known to the recipient, providing the name and
41 mailing address of any assignee of or successor to the
42 recipient's security interest in the collateral.

44 (5) A person that receives a request for an accounting or a
45 request regarding a statement of account, claims no interest in
46 the obligations when it receives the request and claimed an
47 interest in the obligations at an earlier time shall comply with
48 the request within 14 days after receipt by sending to the debtor
49 an authenticated record:

2 4. Permitted Types of Requests for Information. Subsection
3 (a) [Maine cite subsection (1)] contemplates that a debtor may
4 request three types of information by submitting three types of
5 "requests" to the secured party. First, the debtor may request
6 the secured party to prepare and send an "accounting" (defined in
7 Section 9-102 [Maine cite section 9-1102]). Second, the debtor
8 may submit to the secured party a list of collateral for the
9 secured party's approval or correction. Third, the debtor may
10 submit to the secured party for its approval or correction a
11 statement of the aggregate amount of unpaid secured obligations.
12 Inasmuch as a secured party may have numerous transactions and
13 relationships with a debtor, each request must identify the
14 relevant transactions or relationships. Subsections (b) and (c)
15 [Maine cite subsections (2) and (3)] require the secured party to
16 respond to a request within 14 days following receipt of the
17 request.

18 5. Recipients Claiming No Interest in the Transaction. A
19 debtor may be unaware that a creditor with whom it has dealt has
20 assigned its security interest or the secured obligation.
21 Subsections (d) and (e) [Maine cite subsections (4) and (5)]
22 impose upon recipients of requests under this section the duty to
23 inform the debtor that they claim no interest in the collateral
24 or secured obligation, respectively, and to inform the debtor of
25 the name and mailing address of any known assignee or successor.
26 As under subsections (b) and (c) [Maine cite subsections (2) and
27 (3)], a response to a request under subsection (d) or (e) [Maine
28 cite subsection (4) or (5)] is due 14 days following receipt.

30 6. Waiver; Remedy for Failure to Comply. The debtor's
31 rights under this section may not be waived or varied. See
32 Section 9-602(2) [Maine cite section 9-1102, subsection (2)].
33 Section 9-625(e) [Maine cite section 9-1625, subsection (5)] sets
34 forth the remedy for noncompliance with the requirements of this
35 section.

36 7. Limitation on Free Responses to Requests. Under
37 subsection (f) [Maine cite subsection (6)], during a six-month
38 period a debtor is entitled to receive from the secured party one
39 free response to a request. The debtor is not entitled to a free
40 response to each type of request (i.e., three free responses)
41 during a six-month period.

44 **PART 3**

46 **PERFECTION AND PRIORITY**

48 **SUBPART 1**

50

LAW GOVERNING PERFECTION AND PRIORITY

2
4 §9-1301. Law governing perfection and priority of security interests

6 Except as otherwise provided in sections 9-1303 through
8 9-1306, the following rules determine the law governing
10 perfection, the effect of perfection or nonperfection and the
12 priority of a security interest in collateral.

14 (1) Except as otherwise provided in this section, while a
16 debtor is located in a jurisdiction, the local law of that
18 jurisdiction governs perfection, the effect of perfection or
20 nonperfection and the priority of a security interest in
22 collateral.

24 (2) While collateral is located in a jurisdiction, the
26 local law of that jurisdiction governs perfection, the effect of
28 perfection or nonperfection and the priority of a possessory
30 security interest in that collateral.

32 (3) Except as otherwise provided in subsection (4), while
34 negotiable documents, goods, instruments, money or tangible
36 chattel paper is located in a jurisdiction, the local law of that
38 jurisdiction governs:

40 (a) Perfection of a security interest in the goods by
42 filing a fixture filing;

44 (b) Perfection of a security interest in timber to be cut;
46 and

48 (c) The effect of perfection or nonperfection and the
50 priority of a nonpossessory security interest in the
collateral.

(4) The local law of the jurisdiction in which the wellhead
or minehead is located governs perfection, the effect of
perfection or nonperfection and the priority of a security
interest in as-extracted collateral.

Official Comment

1. Source. Former Sections 9-103(1)(a), (b), 9-103(3)(a),
(b), 9-103(5), substantially modified.

2. Scope of This Subpart. Part 3, Subpart 1 (Sections
9-301 through 9-307 [Maine cite sections 9-1301--9-1307])
contains choice-of-law rules similar to those of former Section

2 9-103. Former Section 9-103 generally addresses which State's
law governs "perfection and the effect of perfection or
4 non-perfection of" security interests. See, e.g., former Section
9-103(1)(b). This Article follows the broader and more precise
6 formulation in former Section 9-103(6)(b), which was revised in
connection with the promulgation of Revised Article 8 in 1994:
8 "perfection, the effect of perfection or non-perfection, and the
priority of" security interests. Priority, in this context,
10 subsumes all of the rules in Part 3, including "cut off" or "take
free" rules such as Sections 9-317(b), (c), and (d) [Maine cite
12 section 9-1317, subsections (2), (3) and (4)], 9-320(a), (b), and
(d) [Maine cite section 9-1320, subsections (1), (2) and (4)],
14 and 9-332 [Maine cite section 9-1332]. This subpart does not
address choice of law for other purposes. For example, the law
16 applicable to issues such as attachment, validity,
characterization (e.g., true lease or security interest), and
18 enforcement is governed by the rules in Section 1-105; that
governing law typically is specified in the same agreement that
contains the security agreement. And, another jurisdiction's law
20 may govern other third-party matters addressed in this Article.
See Section 9-401 [Maine cite section 9-1401], Comment 3.

22
24 3. Scope of Referral. In designating the jurisdiction
whose law governs, this Article directs the court to apply only
the substantive ("local") law of a particular jurisdiction and
26 not its choice-of-law rules.

28 Example 1: Litigation over the priority of a security
interest in accounts arises in State X. State X has adopted the
30 official text of this Article, which provides that priority is
determined by the local law of the jurisdiction in which the
32 debtor is located. See Section 9-301(1) [Maine cite section
9-1301, subsection (1)]. The debtor is located in State Y. Even
34 if State Y has retained former Article 9 or enacted a nonuniform
choice-of-law rule (e.g., one that provides that perfection is
36 governed by the law of State Z), a State X court should look only
to the substantive law of State Y and disregard State Y's
38 choice-of-law rule. State Y's substantive law (e.g., its Section
9-501 [Maine cite section 9-1501]) provides that financing
40 statements should be filed in a filing office in State Y. Note,
however, that if the identical perfection issue were to be
42 litigated in State Y, the court would look to State Y's former
Section 9-103 or nonuniform 9-301 and conclude that a filing in
44 State Y is ineffective.

46 Example 2: In the preceding Example, assume that State X
has adopted the official text of this Article, and State Y has
48 adopted a nonuniform Section 9-301(1) under which perfection is
governed by the whole law of State X, including its choice-of-law
50 rules. If litigation occurs in State X, the court should look to

2 the substantive law of State Y, which provides that financing
3 statements are to be filed in a filing office in State Y. If
4 litigation occurs in State Y, the court should look to the law of
5 State X, whose choice-of-law rule requires that the court apply
6 the substantive law of State Y. Thus, regardless of the
7 jurisdiction in which the litigation arises, the financing
8 statement should be filed in State Y.

10 4. Law Governing Perfection: General Rule. Paragraph (1)
11 [Maine cite paragraph (a)] contains the general rule: the law
12 governing perfection of security interests in both tangible and
13 intangible collateral, whether perfected by filing or
14 automatically, is the law of the jurisdiction of the debtor's
15 location, as determined under Section 9-307 [Maine cite section
16 9-1307].

18 Paragraph (1) [Maine cite paragraph (a)] substantially
19 simplifies the choice-of-law rules. Former Section 9-103
20 contained different choice-of-law rules for different types
21 of collateral. Under Section 9-301(1) [Maine cite section
22 9-1301, subsection (1)], the law of a single jurisdiction
23 governs perfection with respect to most types of collateral,
24 both tangible and intangible. Paragraph (1) [Maine cite
25 paragraph (a)] eliminates the need for former Section
26 9-103(1)(c), which concerned purchase-money security
27 interests in tangible collateral that is intended to move
28 from one jurisdiction to the other. It is likely to reduce
29 the frequency of cases in which the governing law changes
30 after a financing statement is properly filed. (Presumably,
31 debtors change their own location less frequently than they
32 change the location of their collateral.) The approach
33 taken in paragraph (1) [Maine cite paragraph (a)] also
34 eliminates some difficult priority issues and the need to
35 distinguish between "mobile" and "ordinary" goods, and it
36 reduces the number of filing offices in which secured
37 parties must file or search when collateral is located in
38 several jurisdictions.

40 5. Law Governing Perfection: Exceptions. The general rule
41 is subject to several exceptions. It does not apply to goods
42 covered by a certificate of title (see Section 9-303 [Maine cite
43 section 9-1303]), deposit accounts (see Section 9-304) [Maine
44 cite section 9-1304], investment property (see Section 9-305
45 [Maine cite section 9-1305]), or letter-of-credit rights (see
46 Section 9-306 [Maine cite section 9-1306]). Nor does it apply to
47 possessory security interests, i.e., security interests that the
48 secured party has perfected by taking possession of the
49 collateral (see paragraph (2) [Maine cite paragraph (b)]),
50 security interests perfected by filing a fixture filing (see
paragraph (4) [Maine cite paragraph (d)]), security interests in

2 timber to be cut (paragraph (5) [Maine cite paragraph (e)]), or
3 security interests in as-extracted collateral (see paragraph (6)
4 [Maine cite paragraph (f)]).

6 a. Possessory Security Interests. Paragraph (2) [Maine
7 cite paragraph (b)] applies to possessory security interests
8 and provides that perfection is governed by the local law of
9 the jurisdiction in which the collateral is located. This
10 is the rule of former Section 9-103(1)(b), except paragraph
11 (2) [Maine cite paragraph (b)] eliminates the troublesome
12 "last event" test of former law.

14 The distinction between nonpossessory and possessory
15 security interests creates the potential for the same
16 jurisdiction to apply two different choice-of-law rules to
17 determine perfection in the same collateral. For example, were a
18 secured party in possession of an instrument or document to
19 relinquish possession in reliance on temporary perfection, the
20 applicable law immediately would change from that of the location
21 of the collateral to that of the location of the debtor. The
22 applicability of two different choice-of-law rules for perfection
23 is unlikely to lead to any material practical problems. The
24 perfection rules of one Article 9 [Maine cite Article 9-A]
25 jurisdiction are likely to be identical to those of another.
26 Moreover, under paragraph (3) [Maine cite paragraph (c)], the
27 relative priority of competing security interests in tangible
28 collateral is resolved by reference to the law of the
29 jurisdiction in which the collateral is located, regardless of
30 how the security interests are perfected.

32 b. Fixtures. Application of the general rule in paragraph
33 (1) [Maine cite paragraph (a)] to perfection of a security
34 interest in fixtures would yield strange results. For
35 example, perfection of a security interest in fixtures
36 located in Arizona and owned by a Delaware corporation would
37 be governed by the law of Delaware. Although Delaware law
38 would send one to a filing office in Arizona for the place
39 to file a financing statement as a fixture filing, see
40 Section 9-501 [Maine cite section 9-1501], Delaware law
41 would not take account of local, nonuniform, real-property
42 filing and recording requirements that Arizona law might
43 impose. For this reason, paragraph (3)(A) [Maine cite
44 paragraph (c), subparagraph (i)] contains a special rule for
45 security interests perfected by a fixture filing; the law of
46 the jurisdiction in which the fixtures are located governs
47 perfection, including the formal requisites of a fixture
48 filing. Under paragraph (3)(C) [Maine cite paragraph (c),
49 subparagraph (iii)], the same law governs priority.
50 Fixtures are "goods" as defined in Section 9-102 [Maine cite
section 9-1102].

2 c. Timber to Be Cut. Application of the general rule in
paragraph (1) [Maine cite paragraph (a)] to perfection of a
4 security interest in timber to be cut would yield
undesirable results analogous to those described with
6 respect to fixtures. Paragraph (3)(B) [Maine cite paragraph
(c), subparagraph (ii)] adopts a similar solution:
8 perfection is governed by the law of the jurisdiction in
which the timber is located. As with fixtures, under
10 paragraph (3)(C) [Maine cite paragraph (c), subparagraph
(iii)], the same law governs priority. Timber to be cut
12 also is "goods" as defined in Section 9-102 [Maine cite
section 9-1102].

14 Paragraph (3)(B) [Maine cite paragraph (c), subparagraph
16 (ii)] applies only to "timber to be cut," not to timber that has
been cut. Consequently, once the timber is cut, the general
18 choice-of-law rule in paragraph (1) [Maine cite paragraph (a)]
becomes applicable. To ensure continued perfection, a secured
20 party should file in both the jurisdiction in which the timber to
be cut is located and in the state where the debtor is located.
22 The former filing would be with the office in which a real
property mortgage would be filed, and the latter would be a
24 central filing. See Section 9-501 [Maine cite section 9-1501].

26 d. As-Extracted Collateral. Paragraph (4) [Maine cite
paragraph (d)] adopts the rule of former Section 9-103(5)
28 with respect to certain security interests in minerals and
related accounts. Like security interests in fixtures
30 perfected by filing a fixture filing, security interests in
minerals that are as-extracted collateral are perfected by
32 filing in the office designated for the filing or recording
of a mortgage on the real property. For the same reasons,
34 the law governing perfection and priority is the law of the
jurisdiction in which the wellhead or minehead is located.

36 6. Change in Law Governing Perfection. When the debtor
38 changes its location to another jurisdiction, the jurisdiction
whose law governs perfection under paragraph (1) [Maine cite
40 paragraph (a)] changes, as well. Similarly, the law governing
perfection of a possessory security interest in collateral under
42 paragraph (2) [Maine cite paragraph (b)] changes when the
collateral is removed to another jurisdiction. Nevertheless,
44 these changes will not result in an immediate loss of
perfection. See Section 9-316(a), (b) [Maine cite section
46 9-1316, subsection (1), subsection (2)].

48 7. Law Governing Effect of Perfection and Priority: Goods,
Documents, Instruments, Money, Negotiable Documents, and Tangible
50 Chattel Paper. Under former section 9-103, the law of a single

2 jurisdiction governed both questions of perfection and those of
3 priority. This Article generally adopts that approach. See
4 paragraph (1) [Maine cite paragraph (a)]. But the approach may
5 create problems if the debtor and collateral are located in
6 different jurisdictions. For example, assume a security interest
7 in equipment located in Pennsylvania is perfected by filing in
8 Illinois, where the debtor is located. If the law of the
9 jurisdiction in which the debtor is located were to govern
10 priority, then the priority of an execution lien on goods located
11 in Pennsylvania would be governed by rules enacted by the
12 Illinois legislature.

13
14 To address this problem, paragraph (3)(C) [Maine cite
15 pargarph (c) subparagraph (iii)] divorces questions of perfection
16 from questions of "the effect of perfection or nonperfection and
17 the priority of a security interest." Under paragraph (3)(C)
18 [Maine cite paragraph (c), subparagraph (iii)], the rights of
19 competing claimants to tangible collateral are resolved by
20 reference to the law of the jurisdiction in which the collateral
21 is located. A similar bifurcation applied to security interests
22 in investment property under former Section 9-103(6). See
23 Section 9-305 [Maine cite section 9-1305].

24 Paragraph (3)(C) [Maine cite paragraph (c), subparagraph
25 (iii)] applies the law of the situs to determine priority only
26 with respect to goods (including fixtures), instruments, money,
27 negotiable documents, and tangible chattel paper. Compare former
28 Section 9-103(1), which applied the law of the location of the
29 collateral to documents, instruments, and "ordinary" (as opposed
30 to "mobile") goods. This Article does not distinguish among
31 types of goods. The ordinary/mobile goods distinction appears to
32 address concerns about where to file and search, rather than
33 concerns about priority. There is no reason to preserve this
34 distinction under the bifurcated approach.

35
36 Particularly serious confusion may arise when the
37 choice-of-law rules of a given jurisdiction result in each of two
38 competing security interests in the same collateral being
39 governed by a different priority rule. The potential for this
40 confusion existed under former Section 9-103(4) with respect to
41 chattel paper: Perfection by possession was governed by the law
42 of the location of the paper, whereas perfection by filing was
43 governed by the law of the location of the debtor. Consider the
44 mess that would have been created if the language or
45 interpretation of former Section 9-308 were to differ in the two
46 relevant States, or if one of the relevant jurisdictions (e.g., a
47 foreign country) had not adopted Article 9. The potential for
48 confusion could have been exacerbated when a secured party
49 perfected both by taking possession in the State where the
50 collateral is located (State A) and by filing in the State where

2 the debtor is located (State B)--a common practice for some
3 chattel paper financiers. By providing that the law of the
4 jurisdiction in which the collateral is located governs priority,
5 paragraph (3) [Maine cite paragraph (c)] substantially diminishes
6 this problem.

7
8 8. Non-U.S. Debtors. This Article applies the same
9 choice-of-law rules to all debtors, foreign and domestic. For
10 example, it adopts the bifurcated approach for determining the
11 law applicable to security interests in goods and other tangible
12 collateral. See Comment 5.a., above. The Article contains a new
13 rule specifying the location of non-U.S. debtors for purposes of
14 this Part. The rule appears in Section 9-307 [Maine cite section
15 9-1307] and is explained in the Reporters' Comments following
16 that section. Former Section 9-103(3)(c), which contained a
17 special choice-of-law rule governing security interests created
18 by debtors located in a non-U.S. jurisdiction, proved
19 unsatisfactory and was deleted.

20 **§9-1302. Law governing perfection and priority of**
21 **agricultural liens**

22
23 While farm products are located in a jurisdiction, the local
24 law of that jurisdiction governs perfection, the effect of
25 perfection or nonperfection and the priority of an agricultural
26 lien on the farm products.

27
28 **Official Comment**

29 1. Source. New.

30
31 2. Agricultural Liens. This section provides choice-of-law
32 rules for agricultural liens on farm products. Perfection, the
33 effect of perfection or nonperfection, and priority all are
34 governed by the law of the jurisdiction in which the farm
35 products are located. Other choice-of-law rules, including
36 Section 1-105, determine which jurisdiction's law governs other
37 matters, such as the secured party's rights on default. See
38 Section 9-301 [Maine cite section 9-1301], Comment 2. Inasmuch
39 as no agricultural lien on proceeds arises under this Article,
40 this section does not expressly apply to proceeds of agricultural
41 liens. However, if another statute creates an agricultural lien
42 on proceeds, it may be appropriate for courts to apply the
43 choice-of-law rule in this section to determine priority in the
44 proceeds.
45

46
47 **§9-1303. Law governing perfection and priority of security**
48 **interests in goods covered by certificate of title**
49

2 Normally, under the law of the relevant jurisdiction, the
3 perfection step would consist of compliance with that
4 jurisdiction's certificate-of-title statute and a resulting
5 notation of the security interest on the certificate of title.
6 See Section 9-311(b) [Maine cite section 9-1301, subsection
7 (2)]. In the typical case of an automobile or over-the-road
8 truck, a person who wishes to take a security interest in the
9 vehicle can ascertain whether it is subject to any security
10 interests by looking at the certificate of title. But
11 certificates of title cover certain types of goods in some States
12 but not in others. A secured party who does not realize this may
13 extend credit and attempt to perfect by filing in the
14 jurisdiction in which the debtor is located. If the goods had
15 been titled in another jurisdiction, the lender would be
16 unperfected.

18 Subsection (b) [Maine cite subsection (2)] explains when
19 goods become covered by a certificate of title and when they
20 cease to be covered. Goods may become covered by a certificate
21 of title, even though no certificate of title has issued. Former
22 Section 9-103(2)(b) provided that the law of the jurisdiction
23 issuing the certificate ceases to apply upon "surrender" of the
24 certificate. This Article eliminates the concept of
25 "surrender." However, if the certificate is surrendered in
26 conjunction with an appropriate application for a certificate to
27 be issued by another jurisdiction, the law of the original
28 jurisdiction ceases to apply because the goods became covered
29 subsequently by a certificate of title from another
30 jurisdiction. Alternatively, the law of the original
31 jurisdiction ceases to apply when the certificate "ceases to be
32 effective" under the law of that jurisdiction. Given the
33 diversity in certificate-of-title statutes, the term "effective"
34 is not defined.

36 4. Continued Perfection. The fact that the law of one
37 State ceases to apply under subsection (b) [Maine cite subsection
38 (2)] does not mean that a security interest perfected under that
39 law becomes unperfected automatically. In most cases, the
40 security interest will remain perfected. See Section 9-316(d),
41 (e) [Maine cite section 9-1316, subsection (4), subsection (5)].
42 Moreover, a perfected security interest may be subject to defeat
43 by certain buyers and secured parties. See Section 9-337 [Maine
44 cite section 9-1337].

46 5. Inventory. Compliance with a certificate-of-title
47 statute generally is not the method of perfecting security
48 interests in inventory. Section 9-311(d) [Maine cite section
49 9-1311, subsection (4)] provides that a security interest created
50 in inventory held by a person in the business of selling or

2 leasing goods of that kind is subject to the normal filing rules;
3 compliance with a certificate-of-title statute is not necessary
4 or effective to perfect the security interest. Most
5 certificate-of-title statutes are in accord.

6 The following example explains the subtle relationship
7 between this rule and the choice-of-law rules in Section 9-303
8 [Maine cite section 9-1303] and former Section 9-103(2):

10 Example: Goods are located in State A and covered by a
11 certificate of title issued under the law of State A. The State
12 A certificate of title is "clean"; it does not reflect a security
13 interest. Owner takes the goods to State B and sells (trades in)
14 the goods to Dealer, who is located (within the meaning of
15 Section 9-307 [Maine cite section 9-1307]) in State B. As is
16 customary, Dealer retains the duly assigned State A certificate
17 of title pending resale of the goods. Dealer's inventory
18 financier, SP, obtains a security interest in the goods under its
19 after-acquired property clause.

20 Under Section 9-311(d) [Maine cite section 9-1311,
21 subsection (4)] of both State A and State B, Dealer's inventory
22 financier, SP, must perfect by filing instead of complying with a
23 certificate-of-title statute. If Section 9-303 [Maine cite
24 section 9-1303] were read to provide that the law applicable to
25 perfection of SP's security interest is that of State A, because
26 the goods are covered by a State A certificate, then SP would be
27 required to file in State A under State A's Section 9-501 [Maine
28 cite section 9-1501]. That result would be anomalous, to say the
29 least, since the principle underlying Section 9-311(d) [Maine
30 cite section 9-1311, subsection (4)] is that the inventory should
31 be treated as ordinary goods.

34 Section 9-303 [Maine cite section 9-1303] (and former
35 Section 9-103(2)) should be read as providing that the law of
36 State B, not State A, applies. A court looking to the forum's
37 Section 9-303(a) [Maine cite section 9-1303, subsection (1)]
38 would find that Section 9-303 [Maine cite section 9-1303] applies
39 only if two conditions are met: (i) the goods are covered by the
40 certificate as explained in Section 9-303(b) [Maine cite section
41 9-1303, subsection (2)], i.e., application had been made for a
42 State (here, State A) to issue a certificate of title covering
43 the goods and (ii) the certificate is a "certificate of title" as
44 defined in Section 9-102 [Maine cite section 9-1102], i.e., "a
45 statute provides for the security interest in question to be
46 indicated on the certificate as a condition or result of the
47 security interest's obtaining priority over the rights of a lien
48 creditor." Stated otherwise, Section 9-303 [Maine cite section
49 9-1303] applies only when compliance with a certificate-of-title
50 statute, and not filing, is the appropriate method of

2 perfection. Under the law of State A, for purposes of perfecting
3 SP's security interest in the dealer's inventory, the proper
4 method of perfection is filing--not compliance with State A's
5 certificate-of-title statute. For that reason, the goods are not
6 covered by a "certificate of title," and the second condition is
7 not met. Thus, Section 9-303 [Maine cite section 9-1303] does
8 not apply to the goods. Instead, Section 9-301 [Maine cite
9 section 9-1301] applies, and the applicable law is that of State
10 B, where the debtor (dealer) is located.

11
12 6. External Constraints on This Section. The need to
13 coordinate Article 9 [Maine cite Article 9-A] with a variety of
14 nonuniform certificate-of-title statutes, the need to provide
15 rules to take account of situations in which multiple
16 certificates of title are outstanding with respect to particular
17 goods, and the need to govern the transition from perfection by
18 filing in one jurisdiction to perfection by notation in another
19 all create pressure for a detailed and complex set of rules. In
20 an effort to minimize complexity, this Article does not attempt
21 to coordinate Article 9 [Maine cite Article 9-A] with the entire
22 array of certificate-of-title statutes. In particular, Sections
23 9-303 [Maine cite section 9-1303], 9-311 [Maine cite section
24 9-1311], and 9-316(d) and (e) [Maine cite section 9-1316,
25 subsections (4) and (5)] assume that the certificate-of-title
26 statutes to which they apply do not have relation-back provisions
27 (i.e., provisions under which perfection is deemed to occur at a
28 time earlier than when the perfection steps actually are taken).
29 A Legislative Note to Section 9-311 [Maine cite section 9-1311]
30 recommends the elimination of relation-back provisions in
31 certificate-of-title statutes affecting perfection of security
32 interests.

33
34 Ideally, at any given time, only one certificate of title is
35 outstanding with respect to particular goods. In fact, however,
36 sometimes more than one jurisdiction issues more than one
37 certificate of title with respect to the same goods. This
38 situation results from defects in certificate-of-title laws and
39 the interstate coordination of those laws, not from deficiencies
40 in this Article. As long as the possibility of multiple
41 certificates of title remains, the potential for innocent parties
42 to suffer losses will continue. At best, this Article can
43 identify clearly which innocent parties will bear the losses in
44 familiar fact patterns.

45 **§9-1304. Law governing perfection and priority of security**
46 **interests in deposit accounts**

47 (1) The local law of a bank's jurisdiction governs
48 perfection, the effect of perfection or nonperfection and the

2 priority of a security interest in a deposit account maintained
3 with that bank.

4 (2) The following rules determine a bank's jurisdiction for
5 purposes of this Part.

6 (a) If an agreement between the bank and the debtor
7 governing the deposit account expressly provides that a
8 particular jurisdiction is the bank's jurisdiction for
9 purposes of this Part, this Article or this Title, that
10 jurisdiction is the bank's jurisdiction.

11 (b) If paragraph (a) does not apply and an agreement
12 between the bank and its customer governing the deposit
13 account expressly provides that the agreement is governed by
14 the law of a particular jurisdiction, that jurisdiction is
15 the bank's jurisdiction.

16 (c) If neither paragraph (a) nor paragraph (b) applies and
17 an agreement between the bank and its customer governing the
18 deposit account expressly provides that the deposit account
19 is maintained at an office in a particular jurisdiction,
20 that jurisdiction is the bank's jurisdiction.

21 (d) If none of the preceding paragraphs applies, the bank's
22 jurisdiction is the jurisdiction in which the office
23 identified in an account statement as the office serving the
24 customer's account is located.

25 (e) If none of the preceding paragraphs applies, the bank's
26 jurisdiction is the jurisdiction in which the chief
27 executive office of the bank is located.

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34 **Official Comment**

35
36 1. Source. New; derived from Section 8-110(e) and former
37 Section 9-103(6).

38
39 2. Deposit Accounts. Under this section, the law of the
40 "bank's jurisdiction" governs perfection and priority of a
41 security interest in deposit accounts. Subsection (b) [Maine
42 cite subsection (2)] contains rules for determining the "bank's
43 jurisdiction." The substance of these rules is substantially
44 similar to that of the rules determining the "security
45 intermediary's jurisdiction" under former Section 8-110(e),
46 except that subsection (b)(1) [Maine cite subsection (2),
47 paragraph (a)] provides more flexibility than the analogous
48 provision in former Section 8-110(e)(1). Subsection (b)(1)
49 [Maine cite subsection (2), paragraph (a)] permits the parties to
50

2 choose the law of one jurisdiction to govern perfection and
3 priority of security interests and a different governing law for
4 other purposes. The parties' choice is effective, even if the
5 jurisdiction whose law is chosen bears no relationship to the
6 parties or the transaction. Section 8-110(e)(1) has been
7 conformed to subsection (b)(1) [Maine cite subsection (2),
8 paragraph (a)] of this section, and Section 9-305(b)(1) [Maine
9 cite section 9-1305, subsection (2), paragraph (a)], concerning a
10 commodity intermediary's jurisdiction, makes a similar departure
11 from former Section 9-103(6)(e)(i).

12 3. Change in Law Governing Perfection. When the bank's
13 jurisdiction changes, the jurisdiction whose law governs
14 perfection under subsection (a) [Maine cite subsection (1)]
15 changes, as well. Nevertheless, the change will not result in an
16 immediate loss of perfection. See Section 9-316(f), (g) [Maine
17 cite section 9-1316, subsection (6), subsection (7)].

18 **§9-1305. Law governing perfection and priority of security**
19 **interests in investment property**

20 (1) Except as otherwise provided in subsection (3), the
21 following rules apply.

22 (a) While a security certificate is located in a
23 jurisdiction, the local law of that jurisdiction governs
24 perfection, the effect of perfection or nonperfection and
25 the priority of a security interest in the certificated
26 security represented thereby.

27 (b) The local law of the issuer's jurisdiction as specified
28 in section 8-1110, subsection 1, paragraph (d) governs
29 perfection, the effect of perfection or nonperfection and
30 the priority of a security interest in an uncertificated
31 security.

32 (c) The local law of the securities intermediary's
33 jurisdiction as specified in section 8-1110, subsection 1,
34 paragraph (e) governs perfection, the effect of perfection
35 or nonperfection and the priority of a security interest in
36 a security entitlement or securities account.

37 (d) The local law of the commodity intermediary's
38 jurisdiction governs perfection, the effect of perfection or
39 nonperfection and the priority of a security interest in a
40 commodity contract or commodity account.

41 (2) The following rules determine a commodity
42 intermediary's jurisdiction for purposes of this Part.

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2 (a) If an agreement between the commodity intermediary and
4 commodity customer governing the commodity account expressly
6 provides that a particular jurisdiction is the commodity
8 intermediary's jurisdiction for purposes of this Part, this
10 Article, or this Title, that jurisdiction is the commodity
12 intermediary's jurisdiction.

14 (b) If paragraph (a) does not apply and an agreement
16 between the commodity intermediary and commodity customer
18 governing the commodity account expressly provides that the
20 agreement is governed by the law of a particular
22 jurisdiction, that jurisdiction is the commodity
24 intermediary's jurisdiction.

26 (c) If neither paragraph (a) nor paragraph (b) applies and
28 an agreement between the commodity intermediary and
30 commodity customer governing the commodity account expressly
32 provides that the commodity account is maintained at an
34 office in a particular jurisdiction, that jurisdiction is
36 the commodity intermediary's jurisdiction.

38 (d) If none of the preceding paragraphs applies, the
40 commodity intermediary's jurisdiction is the jurisdiction in
42 which the office identified in an account statement as the
44 office serving the commodity customer's account is located.

46 (e) If none of the preceding paragraphs applies, the
48 commodity intermediary's jurisdiction is the jurisdiction in
50 which the chief executive office of the commodity
intermediary is located.

(3) The local law of the jurisdiction in which the debtor
is located governs:

(a) Perfection of a security interest in investment
property by filing;

(b) Automatic perfection of a security interest in
investment property created by a broker or securities
intermediary; and

(c) Automatic perfection of a security interest in a
commodity contract or commodity account created by a
commodity intermediary.

Official Comment

1. Source. Former Section 9-103(6).

2. Investment Property: General Rules. This section specifies choice-of-law rules for perfection and priority of security interests in investment property. Subsection (a)(1) [Maine cite subsection (1), paragraph (a)] covers security interests in certificated securities. Subsection (a)(2) [Maine cite subsection (1), paragraph (b)] covers security interests in uncertificated securities. Subsection (a)(3) [Maine cite subsection (1), paragraph (c)] covers security interests in security entitlements and securities accounts. Subsection (a)(4) [Maine cite subsection (1), paragraph (d)] covers security interests in commodity contracts and commodity accounts. The approach of each of these paragraphs is essentially the same. They identify the jurisdiction's law that governs questions of perfection and priority by using the same principles that Article 8 uses to determine other questions concerning that form of investment property. Thus, for certificated securities, the law of the jurisdiction in which the certificate is located governs. Cf. Section 8-110(c). For uncertificated securities, the law of the issuer's jurisdiction governs. Cf. Section 8-110(a). For security entitlements and securities accounts, the law of the securities intermediary's jurisdiction governs. Cf. Section 8-110(b). For commodity contracts and commodity accounts, the law of the commodity intermediary's jurisdiction governs. Because commodity contracts and commodity accounts are not governed by Article 8, subsection (b) [Maine cite subsection (2)] contains rules that specify the commodity intermediary's jurisdiction. These are analogous to the rules in Section 8-110(e) specifying a securities intermediary's jurisdiction. Subsection (b)(1) [Maine cite subsection (2), paragraph (a)] affords the parties greater flexibility than did former Section 9-103(6)(3). See also Section 9-304(b) [Maine cite section 9-1304, subsection (2)] (bank's jurisdiction); Revised Section 8-110(e)(1) (securities intermediary's jurisdiction).

3. Investment Property: Exceptions. Subsection (c) [Maine cite subsection (3)] establishes an exception to the general rules set out in subsection (a) [Maine cite subsection (1)]. It provides that perfection of a security interest by filing, automatic perfection of a security interest in investment property created by a debtor who is a broker or securities intermediary (see Section 9-309(10) [Maine cite section 9-1309, subsection (10)]), and automatic perfection of a security interest in a commodity contract or commodity account of a debtor who is a commodity intermediary (see Section 9-309(11) [Maine cite section 9-1309, subsection (11)]) are governed by the law of the jurisdiction in which the debtor is located, as determined under Section 9-307 [Maine cite section 9-1307].

4. Examples: The following examples illustrate the rules in this section:

2 Example 1: A customer residing in New Jersey maintains a
3 securities account with Able & Co. The agreement between the
4 customer and Able specifies that it is governed by Pennsylvania
5 law but expressly provides that the law of California is Able's
6 jurisdiction for purposes of the Uniform Commercial Code.
7 Through the account the customer holds securities of a
8 Massachusetts corporation, which Able holds through a clearing
9 corporation located in New York. The customer obtains a margin
10 loan from Able. Subsection (a)(3) [Maine cite subsection (1),
11 paragraph (c)] provides that California law--the law of the
12 securities intermediary's jurisdiction--governs perfection and
13 priority of the security interest, even if California has no
14 other relationship to the parties or the transaction.

16 Example 2: A customer residing in New Jersey maintains a
17 securities account with Able & Co. The agreement between the
18 customer and Able specifies that it is governed by Pennsylvania
19 law. Through the account the customer holds securities of a
20 Massachusetts corporation, which Able holds through a clearing
21 corporation located in New York. The customer obtains a loan
22 from a lender located in Illinois. The lender takes a security
23 interest and perfects by obtaining an agreement among the debtor,
24 itself, and Able, which satisfies the requirement of Section
25 8-106(d)(2) to give the lender control. Subsection (a)(3) [Maine
26 cite subsection (1), paragraph (c)] provides that Pennsylvania
27 law--the law of the securities intermediary's
28 jurisdiction--governs perfection and priority of the security
29 interest, even if Pennsylvania has no other relationship to the
30 parties or the transaction.

32 Example 3: A customer residing in New Jersey maintains a
33 securities account with Able & Co. The agreement between the
34 customer and Able specifies that it is governed by Pennsylvania
35 law. Through the account, the customer holds securities of a
36 Massachusetts corporation, which Able holds through a clearing
37 corporation located in New York. The customer borrows from SP-1,
38 and SP-1 files a financing statement in New Jersey. Later, the
39 customer obtains a loan from SP-2. SP-2 takes a security
40 interest and perfects by obtaining an agreement among the debtor,
41 itself, and Able, which satisfies the requirement of Section
42 8-106(d)(2) to give the SP-2 control. Subsection (c) [Maine cite
43 subsection (3)] provides that perfection of SP-1's security
44 interest by filing is governed by the location of the debtor, so
45 the filing in New Jersey was appropriate. Subsection (a)(3)
46 [Maine cite subsection (1), paragraph (c)], however, provides
47 that Pennsylvania law--the law of the securities intermediary's
48 jurisdiction--governs all other questions of perfection and
priority. Thus, Pennsylvania law governs perfection of SP-2's

2 security interest, and Pennsylvania law also governs the priority
of the security interests of SP-1 and SP-2.

4 5. Change in Law Governing Perfection. When the issuer's
jurisdiction, the securities intermediary's jurisdiction, or
6 commodity intermediary's jurisdiction changes, the jurisdiction
whose law governs perfection under subsection (a) [Maine cite
8 subsection (1)] changes, as well. Similarly, the law governing
perfection of a possessory security interest in a certificated
10 security changes when the collateral is removed to another
jurisdiction, see subsection (a)(1) [Maine cite subsection (1),
12 paragraph (a)], and the law governing perfection by filing
changes when the debtor changes its location. See subsection (c)
14 [Maine cite subsection (3)]. Nevertheless, these changes will
not result in an immediate loss of perfection. See Section 9-316
16 [Maine cite section 9-1316].

18 **§9-1306. Law governing perfection and priority of security**
interests in letter-of-credit rights

20 (1) Subject to subsection (3), the local law of the
22 issuer's jurisdiction or a nominated person's jurisdiction
governs perfection, the effect of perfection or nonperfection and
24 the priority of a security interest in a letter-of-credit right
if the issuer's jurisdiction or nominated person's jurisdiction
26 is a state.

28 (2) For purposes of this Part, an issuer's jurisdiction or
30 nominated person's jurisdiction is the jurisdiction whose law
governs the liability of the issuer or nominated person with
32 respect to the letter-of-credit right as provided in section
5-116.

34 (3) This section does not apply to a security interest that
36 is perfected only under section 9-1308, subsection (4).

38 **Official Comment**

40 1. Source. New; derived in part from Section 8-110(e) and
former Section 9-103(6).

42 2. Sui Generis Treatment. This section governs the
44 applicable law for perfection and priority of security interests
in letter-of-credit rights, other than a security interest
46 perfected only under Section 9-308(d) [Maine cite section 9-1308,
subsection (4)] (i.e., as a supporting obligation). The
48 treatment differs substantially from that provided in Section
9-304 [Maine cite section 9-1304] for deposit accounts. The
50 basic rule is that the law of the issuer's or nominated person's

2 (e.g., confirmer's) jurisdiction, derived from the terms of the
letter of credit itself, controls perfection and priority, but
4 only if the issuer's or nominated person's jurisdiction is a
State, as defined in Section 9-102 [Maine cite section 9-1102].
6 If the issuer's or nominated person's jurisdiction is not a
State, the baseline rule of Section 9-301 [Maine cite section
9-1301] applies--perfection and priority are governed by the law
8 of the debtor's location, determined under Section 9-307 [Maine
cite section 9-1307]. Export transactions typically involve a
10 foreign issuer and a domestic nominated person, such as a
confirmer, located in a State. The principal goal of this
12 section is to reduce the likelihood that perfection and priority
would be governed by the law of a foreign jurisdiction in a
14 transaction that is essentially domestic from the standpoint of
the debtor-beneficiary, its creditors, and a domestic nominated
16 person.

18 3. Issuer's or Nominated Person's Jurisdiction. Subsection
(b) [Maine cite subsection (2)] defers to the rules established
20 under Section 5-116 for determination of an issuer's or nominated
person's jurisdiction.

22 Example: An Italian bank issues a letter of credit that is
24 confirmed by a New York bank. The beneficiary is a Connecticut
corporation. The letter of credit provides that the issuer's
26 liability is governed by Italian law, and the confirmation
provides that the confirmer's liability is governed by the law of
28 New York. Under Sections 9-306(b) [Maine cite section 9-1306,
subsection (2)] and 5-116(a), Italy is the issuer's jurisdiction
30 and New York is the confirmer's (nominated person's)
jurisdiction. Because the confirmer's jurisdiction is a State,
32 the law of New York governs perfection and priority of a security
interest in the beneficiary's letter-of-credit right against the
34 confirmer. See Section 9-306(a) [Maine cite section 9-1306,
subsection (1)]. However, because the issuer's jurisdiction is
36 not a State, the law of that jurisdiction does not govern. See
Section 9-306(a) [Maine cite section 9-1306, subsection (1)].
38 Rather, the choice-of-law rule in Section 9-301(1) [Maine cite
section 9-1301, subsection (1)] applies to perfection and
40 priority of a security interest in the beneficiary's
letter-of-credit right against the issuer. Under that section,
42 perfection and priority are governed by the law of the
jurisdiction in which the debtor (beneficiary) is located. That
44 jurisdiction is Connecticut. See Section 9-307 [Maine cite
section 9-1307].

46 4. Scope of this Section. This section specifies only the
48 law governing perfection, the effect of perfection or
nonperfection, and priority of security interests. Section 5-116
50 specifies the law governing the liability of, and Article 5 (or

2 other applicable law) deals with the rights and duties of, an
3 issuer or nominated person. Perfection, nonperfection, and
4 priority have no effect on those rights and duties.

5 5. Change in Law Governing Perfection. When the issuer's
6 jurisdiction, or nominated person's jurisdiction changes, the
7 jurisdiction whose law governs perfection under subsection (a)
8 [Maine cite subsection (1)] changes, as well. Nevertheless,
9 this change will not result in an immediate loss of perfection.
10 See Section 9-316(f), (g) [Maine cite section 9-1316, subsection
11 (6), subsection (7)].

12 **§9-1307. Location of debtor**

13 (1) In this section, "place of business" means a place
14 where a debtor conducts its affairs.

15 (2) Except as otherwise provided in this section, the
16 following rules determine a debtor's location:

17 (a) An debtor who is an individual is located at the
18 individual's principal residence.

19 (b) A debtor that is an organization and has only one place
20 of business is located at its place of business.

21 (c) A debtor that is an organization and has more than one
22 place of business is located at its chief executive office.

23 (3) Subsection (2) applies only if a debtor's residence,
24 place of business or chief executive office, as applicable, is
25 located in a jurisdiction whose law generally requires
26 information concerning the existence of a nonpossessory security
27 interest to be made generally available in a filing, recording or
28 registration system as a condition or result of the security
29 interest's obtaining priority over the rights of a lien creditor
30 with respect to the collateral. If subsection (2) does not
31 apply, the debtor is located in the District of Columbia.

32 (4) A person that ceases to exist, have a residence or have
33 a place of business continues to be located in the jurisdiction
34 specified by subsections (2) and (3).

35 (5) A registered organization that is organized under the
36 law of a state is located in that state.

37 (6) Except as otherwise provided in subsection (9), a
38 registered organization that is organized under the law of the
39 United States and a branch or agency of a bank that is not

2 organized under the law of the United States or a state are
3 located:

4 (a) In the state that the law of the United States
5 designates, if the law designates a state of location;

6
7 (b) In the state that the registered organization, branch
8 or agency designates, if the law of the United States
9 authorizes the registered organization, branch or agency to
10 designate its state of location; or

11 (c) In the District of Columbia, if neither paragraph (a)
12 nor paragraph (b) applies.

13
14 (7) A registered organization continues to be located in
15 the jurisdiction specified by subsection (5) or (6)
16 notwithstanding:

17
18 (a) The suspension, revocation, forfeiture or lapse of the
19 registered organization's status as such in its jurisdiction
20 of organization; or

21
22 (b) The dissolution, winding up or cancellation of the
23 existence of the registered organization.

24
25 (8) The United States is located in the District of
26 Columbia.

27
28 (9) A branch or agency of a bank that is not organized
29 under the law of the United States or a state is located in the
30 state in which the branch or agency is licensed if all branches
31 and agencies of the bank are licensed in only one state.

32
33 (10) A foreign air carrier under the Federal Aviation Act
34 of 1958, as amended, is located at the designated office of the
35 agent upon which service of process may be made on behalf of the
36 carrier.

37
38 (11) This section applies only for purposes of this Part.
39

40 41 **Official Comment**

42
43 1. Source. Former Section 9-103(3)(d), substantially
44 revised.

45
46 2. General Rules. As a general matter, the location of the
47 debtor determines the jurisdiction whose law governs perfection
48 of a security interest. See Sections 9-301(1) [Maine cite
49 section 9-1301, subsection (1)], 9-305(c) [Maine cite section
50

2 9-1305, subsection (3)]. It also governs priority of a security
3 interest in certain types of intangible collateral, such as
4 accounts, electronic chattel paper, and general intangibles.
5 This section determines the location of the debtor for
6 choice-of-law purposes, but not for other purposes. See
7 subsection (k) [Maine cite subsection (11)].

8 Subsection (b) [Maine cite subsection (2)] states the
9 general rules: An individual debtor is deemed to be located at
10 the individual's principal residence with respect to both
11 personal and business assets. Any other debtor is deemed to be
12 located at its place of business if it has only one, or at its
13 chief executive office if it has more than one place of business.

14 As used in this section, a "place of business" means a place
15 where the debtor conducts its affairs. See subsection (a) [Maine
16 cite subsection (1)]. Thus, every organization, even
17 eleemosynary institutions and other organizations that do not
18 conduct "for profit" business activities, has a "place of
19 business." Under subsection (d) [Maine cite subsection (4)], a
20 person who ceases to exist, have a residence, or have a place of
21 business continues to be located in the jurisdiction determined
22 by subsection (b) [Maine cite subsection (2)].

23 The term "chief executive office" is not defined in this
24 Section or elsewhere in the Uniform Commercial Code. "Chief
25 executive office" means the place from which the debtor manages
26 the main part of its business operations or other affairs. This
27 is the place where persons dealing with the debtor would normally
28 look for credit information, and is the appropriate place for
29 filing. With respect to most multi-state debtors, it will be
30 simple to determine which of the debtor's offices is the "chief
31 executive office." Even when a doubt arises, it would be rare
32 that there could be more than two possibilities. A secured party
33 in such a case may protect itself by perfecting under the law of
34 each possible jurisdiction.

35 Similarly, the term "principal residence" is not defined.
36 If the security interest in question is a purchase-money security
37 interest in consumer goods which is perfected upon attachment,
38 see Section 9-309(1) [Maine cite section 9-1309, subsection (1)],
39 the choice of law may make no difference. In other cases, when a
40 doubt arises, prudence may dictate perfecting under the law of
41 each jurisdiction that might be the debtor's "principal
42 residence."

43 The general rule is subject to several exceptions, each of
44 which is discussed below.
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46
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2 3. Non-U.S. Debtors. Under the general rules of this
3 section, a non-U.S. debtor normally would be located in a foreign
4 jurisdiction and, as a consequence, foreign law would govern
5 perfection. When foreign law affords no public notice of
6 security interests, the general rule yields unacceptable results.

7 Accordingly, subsection (c) [Maine cite subsection (3)]
8 provides that the normal rules for determining the location of a
9 debtor (i.e., the rules in subsection (b) [Maine cite subsection
10 (2)]) apply only if they yield a location that is "a jurisdiction
11 whose law generally requires information concerning the existence
12 of a nonpossessory security interest to be made generally
13 available in a filing, recording, or registration system as a
14 condition or result of the security interest's obtaining priority
15 over the rights of a lien creditor with respect to the
16 collateral." The phrase "generally requires" is meant to include
17 legal regimes that generally require notice in a filing or
18 recording system as a condition of perfecting nonpossessory
19 security interests, but which permit perfection by another method
20 (e.g., control, automatic perfection, temporary perfection) in
21 limited circumstances. A jurisdiction that has adopted this
22 Article or an earlier version of this Article is such a
23 jurisdiction. If the rules in subsection (b) [Maine cite
24 subsection (2)] yield a jurisdiction whose law does not generally
25 require notice in a filing or registration system, the debtor is
26 located in the District of Columbia.

28 Example 1: Debtor is an English corporation with 7 offices
29 in the United States and its chief executive office in London,
30 England. Debtor creates a security interest in its accounts.
31 Under subsection (b)(3) [Maine cite subsection (2), paragraph
32 (c)], Debtor would be located in England. However, subsection
33 (c) [Maine cite subsection (3)] provides that subsection (b)
34 [Maine cite subsection (2)] applies only if English law generally
35 conditions perfection on giving public notice in a filing,
36 recording, or registration system. Otherwise, Debtor is located
37 in the District of Columbia. Under Section 9-301(1) [Maine cite
38 section 9-1301, subsection (1)], perfection, the effect of
39 perfection, and priority are governed by the law of the
40 jurisdiction of the debtor's location--here, England or the
41 District of Columbia (depending on the content of English law).

42 Example 2: Debtor is an English corporation with 7 offices
43 in the United States and its chief executive office in London,
44 England. Debtor creates a security interest in equipment located
45 in London. Under subsection (b)(3) [Maine cite subsection (2),
46 paragraph (c)] Debtor would be located in England. However,
47 subsection (c) [Maine cite subsection (3)] provides that
48 subsection (b) [Maine cite subsection (2)] applies only if
49 English law generally conditions perfection on giving public
50 notice in a filing, recording, or registration system.

notice in a filing, recording, or registration system. Otherwise, Debtor is located in the District of Columbia. Under Section 9-301(1) [Maine cite section 9-1301, subsection (1)], perfection is governed by the law of the jurisdiction of the debtor's location, whereas, under Section 9-301(3) [Maine cite section 9-1301, subsection (3)], the law of the jurisdiction in which the collateral is located--here, England--governs priority.

The foregoing discussion assumes that each transaction bears an appropriate relation to the forum State. In the absence of an appropriate relation, the forum State's entire UCC, including the choice-of-law provisions in Article 9 [Maine cite Article 9-A] (Sections 9-301 through 9-307 [Maine cite section 9-1301 through 9-1307]), will not apply. See Section 9-109 [Maine cite section 9-1109], Comment 9.

4. Registered Organizations Organized Under Law of a State. Under subsection (e) [Maine cite subsection (5)], a registered organization (e.g., a corporation or limited partnership) organized under the law of a "State" (defined in Section 9-102 [Maine cite section 9-1102]) is located in its State of organization. Subsection (g) [Maine cite subsection (7)] makes clear that events affecting the status of a registered organization, such as the dissolution of a corporation or revocation of its charter, do not affect its location for purposes of subsection (e) [Maine cite subsection (5)]. However, certain of these events may result in, or be accompanied by, a transfer of collateral from the registered organization to another debtor. This section does not determine whether a transfer occurs, nor does it determine the legal consequences of any transfer.

Determining the registered organization-debtor's location by reference to the jurisdiction of organization could provide some important side benefits for the filing systems. A jurisdiction could structure its filing system so that it would be impossible to make a mistake in a registered organization-debtor's name on a financing statement. For example, a filer would be informed if a filed record designated an incorrect corporate name for the debtor. Linking filing to the jurisdiction of organization also could reduce pressure on the system imposed by transactions in which registered organizations cease to exist--as a consequence of merger or consolidation, for example. The jurisdiction of organization might prohibit such transactions unless steps were taken to ensure that existing filings were refiled against a successor or terminated by the secured party.

5. Registered Organizations Organized Under Law of United States; Branches and Agencies of Banks Not Organized Under Law of United States. Subsection (f) [Maine cite subsection (6)]

2 specifies the location of a debtor that is a registered
organization organized under the law of the United States. It
4 defers to law of the United States, to the extent that that law
determines, or authorizes the debtor to determine, the debtor's
6 location. Thus, if the law of the United States designates a
particular State as the debtor's location, that State is the
8 debtor's location for purposes of this Article's choice-of-law
rules. Similarly, if the law of the United States authorizes the
10 registered organization to designate its State of location, the
State that the registered organization designates is the State in
12 which it is located for purposes of this Article's choice-of-law
rules. In other cases, the debtor is located in the District of
Columbia.

14
16 Subsection (f) [Maine cite subsection (6)] also determines
the location of branches and agencies of banks that are not
18 organized under the law of the United States or a State.
However, if all the branches and agencies of the bank are
20 licensed only in one State, then they are located in that State.
See subsection (i) [Maine cite subsection (9)].

22 6. United States. To the extent that Article 9 [Maine cite
Article 9-A] governs (see Sections 1-105, 9-109(c) [Maine cite
24 section 9-1109, subsection (3)]), the United States is located in
the District of Columbia for purposes of this Article's
26 choice-of-law rules. See subsection (h) [Maine cite subsection
(8)].

28
30 7. Foreign Air Carriers. Subsection (j) [Maine cite
subsection (10)] follows former Section 9-103(3)(d). To the
32 extent that it is applicable, the Convention on the International
Recognition of Rights in Aircraft (Geneva Convention) supersedes
34 state legislation on this subject, as set forth in Section
9-311(b) [Maine cite section 9-1311, subsection (2)], but some
36 nations are not parties to that Convention.

38 SUBPART 2

40 PERFECTION

42 §9-1308. When security interest or agricultural lien is perfected; continuity of perfection

44 (1) Except as otherwise provided in this section and
46 section 9-1309, a security interest is perfected if it has
attached and all of the applicable requirements for perfection in
48 sections 9-1310 to 9-1316 have been satisfied. A security
interest is perfected when it attaches if the applicable
requirements are satisfied before the security interest attaches.

50

2 Subsection (a) [Maine cite subsection (1)] explains that the
time of perfection is when the security interest has attached and
4 any necessary steps for perfection, such as taking possession or
filing, have been taken. The "except" clause refers to the
6 perfection-upon-attachment rules appearing in Section 9-309
[Maine cite section 9-1309]. It also reflects that other
8 subsections of this section, e.g., subsection (d) [Maine cite
subsection (4)], contain automatic-perfection rules. If the
10 steps for perfection have been taken in advance, as when the
secured party files a financing statement before giving value or
12 before the debtor acquires rights in the collateral, then the
security interest is perfected when it attaches.

14
16 3. Agricultural Liens. Subsection (b) [Maine cite
subsection (2)] is new. It describes the elements of perfection
of an agricultural lien.

18
20 4. Continuous Perfection. The following example
illustrates the operation of subsection (c) [Maine cite
subsection (3)]:

22
24 Example 1: Debtor, an importer, creates a security interest
in goods that it imports and the documents of title that cover
the goods. The secured party, Bank, takes possession of a
26 negotiable bill of lading covering certain imported goods and
thereby perfects its security interest in the bill of lading and
the goods. See Sections 9-313(a) [Maine cite section 9-1313,
28 subsection (1)], 9-312(c)(1) [Maine cite section 9-1312,
subsection (3), paragraph (a)]. Bank releases the bill of lading
30 to the debtor for the purpose of procuring the goods from the
carrier and selling them. Under Section 9-312(f) [Maine cite
32 section 9-1312, subsection (6)], Bank continues to have a
perfected security interest in the document and goods for 20
34 days. Bank files a financing statement covering the collateral
before the expiration of the 20-day period. Its security
36 interest now continues perfected for as long as the filing is
38 good.

40 If the successive stages of Bank's security interest succeed
each other without an intervening gap, the security interest is
42 "perfected continuously," and the date of perfection is when the
security interest first became perfected (i.e., when Bank
44 received possession of the bill of lading). If, however, there
is a gap between stages--for example, if Bank does not file until
46 after the expiration of the 20-day period specified in Section
9-312(f) [Maine cite section 9-1312, subsection (6)] and leaves
48 the collateral in the debtor's possession--then, the chain being
broken, the perfection is no longer continuous. The date of
50 perfection would now be the date of filing (after expiration of

2 the 20-day period). Bank's security interest would be vulnerable
3 to any interests arising during the gap period which under
4 Section 9-317 [Maine cite section 9-1317] take priority over an
unperfected security interest.

6 5. Supporting Obligations. Subsection (d) [Maine cite
7 subsection (4)] is new. It provides for automatic perfection of
8 a security interest in a supporting obligation for collateral if
9 the security interest in the collateral is perfected. This is
10 unlikely to effect any change in the law prior to adoption of
11 this Article.

12
13 Example 2: Buyer is obligated to pay Debtor for goods
14 sold. Buyer's president guarantees the obligation. Debtor
15 creates a security interest in the right to payment (account) in
16 favor of Lender. Under Section 9-203(f) [Maine cite section
17 9-1203, subsection (6)], the security interest attaches to
18 Debtor's rights under the guarantee (supporting obligation).
19 Under subsection (d) [Maine cite subsection (4)], perfection of
20 the security interest in the account constitutes perfection of
21 the security interest in Debtor's rights under the guarantee.

22
23 6. Rights to Payment Secured by Lien. Subsection (e)
24 [Maine cite subsection (5)] is new. It deals with the situation
25 in which a security interest is created in a right to payment
26 that is secured by a security interest, mortgage, or other lien.

27
28 Example 3: Owner gives to Mortgagee a mortgage on Blackacre
29 to secure a loan. Owner's obligation to pay is evidenced by a
30 promissory note. In need of working capital, Mortgagee borrows
31 from Financer and creates a security interest in the note in
32 favor of Financer. Section 9-203(g) [Maine cite section 9-1203,
33 subsection (7)] adopts the traditional view that the mortgage
34 follows the note; i.e., the transferee of the note acquires the
35 mortgage, as well. This subsection adopts a similar principle:
36 perfection of a security interest in the right to payment
37 constitutes perfection of a security interest in the mortgage
38 securing it.

39
40 An important consequence of the rules in Section 9-203(g)
41 [Maine cite section 9-1203, subsection (7)] and subsection (e)
42 [Maine cite subsection (5)] is that, by acquiring a perfected
43 security interest in a mortgage (or other secured) note, the
44 secured party acquires a security interest in the mortgage (or
45 other lien) that is senior to the rights of a person who becomes
46 a lien creditor of the mortgagee (Article 9 debtor [Maine cite
47 Article 9-A debtor]). See Section 9-317(a)(2) [Maine cite
48 section 9-1317, subsection (1), paragraph (b)]. This result
49 helps prevent the separation of the mortgage (or other lien) from
50 the note.

2 Under this Article, attachment and perfection of a security
4 interest in a secured right to payment do not of themselves
6 affect the obligation to pay. For example, if the obligation is
8 evidenced by a negotiable note, then Article 3 dictates the
10 person whom the maker must pay to discharge the note and any lien
12 securing it. See Section 3-602. If the right to payment is a
14 payment intangible, then Section 9-406 [Maine cite section
16 9-1406] determines whom the account debtor must pay.

12 Similarly, this Article does not determine who has the power
14 to release a mortgage of record. That issue is determined by
16 real-property law.

14 7. Investment Property. Subsections (f) and (g) [Maine
16 cite subsection (6) and (7)] follow former Section 9-115(2).

18 **§9-1309. Security interest perfected upon attachment**

20 The following security interests are perfected when they
22 attach:

24 (1) A purchase-money security interest in consumer goods,
26 except as otherwise provided in section 9-1311, subsection (2)
with respect to consumer goods that are subject to a statute or
treaty described in section 9-1311, subsection (1);

28 (2) An assignment of accounts or payment intangibles that
30 does not by itself or in conjunction with other assignments to
32 the same assignee transfer a significant part of the assignor's
outstanding accounts or payment intangibles;

34 (3) A sale of a payment intangible;

36 (4) A sale of a promissory note;

38 (5) A security interest created by the assignment of a
40 health-care-insurance receivable to the provider of the
health-care goods or services;

42 (6) A security interest arising under section 2-401, 2-505,
44 2-711, subsection (3) or 2-1508, subsection (5), until the debtor
obtains possession of the collateral;

46 (7) A security interest of a collecting bank arising under
section 4-210;

48 (8) A security interest of an issuer or nominated person
50 arising under section 5-1118;

2 one would think of filing. Any person who regularly takes
3 assignments of any debtor's accounts or payment intangibles
4 should file. In this connection Section 9-109(d)(4) through (7)
5 [Maine cite section 9-1109, subsection (4), paragraphs (d) to
6 (g)], which excludes certain transfers of accounts, chattel
7 paper, payment intangibles, and promissory notes from this
8 Article, should be consulted.

9
10 Paragraphs (3) and (4)[Maine cite paragraphs (c) and (d)],
11 which are new, afford automatic perfection to sales of payment
12 intangibles and promissory notes, respectively. They reflect the
13 practice under former Article 9. Under that Article, filing a
14 financing statement did not affect the rights of a buyer of
15 payment intangibles or promissory notes, inasmuch as the former
16 Article did not cover those sales. To the extent that the
17 exception in paragraph (2) [Maine cite paragraph (b)] covers
18 outright sales of payment intangibles, which automatically are
19 perfected under paragraph (3) [Maine cite paragraph (c)], the
20 exception is redundant.

21
22 **5. Health-Care-Insurance Receivables.** Paragraph (5) [Maine
23 cite paragraph (e)] extends automatic perfection to assignments
24 of health-care-insurance receivables if the assignment is made to
25 the health-care provider that provided the health-care goods or
26 services. The primary effect is that, when an individual assigns
27 a right to payment under an insurance policy to the person who
28 provided health-care goods or services, the provider has no need
29 to file a financing statement against the individual. The normal
30 filing requirements apply to other assignments of
31 health-care-insurance receivables covered by this Article, e.g.,
32 assignments from the health-care provider to a financier.

33
34 **6. Investment Property.** Paragraph (9) [Maine cite
35 paragraph (i)] replaces the last clause of former Section
36 9-116(2), concerning security interests that arise in the
37 delivery of a financial asset.

38 Paragraphs (10) and (11) [Maine cite paragraphs (j) and
39 (k)] replace former Section 9-115(4)(c) and (d), concerning
40 secured financing of securities and commodity firms and clearing
41 corporations. The former sections indicated that, with respect
42 to certain security interests created by a securities
43 intermediary or commodity intermediary, "[t]he filing of a
44 financing statement . . . has no effect for purposes of
45 perfection or priority with respect to that security interest."
46 No change in meaning is intended by the deletion of the quoted
47 phrase.

48
49 Secured financing arrangements for securities firms are
50 currently implemented in various ways. In some circumstances,

2 lenders may require that the transactions be structured as "hard
pledges," where the securities are transferred on the books of a
4 clearing corporation from the debtor's account to the lender's
account or to a special pledge account for the lender where they
6 cannot be disposed of without the specific consent of the
lender. In other circumstances, lenders are content with
8 so-called "agreement to pledge" or "agreement to deliver"
arrangements, where the debtor retains the positions in its own
10 account, but reflects on its books that the positions have been
hypothecated and promises that the securities will be transferred
to the secured party's account on demand.

12
14 The perfection and priority rules of this Article are
designed to facilitate current secured financing arrangements for
securities firms as well as to provide sufficient flexibility to
16 accommodate new arrangements that develop in the future. Hard
pledge arrangements are covered by the concept of control. See
18 Sections 9-314 [Maine cite section 9-1314], 9-106 [Maine cite
section 9-1106], 8-106. Non-control secured financing
20 arrangements for securities firms are covered by the automatic
perfection rule of paragraph (10) [Maine cite paragraph (j)].
22 Before the 1994 revision of Articles 8 and 9, agreement to pledge
arrangements could be implemented under a provision that a
24 security interest in securities given for new value under a
written security agreement was perfected without filing or
26 possession for a period of 21 days. Although the security
interests were temporary in legal theory, the financing
28 arrangements could, in practice, be continued indefinitely by
rolling over the loans at least every 21 days. Accordingly, a
30 knowledgeable creditor of a securities firm realizes that the
firm's securities may be subject to security interests that are
32 not discoverable from any public records. The
automatic-perfection rule of paragraph (10) [Maine cite paragraph
34 (j)] makes it unnecessary to engage in the purely formal practice
of rolling over these arrangements every 21 days.

36
38 In some circumstances, a clearing corporation may be the
debtor in a secured financing arrangement. For example, a
clearing corporation that settles delivery-versus-payment
40 transactions among its participants on a net, same-day basis
relies on timely payments from all participants with net
42 obligations due to the system. If a participant that is a net
debtor were to default on its payment obligation, the clearing
44 corporation would not receive some of the funds needed to settle
with participants that are net creditors to the system. To
46 complete end-of-day settlement after a payment default by a
participant, a clearing corporation that settles on a net,
48 same-day basis may need to draw on credit lines and pledge
securities of the defaulting participant or other securities
50 pledged by participants in the clearing corporation to secure

2 such drawings. The clearing corporation may be the top-tier
3 securities intermediary for the securities pledged, so that it
4 would not be practical for the lender to obtain control. Even
5 where the clearing corporation holds some types of securities
6 through other intermediaries, however, the clearing corporation
7 is unlikely to be able to complete the arrangements necessary to
8 convey "control" over the securities to be pledged in time to
9 complete settlement in a timely manner. However, the term
10 "securities intermediary" is defined in Section 8102(a)(14) to
11 include clearing corporations. Thus, the perfection rule of
12 paragraph (10) [Maine cite paragraph (j)] applies to security
interests in investment property granted by clearing corporations.

14 7. **Beneficial Interests in Trusts.** Under former Section
15 9-302(1)(c), filing was not required to perfect a security
16 interest created by an assignment of a beneficial interest in a
17 trust. Because beneficial interests in trusts are now used as
18 collateral with greater frequency in commercial transactions,
19 under this Article filing is required to perfect a security
20 interest in a beneficial interest.

22 8. **Assignments for Benefit of Creditors.** No filing or
23 other action is required to perfect an assignment for the benefit
24 of creditors. These assignments are not financing transactions,
25 and the debtor ordinarily will not be engaging in further credit
26 transactions.

28 **§9-1310. When filing required to perfect security interest or**
29 **agricultural lien; security interests and agricultural**
30 **liens to which filing provisions do not apply**

32 (1) Except as otherwise provided in subsection (2) and
33 section 9-1312, subsection (2), a financing statement must be
34 filed to perfect all security interests and agricultural liens.

36 (2) The filing of a financing statement is not necessary to
37 perfect a security interest:

38 (a) That is perfected under section 9-1308, subsection (4),
40 (5), (6) or (7);

42 (b) That is perfected under section 9-1309 when it attaches;

44 (c) In property subject to a statute, regulation or treaty
45 described in section 9-1311, subsection (1);

46 (d) In goods in possession of a bailee that is perfected
48 under section 9-1312, subsection (4), paragraph (a) or (b);

2 (e) In certificated securities, documents, goods or
instruments that is perfected without filing or possession
4 under section 9-1312, subsection (5), (6) or (7);

6 (f) In collateral in the secured party's possession under
section 9-1313;

8 (g) In a certificated security that is perfected by
10 delivery of the security certificate to the secured party
under section 9-1313;

12 (h) In deposit accounts, electronic chattel paper,
14 investment property or letter-of-credit rights that is
perfected by control under section 9-1314;

16 (i) In proceeds that is perfected under section 9-1315; or

18 (j) That is perfected under section 9-1316.

20 (3) If a secured party assigns a perfected security
22 interest or agricultural lien, a filing under this Article is not
24 required to continue the perfected status of the security
interest against creditors of and transferees from the original
debtor.

26 **Official Comment**

28 1. **Source.** Former Section 9-302(1), (2).

30 2. **General Rule.** Subsection (a) [Maine cite subsection
32 (1)] establishes a central Article 9 [Maine cite Article 9-A]
34 principle: Filing a financing statement is necessary for
36 perfection of security interests and agricultural liens.
38 However, filing is not necessary to perfect a security interest
40 that is perfected by another permissible method, see subsection
42 (b) [Maine cite subsection (2)], nor does filing ordinarily
perfect a security interest in a deposit account,
letter-of-credit right, or money. See Section 9-312(b) [Maine
cite section 9-1312, subsection (2)]. Part 5 of the Article
deals with the office in which to file, mechanics of filing, and
operations of the filing office.

44 3. **Exemptions from Filing.** Subsection (b) [Maine cite
46 subsection (2)] lists the security interests for which filing is
48 not required as a condition of perfection, because they are
perfected automatically upon attachment (subsections (b)(2) and
50 (b)(9) [Maine cite subsection (2), paragraphs (b) and (i)]) or
upon the occurrence of another event (subsections (b)(1), (b)(5),
and (b)(9) [Maine cite subsection (2), paragraphs (a), (e) and
(i)]), because they are perfected under the law of another

2 jurisdiction (subsection (b)(10) [Maine cite subsection (2),
paragraph (j)]), or because they are perfected by another method,
4 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)
6 [Maine cite subsection (2), paragraphs (c), (d), (e), (f), (g)
and (h)]).

8 **4. Assignments of Perfected Security Interests.** Subsection
10 (c) [Maine cite subsection (3)] concerns assignment of a
perfected security interest or agricultural lien. It provides
12 that no filing is necessary in connection with an assignment by a
secured party to an assignee in order to maintain perfection as
14 against creditors of and transferees from the original debtor.

16 **Example 1:** Buyer buys goods from Seller, who retains a
security interest in them. After Seller perfects the security
18 interest by filing, Seller assigns the perfected security
interest to X. The security interest, in X's hands and without
20 further steps on X's part, continues perfected against Buyer's
transferees and creditors.

22 **Example 2:** Dealer creates a security interest in specific
equipment in favor of Lender. After Lender perfects the security
24 interest in the equipment by filing, Lender assigns the chattel
paper (which includes the perfected security interest in Dealer's
26 equipment) to X. The security interest in the equipment, in X's
hands and without further steps on X's part, continues perfected
28 against Dealer's transferees and creditors. However, regardless
of whether Lender made the assignment to secure Lender's
30 obligation to X or whether the assignment was an outright sale of
the chattel paper, the assignment creates a security interest in
32 the chattel paper in favor of X. Accordingly, X must take
whatever steps may be required for perfection in order to be
34 protected against Lender's transferees and creditors with respect
to the chattel paper.

36 Subsection (c) [Maine cite subsection (3)] applies not only
38 to an assignment of a security interest perfected by filing but
also to an assignment of a security interest perfected by a
40 method other than by filing, such as by control or by
possession. Although subsection (c) [Maine cite subsection (3)]
42 addresses explicitly only the absence of an additional filing
requirement, the same result normally will follow in the case of
44 an assignment of a security interest perfected by a method other
than by filing. For example, as long as possession of collateral
46 is maintained by an assignee or by the assignor or another person
on behalf of the assignee, no further perfection steps need be
48 taken on account of the assignment to continue perfection as
against creditors and transferees of the original debtor. Of
50 course, additional action may be required for perfection of the

2 assignee's interest as against creditors and transferees of the
3 assignor.

4 Similarly, subsection (c) [Maine cite subsection (3)]
5 applies to the assignment of a security interest perfected by
6 compliance with a statute, regulation, or treaty under Section
7 9-311(b) [Maine cite section 9-1311, subsection (2)], such as a
8 certificate-of-title statute. Unless the statute expressly
9 provides to the contrary, the security interest will remain
10 perfected against creditors of and transferees from the original
11 debtor, even if the assignee takes no action to cause the
12 certificate of title to reflect the assignment or to cause its
13 name to appear on the certificate of title. See PEB Commentary
14 No. 12, which discusses this issue under former Section
15 9-302(3). Compliance with the statute is "equivalent to filing"
16 under Section 9-311(b) [Maine cite section 9-1311, subsection
17 (2)].

18 **§9-1311. Perfection of security interests in property subject to**
19 **certain statutes, regulations and treaties**

20
21 (1) Except as otherwise provided in subsection (4), the
22 filing of a financing statement is not necessary or effective to
23 perfect a security interest in property subject to:

24
25 (a) A statute, regulation, or treaty of the United States
26 whose requirements for a security interest's obtaining
27 priority over the rights of a lien creditor with respect to
28 the property preempt section 9-1310, subsection (1);

29
30 (b) For automobiles, trailers and motorcycles, Title 14,
31 sections 3131 and 3132; or

32
33 (c) A certificate-of-title statute of another jurisdiction
34 that provides for a security interest to be indicated on the
35 certificate as a condition or result of the security
36 interest's obtaining priority over the rights of a lien
37 creditor with respect to the property.

38
39 (2) Compliance with the requirements of a statute,
40 regulation or treaty described in subsection (1) for obtaining
41 priority over the rights of a lien creditor is equivalent to the
42 filing of a financing statement under this Article. Except as
43 otherwise provided in subsection (4) and sections 9-1313 and
44 9-1316, subsections (4) and (5) for goods covered by a
45 certificate of title, a security interest in property subject to
46 a statute, regulation or treaty described in subsection (1) may
47 be perfected only by compliance with those requirements, and a
48 security interest so perfected remains perfected notwithstanding
49 a change in the use or transfer of possession of the collateral.
50

2 [Maine cite section 9-1308] specifies the meaning of that term
and a preemptive rule may use other terminology.

4 **3. State Statutes.** Subsections (a)(2) and (3) [Maine cite
6 subsection (1), paragraphs (b) and (c)] exempt from the filing
requirements of this Article transactions covered by State
8 certificate-of-title statutes covering motor vehicles and the
like. The description of certificate-of-title statutes in
10 subsections (a)(2) and (a)(3) [Maine cite subsection (1),
paragraphs (b) and (c)] tracks the language of the definition of
12 "certificate of title" in Section 9-102 [Maine cite section
9-1102]. For a discussion of the operation of state
14 certificate-of-title statutes in interstate contexts, see the
Comments to Section 9-303 [Maine cite section 9-1303].

16 Some states have enacted central filing statutes with
18 respect to secured transactions in kinds of property that are of
special importance in the local economy. Subsection (a)(2)
20 [Maine cite subsection (1), paragraph (b)] defers to these
statutes with respect to filing for that property.

22 **4. Inventory Covered by Certificate of Title.** Under
24 subsection (d) [Maine cite subsection (4)], perfection of a
security interest in the inventory of a dealer is governed by the
26 normal perfection rules, even if the inventory is covered by a
certificate of title. Under former Section 9-302(3), a secured
28 party who financed a dealer may have needed to perfect by filing
for goods held for sale and by compliance with a
30 certificate-of-title statute for goods held for lease. In some
cases, this may have required notation on thousands of
32 certificates. The problem would have been compounded by the fact
that dealers, particularly of automobiles, often do not know
34 whether a particular item of inventory will be sold or leased.
Under subsection (d) [Maine cite subsection (4)], notation is
36 both unnecessary and ineffective.

38 The filing and other perfection provisions of this Article
apply to goods covered by a certificate of title only "during any
40 period in which collateral is inventory held for sale or lease or
leased." If the debtor takes goods of this kind out of inventory
42 and uses them, say, as equipment, a filed financing statement
would not remain effective to perfect a security interest.

44 **5. Compliance with Perfection Requirements of Other
Statute.** Subsection (b) [Maine cite subsection (2)] makes clear
46 that compliance with the perfection requirements (i.e., the
requirements for obtaining priority over a lien creditor), but
48 not other requirements, of a statute, regulation, or treaty
described in subsection (a) [Maine cite subsection (1)] is
50 sufficient for perfection under this Article. Perfection of a

2 security interest under a such a statute, regulation, or treaty
has all the consequences of perfection under this Article.

4 The interplay of this section with certain
6 certificate-of-title statutes may create confusion and
uncertainty. For example, statutes under which perfection does
8 not occur until a certificate of title is issued will create a
gap between the time that the goods are covered by the
10 certificate under Section 9-303 [Maine cite section 9-1303] and
the time of perfection. If the gap is long enough, it may result
12 in turning some unobjectionable transactions into avoidable
preferences under Bankruptcy Code Section 547. (The preference
14 risk arises if more than ten days (or 20 days, in the case of a
purchase-money security interest) passes between the time a
security interest attaches (or the debtor receives possession of
16 the collateral, in the case of a purchase-money security
interest) and the time it is perfected.) Accordingly, the
18 Legislative Note to this section instructs the legislature to
amend the applicable certificate-of-title statute to provide that
20 perfection occurs upon receipt by the appropriate State official
of a properly tendered application for a certificate of title on
22 which the security interest is to be indicated.

24 Under some certificate-of-title statutes, including the
Uniform Motor Vehicle Certificate of Title and Anti-Theft Act,
26 perfection generally occurs upon delivery of specified documents
to a state official but may, under certain circumstances, relate
28 back to the time of attachment. This relation-back feature can
create great difficulties for the application of the rules in
30 Sections 9-303 and 9-311(b) [Maine cite section 9-1303 and
section 9-1311, subsection (2)]. Accordingly, the Legislative
32 Note also recommends to legislatures that they remove any
relation-back provisions from certificate-of-title statutes
34 affecting security interests.

36 **6. Compliance with Perfection Requirements of Other Statute
as Equivalent to Filing.** Under Subsection (b) [Maine cite
38 subsection (2)], compliance with the perfection requirements
(i.e., the requirements for obtaining priority over a lien
40 creditor) of a statute, regulation, or treaty described in
subsection (a) [Maine cite subsection (1)] "is equivalent to the
42 filing of a financing statement."

44 The quoted phrase appeared in former Section 9-302(3). Its
meaning was unclear, and many questions arose concerning the
46 extent to which and manner in which Article 9 [Maine cite Article
9-A] rules referring to "filing" were applicable to perfection by
48 compliance with a certificate-of-title statute. This Article
takes a variety of approaches for applying Article 9's [Maine
50 cite Article 9-A's] filing rules to compliance with other

2 statutes and treaties. First, as discussed above in Comment 5,
it leaves the determination of some rules, such as the rule
4 establishing time of perfection (Section 9-516(a) [Maine cite
section 9-1516, subsection (1)]), to the other statutes
6 themselves. Second, this Article explicitly applies some Article
9 [Maine cite Article 9-A] filing rules to perfection under other
8 statutes or treaties. See, e.g., Section 9-505 [Maine cite
section 9-1505]. Third, this Article makes other Article 9
10 [Maine cite Article 9-A] rules applicable to security interests
perfected by compliance with another statute through the
12 "equivalent to . . . filing" provision in the first sentence of
Section 9-311(b) [Maine cite section 9-1311, subsection (2)].
14 The third approach is reflected for the most part in occasional
Comments explaining how particular rules apply when perfection is
16 accomplished under Section 9-311(b) [Maine cite section 9-1311,
subsection (2)]. See, e.g., Section 9-310 [Maine cite section
9-1310], Comment 4; Section 9-315 [Maine cite section 9-1315],
18 Comment 6; Section 9-317 [Maine cite section 9-1317], Comment 8.
The absence of a Comment indicating that a particular filing
20 provision applies to perfection pursuant to Section 9-311(b)
[Maine cite section 9-1311, subsection (2)] does not mean the
22 provision is inapplicable.

24 **7. Perfection by Possession of Goods Covered by
Certificate-of-Title Statute.** A secured party who holds a
26 security interest perfected under the law of State A in goods
that subsequently are covered by a State B certificate of title
28 may face a predicament. Ordinarily, the secured party will have
four months under State B's Section 9-316(c) and (d) [Maine cite
30 section 9-1316, subsections (3) and (4)] in which to (re)perfect
as against a purchaser of the goods by having its security
32 interest noted on a State B certificate. This procedure is
likely to require the cooperation of the debtor and any competing
34 secured party whose security interest has been noted on the
certificate. Comment 4(e) to former Section 9-103 observed that
36 "that cooperation is not likely to be forthcoming from an owner
who wrongfully procured the issuance of a new certificate not
38 showing the out-of-state security interest, or from a local
secured party finding himself in a priority contest with the
40 out-of-state secured party." According to that Comment, "[t]he
only solution for the out-of-state secured party under present
42 certificate of title statutes seems to be to reperfect by
possession, i.e., by repossessing the goods." But the "solution"
44 may not have worked: Former Section 9-302(4) provided that a
security interest in property subject to a certificate-of-title
46 statute "can be perfected only by compliance therewith."

48 Sections 9-316(d) and (e), 9-311(c), and 9-313(b) [Maine
cite section 9-1316, subsections (4) and (5), section 9-1311,
50 subsection (3), and section 9-1313, subsection (2)] of this

2 Article resolve the conflict by providing that a security
3 interest that remains perfected solely by virtue of Section
4 9-316(e) [Maine cite section 9-1316, subsection (5)] can be
5 (re)perfected by the secured party's taking possession of the
6 collateral. These sections contemplate only that taking
7 possession of goods covered by a certificate of title will work
8 as a method of perfection. None of these sections creates a
9 right to take possession. Section 9-609 [Maine cite section
10 9-1609] and the agreement of the parties define the secured
11 party's right to take possession.

12 **§9-1312. Perfection of security interests in chattel paper,
13 deposit accounts, documents, goods covered by
14 documents, instruments, investment property,
15 letter-of-credit rights and money; perfection by
16 permissive filing; temporary perfection without filing
17 or transfer of possession**

18
19 (1) A security interest in chattel paper, negotiable
20 documents, instruments or investment property may be perfected by
21 filing.

22
23 (2) Except as otherwise provided in section 9-1315,
24 subsections (3) and (4) for proceeds:

25 (a) A security interest in a deposit account may be
26 perfected only by control under section 9-1314;

27 (b) Except as otherwise provided in section 9-1308,
28 subsection (4), a security interest in a letter-of-credit
29 right may be perfected only by control under section 9-1314;
30 and

31 (c) A security interest in money may be perfected only by
32 the secured party's taking possession under section 9-1313.

33 (3) While goods are in the possession of a bailee that has
34 issued a negotiable document covering the goods:

35 (a) A security interest in the goods may be perfected by
36 perfecting a security interest in the document; and

37 (b) A security interest perfected in the document has
38 priority over any security interest that becomes perfected
39 in the goods by another method during that time.

40 (4) While goods are in the possession of a bailee that has
41 issued a nonnegotiable document covering the goods, a security
42 interest in the goods may be perfected by:

43

2 long-term perfection. The rule is likely to be particularly
3 useful in transactions involving large number of notes that a
4 debtor uses as collateral but continues to collect from the
5 makers. A security interest perfected by filing is subject to
6 defeat by certain subsequent purchasers (including secured
7 parties). Under Section 9-330(d) [Maine cite section 9-1330,
8 subsection (4)], purchasers for value who take possession of an
9 instrument without knowledge that the purchase violates the
10 rights of the secured party generally would achieve priority over
11 a security interest in the instrument perfected by filing. In
12 addition, Section 9-331 [Maine cite section 9-1331] provides that
13 filing a financing statement does not constitute notice that
14 would preclude a subsequent purchaser from becoming a holder in
due course and taking free of all claims under Section 3-306.

16 **3. Chattel Paper; Negotiable Documents.** Subsection (a)
17 [Maine cite subsection (1)] further provides that filing is
18 available as a method of perfection for security interests in
19 chattel paper and negotiable documents. Tangible chattel paper
20 is sometimes delivered to the assignee, and sometimes left in the
21 hands of the assignor for collection. Subsection (a) [Maine cite
22 subsection (1)] allows the assignee to perfect its security
23 interest by filing in the latter case. Alternatively, the
24 assignee may perfect by taking possession. See Section 9-313(a)
25 [Maine cite section 9-1313, subsection (1)] . An assignee of
26 electronic chattel paper may perfect by taking control. See
27 Sections 9-314(a), 9-105 [Maine cite section 9-1314, subsection
28 (1), section 9-1105]. The security interest of an assignee who
29 takes possession or control may qualify for priority over a
30 competing security interest perfected by filing. See Section
31 9-330 [Maine cite section 9-1330].

32
33 Negotiable documents may be, and usually are, delivered to
34 the secured party. The secured party's taking possession will
35 suffice as a perfection step. See Section 9-313(a) [Maine cite
36 section 9-1313, subsection (1)]. However, as is the case with
37 chattel paper, a security interest in a negotiable document may
38 be perfected by filing.

40 **4. Investment Property.** A security interest in investment
41 property, including certificated securities, uncertificated
42 securities, security entitlements, and securities accounts, may
43 be perfected by filing. However, security interests created by
44 brokers, securities intermediaries, or commodity intermediaries
45 are automatically perfected; filing is of no effect. See Section
46 9-309(10), (11) [Maine cite section 9-1309, subsections (10) and
47 (11)]. A security interest in all kinds of investment property
48 also may be perfected by control, see Sections 9-314, 9-106
49 [Maine cite section 9-1314, section 9-1106], and a security
50 interest in a certificated security also may be perfected by the

2 secured party's taking delivery under Section 8-301. See Section
3 9-313(a) [Maine cite section 9-1313, subsection (1)]. A security
4 interest perfected only by filing is subordinate to a conflicting
5 security interest perfected by control or delivery. See Section
6 9-328(1), (5) [Maine cite section 9-1328, subsections (1), (5)].
7 Thus, although filing is a permissible method of perfection, a
8 secured party who perfects by filing takes the risk that the
9 debtor has granted or will grant a security interest in the same
10 collateral to another party who obtains control. Also,
11 perfection by filing would not give the secured party protection
12 against other types of adverse claims, since the Article 8
13 adverse claim cut-off rules require control. See Section 8510.

14 **5. Deposit Accounts.** Under new subsection (b)(1) [Maine
15 cite subsection (2), paragraph (a)] , the only method of
16 perfecting a security interest in a deposit account as original
17 collateral is by control. Filing is ineffective, except as
18 provided in Section 9-315 [Maine cite section 9-1315] with
19 respect to proceeds. As explained in Section 9-104 [Maine cite
20 section 9-1104] , "control" can arise as a result of an agreement
21 among the secured party, debtor, and bank, whereby the bank
22 agrees to comply with instructions of the secured party with
23 respect to disposition of the funds on deposit, even though the
24 debtor retains the right to direct disposition of the funds.
25 Thus, subsection (b)(1) [Maine cite subsection (2), paragraph
26 (a)] takes an intermediate position between certain non-UCC law,
27 which conditions the effectiveness of a security interest on the
28 secured party's enjoyment of such dominion and control over the
29 deposit account that the debtor is unable to dispose of the
30 funds, and the approach this Article takes to securities
31 accounts, under which a secured party who is unable to reach the
32 collateral without resort to judicial process may perfect by
33 filing. By conditioning perfection on "control," rather than
34 requiring the secured party to enjoy absolute dominion to the
35 exclusion of the debtor, subsection (b)(1) [Maine cite subsection
36 (2), paragraph (a)] permits perfection in a wide variety of
37 transactions, including those in which the secured party actually
38 relies on the deposit account in extending credit and maintains
39 some meaningful dominion over it, but does not wish to deprive
40 the debtor of access to the funds altogether.

42 **6. Letter-of-Credit Rights.** Letter-of-credit rights
43 commonly are "supporting obligations," as defined in Section
44 9-102 [Maine cite section 9-1102]. Perfection as to the related
45 account, chattel paper, document, general intangible, instrument,
46 or investment property will perfect as to the letter-of-credit
47 rights. See Section 9-308(d) [Maine cite section 9-1308,
48 subsection (4)]. Subsection (b)(2) [Maine cite subsection (2),
49 paragraph (b)] provides that, in other cases, a security interest
50 in a letter-of-credit right may be perfected only by control.

2 "Control," for these purposes, is explained in Section 9-107
[Maine cite section 9-1107].

4 **7. Goods Covered by Document of Title.** Subsection (c)
[Maine cite subsection (3)] applies to goods in the possession of
6 a bailee who has issued a negotiable document covering the
goods. Subsection (d) [Maine cite subsection (4)] applies to
8 goods in the possession of a bailee who has issued a
nonnegotiable document of title, including a document of title
10 that is "non-negotiable" under Section 7-104. Section 9-313
[Maine cite section 9-1313] governs perfection of a security
12 interest in goods in the possession of a bailee who has not
issued a document of title.

14 Subsection (c) [Maine cite subsection (3)] clarifies the
16 perfection and priority rules in former Section 9-304(2).
Consistently with the provisions of Article 7, subsection (c)
18 takes the position that, as long as a negotiable document
covering goods is outstanding, title to the goods is, so to say,
20 locked up in the document. Accordingly, a security interest in
goods covered by a negotiable document may be perfected by
22 perfecting a security interest in the document. The security
interest also may be perfected by another method, e.g., by
24 filing. The priority rule in subsection (c) [Maine cite
subsection (3)] governs only priority between (i) a security
26 interest in goods which is perfected by perfecting in the
document and (ii) a security interest in the goods which becomes
28 perfected by another method while the goods are covered by the
document.

30 **Example 1:** While wheat is in a grain elevator and covered
32 by a negotiable warehouse receipt, Debtor creates a security
interest in the wheat in favor of SP-1 and SP-2. SP-1 perfects
34 by filing a financing statement covering "wheat." Thereafter,
SP-2 perfects by filing a financing statement describing the
36 warehouse receipt. Subsection (c)(1) provides that SP-2's
security interest is perfected. Subsection (c)(2) [Maine cite
38 subsection (3), paragraph (b)] provides that SP-2's security
interest is senior to SP-1's.

40 **Example 2:** The facts are as in Example 1, but SP-1's
42 security interest attached and was perfected before the goods
were delivered to the grain elevator. Subsection (c)(2) [Maine
44 cite subsection (3), paragraph (b)] does not apply, because
SP-1's security interest did not become perfected during the time
46 that the wheat was in the possession of a bailee. Rather, the
first-to-file-or-perfect priority rule applies. See Section
48 9-322 [Maine cite section 9-1322].

2 A secured party may become "a holder to whom a negotiable
document of title has been duly negotiated" under Section 7-501.
4 If so, the secured party acquires the rights specified by Article
7. Article 9 [Maine cite Article 9-A] does not limit those
6 rights, which may include the right to priority over an
earlier-perfected security interest. See Section 9-331(a) [Maine
cite section 9-1331, subsection (1)].

8
10 Subsection (d) [Maine cite subsection (4)] takes a different
approach to the problem of goods covered by a nonnegotiable
12 document. Here, title to the goods is not looked on as being
locked up in the document, and the secured party may perfect its
14 security interest directly in the goods by filing as to them.
The subsection provides two other methods of perfection:
16 issuance of the document in the secured party's name (as
consignee of a straight bill of lading or the person to whom
18 delivery would be made under a nonnegotiable warehouse receipt)
and receipt of notification of the secured party's interest by
the bailee. Perfection under subsection (d) [Maine cite
20 subsection (4)] occurs when the bailee receives notification of
the secured party's interest in the goods, regardless of who
22 sends the notification. Receipt of notification is effective to
perfect, regardless of whether the bailee responds. Unlike
24 former Section 9-304(3), from which it derives, subsection (d)
[Maine cite subsection (4)] does not apply to goods in the
26 possession of a bailee who has not issued a document of title.
Section 9-313(c) [Maine cite section 9-1313, subsection (3)]
28 covers that case and provides that perfection by possession as to
goods not covered by a document requires the bailee's
30 acknowledgment.

32 **8. Temporary Perfection Without Having First Otherwise**
Perfected. Subsection (e) [Maine cite subsection (5)] follows
34 former Section 9-304(4) in giving perfected status to security
interests in certificated securities, instruments, and negotiable
36 documents for a short period (reduced from 21 to 20 days, which
is the time period generally applicable in this Article),
38 although there has been no filing and the collateral is in the
debtor's possession. The 20-day temporary perfection runs from
40 the date of attachment. There is no limitation on the purpose
for which the debtor is in possession, but the secured party must
42 have given "new value" (defined in Section 9-102 [Maine cite
section 9-1102) under an authenticated security agreement.

44
46 **9. Maintaining Perfection After Surrendering Possession.**
There are a variety of legitimate reasons-many of them are
described in subsections (f) and (g) [Maine cite subsections (6)
48 and (7)]-why certain types of collateral must be released
temporarily to a debtor. No useful purpose would be served by

2 cluttering the files with records of such exceedingly short term transactions.

4 Subsection (f) [Maine cite subsection (6)] affords the
6 possibility of 20-day perfection in negotiable documents and
8 goods in the possession of a bailee but not covered by a
10 negotiable document. Subsection (g) [Maine cite subsection (7)]
12 provides for 20-day perfection in certificated securities and
14 instruments. These subsections derive from former Section
16 9-305(5). However, the period of temporary perfection has been
18 reduced from 21 to 20 days, which is the time period generally
20 applicable in this Article, and "enforcement" has been added in
22 subsection (g) [Maine cite subsection (7)] as one of the special
24 and limited purposes for which a secured party can release an
26 instrument or certificated security to the debtor and still
remain perfected. The period of temporary perfection runs from
the date a secured party who already has a perfected security
interest turns over the collateral to the debtor. There is no
new value requirement, but the turnover must be for one or more
of the purposes stated in subsection (f) or (g) [Maine cite
subsection (6) or (7)]. The 20-day period may be extended by
perfecting as to the collateral by another method before the
period expires. However, if the security interest is not
perfected by another method until after the 20-day period
expires, there will be a gap during which the security interest
is unperfected.

28 Temporary perfection extends only to the negotiable document
30 or goods under subsections (f) [Maine cite subsection (6)] and
32 only to the certificated security or instrument under subsection
34 (g) [Maine cite subsection (7)]. It does not extend to
proceeds. If the collateral is sold, the security interest will
continue in the proceeds for the period specified in Section
9-315 [Maine cite section 9-1315].

36 Subsections (f) and (g) [Maine cite subsections (6) and (7)]
38 deal only with perfection. Other sections of this Article govern
40 the priority of a security interest in goods after surrender of
42 the document covering them. In the case of a purchase-money
security interest in inventory, priority may be conditioned upon
giving notification to a prior inventory financier. See Section
9-324 [Maine cite section 9-1324].

44 **§9-1313. When possession by or delivery to secured party perfects**
46 **security interest without filing**

48 (1) Except as otherwise provided in subsection (2), a
50 secured party may perfect a security interest in negotiable
documents, goods, instruments, money or tangible chattel paper by
taking possession of the collateral. A secured party may perfect

2 a security interest in certificated securities by taking delivery
3 of the certificated securities under section 8-1301.

4 (2) With respect to goods covered by a certificate of title
5 issued by this State, a secured party may perfect a security
6 interest in the goods by taking possession of the goods only in
7 the circumstances described in Section 9-1316, subsection (4).

8
9 (3) With respect to collateral other than certificated
10 securities and goods covered by a document, a secured party takes
11 possession of collateral in the possession of a person other than
12 the debtor, the secured party or a lessee of the collateral from
13 the debtor in the ordinary course of the debtor's business, when:

14
15 (a) The person in possession authenticates a record
16 acknowledging that it holds possession of the collateral for
17 the secured party's benefit; or

18
19 (b) The person takes possession of the collateral after
20 having authenticated a record acknowledging that it will
21 hold possession of collateral for the secured party's
22 benefit.

23
24 (4) If perfection of a security interest depends upon
25 possession of the collateral by a secured party, perfection
26 occurs no earlier than the time the secured party takes
27 possession and continues only while the secured party retains
28 possession.

29
30 (5) A security interest in a certificated security in
31 registered form is perfected by delivery when delivery of the
32 certificated security occurs under section 8-1301 and remains
33 perfected by delivery until the debtor obtains possession of the
34 security certificate.

35
36 (6) A person in possession of collateral is not required to
37 acknowledge that it holds possession for a secured party's
38 benefit.

39
40 (7) If a person acknowledges that it holds possession for
41 the secured party's benefit:

42
43 (a) The acknowledgment is effective under subsection (3) or
44 section 8-1301, subsection (1), even if the acknowledgment
45 violates the rights of a debtor; and

46
47 (b) Unless the person otherwise agrees or law other than
48 this Article otherwise provides, the person does not owe any
49 duty to the secured party and is not required to confirm the
50 acknowledgment to another person.

2 section 9-1309, subsection (3)], sales of payment intangibles are
automatically perfected.

4 3. **"Possession."** This section does not define
"possession." In determining whether a particular person has
6 possession, the principles of agency apply. For example, if the
collateral clearly is in possession of an agent of the secured
8 party for the purposes of possessing on behalf of the secured
party, and if the agent is not also an agent of the debtor, the
10 secured party has taken actual possession without the need to
rely on a third-party acknowledgment. See subsection (c) [Maine
12 cite subsection (3)] and Comments 4 and 8. However, if the agent
is an agent of both the secured party and the debtor, prudence
14 might suggest that the secured party obtain the agent's
acknowledgment in order to ensure perfection by possession. The
16 debtor cannot qualify as an agent for the secured party for
purposes of the secured party's taking possession. And, under
18 appropriate circumstances, a court may determine that a third
person in possession is so closely connected to or controlled by
20 the debtor that the debtor has retained effective possession,
even though the third person may have agreed to take possession
22 on behalf of the secured party. If so, the third person's taking
possession would not constitute the secured party's taking
24 possession and would not be sufficient for perfection. See also
Section 9-205(b) [Maine cite section 9-1205, subsection (2)]. In
26 a typical escrow arrangement, where the escrowee holds possession
of collateral as agent for both the secured party and the debtor,
28 the debtor's relationship to the escrowee is not such as to
constitute retention of possession by the debtor.

30 4. **Goods in Possession of Third Party: Perfection.** Former
32 Section 9-305 permitted perfection of a security interest by
notification to a bailee in possession of collateral. This
34 Article distinguishes between goods in the possession of a bailee
who has issued a document of title covering the goods and goods
36 in the possession of a third party who has not issued a
document. Section 9-312(c) or (d) [Maine cite section 9-1312,
38 subsection (3) or (4)] applies to the former, depending on
whether the document is negotiable. Section 9-313(c) [Maine cite
40 section 9-1313, subsection (3)] applies to the latter. It
provides a method of perfection by possession when the collateral
42 is possessed by a third person who is not the secured party's
agent.

44 Notification of a third person does not suffice to perfect
46 under Section 9-313(c) [Maine cite section 9-1313, subsection
(3)]. Rather, perfection does not occur unless the third person
48 authenticates an acknowledgment that it holds possession of the
collateral for the secured party's benefit. Compare Section
50 9-312(d) [Maine cite section 9-1312, subsection (4)], under which

2 receipt of notification of the security party's interest by a
3 bailee holding goods covered by a nonnegotiable document is
4 sufficient to perfect, even if the bailee does not acknowledge
5 receipt of the notification. A third person may acknowledge that
6 it will hold for the secured party's benefit goods to be received
7 in the future. Under these circumstances, perfection by
8 possession occurs when the third person obtains possession of the
9 goods.

10 Under subsection (c) [Maine cite subsection (3)],
11 acknowledgment of notification by a "lessee . . . in . . .
12 ordinary course of . . . business" (defined in Section 2A103)
13 does not suffice for possession. The section thus rejects the
14 reasoning of *In re Atlantic Systems, Inc.*, 135 B.R. 463 (Bankr.
15 S.D.N.Y. 1992) (holding that notification to debtor-lessor's
16 lessee sufficed to perfect security interest in leased goods).
17 See Steven O. Weise, *Perfection by Possession: The Need for an*
18 *Objective Test*, 29 *Idaho Law Rev.* 705 (1992-93) (arguing that
19 lessee's possession in ordinary course of debtor-lessor's
20 business does not provide adequate public notice of possible
21 security interest in leased goods). Inclusion of a per se rule
22 concerning lessees is not meant to preclude a court, under
23 appropriate circumstances, from determining that a third person
24 is so closely connected to or controlled by the debtor that the
25 debtor has retained effective possession. If so, the third
26 person's acknowledgment would not be sufficient for perfection.

28 **5. No Relation Back.** Former Section 9-305 provided that a
29 security interest is perfected by possession from the time
30 possession is taken "without a relation back." As the Comment to
31 former Section 9-305 observed, the relation-back theory, under
32 which the taking of possession was deemed to relate back to the
33 date of the original security agreement, has had little vitality
34 since the 1938 revision of the Federal Bankruptcy Act. The
35 theory is inconsistent with former Article 9 and with this
36 Article. See Section 9-313(d) [Maine cite section 9-1313,
37 subsection (4)]. Accordingly, this Article deletes the quoted
38 phrase as unnecessary. Where a pledge transaction is
39 contemplated, perfection dates only from the time possession is
40 taken, although a security interest may attach, unperfected. The
41 only exceptions to this rule are the short, 20-day periods of
42 perfection provided in Section 9-312(e), (f) and (g) [Maine cite
43 section 9-1312, subsections (5), (6) and (7)], during which a
44 debtor may have possession of specified collateral in which there
45 is a perfected security interest.

46 **6. Certificated Securities.** The second sentence of
47 subsection (a) [Maine cite subsection (1)] reflects the
48 traditional rule for perfection of a security interest in
49 certificated securities. Compare Section 9-115(6) (1994 Official
50

2 Text); Sections 8321, 8313(1)(a) (1978 Official Text); Section
9-305 (1972 Official Text). It has been modified to refer to
"delivery" under Section 8-301. Corresponding changes appear in
4 Section 9-203(b) [Maine cite section 9-1203, subsection (2)].

6 Subsections (e), (f), and (g) [Maine cite subsections (5),
(6) and (7)] , which are new, apply to a person in possession of
8 security certificates or holding security certificates for the
secured party's benefit under Section 8-301. For delivery to
10 occur when a person other than a secured party holds possession
for the secured party, the person may not be a securities
12 intermediary.

14 Under subsection (e) [Maine cite subsection (5)], a
possessory security interest in a certificated security remains
16 perfected until the debtor obtains possession of the security
certificate. This rule is analogous to that of Section 9-314(c)
18 [Maine cite section 9-1314, subsection (3)], which deals with
perfection of security interests in investment property by
20 control. See Section 9-314 [Maine cite section 9-1314], Comment
3.

22
24 **7. Goods Covered by Certificate of Title.** Subsection (b)
[Maine cite subsection (2)] is necessary to effect changes to the
choice-of-law rules governing goods covered by a certificate of
26 title. These changes are described in the Comments to Section
9-311 [Maine cite section 9-1311]. Subsection (b) [Maine cite
28 subsection (2)], like subsection (a) [Maine cite subsection (1)],
does not create a right to take possession. Rather, it indicates
30 the circumstances under which the secured party's taking
possession of goods covered by a certificate of title is
32 effective to perfect a security interest in the goods: the goods
become covered by a certificate of title issued by this State at
34 a time when the security interest is perfected by any method
under the law of another jurisdiction.

36
38 **8. Goods in Possession of Third Party: No Duty to
Acknowledge; Consequences of Acknowledgment.** Subsections (f) and
(g) [Maine cite subsections (6) and (7)] are new and address
40 matters as to which former Article 9 was silent. They derive in
part from Section 8-106(g). Subsection (f) [Maine cite
42 subsection (6)] provides that a person in possession of
collateral is not required to acknowledge that it holds for a
44 secured party. Subsection (g)(1) [Maine cite subsection (7),
paragraph (a)] provides that an acknowledgment is effective even
46 if wrongful as to the debtor. Subsection (g)(2) [Maine cite
subsection (7), paragraph (b)] makes clear that an acknowledgment
48 does not give rise to any duties or responsibilities under this
Article. Arrangements involving the possession of goods are
50 hardly standardized. They include bailments for services to be

2 performed on the goods (such as repair or processing), for use
(leases), as security (pledges), for carriage, and for storage.
4 This Article leaves to the agreement of the parties and to any
other applicable law the imposition of duties and
6 responsibilities upon a person who acknowledges under subsection
(c) [Maine cite subsection (3)]. For example, by acknowledging,
8 a third party does not become obliged to act on the secured
party's direction or to remain in possession of the collateral
unless it agrees to do so or other law so provides.

10
12 **9. Delivery to Third Party by Secured Party.** New
subsections (h) and (i) [Maine cite subsections (8) and (9)]
14 address the practice of mortgage warehouse lenders. These
lenders typically send mortgage notes to prospective purchasers
16 under cover of letters advising the prospective purchasers that
the lenders hold security interests in the notes. These lenders
18 relied on notification to maintain perfection under former
9-305. Requiring them to obtain authenticated acknowledgments
20 from each prospective purchaser under subsection (c) [Maine cite
subsection (3)] could be unduly burdensome and disruptive of
22 established practices. Under subsection (h) [Maine cite
subsection (8)], when a secured party in possession itself
24 delivers the collateral to a third party, instructions to the
third party would be sufficient to maintain perfection by
26 possession; an acknowledgment would not be necessary. Under
subsection (i) [Maine cite subsection (9)], the secured party
28 does not relinquish possession by making a delivery under
subsection (h) [Maine cite subsection (8)], even if the delivery
30 violates the rights of the debtor. That subsection also makes
clear that a person to whom collateral is delivered under
32 subsection (h) [Maine cite subsection (8)] does not owe any duty
to the secured party and is not required to confirm the delivery
34 to another person unless the person otherwise agrees or law other
than this Article provides otherwise.

36 **§9-1314. Perfection by control**

38 (1) A security interest in investment property, deposit
40 accounts, letter-of-credit rights or electronic chattel paper may
be perfected by control of the collateral under section 9-1104,
9-1105, 9-1106 or 9-1107.

42
44 (2) A security interest in deposit accounts, electronic
chattel paper, or letter-of-credit rights is perfected by control
under section 9-1104, 9-1105 or 9-1107 when the secured party
obtains control and remains perfected by control only while the
secured party retains control.

2 In a transaction in which a secured party who has control
3 grants a security interest in investment property or sells
4 outright the investment property, by virtue of the debtor's
5 consent or applicable legal rules, a purchaser from the secured
6 party typically will cut off the debtor's rights in the
7 investment property or be immune from the debtor's claims. See
8 Section 9-207 [Maine cite section 9-1207], Comments 5 and 6. If
9 the investment property is a security, the debtor normally would
10 retain no interest in the security following the purchase from
11 the secured party, and a claim of the debtor against the secured
12 party for redemption (Section 9-623 [Maine cite section 9-1623])
13 or otherwise with respect to the security would be a purely
14 personal claim. If the investment property transferred by the
15 secured party is a financial asset in which the debtor had a
16 security entitlement credited to a securities account maintained
17 with the secured party as a securities intermediary, the debtor's
18 claim against the secured party could arise as a part of its
19 securities account notwithstanding its personal nature. (This
20 claim would be analogous to a "credit balance" in the securities
21 account, which is a component of the securities account even
22 though it is a personal claim against the intermediary.) In the
23 case in which the debtor may retain an interest in investment
24 property notwithstanding a repledge or sale by the secured party,
25 subsection (c) [Maine cite subsection (3)] makes clear that the
26 security interest will remain perfected by control.

27 **§9-1315. Secured party's rights on disposition of collateral and**
28 **in proceeds**

29 (1) Except as otherwise provided in this Article and in
30 section 2-403, subsection (2):

31 (a) A security interest or agricultural lien continues in
32 collateral notwithstanding sale, lease, license, exchange or
33 other disposition thereof unless the secured party
34 authorized the disposition free of the security interest or
35 agricultural lien; and
36 agricultural lien; and

37 (b) A security interest attaches to any identifiable
38 proceeds of collateral.
39

40 (2) Proceeds that are commingled with other property are
41 identifiable proceeds:

42 (a) If the proceeds are goods, to the extent provided by
43 section 9-1336; and
44

45 (b) If the proceeds are not goods, to the extent that the
46 secured party identifies the proceeds by a method of
47 tracing, including application of equitable principles, that
48 tracing, including application of equitable principles, that
49 tracing, including application of equitable principles, that
50 tracing, including application of equitable principles, that

2 transferee or, in an appropriate case, maintain an action for
conversion. The secured party may claim both any proceeds and
4 the original collateral but, of course, may have only one
satisfaction.

6 In many cases, a purchaser or other transferee of collateral
will take free of a security interest, and the secured party's
8 only right will be to proceeds. For example, the general rule
does not apply, and a security interest does not continue in
10 collateral, if the secured party authorized the disposition, in
the agreement that contains the security agreement or otherwise.
12 Subsection (a)(1) [Maine cite subsection (1), paragraph (a)]
adopts the view of PEB Commentary No. 3 and makes explicit that
14 the authorized disposition to which it refers is an authorized
disposition "free of" the security interest or agricultural
16 lien. The secured party's right to proceeds under this section
or under the express terms of an agreement does not in itself
18 constitute an authorization of disposition. The change in
language from former Section 9-306(2) is not intended to address
20 the frequently litigated situation in which the effectiveness of
the secured party's consent to a disposition is conditioned upon
22 the secured party's receipt of the proceeds. In that situation,
subsection (a) [Maine cite subsection (1)] leaves the
24 determination of authorization to the courts, as under former
Article 9.

26 This Article contains several provisions under which a
transferee takes free of a security interest or agricultural
28 lien. For example, Section 9-317 [Maine cite section 9-1317]
states when transferees take free of unperfected security
30 interests; Sections 9-320 and 9-321 [Maine cite section 9-1320
and section 9-1321] on goods, 9-321 [Maine cite section 9-1321]
32 on general intangibles, 9330 [Maine cite section 9-1330] on
chattel paper and instruments, and 9331 [Maine cite section
34 9-1331] on negotiable instruments, negotiable documents, and
securities state when purchasers of such collateral take free of
36 a security interest, even though perfected and even though the
disposition was not authorized. Section 9-332 [Maine cite
38 section 9-1332] enables most transferees (including
non-purchasers) of funds from a deposit account and most
40 transferees of money to take free of a perfected security
interest in the deposit account or money.
42

44 Likewise, the general rule that a security interest survives
disposition does not apply if the secured party entrusts goods
46 collateral to a merchant who deals in goods of that kind and the
merchant sells the collateral to a buyer in ordinary course of
48 business. Section 2-403(2) gives the merchant the power to
transfer all the secured party's rights to the buyer, even if the
50 sale is wrongful as against the secured party. Thus, under

2 subsection (a)(1) [Maine cite subsection (1), paragraph (a)], an
entrusting secured party runs the same risk as any other
entruster.

4
6 **3. Secured Party's Right to Identifiable Proceeds.** Under
subsection (a)(2) [Maine cite subsection (1), paragraph (b)],
8 which derives from former Section 9-306(2), a security interest
attaches to any identifiable "proceeds," as defined in Section
10 9-102 [Maine cite section 9-1102]. See also Section 9-203(f)
[Maine cite section 9-1203, subsection (6)]. Subsection (b)
12 [Maine cite subsection (2)] is new. It indicates when proceeds
commingled with other property are identifiable proceeds and
14 permits the use of whatever methods of tracing other law permits
with respect to the type of property involved. Among the
"equitable principles" whose use other law may permit is the
16 "lowest intermediate balance rule." See Restatement (2d), Trusts
§202.

18
20 **4. Automatic Perfection in Proceeds: General Rule.** Under
subsection (c) [Maine cite subsection (3)], a security interest
22 in proceeds is a perfected security interest if the security
interest in the original collateral was perfected. This Article
24 extends the period of automatic perfection in proceeds from ten
days to 20 days. Generally, a security interest in proceeds
26 becomes unperfected on the 21st day after the security interest
attaches to the proceeds. See subsection (d) [Maine cite
subsection (4)]. The loss of perfected status under subsection
28 (d) [Maine cite subsection (4)] is prospective only. Compare,
e.g., Section 9-515(c) [Maine cite section 9-1515, subsection
30 (3)] (deeming security interest unperfected retroactively).

32 **5. Automatic Perfection in Proceeds: Proceeds Acquired
with Cash Proceeds.** Subsection (d)(1) [Maine cite subsection
34 (4), paragraph (a)] derives from former Section 9-306(3)(a). It
carries forward the basic rule that a security interest in
36 proceeds remains perfected beyond the period of automatic
perfection if a filed financing statement covers the original
38 collateral (e.g., inventory) and the proceeds are collateral in
which a security interest may be perfected by filing in the
40 office where the financing statement has been filed (e.g.,
equipment). A different rule applies if the proceeds are
42 acquired with cash proceeds, as is the case if the original
collateral (inventory) is sold for cash (cash proceeds) that is
44 used to purchase equipment (proceeds). Under these
circumstances, the security interest in the equipment proceeds
46 remains perfected only if the description in the filed financing
indicates the type of property constituting the proceeds (e.g.,
48 "equipment").

2 This section reaches the same result but takes a different
3 approach. It recognizes that the treatment of proceeds acquired
4 with cash proceeds under former Section 9-306(3)(a) essentially
5 was superfluous. In the example, had the filing covered
6 "equipment" as well as "inventory," the security interest in the
7 proceeds would have been perfected under the usual rules
8 governing after-acquired equipment (see former Sections 9-302,
9-303); paragraph (3)(a) added only an exception to the general
10 rule. Subsection (d)(1)(C) [Maine cite subsection (4), paragraph
11 (a), subparagraph (iii)] of this section takes a more direct
12 approach. It makes the general rule of continued perfection
13 inapplicable to proceeds acquired with cash proceeds, leaving
14 perfection of a security interest in those proceeds to the
15 generally applicable perfection rules under subsection (d)(3)
16 [Maine cite subsection (4), paragraph (c)].

17 **Example 1:** Lender perfects a security interest in Debtor's
18 inventory by filing a financing statement covering "inventory."
19 Debtor sells the inventory and deposits the buyer's check into a
20 deposit account. Debtor draws a check on the deposit account and
21 uses it to pay for equipment. Under the "lowest intermediate
22 balance rule," which is a permitted method of tracing in the
23 relevant jurisdiction, see Comment 3, the funds used to pay for
24 the equipment were identifiable proceeds of the inventory.
25 Because the proceeds (equipment) were acquired with cash proceeds
26 (deposit account), subsection (d)(1) [Maine cite subsection (4),
27 paragraph (a)] does not extend perfection beyond the 20-day
28 automatic period.

29 **Example 2:** Lender perfects a security interest in Debtor's
30 inventory by filing a financing statement covering "all debtor's
31 property." As in Example 1, Debtor sells the inventory, deposits
32 the buyer's check into a deposit account, draws a check on the
33 deposit account, and uses the check to pay for equipment. Under
34 the "lowest intermediate balance rule," which is a permitted
35 method of tracing in the relevant jurisdiction, see Comment 3,
36 the funds used to pay for the equipment were identifiable
37 proceeds of the inventory. Because the proceeds (equipment) were
38 acquired with cash proceeds (deposit account), subsection (d)(1)
39 [Maine cite subsection (4), paragraph (a)] does not extend
40 perfection beyond the 20-day automatic period. However, because
41 the financing statement is sufficient to perfect a security
42 interest in debtor's equipment, under subsection (d)(3) [Maine
43 cite subsection (4), paragraph (c)] the security interest in the
44 equipment proceeds remains perfected beyond the 20-day period.
45

46
47 **6. Automatic Perfection in Proceeds: Lapse or Termination**
48 **of Financing Statement During 20-Day Period; Perfection Under**
49 **Other Statute or Treaty.** Subsection (e) [Maine cite subsection
50 (5)] provides that a security interest in proceeds perfected

2 under subsection (d)(1) [Maine cite subsection (4), paragraph
3 (a)] ceases to be perfected when the financing statement covering
4 the original collateral lapses or is terminated. If the lapse or
5 termination occurs before the 21st day after the security
6 interest attaches, however, the security interest in the proceeds
7 remains perfected until the 21st day. Section 9-311(b) [Maine
8 cite section 9-1311, subsection (2)] provides that compliance
9 with the perfection requirements of a statute or treaty described
10 in Section 9-311(a) [Maine cite section 9-1311, subsection (1)]
11 "is equivalent to the filing of a financing statement." It
12 follows that collateral subject to a security interest perfected
13 by such compliance under Section 9-311(b) [Maine cite section
14 9-1311, subsection (2)] is covered by a "filed financing
15 statement" within the meaning of Section 9-315(d) and (e) [Maine
16 cite section 9-1315, subsections (4) and (5)].

17 **7. Automatic Perfection in Proceeds: Continuation of**
18 **Perfection in Cash Proceeds.** Former Section 9-306(3)(b) provided
19 that if a filed financing statement covered original collateral,
20 a security interest in identifiable cash proceeds of the
21 collateral remained perfected beyond the ten-day period of
22 automatic perfection. Former Section 9-306(3)(c) contained a
23 similar rule with respect to identifiable cash proceeds of
24 investment property. Subsection (d)(2) [Maine cite subsection
25 (4), paragraph (b)] extends the benefits of former Sections
26 9-306(3)(b) and (3)(c) to identifiable cash proceeds of all types
27 of original collateral in which a security interest is perfected
28 by any method. Under subsection (d)(2) [Maine cite subsection
29 (4), paragraph (b)], if the security interest in the original
30 collateral was perfected, a security interest in identifiable
31 cash proceeds will remain perfected indefinitely, regardless of
32 whether the security interest in the original collateral remains
33 perfected. In many cases, however, a purchaser or other
34 transferee of the cash proceeds will take free of the perfected
35 security interest. See, e.g., Sections 9-330(d) [Maine cite
36 section 9-1330, subsection (4)] (purchaser of check), 9-331
37 [Maine cite section 9-1331] (holder in due course of check),
38 9-332 [Maine cite section 9-1322] (transferee of money or funds
39 from a deposit account).

40 **8. Insolvency Proceedings; Returned and Repossessed Goods.**
41 This Article deletes former Section 9-306(4), which dealt with
42 proceeds in insolvency proceedings. Except as otherwise provided
43 by the Bankruptcy Code, the debtor's entering into bankruptcy
44 does not affect a secured party's right to proceeds.

45 This Article also deletes former Section 9-306(5), which
46 dealt with returned and repossessed goods. Section 9-330 [Maine
47 cite section 9-1330], Comments 9 to 11 explain and clarify the

2 application of priority rules to returned and repossessed goods
as proceeds of chattel paper.

4 9. **Proceeds of Collateral Subject to Agricultural Lien.**
This Article does not determine whether a lien extends to
6 proceeds of farm products encumbered by an agricultural lien.
If, however, the proceeds are themselves farm products on which
8 an "agricultural lien" (defined in Section 9-102 [Maine cite
section 9-1102]) arises under other law, then the
10 agricultural-lien provisions of this Article apply to the
agricultural lien on the proceeds in the same way in which they
12 would apply had the farm products not been proceeds.

14 **§9-1316. Continued perfection of security interest following
change in governing law**

16 (1) A security interest perfected pursuant to the law of
18 the jurisdiction designated in section 9-1301, subsection (1) or
section 9-1305, subsection (3) remains perfected until the
20 earliest of:

22 (a) The time perfection would have ceased under the law of
that jurisdiction;

24 (b) The expiration of 4 months after a change of the
26 debtor's location to another jurisdiction;

28 (c) The expiration of one year after a transfer of
collateral to a person that thereby becomes a debtor and is
30 located in another jurisdiction; or

32 (d) The expiration of one year after a new debtor located
in another jurisdiction becomes bound under section 9-1203,
34 subsection (4).

36 (2) If a security interest described in subsection (1)
becomes perfected under the law of the other jurisdiction before
38 the earliest time or event described in that subsection, it
remains perfected thereafter. If the security interest does not
40 become perfected under the law of the other jurisdiction before
the earliest time or event, it becomes unperfected and is deemed
42 never to have been perfected as against a purchaser of the
collateral for value.

44 (3) A possessory security interest in collateral, other
46 than goods covered by a certificate of title and collateral, as
extracted, consisting of goods, remains continuously perfected if:

2 (a) The collateral is located in one jurisdiction and
3 subject to a security interest perfected under the law of
4 that jurisdiction;

5 (b) Thereafter the collateral is brought into another
6 jurisdiction; and

7 (c) Upon entry into the other jurisdiction, the security
8 interest is perfected under the law of the other
9 jurisdiction.

10 (4) Except as otherwise provided in subsection (5), a
11 security interest in goods covered by a certificate of title that
12 is perfected by any method under the law of another jurisdiction
13 when the goods become covered by a certificate of title from this
14 State remains perfected until the security interest would have
15 become unperfected under the law of the other jurisdiction had
16 the goods not become so covered.

17 (5) A security interest described in subsection (4) becomes
18 unperfected as against a purchaser of the goods for value and is
19 deemed never to have been perfected as against a purchaser of the
20 goods for value if the applicable requirements for perfection
21 under section 9-1311, subsection (2) or section 9-1313 are not
22 satisfied before the earlier of:

23 (a) The time the security interest would have become
24 unperfected under the law of the other jurisdiction had the
25 goods not become covered by a certificate of title from this
26 State; or

27 (b) The expiration of 4 months after the goods had become
28 so covered.

29 (6) A security interest in deposit accounts,
30 letter-of-credit rights or investment property that is perfected
31 under the law of the bank's jurisdiction, the issuer's
32 jurisdiction, a nominated person's jurisdiction, the securities
33 intermediary's jurisdiction or the commodity intermediary's
34 jurisdiction, as applicable, remains perfected until the earlier
35 of:

36 (a) The time the security interest would have become
37 unperfected under the law of that jurisdiction; or

38 (b) The expiration of 4 months after a change of the
39 applicable jurisdiction to another jurisdiction.

40 (7) If a security interest described in subsection (6)
41 becomes perfected under the law of the other jurisdiction before

2 the earlier of the time or the end of the period described in
3 that subsection, it remains perfected thereafter. If the
4 security interest does not become perfected under the law of the
5 other jurisdiction before the earlier of that time or the end of
6 that period, it becomes unperfected and is deemed never to have
7 been perfected as against a purchaser of the collateral for value.

8 **Official Comment**

10 1. **Source.** Former Section 9-103(1)(d), (2)(b), (3)(e), as
11 modified.

12 2. **Continued Perfection.** This section deals with continued
13 perfection of security interests that have been perfected under
14 the law of another jurisdiction. The fact that the law of a
15 particular jurisdiction ceases to govern perfection under
16 Sections 9-301 through 9-307 [Maine cite sections 9-1301 to
17 9-1307] does not necessarily mean that a security interest
18 perfected under that law automatically becomes unperfected. To
19 the contrary: This section generally provides that a security
20 interest perfected under the law of one jurisdiction remains
21 perfected for a fixed period of time (four months or one year,
22 depending on the circumstances), even though the jurisdiction
23 whose law governs perfection changes. However, cessation of
24 perfection under the law of the original jurisdiction cuts short
25 the fixed period. The 4-month and one-year periods are long
26 enough for a secured party to discover in most cases that the law
27 of a different jurisdiction governs perfection and to reperfect
28 (typically by filing) under the law of that jurisdiction. If a
29 secured party properly reperfects a security interest before it
30 becomes unperfected under subsection (a) [Maine cite subsection
31 (1)], then the security interest remains perfected continuously
32 thereafter. See subsection (b) [Maine cite subsection (2)].

34 **Example 1:** Debtor is a general partnership whose chief
35 executive office is in Pennsylvania. Lender perfects a security
36 interest in Debtor's equipment by filing in Pennsylvania on May
37 15, 2002. On April 1, 2005, without Lender's knowledge, Debtor
38 moves its chief executive office to New Jersey. Lender's
39 security interest remains perfected for four months after the
40 move. See subsection (a)(2) [Maine cite subsection (1),
41 paragraph (b)].

44 **Example 2:** Debtor is a general partnership whose chief
45 executive office is in Pennsylvania. Lender perfects a security
46 interest in Debtor's equipment by filing in Pennsylvania on May
47 15, 2002. On April 1, 2007, without Lender's knowledge, Debtor
48 moves its chief executive office to New Jersey. Lender's
49 security interest remains perfected only through May 14, 2007,
50 when the effectiveness of the filed financing statement lapses.

2 See subsection (a)(1) [Maine cite subsection (1), paragraph
3 (a)]. Although, under these facts, Lender would have only a
4 short period of time to discover that Debtor had relocated and to
5 reperfect under New Jersey law, Lender could have protected
6 itself by filing a continuation statement in Pennsylvania before
7 Debtor relocated. By doing so, Lender would have prevented lapse
8 and allowed itself the full four months to discover Debtor's new
9 location and refile there or, if Debtor is in default, to perfect
10 by taking possession of the equipment.

11 **Example 3:** Under the facts of Example 2, Lender files a
12 financing statement in New Jersey before the effectiveness of the
13 Pennsylvania financing statement lapses. Under subsection (b)
14 [Maine cite subsection (2)], Lender's security interest is
15 continuously perfected beyond May 14, 2007, for a period
16 determined by New Jersey's Article 9.

17 Subsection (a)(3) [Maine cite subsection (1), paragraph (c)]
18 allows a one-year period in which to reperfect. The longer
19 period is necessary, because, even with the exercise of due
20 diligence, the secured party may be unable to discover that the
21 collateral has been transferred to a person located in another
22 jurisdiction.

23 **Example 4:** Debtor is a Pennsylvania corporation. Lender
24 perfects a security interest in Debtor's equipment by filing in
25 Pennsylvania. Debtor's shareholders decide to "reincorporate" in
26 Delaware. They form a Delaware corporation (Newcorp) into which
27 they merge Debtor. The merger effectuates a transfer of the
28 collateral from Debtor to Newcorp, which thereby becomes a debtor
29 and is located in another jurisdiction. Under subsection (a)(3),
30 [Maine cite subsection (1), paragraph (c)] the security interest
31 remains perfected for one year after the merger. If a financing
32 statement is filed in Delaware against Newcorp within the year
33 following the merger, then the security interest remains
34 perfected thereafter for a period determined by Delaware's
35 Article 9.

36 Note that although Newcorp is a "new debtor" as defined in
37 Section 9-102, the application of subsection (a)(3) [Maine cite
38 subsection (1), paragraph (c)] is not limited to transferees who
39 are new debtors. Note also that, under Section 9-507, the
40 financing statement naming Debtor remains effective even though
41 Newcorp has become the debtor.

42 This section addresses security interests that are perfected
43 (i.e., that have attached and as to which any required perfection
44 step has been taken) before the debtor changes its location. It
45 does not apply to security interests that have not attached
46 before the location changes.

2 **Example 5:** Debtor is a Pennsylvania corporation. Debtor
3 grants to Lender a security interest in Debtor's existing and
4 after-acquired inventory. Lender perfects by filing in
5 Pennsylvania. Debtor's shareholders decide to "reincorporate" in
6 Delaware. They form a Delaware corporation (Newcorp) into which
7 they merge Debtor. By virtue of the merger, Newcorp becomes
8 bound by Debtor's security agreement. See Section 9-203 [Maine
9 cite section 9-1203]. After the merger, Newcorp acquires
10 inventory to which Lender's security interest attaches. Because
11 Newcorp is located in Delaware, Delaware law governs perfection
12 of a security interest in Newcorp's inventory. See Sections
13 9-301, 9-307 [Maine cite sections 9-1301, 9-1307]. Having failed
14 to perfect under Delaware law, Lender holds an unperfected
15 security interest in the inventory acquired by Newcorp after the
16 merger. The same result follows regardless of the name of the
17 Delaware corporation (i.e., even if the Delaware corporation and
18 Debtor have the same name).

20 **3. Retroactive Unperfection.** Subsection (b) [Maine cite
21 subsection (2)] sets forth the consequences of the failure to
22 reperfect before perfection ceases under subsection (a) [Maine
23 cite subsection (1)]: the security interest becomes unperfected
24 prospectively and, as against purchasers for value, including
25 buyers and secured parties, but not as against donees or lien
26 creditors, retroactively. The rule applies to agricultural
27 liens, as well. See also Section 9-515 [Maine cite section
28 9-1515] (taking the same approach with respect to lapse).
29 Although this approach creates the potential for circular
30 priorities, the alternative-retroactive unperfection against lien
31 creditors-would create substantial and unjustifiable preference
32 risks.

34 **Example 6:** Under the facts of Example 4, six months after
35 the merger, Buyer bought from Newcorp some equipment formerly
36 owned by Debtor. At the time of the purchase, Buyer took subject
37 to Lender's perfected security interest, of which Buyer was
38 unaware. See Section 9-315(a)(1) [Maine cite section 9-1315,
39 subsection (1), paragraph (a)]. However, subsection (b) [Maine
40 cite subsection (2)] provides that if Lender fails to reperfect
41 in Delaware within a year after the merger, its security interest
42 becomes unperfected and is deemed never to have been perfected
43 against Buyer. Having given value and received delivery of the
44 equipment without knowledge of the security interest and before
45 it was perfected, Buyer would take free of the security
46 interest. See Section 9-317(b) [Maine cite section 9-1317,
47 subsection (2)].

48 **Example 7:** Under the facts of Example 4, one month before
49 the merger, Debtor created a security interest in certain
50

2 equipment in favor of Financer, who perfected by filing in
3 Pennsylvania. At that time, Financer's security interest is
4 subordinate to Lender's. See Section 9-322(a)(1) [Maine cite
5 section 9-1322, subsection (1), paragraph (a)]. Financer
6 reperfects by filing in Delaware within a year after the merger,
7 but Lender fails to do so. Under subsection (b) [Maine cite
8 subsection (2)], Lender's security interest is deemed never to
9 have been perfected against Financer, a purchaser for value.
10 Consequently, under Section 9-322(a)(2) [Maine cite section
11 9-1322, subsection (1), paragraph (b)], Financer's security
12 interest is now senior.

13
14 Of course, the expiration of the time period specified in
15 subsection (a) [Maine cite subsection (1)] does not of itself
16 prevent the secured party from later reperfecting under the law
17 of the new jurisdiction. If the secured party does so, however,
18 there will be a gap in perfection, and the secured party may lose
19 priority as a result. Thus, in Example 7, if Lender perfects by
20 filing in Delaware more than one year under the merger, it will
21 have a new date of filing and perfection for purposes of Section
22 9-322(a)(1) [Maine cite section 9-1322, subsection (1), paragraph
23 (a)]. Financer's security interest, whose perfection dates back
24 to the filing in Pennsylvania under subsection (b) [Maine cite
25 subsection (2)], will remain senior.

26 **4. Possessory Security Interests.** Subsection (c) [Maine
27 cite subsection (3)] deals with continued perfection of
28 possessory security interests. It applies not only to security
29 interests perfected solely by the secured party's having taken
30 possession of the collateral. It also applies to security
31 interests perfected by a method that includes as an element of
32 perfection the secured party's having taken possession, such as
33 perfection by taking delivery of a certificated security in
34 registered form, see Section 9-313(a) [Maine cite section 9-1313,
35 subsection (1)] and perfection by obtaining control over a
36 certificated security. See Section 9-314(a) [Maine cite section
37 9-1314, subsection (1)].

38
39 **5. Goods Covered by Certificate of Title.** Subsections (d)
40 and (e) [Maine cite subsections (4) and (5)] address continued
41 perfection of a security interest in goods covered by a
42 certificate of title. The following examples explain the
43 operation of those subsections.

44
45 **Example 8:** Debtor's automobile is covered by a certificate
46 of title issued by Illinois. Lender perfects a security interest
47 in the automobile by complying with Illinois'
48 certificate-of-title statute. Thereafter, Debtor applies for a
49 certificate of title in Indiana. Six months thereafter, Creditor
50 acquires a judicial lien on the automobile. Under Section

2 9-303(b) [Maine cite section 9-1303, subsection (2)], Illinois
4 law ceases to govern perfection; rather, once Debtor delivers the
6 application and applicable fee to the appropriate Indiana
8 authority, Indiana law governs. Nevertheless, under Indiana's
10 Section 9-316(d), Lender's security interest remains perfected
12 until it would become unperfected under Illinois law had no
14 certificate of title been issued by Indiana. (For example,
16 Illinois' certificate-of-title statute may provide that the
18 surrender of an Illinois certificate of title in connection with
20 the issuance of a certificate of title by another jurisdiction
22 causes a security interest noted thereon to become unperfected.)
24 If Lender's security interest remains perfected, it is senior to
26 Creditor's judicial lien.

28 **Example 9:** Under the facts in Example 8, five months after
30 Debtor applies for an Indiana certificate of title, Debtor sells
32 the automobile to Buyer. Under subsection (e)(2) [Maine cite
34 subsection (5), paragraph (b)], because Lender did not reperfect
36 within the four months after the goods became covered by the
38 Indiana certificate of title, Lender's security interest is
40 deemed never to have been perfected against Buyer. Under Section
42 9-317(b) [Maine cite section 9-1317, subsection (2)], Buyer is
44 likely to take free of the security interest. Lender could have
46 protected itself by perfecting its security interest either under
48 Indiana's certificate-of-title statute, see Section 9-311 [Maine
50 cite section 9-1311], or, if it had a right to do so under an
agreement or Section 9-610 [Maine cite section 9-1610], by taking
possession of the automobile. See Section 9-313(b) [Maine cite
section 9-1313, subsection (2)].

The results in Examples 8 and 9 do not depend on the fact
that the original perfection was achieved by notation on a
certificate of title. Subsection (d) [Maine cite subsection (4)]
applies regardless of the method by which a security interest is
perfected under the law of another jurisdiction when the goods
became covered by a certificate of title from this State.

Section 9-337 [Maine cite section 9-1337] affords protection
to a limited class of persons buying or acquiring a security
interest in the goods while a security interest is perfected
under the law of another jurisdiction but after this State has
issued a clean certificate of title.

**6. Deposit Accounts, Letter-of-Credit Rights and Investment
Property.** Subsections (f) and (g) [Maine cite subsections (6)
and (7)] address changes in the jurisdiction of a bank, issuer of
an uncertificated security, issuer of or nominated person under a
letter of credit, securities intermediary, and commodity
intermediary. The provisions are analogous to those of
subsections (a) and (b) [Maine cite subsections (1) and (2)].

2 general intangibles or investment property other than a
3 certificated security takes free of a security interest if the
4 licensee or buyer gives value without knowledge of the security
5 interest and before it is perfected.

6 (5) Except as otherwise provided in sections 9-1320 and
7 9-1321, if a person files a financing statement with respect to a
8 purchase-money security interest before or within 20 days after
9 the debtor receives delivery of the collateral, the security
10 interest takes priority over the rights of a buyer, lessee or
11 lien creditor that arise between the time the security interest
12 attaches and the time of filing.

14 **Official Comment**

16 1. **Source.** Former Sections 9-301, 2A-307(2).

18 2. **Scope of This Section.** As did former Section 9-301,
19 this section lists the classes of persons who take priority over,
20 or take free of, an unperfected security interest. Section 9-308
21 [Maine cite section 9-1308] explains when a security interest or
22 agricultural lien is "perfected." A security interest that has
23 attached (see Section 9-203 [Maine cite section 9-1203]) but as
24 to which a required perfection step has not been taken is
25 "unperfected." Certain provisions have been moved from former
26 Section 9-301. The definition of "lien creditor" now appears in
27 Section 9-102 [Maine cite section 9-1102], and the rules
28 governing priority in future advances are found in Section 9-323
29 [Maine cite section 9-1323].

30 3. **Competing Security Interests.** Section 9-322 [Maine cite
31 section 9-1322] states general rules for determining priority
32 among conflicting security interests and refers to other sections
33 that state special rules of priority in a variety of situations.
34 The security interests given priority under Section 9-322 [Maine
35 cite section 9-1322] and the other sections to which it refers
36 take priority in general even over a perfected security
37 interest. A fortiori they take priority over an unperfected
38 security interest. Paragraph (a)(1) [Maine cite subsection (1),
39 paragraph (a)] of this section so states.

42 4. **Filed but Unattached Security Interest vs. Lien**
43 **Creditor.** Under former Section 9-301(1)(b), a lien creditor's
44 rights had priority over an unperfected security interest.
45 Perfection required attachment (former Section 9-303) and
46 attachment required the giving of value (former Section 9-203).
47 It followed that, if a secured party had filed a financing
48 statement but had not yet given value, an intervening lien
49 creditor whose lien arose after filing but before attachment of
50 the security interest acquired rights that are senior to those of

2 the secured party who later gives value. This result comported
with the nemo dat concept: When the security interest attached,
4 the collateral was already subject to the judicial lien.

6 On the other hand, this result treated the first secured
advance differently from all other advances. The special rule
8 for future advances in former Section 9-301(4) (substantially
reproduced in Section 9-323(b) [Maine cite section 9-1323,
10 subsection (2)]) afforded priority to a discretionary advance
made by a secured party within 45 days after the lien creditor's
12 rights arose as long as the secured party was "perfected" when
the lien creditor's lien arose-i.e., as long as the advance was
14 not the first one and an earlier advance had been made.

16 Subsection (a)(2) [Maine cite subsection (1), paragraph (b)]
revises former Section 9-301(1)(b) and treats the first advance
the same as subsequent advances. That is, a judicial lien that
18 arises after a financing statement is filed and before the
security interest attaches and becomes perfected is subordinate
20 to all advances secured by the security interest, even the first
advance, except as otherwise provided in Section 9-323(b) [Maine
22 cite section 9-1323, subsection (2)]. However, if the security
interest becomes unperfected (e.g., because the effectiveness of
24 the filed financing statement lapses) before the judicial lien
arises, the security interest is subordinate. If a financing
26 statement is filed but a security interest does not attach, then
no priority contest arises. The lien creditor has the only claim
28 to the property.

30 **5. Security Interest of Consignor or Receivables Buyer vs.**
Lien Creditor. Section 1-201(37) defines "security interest" to
32 include the interest of most true consignors of goods and the
interest of most buyers of certain receivables (accounts, chattel
34 paper, payment intangibles, and promissory notes). A consignee
of goods or a seller of accounts or chattel paper each is deemed
36 to have rights in the collateral which a lien creditor may reach,
as long as the competing security interest of the consignor or
38 buyer is unperfected. This is so even though, as between the
consignor and the debtor-consignee, the latter has only limited
40 rights, and, as between the buyer and debtor-seller, the latter
does not have any rights in the collateral. See Sections 9-318
42 [Maine cite section 9-1318] (seller), 9-319 [Maine cite section
9-1319] (consignee). Security interests arising from sales of
44 payment intangibles and promissory notes are automatically
perfected. See Section 9-309 [Maine cite section 9-1309].
46 Accordingly, a subsequent judicial lien always would be
subordinate to the rights of a buyer of those types of
48 receivables.

2 **6. Purchasers Other Than Secured Parties.** Subsections (b),
3 (c), and (d) [Maine cite subsections (2), (3) and (4)] afford
4 priority over an unperfected security interest to certain
5 purchasers (other than secured parties) of collateral. They
6 derive from former Sections 9-301(1)(c), 2A-307(2), and
7 9-301(d). Former Section 9-301(1)(c) and (1)(d) provided that
8 unperfected security interests are "subordinate" to the rights of
9 certain purchasers. But, as former Comment 9 suggested, the
10 practical effect of subordination in this context is that the
11 purchaser takes free of the security interest. To avoid any
12 possible misinterpretation, subsections (b) and (d) [Maine cite
13 subsections (2) and (4)] of this section use the phrase "takes
14 free."

15 Subsection (b) [Maine cite subsection (2)] governs goods, as
16 well as intangibles of the type whose transfer is effected by
17 physical delivery of the representative piece of paper (tangible
18 chattel paper, documents, instruments, and security
19 certificates). To obtain priority, a buyer must both give value
20 and receive delivery of the collateral without knowledge of the
21 existing security interest and before perfection. Even if the
22 buyer gave value without knowledge and before perfection, the
23 buyer would take subject to the security interest if perfection
24 occurred before physical delivery of the collateral to the
25 buyer. Subsection (c) [Maine cite subsection (3)] contains a
26 similar rule with respect to lessees of goods. Note that a
27 lessee of goods in ordinary course of business takes free of all
28 security interests created by the lessor, even if perfected. See
29 Section 9-321 [Maine cite section 9-1321].

30 Normally, there will be no question when a buyer of chattel
31 paper, documents, instruments, or security certificates "receives
32 delivery" of the property. See Section 1-201 (defining
33 "delivery"). However, sometimes a buyer or lessee of goods, such
34 as complex machinery, takes delivery of the goods in stages and
35 completes assembly at its own location. Under those
36 circumstances, the buyer or lessee "receives delivery" within the
37 meaning of subsections (b) and (c) [Maine cite subsections (2)
38 and (3)] when, after an inspection of the portion of the goods
39 remaining with the seller or lessor, it would be apparent to a
40 potential lender to the seller or lessor that another person
41 might have an interest in the goods.

42 The rule of subsection (b) [Maine cite subsection (2)]
43 obviously is not appropriate where the collateral consists of
44 intangibles and there is no representative piece of paper whose
45 physical delivery is the only or the customary method of
46 transfer. Therefore, with respect to such intangibles (accounts,
47 electronic chattel paper, general intangibles, and investment
48 property other than certificated securities), subsection (d)

2 [Maine cite subsection (4)] gives priority to any buyer who gives
value without knowledge, and before perfection, of the security
4 interest. A licensee of a general intangible takes free of an
unperfected security interest in the general intangible under the
6 same circumstances. Note that a licensee of a general intangible
in ordinary course of business takes rights under a nonexclusive
license free of security interests created by the licensor, even
8 if perfected. See Section 9-321 [Maine cite section 9-1321].

10 Unless Section 9-109 [Maine cite section 9-1109] excludes
the transaction from this Article, a buyer of accounts, chattel
12 paper, payment intangibles, or promissory notes is a "secured
party" (defined in Section 9-102) [Maine cite section 9-1102],
14 and subsections (b) and (d) [Maine cite subsections (2) and (4)]
do not determine priority of the security interest created by the
16 sale. Rather, the priority rules generally applicable to
competing security interests apply. See Section 9-322 [Maine
18 cite section 9-1322].

20 **7. Agricultural Liens.** Subsections (a), (b), and (c)
[Maine cite subsections (1), (2) and (3)] subordinate unperfected
22 agricultural liens in the same manner in which they subordinate
unperfected security interests.

24 **8. Purchase-Money Security Interests.** Subsection (e)
26 [Maine cite subsection (5)] derives from former Section
9-301(2). It provides that, if a purchase-money security
28 interest is perfected by filing no later than 20 days after the
debtor receives delivery of the collateral, the security interest
30 takes priority over the rights of buyers, lessees, or lien
creditors which arise between the time the security interest
32 attaches and the time of filing. Subsection (e) [Maine cite
subsection (5)] differs from former Section 9-301(2) in two
34 significant respects. First, subsection (e) [Maine cite
subsection (5)] protects a purchase-money security interest
36 against all buyers and lessees, not just against transferees in
bulk. Second, subsection (e) [Maine cite subsection (5)]
38 conditions this protection on filing within 20, as opposed to
ten, days after delivery.

40 Section 9-311(b) [Maine cite section 9-1311, subsection (2)]
42 provides that compliance with the perfection requirements of a
statute or treaty described in Section 9-311(a) [Maine cite
44 section 9-1311, subsection (1)] "is equivalent to the filing of a
financing statement." It follows that a person who perfects a
46 security interest in goods covered by a certificate of title by
complying with the perfection requirements of an applicable
48 certificate-of-title statute "files a financing statement" within
the meaning of subsection (e) [Maine cite subsection (5)].

50

2 **§9-1318. No interest retained in right to payment that is sold;**
3 **rights and title of seller of account or chattel paper**
4 **with respect to creditors and purchasers**

6 (1) A debtor that has sold an account, chattel paper,
7 payment intangible or promissory note does not retain a legal or
8 equitable interest in the collateral sold.

10 (2) For purposes of determining the rights of creditors of,
11 and purchasers for value of an account or chattel paper from, a
12 debtor that has sold an account or chattel paper, while the
13 buyer's security interest is unperfected, the debtor is deemed to
14 have rights and title to the account or chattel paper identical
15 to those the debtor sold.

16 **Official Comment**

18 1. **Source.** New.

20 2. **Sellers of Accounts, Chattel Paper, Payment Intangibles,**
21 **and Promissory Notes.** Section 1-201(37) defines "security
22 interest" to include the interest of a buyer of accounts, chattel
23 paper, payment intangibles, or promissory notes. See also
24 Section 9-109(a) [Maine cite section 9-1109, subsection (1)] and
25 Comment 5. Subsection (a) [Maine cite subsection (1)] makes
26 explicit what was implicit, but perfectly obvious, under former
27 Article 9: The fact that a sale of an account or chattel paper
28 gives rise to a "security interest" does not imply that the
29 seller retains an interest in the property that has been sold.
30 To the contrary, a seller of an account or chattel paper retains
31 no interest whatsoever in the property to the extent that it has
32 been sold. Subsection (a) [Maine cite subsection (1)] also
33 applies to sales of payment intangibles and promissory notes,
34 transactions that were not covered by former Article 9. Neither
35 this Article nor the definition of "security interest" in Section
36 1-201 provides rules for distinguishing sales transactions from
37 those that create a security interest securing an obligation.

38 3. **Buyers of Accounts and Chattel Paper.** Another aspect of
39 sales of accounts and chattel paper also was implicit, and
40 equally obvious, under former Article 9: If the buyer's security
41 interest is unperfected, then for purposes of determining the
42 rights of certain third parties, the seller (debtor) is deemed to
43 have all rights and title that the seller sold. The seller is
44 deemed to have these rights even though, as between the parties,
45 it has sold all its rights to the buyer. Subsection (b) [Maine
46 cite subsection (2)] makes this explicit. As a consequence of
47 subsection (b) [Maine cite subsection (2)], if the buyer's
48 security interest is unperfected, the seller can transfer, and

2 the creditors of the seller can reach, the account or chattel
paper as if it had not been sold.

4 **Example:** Debtor sells accounts or chattel paper to Buyer1
and retains no interest in them. Buyer1 does not file a
6 financing statement. Debtor then sells the same receivables to
Buyer2. Buyer2 files a proper financing statement. Having sold
8 the receivables to Buyer1, Debtor would not have any rights in
the collateral so as to permit Buyer2's security (ownership)
10 interest to attach. Nevertheless, under this section, for
purposes of determining the rights of purchasers for value from
12 Debtor, Debtor is deemed to have the rights that Debtor sold.
Accordingly, Buyer2's security interest attaches, is perfected by
14 the filing, and, under Section 9-322 [Maine cite section 9-1322],
is senior to Buyer1's interest.

16
18 4. **Effect of Perfection.** If the security interest of a
buyer of accounts or chattel paper is perfected the usual result
20 would take effect: transferees from and creditors of the seller
could not acquire an interest in the sold accounts or chattel
22 paper. The same result would occur if payment intangibles or
promissory notes were sold, inasmuch as the buyer's security
24 interest is automatically perfected under Section 9-309 [Maine
cite section 9-1309].

26 **§9-1319. Rights and title of consignee with respect to creditors
and purchasers**

28
30 (1) Except as otherwise provided in subsection (2), for
purposes of determining the rights of creditors of, and
purchasers for value of goods from, a consignee, while the goods
32 are in the possession of the consignee, the consignee is deemed
to have rights and title to the goods identical to those the
34 consignor had or had power to transfer.

36 (2) For purposes of determining the rights of a creditor of
a consignee, law other than this Article determines the rights
38 and title of a consignee while goods are in the consignee's
possession if, under this Part, a perfected security interest
40 held by the consignor would have priority over the rights of the
creditor.

42 **Official Comment**

44 1. **Source.** New.

46
48 2. **Consignments.** This section takes an approach to
consignments similar to that taken by Section 9-318 [Maine cite
section 9-1318] with respect to buyers of accounts and chattel
50 paper. Revised Section 1-201(37) defines "security interest" to

2 include the interest of a consignor of goods under many true
3 consignments. Section 9-319(a) [Maine cite section 9-1319,
4 subsection (1)] provides that, for purposes of determining the
5 rights of certain third parties, the consignee is deemed to
6 acquire all rights and title that the consignor had, if the
7 consignor's security interest is unperfected. The consignee
8 acquires these rights even though, as between the parties, it
9 purchases a limited interest in the goods (as would be the case
10 in a true consignment, under which the consignee acquires only
11 the interest of a bailee). As a consequence of this section,
12 creditors of the consignee can acquire judicial liens and
13 security interests in the goods.

14 Insofar as creditors of the consignee are concerned, this
15 Article to a considerable extent reformulates the former law,
16 which appeared in former Sections 2-326 and 9-114, without
17 changing the results. However, neither Article 2 nor former
18 Article 9 specifically addresses the rights of non-ordinary
19 course buyers from the consignee. Former Section 9-114 contained
20 priority rules applicable to security interests in consigned
21 goods. Under this Article, the priority rules for purchase-money
22 security interests in inventory apply to consignments. See
23 Section 9-103(d) [Maine cite section 9-1103, subsection (4)].
24 Accordingly, a special section containing priority rules for
25 consignments no longer is needed. Section 9-317 [Maine cite
26 section 9-1317] determines whether the rights of a judicial lien
27 creditor are senior to the interest of the consignor, Sections
28 9-322 and 9-324 [Maine cite sections 9-1322 and 9-1324] govern
29 competing security interests in consigned goods, and Sections
30 9-317, 9-315, and 9-320 [Maine cite sections 9-1317, 9-1315 and
31 9-1320] determine whether a buyer takes free of the consignor's
32 interest.

34 The following example explains the operation of this section:

36 **Example 1:** SP1 delivers goods to Debtor in a transaction
37 constituting a "consignment" as defined in Section 9-102 [Maine
38 cite section 9-1102]. SP1 does not file a financing statement.
39 Debtor then grants a security interest in the goods to SP2. SP2
40 files a proper financing statement. Assuming Debtor is a mere
41 bailee, as in a "true" consignment, Debtor would not have any
42 rights in the collateral (beyond those of a bailee) so as to
43 permit SP2's security interest to attach to any greater rights.
44 Nevertheless, under this section, for purposes of determining the
45 rights of Debtor's creditors, Debtor is deemed to acquire SP-1's
46 rights. Accordingly, SP2's security interest attaches, is
47 perfected by the filing, and, under Section 9-322 [Maine cite
48 section 9-1322], is senior to SP1's interest.

2 3. **Effect of Perfection.** Subsection (b) [Maine cite
3 subsection (2)] contains a special rule with respect to
4 consignments that are perfected. If application of this Article
5 would result in the consignor having priority over a competing
6 creditor, then other law determines the rights and title of the
7 consignee.

8 **Example 2:** SP1 delivers goods to Debtor in a transaction
9 constituting a "consignment" as defined in Section 9-102 [Maine
10 cite section 9-1102]. SP1 files a proper financing statement.
11 Debtor then grants a security interest in the goods to SP2.
12 Under Section 9-322 [Maine cite section 9-1322], SP-1's security
13 interest is senior to SP-2's. Subsection (b) [Maine cite
14 subsection (2)] indicates that, for purposes of determining
15 SP-2's rights, other law determines the rights and title of the
16 consignee. If, for example, a consignee obtains only the
17 special property of a bailee, then SP-2's security interest would
18 attach only to that special property.

19 **Example 3:** SP-1 obtains a security interest in all Debtor's
20 existing and after-acquired inventory. SP-1 perfects its
21 security interest with a proper filing. Then SP2 delivers goods
22 to Debtor in a transaction constituting a "consignment" as
23 defined in Section 9-102 [Maine cite section 9-1102]. SP2 files
24 a proper financing statement but does not send notification to
25 SP-1 under Section 9-324(b) [Maine cite section 9-1324,
26 subsection (2)]. Accordingly, SP-2's security interest is junior
27 to SP-1's under Section 9-322(a) [Maine cite section 9-1322,
28 subsection (1)]. Under Section 9-319(a) [Maine cite section
29 9-1319, subsection (1)], Debtor is deemed to have the consignor's
30 rights and title, so that SP-1's security interest attaches to
31 SP-2's ownership interest in the goods. Thereafter, Debtor
32 grants a security interest in the goods to SP-3, and SP-3
33 perfects by filing. Because SP-2's perfected security interest
34 is senior to SP-3's under Section 9-322(a) [Maine cite section
35 9-1322, subsection (1)], Section 9-319(b) [Maine cite section
36 9-1319, subsection (2)] applies: Other law determines Debtor's
37 rights and title to the goods insofar as SP-3 is concerned, and
38 SP-3's security interest attaches to those rights.

39 **§9-1320. Buyer of goods**

40
41 (1) Except as otherwise provided in subsection (5), a buyer
42 in ordinary course of business, other than a person buying farm
43 products from a person engaged in farming operations, takes free
44 of a security interest created by the buyer's seller, even if the
45 security interest is perfected and the buyer knows of its
46 existence.
47
48

2 excludes from its operation buyers of "farm products"(defined in
3 Section 9-102 [Maine cite section 9-1102]) from a person engaged
4 in farming operations. The buyer in ordinary course of business
5 is defined as one who buys goods "in good faith, without
6 knowledge that the sale violates the rights of another person and
7 in the ordinary course." Subsection (a) [Maine cite subsection
8 (1)] provides that such a buyer takes free of a security
9 interest, even though perfected, and even though the buyer knows
10 the security interest exists. Reading the definition together
11 with the rule of law results in the buyer's taking free if the
12 buyer merely knows that a security interest covers the goods but
13 taking subject if the buyer knows, in addition, that the sale
14 violates a term in an agreement with the secured party.

15
16 As did former Section 9-307(1), subsection (a) [Maine cite
17 subsection (1)] applies only to security interests created by the
18 seller of the goods to the buyer in ordinary course. However,
19 under certain circumstances a buyer in ordinary course who buys
20 goods that were encumbered with a security interest created by a
21 person other than the seller may take free of the security
22 interest, as Example 2 explains. See also Comment 6, below.

23
24 **Example 1:** Manufacturer, who is in the business of
25 manufacturing appliances, owns manufacturing equipment subject to
26 a perfected security interest in favor of Lender. Manufacturer
27 sells the equipment to Dealer, who is in the business of buying
28 and selling used equipment. Buyer buys the equipment from
29 Dealer. Even if Buyer qualifies as a buyer in the ordinary
30 course of business, Buyer does not take free of Lender's security
31 interest under subsection (a) [Maine cite subsection (1)],
32 because Dealer did not create the security interest; Manufacturer
33 did.

34
35 **Example 2:** Manufacturer, who is in the business of
36 manufacturing appliances, owns manufacturing equipment subject to
37 a perfected security interest in favor of Lender. Manufacturer
38 sells the equipment to Dealer, who is in the business of buying
39 and selling used equipment. Lender learns of the sale but does
40 nothing to assert its security interest. Buyer buys the
41 equipment from Dealer. Inasmuch as Lender's acquiescence
42 constitutes an "entrusting" of the goods to Dealer within the
43 meaning of Section 2-403(3) Buyer takes free of Lender's security
44 interest under Section 2-403(2) if Buyer qualifies as a buyer in
45 ordinary course of business.

46
47 **4. Buyers of Farm Products.** This section does not enable a
48 buyer of farm products to take free of a security interest
created by the seller, even if the buyer is a buyer in ordinary
course of business. However, a buyer of farm products may take

2 free of a security interest under Section 1324 of the Food
Security Act of 1985, 7 U.S.C. § 1631.

4 **5. Buyers of Consumer Goods.** Subsection (b) [Maine cite
subsection (2)], which derives from former Section 9-307(2),
6 deals with buyers of collateral that the debtor-seller holds as
"consumer goods" (defined in Section 9-102 [Maine cite section
8 9-1102]). Under Section 9-309(1) [Maine cite section 9-1309,
subsection (1)], a purchase-money interest in consumer goods,
10 except goods that are subject to a statute or treaty described in
Section 9-311(a) [Maine cite section 9-1311, subsection (1)]
12 (such as automobiles that are subject to a certificate-of-title
statute), is perfected automatically upon attachment. There is
14 no need to file to perfect. Under subsection (b) [Maine cite
subsection (2)] a buyer of consumer goods takes free of a
16 security interest, even though perfected, if the buyer buys (1)
without knowledge of the security interest, (2) for value, (3)
18 primarily for the buyer's own personal, family, or household
purposes, and (4) before a financing statement is filed.
20

22 As to purchase money security interests which are perfected
without filing under Section 9-309(1) [Maine cite section 9-1309,
24 subsection (1)]: A secured party may file a financing statement,
although filing is not required for perfection. If the secured
26 party does file, all buyers take subject to the security
interest. If the secured party does not file, a buyer who meets
28 the qualifications stated in the preceding paragraph takes free
of the security interest.

30 As to security interests for which a perfection step is
required: This category includes all nonpurchase-money security
32 interests, and all security interests, whether or not
purchase-money, in goods subject to a statute or treaty described
34 in Section 9-311(a) [Maine cite section 9-1311, subsection (1)],
such as automobiles covered by a certificate-of-title statute.
36 As long as the required perfection step has not been taken and
the security interest remains unperfected, not only the buyers
38 described in subsection (b) [Maine cite subsection (2)] but also
the purchasers described in Section 9-317 [Maine cite section
40 9-1317] will take free of the security interest. After a
financing statement has been filed or the perfection requirements
42 of the applicable certificate-of-title statute have been complied
with (compliance is the equivalent of filing a financing
44 statement; see Section 9-311(b) [Maine cite section 9-1311,
subsection (2)]), all subsequent buyers, under the rule of
46 subsection (b) [Maine cite subsection (2)], are subject to the
security interest.
48

50 The rights of a buyer under subsection (b) [Maine cite
subsection (2)] turn on whether a financing statement has been

2 filed against consumer goods. Occasionally, a debtor changes his
3 or her location after a filing is made. Subsection (c) [Maine
4 cite subsection (3)], which derives from former Section
5 9-103(1)(d)(iii), deals with the continued effectiveness of the
6 filing under those circumstances. It adopts the rules of
7 Sections 9-316(a) and (b) [Maine cite section 9-1316, subsections
8 (1) and (2)]. These rules are explained in the Comments to that
9 section.

10 **6. Authorized Dispositions.** The limitations that
11 subsections (a) and (b) [Maine cite subsections (1) and (2)]
12 impose on the persons who may take free of a security interest
13 apply of course only to unauthorized sales by the debtor. If the
14 secured party authorized the sale in an express agreement or
15 otherwise, the buyer takes free under Section 9-315(a) [Maine
16 cite section 9-1315, subsection (1)] without regard to the
17 limitations of this section. (That section also states the right
18 of a secured party to the proceeds of a sale, authorized or
19 unauthorized.) Moreover, the buyer also takes free if the
20 secured party waived or otherwise is precluded from asserting its
21 security interest against the buyer. See Section 1-103.

22 **7. Oil, Gas and Other Minerals.** Under subsection (d)
23 [Maine cite subsection (4)], a buyer in ordinary course of
24 business of minerals at the wellhead or minehead or after
25 extraction takes free of a security interest created by the
26 seller. Specifically, it provides that qualified buyers take
27 free not only of Article 9 [Maine cite Article 9-A] security
28 interests but also of interests "arising out of an encumbrance."
29 As defined in Section 9-102 [Maine cite section 9-1102], the term
30 "encumbrance" means "a right, other than an ownership interest,
31 in real property." Thus, to the extent that a mortgage encumbers
32 minerals not only before but also after extraction, subsection
33 (d) [Maine cite subsection (4)] enables a buyer in ordinary
34 course of the minerals to take free of the mortgage. This
35 subsection does not, however, enable these buyers to take free of
36 interests arising out of ownership interests in the real
37 property. This issue is significant only in a minority of
38 states. Several of them have adopted special statutes and
39 nonuniform amendments to Article 9 to provide special protections
40 to mineral owners, whose interests often are highly
41 fractionalized in the case of oil and gas. See Terry I. Cross,
42 Oil and Gas Product Liens--Statutory Security Interests for
43 Producers and Royalty Owners Under the Statutes of Kansas, New
44 Mexico, Oklahoma, Texas and Wyoming, 50 Consumer Fin. L. Q. Rep.
45 418 (1996). Inasmuch as a complete resolution of the issue would
46 require the addition of complex provisions to this Article, and
47 there are good reasons to believe that a uniform solution would
48 not be feasible, this Article leaves its resolution to other
49 legislation.

2 8. **Possessory Security Interests.** Subsection (e) [Maine
cite subsection (5)] is new. It rejects the holding of Tanbro
4 Fabrics Corp. v. Deering Milliken, Inc., 350 N.E.2d 590 (N.Y.
1976) and, together with Section 9-317(b) [Maine cite section
6 9-1317, subsection (2)], prevents a buyer of goods collateral
from taking free of a security interest if the collateral is in
8 the possession of the secured party. "The secured party"
referred in subsection (e) [Maine cite subsection (5)] is the
10 holder of the security interest referred to in subsection (a) or
(b) [Maine cite subsection (1) or (2)]. Section 9-313 [Maine
12 cite section 9-1313] determines whether a secured party is in
possession for purposes of this section. Under some
14 circumstances, Section 9-313 [Maine cite section 9-1313] provides
that a secured party is in possession of collateral even if the
16 collateral is in the physical possession of a third party.

18 **§9-1321. Licensee of general intangible and lessee of goods in
ordinary course of business**

20 (1) In this section, "licensee in ordinary course of
22 business" means a person that becomes a licensee of a general
intangible in good faith, without knowledge that the license
24 violates the rights of another person in the general intangible
and in the ordinary course from a person in the business of
26 licensing general intangibles of that kind. A person becomes a
licensee in the ordinary course if the license to the person
28 comports with the usual or customary practices in the kind of
business in which the licensor is engaged or with the licensor's
30 own usual or customary practices.

32 (2) A licensee in ordinary course of business takes its
rights under a nonexclusive license free of a security interest
34 in the general intangible created by the licensor, even if the
security interest is perfected and the licensee knows of its
36 existence.

38 (3) A lessee in ordinary course of business takes its
leasehold interest free of a security interest in the goods
40 created by the lessor, even if the security interest is perfected
and the lessee knows of its existence.

42

Official Comment

44

1. **Source.** Derived from Sections 2A-103(1)(o), 2A307(3).

46

2. **Licensee in Ordinary Course.** Like the analogous rules
48 in Section 9-320(a) [Maine cite section 9-1320, subsection (1)]
with respect to buyers in ordinary course and subsection (c)
50 [Maine cite subsection (3)] with respect to lessees in ordinary

2 course, the new rule in subsection (b) [Maine cite subsection
3 (2)] reflects the expectations of the parties and the
4 marketplace: a licensee under a nonexclusive license takes
5 subject to a security interest unless the secured party
6 authorizes the license free of the security interest or other,
7 controlling law such as that of this section (protecting
8 ordinary-course licensees) dictates a contrary result. See
9 Sections 9-201, 9-315 [Maine cite sections 9-1201, 9-1315]. The
10 definition of "licensee in ordinary course of business" in
11 subsection (a) [Maine cite subsection (1)] is modeled upon that
12 of "buyer in ordinary course of business."

13
14 3. **Lessee in Ordinary Course.** Subsection (c) [Maine cite
15 subsection (3)] contains the rule formerly found in Section
16 2A-307(3). The rule works in the same way as that of Section
17 9-320(a) [Maine cite section 9-1320, subsection (1)].

18 **§9-1322. Priorities among conflicting security interests in and**
19 **agricultural liens on same collateral**

20
21 (1) Except as otherwise provided in this section, priority
22 among conflicting security interests and agricultural liens in
23 the same collateral is determined according to the following
24 rules.

25 (a) Conflicting perfected security interests and
26 agricultural liens rank according to priority in time of
27 filing or perfection. Priority dates from the earlier of
28 the time a filing covering the collateral is first made or
29 the security interest or agricultural lien is first
30 perfected, if there is no period thereafter when there is
31 neither filing nor perfection.

32
33 (b) A perfected security interest or agricultural lien has
34 priority over a conflicting unperfected security interest or
35 agricultural lien.

36
37 (c) The first security interest or agricultural lien to
38 attach or become effective has priority if conflicting
39 security interests and agricultural liens are unperfected.

40
41 (2) For the purposes of subsection (1), paragraph (a):

42
43 (a) The time of filing or perfection as to a security
44 interest in collateral is also the time of filing or
45 perfection as to a security interest in proceeds; and

46
47 (b) The time of filing or perfection as to a security
48 interest in collateral supported by a supporting obligation

2 is also the time of filing or perfection as to a security
interest in the supporting obligation.

4 (3) Except as otherwise provided in subsection (6), a
security interest in collateral that qualifies for priority over
6 a conflicting security interest under section 9-1327, 9-1328,
9-1329, 9-1330, or 9-1331 also has priority over a conflicting
8 security interest in:

10 (a) Any supporting obligation for the collateral; and

12 (b) Proceeds of the collateral if:

14 (i) The security interest in proceeds is perfected;

16 (ii) The proceeds are cash proceeds or of the same
type as the collateral; and

18 (iii) In the case of proceeds that are proceeds of
20 proceeds, all intervening proceeds are cash proceeds,
proceeds of the same type as the collateral or an
22 account relating to the collateral.

24 (4) Subject to subsection (5) and except as otherwise
provided in subsection (6), if a security interest in chattel
26 paper, deposit accounts, negotiable documents, instruments,
investment property or letter-of-credit rights is perfected by a
28 method other than filing, conflicting perfected security
interests in proceeds of the collateral rank according to
30 priority in time of filing.

32 (5) Subsection (4) applies only if the proceeds of the
collateral are not cash proceeds, chattel paper, negotiable
34 documents, instruments, investment property or letter-of-credit
rights.

36 (6) Subsections (1) to (5) are subject to:

38 (a) Subsection (7) and the other provisions of this Part;

40 (b) Section 4-210 with respect to a security interest of a
42 collecting bank;

44 (c) Section 5-1118 with respect to a security interest of an
issuer or nominated person; and

46 (d) Section 9-1110 with respect to a security interest
48 arising under Article 2 or 2A.

are unperfected, the first to attach has priority. Note that
2 Section 9-708(b) [Maine cite section 9-1708, subsection (2)] may
affect the application of subsection (a) [Maine cite subsection
4 (1)] to a filing that occurred before the effective date of this
Article and which would be ineffective to perfect a security
6 interest under former Article 9 but effective under this
Article.

8
4. **Competing Perfected Security Interests.** When there is
10 more than one perfected security interest, the security interests
rank according to priority in time of filing or perfection.
12 "Filing," of course, refers to the filing of an effective
financing statement. "Perfection" refers to the acquisition of a
14 perfected security interest, i.e., one that has attached and as
to which any required perfection step has been taken. See
16 Section 9-308 [Maine cite section 9-1308].

18 **Example 1:** On February 1, A files a financing statement
covering a certain item of Debtor's equipment. On March 1, B
20 files a financing statement covering the same equipment. On
April 1, B makes a loan to Debtor and obtains a security interest
22 in the equipment. On May 1, A makes a loan to Debtor and obtains
a security interest in the same collateral. A has priority even
24 though B's loan was made earlier and was perfected when made. It
makes no difference whether A knew of B's security interest when
26 A made its advance.

28 The problem stated in Example 1 is peculiar to a
notice-filing system under which filing may occur before the
30 security interest attaches (see Section 9-502 [Maine cite section
9-1502]). The justification for determining priority by order of
32 filing lies in the necessity of protecting the filing system—that
is, of allowing the first secured party who has filed to make
34 subsequent advances without each time having to check for
subsequent filings as a condition of protection. Note, however,
36 that this first-to-file protection is not absolute. For example,
Section 9-324 [Maine cite section 9-1324] affords priority to
38 certain purchase-money security interests, even if a competing
secured party was the first to file or perfect.

40
Example 2: A and B make nonpurchase-money advances secured
42 by the same collateral. The collateral is in Debtor's
possession, and neither security interest is perfected when the
44 second advance is made. Whichever secured party first perfects
its security interest (by taking possession of the collateral or
46 by filing) takes priority. It makes no difference whether that
secured party knows of the other security interest at the time it
48 perfects its own.

2 The rule of subsection (a)(1) [Maine cite subsection (1),
3 paragraph (a)], affording priority to the first to file or
4 perfect, applies to security interests that are perfected by any
5 method, including temporarily (Section 9-312 [Maine cite section
6 9-1312]) or upon attachment (Section 9-309 [Maine cite section
7 9-1309]), even though there may be no notice to creditors or
8 subsequent purchasers and notwithstanding any common-law rule to
9 the contrary. The form of the claim to priority, i.e., filing or
10 perfection, may shift from time to time, and the rank will be
11 based on the first filing or perfection as long as there is no
12 intervening period without filing or perfection. See Section
13 9-308(c) [Maine cite section 9-1308, subsection (3)].

14 **Example 3:** On October 1, A acquires a temporarily perfected
15 (20-day) security interest, unfiled, in a negotiable document in
16 the debtor's possession under Section 9-312(e) [Maine cite
17 section 9-1312, subsection (5)]. On October 5, B files and
18 thereby perfects a security interest that previously had attached
19 to the same document. On October 10, A files. A has priority,
20 even after the 20-day period expires, regardless of whether A
21 knows of B's security interest when A files. A was the first to
22 perfect and maintained continuous perfection or filing since the
23 start of the 20-day period. However, the perfection of A's
24 security interest extends only "to the extent it arises for new
25 value given." To the extent A's security interest secures
26 advances made by A beyond the 20-day period, its security
27 interest would be subordinate to B's, inasmuch as B was the first
28 to file.

30 In general, the rule in subsection (a)(1) [Maine cite
31 subsection (1), paragraph (a)] does not distinguish among various
32 advances made by a secured party. The priority of every advance
33 dates from the earlier of filing or perfection. However, in rare
34 instances, the priority of an advance dates from the time the
35 advance is made. See Example 3 and Section 9-323 [Maine cite
36 section 9-1323].

38 **5. Priority in After-acquired Property.** The application of
39 the priority rules to afteracquired property must be considered
40 separately for each item of collateral. Priority does not depend
41 only on time of perfection but may also be based on priority in
42 filing before perfection.

44 **Example 4:** On February 1, A makes advances to Debtor under
45 a security agreement covering "all Debtor's machinery, both
46 existing and after-acquired." A promptly files a financing
47 statement. On April 1, B takes a security interest in all
48 Debtor's machinery, existing and after-acquired, to secure an
49 outstanding loan. The following day, B files a financing
50 statement. On May 1, Debtor acquires a new machine. When Debtor

2 acquires rights in the new machine, both A and B acquire security
interests in the machine simultaneously. Both security interests
4 are perfected simultaneously. However, A has priority because A
filed before B.

6 When after-acquired collateral is encumbered by more than
one security interest, one of the security interests often is a
8 purchase-money security interest that is entitled to special
priority under Section 9-324 [Maine cite section 9-1324].

10
12 **6. Priority in Proceeds: General Rule.** Subsection (b)(1)
[Maine cite subsection (2), paragraph (a)] follows former Section
9-312(6). It provides that the baseline rules of subsection (a)
14 [Maine cite subsection (1)] apply generally to priority conflicts
in proceeds except where otherwise provided (e.g., as in
16 subsections (c) through (e) [Maine cite subsections (3) to
(5)]). Under Section 9-203 [Maine cite section 9-1203],
18 attachment cannot occur (and therefore, under Section 9-308
[Maine cite section 9-1308], perfection cannot occur) as to
20 particular collateral until the collateral itself comes into
existence and the debtor has rights in it. Thus, a security
22 interest in proceeds of original collateral does not attach and
is not perfected until the proceeds come into existence and the
24 debtor acquires rights in them.

26 **Example 5:** On April 1, Debtor authenticates a security
agreement granting to A a security interest in all Debtor's
28 existing and after-acquired inventory. The same day, A files a
financing statement covering inventory. On May 1, Debtor
30 authenticates a security agreement granting B a security interest
in all Debtor's existing and future accounts. On June 1, Debtor
32 sells inventory to a customer on 30-day unsecured credit. When
Debtor acquires the account, B's security interest attaches to it
34 and is perfected by B's financing statement. At the very same
time, A's security interest attaches to the account as proceeds
36 of the inventory and is automatically perfected. See Section
9-315 [Maine cite section 9-1315]. Under subsection (b) [Maine
38 cite subsection (2)] of this section, for purposes of determining
A's priority in the account, the time of filing as to the
40 original collateral (April 1, as to inventory) is also the time
of filing as to proceeds (account). Accordingly, A's security
42 interest in the account has priority over B's. Of course, had B
filed its financing statement on before A filed (e.g., on March
44 1), then B would have priority in the accounts.

46 Section 9-324 [Maine cite section 9-1324] governs the extent
to which a special purchase-money priority in goods or software
48 carries over into the proceeds of the original collateral.

2 7. **Priority in Proceeds: Special Rules.** Subsections (c),
3 (d), and (e) [Maine cite subsections (3), (4) and (5)], which are
4 new, provide additional priority rules for proceeds of collateral
5 in situations where the temporal (first-in-time) rules of
6 subsection (a)(1) [Maine cite subsection (1), paragraph (a)] are
7 not appropriate. These new provisions distinguish what these
8 Comments refer to as "non-filing collateral" from what they call
9 "filing collateral." As used in these Comments, non-filing
10 collateral is collateral of a type for which perfection may be
11 achieved by a method other than filing (possession or control,
12 mainly) and for which secured parties who so perfect generally do
13 not expect or need to conduct a filing search. More
14 specifically, non-filing collateral is chattel paper, deposit
15 accounts, negotiable documents, instruments, investment property,
16 and letter-of-credit rights. Other collateral-accounts,
17 commercial tort claims, general intangibles, goods, nonnegotiable
18 documents, and payment intangibles-is filing collateral.

19 8. **Proceeds of Non-filing Collateral: Non-temporal**
20 **Priority.** Subsection (c)(2) [Maine cite subsection (3),
21 paragraph (b)] provides a baseline priority rule for proceeds of
22 non-filing collateral which applies if the secured party has
23 taken the steps required for non-temporal priority over a
24 conflicting security interest in non-filing collateral (e.g.,
25 control, in the case of deposit accounts, letter-of-credit
26 rights, and investment property). This rule determines priority
27 in proceeds of non-filing collateral whether or not there exists
28 an actual conflicting security interest in the original
29 non-filing collateral. Under subsection (c)(2) [Maine cite
30 subsection (3), paragraph (b)], the priority in the original
31 collateral continues in proceeds if the security interest in
32 proceeds is perfected and the proceeds are cash proceeds or
33 non-filing proceeds "of the same type" as the original
34 collateral. As used in subsection (c)(2) [Maine cite subsection
35 (3), paragraph (b)], "type" means a type of collateral defined in
36 the Uniform Commercial Code and should be read broadly. For
37 example, a security is "of the same type" as a security
38 entitlement (i.e., investment property), and a promissory note
39 is "of the same type" as a draft (i.e., an instrument).

40 **Example 6:** SP-1 perfects its security interest in
41 investment property by filing. SP-2 perfects subsequently by
42 taking control of a certificated security. Debtor receives cash
43 proceeds of the security (e.g., dividends deposited into Debtor's
44 deposit account). If the first-to-file-or-perfect rule of
45 subsection (a)(1) were applied, SP-1's security interest in the
46 cash proceeds would be senior, although SP-2's security interest
47 continues perfected under Section 9-315 [Maine cite section
48 9-1315] beyond the 20-day period of automatic perfection. This
49 was the result under former Article 9. Under subsection (c)
50

2 certificated security and also by filing against investment
3 property. Debtor receives proceeds of the security consisting of
4 a dividend check that it deposits to a deposit account. Because
5 the check and the deposit account are cash proceeds, SP-1's and
6 SP-2's security interests in the cash proceeds are perfected
7 under Section 9-315 [Maine cite section 9-1315] beyond the 20-day
8 period of automatic perfection. However, SP-2's security
9 interest is senior under subsection (c) [Maine cite subsection
10 (3)].

11 **Example 10:** SP-1 perfects its security interest in
12 investment property by filing. SP-2 perfects subsequently by
13 taking control of a certificated security and also by filing
14 against investment property. Debtor receives an instrument as
15 proceeds of the security. (Assume that the instrument is not
16 cash proceeds.) Because the instrument is not of the same type
17 as the original collateral (i.e., investment property), SP-2's
18 security interest, although perfected by filing, does not achieve
19 priority under subsection (c) [Maine cite subsection (3)]. Under
20 the first-to-file-or-perfect rule of subsection (a)(1) [Maine
21 cite subsection (1), paragraph (a)], SP-1's security interest in
22 the proceeds is senior.

23 The proceeds of proceeds are themselves proceeds. See
24 Section 9-102 [Maine cite section 9-1102] (defining "proceeds"
25 and "collateral"). Sometimes competing security interests arise
26 in proceeds that are several generations removed from the
27 original collateral. As the following example explains, the
28 applicability of subsection (c) [Maine cite subsection (3)] may
29 turn on the nature of the intervening proceeds.

30 **Example 11:** SP-1 perfects its security interest in Debtor's
31 deposit account by obtaining control. Thereafter, SP-2 files
32 against inventory, (presumably) searches, finds no indication of
33 a conflicting security interest, and advances against Debtor's
34 existing and after-acquired inventory. Debtor uses funds from
35 the deposit account to purchase inventory, which SP-1 can trace
36 as identifiable proceeds of its security interest in Debtor's
37 deposit account, and which SP-2 claims as original collateral.
38 The inventory is sold and the proceeds deposited into another
39 deposit account, as to which SP-1 has not obtained control.
40 Subsection (c) [Maine cite subsection (3)] does not govern
41 priority in this other deposit account. This deposit account is
42 cash proceeds and is also the same type of collateral as SP-1's
43 original collateral, as required by subsections (c)(2) (A) and
44 (B) [Maine cite subsection (3), paragraph (b), subparagraphs (i)
45 and (ii)]. However, SP-1's security interest does not satisfy
46 subsection (c)(2) (C) [Maine cite subsection (3), paragraph (b),
47 subparagraph (iii)] because the inventory proceeds, which
48 intervened between the original deposit account and the deposit
49

2 account constituting the proceeds at issue, are not cash
3 proceeds, proceeds of the same type as the collateral (original
4 deposit account), or an account relating to the collateral.
5 Stated otherwise, once proceeds other than cash proceeds,
6 proceeds of the same type as the original collateral, or an
7 account relating to the original collateral intervene in the
8 chain of proceeds, priority under subsection (c) [Maine cite
9 subsection (3)] is thereafter unavailable. The special priority
10 rule in subsection (d) [Maine cite subsection (4)] also is
11 inapplicable to this case. See Comment 9, Example 13, below.
12 Instead, the general first-to-file-or-perfect rule of subsections
13 (a) and (b) [Maine cite subsections (1) and (2)] apply. Under
14 that rule, SP-1 has priority unless its security interest in the
15 inventory proceeds became unperfected under Section 9-315(d)
16 [Maine cite section 9-1315, subsection (4)]. Had SP-2 filed
17 against inventory before SP-1 obtained control of the original
18 deposit account, the SP-2 would have had priority even if SP-1's
19 security interest in the inventory proceeds remained perfected.

20 **9. Proceeds of Non-filing Collateral: Special Temporal**
21 **Priority.** Under subsections (d) and (e) [Maine cite subsections
22 (4) and (5)], if a security interest in non-filing collateral is
23 perfected by a method other than filing (e.g., control or
24 possession), it does not retain its priority over a conflicting
25 security interest in proceeds that are filing collateral.
26 Moreover, it is not entitled to priority in proceeds under the
27 first-to file-or-perfect rule of subsections (a)(1) and (b)
28 [Maine cite subsection (1), paragraph (a) and subsection (2)].
29 Instead, under subsection (d) [Maine cite subsection (4)],
30 priority is determined by a new first-to-file rule.

32 **Example 12:** SP-1 perfects its security interest in Debtor's
33 deposit account by obtaining control. Thereafter, SP-2 files
34 against equipment, (presumably) searches, finds no indication of
35 a conflicting security interest, and advances against Debtor's
36 equipment. SP-1 then files against Debtor's equipment. Debtor
37 uses funds from the deposit account to purchase equipment, which
38 SP-1 can trace as proceeds of its security interest in Debtor's
39 deposit account. If the first-to-file-or-perfect rule were
40 applied, SP-1's security interest would be senior under
41 subsections (a)(1) and (b) [Maine cite subsection (1), paragraph
42 (a) and subsection (2)], because it was the first to perfect in
43 the original collateral and there was no period during which its
44 security interest was unperfected. Under subsection (d) [Maine
45 cite subsection (4)], however, SP-2's security interest would be
46 senior because it filed first. This corresponds with the likely
47 expectations of the parties.

48
49 Note that under subsection (e) [Maine cite subsection (5)],
50 the first-to-file rule of subsection (d) [Maine cite subsection

(4)] applies only if the proceeds in question are other than non-filing collateral (i.e., if the proceeds are filing collateral). If the proceeds are non-filing collateral, either the first-to-file-or-perfect rule under subsections (a) and (b) [Maine cite subsections (1) and (2)] or the non-temporal priority rule in subsection (c) [Maine cite subsection (3)] would apply, depending on the facts.

Example 13: SP-1 perfects its security interest in Debtor's deposit account by obtaining control. Thereafter, SP-2 files against inventory, (presumably) searches, finds no indication of a conflicting security interest, and advances against Debtor's existing and after-acquired inventory. Debtor uses funds from the deposit account to purchase inventory, which SP-1 can trace as identifiable proceeds of its security interest in Debtor's deposit account, and which SP-2 claims as original collateral. The inventory is sold and the proceeds deposited into another deposit account, as to which SP-1 has not obtained control. As discussed above in Comment 8, Example 11, subsection (c) [Maine cite subsection (3)] does not govern priority in this deposit account. Subsection (d) [Maine cite subsection (4)] also does not govern, because the proceeds at issue (the deposit account) are cash proceeds. See subsection (e) [Maine cite subsection (5)]. Rather, the general rules of subsections (a) and (b) [Maine cite subsections (1) and (2)] govern.

10. Priority in Supporting Obligations. Under subsections (b)(2) [Maine cite subsection (2), paragraph (b)] and (c)(1) [Maine cite subsection (3), paragraph (a)], a security interest having priority in collateral also has priority in a supporting obligation for that collateral. However, the rules in these subsections are subject to the special rule in Section 9-329 [Maine cite section 9-1329] governing the priority of security interests in a letter-of-credit right. See subsection (f) [Maine cite subsection (6)] . Under Section 9-329 [Maine cite section 9-1329], a secured party's failure to obtain control (Section 9-107 [Maine cite section 9-1107]) of a letter-of-credit right that serves as supporting collateral leaves its security interest exposed to a priming interest of a party who does take control.

11. Unperfected Security Interests. Under subsection (a)(3) [Maine cite subsection (1), paragraph (c)], if conflicting security interests are unperfected, the first to attach has priority. This rule may be of merely theoretical interest, inasmuch as it is hard to imagine a situation where the case would come into litigation without either secured party's having perfected its security interest. If neither security interest had been perfected at the time of the filing of a petition in bankruptcy, ordinarily neither would be good against the trustee in bankruptcy under the Bankruptcy Code.

2 12. **Agricultural Liens.** Statutes other than this Article
4 may purport to grant priority to an agricultural lien as against
6 a conflicting security interest or agricultural lien. Under
8 subsection (g) [Maine cite subsection (7)], if another statute
10 grants priority to an agricultural lien, the agricultural lien
12 has priority only if the same statute creates the agricultural
lien and the agricultural lien is perfected. Otherwise,
subsection (a) [Maine cite subsection (1)] applies the same
priority rules to an agricultural lien as to a security interest,
regardless of whether the agricultural lien conflicts with
another agricultural lien or with a security interest.

14 Inasmuch as no agricultural lien on proceeds arises under
16 this Article, subsections (b) to (e) [Maine cite subsections (2)
18 to (5)] do not apply to proceeds of agricultural liens. However,
20 if an agricultural lien has priority under subsection (g) [Maine
22 cite subsection (7)] and the statute creating the agricultural
lien gives the secured party a lien on proceeds of the collateral
subject to the lien, a court should apply the principle of
subsection (g) [Maine cite subsection (7)] and award priority in
the proceeds to the holder of the perfected agricultural lien.

24 **§9-1323. Future advances**

26 (1) Except as otherwise provided in subsection (3), for
28 purposes of determining the priority of a perfected security
30 interest under section 9-1322, subsection (1), paragraph (a),
32 perfection of the security interest dates from the time an
advance is made to the extent that the security interest secures
an advance that:

34 (a) Is made while the security interest is perfected only:

36 (i) Under section 9-1309 when it attaches; or

38 (ii) Temporarily under section 9-1312, subsection (5),
(6) or (7); and

40 (b) Is not made pursuant to a commitment entered into
42 before or while the security interest is perfected by a
method other than under section 9-1309 or 9-1312 subsection
44 (5) (6) or (7).

46 (2) Except as otherwise provided in subsection (3), a
48 security interest is subordinate to the rights of a person that
becomes a lien creditor while the security interest is perfected
only to the extent that it secures advances made more than 45
50 days after the person becomes a lien creditor unless the advance
is made:

2 advances made by a secured party after a third party acquires an
interest in the collateral. Subsection (a) [Maine cite
4 subsection (1)] applies when the third party is a competing
secured party. It replaces and clarifies former Section
6 9-312(7). Subsection (b) [Maine cite subsection (2)] deals with
lien creditors and replaces former Section 9-301(4). Subsections
8 (d) and (e) [Maine cite subsections (4) and (5)] deal with buyers
and replace former Section 9-307(3). Subsections (f) and (g)
10 [Maine cite subsections (6) and (7)] deal with lessees and
replace former Section 2A307(4).

12 **3. Competing Security Interests.** Under a proper reading of
the first-to-file-or perfect rule of Section 9-322(a)(1) [Maine
14 cite section 9-1322, subsection (1), paragraph (a)] (and former
Section 9-312(5)), it is abundantly clear that the time when an
16 advance is made plays no role in determining priorities among
conflicting security interests except when a financing statement
18 was not filed and the advance is the giving of value as the last
step for attachment and perfection. Thus, a secured party takes
20 subject to all advances secured by a competing security interest
having priority under Section 9-322(a)(1) [Maine cite section
22 9-1322, subsection (1), paragraph (a)]. This result generally
obtains regardless of how the competing security interest is
24 perfected and regardless of whether the advances are made
"pursuant to commitment" (Section 9-102 [Maine cite section
26 9-1102]). Subsection (a) [Maine cite subsection (1)] of this
section states the only other instance when the time of an
28 advance figures in the priority scheme in Section 9-322 [Maine
cite section 9-1322]: when the security interest is perfected
30 only automatically under Section 9-309 [Maine cite section
9-1309] or temporarily under Section 9-312(e), (f), or (g) [Maine
32 cite section 9-1312, subsection (5), (6) or (7)], and the advance
is not made pursuant to a commitment entered into while the
34 security interest was perfected by another method. Thus, an
advance has priority from the date it is made only in the rare
36 case in which it is made without commitment and while the
security interest is perfected only temporarily under Section
38 9-312 [Maine cite section 9-1312].

40 The new formulation in subsection (a) [Maine cite subsection
(1)] clarifies the result when the initial advance is paid and a
42 new ("future") advance is made subsequently. Under former
Section 9-312(7), the priority of the new advance turned on
44 whether it was "made while a security interest is perfected."
This section resolves any ambiguity by omitting the quoted phrase.
46

48 **Example 1:** On February 1, A makes an advance secured by
machinery in the debtor's possession and files a financing
statement. On March 1, B makes an advance secured by the same
50 machinery and files a financing statement. On April 1, A makes a

2 further advance, under the original security agreement, against
3 the same machinery. A was the first to file and so, under the
4 first-to-file-or-perfect rule of Section 9-322(a)(1) [Maine cite
5 section 9-1322, subsection (1), paragraph (a)], A's security
6 interest has priority over B's, B both as to the February 1 and
7 as to the April 1 advance. It makes no difference whether A
8 knows of B's intervening advance when A makes the second
9 advance. Note that, as long as A was the first to file or
10 perfect, A would have priority with respect to both advances if
11 either A or B had perfected by taking possession of the
12 collateral. Likewise, A would have priority if A's April 1
13 advance was not made under the original agreement with the
14 debtor, but was under a new agreement.

16 **Example 2:** On October 1, A acquires a temporarily perfected
17 (20-day) security interest, unfiled, in a negotiable document in
18 the debtor's possession under Section 9-312(e) or (f) [Maine cite
19 section 9-1312, subsection (5) or (6)]. The security interest
20 secures an advance made on that day as well as future advances.
21 On October 5, B files and thereby perfects a security interest
22 that previously had attached to the same document. On October 8,
23 A makes an additional advance. On October 10, A files. Under
24 Section 9-322(a)(1) [Maine cite section 9-1322, subsection (1),
25 paragraph (a)], because A was the first to perfect and maintained
26 continuous perfection or filing since the start of the 20-day
27 period, A has priority, even after the 20-day period expires.
28 See Section 9-322 [Maine cite section 9-1322], Comment 4, Example
29 3. However, under this section, for purposes of Section
30 9-322(a)(1) [Maine cite section 9-1322, subsection (1), paragraph
31 (a)], to the extent A's security interest secures the October 8
32 advance, the security interest was perfected on October 8.
33 Inasmuch as B perfected on October 5, B has priority over the
34 October 8 advance.

36 The rule in subsection (a) [Maine cite subsection (1)] is
37 more liberal toward the priority of future advances than the
38 corresponding rules applicable to intervening lien creditors
39 (subsection (b) [Maine cite subsection (2)]), buyers (subsections
40 (d) and (e) [Maine cite subsections (4) and (5)] , and lessees
(subsections (f) and (g) [Maine cite subsections (6) and (7)]).

42 **4. Competing Lien Creditors.** Subsection (b) [Maine cite
43 subsection (2)] replaces former Section 9-301(4). It addresses
44 the problem considered by PEB Commentary No. 2 and removes the
45 ambiguity that necessitated the Commentary. Former Section
46 9-301(4) appeared to state a general rule that a lien creditor
47 has priority over a perfected security interest and is "subject
48 to" the security interest "only" in specified circumstances.
49 Because that section spoke to the making of an "advance," it
50 arguably implied that to the extent a security interest secured

2 non-advances (expenses, interest, etc.), it was junior to the
lien creditor's interest. Under Section 9-317(a)(2) [Maine cite
4 section 9-1317, subsection (1), paragraph (b)], a perfected
security interest is senior to the rights of a subsequent lien
6 creditor. Subsection (b) [Maine cite subsection (2)] of this
section eliminates the erroneous implication of former law by
8 providing that a perfected security interest is subordinate only
to the extent that the specified circumstances occur.

10 As under former Section 9-301(4), a secured party's
knowledge does not cut short the 45-day period during which
12 future advances can achieve priority over an intervening lien
creditor's interest. Rather, because of the impact of the rule
14 in subsection (b) [Maine cite subsection (2)] on the question
whether the security interest for future advances is "protected"
16 under Section 6323(c)(2) and (d) of the Internal Revenue Code as
amended by the Federal Tax Lien Act of 1966, the priority of the
18 security interest for future advances over a lien creditor is
made absolute for 45 days regardless of knowledge of the secured
20 party concerning the lien. If, however, the advance is made
after the 45 days, the advance will not have priority unless it
22 was made or committed without knowledge of the lien.

24 **5. Sales of Receivables; Consignments.** Subsections (a) and
(b) [Maine cite subsections (1) and (2)] do not apply to outright
26 sales of accounts, chattel paper, payment intangibles, or
promissory notes, nor do they apply to consignments.

28 **6. Competing Buyers and Lessees.** Under subsections (d) and
30 (e) [Maine cite subsections (4) and (5)], a buyer will not take
subject to a security interest to the extent it secures advances
32 made after the secured party has knowledge that the buyer has
purchased the collateral or more than 45 days after the purchase
34 unless the advances were made pursuant to a commitment entered
into before the expiration of the 45-day period and without
36 knowledge of the purchase. Subsections (f) and (g) [Maine cite
subsection (6) and (7)] provide an analogous rule for lessees.
38 Of course, a buyer in ordinary course who takes free of the
security interest under Section 9-320 [Maine cite section 9-1320]
40 and a lessee in ordinary course who takes free under Section
9-321 [Maine cite section 9-1321] are not subject to any future
42 advances. Subsections (d) and (e) [Maine cite subsections (4)
and (5)] replace former Section 9-307(3), and subsections (f) and
44 (g) [Maine cite subsections (6) and (7)] replace former Section
2A307(4). No change in meaning is intended.

46 **§9-1324. Priority of purchase-money security interests**

48 (1) Except as otherwise provided in subsection (7), a
50 perfected purchase-money security interest in goods other than

2 inventory or livestock has priority over a conflicting security
3 interest in the same goods, and, except as otherwise provided in
4 section 9-1327, a perfected security interest in its identifiable
5 proceeds also has priority, if the purchase-money security
6 interest is perfected when the debtor receives possession of the
7 collateral or within 20 days thereafter.

8 (2) Subject to subsection (3) and except as otherwise
9 provided in subsection (7), a perfected purchase-money security
10 interest in inventory has priority over a conflicting security
11 interest in the same inventory, has priority over a conflicting
12 security interest in chattel paper or an instrument constituting
13 proceeds of the inventory and in proceeds of the chattel paper,
14 if so provided in section 9-1330, and, except as otherwise
15 provided in section 9-1327, also has priority in identifiable
16 cash proceeds of the inventory to the extent the identifiable
17 cash proceeds are received on or before the delivery of the
18 inventory to a buyer, if:

19 (a) The purchase-money security interest is perfected when
20 the debtor receives possession of the inventory;

21 (b) The purchase-money secured party sends an authenticated
22 notification to the holder of the conflicting security
23 interest;

24 (c) The holder of the conflicting security interest
25 receives the notification within 5 years before the debtor
26 receives possession of the inventory; and

27 (d) The notification states that the person sending the
28 notification has or expects to acquire a purchase-money
29 security interest in inventory of the debtor and describes
30 the inventory.

31 (3) Subsection (2), paragraphs (b) to (d) apply only if the
32 holder of the conflicting security interest had filed a financing
33 statement covering the same types of inventory;

34 (a) If the purchase-money security interest is perfected by
35 filing, before the date of the filing; or

36 (b) If the purchase-money security interest is temporarily
37 perfected without filing or possession under section 9-1312,
38 subsection (6) before the beginning of the 20-day period
39 thereunder.

40 (4) Subject to subsection (5) and except as otherwise
41 provided in subsection (7), a perfected purchase-money security
42 interest in livestock that are farm products has priority over a
43 perfected purchase-money security interest in other
44 inventory.

2 conflicting security interest in the same livestock, and, except
3 as otherwise provided in section 9-1327, a perfected security
4 interest in their identifiable proceeds and identifiable products
5 in their unmanufactured states also has priority, if:

6 (a) The purchase-money security interest is perfected when
7 the debtor receives possession of the livestock;

8
9 (b) The purchase-money secured party sends an authenticated
10 notification to the holder of the conflicting security
11 interest;

12
13 (c) The holder of the conflicting security interest
14 receives the notification within 6 months before the debtor
15 receives possession of the livestock; and

16
17 (d) The notification states that the person sending the
18 notification has or expects to acquire a purchase-money
19 security interest in livestock of the debtor and describes
20 the livestock.

21
22 (5) Subsection (4), paragraphs (b) to (d) apply only if the
23 holder of the conflicting security interest had filed a financing
24 statement covering the same types of livestock;

25
26 (a) If the purchase-money security interest is perfected by
27 filing, before the date of the filing; or

28
29 (b) If the purchase-money security interest is temporarily
30 perfected without filing or possession under section 9-1312,
31 subsection (6), before the beginning of the 20-day period
32 thereunder.

33
34 (6) Except as otherwise provided in subsection (7), a
35 perfected purchase-money security interest in software has
36 priority over a conflicting security interest in the same
37 collateral, and, except as otherwise provided in section 9-1327,
38 a perfected security interest in its identifiable proceeds also
39 has priority, to the extent that the purchase-money security
40 interest in the goods in which the software was acquired for use
41 has priority in the goods and proceeds of the goods under this
42 section.

43
44 (7) If more than one security interest qualifies for
45 priority in the same collateral under subsection (1), (2), (4) or
46 (6):

47
48 (a) A security interest securing an obligation incurred as
49 all or part of the price of the collateral has priority over
50 a security interest securing an obligation incurred for

2 value given to enable the debtor to acquire rights in or the
3 use of collateral; and

4 (b) In all other cases, section 9-1322, subsection (1)
5 applies to the qualifying security interests.

6

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Official Comment

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1. **Source.** Former Section 9-312(3), (4).

12

2. **Priority of Purchase-money Security Interests.** This section contains the priority rules applicable to purchase-money security interests, as defined in Section 9-103 [Maine cite section 9-1103]. It affords a special, non-temporal priority to those purchase-money security interests that satisfy the statutory conditions. In most cases, priority will be over a security interest asserted under an afteracquired property clause. See Section 9-204 [Maine cite section 9-1204] on the extent to which security interests in afteracquired property are validated.

16

18

A purchase-money security interest can be created only in goods and software. See Section 9-103 [Maine cite section 9-1103]. Section 9-324(a) [Maine cite section 9-1324, subsection (1)], which follows former Section 9-312(4), contains the general rule for purchase-money security interests in goods. It is subject to subsections (b) and (c) [Maine cite subsections (2) and (3)], which derive from former Section 9-312(3) and apply to purchase-money security interests in inventory, and subsections (d) and (e) [Maine cite subsections (4) and (5)], which apply to purchase-money security interests in livestock that are farm products. Subsection (f) [Maine cite subsection (6)] applies to purchase-money security interests in software. Subsection (g) [Maine cite subsection (7)] deals with the relatively unusual case in which a debtor creates two purchase-money security interests in the same collateral and both security interests qualify for special priority under one of the other subsections.

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Former Section 9-312(2) contained a rule affording special priority to those who provided secured credit that enabled a debtor to produce crops. This rule proved unworkable and has been eliminated from this Article. Instead, model Section 9-324A [Maine cite section 9-1324-A] contains a revised production-money priority rule. That section is a model, not uniform, provision. The sponsors of the UCC have taken no position as to whether it should be enacted, instead leaving the matter for state legislatures to consider if they are so inclined.

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3. **Purchase-money Priority in Goods Other Than Inventory and Livestock.** Subsection (a) [Maine cite subsection (1)] states

2 a general rule applicable to all types of goods except inventory
and farm-products livestock: the purchase-money interest takes
4 priority if it is perfected when the debtor receives possession
of the collateral or within 20 days thereafter. (As to the
6 20-day "grace period," compare Section 9-317(e) [Maine cite
section 9-1317, subsection (5)]. Former Sections 9-312(4) and
8 9-301(2) contained a 10-day grace period.) The perfection
requirement means that the purchase-money secured party either
has filed a financing statement before that time or has a
10 temporarily perfected security interest in goods covered by
documents under Section 9-312(e) and (f) [Maine cite section
12 9-1312, subsections (5) and (6)] which is continued in a
perfected status by filing before the expiration of the 20-day
14 period specified in that section. A purchase-money security
interest qualifies for priority under subsection (a) [Maine cite,
16 subsection (1)], even if the purchase-money secured party knows
that a conflicting security interest has been created and or that
18 the holder of the conflicting interest has filed a financing
statement covering the collateral.

20
22 Normally, there will be no question when "the debtor
receives possession of the collateral" for purposes of subsection
(a) [Maine cite subsection (1)]. However, sometimes a debtor
24 buys goods and takes possession of them in stages, and then
assembly and testing are completed (by the seller or
26 debtor-buyer) at the debtor's location. Under those
circumstances, the buyer "takes possession" within the meaning of
28 subsection (a) [Maine cite subsection (1)] when, after an
inspection of the portion of the goods in the debtor's
30 possession, it would be apparent to a potential lender to the
debtor that the debtor has acquired an interest in the goods
32 taken as a whole.

34 A similar issue concerning the time when "the debtor
receives possession" arises when a person acquires possession of
36 goods under a transaction that is not governed by this Article
and then later agrees to buy the goods on secured credit. For
38 example, a person may take possession of goods as lessee under a
lease contract and then exercise an option to purchase the goods
40 from the lessor on secured credit. Under Section 2A-307(1),
creditors of the lessee generally take subject to the lease
42 contract; filing a financing statement against the lessee is
unnecessary to protect the lessor's leasehold or residual
44 interest. Once the lease is converted to a security interest,
filing a financing statement is necessary to protect the seller's
46 (former lessor's) security interest. Accordingly, the 20-day
period in subsection (a) does not commence until a the goods
48 become "collateral" (defined in Section 9-102 [Maine cite section
9-1102]), i.e., until they are subject to a security interest.

50

4. **Purchase-money Security Interests in Inventory.**

2 Subsections (b) and (c) [Maine cite subsections (2) and (3)]
4 afford a means by which a purchase-money security interest in
6 inventory can achieve priority over an earlier-filed security
8 interest in the same collateral. To achieve priority, the
10 purchase-money security interest must be perfected when the
debtor receives possession of the inventory. For a discussion of
when "the debtor receives possession," see Comment 3, above. The
20-day grace period of subsection (a) [Maine cite subsection (1)]
does not apply.

12 The arrangement between an inventory secured party and its
14 debtor typically requires the secured party to make periodic
16 advances against incoming inventory or periodic releases of old
18 inventory as new inventory is received. A fraudulent debtor may
20 apply to the secured party for advances even though it has
22 already given a purchase-money security interest in the inventory
24 to another secured party. For this reason, subsections (b)(2)
26 through (4) and (c) [Maine cite subsection (2), paragraphs (b) to
28 (d) and subsection (3)] impose a second condition for the
purchase-money security interest's achieving priority: the
purchase-money secured party must give notification to the holder
of a conflicting security interest who filed against the same
item or type of inventory before the purchase-money secured party
filed or its security interest became perfected temporarily under
Section 9-312(e) or (f) [Maine cite section 9-1312, subsection
(5) or (6)]. The notification requirement protects the
non-purchase-money inventory secured party in such a situation:
if the inventory secured party has received notification, it
presumably will not make an advance; if it has not received
notification (or if the other security interest does not qualify
as purchase-money), any advance the inventory secured party may
make ordinarily will have priority under Section 9-322 [Maine
cite section 9-1322]. Inasmuch as an arrangement for periodic
advances against incoming goods is unusual outside the inventory
field, subsection (a) [Maine cite subsection (1)] does not
contain a notification requirement.

5. **Notification to Conflicting Inventory Secured Party:**

40 **Timing.** Under subsection (b)(3) [Maine cite subsection (2),
42 paragraph (c)] , the perfected purchase-money security interest
44 achieves priority over a conflicting security interest only if
46 the holder of the conflicting security interest receives a
notification within five years before the debtor receives
possession of the purchase-money collateral. If the debtor never
receives possession, the five-year period never begins, and the
purchase-money security interest has priority, even if
48 notification is not given. However, where the purchase-money
inventory financing began by the purchase-money secured party's
50 possession of a negotiable document of title, to retain priority

2 the secured party must give the notification required by
3 subsection (b) [Maine cite subsection (2)] at or before the usual
4 time, i.e., when the debtor gets possession of the inventory,
5 even though the security interest remains perfected for 20 days
6 under Section 9312 (e) or (f) [Maine cite section 9-1312,
7 subsection (5) or (6)].

8 Some people have mistakenly read former Section 9-312(3)(b)
9 to require, as a condition of purchase-money priority in
10 inventory, that the purchase-money secured party give the
11 notification before it files a financing statement. Read
12 correctly, the "before" clauses compare (i) the time when the
13 holder of the conflicting security interest filed a financing
14 statement with (ii) the time when the purchase-money security
15 interest becomes perfected by filing or automatically perfected
16 temporarily. Only if (i) occurs before (ii) must notification be
17 given to the holder of the conflicting security interest.
18 Subsection (c) [Maine cite subsection (3)] has been rewritten to
19 clarify this point.
20

21 **6. Notification to Conflicting Inventory Secured Party:**
22 **Address.** Inasmuch as the address provided as that of the secured
23 party on a filed financing statement is an "address that is
24 reasonable under the circumstances," the holder of a
25 purchase-money security interest may satisfy the requirement to
26 "send" notification to the holder of a conflicting security
27 interest in inventory by sending a notification to that address,
28 even if the address is or becomes incorrect. See Section 9-102
29 [Maine cite section 9-1102] (definition of "send"). Similarly,
30 because the address is "held out by [the holder of the
31 conflicting security interest] as the place for receipt of such
32 communications [i.e., communications relating to security
33 interests]," the holder is deemed to have "received" a
34 notification delivered to that address. See Section 1-201(26).

35 **7. Consignments.** Subsections (b) and (c) [Maine cite
36 subsections (2) and (3)] also determine the priority of a
37 consignor's interest in consigned goods as against a security
38 interest in the goods created by the consignee. Inasmuch as a
39 consignment subject to this Article is defined to be a
40 purchase-money security interest, see Section 9-103(d) [Maine
41 cite section 9-1103, subsection (4)], no inference concerning the
42 nature of the transaction should be drawn from the fact that a
43 consignor uses the term "security interest" in its notice under
44 subsection (b)(4) [Maine cite subsection (2), paragraph (d)].
45 Similarly, a notice stating that the consignor has delivered or
46 expects to deliver goods, properly described, "on consignment"
47 meets the requirements of subsection (b)(4) [Maine cite
48 subsection (2), paragraph (d)], even if it does not contain the
49 term "security interest," and even if the transaction
50

2 subsequently is determined to be a security interest. Cf.
3 Section 9-505 [Maine cite section 9-1505] (use of "consignor" and
4 "consignee" in financing statement).

6 **8. Priority in Proceeds: General.** When the purchase-money
7 secured party has priority over another secured party, the
8 question arises whether this priority extends to the proceeds of
9 the original collateral. Subsections (a), (d) and (f) [Maine
10 cite subsections (1), (4) and (6)] give an affirmative answer,
11 but only as to proceeds in which the security interest is
12 perfected (see Section 9-315 [Maine cite section 9-1315]).
13 Although this qualification did not appear in former Section
14 9-312(4), it was implicit in that provision.

16 In the case of inventory collateral under subsection (b)
17 [Maine cite subsection (2)], where financing frequently is based
18 on the resulting accounts, chattel paper, or other proceeds, the
19 special priority of the purchase-money secured interest carries
20 over into only certain types of proceeds. As under former
21 Section 9-312(3), the purchase-money priority in inventory under
22 subsection (b) [Maine cite subsection (2)] carries over into
23 identifiable cash proceeds (defined in Section 9-102 [Maine cite
24 section 9-1102]) received on or before the delivery of the
25 inventory to a buyer.

26 As a general matter, also like former Section 9-312(3), the
27 purchase-money priority in inventory does *not* carry over into
28 proceeds consisting of accounts or chattel paper. Many parties
29 financing inventory are quite content to protect their
30 first-priority security interest in the inventory itself. They
31 realize that when the inventory is sold, someone else will be
32 financing the resulting receivables (accounts or chattel paper),
33 and the priority for inventory will not run forward to the
34 receivables constituting the proceeds. Indeed, the cash supplied
35 by the receivables financier often will be used to pay the
36 inventory financing. In some situations, the party financing the
37 inventory on a purchase-money basis makes contractual
38 arrangements that the proceeds of receivables financing by
39 another be devoted to paying off the inventory security interest.

40
41 However, the purchase-money priority in inventory *does* carry
42 over to proceeds consisting of chattel paper and its proceeds
43 (and also to instruments) to the extent provided in Section 9-330
44 [Maine cite section 9-1330]. Under Section 9-330(e) [Maine cite
45 section 9-1330, subsection (5)], the holder of a purchase-money
46 security interest in inventory is deemed to give new value for
47 proceeds consisting of chattel paper. Taken together, Sections
48 9-324(b) [Maine cite section 9-1324, subsection (2)] and 9-330(e)
49 [Maine cite section 9-1330, subsection (5)] enable a
50 purchase-money inventory secured party to obtain priority in

2 chattel paper constituting proceeds of the inventory, even if the
3 secured party does not actually give new value for the chattel
4 paper, provided the purchase-money secured party satisfies the
5 other conditions for achieving priority.

6 When the proceeds of original collateral (goods or software)
7 consist of a deposit account, Section 9-327 [Maine cite section
8 9-1327] governs priority to the extent it conflicts with the
9 priority rules of this section.

10
11 **9. Priority in Accounts Constituting Proceeds of**
12 **Inventory.** The application of the priority rules in subsection
13 (b) [Maine cite subsection (2)] is shown by the following
14 examples:

15 **Example 1:** Debtor creates a security interest in its
16 existing and after-acquired inventory in favor of SP-1, who files
17 a financing statement covering inventory. SP-2 subsequently
18 takes a purchase-money security interest in certain inventory
19 and, under subsection (b) [Maine cite subsection (2)], achieves
20 priority in this inventory over SP-1. This inventory is then
21 sold, producing accounts. Accounts are not cash proceeds, and so
22 the special purchase-money priority in the inventory does not
23 control the priority in the accounts. Rather, the
24 first-to-file-or-perfect rule of Section 9-322(a)(1) [Maine cite
25 section 9-1322, subsection (1), paragraph (a)] applies. The time
26 of SP-1's filing as to the inventory is also the time of filing
27 as to the accounts under Section 9-322 (b) [Maine cite section
28 9-1322, subsection (2)]. Assuming that each security interest in
29 the accounts proceeds remains perfected under Section 9-315
30 [Maine cite section 9-1315], SP-1 has priority as to the accounts.
31

32
33 **Example 2:** In Example 1, if SP-2 had filed directly against
34 accounts, the date of that filing as to accounts would be
35 compared with the date of SP-1's filing as to the inventory. The
36 first filed would prevail under Section 9-322(a)(1) [Maine cite
37 section 9-1322, subsection (1), paragraph (a)].
38

39 **Example 3:** If SP-3 had filed against accounts in Example 1
40 before either SP-1 or SP-2 filed against inventory, SP-3's filing
41 against accounts would have priority over the filings of SP-1 and
42 SP-2. This result obtains even though the filings against
43 inventory are effective to continue the perfected status of
44 SP-1's and SP-2's security interest in the accounts beyond the
45 20-day period of automatic perfection. See Section 9-315 [Maine
46 cite section 9-1315]. SP-1's and SP-2's position as to the
47 inventory does not give them a claim to accounts (as proceeds of
48 the inventory) which is senior to someone who has filed earlier
49 against accounts. If, on the other hand, either SP-1's or SP-2's

2 filing against the inventory preceded SP-3's filing against
accounts, SP-1 or SP-2 would outrank SP-3 as to the accounts.

4 **10. Purchase-money Security Interests in Livestock.** New
subsections (d) and (e) [Maine cite subsections (4) and (5)]
6 provide a purchase-money priority rule for farm-products
livestock. They are patterned on the purchase-money priority
8 rule for inventory found in subsections (b) and (c) [Maine cite
subsections (2) and (3)] and include a requirement that the
10 purchase-money secured party notify earlier-filed parties. Two
differences between subsections (b) and (d) [Maine cite
12 subsections (2) and (4)] are noteworthy. First, unlike the
purchase-money inventory lender, the purchase-money livestock
14 lender enjoys priority in all proceeds of the collateral. Thus,
under subsection (d) [Maine cite subsection (4)], the
16 purchase-money secured party takes priority in accounts over an
earlier-filed accounts financier. Second, subsection (d) [Maine
18 cite subsection (4)] affords priority in certain products of the
collateral as well as proceeds.

20 **11. Purchase-money Security Interests in Aquatic Farm
22 Products.** Aquatic goods produced in aquacultural operations
(e.g., catfish raised on a catfish farm) are farm products. See
24 Section 9-102 [Maine cite section 9-1102] (definition of "farm
products"). The definition does not indicate whether aquatic
26 goods are "crops," as to which the model production money
security interest priority in Section 9-324-A [Maine cite section
28 9-1324-A] applies, or "livestock," as to which the purchase-money
priority in subsection (d) [Maine cite subsection (4)] of this
30 section applies. This Article leaves courts free to determine
the classification of particular aquatic goods on a case-by-case
32 basis, applying whichever priority rule makes more sense in the
overall context of the debtor's business.

34 **12. Purchase-money Security Interests in Software.**
36 Subsection (f) [Maine cite subsection (6)] governs the priority
of purchase-money security interests in software. Under Section
38 9-103(c) [Maine cite section 9-1103, subsection (3)], a
purchase-money security interest arises in software only if the
40 debtor acquires its interest in the software for the principal
purpose of using the software in goods subject to a
42 purchase-money security interest. Under subsection (f) [Maine
cite subsection (6)], a purchase-money security interest in
44 software has the same priority as the purchase-money security
interest in the goods in which the software was acquired for
46 use. This priority is determined under subsections (b) and (c)
[Maine cite subsections (2) and (3)] (for inventory) or (a)
48 [Maine cite subsection (1)] (for other goods).

13. **Multiple Purchase-money Security Interests.** New
2 subsection (g) [Maine cite subsection (7)] governs priority among
multiple purchase-money security interests in the same
4 collateral. It grants priority to purchase-money security
interests securing the price of collateral (i.e., created in
6 favor of the seller) over purchase-money security interests that
secure enabling loans. Section 7.2(c) of the Restatement (3d) of
8 the Law of Property (Mortgages) (1997) adopts this rule with
respect to real property mortgages. As Comment d to that section
10 explains:

12 The equities favor the vendor. Not only does the vendor
part with specific real estate rather than money, but the
14 vendor would never relinquish it at all except on the
understanding that the vendor will be able to use it to
16 satisfy the obligation to pay the price. This is the case
even though the vendor may know that the mortgagor is going
18 to finance the transaction in part by borrowing from a third
party and giving a mortgage to secure that obligation. In
20 the final analysis, the law is more sympathetic to the
vendor's hazard of losing real estate previously owned than
22 to the third party lender's risk of being unable to collect
from an interest in real estate that never previously
24 belonged to it.

26 The first-to-file-or-perfect rule of Section 9-322 [Maine
cite section 9-1322] applies to multiple purchase-money security
28 interests securing enabling loans.

30 **§9-1324-A. Priority of production-money security interests and**
32 **agricultural liens**

34 (1) Except as otherwise provided in subsections (3), (4)
and (5), if the requirements of subsection (2) are satisfied, a
perfected production-money security interest in production-money
crops has priority over a conflicting security interest in the
same crops and, except as otherwise provided in section 9-1327,
38 also has priority in their identifiable proceeds.

40 (2) A production-money security interest has priority under
subsection (1) if:

42 (a) The production-money security interest is perfected by
filing when the production-money secured party first gives
new value to enable the debtor to produce the crops;

46 (b) The production-money secured party sends an
authenticated notification to the holder of the conflicting
security interest not less than 10 or more than 30 days
48 before the production-money secured party first gives new
50

2 production of the crops, the security interests rank according to
3 priority in time of filing under Section 9-322(a) [Maine cite
4 section 9-1322, subsection (1)].

6 3. Multiple Production-Money Security Interests. In the
7 case of multiple production-money security interests that qualify
8 for priority under subsection (a) [Maine cite subsection (1)],
9 the first to file has priority. See subsection (c) [Maine cite
10 subsection (3)]. Note that only a security interest perfected by
11 filing is entitled to production-money priority. See subsection
12 (b)(1) [Maine cite subsection (2), paragraph (a)]. Consequently,
13 subsection (c) [Maine cite subsection (3)] does not adopt the
14 first-to-file-or-perfect formulation.

16 4. Holder of Agricultural Lien and Production-Money
17 Security Interest. Subsection (e) [Maine cite subsection (5)]
18 deals with a creditor who holds both an agricultural lien and an
19 Article 9 [Maine cite Article 9-A] production-money security
20 interest in the same collateral. In these cases, the priority
21 rules applicable to agricultural liens govern. The creditor can
22 avoid this result by waiving its agricultural lien.

24 **§9-1325. Priority of security interests in transferred collateral**

26 (1) Except as otherwise provided in subsection (2), a
27 security interest created by a debtor is subordinate to a
28 security interest in the same collateral created by another
29 person if:

30 (a) The debtor acquired the collateral subject to the
31 security interest created by the other person;

32 (b) The security interest created by the other person was
33 perfected when the debtor acquired the collateral; and

34 (c) There is no period thereafter when the security
35 interest is unperfected.

36 (2) Subsection (1) subordinates a security interest only if
37 the security interest:

38 (a) Otherwise would have priority solely under section
39 9-1322, subsection (1) or section 9-1324; or

40 (b) Arose solely under section 2-711, subsection (3) or
41 2-1508(5), subsection (5).

48 **Official Comment**

50

1. Source. New.

2
3 2. "Double Debtor Problem." This section addresses the
4 "double debtor" problem, which arises when a debtor acquires
5 property that is subject to a security interest created by
6 another debtor.

7
8 3. Taking Subject to Perfected Security Interest. Consider
9 the following scenario:
10

11 Example 1: A owns an item of equipment subject to a
12 perfected security interest in favor of SPA. A sells the
13 equipment to B, not in the ordinary course of business. B
14 acquires its interest subject to SPA's security interest. See
15 Sections 9-201, 9-315(a)(1). [Maine cite section 9-1201, section
16 9-1315, subsection (1), paragraph (a)] Under this section, if B
17 creates a security interest in the equipment in favor of SPB,
18 SPB's security interest is subordinate to SPA's security
19 interest, even if SPB filed against B before SPA filed against A,
20 and even if SPB took a purchase-money security interest.
21 Normally, SPB could have investigated the source of the equipment
22 and discovered SPA's filing before making an advance against the
23 equipment, whereas SPA had no reason to search the filings
24 against someone other than its debtor, A.

25
26 4. Taking Subject to Unperfected Security Interest. This
27 section applies only if the security interest in the transferred
28 collateral was perfected when the transferee acquired the
29 collateral. See subsection (a)(2). [Maine cite subsection (1),
30 paragraph (b)] If this condition is not met, then the normal
31 priority rules apply.
32

33 Example 2: A owns an item of equipment subject to an
34 unperfected security interest in favor of SP-A. A sells the
35 equipment to B, who gives value and takes delivery of the
36 equipment without knowledge of the security interest. B takes
37 free of the security interest. See Section 9-317(b). [Maine
38 cite section 9-1317, subsection (2)] If B then creates a
39 security interest in favor of SPB, no priority issue arises; SPB
40 has the only security interest in the equipment.

41 Example 3: The facts are as in Example 2, except that B
42 knows of SPA's security interest and therefore takes the
43 equipment subject to it. If B creates a security interest in the
44 equipment in favor of SPB, this section does not determine the
45 relative priority of the security interests. Rather, the normal
46 priority rules govern. If SP-B perfects its security interest,
47 then, under Section 9-322(a)(2) [Maine cite section 9-1322,
48 subsection (1), paragraph (b)], SPA's unperfected security
49 interest will be junior to SPB's perfected security interest.
50

2 The award of priority to SPB is premised on the belief that SPA's
failure to file could have misled SPB.

4 5. Taking Subject to Perfected Security Interest that
6 Becomes Unperfected. This section applies only if the security
interest in the transferred collateral did not become unperfected
8 at any time after the transferee acquired the collateral. See
subsection (a)(3) [Maine cite subsection (1), paragraph (c)]. If
this condition is not met, then the normal priority rules apply.

10 Example 4: As in Example 1, A owns an item of equipment
12 subject to a perfected security interest in favor of SPA. A
sells the equipment to B, not in the ordinary course of
14 business. B acquires its interest subject to SPA's security
interest. See Sections 9-201, 9-315(a)(1) [Maine cite section
16 9-1201; section 9-1315, subsection (1), paragraph (a)]. B
creates a security interest in favor of SP-B, and SP-B perfects
18 its security interest. This section provides that SP-A's
security interest is senior to SP-B's. However, if SP-A's
20 financing statement lapses while SPB's security interest is
perfected, then the normal priority rules would apply, and SPB's
22 security interest would become senior to SP-A's security
interest. See Sections 9-322(a)(2), 9-515(c) [Maine cite section
24 9-1322, subsection (1), paragraph (b); section 9-1515, subsection
(3)].

26 6. Unusual Situations. The appropriateness of the rule of
28 subsection (a) [Maine cite subsection (1)] is most apparent when
it works to subordinate security interests having priority under
30 the basic priority rules of Section 9-322(a) [Maine cite section
9-1322, subsection (1)] or the purchase-money priority rules of
32 Section 9-324 [Maine cite section 9-1324]. The rule also works
properly when applied to the security interest of a buyer under
34 Section 2-711(3) or a lessee under Section 2-508(5) [Maine cite
section 9-1508, subsection (5)]. However, subsection (a) [Maine
36 cite subsection (1)] may provide an inappropriate resolution of
the "double debtor" problem in some of the wide variety of other
38 contexts in which the problem may arise. Although subsection (b)
[Maine cite subsection (2)] limits the application of subsection
40 (a) [Maine cite subsection (1)] to those cases in which
subordination is known to be appropriate, courts should apply the
42 rule in other settings, if necessary to promote the underlying
purposes and policies of the Uniform Commercial Code. See
44 Section 1-102(1).

46 **§9-1326. Priority of security interests created by new debtor**

48 (1) Subject to subsection (2), a security interest created
by a new debtor that is perfected by a filed financing statement
50 that is effective solely under section 9-1508 in collateral in

2 which a new debtor has or acquires rights is subordinate to a
3 security interest in the same collateral that is perfected other
4 than by a filed financing statement that is effective solely
5 under section 9-1508.

6 (2) The other provisions of this Part determine the
7 priority among conflicting security interests in the same
8 collateral perfected by filed financing statements that are
9 effective solely under section 9-1508. However, if the security
10 agreements to which a new debtor became bound as debtor were not
11 entered into by the same original debtor, the conflicting
12 security interests rank according to priority in time of the new
13 debtor's having become bound.

16 **Official Comment**

18 1. Source. New.

20 2. Subordination of Security Interests Created by New
21 Debtor. This section addresses the priority contests that may
22 arise when a new debtor becomes bound by the security agreement
23 of an original debtor and each debtor has a secured creditor.

24 Subsection (a) [Maine cite subsection (1)] subordinates the
25 original debtor's secured party's security interest perfected
26 against the new debtor solely under Section 9-508 [Maine cite
27 section 9-1508]. The security interest is subordinated to
28 security interests in the same collateral perfected by another
29 method, e.g., by filing against the new debtor. As used in this
30 section, "a filed financing statement that is effective solely
31 under Section 9508 [Maine cite section 9-1508]" refers to a
32 financing statement filed against the original debtor that
33 continues to be effective under Section 9-508 [Maine cite section
34 9-1508]. It does not encompass a new initial financing statement
35 providing the name of the new debtor, even if the initial
36 financing statement is filed to maintain the effectiveness of a
37 financing statement under the circumstances described in Section
38 9-508(b) [Maine cite section 9-1508, subsection (2)]. Nor does
39 it encompass a financing statement filed against the original
40 debtor which remains effective against collateral transferred by
41 the original debtor to the new debtor. See Section 9-508(c)
42 [Maine cite section 9-1508, subsection (3)]. Concerning priority
43 contests involving transferred collateral, see Sections 9-325 and
44 9-507 [Maine cite sections 9-1325 and 9-1507].

46 Example 1: SPX holds a perfected-by-filing security
47 interest in X Corp's existing and after-acquired inventory, and
48 SPZ holds a perfected-by-possession security interest in an item
49 of Z Corp's inventory. Z Corp becomes bound as debtor by X
50

2 Corp's security agreement (e.g., Z Corp buys X Corp's assets and
3 assumes its security agreement). See Section 9-203(d) [Maine
4 cite section 9-1203, subsection (4)]. Under Section 9-508 [Maine
5 cite section 9-1508], SPX's financing statement is effective to
6 perfect a security interest in the item of inventory in which Z
7 Corp has rights. However, subsection (a) [Maine cite subsection
8 (1)] provides that SPX's security interest is subordinate to
9 SPZ's, regardless of whether SP-X's financing statement was filed
10 before SP-Z perfected its security interest.

11
12 Example 2: SPX holds a perfected-by-filing security
13 interest in X Corp's existing and after-acquired inventory, and
14 SPZ holds a perfected-by-filing security interest in Z Corp's
15 existing and after-acquired inventory. Z Corp becomes bound as
16 debtor by X Corp's security agreement. Subsequently, Z Corp
17 acquires a new item of inventory. Under Section 9-508 [Maine
18 cite section 9-1508], SPX's financing statement is effective to
19 perfect a security interest in the new item of inventory in which
20 Z Corp has rights. However, because SP-Z's security interest was
21 perfected by another method, subsection (a) [Maine cite
22 subsection (1)] provides that SPX's security interest is
23 subordinate to SPZ's, regardless of which financing statement was
24 filed first. This would be the case even if SP-Z filed after Z
25 Corp became bound by X Corp's security agreement.

26 3. Other Priority Rules. Subsection (b) [Maine cite
27 subsection (2)] addresses the priority among security interests
28 created by the original debtor (X Corp). By invoking the other
29 priority rules of this subpart, as applicable, subsection (b)
30 [Maine cite subsection (2)] preserves the relative priority of
31 security interests created by the original debtor.

32
33 Example 3: Under the facts of Example 2, SPY also holds a
34 perfected-by-filing security interest in X Corp's existing and
35 after-acquired inventory. SPY filed after SPX. Inasmuch as both
36 SP-X's and SP-Y's security interests in inventory acquired by Z
37 Corp after it became bound are perfected solely under Section
38 9-508 [Maine cite section 9-1508], the normal priority rules
39 determine their relative priorities. Under the
40 "first-to-file-or-perfect" rule of Section 9-322(a)(1) [Maine
41 cite section 9-1322, subsection (1), paragraph (a)], SPX has
42 priority over SPY.

43
44 Example 4: Under the facts of Example 3, after Z Corp
45 became bound by X Corp's security agreement, SP-Y promptly filed
46 a new initial financing statement against Z Corp. At that time,
47 SP-X's security interest was perfected only by virtue of its
48 original filing against X Corp which was "effective solely under
49 Section 9508 [Maine cite section 9-1508]." Because SP-Y's
50 security interest no longer is perfected by a financing statement

2 that is "effective solely under Section 9508 [Maine cite section
3 9-1508]," this section does not apply to the priority contest.
4 Rather, the normal priority rules apply. Under Section 9-322
5 [Maine cite section 9-1322], because SP-Y's financing statement
6 was filed against Z Corp, the new debtor, before SP-X's, SP-Y's
7 security interest is senior to that of SP-X. Similarly, the
8 normal priority rules would govern priority between SP-Y and SP-Z.

10 The second sentence of subsection (b) [Maine cite subsection
11 (2)] effectively limits the applicability of the first sentence
12 to situations in which a new debtor has become bound by more than
13 one security agreement entered into by the same original debtor.
14 When the new debtor has become bound by security agreements
15 entered into by different original debtors, the second sentence
16 provides that priority is based on priority in time of the new
17 debtor's becoming bound.

18 Example 5: Under the facts of Example 2, SP-W holds a
19 perfected-by-filing security interest in W Corp's existing and
20 after-acquired inventory. After Z Corp became bound by X Corp's
21 security agreement in favor of SP-X, Z Corp became bound by W
22 Corp's security agreement. Under subsection (b) [Maine cite
23 subsection (2)], SP-W's security interest in inventory acquired
24 by Z Corp is subordinate to that of SP-X, because Z Corp became
25 bound under SP-X's security agreement before it became bound
26 under SP-W's security agreement. This is the result regardless
27 of which financing statement (SP-X's or SP-W's) was filed first.

28 The second sentence of subsection (b) [Maine cite subsection
29 (2)] reflects the generally accepted view that priority based on
30 the first-to-file rule is inappropriate for resolving priority
31 disputes when the filings were made against different debtors.
32 Like subsection (a) [Maine cite subsection (1)] and the first
33 sentence of subsection (b) [Maine cite subsection (2)], however,
34 the second sentence of subsection (b) [Maine cite subsection (2)]
35 relates only to priority conflicts among security interests
36 perfected by filed financing statements that are "effective
37 solely under Section 9508 [Maine cite section 9-1508]."

40 Example 6: Under the facts of Example 5, after Z Corp
41 became bound by W Corp's security agreement, SP-W promptly filed
42 a new initial financing statement against Z Corp. At that time,
43 SP-X's security interest was perfected only pursuant to its
44 original filing against X Corp which was "effective solely under
45 Section 9508 [Maine cite section 9-1508]." Because SP-W's
46 security interest is not perfected by a financing statement that
47 is "effective solely under Section 9-508," this section does not
48 apply to the priority contest. Rather, the normal priority rules
49 apply. Under Section 9-322 [Maine cite section 9-1322], because
50 SP-W's financing statement was the first to be filed against Z

2 Corp, the new debtor, SP-W's security interest is senior to that
of SP-X. Similarly, the normal priority rules would govern
4 priority between SP-W and SP-Z.

6 **§9-1327. Priority of security interests in deposit account**

8 The following rules govern priority among conflicting
security interests in the same deposit account.

10 (1) A security interest held by a secured party having
12 control of the deposit account under section 9-1104 has priority
14 over a conflicting security interest held by a secured party that
does not have control.

16 (2) Except as otherwise provided in subsections (3) and
18 (4), security interests perfected by control under section 9-1314
rank according to priority in time of obtaining control.

20 (3) Except as otherwise provided in subsection (4), a
22 security interest held by the bank with which the deposit account
is maintained has priority over a conflicting security interest
held by another secured party.

24 (4) A security interest perfected by control under section
26 9-1104, subsection (1), paragraph (c) has priority over a
28 security interest held by the bank with which the deposit account
is maintained.

30 **Official Comment**

32 1. Source. New; derived from former Section 9-115(5).

34 2. Scope of This Section. This section contains the rules
36 governing the priority of conflicting security interests in
38 deposit accounts. It overrides conflicting priority rules. See
40 Sections 9-322(f)(1) [Maine cite section 9-1322, subsection (6),
42 paragraph (a)], 9-324(a), (b), (d), (f) [Maine cite section
9-1324, subsections (1), (2), (4) and (6)]. This section does
not apply to accounts evidenced by an instrument (e.g., certain
certificates of deposit), which by definition are not "deposit
accounts."

44 3. Control. Under paragraph (1) [Maine cite subsection
46 (1)], security interests perfected by control (Sections 9-314,
9-104 [Maine cite section 9-1314, 9-1104]) take priority over
48 those perfected otherwise, e.g., as identifiable cash proceeds
under Section 9-315 [Maine cite section 9-1315]. Secured parties
for whom the deposit account is an integral part of the credit
50 decision will, at a minimum, insist upon the right to immediate

2 access to the deposit account upon the debtor's default (i.e.,
control). Those secured parties for whom the deposit account is
4 less essential will not take control, thereby running the risk
that the debtor will dispose of funds on deposit (either outright
6 or for collateral purposes) after default but before the account
can be frozen by court order or the secured party can obtain
control.

8
10 Paragraph (2) [Maine cite subsection (2)] governs the case
(expected to be very rare) in which a bank enters into a Section
9-104(a)(2) [Maine cite section 9-1104, subsection (1), paragraph
12 (b)] control agreement with more than one secured party. It
provides that the security interests rank according to time of
14 obtaining control. If the bank is solvent and the control
agreements are well drafted, the bank will be liable to each
16 secured party, and the priority rule will have no practical
effect.

18
20 4. Priority of Bank. Under paragraph (3) [Maine cite
subsection (3)], the security interest of the bank with which the
deposit account is maintained normally takes priority over all
22 other conflicting security interests in the deposit account,
regardless of whether the deposit account constitutes the
24 competing secured party's original collateral or its proceeds. A
rule of this kind enables banks to extend credit to their
26 depositors without the need to examine either the public record
or their own records to determine whether another party might
28 have a security interest in the deposit account.

30 A secured party who takes a security interest in the deposit
account as original collateral can protect itself against the
32 results of this rule in one of two ways. It can take control of
the deposit account by becoming the bank's customer. Under
34 paragraph (4) [Maine cite subsection (4)], this arrangement
operates to subordinate the bank's security interest.
36 Alternatively, the secured party can obtain a subordination
agreement from the bank. See Section 9-339 [Maine cite section
38 9-1339].

40 A secured party who claims the deposit account as proceeds
of other collateral can reduce the risk of becoming junior by
42 obtaining the debtor's agreement to deposit proceeds into a
specific cash-collateral account and obtaining the agreement of
44 that bank to subordinate all its claims to those of the secured
party. But if the debtor violates its agreement and deposits
46 funds into a deposit account other than the cash-collateral
account, the secured party risks being subordinated.

48
50 5. Priority in Proceeds of, and Funds Transferred from,
Deposit Account. The priority afforded by this section does not

2 extend to proceeds of a deposit account. Rather, Section
4 9-322(c) to (e) [Maine cite section 9-1322, subsection (3) to
6 (5)] and the provisions referred to in Section 9-322(f) [Maine
8 cite section 9-1322, subsection (6)] govern priorities in
10 proceeds of a deposit account. Section 9-315(d) [Maine cite
12 section 9-1315, subsection (4)] addresses continuation of
14 perfection in proceeds of deposit accounts. As to funds
16 transferred from a deposit account that serves as collateral, see
18 Section 9-332 [Maine cite section 9-1332].

20 **§9-1328. Priority of security interests in investment property**

22 The following rules govern priority among conflicting
24 security interests in the same investment property.

26 (1) A security interest held by a secured party having
28 control of investment property under section 9-1106 has priority
30 over a security interest held by a secured party that does not
32 have control of the investment property.

34 (2) Except as otherwise provided in subsections (3) and
36 (4), conflicting security interests held by secured parties each
38 of which has control under section 9-1106 rank according to
40 priority in time of:

42 (a) If the collateral is a security, obtaining control;

44 (b) If the collateral is a security entitlement carried in
46 a securities account and:

48 (i) If the secured party obtained control under
50 section 8-1106, subsection (4), paragraph (a), the
secured party's becoming the person for which the
securities account is maintained;

(ii) If the secured party obtained control under
section 8-1106, subsection (4), paragraph (b), the
securities intermediary's agreement to comply with the
secured party's entitlement orders with respect to
security entitlements carried or to be carried in the
securities account; or

(iii) If the secured party obtained control through
another person under section 8-1106, subsection (4),
paragraph (c), the time on which priority would be
based under this paragraph if the other person were the
secured party; or

(c) If the collateral is a commodity contract carried with
a commodity intermediary, the satisfaction of the

2 requirement for control specified in section 9-1106,
3 subsection (2), paragraph (b) with respect to commodity
4 contracts carried or to be carried with the commodity
5 intermediary.

6 (3) A security interest held by a securities intermediary
7 in a security entitlement or a securities account maintained with
8 the securities intermediary has priority over a conflicting
9 security interest held by another secured party.

10 (4) A security interest held by a commodity intermediary in
11 a commodity contract or a commodity account maintained with the
12 commodity intermediary has priority over a conflicting security
13 interest held by another secured party.

14 (5) A security interest in a certificated security in
15 registered form that is perfected by taking delivery under
16 section 9-1313, subsection (1) and not by control under section
17 9-1314 has priority over a conflicting security interest
18 perfected by a method other than control.

19 (6) Conflicting security interests created by a broker,
20 securities intermediary or commodity intermediary that are
21 perfected without control under section 9-1106 rank equally.

22 (7) In all other cases, priority among conflicting security
23 interests in investment property is governed by sections 9-1322
24 and 9-1323.

25

Official Comment

26

1. Source. Former Section 9-115(5).

27

28 2. Scope of This Section. This section contains the rules
29 governing the priority of conflicting security interests in
30 investment property. Paragraph (1) [Maine cite subsection (1)]
31 states the most important general rule—that a secured party who
32 obtains control has priority over a secured party who does not
33 obtain control. Paragraphs (2) through (4) [Maine cite
34 subsections (2) to (4)] deal with conflicting security interests
35 each of which is perfected by control. Paragraph (5) [Maine cite
36 subsection (5)] addresses the priority of a security interest in
37 a certificated security which is perfected by delivery but not
38 control. Paragraph (6) [Maine cite subsection (6)] deals with
39 the relatively unusual circumstance in which a broker, securities
40 intermediary, or commodity intermediary has created conflicting
41 security interests none of which is perfected by control.
42 Paragraph (7) [Maine cite subsection (7)] provides that the
43 general priority rules of Sections 9322 and 9-323 [Maine cite
44
45
46
47
48
49
50

2 sections 9-1322 and 9-1323] apply to cases not covered by the
3 specific rules in this section. The principal application of
4 this residual rule is that the usual first in time of filing rule
5 applies to conflicting security interests that are perfected only
6 by filing. Because the control priority rule of paragraph (1)
7 [Maine cite subsection (1)] provides for the ordinary cases in
8 which persons purchase securities on margin credit from their
9 brokers, there is no need for special rules for purchase-money
10 security interests. See also Section 9-103 [Maine cite section
11 9-1103] (limiting purchase-money collateral to goods and
12 software).

13
14 3. General Rule: Priority of Security Interest Perfected
15 by Control. Under paragraph (1) [Maine cite subsection (1)], a
16 secured party who obtains control has priority over a secured
17 party who does not obtain control. The control priority rule
18 does not turn on either temporal sequence or awareness of
19 conflicting security interests. Rather, it is a structural rule,
20 based on the principle that a lender should be able to rely on
21 the collateral without question if the lender has taken the
22 necessary steps to assure itself that it is in a position where
23 it can foreclose on the collateral without further action by the
24 debtor. The control priority rule is necessary because the
25 perfection rules provide considerable flexibility in structuring
26 secured financing arrangements. For example, at the "retail"
27 level, a secured lender to an investor who wants the full measure
28 of protection can obtain control, but the creditor may be willing
29 to accept the greater measure of risk that follows from
30 perfection by filing. Similarly, at the "wholesale" level, a
31 lender to securities firms can leave the collateral with the
32 debtor and obtain a perfected security interest under the
33 automatic perfection rule of Section 9-309(a)(10) [Maine cite
34 section 9-1309, subsection (1), paragraph (j)], but a lender who
35 wants to be entirely sure of its position will want to obtain
36 control. The control priority rule of paragraph (1) [Maine cite
37 subsection (1)] is an essential part of this system of
38 flexibility. It is feasible to provide more than one method of
39 perfecting security interests only if the rules ensure that those
40 who take the necessary steps to obtain the full measure of
41 protection do not run the risk of subordination to those who have
42 not taken such steps. A secured party who is unwilling to run
43 the risk that the debtor has granted or will grant a conflicting
44 control security interest should not make a loan without
45 obtaining control of the collateral.

46 As applied to the retail level, the control priority rule
47 means that a secured party who obtains control has priority over
48 a conflicting security interest perfected by filing without
49 regard to inquiry into whether the control secured party was
50 aware of the filed security interest. Prior to the 1994

2 revisions to Articles 8 and 9, Article 9 did not permit
3 perfection of security interests in securities by filing.
4 Accordingly, parties who deal in securities never developed a
5 practice of searching the UCC files before conducting securities
6 transactions. Although filing is now a permissible method of
7 perfection, in order to avoid disruption of existing practices in
8 this business it is necessary to give perfection by filing a
9 different and more limited effect for securities than for some
10 other forms of collateral. The priority rules are not based on
11 the assumption that parties who perfect by the usual method of
12 obtaining control will search the files. Quite the contrary, the
13 control priority rule is intended to ensure that, with respect to
14 investment property, secured parties who do obtain control are
15 entirely unaffected by filings. To state the point another way,
16 perfection by filing is intended to affect only general creditors
17 or other secured creditors who rely on filing. The rule that a
18 security interest perfected by filing can be primed by a control
19 security interest, without regard to awareness, is a consequence
20 of the system of perfection and priority rules for investment
21 property. These rules are designed to take account of the
22 circumstances of the securities markets, where filing is not
23 given the same effect as for some other forms of property. No
24 implication is made about the effect of filing with respect to
25 security interests in other forms of property, nor about other
26 Article 9 [Maine cite Article 9-A] rules, e.g., Section 9330
27 [Maine cite section 9-1330], which govern the circumstances in
28 which security interests in other forms of property perfected by
filing can be primed by subsequent perfected security interests.

30 The following examples illustrate the application of the
31 priority rule in paragraph (1) [Maine cite subsection (1)]:

32
33 Example 1: Debtor borrows from Alpha and grants Alpha a
34 security interest in a variety of collateral, including all of
35 Debtor's investment property. At that time Debtor owns 1000
36 shares of XYZ Co. stock for which Debtor has a certificate.
37 Alpha perfects by filing. Later, Debtor borrows from Beta and
38 grants Beta a security interest in the 1000 shares of XYZ Co.
39 stock. Debtor delivers the certificate, properly indorsed, to
40 Beta. Alpha and Beta both have perfected security interests in
41 the XYZ Co. stock. Beta has control, see Section 8-106(b)(1)
42 [Maine cite section 8-1106, subsection (2), paragraph (a)], and
43 hence has priority over Alpha.

44
45 Example 2: Debtor borrows from Alpha and grants Alpha a
46 security interest in a variety of collateral, including all of
47 Debtor's investment property. At that time Debtor owns 1000
48 shares of XYZ Co. stock, held through a securities account with
49 Able & Co. Alpha perfects by filing. Later, Debtor borrows from
50 Beta and grants Beta a security interest in the 1000 shares of

2 XYZ Co. stock. Debtor instructs Able to have the 1000 shares
transferred through the clearing corporation to Custodian Bank,
4 to be credited to Beta's account with Custodian Bank. Alpha and
Beta both have perfected security interests in the XYZ Co.
6 stock. Beta has control, see Section 8-106(d)(1) [Maine cite
section 8-1106, subsection (4), paragraph (a)], and hence has
priority over Alpha.

8
10 Example 3: Debtor borrows from Alpha and grants Alpha a
security interest in a variety of collateral, including all of
Debtor's investment property. At that time Debtor owns 1000
12 shares of XYZ Co. stock, which is held through a securities
account with Able & Co. Alpha perfects by filing. Later, Debtor
14 borrows from Beta and grants Beta a security interest in the 1000
shares of XYZ Co. stock. Debtor, Able, and Beta enter into an
16 agreement under which Debtor will continue to receive dividends
and distributions, and will continue to have the right to direct
18 dispositions, but Beta will also have the right to direct
dispositions and receive the proceeds. Alpha and Beta both have
20 perfected security interests in the XYZ Co. stock (more
precisely, in the Debtor's security entitlement to the financial
22 asset consisting of the XYZ Co. stock). Beta has control, see
Section 8-106(d)(2) [Maine cite section 8-1106, subsection (4),
24 paragraph (b)], and hence has priority over Alpha.

26 Example 4: Debtor borrows from Alpha and grants Alpha a
security interest in a variety of collateral, including all of
28 Debtor's investment property. At that time Debtor owns 1000
shares of XYZ Co. stock, held through a securities account with
30 Able & Co. Alpha perfects by filing. Debtor's agreement with
Able & Co. provides that Able has a security interest in all
32 securities carried in the account as security for any obligations
of Debtor to Able. Debtor incurs obligations to Alpha and later
34 defaults on the obligations to Alpha and Able. Able has control
by virtue of the rule of Section 8-106(e) [Maine cite section
36 8-1106, subsection (5)] that if a customer grants a security
interest to its own intermediary, the intermediary has control.
38 Since Alpha does not have control, Able has priority over Alpha
under the general control priority rule of paragraph (1) [Maine
40 cite subsection (1)].

42 4. Conflicting Security Interests Perfected by Control:
Priority of Securities Intermediary or Commodity Intermediary.
44 Paragraphs (2) through (4) [Maine cite subsections (2) to (4)]
govern the priority of conflicting security interests each of
46 which is perfected by control. The following example explains
the application of the rules in paragraphs (3) and (4) [Maine
48 cite subsections (3) and (4)]:

2 Example 5: Debtor holds securities through a securities
3 account with Able & Co. Debtor's agreement with Able & Co.
4 provides that Able has a security interest in all securities
5 carried in the account as security for any obligations of Debtor
6 to Able. Debtor borrows from Beta and grants Beta a security
7 interest in 1000 shares of XYZ Co. stock carried in the account.
8 Debtor, Able, and Beta enter into an agreement under which Debtor
9 will continue to receive dividends and distributions and will
10 continue to have the right to direct dispositions, but Beta will
11 also have the right to direct dispositions and receive the
12 proceeds. Debtor incurs obligations to Able and later defaults
13 on the obligations to Beta and Able. Both Beta and Able have
14 control, so the general control priority rule of paragraph (1)
15 [Maine cite subsection (1)] does not apply. Compare Example 4.
16 Paragraph (3) [Maine cite subsection (3)] provides that a security
17 interest held by a securities intermediary in positions of its
18 own customer has priority over a conflicting security interest of
19 an external lender, so Able has priority over Beta. (Paragraph
20 (4) [Maine cite subsection (4)] contains a parallel rule for
21 commodity intermediaries.) The agreement among Able, Beta, and
22 Debtor could, of course, determine the relative priority of the
23 security interests of Able and Beta, see Section 9339 [Maine cite
24 section 9-1339], but the fact that the intermediary has agreed to
25 act on the instructions of a secured party such as Beta does not
26 itself imply any agreement by the intermediary to subordinate.

27
28 5. Conflicting Security Interests Perfected by Control:
29 Temporal Priority. Former Section 9-115 introduced into Article
30 9 the concept of conflicting security interests that rank
31 equally. Paragraph (2) [Maine cite subsection (2)] of this
32 section governs priority in those circumstances in which more
33 than one secured party (other than a broker, securities
34 intermediary, or commodity intermediary) has control. It
35 replaces the equal-priority rule for conflicting security
36 interests in investment property with a temporal rule. For
37 securities, both certificated and uncertificated, under paragraph
38 (2)(A) [Maine cite subsection (2), paragraph (a)] priority is
39 based on the time that control is obtained. For security
40 entitlements carried in securities accounts, the treatment is
41 more complex. Paragraph (2)(B) [Maine cite subsection (2),
42 paragraph (b)] bases priority on the timing of the steps taken to
43 achieve control. The following example illustrates the
44 application of paragraph (2) [Maine cite subsection (2)].

45
46 Example 6: Debtor borrows from Alpha and grants Alpha a
47 security interest in a variety of collateral, including all of
48 Debtor's investment property. At that time Debtor owns a
49 security entitlement that includes 1000 shares of XYZ Co. stock
50 that Debtor holds through a securities account with Able & Co.
Debtor, Able, and Alpha enter into an agreement under which

2 Debtor will continue to receive dividends and distributions, and
3 will continue to have the right to direct dispositions, but Alpha
4 will also have the right to direct dispositions and receive the
5 proceeds. Later, Debtor borrows from Beta and grants Beta a
6 security interest all its investment property, existing and
7 after-acquired. Debtor, Able, and Beta enter into an agreement
8 under which Debtor will continue to receive dividends and
9 distributions, and will continue to have the right to direct
10 dispositions, but Beta will also have the right to direct
11 dispositions and receive the proceeds. Alpha and Beta both have
12 perfected-by-control security interests in the security
13 entitlement to the XYZ Co. stock by virtue of their agreements
14 with Able. See Sections 9-314(a), 9-106(a) [Maine cite section
15 9-1314, subsection (1), section 9-1106, subsection (1)],
16 8-106(d)(2) [Maine cite section 8-1106, subsection (4), paragraph
17 (b)]. Under paragraph (2)(B)(ii) [Maine cite subsection (2),
18 paragraph (b), subparagraph (ii)], the priority of each security
19 interest dates from the time of the secured party's agreement
20 with Able. Because Alpha's agreement was first in time, Alpha
21 has priority. This priority applies equally to security
22 entitlements to financial assets credited to the account after
the agreement was entered into.

24 The priority rule is analogous to "first-to-file" priority
25 under Section 9-322 [Maine cite section 9-1322] with respect to
26 after-acquired collateral. Paragraphs (2)(B)(i) and (2)(B)(iii)
27 [Maine cite subsection (2), paragraph (b), subparagraphs (i) and
28 (iii)] provide similar rules for security entitlements as to
29 which control is obtained by other methods, and paragraph (2)(C)
30 [Maine cite subsection (2), paragraph (c)] provides a similar
31 rule for commodity contracts carried in a commodity account.
32 Section 8-510 also has been revised to provide a temporal
33 priority conforming to paragraph (2)(B) [Maine cite subsection
34 (2), paragraph (b)].

36 6. Certificated Securities. A long-standing practice has
37 developed whereby secured parties whose collateral consists of a
38 security evidenced by a security certificate take possession of
39 the security certificate. If the security certificate is in
40 bearer form, the secured party's acquisition of possession
41 constitutes "delivery" under Section 8-301(a)(1) [Maine cite
42 section 8-1301, subsection (1), paragraph (a)], and the delivery
43 constitutes "control" under Section 8-106(a) [Maine cite section
44 8-1106, subsection (1)]. Comment 5 discusses the priority of
45 security interests perfected by control of investment property.

46
47 If the security certificate is in registered form, the
48 secured party will not achieve control over the security unless
49 the security certificate contains an appropriate indorsement or
50 is (re)registered in the secured party's name. See Section

2 8-106(b) [Maine cite section 8-1106, subsection (2)]. However,
3 the secured party's acquisition of possession constitutes
4 "delivery" of the security certificate under Section 8-301 [Maine
5 cite section 8-1301] and serves to perfect the security interest
6 under Section 9-313(a) [Maine cite section 9-1313, subsection
7 (1)], even if the security certificate has not been appropriately
8 indorsed and has not been (re)registered in the secured party's
9 name. A security interest perfected by this method has priority
10 over a security interest perfected other than by control (e.g.,
11 by filing). See paragraph (5) [Maine cite subsection (5)].

12 The priority rule stated in paragraph (5) [Maine cite
13 subsection (5)] may seem anomalous, in that it can afford less
14 favorable treatment to purchasers who buy collateral outright
15 that to those who take a security interest in it. For example, a
16 buyer of a security certificate would cut off a security interest
17 perfected by filing only if the buyer achieves the status of a
18 protected purchaser under Section 8-303 [Maine cite section
19 8-1303]. The buyer would not be a protected purchaser, for
20 example, if it does not obtain "control" under Section 8-106
21 [Maine cite section 8-1106] (e.g., if it fails to obtain a proper
22 indorsement of the certificate) or if it had notice of an adverse
23 claim under Section 8-105 [Maine cite section 8-1105]. The
24 apparent anomaly disappears, however, when one understands the
25 priority rule not as one intended to protect careless or guilty
26 parties, but as one that eliminates the need to conduct a search
27 of the public records only insofar as necessary to serve the
28 needs of the securities markets.

30 7. Secured Financing of Securities Firms. Priority
31 questions concerning security interests granted by brokers and
32 securities intermediaries are governed by the general
33 control-beats-non-control priority rule of paragraph (1) [Maine
34 cite subsection (1)], as supplemented by the special rules set
35 out in paragraphs (2) [Maine cite subsection (2)] (temporal
36 priority-first to control), (3) [Maine cite subsection (3)]
37 (special priority for securities intermediary), and (6) [Maine
38 cite subsection (6)] (equal priority for non-control). The
39 following examples illustrate the priority rules as applied to
40 this setting. (In all cases it is assumed that the debtor
41 retains sufficient other securities to satisfy all customers'
42 claims. This section deals with the relative rights of secured
43 lenders to a securities firm. Disputes between a secured lender
44 and the firm's own customers are governed by Section 8-511 [Maine
45 cite section 8-1511].)

46 Example 7: Able & Co., a securities dealer, enters into
47 financing arrangements with two lenders, Alpha Bank and Beta
48 Bank. In each case the agreements provide that the lender will
49 have a security interest in the securities identified on lists
50

2 provided to the lender on a daily basis, that the debtor will
3 deliver the securities to the lender on demand, and that the
4 debtor will not list as collateral any securities which the
5 debtor has pledged to any other lender. Upon Able's insolvency
6 it is discovered that Able has listed the same securities on the
7 collateral lists provided to both Alpha and Beta. Alpha and Beta
8 both have perfected security interests under the
9 automatic-perfection rule of Section 9-309(10) [Maine cite
10 section 9-1309, subsection (10)]. Neither Alpha nor Beta has
11 control. Paragraph (6) [Maine cite subsection (6)] provides that
12 the security interests of Alpha and Beta rank equally, because
13 each of them has a non-control security interest granted by a
14 securities firm. They share pro-rata.

16 Example 8: Able enters into financing arrangements, with
17 Alpha Bank and Beta Bank as in Example 7. At some point,
18 however, Beta decides that it is unwilling to continue to provide
19 financing on a non-control basis. Able directs the clearing
20 corporation where it holds its principal inventory of securities
21 to move specified securities into Beta's account. Upon Able's
22 insolvency it is discovered that a list of collateral provided to
23 Alpha includes securities that had been moved to Beta's account.
24 Both Alpha and Beta have perfected security interests; Alpha
25 under the automatic-perfection rule of Section 9-309(10) [Maine
26 cite section 9-1309, subsection (10)], and Beta under that rule
27 and also the perfection-by-control rule in Section 9-314(a)
28 [Maine cite section 9-1314, subsection (a)]. Beta has control
29 but Alpha does not. Beta has priority over Alpha under paragraph
30 (1) [Maine cite subsection (1)].

32 Example 9: Able & Co. carries its principal inventory of
33 securities through Clearing Corporation, which offers a "shared
34 control" facility whereby a participant securities firm can enter
35 into an arrangement with a lender under which the securities firm
36 will retain the power to trade and otherwise direct dispositions
37 of securities carried in its account, but Clearing Corporation
38 agrees that, at any time the lender so directs, Clearing
39 Corporation will transfer any securities from the firm's account
40 to the lender's account or otherwise dispose of them as directed
41 by the lender. Able enters into financing arrangements with two
42 lenders, Alpha and Beta, each of which obtains such a control
43 agreement from Clearing Corporation. The agreement with each
44 lender provides that Able will designate specific securities as
45 collateral on lists provided to the lender on a daily or other
46 periodic basis, and that it will not pledge the same securities
47 to different lenders. Upon Able's insolvency, it is discovered
48 that Able has listed the same securities on the collateral lists
provided to both Alpha and Beta. Both Alpha and Beta have
control over the disputed securities. Paragraph (2) [Maine cite

2 subsection (2)] awards priority to whichever secured party first
entered into the agreement with Clearing Corporation.

4 8. Relation to Other Law. Section 1103 provides that
6 "unless displaced by particular provisions of this Act, the
principles of law and equity . . . shall supplement its
8 provisions." There may be circumstances in which a secured
party's action in acquiring a security interest that has priority
10 under this section constitutes conduct that is wrongful under
other law. Though the possibility of such resort to other law
12 may provide an appropriate "escape valve" for cases of egregious
conduct, care must be taken to ensure that this does not impair
14 the certainty and predictability of the priority rules. Whether
a court may appropriately look to other law to impose liability
16 upon or estop a secured party from asserting its Article 9 [Maine
cite Article 9-A] priority depends on an assessment of the
18 secured party's conduct under the standards established by such
other law as well as a determination of whether the particular
application of such other law is displaced by the UCC.

20
22 Some circumstances in which other law is clearly displaced
by the UCC rules are readily identifiable. Common law "first in
24 time, first in right" principles, or correlative tort liability
rules such as common law conversion principles under which a
26 purchaser may incur liability to a person with a prior property
interest without regard to awareness of that claim, are
necessarily displaced by the priority rules set out in this
28 section since these rules determine the relative ranking of
security interests in investment property. So too, Article 8
30 provides protections against adverse claims to certain purchasers
of interests in investment property. In circumstances where a
32 secured party not only has priority under Section 9328 [Maine
cite section 9-1328], but also qualifies for protection against
34 adverse claims under Section 8-303, 8-502, or 8-510 [Maine cite
sections 8-1303, 8-1502 or 8-1510], resort to other law would be
36 precluded.

38 In determining whether it is appropriate in a particular
case to look to other law, account must also be taken of the
40 policies that underlie the commercial law rules on securities
markets and security interests in securities. A principal
42 objective of the 1994 revision of Article 8 and the provisions of
Article 9 [Maine cite Article 9-A] governing investment property
44 was to ensure that secured financing transactions can be
implemented on a simple, timely, and certain basis. One of the
46 circumstances that led to the revision was the concern that
uncertainty in the application of the rules on secured
48 transactions involving securities and other financial assets
could contribute to systemic risk by impairing the ability of
50 financial institutions to provide liquidity to the markets in

2 times of stress. The control priority rule is designed to
provide a clear and certain rule to ensure that lenders who have
4 taken the necessary steps to establish control do not face a risk
of subordination to other lenders who have not done so.

6 The control priority rule does not turn on an inquiry into
the state of a secured party's awareness of potential conflicting
8 claims because a rule under which a person's rights depended on
that sort of after-the-fact inquiry could introduce an
10 unacceptable measure of uncertainty. If an inquiry into
awareness could provide a complete and satisfactory resolution of
12 the problem in all cases, the priority rules of this section
would have incorporated that test. The fact that they do not
14 necessarily means that resort to other law based solely on that
factor is precluded, though the question whether a control
16 secured party induced or encouraged its financing arrangement
with actual knowledge that the debtor would be violating the
18 rights of another secured party may, in some circumstances,
appropriately be treated as a factor in determining whether the
20 control party's action is the kind of egregious conduct for which
resort to other law is appropriate.

22 **§9-1329. Priority of security interests in letter-of-credit right**

24 The following rules govern priority among conflicting
26 security interests in the same letter-of-credit right.

28 (1) A security interest held by a secured party having
control of the letter-of-credit right under section 9-1107 has
30 priority to the extent of its control over a conflicting security
interest held by a secured party that does not have control.

32 (2) Security interests perfected by control under section
34 9-1314 rank according to priority in time of obtaining control.

36 **Official Comment**

38 1. Source. New; loosely modeled after former Section
40 9-115(5).

42 2. General Rule. Paragraph (1) [Maine cite subsection (1)]
awards priority to a secured party who perfects a security
44 interest directly in letter-of-credit rights (i.e., one that
takes an assignment of proceeds and obtains consent of the issuer
46 or any nominated person under Section 5-114(c)) over another
conflicting security interest (i.e., one that is perfected
48 automatically in the letter-of-credit rights as supporting
obligations under Section 9-308(d) [Maine cite section 9-1308,
50 subsection (4)]). This is consistent with international

2 letter-of-credit practice and provides finality to payments made
3 to recognized assignees of letter-of-credit proceeds. If an
4 issuer or nominated person recognizes multiple security interests
5 in a letter-of-credit right, resulting in multiple parties having
6 control (Section 9-107 [Maine cite section 9-1107]), under
7 paragraph (2) [Maine cite subsection (2)] the security interests
8 rank according to the time of obtaining control.

9
10 3. Drawing Rights; Transferee Beneficiaries. Drawing under
11 a letter of credit is personal to the beneficiary and requires
12 the beneficiary to perform the conditions for drawing under the
13 letter of credit. Accordingly, a beneficiary's grant of a
14 security interest in a letter of credit includes the
15 beneficiary's "letter-of-credit right" as defined in Section
16 9-102 [Maine cite section 9-1102)] and the right to "proceeds of
17 [the] letter of credit" as defined in Section 5-114(a), but does
18 not include the right to demand payment under the letter of
19 credit.

20 Section 5-114(e) provides that the "[r]ights of a transferee
21 beneficiary or nominated person are independent of the
22 beneficiary's assignment of the proceeds of a letter of credit
23 and are superior to the assignee's right to the proceeds." To
24 the extent the rights of a transferee beneficiary or nominated
25 person are independent and superior, this Article does not
26 apply. See Section 9-109(c) [Maine cite section 9-1109,
27 subsection (3)].

28
29 Under Article 5, there is in effect a novation upon the
30 transfer with the issuer becoming bound on a new, independent
31 obligation to the transferee. The rights of nominated persons
32 and transferee beneficiaries under a letter of credit include the
33 right to demand payment from the issuer. Under Section 5-114(e),
34 their rights to payment are independent of their obligations to
35 the beneficiary (or original beneficiary) and superior to the
36 rights of assignees of letter of credit proceeds (Section
37 5-114(c)) and others claiming a security interest in the
38 beneficiary's (or original beneficiary's) letter of credit rights.

39
40 A transfer of drawing rights under a transferable letter of
41 credit establishes independent Article 5 rights in the transferee
42 and does not create or perfect an Article 9 [Maine cite Article
43 9-A] security interest in the transferred drawing rights. The
44 definition of "letter-of-credit right" in Section 9-102 [Maine
45 cite section 9-1102] excludes a beneficiary's drawing rights.
46 The exercise of drawing rights by a transferee beneficiary may
47 breach a contractual obligation of the transferee to the original
48 beneficiary concerning when and how much the transferee may draw
49 or how it may use the funds received under the letter of credit.
50 If, for example, drawing rights are transferred to support a sale

2 or loan from the transferee to the original beneficiary, then the
3 transferee would be obligated to the original beneficiary under
4 the sale or loan agreement to account for any drawing and for the
5 use of any funds received. The transferee's obligation would be
6 governed by the applicable law of contracts or restitution.

7
8 4. Secured Party-Transferee Beneficiaries. As described in
9 Comment 3, drawing rights under letters of credit are transferred
10 in many commercial contexts in which the transferee is not a
11 secured party claiming a security interest in an underlying
12 receivable supported by the letter of credit. Consequently, a
13 transfer of a letter of credit is not a method of "perfection" of
14 a security interest. The transferee's independent right to draw
15 under the letter of credit and to receive and retain the value
16 thereunder (in effect, priority) is not based on Article 9 [Maine
17 cite Article 9-A] but on letter-of-credit law and the terms of
18 the letter of credit. Assume, however, that a secured party does
19 hold a security interest in a receivable that is owned by a
20 beneficiary-debtor and supported by a transferable letter of
21 credit. Assume further that the beneficiary-debtor causes the
22 letter of credit to be transferred to the secured party, the
23 secured party draws under the letter of credit, and, upon the
24 issuer's payment to the secured party-transferee, the underlying
25 account debtor's obligation to the original beneficiary-debtor is
26 satisfied. In this situation, the payment to the secured
27 party-transferee is proceeds of the receivable collected by the
28 secured party-transferee. Consequently, the secured
29 party-transferee would have certain duties to the debtor and
30 third parties under Article 9 [Maine cite Article 9-A]. For
31 example, it would be obliged to collect under the letter of
32 credit in a commercially reasonable manner and to remit any
33 surplus pursuant to Sections 9-607 and 9-608 [Maine cite sections
34 9-1607 and 9-1608].

35
36 This scenario is problematic under letter-of-credit law and
37 practice, inasmuch as a transferee beneficiary collects in its
38 own right arising from its own performance. Accordingly, under
39 Section 5-114, the independent and superior rights of a
40 transferee control over any inconsistent duties under Article 9
41 [Maine cite Article 9-A]. A transferee beneficiary may take a
42 transfer of drawing rights to avoid reliance on the original
43 beneficiary's credit and collateral, and it may consider any
44 Article 9 [Maine cite Article 9-A] rights superseded by its
45 Article 5 rights. Moreover, it will not always be clear (i)
46 whether a transferee beneficiary has a security interest in the
47 underlying collateral, (ii) whether any security interest is
48 senior to the rights of others, or (iii) whether the transferee
49 beneficiary is aware that it holds a security interest. There
50 will be clear cases in which the role of a transferee beneficiary
as such is merely incidental to a conventional secured

2 financing. There also will be cases in which the existence of a
3 security interest may have little to do with the position of a
4 transferee beneficiary as such. In dealing with these cases and
5 less clear cases involving the possible application of Article 9
6 to a nominated person or a transferee beneficiary, the right to
7 demand payment under a letter of credit should be distinguished
8 from letter-of-credit rights. The courts also should give
9 appropriate consideration to the policies and provisions of
10 Article 5 and letter-of-credit practice as well as Article 9
11 [Maine cite Article 9-A].

12 **§9-1330. Priority of purchaser of chattel paper or instrument**

13 (1) A purchaser of chattel paper has priority over a
14 security interest in the chattel paper that is claimed merely as
15 proceeds of inventory subject to a security interest if:

16 (a) In good faith and in the ordinary course of the
17 purchaser's business, the purchaser gives new value and
18 takes possession of the chattel paper or obtains control of
19 the chattel paper under section 9-1105; and

20 (b) The chattel paper does not indicate that it has been
21 assigned to an identified assignee other than the purchaser.

22 (2) A purchaser of chattel paper has priority over a
23 security interest in the chattel paper that is claimed other than
24 merely as proceeds of inventory subject to a security interest if
25 the purchaser gives new value and takes possession of the chattel
26 paper or obtains control of the chattel paper under section
27 9-1105 in good faith, in the ordinary course of the purchaser's
28 business and without knowledge that the purchase violates the
29 rights of the secured party.

30 (3) Except as otherwise provided in section 9-1327, a
31 purchaser having priority in chattel paper under subsection (1)
32 or (2) also has priority in proceeds of the chattel paper to the
33 extent that:

34 (a) Section 9-1322 provides for priority in the proceeds; or

35 (b) The proceeds consist of the specific goods covered by
36 the chattel paper or cash proceeds of the specific goods,
37 even if the purchaser's security interest in the proceeds is
38 unperfected.

39 (4) Except as otherwise provided in section 9-1331,
40 subsection (1), a purchaser of an instrument has priority over a
41 security interest in the instrument perfected by a method other
42 than possession if the purchaser gives value and takes possession
43 of the instrument.

2 of the instrument in good faith and without knowledge that the
3 purchase violates the rights of the secured party.

4 (5) For purposes of subsections (1) and (2), the holder of
5 a purchase-money security interest in inventory gives new value
6 for chattel paper constituting proceeds of the inventory.

7 (6) For purposes of subsections (2) and (4), if chattel
8 paper or an instrument indicates that it has been assigned to an
9 identified secured party other than the purchaser, a purchaser of
10 the chattel paper or instrument has knowledge that the purchase
11 violates the rights of the secured party.

14 **Official Comment**

16 1. Source. Former Section 9-308.

18 2. Non-Temporal Priority. This Article permits a security
19 interest in chattel paper or instruments to be perfected either
20 by filing or by the secured party's taking possession. This
21 section enables secured parties and other purchasers of chattel
22 paper (both electronic and tangible) and instruments to obtain
23 priority over earlier-perfected security interests.

24 3. Chattel Paper. Subsections (a) and (b) [Maine cite
25 subsections (1) and (2)] follow former Section 9-308 in
26 distinguishing between earlier-perfected security interests in
27 chattel paper that is claimed merely as proceeds of inventory
28 subject to a security interest and chattel paper that is claimed
29 other than merely as proceeds. Like former Section 9-308, this
30 section does not elaborate upon the phrase "merely as proceeds."
31 For an elaboration, see PEB Commentary No. 8.

34 This section makes explicit the "good faith" requirement and
35 retains the requirements of "the ordinary course of the
36 purchaser's business" and the giving of "new value" as conditions
37 for priority. Concerning the last, this Article deletes former
38 Section 9-108 and adds to Section 9-102 [Maine cite section
39 9-1102] a completely different definition of the term "new
40 value." Under subsection (e) [Maine cite subsection (5)], the
41 holder of a purchase-money security interest in inventory is
42 deemed to give "new value" for chattel paper constituting the
43 proceeds of the inventory. Accordingly, the purchase-money
44 secured party may qualify for priority in the chattel paper under
45 subsection (a) or (b) [Maine cite subsection (1) or (2)],
46 whichever is applicable, even if it does not make an additional
47 advance against the chattel paper.

48 If a possessory security interest in tangible chattel paper
49 or a perfected-by-control security interest in electronic chattel
50

2 paper does not qualify for priority under this section, it may be
3 subordinate to a perfected-by-filing security interest under
4 Section 9-322(a)(1) [Maine cite section 9-1322, subsection (1),
5 paragraph (a)].

6 4. Possession. The priority afforded by this section turns
7 in part on whether a purchaser "takes possession" of tangible
8 chattel paper. Similarly, the governing law provisions in
9 Section 9-301 [Maine cite section 9-1301] address both
10 "possessory" and "nonpossessory" security interests. Two common
11 practices have raised particular concerns. First, in some cases
12 the parties create more than one copy or counterpart of chattel
13 paper evidencing a single secured obligation or lease. This
14 practice raises questions as to which counterpart is the
15 "original" and whether it is necessary for a purchaser to take
16 possession of all counterparts in order to "take possession" of
17 the chattel paper. Second, parties sometimes enter into a single
18 "master" agreement. The master agreement contemplates that the
19 parties will enter into separate "schedules" from time to time,
20 each evidencing chattel paper. Must a purchaser of an obligation
21 or lease evidenced by a single schedule also take possession of
22 the master agreement as well as the schedule in order to "take
23 possession" of the chattel paper?

24
25 The problem raised by the first practice is easily solved.
26 The parties may in the terms of their agreement and by
27 designation on the chattel paper identify only one counterpart as
28 the original chattel paper for purposes of taking possession of
29 the chattel paper. Concerns about the second practice also are
30 easily solved by careful drafting. Each schedule should provide
31 that it incorporates the terms of the master agreement, not the
32 other way around. This will make it clear that each schedule is
33 a "stand alone" document.

34
35 5. Chattel Paper Claimed Merely as Proceeds. Subsection
36 (a) [Maine cite subsection (1)] revises the rule in former
37 Section 9-308(b) to eliminate reference to what the purchaser
38 knows. Instead, a purchaser who meets the possession or control,
39 ordinary course, and new value requirements takes priority over a
40 competing security interest unless the chattel paper itself
41 indicates that it has been assigned to an identified assignee
42 other than the purchaser. Thus subsection (a) [Maine cite
43 subsection (1)] recognizes the common practice of placing a
44 "legend" on chattel paper to indicate that it has been assigned.
45 This approach, under which the chattel paper purchaser who gives
46 new value in ordinary course can rely on possession of
47 unlegended, tangible chattel paper without any concern for other
48 facts that it may know, comports with the expectations of both
49 inventory and chattel paper financiers.

50

2 6. Chattel Paper Claimed Other Than Merely as Proceeds.
3 Subsection (b) [Maine cite subsection (2)] eliminates the
4 requirement that the purchaser take without knowledge that the
5 "specific paper" is subject to the security interest and
6 substitutes for it the requirement that the purchaser take
7 "without knowledge that the purchase violates the rights of the
8 secured party." This standard derives from the definition of
9 "buyer in ordinary course of business" in Section 1-201(9). The
10 source of the purchaser's knowledge is irrelevant. Note,
11 however, that "knowledge" means "actual knowledge." Section
12 1-201(25).

13
14 In contrast to a junior secured party in accounts, who may
15 be required in some special circumstances to undertake a search
16 under the "good faith" requirement, see Comment 5 to Section
17 9-331 [Maine cite section 9-1331], a purchaser of chattel paper
18 under this section is not required as a matter of good faith to
19 make a search in order to determine the existence of prior
20 security interests. There may be circumstances where the
21 purchaser undertakes a search nevertheless, either on its own
22 volition or because other considerations make it advisable to do
23 so, e.g., where the purchaser also is purchasing accounts.
24 Without more, a purchaser of chattel paper who has seen a
25 financing statement covering the chattel paper or who knows that
26 the chattel paper is encumbered with a security interest, does
27 not have knowledge that its purchase violates the secured party's
28 rights. However, if a purchaser sees a statement in a financing
29 statement to the effect that a purchase of chattel paper from the
30 debtor would violate the rights of the filed secured party, the
31 purchaser would have such knowledge. Likewise, under new
32 subsection (f) [Maine cite subsection (6)], if the chattel paper
33 itself indicates that it had been assigned to an identified
34 secured party other than the purchaser, the purchaser would have
35 wrongful knowledge for purposes of subsection (b) [Maine cite
36 subsection (2)], thereby preventing the purchaser from qualifying
37 for priority under that subsection, even if the purchaser did not
38 have actual knowledge. In the case of tangible chattel paper,
39 the indication normally would consist of a written legend on the
40 chattel paper. In the case of electronic chattel paper, this
41 Article leaves to developing market and technological practices
42 the manner in which the chattel paper would indicate an
43 assignment.

44 7. Instruments. Subsection (d) [Maine cite subsection (4)]
45 contains a special priority rule for instruments. Under this
46 subsection, a purchaser of an instrument has priority over a
47 security interest perfected by a method other than possession
48 (e.g., by filing, temporarily under Section 9-312(e) or (g)
49 [Maine cite section 9-1312, subsection (5) or (7)], as proceeds
50 under Section 9-315(d) [Maine cite section 9-1315, subsection

2 (4)], or automatically upon attachment under Section 9-309(4)
3 [Maine cite section 9-1309, subsection (4)] if the security
4 interest arises out of a sale of the instrument) if the purchaser
5 gives value and takes possession of the instrument in good faith
6 and without knowledge that the purchase violates the rights of
7 the secured party. Generally, to the extent subsection (d)
8 [Maine cite subsection (4)] conflicts with Section 3-306,
9 subsection (d) governs. See Section 3-102(b). For example,
10 notice of a conflicting security interest precludes a purchaser
11 from becoming a holder in due course under Section 3-302 and
12 thereby taking free of all claims to the instrument under Section
13 3-306. However, a purchaser who takes even with knowledge of the
14 security interest qualifies for priority under subsection (d)
15 [Maine cite subsection (4)] if it takes without knowledge that
16 the purchase violates the rights of the holder of the security
17 interest. Likewise, a purchaser qualifies for priority under
18 subsection (d) [Maine cite subsection (4)] if it takes for
19 "value" as defined in Section 1-201, even if it does not take for
20 "value" as defined in Section 3-303.

21 Subsection (d) [Maine cite subsection (4)] is subject to
22 Section 9-331(a) [Maine cite section 9-1331, subsection (1)],
23 which provides that Article 9 [Maine cite Article 9-A] does not
24 limit the rights of a holder in due course under Article 3.
25 Thus, in the rare case in which the purchaser of an instrument
26 qualifies for priority under subsection (d) [Maine cite
27 subsection (4)], but another person has the rights of a holder in
28 due course of the instrument, the other person takes free of the
29 purchaser's claim. See Section 3-306.

30 The rule in subsection (d) [Maine cite subsection (4)] is
31 similar to the rules in subsections (a) and (b) [Maine cite
32 subsections (1) and (2)], which govern priority in chattel
33 paper. The observations in Comment 6 concerning the requirement
34 of good faith and the phrase "without knowledge that the purchase
35 violates the rights of the secured party" apply equally to
36 purchasers of instruments. However, unlike a purchaser of
37 chattel paper, to qualify for priority under this section a
38 purchaser of an instrument need only give "value" as defined in
39 Section 1-201; it need not give "new value." Also, the purchaser
40 need not purchase the instrument in the ordinary course of its
41 business.

42 Subsection (d) [Maine cite subsection (4)] applies to checks
43 as well as notes. For example, to collect and retain checks that
44 are proceeds (collections) of accounts free of a senior secured
45 party's claim to the same checks, a junior secured party must
46 satisfy the good-faith requirement (honesty in fact and the
47 observance of reasonable commercial standards of fair dealing) of
48 this subsection. This is the same good-faith requirement
49

2 applicable to holders in due course. See Section 9-331 [Maine
cite section 9-1331], Comment 5.

4 8. Priority in Proceeds of Chattel Paper. Subsection (c)
[Maine cite subsection (3)] sets forth the two circumstances
6 under which the priority afforded to a purchaser of chattel paper
under subsection (a) or (b) [Maine cite subsection (1) or (2)]
8 extends also to proceeds of the chattel paper. The first is if
the purchaser would have priority under the normal priority rules
10 applicable to proceeds. The second, which the following Comments
discuss in greater detail, is if the proceeds consist of the
12 specific goods covered by the chattel paper. Former Article 9
generally was silent as to the priority of a security interest in
14 proceeds when a purchaser qualifies for priority under Section
9-308 [Maine cite section 9-1308] (but see former Section
16 9-306(5)(b), concerning returned and repossessed goods).

18 9. Priority in Returned and Repossessed Goods. Returned
and repossessed goods may constitute proceeds of chattel paper.
20 The following Comments explain the treatment of returned and
repossessed goods as proceeds of chattel paper. The analysis is
22 consistent with that of PEB Commentary No. 5, which these
Comments replace, and is based upon the following example:

24
Example: SP1 has a security interest in all the inventory
26 of a dealer in goods (Dealer); SP1's security interest is
perfected by filing. Dealer sells some of its inventory to a
28 buyer in the ordinary course of business (BIOCOB) pursuant to a
conditional sales contract (chattel paper) that does not indicate
30 that it has been assigned to SP-1. SP2 purchases the chattel
paper from Dealer and takes possession of the paper in good
32 faith, in the ordinary course of business, and without knowledge
that the purchase violates the rights of SP1. Subsequently,
34 BIOCOB returns the goods to Dealer because they are defective.
Alternatively, Dealer acquires possession of the goods following
36 BIOCOB's default.

38 10. Assignment of Non-Lease Chattel Paper.

40 a. Loan by SP2 to Dealer Secured by Chattel Paper (or
Functional Equivalent Pursuant to Recourse Arrangement).

42
(1) Returned Goods. If BIOCOB returns the goods to
44 Dealer for repairs, Dealer is merely a bailee and
acquires thereby no meaningful rights in the goods to
46 which SP1's security interest could attach. (Although
SP1's security interest could attach to Dealer's
48 interest as a bailee, that interest is not likely to be
of any particular value to SP1.) Dealer is the owner
50 of the chattel paper (i.e., the owner of a right to

2 payment secured by a security interest in the goods);
3 SP2 has a security interest in the chattel paper, as
4 does SP1 (as proceeds of the goods under Section 9-315
5 [Maine cite section 9-1315]). Under Section 9-330
6 [Maine cite section 9-1330], SP2's security interest in
7 the chattel paper is senior to that of SP1. SP2 enjoys
8 this priority regardless of whether, or when, SP2 filed
9 a financing statement covering the chattel paper.
10 Because chattel paper and goods represent different
11 types of collateral, Dealer does not have any
12 meaningful interest in goods to which either SP1's or
13 SP2's security interest could attach in order to secure
14 Dealer's obligations to either creditor. See Section
15 9-102 [Maine cite section 9-1102] (defining "chattel
16 paper" and "goods").

17 Now assume that BIOCOB returns the goods to Dealer under
18 circumstances whereby Dealer once again becomes the owner of the
19 goods. This would be the case, for example, if the goods were
20 defective and BIOCOB was entitled to reject or revoke acceptance
21 of the goods. See Sections 2-602 (rejection), 2-608 (revocation
22 of acceptance). Unless BIOCOB has waived its defenses as against
23 assignees of the chattel paper, SP1's and SP2's rights against
24 BIOCOB would be subject to BIOCOB's claims and defenses. See
25 Sections 9-403, 9-404 [Maine cite section 9-1403, 9-1404]. SP1's
26 security interest would attach again because the returned goods
27 would be proceeds of the chattel paper. Dealer's acquisition of
28 the goods easily can be characterized as "proceeds" consisting of
29 an "in kind" collection on or distribution on account of the
30 chattel paper. See Section 9-102 [Maine cite section 9-1102]
31 (definition of "proceeds"). Assuming that SP1's security
32 interest is perfected by filing against the goods and that the
33 filing is made in the same office where a filing would be made
34 against the chattel paper, SP1's security interest in the goods
35 would remain perfected beyond the 20-day period of automatic
36 perfection. See Section 9-315(e) [Maine cite section 9-1315,
37 subsection (5)].

38 Because Dealer's newly reacquired interest in the goods is
39 proceeds of the chattel paper, SP2's security interest also would
40 attach in the goods as proceeds. If SP2 had perfected its
41 security interest in the chattel paper by filing (again, assuming
42 that filing against the chattel paper was made in the same office
43 where a filing would be made against the goods), SP2's security
44 interest in the reacquired goods would be perfected beyond 20
45 days. See Section 9-315(e) [Maine cite section 9-1315,
46 subsection (5)]. However, if SP2 had relied only on its
47 possession of the chattel paper for perfection and had not filed
48 against the chattel paper or the goods, SP2's security interest
49 would be unperfected after the 20day period. See Section
50

2 9-315(e) [Maine cite section 9-1315, subsection (5)].
3 Nevertheless, SP2's unperfected security interest in the goods
4 would be senior to SP1's security interest under Section 9-330(c)
5 [Maine cite section 9-1330, subsection (3)]. The result in this
6 priority contest is not affected by SP2's acquiescence or
7 non-acquiescence in the return of the goods to Dealer.

8 (2) Repossessed Goods. As explained above, Dealer
9 owns the chattel paper covering the goods, subject to
10 security interests in favor of SP1 and SP2. In Article
11 9 [Maine cite Article 9-A] parlance, Dealer has an
12 interest in chattel paper, not goods. If Dealer, SP1,
13 or SP2 repossesses the goods upon BIOCOP's default,
14 whether the repossession is rightful or wrongful as
15 among Dealer, SP1, or SP2, Dealer's interest will not
16 change. The location of goods and the party who
17 possesses them does not affect the fact that Dealer's
18 interest is in chattel paper, not goods. The goods
19 continue to be owned by BIOCOP. SP1's security
20 interest in the goods does not attach until such time
21 as Dealer reacquires an interest (other than a bare
22 possessory interest) in the goods. For example, Dealer
23 might buy the goods at a foreclosure sale from SP2
24 (whose security interest in the chattel paper is senior
25 to that of SP1); that disposition would cut off
26 BIOCOP's rights in the goods. Section 9-617 [Maine
27 cite section 9-1617].

28
29 In many cases the matter would end upon sale of the goods to
30 Dealer at a foreclosure sale and there would be no priority
31 contest between SP1 and SP2; Dealer would be unlikely to buy the
32 goods under circumstances whereby SP2 would retain its security
33 interest. There can be exceptions, however. For example, Dealer
34 may be obliged to purchase the goods from SP2 and SP2 may be
35 obliged to convey the goods to Dealer, but Dealer may fail to pay
36 SP2. Or, one could imagine that SP2, like SP1, has a general
37 security interest in the inventory of Dealer. In the latter
38 case, SP2 should not receive the benefit of any special priority
39 rule, since its interest in no way derives from priority under
40 Section 9-330 [Maine cite section 9-1330]. In the former case,
41 SP2's security interest in the goods reacquired by Dealer is
42 senior to SP1's security interest under Section 9-330 [Maine cite
43 section 9-1330].

44
45 b. Dealer's Outright Sale of Chattel Paper to SP2. Article
46 9 [Maine cite Article 9-A] also applies to a transaction
47 whereby SP2 buys the chattel paper in an outright sale
48 transaction without recourse against Dealer. Sections
49 1-201(37), 9-109(a) [Maine cite section 9-1109, subsection
50 (1)]. Although Dealer does not, in such a transaction,

2 retain any residual ownership interest in the chattel paper,
the chattel paper constitutes proceeds of the goods to which
SP1's security interest will attach and continue following
4 the sale of the goods. Section 9-315(a) [Maine cite section
9-1315, subsection (1)]. Even though Dealer has not
6 retained any interest in the chattel paper, as discussed
above BIOCOB subsequently may return the goods to Dealer
8 under circumstances whereby Dealer reacquires an interest in
the goods. The priority contest between SP1 and SP2 will be
10 resolved as discussed above; Section 9-330 [Maine cite
section 9-1330] makes no distinction among purchasers of
12 chattel paper on the basis of whether the purchaser is an
outright buyer of chattel paper or one whose security
14 interest secures an obligation of Dealer.

16 11. Assignment of Lease Chattel Paper. As defined in
Section 9-102 [Maine cite section 9-1102], "chattel paper"
18 includes not only writings that evidence security interests in
specific goods but also those that evidence true leases of goods.

20
The analysis with respect to lease chattel paper is similar
22 to that set forth above with respect to non-lease chattel paper.
It is complicated, however, by the fact that, unlike the case of
24 chattel paper arising out of a sale, Dealer retains a residual
interest in the goods. See Section 2A103(1)(q) (defining
26 "lessor's residual interest"); In re Leasing Consultants, Inc.,
486 F.2d 367 (2d Cir. 1973) (lessor's residual interest under
28 true lease is an interest in goods and is a separate type of
collateral from lessor's interest in the lease). If Dealer
30 leases goods to a "lessee in ordinary course of business"
(LIOCOB), then LIOCOB takes its interest under the lease (i.e.,
32 its "leasehold interest") free of the security interest of SP1.
See Sections 2A307(3), 2A103(1)(m) (defining "leasehold
34 interest"), (1)(o) (defining "lessee in ordinary course of
business"). SP1 would, however, retain its security interest in
36 the residual interest. In addition, SP1 would acquire an
interest in the lease chattel paper as proceeds. If Dealer then
38 assigns the lease chattel paper to SP2, Section 9-330 [Maine cite
section 9-1330] gives SP2 priority over SP1 with respect to the
40 chattel paper, but not with respect to the residual interest in
the goods. Consequently, assignees of lease chattel paper
42 typically take a security interest in and file against the
lessor's residual interest in goods, expecting their priority in
44 the goods to be governed by the first-to-file-or-perfect rule of
Section 9-322 [Maine cite section 9-1322].

46
If the goods are returned to Dealer, other than upon
48 expiration of the lease term, then the security interests of both
SP1 and SP2 normally would attach to the goods as proceeds of the
50 chattel paper. (If the goods are returned to Dealer at the

2 expiration of the lease term and the lessee has made all payments
3 due under the lease, however, then Dealer no longer has any
4 rights under the chattel paper. Dealer's interest in the goods
5 consists solely of its residual interest, as to which SP2 has no
6 claim.) This would be the case, for example, when the lessee
7 rescinds the lease or when the lessor recovers possession in the
8 exercise of its remedies under Article 2A. See, e.g., Section
9 2A525. If SP2 enjoyed priority in the chattel paper under
10 Section 9-330 [Maine cite section 9-1330], then SP2 likewise
11 would enjoy priority in the returned goods as proceeds. This
12 does not mean that SP2 necessarily is entitled to the entire
13 value of the returned goods. The value of the goods represents
14 the sum of the present value of (i) the value of their use for
15 the term of the lease and (ii) the value of the residual
16 interest. SP2 has priority in the former, but SP1 ordinarily
17 would have priority in the latter. Thus, an allocation of a
18 portion of the value of the goods to each component may be
19 necessary. Where, as here, one secured party has a security
20 interest in the lessor's residual interest and another has a
21 priority security interest in the chattel paper, it may be
22 advisable for the conflicting secured parties to establish a
23 method for making such an allocation and otherwise to determine
24 their relative rights in returned goods by agreement.

25 **§9-1331. Priority of rights of purchasers of instruments,**
26 **documents and securities under other Articles;**
27 **priority of interests in financial assets and security**
28 **entitlements under Article 8**

30 (1) This Article does not limit the rights of a holder in
31 due course of a negotiable instrument, a holder to which a
32 negotiable document of title has been duly negotiated or a
33 protected purchaser of a security. These holders or purchasers
34 take priority over an earlier security interest, even if
35 perfected, to the extent provided in Articles 3, 7 and 8.

36 (2) This Article does not limit the rights of or impose
37 liability on a person to the extent that the person is protected
38 against the assertion of an adverse claim under Article 8.

39 (3) Filing under this Article does not constitute notice of
40 a claim or defense to the holders, or purchasers, or persons
41 described in subsections (1) and (2).

42 **Official Comment**

43 1. Source. Former Section 9-309.

2. "Priority." In some provisions, this Article distinguishes between claimants that take collateral free of a security interest (in the sense that the security interest no longer encumbers the collateral) and those that take an interest in the collateral that is senior to a surviving security interest. See, e.g., Section 9-317 [Maine cite section 9-1317]. Whether a holder or purchaser referred to in this section takes free or is senior to a security interest depends on the whether the purchaser is a buyer of the collateral or takes a security interest in it. The term "priority" is meant to encompass both scenarios, as it does in Section 9-330 [Maine cite section 9-1330].

3. Rights Acquired by Purchasers. The rights to which this section refers are set forth in Sections 3-305 and 3-306 (holder in due course), 7-502 (holder to whom a negotiable document of title has been duly negotiated), and 8-303 (protected purchaser). The holders and purchasers referred to in this section do not always take priority over a security interest. See, e.g., Section 7-503 (affording paramount rights to certain owners and secured parties as against holder to whom a negotiable document of title has been duly negotiated). Accordingly, this section adds the clause, "to the extent provided in Articles 3, 7, and 8" to former Section 9-309.

4. Financial Assets and Security Entitlements. New subsection (b) [Maine cite subsection (2)] provides explicit protection for those who deal with financial assets and security entitlements and who are immunized from liability under Article 8. See, e.g., Sections 8-502, 8-503(e), 8-510, 8-511. The new subsection makes explicit in Article 9 [Maine cite Article 9-A] what is implicit in former Article 9 and explicit in several provisions of Article 8. It does not change the law.

5. Collections by Junior Secured Party. Under this section, a secured party with a junior security interest in receivables (accounts, chattel paper, promissory notes, or payment intangibles) may collect and retain the proceeds of those receivables free of the claim of a senior secured party to the same receivables, if the junior secured party is a holder in due course of the proceeds. In order to qualify as a holder in due course, the junior must satisfy the requirements of Section 3-302, which include taking in "good faith." This means that the junior not only must act "honestly" but also must observe "reasonable commercial standards of fair dealing" under the particular circumstances. See Section 9-102(a) [Maine cite section 9-1102]. Although "good faith" does not impose a general duty of inquiry, e.g., a search of the records in filing offices, there may be circumstances in which "reasonable commercial standards of fair dealing" would require such a search.

2 Consider, for example, a junior secured party in the
4 business of financing or buying accounts who fails to undertake a
6 search to determine the existence of prior security interests.
8 Because a search, under the usages of trade of that business,
10 would enable it to know or learn upon reasonable inquiry that
12 collecting the accounts violated the rights of a senior secured
14 party, the junior may fail to meet the good-faith standard. See
16 Utility Contractors Financial Services, Inc. v. Amsouth Bank, NA,
18 985 F.2d 1554 (11th Cir. 1993). Likewise, a junior secured party
20 who collects accounts when it knows or should know under the
22 particular circumstances that doing so would violate the rights
24 of a senior secured party, because the debtor had agreed not to
26 grant a junior security interest in, or sell, the accounts, may
28 not meet the good-faith test. Thus, if a junior secured party
30 conducted or should have conducted a search and a financing
32 statement filed on behalf of the senior secured party states such
34 a restriction, the junior's collection would not meet the
36 good-faith standard. On the other hand, if there was a course of
38 performance between the senior secured party and the debtor which
40 placed no such restrictions on the debtor and allowed the debtor
to collect and use the proceeds without any restrictions, the
junior secured party may then satisfy the requirements for being
a holder in due course. This would be more likely in those
circumstances where the junior secured party was providing
additional financing to the debtor on an on-going basis by
lending against or buying the accounts and had no notice of any
restrictions against doing so. Generally, the senior secured
party would not be prejudiced because the practical effect of
such payment to the junior secured party is little different than
if the debtor itself had made the collections and subsequently
paid the secured party from the debtor's general funds. Absent
collusion, the junior secured party would take the funds free of
the senior security interests. See Section 9-332 [Maine cite
section 9-1332]. In contrast, the senior secured party is likely
to be prejudiced if the debtor is going out of business and the
junior secured party collects the accounts by notifying the
account debtors to make payments directly to the junior. Those
collections may not be consistent with "reasonable commercial
standards of fair dealing."

42 Whether the junior secured party qualifies as a holder in
44 due course is fact-sensitive and should be decided on a
46 case-by-case basis in the light of those circumstances.
48 Decisions such as Financial Management Services Inc. v. Familian,
905 P.2d 506 (Ariz. App. Div. 1995) (finding holder in due course
status) could be determined differently under this application of
the good-faith requirement.

2 The concepts addressed in this Comment are also applicable
to junior secured parties as purchasers of instruments under
Section 9-330(d) [Maine cite section 9-1330, subsection (4)].
4 See Section 9-330 [Maine cite section 9-1330], Comment 7.

6 **§9-1332. Transfer of money; transfer of funds from deposit
account**

8
10 (1) A transferee of money takes the money free of a
security interest unless the transferee acts in collusion with
the debtor in violating the rights of the secured party.

12
14 (2) A transferee of funds from a deposit account takes the
funds free of a security interest in the deposit account unless
the transferee acts in collusion with the debtor in violating the
rights of the secured party.

18
20 **Official Comment**

22 1. Source. New.

24 2. Scope of This Section. This section affords broad
protection to transferees who take funds from a deposit account
and to those who take money. The term "transferee" is not
26 defined; however, the debtor itself is not a transferee. Thus
this section does not cover the case in which a debtor withdraws
28 money (currency) from its deposit account or the case in which a
bank debits an encumbered account and credits another account it
30 maintains for the debtor.

32 A transfer of funds from a deposit account, to which
subsection (b) [Maine cite subsection (2)] applies, normally will
34 be made by check, by funds transfer, or by debiting the debtor's
deposit account and crediting another depositor's account.

36
38 Example 1: Debtor maintains a deposit account with Bank A.
The deposit account is subject to a perfected security interest
in favor of Lender. Debtor draws a check on the account, payable
40 to Payee. Inasmuch as the check is not the proceeds of the
deposit account (it is an order to pay funds from the deposit
42 account), Lender's security interest in the deposit account does
not give rise to a security interest in the check. Payee
44 deposits the check into its own deposit account, and Bank A pays
it. Unless Payee acted in collusion with Debtor in violating
46 Lender's rights, Payee takes the funds (the credits running in
favor of Payee) free of Lender's security interest. This is true
48 regardless of whether Payee is a holder in due course of the
check and even if Payee gave no value for the check.

50

2 Example 2: Debtor maintains a deposit account with Bank A.
3 The deposit account is subject to a perfected security interest
4 in favor of Lender. At Bank B's suggestion, Debtor moves the
5 funds from the account at Bank A to Debtor's deposit account with
6 Bank B. Unless Bank B acted in collusion with Debtor in
7 violating Lender's rights, Bank B takes the funds (the credits
8 running in favor of Bank B) free from Lender's security
9 interest. See subsection (b) [Maine cite subsection (2)].
10 However, inasmuch as the deposit account maintained with Bank B
11 constitutes the proceeds of the deposit account at Bank A,
12 Lender's security interest would attach to that account as
13 proceeds. See Section 9-315 [Maine cite section 9-1315].

14 Subsection (b) [Maine cite subsection (2)] also would apply
15 if, in the example, Bank A debited Debtor's deposit account in
16 exchange for the issuance of Bank A's cashier's check. Lender's
17 security interest would attach to the cashier's check as proceeds
18 of the deposit account, and the rules applicable to instruments
19 would govern any competing claims to the cashier's check. See,
20 e.g., Sections 3-306, 9-322, 9-330, 9-331 [Maine cite sections
21 9-1322, 9-1330, 9-1331].

22 If Debtor withdraws money (currency) from an encumbered
23 deposit account and transfers the money to a third party, then
24 subsection (a) [Maine cite subsection (1)], to the extent not
25 displaced by federal law relating to money, applies. It contains
26 the same rule as subsection (b) [Maine cite subsection (2)].

28 Subsection (b) [Maine cite subsection (2)] applies to
29 transfers of funds from a deposit account; it does not apply to
30 transfers of the deposit account itself or of an interest
31 therein. For example, this section does not apply to the
32 creation of a security interest in a deposit account. Competing
33 claims to the deposit account itself are dealt with by other
34 Article 9 [Maine cite Article 9-A] priority rules. See Sections
35 9-317(a), 9-327, 9-340, 9-341 [Maine cite section 9-1317,
36 subsection (1), section 9-1327, 9-1340, 9-1341]. Similarly, a
37 corporate merger normally would not result in a transfer of funds
38 from a deposit account. Rather, it might result in a transfer of
39 the deposit account itself. If so, the normal rules applicable
40 to transferred collateral would apply; this section would not.

42 3. Policy. Broad protection for transferees helps to
43 ensure that security interests in deposit accounts do not impair
44 the free flow of funds. It also minimizes the likelihood that a
45 secured party will enjoy a claim to whatever the transferee
46 purchases with the funds. Rules concerning recovery of payments
47 traditionally have placed a high value on finality. The
48 opportunity to upset a completed transaction, or even to place a
49 completed transaction in jeopardy by bringing suit against the
50

2 transferee of funds, should be severely limited. Although the
3 giving of value usually is a prerequisite for receiving the
4 ability to take free from third-party claims, where payments are
5 concerned the law is even more protective. Thus, Section
6 3-418(c) provides that, even where the law of restitution
7 otherwise would permit recovery of funds paid by mistake, no
8 recovery may be had from a person "who in good faith changed
9 position in reliance on the payment." Rather than adopt this
10 standard, this section eliminates all reliance requirements
11 whatsoever. Payments made by mistake are relatively rare, but
12 payments of funds from encumbered deposit accounts (e.g., deposit
13 accounts containing collections from accounts receivable) occur
14 with great regularity. In the mine run of cases, unlike payment
15 by mistake, no one would object to these payments. In the vast
16 proportion of cases, the transferee probably would be able to
17 show a change of position in reliance on the payment. This
18 section does not put the transferee to the burden of having to
19 make this proof.

20 4. "Bad Actors." To deal with the question of the "bad
21 actor," this section borrows "collusion" language from Article
22 8. See, e.g., Sections 8-115, 8-503(e). This is the most
23 protective (i.e., least stringent) of the various standards now
24 found in the UCC. Compare, e.g., Section 1-201(9) ("without
25 knowledge that the sale . . . is in violation of the . . .
26 security interest"); Section 1-201(19) ("honesty in fact in the
27 conduct or transaction concerned"); Section 3-302(a)(2)(v)
28 ("without notice of any claim").

30 5. Transferee Who Does Not Take Free. This section sets
31 forth the circumstances under which certain transferees of money
32 or funds take free of security interests. It does not determine
33 the rights of a transferee who does not take free of a security
34 interest.

36 Example 3: The facts are as in Example 2, but, in
37 wrongfully moving the funds from the deposit account at Bank A to
38 Debtor's deposit account with Bank B, Debtor acts in collusion
39 with Bank B. Bank B does not take the funds free of Lender's
40 security interest under this section. If Debtor grants a
41 security interest to Bank B, Section 9-327 [Maine cite section
42 9-1327] governs the relative priorities of Lender and Bank B.
43 Under Section 9-327(3) [Maine cite section 9-1327, subsection
44 (3)], Bank B's security interest in the Bank B deposit account is
45 senior to Lender's security interest in the deposit account as
46 proceeds. However, Bank B's senior security interest does not
47 protect Bank B against any liability to Lender that might arise
48 from Bank B's wrongful conduct.

50 **§9-1333. Priority of certain liens arising by operation of law**

2 (3) In cases not governed by subsections (4) to (8), a
3 security interest in fixtures is subordinate to a conflicting
4 interest of an encumbrancer or owner of the related real property
5 other than the debtor.

6 (4) Except as otherwise provided in subsection (8), a
7 perfected security interest in fixtures has priority over a
8 conflicting interest of an encumbrancer or owner of the real
9 property if the debtor has an interest of record in or is in
10 possession of the real property and:

11 (a) The security interest is a purchase-money security
12 interest;

13 (b) The interest of the encumbrancer or owner arises before
14 the goods become fixtures; and

15 (c) The security interest is perfected by a fixture filing
16 before the goods become fixtures or within 20 days
17 thereafter.

18 (5) A perfected security interest in fixtures has priority
19 over a conflicting interest of an encumbrancer or owner of the
20 real property if:

21 (a) The debtor has an interest of record in the real
22 property or is in possession of the real property and the
23 security interest:

24 (i) Is perfected by a fixture filing before the
25 interest of the encumbrancer or owner is of record; and

26 (ii) Has priority over any conflicting interest of a
27 predecessor in title of the encumbrancer or owner;

28 (b) Before the goods become fixtures, the security interest
29 is perfected by any method permitted by this Article and the
30 fixtures are readily removable:

31 (i) Factory or office machines;

32 (ii) Equipment that is not primarily used or leased
33 for use in the operation of the real property; or

34 (iii) Replacements of domestic appliances that are
35 consumer goods;

36 (c) The conflicting interest is a lien on the real property
37 obtained by legal or equitable proceedings after the

2 security interest was perfected by any method permitted by
3 this Article; or

4 (d) The security interest is:

6 (i) Created in a manufactured home in a
7 manufactured-home transaction; and

8 (ii) Perfected pursuant to a statute described in
9 section 9-1311, subsection (1), paragraph (b).

12 (6) A security interest in fixtures, whether or not
13 perfected, has priority over a conflicting interest of an
14 encumbrancer or owner of the real property if:

16 (a) The encumbrancer or owner has, in an authenticated
17 record, consented to the security interest or disclaimed an
18 interest in the goods as fixtures; or

20 (b) The debtor has a right to remove the goods as against
21 the encumbrancer or owner.

22 (7) The priority of the security interest under subsection
23 (6)(b) continues for a reasonable time if the debtor's right to
24 remove the goods as against the encumbrancer or owner terminates.

26 (8) A mortgage is a construction mortgage to the extent
27 that it secures an obligation incurred for the construction of an
28 improvement on land, including the acquisition cost of the land,
29 if a recorded record of the mortgage so indicates. Except as
30 otherwise provided in subsections (5) and (6), a security
31 interest in fixtures is subordinate to a construction mortgage if
32 a record of the mortgage is recorded before the goods become
33 fixtures and the goods become fixtures before the completion of
34 the construction. A mortgage has this priority to the same
35 extent as a construction mortgage to the extent that it is given
36 to refinance a construction mortgage.

38 (9) A perfected security interest in crops growing on real
39 property has priority over a conflicting interest of an
40 encumbrancer or owner of the real property if the debtor has an
41 interest of record in or is in possession of the real property.

44 **Official Comment**

46 1. Source. Former Section 9-313.

48 2. Scope of This Section. This section contains rules
50 governing the priority of security interests in fixtures and

2 crops as against persons who claim an interest in real property.
3 Priority contests with other Article 9 [Maine cite Article 9-A]
4 security interests are governed by the other priority rules of
5 this Article. The provisions with respect to fixtures follow
6 those of former Section 9-313. However, they have been rewritten
7 to conform to Section 2A-309 and to prevailing style
8 conventions. Subsections (i) and (j) [Maine cite subsection
9 (9)], which apply to crops, are new.

10 3. Security Interests in Fixtures. Certain goods that are
11 the subject of personal-property (chattel) financing become so
12 affixed or otherwise so related to real property that they become
13 part of the real property. These goods are called "fixtures."
14 See Section 9-102 [Maine cite section 9-1102] (definition of
15 "fixtures"). Some fixtures retain their personal-property
16 nature: a security interest under this Article may be created in
17 fixtures and may continue in goods that become fixtures. See
18 subsection (a) [Maine cite subsection (1)]. However, if the
19 goods are ordinary building materials incorporated into an
20 improvement on land, no security interest in them exists.
21 Rather, the priority of claims to the building materials are
22 determined by the law governing claims to real property. (Of
23 course, the fact that no security interest exists in ordinary
24 building materials incorporated into an improvement on land does
25 not prejudice any rights the secured party may have against the
26 debtor or any other person who violated the secured party's
27 rights by wrongfully incorporating the goods into real property.)
28

29 Thus, this section recognizes three categories of goods:
30 (1) those that retain their chattel character entirely and are
31 not part of the real property; (2) ordinary building materials
32 that have become an integral part of the real property and cannot
33 retain their chattel character for purposes of finance; and (3)
34 an intermediate class that has become real property for certain
35 purposes, but as to which chattel financing may be preserved.
36

37 To achieve priority under certain provisions of this
38 section, a security interest must be perfected by making a
39 "fixture filing" (defined in Section 9-102 [Maine cite section
40 9-1102]) in the real-property records. Because the question
41 whether goods have become fixtures often is a difficult one under
42 applicable real-property law, a secured party may make a fixture
43 filing as a precaution. Courts should not infer from a fixture
44 filing that the secured party concedes that the goods are or will
45 become fixtures.
46

47 4. Priority in Fixtures: General. In considering priority
48 problems under this section, one must first determine whether
49 real-property claimants per se have an interest in the crops or
50 fixtures as part of real property. If not, it is immaterial, so

2 far as concerns real property parties as such, whether a security
interest arising under this Article is perfected or unperfected.
4 In no event does a real-property claimant (e.g., owner or
mortgagee) acquire an interest in a "pure" chattel just because a
6 security interest therein is unperfected. If on the other hand
real-property law gives real-property parties an interest in the
8 goods, a conflict arises and this section states the priorities.

10 5. Priority in Fixtures: Residual Rule. Subsection (c)
[Maine cite subsection (3)] states the residual priority rule,
12 which applies only if one of the other rules does not: A
security interest in fixtures is subordinate to a conflicting
14 interest of an encumbrancer or owner of the related real property
other than the debtor.

16 6. Priority in Fixtures: First to File or Record.
Subsection (e)(1) [Maine cite subsection (5), paragraph (a)],
18 which follows former Section 9-313(4)(b), contains the usual
priority rule of conveyancing, that is, the first to file or
20 record prevails. In order to achieve priority under this rule,
however, the security interest must be perfected by a "fixture
22 filing" (defined in Section 9-102 [Maine cite section 9-1102]),
i.e., a filing for record in the real property records and
24 indexed therein, so that it will be found in a real-property
search.. The condition in subsection (e)(1)(B) [Maine cite
26 subsection (5), paragraph (1), subparagraph (ii)], that the
security interest must have had priority over any conflicting
28 interest of a predecessor in title of the conflicting
encumbrancer or owner, appears to limit to the first-in-time
30 principle. However, this apparent limitation is nothing other
than an expression of the usual rule that a person must be
32 entitled to transfer what he has. Thus, if the fixture security
interest is subordinate to a mortgage, it is subordinate to an
34 interest of an assignee of the mortgage, even though the
assignment is a later recorded instrument. Similarly if the
36 fixture security interest is subordinate to the rights of an
owner, it is subordinate to a subsequent grantee of the owner and
38 likewise subordinate to a subsequent mortgagee of the owner.

40 7. Priority in Fixtures: Purchase-Money Security
Interests. Subsection (d) [Maine cite subsection (4)], which
42 follows former Section 9-313(4)(a), contains the principal
exception to the first-to-file-or-record rule of subsection
44 (e)(1) [Maine cite subsection (5), paragraph (a)]. It affords
priority to purchase-money security interests in fixtures as
46 against prior recorded real-property interests, provided that the
purchase-money security interest is filed as a fixture filing in
48 the real-property records before the goods become fixtures or
within 20 days thereafter. This priority corresponds to the
50 purchase-money priority under Section 9-324(a) [Maine cite

2 section 9-1324, subsection (1)]. (Like other 10-day periods in
former Article 9, the 10-day period in this section has been
4 changed to 20 days.)

6 It should be emphasized that this purchase-money priority
against real-property interests that arise before the goods
8 become fixtures. There is no such priority with the 20-day grace
period as against real-property interests that arise
10 subsequently. The fixture security interest can defeat
subsequent real-property interests only if it is filed first and
12 prevails under the usual conveyancing rule in subsection (e)(1)
[Maine cite subsection (5), paragraph (a)] or one of the other
14 rules in this section.

16 8. Priority in Fixtures: Readily Removable Goods.
Subsection (e)(2) [Maine cite subsection (5), paragraph (b)],
18 which derives from Section 2A-309 and former Section 9-313(4)(d),
contains another exception to the usual first-to-file-or-rule.
20 It affords priority to the holders of security interests in
certain types of readily removable goods—factory and office
22 machines, equipment that is not primarily used or leased for use
in the operation of the real property, and (as discussed below)
24 certain replacements of domestic appliances. This rule is made
necessary by the confusion in the law as to whether certain
26 machinery, equipment, and appliances become fixtures. It
protects a secured party who, perhaps in the mistaken belief that
28 the readily removable goods will not become fixtures, makes a UCC
filing (or otherwise perfects under this Article) rather than
30 making a fixture filing.

32 Frequently, under applicable law, goods of the type
described in subsection (e)(2) [Maine cite subsection (5),
34 paragraph (b)] will not be considered to have become part of the
real property. In those cases, the fixture security interest
36 does not conflict with a real-property interest, and resort to
this section is unnecessary. However, if the goods have become
38 part of the real property, subsection (e)(2) [Maine cite
subsection (5), paragraph (b)] enables a fixture secured party to
40 take priority over a conflicting real-property interest if the
fixture security interest is perfected by a fixture filing or by
42 any other method permitted by this Article. If perfection is by
fixture filing, the fixture security interest would have priority
44 over subsequently recorded real-property interests under
subsection (e)(1) [Maine cite subsection (5), paragraph (a)] and,
46 if the fixture security interest is a purchase-money security
interest (a likely scenario), it would also have priority over
48 most real property interests under the purchase-money priority of
subsection (d) [Maine cite subsection (4)]. Note, however, that
50 unlike the purchase-money priority rule in subsection (d) [Maine

2 cite subsection (4)], the priority rules in subsection (e) [Maine
cite subsection (5)] override the priority given to a
4 construction mortgage under subsection (h) [Maine cite subsection
(8)].

6 The rule in subsection (e)(2) [Maine cite subsection (5),
paragraph (b)] is limited to readily removable replacements of
8 domestic appliances. It does not apply to original
installations. Moreover, it is limited to appliances that are
10 "consumer goods" (defined in Section 9-102 [Maine cite section
9-1102]) in the hands of the debtor. The principal effect of the
12 rule is to make clear that a secured party financing occasional
replacements of domestic appliances in noncommercial,
14 owneroccupied contexts need not concern itself with real-property
descriptions or records; indeed, for a purchasemoney replacement
16 of consumer goods, perfection without any filing will be
possible. See Section 9-309(1) [Maine cite section 9-1309,
18 subsection (a)].

20 9. Priority in Fixtures: Judicial Liens. Subsection
(e)(3) [Maine cite subsection (5), paragraph (c)], which follows
22 former Section 9-313(4)(d), adopts a first-in-time rule
applicable to conflicts between a fixture security interest and a
24 lien on the real property obtained by legal or equitable
proceedings. Such a lien is subordinate to an earlier-perfected
26 security interest, regardless of the method by which the security
interest was perfected. Judgment creditors generally are not
28 reliance creditors who search real-property records.
Accordingly, a perfected fixture security interest takes priority
30 over a subsequent judgment lien or other lien obtained by legal
or equitable proceedings, even if no evidence of the security
32 interest appears in the relevant real-property records.
Subsection (e)(3) [Maine cite subsection (5), paragraph (c)] thus
34 protects a perfected fixture security interest from avoidance by
a trustee in bankruptcy under Bankruptcy Code Section 544(a),
36 regardless of the method of perfection.

38 10. Priority in Fixtures: Manufactured Homes. A
manufactured home may become a fixture. New subsection (e)(4)
40 [Maine cite subsection (5), paragraph (d)] contains a special
rule granting priority to certain security interests created in a
42 "manufactured home" as part of a "manufactured-home transaction"
(both defined in Section 9-102 [Maine cite section 9-1102]).
44 Under this rule, a security interest in a manufactured home that
becomes a fixture has priority over a conflicting interest of an
46 encumbrancer or owner of the real property if the security
interest is perfected under a certificate-of-title statute (see
48 Section 9-311 [Maine cite section 9-1311]). Subsection (e)(4)
[Maine cite subsection (5), paragraph (d)] is only one of the
50 priority rules applicable to security interests in a manufactured

2 home that becomes a fixture. Thus, a security interest in a
3 manufactured home which does not qualify for priority under this
4 subsection may qualify under another.

6 11. Priority in Fixtures: Construction Mortgages. The
7 purchase-money priority presents a difficult problem in relation
8 to construction mortgages. The latter ordinarily will have been
9 recorded even before the commencement of delivery of materials to
10 the job, and therefore would take priority over fixture security
11 interests were it not for the purchase-money priority. However,
12 having recorded first, the holder of a construction mortgage
13 reasonably expects to have first priority in the improvement
14 built using the mortgagee's advances. Subsection (g) [Maine cite
15 subsection (7)] expressly gives priority to the construction
16 mortgage recorded before the filing of the purchase-money
17 security interest in fixtures. A refinancing of a construction
18 mortgage has the same priority as the construction mortgage
19 itself. The phrase "an obligation incurred for the construction
20 of an improvement" covers both optional advances and advances
21 pursuant to commitment. Both types of advances have the same
22 priority under subsection (g) [Maine cite subsection (7)].

24 The priority under this subsection applies only to goods
25 that become fixtures during the construction period leading to
26 the completion of the improvement. The construction priority
27 will not apply to additions to the building made long after
28 completion of the improvement, even if the additions are financed
29 by the real-property mortgagee under an open-end clause of the
30 construction mortgage. In such case, subsections (d), (e), and
31 (f) [Maine cite subsections (4), (5) and (6)] govern.

32 Although this subsection affords a construction mortgage
33 priority over a purchase-money security interest that otherwise
34 would have priority under subsection (d) [Maine cite subsection
35 (4)], the subsection is subject to the priority rules in
36 subsections (e) and (f) [Maine cite subsections (5) and (6)].
37 Thus, a construction mortgage may be junior to a fixture security
38 interest perfected by a fixture filing before the construction
39 mortgage was recorded. See subsection (e)(1) [Maine cite
40 subsection (5), paragraph (a)].

42 12. Crops. Growing crops are "goods" in which a security
43 interest may be created and perfected under this Article. In
44 some jurisdictions, a mortgage of real property may cover crops,
45 as well. In the event that crops are encumbered by both a
46 mortgage and an Article 9 [Maine cite Article 9-A] security
47 interest, subsection (i) [Maine cite subsection (a)] provides
48 that the security interest has priority. States whose
49 real-property law provides otherwise should either amend that law
50 directly or override it by enacting subsection (j).

addresses the case of collateral that changes form without the addition of other goods.

3. "Accession" vs. "Other Goods." This section distinguishes among the "accession," the "other goods," and the "whole." The last term refers to the combination of the "accession" and the "other goods." If one person's collateral becomes physically united with another person's collateral, each is an "accession."

Example 1: SP-1 holds a security interest in the debtor's tractors (which are not subject to a certificate-of-title statute), and SP-2 holds a security interest in a particular tractor engine. The engine is installed in a tractor. From the perspective of SP-1, the tractor becomes an "accession" and the engine is the "other goods." From the perspective of SP-2, the engine is the "accession" and the tractor is the "other goods." The completed tractor-tractor cum engine-constitutes the "whole."

4. Scope. This section governs only a few issues concerning accessions. Subsection (a) [Maine cite subsection (1)] contains rules governing continuation of a security interest in an accession. Subsection (b) [Maine cite subsection (2)] contains a rule governing continued perfection of a security interest in goods that become an accession. Subsection (d) [Maine cite subsection (4)] contains a special priority rule governing accessions that become part of a whole covered by a certificate of title. Subsections (e) and (f) [Maine cite subsections (5) and (6)] govern enforcement of a security interest in an accession.

5. Matters Left to Other Provisions of This Article: Attachment and Perfection. Other provisions of this Article often govern accession-related issues. For example, this section does not address whether a secured party acquires a security interest in the whole if its collateral becomes an accession. Normally this will turn on the description of the collateral in the security agreement.

Example 2: Debtor owns a computer subject to a perfected security interest in favor of SP-1. Debtor acquires memory and installs it in the computer. Whether SP-1's security interest attaches to the memory depends on whether the security agreement covers it.

Similarly, this section does not determine whether perfection against collateral that becomes an accession is effective to perfect a security interest in the whole. Other provisions of this Article, including the requirements for

2 indicating the collateral covered by a financing statement,
2 resolve that question.

4 6. Matters Left to Other Provisions of This Article:
Priority. With one exception, concerning goods covered by a
6 certificate of title (see subsection (d) [Maine cite subsection
(4)]), the other provisions of this Part, including the rules
8 governing purchase-money security interests, determine the
priority of most security interests in an accession, including
10 the relative priority of a security interest in an accession and
a security interest in the whole. See subsection (c) [Maine cite
12 subsection (3)].

14 Example 3: Debtor owns an office computer subject to a
security interest in favor of SP-1. Debtor acquires memory and
16 grants a perfected security interest in the memory to SP-2.
Debtor installs the memory in the computer, at which time (one
18 assumes) SP-1's security interest attaches to the memory. The
first-to-file-or-perfect rule of Section 9-322 [Maine cite
20 section 9-1322] governs priority in the memory. If, however,
SP-2's security interest is a purchase-money security interest,
22 Section 9-324(a) [Maine cite section 9-1324, subsection (1)]
would afford priority in the memory to SP-2, regardless of which
24 security interest was perfected first.

26 7. Goods Covered by Certificate of Title. This section
does govern the priority of a security interest in an accession
28 that is or becomes part of a whole that is subject to a security
interest perfected by compliance with a certificate-of-title
30 statute. Subsection (d) [Maine cite subsection (4)] provides
that a security interest in the whole, perfected by compliance
32 with a certificate-of-title statute, takes priority over a
security interest in the accession. It enables a secured party
34 to rely upon a certificate of title without having to check the
UCC files to determine whether any components of the collateral
36 may be encumbered. The subsection imposes a corresponding risk
upon those who finance goods that may become part of goods
38 covered by a certificate of title. In doing so, it reverses the
priority that appeared reasonable to most pre-UCC courts.

40 Example 4: Debtor owns an automobile subject to a security
42 interest in favor of SP-1. The security interest is perfected by
notation on the certificate of title. Debtor buys tires subject
44 to a perfected-by-filing purchase-money security interest in
favor of SP-2 and mounts the tires on the automobile's wheels.
46 If the security interest in the automobile attaches to the tires,
then SP-1 acquires priority over SP-2. The same result would
48 obtain if SP-1's security interest attached to the automobile and
was perfected after the tires had been mounted on the wheels.

50

2 **§9-1336. Commingled goods**

4 (1) In this section, "commingled goods" means goods that
6 are physically united with other goods in such a manner that
8 their identity is lost in a product or mass.

10 (2) A security interest does not exist in commingled goods
12 as such. However, a security interest may attach to a product or
14 mass that results when goods become commingled goods.

16 (3) If collateral becomes commingled goods, a security
18 interest attaches to the product or mass.

20 (4) If a security interest in collateral is perfected
22 before the collateral becomes commingled goods, the security
24 interest that attaches to the product or mass under subsection
26 (3) is perfected.

28 (5) Except as otherwise provided in subsection (6), the
30 other provisions of this Part determine the priority of a
32 security interest that attaches to the product or mass under
34 subsection (3).

36 (6) If more than one security interest attaches to the
38 product or mass under subsection (3), the following rules
40 determine priority.

42 (a) A security interest that is perfected under subsection
44 (4) has priority over a security interest that is
46 unperfected at the time the collateral becomes commingled
48 goods.

50 (b) If more than one security interest is perfected under
subsection (4), the security interests rank equally in
proportion to value of the collateral at the time it became
commingled goods.

Official Comment

1. Source. Former Section 9-315.

2. "Commingled Goods." Subsection (a) [Maine cite
subsection (1)] defines "commingled goods." It is meant to
include not only goods whose identity is lost through
manufacturing or production (e.g., flour that has become part of
baked goods) but also goods whose identity is lost by commingling
with other goods from which they cannot be distinguished (e.g.,
ball bearings).

3. Consequences of Becoming "Commingled Goods." By definition, the identity of the original collateral cannot be determined once the original collateral becomes commingled goods. Consequently, the security interest in the specific original collateral alone is lost once the collateral becomes commingled goods, and no security interest in the original collateral can be created thereafter except as a part of the resulting product or mass. See subsection (b) [Maine cite subsection (2)].

Once collateral becomes commingled goods, the secured party's security interest is transferred from the original collateral to the product or mass. See subsection (c) [Maine cite subsection (3)]. If the security interest in the original collateral was perfected, the security interest in the product or mass is a perfected security interest. See subsection (d) [Maine cite subsection (4)]. This perfection continues until lapse.

4. Priority of Perfected Security Interests That Attach Under This Section. This section governs the priority of competing security interests in a product or mass only when both security interests arise under this section. In that case, if both security interests are perfected by operation of this section (see subsections (c) and (d) [Maine cite subsections (3) and (4)]), then the security interests rank equally, in proportion to the value of the collateral at the time it became commingled goods. See subsection (f)(2) [Maine cite subsection (6), paragraph (b)].

Example 1: SP-1 has a perfected security interest in Debtor's eggs, which have a value of \$300 and secure a debt of \$400, and SP-2 has a perfected security interest in Debtor's flour, which has a value of \$500 and secures a debt of \$600. Debtor uses the flour and eggs to make cakes, which have a value of \$1000. The two security interests rank equally and share in the ratio of 3:5. Applying this ratio to the entire value of the product, SP-1 would be entitled to \$375 (i.e., $3/8 \times \$1000$), and SP-2 would be entitled to \$625 (i.e., $5/8 \times \$1000$).

Example 2: Assume the facts of Example 1, except that SP-1's collateral, worth \$300, secures a debt of \$200. Recall that, if the cake is worth \$1000, then applying the ratio of 3:5 would entitle SP-1 to \$375 and SP-2 to \$625. However, SP-1 is not entitled to collect from the product more than it is owed. Accordingly, SP-1's share would be only \$200, SP-2 would receive the remaining value, up to the amount it is owed (\$600).

Example 3: Assume that the cakes in the previous examples have a value of only \$600. Again, the parties share in the ratio of 3:5. If, as in Example 1, SP-1 is owed \$400, then SP-1 is

2 entitled to \$225 (i.e., $3/8 \times \$600$), and SP-2 is entitled to \$375
3 (i.e., $5/8 \times \$600$). Debtor receives nothing. If, however, as in
4 Example 2, SP-1 is owed only \$200, then SP-2 receives \$400.

6 The results in the foregoing examples remain the same,
7 regardless of whether SP-1 or SP-2 (or each) has a purchase-money
8 security interest.

10 5. Perfection: Unperfected Security Interests. The rule
11 explained in the preceding Comment applies only when both
12 security interests in original collateral are perfected when the
13 goods become commingled goods. If a security interest in
14 original collateral is unperfected at the time the collateral
15 becomes commingled goods, subsection (f)(1) [Maine cite
16 subsection (6), paragraph (a)] applies.

18 Example 4: SP-1 has a perfected security interest in the
19 debtor's eggs, and SP-2 has an unperfected security interest in
20 the debtor's flour. Debtor uses the flour and eggs to make
21 cakes. Under subsection (c) [Maine cite subsection (3)], both
22 security interests attach to the cakes. But since SP-1's
23 security interest was perfected at the time of commingling and
24 SP-2's was not, only SP-1's security interest in the cakes is
25 perfected. See subsection (d) [Maine cite subsection (4)].
26 Under subsection (f)(1) [Maine cite subsection (6), paragraph
27 (a)] and Section 9-322(a)(2) [Maine cite section 9-1322,
28 subsection (1), paragraph (b)], SP-1's perfected security
interest has priority over SP-2's unperfected security interest.

30 If both security interests are unperfected, the rule of Section
31 9-322(a)(3) [Maine cite section 9-1322, subsection (1), paragraph
32 (c)] would apply.

34 6. Multiple Security Interests. On occasion, a single
35 input may be encumbered by more than one security interest. In
36 those cases, the multiple secured parties should be treated like
37 a single secured party for purposes of determining their
38 collective share under subsection (f)(2) [Maine cite subsection
39 (6), paragraph (b)]. The normal priority rules would determine
40 how that share would be allocated between them. Consider the
41 following example, which is a variation on Example 1 above:

42 Example 5: SP-1A has a perfected, first-priority security
43 interest in Debtor's eggs. SP-1B has a perfected,
44 second-priority security interest in the same collateral. The
45 eggs have a value of \$300. Debtor owes \$200 to SP-1A and \$200 to
46 SP-1B. SP-2 has a perfected security interest in Debtor's flour,
47 which has a value of \$500 and secures a debt of \$600. Debtor
48 uses the flour and eggs to make cakes, which have a value of
49 \$1000.
50

2 For purposes of subsection (f)(2) [Maine cite subsection 6,
4 paragraph (b)], SP-1A and SP-1B should be treated like a single
secured party. The collective security interest would rank
6 equally with that of SP-2. Thus, the secured parties would share
in the ratio of 3 (for SP-1A and SP-1B combined) to 5 (for
8 SP-2). Applying this ratio to the entire value of the product,
SP-1A and SP-1B in the aggregate would be entitled to \$375 (i.e.,
10 $3/8 \times \$1000$), and SP-2 would be entitled to \$625 (i.e., $5/8 \times$
\$1000).

12 SP-1A and SP-1B would share the \$300 in accordance with
their priority, as established under other rules. Inasmuch as
14 SP-1A has first priority, it would receive \$200, and SP-1B would
receive \$100.

16
18 7. Priority of Security Interests That Attach Other Than by
Operation of This Section. Under subsection (e) [Maine cite
20 subsection (5)], the normal priority rules determine the priority
of a security interest that attaches to the product or mass other
22 than by operation of this section. For example, assume that SP-1
has a perfected security interest in Debtor's existing and
24 after-acquired baked goods, and SP-2 has a perfected security
interest in Debtor's flour. When the flour is processed into
26 cakes, subsections (c) and (d) [Maine cite subsections (3) and
(4)] provide that SP-2 acquires a perfected security interest in
the cakes. If SP-1 filed against the baked goods before SP-2
28 filed against the flour, then SP-1 will enjoy priority in the
cakes. See Section 9-322 [Maine cite section 9-1322]
30 (first-to-file-or perfect). But if SP-2 filed against the flour
before SP-1 filed against the baked goods, then SP-2 will enjoy
32 priority in the cakes to the extent of its security interest.

34 **§9-1337. Priority of security interests in goods covered by**
36 **certificate of title**

38 If, while a security interest in goods is perfected by any
method under the law of another jurisdiction, this State issues a
40 certificate of title that does not show that the goods are
subject to the security interest or contain a statement that they
42 may be subject to security interests not shown on the certificate:

44 (1) A buyer of the goods, other than a person in the
business of selling goods of that kind, takes free of the
46 security interest if the buyer gives value and receives delivery
of the goods after issuance of the certificate and without
48 knowledge of the security interest; and

50 (2) The security interest is subordinate to a conflicting
security interest in the goods that attaches, and is perfected

2 under section 9-1311, subsection (2), after issuance of the
3 certificate and without the conflicting secured party's knowledge
4 of the security interest.

6 **Official Comment**

8 1. Source. Derived from former Section 9-103(2)(d).

10 2. Protection for Buyers and Secured Parties. This section
11 affords protection to certain good-faith purchasers for value who
12 are likely to have relied on a "clean" certificate of title,
13 i.e., one that neither shows that the goods are subject to a
14 particular security interest nor contains a statement that they
15 may be subject to security interests not shown on the
16 certificate. Under this section, a buyer can take free of, and
17 the holder of a conflicting security interest can acquire
18 priority over, a security interest that is perfected by any
19 method under the law of another jurisdiction. The fact that the
20 security interest has been reperfected by possession under
21 Section 9-313 [Maine cite section 9-1313] does not of itself
22 disqualify the holder of a conflicting security interest from
23 protection under paragraph (2) [Maine cite subsection (2)].

24 **§9-1338. Priority of security interest or agricultural lien**
25 **perfected by filed financing statement providing**
26 **certain incorrect information**

28 If a security interest or agricultural lien is perfected by
29 a filed financing statement providing information described in
30 section 9-1516, subsection (2), paragraph (e) that is incorrect
31 at the time the financing statement is filed:

34 (1) The security interest or agricultural lien is
35 subordinate to a conflicting perfected security interest in the
36 collateral to the extent that the holder of the conflicting
37 security interest gives value in reasonable reliance upon the
38 incorrect information; and

40 (2) A purchaser, other than a secured party, of the
41 collateral takes free of the security interest or agricultural
42 lien to the extent that, in reasonable reliance upon the
43 incorrect information, the purchaser gives value and, in the case
44 of chattel paper, documents, goods, instruments or a security
45 certificate, receives delivery of the collateral.

48 **Official Comment**

50 1. Source. New.

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SUBPART 4

RIGHTS OF BANK

§9-1340. Effectiveness of right of recoupment or setoff against deposit account

(1) Except as otherwise provided in subsection (3), a bank with which a deposit account is maintained may exercise any right of recoupment or setoff against a secured party that holds a security interest in the deposit account.

(2) Except as otherwise provided in subsection (3), the application of this Article to a security interest in a deposit account does not affect a right of recoupment or setoff of the secured party as to a deposit account maintained with the secured party.

(3) The exercise by a bank of a setoff against a deposit account is ineffective against a secured party that holds a security interest in the deposit account that is perfected by control under section 9-1104, subsection (1), paragraph (c), if the setoff is based on a claim against the debtor.

Official Comment

1. Source. New; subsection (b) [Maine cite subsection (2)] is based on a nonuniform Illinois amendment.

2. Setoff vs. Security Interest. This section resolves the conflict between a security interest in a deposit account and the bank's rights of recoupment and setoff.

Subsection (a) [Maine cite subsection (1)] states the general rule and provides that the bank may effectively exercise rights of recoupment and setoff against the secured party. Subsection (c) [Maine cite subsection (3)] contains an exception: if the secured party has control under Section 9-104(a)(3) [Maine cite section 9-1104, subsection (1), paragraph (c)] (i.e., if it has become the bank's customer), then any setoff exercised by the bank against a debt owed by the debtor (as opposed to a debt owed to the bank by the secured party) is ineffective. The bank may, however, exercise its recoupment rights effectively. This result is consistent with the priority rule in Section 9-327(4) [Maine cite section 9-1327, subsection (4)], under which the security interest of a bank in a deposit account is subordinate to that of a secured party who has control under Section 9-104(a)(3) [Maine cite section 9-1104, subsection (1), paragraph (c)].

2 This section deals with rights of setoff and recoupment that
4 a bank may have under other law. It does not create a right of
6 setoff or recoupment, nor is it intended to override any
limitations or restrictions that other law imposes on the
exercise of those rights.

8 3. Preservation of Setoff Right. Subsection (b) [Maine
10 cite subsection 2)] makes clear that a bank may hold both a right
of setoff against, and an Article 9 [Maine cite Article 9-A]
12 security interest in, the same deposit account. By holding a
security interest in a deposit account, a bank does not impair
14 any right of setoff it would otherwise enjoy. This subsection
does not pertain to accounts evidenced by an instrument (e.g.,
16 certain certificates of deposit), which are excluded from the
definition of "deposit accounts."

18 **§9-1341. Bank's rights and duties with respect to deposit account**

20 Except as otherwise provided in section 9-1340, subsection
22 (3), and unless the bank otherwise agrees in an authenticated
record, a bank's rights and duties with respect to a deposit
24 account maintained with the bank are not terminated, suspended or
modified by:

26 (1) The creation, attachment or perfection of a security
interest in the deposit account;

28 (2) The bank's knowledge of the security interest; or

30 (3) The bank's receipt of instructions from the secured
32 party.

34

Official Comment

36

1. Source. New.

38

2. Free Flow of Funds. This section is designed to prevent
40 security interests in deposit accounts from impeding the free
flow of funds through the payment system. Subject to two
42 exceptions, it leaves the bank's rights and duties with respect
to the deposit account and the funds on deposit unaffected by the
44 creation or perfection of a security interest or by the bank's
knowledge of the security interest. In addition, the section
46 permits the bank to ignore the instructions of the secured party
unless it had agreed to honor them or unless other law provides
48 to the contrary. A secured party who wishes to deprive the
debtor of access to funds on deposit or to appropriate those
50 funds for itself needs to obtain the agreement of the bank,

2 utilize the judicial process, or comply with procedures set forth
3 in other law. Section 4-303(a), concerning the effect of notice
4 on a bank's right and duty to pay items, is not to the contrary.
5 That section addresses only whether an otherwise effective notice
6 comes too late; it does not determine whether a timely notice is
7 otherwise effective.

8 3. Operation of Rule. The general rule of this section is
9 subject to Section 9-340(c) [Maine cite section 9-1340,
10 subsection (3)] , under which a bank's right of setoff may not be
11 exercised against a deposit account in the secured party's name
12 if the right is based on a claim against the debtor. This result
13 reflects current law in many jurisdictions and does not appear to
14 have unduly disrupted banking practices or the payments system.
15 The more important function of this section, which is not
16 impaired by Section 9-340 [Maine cite section 9-1340], is the
17 bank's right to follow the debtor's (customer's) instructions
18 (e.g., by honoring checks, permitting withdrawals, etc.) until
19 such time as the depository institution is served with judicial
20 process or receives instructions with respect to the funds on
21 deposit from a secured party who has control over the deposit
22 account.

23 4. Liability of Bank. This Article does not determine
24 whether a bank that pays out funds from an encumbered deposit is
25 liable to the holder of a security interest. Although the fact
26 that a secured party has control over the deposit account and the
27 manner by which control was achieved may be relevant to the
28 imposition of liability, whatever rule applies generally when a
29 bank pays out funds in which a third party has an interest would
30 determine liability to a secured party. Often, this rule is
31 found in a non-UCC adverse claim statute.

32 5. Certificates of Deposit. This section does not address
33 the obligations of banks that issue instruments evidencing
34 deposits (e.g., certain certificates of deposit).

35 **§9-1342. Bank's right to refuse to enter into or disclose**
36 **existence of control agreement**

37 This Article does not require a bank to enter into an
38 agreement of the kind described in section 9-1104, subsection
39 (1), paragraph (b), even if its customer so requests or directs.
40 A bank that has entered into such an agreement is not required to
41 confirm the existence of the agreement to another person unless
42 requested to do so by its customer.

43 **Official Comment**

1. Source. New; derived from Section 8-106(g).

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4 2. Protection for Bank. This section protects banks from
5 the need to enter into agreements against their will and from the
6 need to respond to inquiries from persons other than their
7 customers.

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10 **PART 4**

11 **RIGHTS OF 3RD PARTIES**

12 **§9-1401. Alienability of debtor's rights**

13
14 (1) Except as otherwise provided in subsection (2) and
15 sections 9-1406, 9-1407, 9-1408 and 9-1409, whether a debtor's
16 rights in collateral may be voluntarily or involuntarily
17 transferred is governed by law other than this Article.

18
19 (2) An agreement between the debtor and secured party that
20 prohibits a transfer of the debtor's rights in collateral or
21 makes the transfer a default does not prevent the transfer from
22 taking effect.

23
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25 **Official Comment**

26
27 1. Source. Former Section 9-311.

28
29 2. Scope of This Part. This Part deals with several issues
30 affecting third parties (i.e., parties other than the debtor and
31 the secured party). These issues are not addressed in Part 3,
32 Subpart 3, which deals with priorities. This Part primarily
33 addresses the rights and duties of account debtors and other
34 persons obligated on collateral who are not, themselves, parties
35 to a secured transaction.

36
37 3. Governing Law. There was some uncertainty under former
38 Article 9 as to which jurisdiction's law (usually, which
39 jurisdiction's version of Article 9) applied to the matters that
40 this Part addresses. Part 3, Subpart 1, does not determine the
41 law governing these matters because they do not relate to
42 perfection, the effect of perfection or nonperfection, or
43 priority. However, it might be inappropriate for a designation
44 of applicable law by a debtor and secured party under Section
45 1-105 to control the law applicable to an independent transaction
46 or relationship between the debtor and an account debtor.

47
48 Consider an example under Section 9-408 [Maine cite section
49 9-1408].
50

2 Example 1: State X has adopted this Article; former Article
3 9 is the law of State Y. A general intangible (e.g., a franchise
4 agreement) between a debtor-franchisee, D, and an account
5 debtor-franchisor, AD, is governed by the law of State Y. D
6 grants to SP a security interest in its rights under the
7 franchise agreement. The franchise agreement contains a term
8 prohibiting D's assignment of its rights under the agreement. D
9 and SP agree that their secured transaction is governed by the
10 law of State X. Under State X's Section 9-408 [Maine cite
11 section 9-1408], the restriction on D's assignment is ineffective
12 to prevent the creation, attachment, or perfection of SP's
13 security interest. State Y's former Section 9-318(4), however,
14 does not address restrictions on the creation of security
15 interests in general intangibles other than general intangibles
16 for money due or to become due. Accordingly, it does not address
17 restrictions on the assignment to SP of D's rights under the
18 franchise agreement. The non-Article-9 law of State Y, which
19 does address restrictions, provides that the prohibition on
20 assignment is effective.

21 This Article does not provide a specific answer to the
22 question of which State's law applies to the restriction on
23 assignment in the example. However, assuming that under non-UCC
24 choice-of-law principles the effectiveness of the restriction
25 would be governed by the law of State Y, which governs the
26 franchise agreement, the fact that State X's Article 9 governs
27 the secured transaction between SP and D would not override the
28 otherwise applicable law governing the agreement. Of course, to
29 the extent that jurisdictions eventually adopt identical versions
30 of this Article and courts interpret it consistently, the
31 inability to identify the applicable law in circumstances such as
32 those in the example may be inconsequential.

33
34 4. Inalienability Under Other Law. Subsection (a) [Maine
35 cite subsection (1)] addresses the question whether property
36 necessarily is transferable by virtue of its inclusion (i.e., its
37 eligibility as collateral) within the scope of Article 9 [Maine
38 cite Article 9-A]. It gives a negative answer, subject to the
39 identified exceptions. The substance of subsection (a) [Maine
40 cite subsection (1)] was implicit under former Article 9.

41
42 5. Negative Pledge Covenant. Subsection (b) [Maine cite
43 subsection (2)] is an exception to the general rule in subsection
44 (a) [Maine cite subsection (1)]. It makes clear that in secured
45 transactions under this Article the debtor has rights in
46 collateral (whether legal title or equitable) which it can
47 transfer and which its creditors can reach. It is best explained
48 with an example.

49
50

2 Example 2: A debtor, D, grants to SP a security interest to
3 secure a debt in excess of the value of the collateral. D agrees
4 with SP that it will not create a subsequent security interest in
5 the collateral and that any security interest purportedly granted
6 in violation of the agreement will be void. Subsequently, in
7 violation of its agreement with SP, D purports to grant a
8 security interest in the same collateral to another secured party.

9
10 Subsection (b) [Maine cite subsection (2)] validates D's creation
11 of the subsequent (prohibited) security interest, which might
12 even achieve priority over the earlier security interest. See
13 Comment 7. However, unlike some other provisions of this Part,
14 such as Section 9-406, subsection (b) [Maine cite section 9-1406,
15 subsection (2)] does not provide that the agreement restricting
16 assignment itself is "ineffective." Consequently, the debtor's
17 breach may create a default.

18 6. Rights of Lien Creditors. Difficult problems may arise
19 with respect to attachment, levy, and other judicial procedures
20 under which a debtor's creditors may reach collateral subject to
21 a security interest. For example, an obligation may be secured
22 by collateral worth many times the amount of the obligation. If
23 a lien creditor has caused all or a portion of the collateral to
24 be seized under judicial process, it may be difficult to
25 determine the amount of the debtor's "equity" in the collateral
26 that has been seized. The section leaves resolution of this
27 problem to the courts. The doctrine of marshaling may be
28 appropriate.

29 7. Sale of Receivables. If a debtor sells an account,
30 chattel paper, payment intangible, or promissory note outright,
31 as against the buyer the debtor has no remaining rights to
32 transfer. If, however, the buyer fails to perfect its interest,
33 then solely insofar as the rights of certain third parties are
34 concerned, the debtor is deemed to retain its rights and title.
35 See Section 9-318 [Maine cite section 9-1318]. The debtor has
36 the power to convey these rights to a subsequent purchaser. If
37 the subsequent purchaser (buyer or secured lender) perfects its
38 interest, it will achieve priority over the earlier, unperfected
39 purchaser. See Section 9-322(a)(1) [Maine cite section 9-1322,
40 subsection (1), paragraph (a)].

41 **§9-1402. Secured party not obligated on contract of debtor or in**
42 **tort**

43 The existence of a security interest, agricultural lien or
44 authority given to a debtor to dispose of or use collateral,
45 without more, does not subject a secured party to liability in
46 contract or tort for the debtor's acts or omissions.

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Official Comment

1. Source. Former Section 9-317.

2. Nonliability of Secured Party. This section, like former Section 9-317, rejects theories on which a secured party might be held liable on a debtor's contracts or in tort merely because a security interest exists or because the debtor is entitled to dispose of or use collateral. This section expands former Section 9-317 to cover agricultural liens.

§9-1403. Agreement not to assert defenses against assignee

(1) In this section, "value" has the meaning provided in section 3-303, subsection (1).

(2) Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

(a) For value;

(b) In good faith;

(c) Without notice of a claim of a property or possessory right to the property assigned; and

(d) Without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under section 3-305, subsection (1).

(3) Subsection (2) does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under section 3-305, subsection (2).

(4) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this Article requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement:

(a) The record has the same effect as if the record included such a statement; and

2 applicable definition in Section 1-201(44). Subsection (a)
3 [Maine cite subsection (1)] addresses this question; it provides
4 that "value" has the meaning specified in Section 3-303(a).
5 Similarly, subsection (c) [Maine cite subsection (3)] provides
6 that subsection (b) [Maine cite subsection (2)] does not validate
7 an agreement with respect to defenses that could be asserted
8 against a holder in due course under Section 9-305(b) [Maine cite
9 section 9-1305, subsection (2)] (the so-called "real" defenses).
10 In 1990, the definition of "holder in due course" (Section 3-302)
11 and the articulation of the rights of a holder in due course
12 (Sections 3-305 and 3-306) were revised substantially. This
13 section tracks more closely the rules of Sections 3-302, 3-305,
14 and 3-306.

15
16 4. Relationship to Terms of Assigned Property. Former
17 Section 9-206(2), concerning warranties accompanying the sale of
18 goods, has been deleted as unnecessary. This Article does not
19 regulate the terms of the account, chattel paper, or general
20 intangible that is assigned, except insofar as the account,
21 chattel paper, or general intangible itself creates a security
22 interest (as often is the case with chattel paper). Thus,
23 Article 2, and not this Article, determines whether a seller of
24 goods makes or effectively disclaims warranties, even if the sale
25 is secured. Similarly, other law, and not this Article,
26 determines the effectiveness of an account debtor's undertaking
27 to pay notwithstanding, and not to assert, any defenses or claims
28 against an assignor-e.g., a "hell or high water" provision in the
29 underlying agreement that is assigned. If other law gives effect
30 to this undertaking, then, under principles of nemo dat, the
31 undertaking would be enforceable by the assignee (secured
32 party). If other law prevents the assignor from enforcing the
33 undertaking, this section nevertheless might permit the assignee
34 to do so. The right of the assignee to enforce would depend upon
35 whether, under the particular facts, the account debtor's
36 undertaking fairly could be construed as an agreement that falls
37 within the scope of this section and whether the assignee meets
38 the requirements of this section.

39
40 5. Relationship to Federal Trade Commission Rule.
41 Subsection (d) [Maine cite subsection (4)] is new. It applies to
42 rights evidenced by a record that is required to contain, but
43 does not contain, the notice set forth in Federal Trade
44 Commission Rule 433, 16 C.F.R. Part 433 (the
45 "Holder-in-Due-Course Regulations"). Under this subsection, an
46 assignee of such a record takes subject to the consumer account
47 debtor's claims and defenses to the same extent as it would have
48 if the writing had contained the required notice. Thus,
49 subsection (d) [Maine cite subsection (4)] effectively renders
50 waiver-of-defense clauses ineffective in the transactions with
consumers to which it applies.

2 6. Relationship to Other Law. Like former Section
3 9-206(1), this section takes no position on the enforceability of
4 waivers of claims and defenses by consumer account debtors,
5 leaving that question to other law. However, the reference to
6 "law other than this article" in subsection (e) [Maine cite
7 subsection (5)] encompasses administrative rules and regulations;
8 the reference in former Section 9-206(1) that it replaces
9 ("statute or decision") arguably did not.

10
11 This section does not displace other law that gives effect
12 to a non-consumer account debtor's agreement not to assert
13 defenses against an assignee, even if the agreement would not
14 qualify under subsection (b) [Maine cite subsection (2)]. See
15 subsection (f) [Maine cite subsection (6)]. It validates, but
16 does not invalidate, agreements made by a non-consumer account
17 debtor. This section also does not displace other law to the
18 extent that the other law permits an assignee, who takes an
19 assignment with notice of a claim of a property or possessory
20 right, a defense, or a claim in recoupment, to enforce an account
21 debtor's agreement not to assert claims and defenses against the
22 assignor (e.g., a "hell-or-high-water" agreement). See Comment
23 4. It also does not displace an assignee's right to assert that
24 an account debtor is estopped from asserting a claim or defense.
25 Nor does this section displace other law with respect to waivers
26 of potential future claims and defenses that are the subject of
27 an agreement between the account debtor and the assignee.
28 Finally, it does not displace Section 1-107, concerning waiver of
29 a breach that allegedly already has occurred.

30
31 **§9-1404. Rights acquired by assignee; claims and defenses**
32 **against assignee**

33
34 (1) Unless an account debtor has made an enforceable
35 agreement not to assert defenses or claims, and subject to
36 subsections (2) through (5), the rights of an assignee are
37 subject to:

38 (a) All terms of the agreement between the account debtor
39 and assignor and any defense or claim in recoupment arising
40 from the transaction that gave rise to the contract; and

41 (b) Any other defense or claim of the account debtor
42 against the assignor that accrues before the account debtor
43 receives a notification of the assignment authenticated by
44 the assignor or the assignee.

45 (2) Subject to subsection (3) and except as otherwise
46 provided in subsection (4), the claim of an account debtor

2 against an assignor may be asserted against an assignee under
3 subsection (1) only to reduce the amount the account debtor owes.

4 (3) This section is subject to law other than this Article
5 that establishes a different rule for an account debtor who is an
6 individual and who incurred the obligation primarily for
7 personal, family or household purposes.

8
9
10 (4) In a consumer transaction, if a record evidences the
11 account debtor's obligation, law other than this Article requires
12 that the record include a statement to the effect that the
13 account debtor's recovery against an assignee with respect to
14 claims and defenses against the assignor may not exceed amounts
15 paid by the account debtor under the record, and the record does
16 not include such a statement, the extent to which a claim of an
17 account debtor against the assignor may be asserted against an
18 assignee is determined as if the record included such a statement.

19
20 (5) This section does not apply to an assignment of a
21 health-care-insurance receivable.

22
23 **Official Comment**

24
25 1. Source. Former Section 9-318(1).

26
27 2. Purpose; Rights of Assignee in General. Subsection (a)
28 [Maine cite subsection (1)], like former Section 9-318(1),
29 provides that an assignee generally takes an assignment subject
30 to defenses and claims of an account debtor. Under subsection
31 (a)(1) [Maine cite subsection (1), paragraph (a)], if the account
32 debtor's defenses on an assigned claim arise from the transaction
33 that gave rise to the contract with the assignor, it makes no
34 difference whether the defense or claim accrues before or after
35 the account debtor is notified of the assignment. Under
36 subsection (a)(2) [Maine cite subsection (1), paragraph (b)], the
37 assignee takes subject to other defenses or claims only if they
38 accrue before the account debtor has been notified of the
39 assignment. Of course, an account debtor may waive its right to
40 assert defenses or claims against an assignee under Section 9-403
41 [Maine cite section 9-1403] or other applicable law. Subsection
42 (a) [Maine cite subsection (1)] tracks Section 3-305(a)(3) more
43 closely than its predecessor.

44
45 3. Limitation on Affirmative Claims. Subsection (b) [Maine
46 cite subsection (2)] is new. It limits the claim that the
47 account debtor may assert against an assignee. Borrowing from
48 Section 3-305(a)(3) and cases construing former Section 9318,
49 subsection (b) generally does not afford the account debtor the
50 right to an affirmative recovery from an assignee.

2 4. Consumer Account Debtors; Relationship to Federal Trade
Commission Rule. Subsections (c) and (d) [Maine cite subsections
4 (3) and (4)] also are new. Subsection (c) [Maine cite subsection
6 (3)] makes clear that the rules of this section are subject to
8 other law establishing special rules for consumer account
10 debtors. An "account debtor who is an individual" as used in
12 subsection (c) [Maine cite subsection (3)] includes individuals
14 who are jointly or jointly and severally obligated. Subsection
16 (d) [Maine cite subsection (4)] applies to rights evidenced by a
18 record that is required to contain, but does not contain, the
notice set forth in Federal Trade Commission Rule 433, 16 C.F.R.
Part 433 (the "Holder-in-Due-Course Regulations"). Under
subsection (d) [Maine cite subsection (4)], a consumer account
debtor has the same right to an affirmative recovery from an
assignee of such a record as the consumer would have had against
the assignee had the record contained the required notice.

20 5. Scope; Application to "Account Debtor." This section
22 deals only with the rights and duties of "account debtors"-and
24 for the most part only with account debtors on accounts, chattel
26 paper, and payment intangibles. Subsection (e) [Maine cite
28 subsection (5)] provides that the obligation of an insurer with
30 respect to a health-care-insurance receivable is governed by
32 other law. References in this section to an "account debtor"
34 include account debtors on collateral that is proceeds. Neither
36 this section nor any other provision of this Article, including
38 Sections 9-408 and 9-409 [Maine cite sections 9-1408 and 9-1409],
40 provides analogous regulation of the rights and duties of other
42 obligors on collateral, such as the maker of a negotiable
instrument (governed by Article 3), the issuer of or nominated
person under a letter of credit (governed by Article 5), or the
issuer of a security (governed by Article 8). Article 9 [Maine
cite Article 9-A] leaves those rights and duties untouched;
however, Section 9-409 [Maine cite section 9-1409] deals with the
special case of letters of credit. When chattel paper is
composed in part of a negotiable instrument, the obligor on the
instrument is not an "account debtor," and Article 3 governs the
rights of the assignee of the chattel paper with respect to the
issues that this section addresses. See, e.g., Section 3-601
(dealing with discharge of an obligation to pay a negotiable
instrument).

44 **§9-1405. Modification of assigned contract**

46 (1) A modification of or substitution for an assigned
48 contract is effective against an assignee if made in good faith.
50 The assignee acquires corresponding rights under the modified or
substituted contract. The assignment may provide that the

2 modification or substitution is a breach of contract by the
3 assignor. This subsection is subject to subsections (2) through
4 (4).

6 (2) Subsection (1) applies to the extent that:

8 (a) The right to payment or a part thereof under an
9 assigned contract has not been fully earned by performance;
10 or

12 (b) The right to payment or a part thereof has been fully
13 earned by performance and the account debtor has not
14 received notification of the assignment under section
15 9-1406, subsection (1).

16 (3) This section is subject to law other than this Article
17 that establishes a different rule for an account debtor who is an
18 individual and who incurred the obligation primarily for
19 personal, family or household purposes.

20 (4) This section does not apply to an assignment of a
21 health-care-insurance receivable.

24 **Official Comment**

26
28 1. Source. Former Section 9-318(2).

30 2. Modification of Assigned Contract. The ability of
31 account debtors and assignors to modify assigned contracts can be
32 important, especially in the case of government contracts and
33 complex contractual arrangements (e.g., construction contracts)
34 with respect to which modifications are customary. Subsections
35 (a) and (b) [Maine cite subsections (1) and (2)] provide that
36 good-faith modifications of assigned contracts are binding
37 against an assignee to the extent that (i) the right to payment
38 has not been fully earned or (ii) the right to payment has been
39 earned and notification of the assignment has not been given to
40 the account debtor. Former Section 9-318(2) did not validate
41 modifications of fully-performed contracts under any
42 circumstances, whether or not notification of the assignment had
43 been given to the account debtor. Subsection (a) [Maine cite
44 subsection (1)] protects the interests of assignees by (i)
45 limiting the effectiveness of modifications to those made in good
46 faith, (ii) affording the assignee with corresponding rights
47 under the contract as modified, and (iii) recognizing that the
48 modification may be a breach of the assignor's agreement with the
49 assignee.

2 3. Consumer Account Debtors. Subsection (c) [Maine cite
3 subsection (3)] is new. It makes clear that the rules of this
4 section are subject to other law establishing special rules for
5 consumer account debtors.

6 4. Account Debtors on Health-Care-Insurance Receivables.
7 Subsection (d) [Maine cite subsection (4)] also is new. It
8 provides that this section does not apply to an assignment of a
9 health-care-insurance receivable. The obligation of an insurer
10 with respect to a health-care-insurance receivable is governed by
11 other law.

12

14 **§9-1406. Discharge of account debtor; notification of**
15 **assignment; identification and proof of assignment;**
16 **restrictions on assignment of accounts, chattel paper,**
17 **payment intangibles, and promissory notes ineffective**

18

19 (1) Subject to subsections (2) through (9), an account
20 debtor on an account, chattel paper, or a payment intangible may
21 discharge its obligation by paying the assignor until, but not
22 after, the account debtor receives a notification, authenticated
23 by the assignor or the assignee, that the amount due or to become
24 due has been assigned and that payment is to be made to the
25 assignee. After receipt of the notification, the account debtor
26 may discharge its obligation by paying the assignee and may not
27 discharge the obligation by paying the assignor.

28

29 (2) Subject to subsection (8), notification is ineffective
30 under subsection (1):

31 (a) If it does not reasonably identify the rights assigned:

32 (b) To the extent that an agreement between an account
33 debtor and a seller of a payment intangible limits the
34 account debtor's duty to pay a person other than the seller
35 and the limitation is effective under law other than this
36 Article; or

37 (c) At the option of an account debtor, if the notification
38 notifies the account debtor to make less than the full
39 amount of any installment or other periodic payment to the
40 assignee, even if:

41

42 (i) Only a portion of the account, chattel paper or
43 general intangible has been assigned to that assignee;

44 (ii) A portion has been assigned to another assignee;
45 or

46

2 (iii) The account debtor knows that the assignment to
3 that assignee is limited.

4 (3) Subject to subsection (8), if requested by the account
5 debtor, an assignee shall seasonably furnish reasonable proof
6 that the assignment has been made. Unless the assignee complies,
7 the account debtor may discharge its obligation by paying the
8 assignor, even if the account debtor has received a notification
9 under subsection (1).

10 (4) Except as otherwise provided in subsection (5) and
11 sections 2-1303 and 9-1407, and subject to subsection (8), a term
12 in an agreement between an account debtor and an assignor or in a
13 promissory note is ineffective to the extent that it:

14 (a) Prohibits, restricts or requires the consent of the
15 account debtor or person obligated on the promissory note to
16 the assignment or transfer of, or the creation, attachment,
17 perfection or enforcement of a security interest in, the
18 account, chattel paper, payment intangible or promissory
19 note; or

20 (b) Provides that the creation, attachment, perfection or
21 enforcement of the security interest may give rise to a
22 default, breach, right of recoupment, claim, defense,
23 termination, right of termination or remedy under the
24 account, chattel paper, payment intangible or promissory
25 note.

26 (5) Subsection (4) does not apply to the sale of a payment
27 intangible or promissory note.

28 (6) Except as otherwise provided in sections 2-1303 and
29 9-1407 and subject to subsections (8) and (9), a rule of law,
30 statute, or regulation that prohibits, restricts or requires the
31 consent of a government, governmental body or official, or
32 account debtor to the assignment or transfer of, or creation of a
33 security interest in, an account or chattel paper is ineffective
34 to the extent that the rule of law, statute or regulation:

35 (a) Prohibits, restricts or requires the consent of the
36 government, governmental body or official, or account debtor
37 to the assignment or transfer of, or the creation,
38 attachment, perfection or enforcement of a security interest
39 in the account or chattel paper; or

40 (b) Provides that the creation, attachment, perfection or
41 enforcement of the security interest may give rise to a
42 default, breach, right of recoupment, claim, defense,
43 termination, right of termination or remedy under the
44 account, chattel paper, payment intangible or promissory
45 note.

2 it probably does not change the rule that applied under former
3 Article 9. Former Section 9-318(3) referred to the account
4 debtor's obligation to "pay," indicating that the subsection was
5 limited to account debtors on accounts, chattel paper, and other
6 payment obligations.

7 3. Limitations on Effectiveness of Notification.
8 Subsection (b) [Maine cite subsection (2)] contains some special
9 rules concerning the effectiveness of a notification under
10 subsection (a) [Maine cite subsection (1)].

11 Subsection (b)(1) [Maine cite subsection (2), paragraph (a)]
12 tracks former Section 9-318(3) by making ineffective a
13 notification that does not reasonably identify the rights
14 assigned. A reasonable identification need not identify the
15 right to payment with specificity, but what is reasonable also is
16 not left to the arbitrary decision of the account debtor. If an
17 account debtor has doubt as to the adequacy of a notification, it
18 may not be safe in disregarding the notification unless it
19 notifies the assignee with reasonable promptness as to the
20 respects in which the account debtor considers the notification
21 defective.

22 Subsection (b)(2) [Maine cite subsection (2), paragraph
23 (b)], which is new, applies only to sales of payment
24 intangibles. It makes a notification ineffective to the extent
25 that other law gives effect to an agreement between an account
26 debtor and a seller of a payment intangible that limits the
27 account debtor's duty to pay a person other than the seller.
28 Payment intangibles are substantially less fungible than accounts
29 and chattel paper. In some (e.g., commercial bank loans),
30 account debtors customarily and legitimately expect that they
31 will not be required to pay any person other than the financial
32 institution that has advanced funds.

33 It has become common in financing transactions to assign
34 interests in a single obligation to more than one assignee.
35 Requiring an account debtor that owes a single obligation to make
36 multiple payments to multiple assignees would be unnecessarily
37 burdensome. Thus, under subsection (b)(3) [Maine cite subsection
38 (2), paragraph (c)], an account debtor that is notified to pay an
39 assignee less than the full amount of any installment or other
40 periodic payment has the option to treat the notification as
41 ineffective, ignore the notice, and discharge the assigned
42 obligation by paying the assignor. Some account debtors may not
43 realize that the law affords them the right to ignore certain
44 notices of assignment with impunity. By making the notification
45 ineffective at the account debtor's option, subsection (b)(3)
46 [Maine cite subsection (2), paragraph (c)] permits an account
47 debtor to pay the assignee in accordance with the notice and
48
49
50

2 thereby to satisfy its obligation pro tanto. Under subsection
(g) [Maine cite subsection (7)], the rights and duties created by
3 subsection (b)(3) [Maine cite subsection (2), paragraph (c)]
4 cannot be waived or varied.

6 4. Proof of Assignment. Subsection (c) [Maine cite
subsection (3)] links payment with discharge, as in subsection
8 (a) [Maine cite subsection (1)]. It follows former Section
9-318(3) in referring to the right of the account debtor to pay
10 the assignor if the requested proof of assignment is not
seasonably forthcoming. Even if the proof is not forthcoming,
12 the notification of assignment would remain effective, so that,
in the absence of reasonable proof of the assignment, the account
14 debtor could discharge the obligation by paying either the
assignee or the assignor. Of course, if the assignee did not in
16 fact receive an assignment, the account debtor cannot discharge
its obligation by paying a putative assignee who is a stranger.
18 The observations in Comment 3 concerning the reasonableness of an
identification of a right to payment also apply here. An account
20 debtor that questions the adequacy of proof submitted by an
assignor would be well advised to promptly inform the assignor of
22 the defects.

24 An account debtor may face another problem if its obligation
becomes due while the account debtor is awaiting reasonable proof
26 of the assignment that it has requested from the assignee. This
section does not excuse the account debtor from timely compliance
28 with its obligations. Consequently, an account debtor that has
received a notification of assignment and who has requested
30 reasonable proof of the assignment may discharge its obligation
by paying the assignor at the time (or even earlier if reasonably
32 necessary to avoid risk of default) when a payment is due, even
if the account debtor has not yet received a response to its
34 request for proof. On the other hand, after requesting
reasonable proof of the assignment, an account debtor may not
36 discharge its obligation by paying the assignor substantially in
advance of the time that the payment is due unless the assignee
38 has failed to provide the proof seasonably.

40 5. Contractual Restrictions on Assignment. Former Section
9-318(4) rendered ineffective an agreement between an account
42 debtor and an assignor which prohibited assignment of an account
(whether outright or to secure an obligation) or prohibited a
44 security assignment of a general intangible for the payment of
money due or to become due. Subsection (d) [Maine cite
46 subsection (4)] essentially follows former Section 9-318(4), but
expands the rule of free assignability to chattel paper (subject
48 to Sections 2-1303 and 9-407 [Maine cite section 9-1407]) and
promissory notes and explicitly overrides both restrictions and
50 prohibitions of assignment. The policies underlying the

2 ineffectiveness of contractual restrictions under this section
3 build on common-law developments that essentially have eliminated
4 legal restrictions on assignments of rights to payment as
5 security and other assignments of rights to payment such as
6 accounts and chattel paper. Any that might linger for accounts
7 and chattel paper are addressed by new subsection (f) [Maine cite
8 subsection (6)]. See Comment 6.

9
10 Former Section 9-318(4) did not apply to a sale of a payment
11 intangible (as described in the former provision, "a general
12 intangible for money due or to become due") but did apply to an
13 assignment of a payment intangible for security. Subsection (e)
14 [Maine cite subsection (5)] continues this approach and also
15 makes subsection (d) [Maine cite subsection (4)] inapplicable to
16 sales of promissory notes. Section 9-408 [Maine cite section
17 9-1408] addresses anti-assignment clauses with respect to sales
18 of payment intangibles and promissory notes.

19
20 Like former Section 9-318(4), subsection (d) [Maine cite
21 subsection (4)] provides that anti-assignment clauses are
22 "ineffective." The quoted term means that the clause is of no
23 effect whatsoever; the clause does not prevent the assignment
24 from taking effect between the parties and the prohibited
25 assignment does not constitute a default under the agreement
26 between the account debtor and assignor. However, subsection (d)
27 [Maine cite subsection (4)] does not override terms that do not
28 directly prohibit, restrict, or require consent to an assignment
29 but which might, nonetheless, present a practical impairment of
30 the assignment. Properly read, however, subsection (d) [Maine
31 cite subsection (4)] reaches only covenants that prohibit,
32 restrict, or require consents to assignments; it does not
33 override all terms that might "impair" an assignment in fact.

34 Example: Buyer enters into an agreement with Seller to buy
35 equipment that Seller is to manufacture according to Buyer's
36 specifications. Buyer agrees to make a series of prepayments
37 during the construction process. In return, Seller agrees to set
38 aside the prepaid funds in a special account and to use the funds
39 solely for the manufacture of the designated equipment. Seller
40 also agrees that it will not assign any of its rights under the
41 sale agreement with Buyer. Nevertheless, Seller grants to
42 Secured Party a security interest in its accounts. Seller's
43 anti-assignment agreement is ineffective under subsection (d)
44 [Maine cite subsection (4)]; its agreement concerning the use of
45 prepaid funds, which is not a restriction or prohibition on
46 assignment, is not. However, if Secured Party notifies Buyer to
47 make all future payments directly to Secured Party, Buyer will be
48 obliged to do so under subsection (a) [Maine cite subsection (1)]
49 if it wishes the payments to discharge its obligation. Unless
50 Secured Party releases the funds to Seller so that Seller can

2 comply with its use-of-funds covenant, Seller will be in breach
of that covenant.

4 In the example, there appears to be a plausible business purpose
6 for the use-of-funds covenant. However, a court may conclude
8 that a covenant with no business purpose other than imposing an
impediment to an assignment actually is a direct restriction that
is rendered ineffective by subsection (d) [Maine cite subsection
(4)].

10
12 6. Legal Restrictions on Assignment. Former Section
14 9-318(4), like subsection (d) [Maine cite subsection (4)] of this
16 section, addressed only contractual restrictions on assignment.
18 The former section was grounded on the reality that legal, as
opposed to contractual, restrictions on assignments of rights to
20 payment had largely disappeared. New subsection (f) [Maine cite
subsection (6)] codifies this principle of free assignability for
accounts and chattel paper. For the most part the discussion of
contractual restrictions in Comment 5 applies as well to legal
restrictions rendered ineffective under subsection (f) [Maine
cite subsection (6)].

22
24 7. Multiple Assignments. This section, like former Section
26 9-318, is not a complete codification of the law of assignments
of rights to payment. In particular, it is silent concerning
28 many of the ramifications for an account debtor in cases of
multiple assignments of the same right. For example, an assignor
30 might assign the same receivable to multiple assignees (which
assignments could be either inadvertent or wrongful). Or, the
32 assignor could assign the receivable to assignee-1, which then
might re-assign it to assignee-2, and so forth. The rights and
34 duties of an account debtor in the face of multiple assignments
and in other circumstances not resolved in the statutory text are
left to the common-law rules. See, e.g., Restatement (2d),
36 Contracts §§ 338(3), 339. The failure of former Article 9 to
codify these rules does not appear to have caused problems.

38 8. Consumer Account Debtors. Subsection (h) [Maine cite
40 subsection (8)] is new. It makes clear that the rules of this
section are subject to other law establishing special rules for
consumer account debtors.

42
44 9. Account Debtors on Health-Care-Insurance Receivables.
46 Subsection (i) [Maine cite subsection (9)] also is new. The
obligation of an insurer with respect to a health-care-insurance
48 receivable is governed by other law. Section 9-408 [Maine cite
section 9-1408] addresses contractual and legal restrictions on
the assignment of a health-care-insurance receivable.

50

2 **§9-1407. Restrictions on creation or enforcement of security**
3 **interest in leasehold interest or in lessor's residual**
4 **interest**

6 (1) Except as otherwise provided in subsection (2), a term
7 in a lease agreement is ineffective to the extent that it:

8 (a) Prohibits, restricts or requires the consent of a party
9 to the lease to the creation, attachment, perfection or
10 enforcement of a security interest in an interest of a party
11 under the lease contract or in the lessor's residual
12 interest in the goods; or

14 (b) Provides that the creation, attachment, perfection or
15 enforcement of the security interest may give rise to a
16 default, breach, right of recoupment, claim, defense,
17 termination, right of termination or remedy under the lease.

18 (2) Except as otherwise provided in section 2-1303,
19 subsection (7), a term described in subsection (1), paragraph (b)
20 is effective to the extent that there is:

22 (a) A transfer by the lessee of the lessee's right of
23 possession or use of the goods in violation of the term; or

24 (b) A delegation of a material performance of either party
25 to the lease contract in violation of the term.

26 (3) The creation, attachment, perfection or enforcement of
27 a security interest in the lessor's interest under the lease
28 contract or the lessor's residual interest in the goods is not a
29 transfer that materially impairs the lessee's prospect of
30 obtaining return performance or materially changes the duty of or
31 materially increases the burden or risk imposed on the lessee
32 within the purview of section 2-1303, subsection (4) unless, and
33 then only to the extent that, enforcement actually results in a
34 delegation of material performance of the lessor.

38
39
40 **Official Comment**

41
42 1. Source. Section 2-1303.

43
44 2. Restrictions on Assignment Generally Ineffective. Under
45 subsection (a) [Maine cite subsection (1)] , as under former
46 Section 2-1303, subsection (3), a term in a lease agreement which
47 prohibits or restricts the creation of a security interest
48 generally is ineffective. This reflects the general policy of
49 Section 9-406(d) [Maine cite section 9-1406 (d)] and former
50 Section 9-318(4). This section has been conformed in several

2 respects to analogous provisions in Sections 9-406, 9-408, and
3 9-409 [Maine cite sections 9-1406, 9-1408 and 9-1409], including
4 the substitution of "ineffective" for "not enforceable" and the
5 substitution of "creation, attachment, perfection, or enforcement
6 of a security interest" for "creation or enforcement of a
7 security interest."

8 3. Exceptions for Certain Transfers and Delegations.
9 Subsection (b) [Maine cite subsection (2)] provides exceptions to
10 the general ineffectiveness of restrictions under subsection (a)
11 [Maine cite subsection (1)]. A term that otherwise is
12 ineffective under subsection (a)(2) [Maine cite subsection (1),
13 paragraph (b)] is effective to the extent that a lessee transfers
14 its right to possession and use of goods or if either party
15 delegates material performance of the lease contract in violation
16 of the term. However, under subsection (c) [Maine cite
17 subsection (3)], as under former Section 2-1303(3), a lessor's
18 creation of a security interest in its interest in a lease
19 contract or its residual interest in the leased goods is not a
20 material impairment under Section 2-1303(4) (former Section
21 2-1303(5)), absent an actual delegation of the lessor's material
22 performance. The terms of the lease contract determine whether
23 the lessor, in fact, has any remaining obligations to perform.
24 If it does, it is then necessary to determine whether there has
25 been an actual delegation of "material performance." See Section
26 2-1303, Comments 3 and 4.

28 **§9-1408. Restrictions on assignment of promissory notes,
29 health-care-insurance receivables and certain general
30 intangibles ineffective**

31 (1) Except as otherwise provided in subsection (2), a term
32 in a promissory note or in an agreement between an account debtor
33 and a debtor that relates to a health-care-insurance receivable
34 or a general intangible, including a contract, permit, license or
35 franchise, and which term prohibits, restricts or requires the
36 consent of the person obligated on the promissory note or the
37 account debtor to, the assignment or transfer of, or creation,
38 attachment or perfection of a security interest in, the
39 promissory note, health-care-insurance receivable or general
40 intangible, is ineffective to the extent that the term:

41 (a) Would impair the creation, attachment or perfection of
42 a security interest; or

43 (b) Provides that the creation, attachment or perfection of
44 the security interest may give rise to a default, breach,
45 right of recoupment, claim, defense, termination right of

2 termination, or remedy under the promissory note,
health-care-insurance receivable or general intangible.

4 (2) Subsection (1) applies to a security interest in a
payment intangible or promissory note only if the security
6 interest arises out of a sale of the payment intangible or
promissory note.

8 (3) A rule of law, statute or regulation that prohibits,
10 restricts or requires the consent of a government, governmental
body or official, person obligated on a promissory note, or
12 account debtor to the assignment or transfer of, or creation of a
security interest in, a promissory note, health-care-insurance
14 receivable or general intangible, including a contract, permit,
license or franchise between an account debtor and a debtor, is
16 ineffective to the extent that the rule of law, statute or
regulation:

18 (a) Would impair the creation, attachment or perfection of
20 a security interest; or

22 (b) Provides that the creation, attachment or perfection of
the security interest may give rise to a default, breach,
24 right of recoupment, claim, defense, termination right of
termination or remedy under the promissory note,
26 health-care-insurance receivable or general intangible.

28 (4) To the extent that a term in a promissory note or in an
agreement between an account debtor and a debtor that relates to
30 a health-care-insurance receivable or general intangible or a
rule of law, statute or regulation described in subsection (3)
32 would be effective under law other than this Article but is
ineffective under subsection (1) or (3), the creation, attachment
34 or perfection of a security interest in the promissory note,
health-care-insurance receivable or general intangible:

36 (a) Is not enforceable against the person obligated on the
38 promissory note or the account debtor;

40 (b) Does not impose a duty or obligation on the person
obligated on the promissory note or the account debtor;

42 (c) Does not require the person obligated on the promissory
note or the account debtor to recognize the security
44 interest, pay or render performance to the secured party or
accept payment or performance from the secured party;
46

48 (d) Does not entitle the secured party to use or assign the
debtor's rights under the promissory note,
50 health-care-insurance receivable or general intangible,

2 including any related information or materials furnished to
3 the debtor in the transaction giving rise to the promissory
4 note, health-care-insurance receivable or general intangible;

6 (e) Does not entitle the secured party to use, assign,
7 possess or have access to any trade secrets or confidential
8 information of the person obligated on the promissory note
9 or the account debtor; and

10 (f) Does not entitle the secured party to enforce the
11 security interest in the promissory note,
12 health-care-insurance receivable or general intangible.

14 **Official Comment**

16 1. Source. New.

18 2. Free Assignability. This section makes ineffective any
19 attempt to restrict the assignment of a general intangible,
20 health-care-insurance receivable, or promissory note, whether the
21 restriction appears in the terms of a promissory note or the
22 agreement between an account debtor and a debtor (subsection (a)
23 [Maine cite subsection (1)]) or in a rule of law, including a
24 statute or governmental rule or regulation (subsection (c) [Maine
25 cite subsection (3)]). This result allows the creation,
26 attachment, and perfection of a security interest in a general
27 intangible, such as an agreement for the nonexclusive license of
28 software, as well as sales of certain receivables, such as a
29 health-care-insurance receivable (which is an "account"), payment
30 intangible, or promissory note, without giving rise to a default
31 or breach by the assignor or from triggering a remedy of the
32 account debtor or person obligated on a promissory note. This
33 enhances the ability of certain debtors to obtain credit. On the
34 other hand, subsection (d) [Maine cite subsection (4)] protects
35 the other party—the "account debtor" on a general intangible or
36 the person obligated on a promissory note—from adverse effects
37 arising from the security interest. It leaves the account
38 debtor's or obligated person's rights and obligations unaffected
39 in all material respects if a restriction rendered ineffective by
40 subsection (a) or (c) [Maine cite subsection (1) or (3)] would be
41 effective under law other than Article 9 [Maine cite Article 9-A].

44 Example 1: A term of an agreement for the nonexclusive
45 license of computer software prohibits the licensee from
46 assigning any of its rights as licensee with respect to the
47 software. The agreement also provides that an attempt to assign
48 rights in violation of the restriction is a default entitling the
49 licensor to terminate the license agreement. The licensee, as
50 debtor, grants to a secured party a security interest in its

rights under the license and in the computers in which it is
2 installed. Under this section, the term prohibiting assignment
and providing for a default upon an attempted assignment is
4 ineffective to prevent the creation, attachment, or perfection of
the security interest or entitle the licensor to terminate the
6 license agreement. However, under subsection (d) [Maine cite
subsection (4)], the secured party (absent the licensor's
8 agreement) is not entitled to enforce the license or to use,
assign, or otherwise enjoy the benefits of the licensed software,
10 and the licensor need not recognize (or pay any attention to) the
secured party. Even if the secured party takes possession of the
12 computers on the debtor's default, the debtor would remain free
to remove the software from the computer, load it on another
14 computer, and continue to use it, if the license so permits. If
the debtor does not remove the software, other law may require
16 the secured party to remove it before disposing of the computer.
Disposition of the software with the computer could violate an
18 effective prohibition on enforcement of the security interest.
See subsection (d) [Maine cite subsection (4)].

20

3. Nature of Debtor's Interest. Neither this section nor
22 any other provision of this Article determines whether a debtor
has a property interest. The definition of the term "security
24 interest" provides that it is an "interest in personal
property." See Section 1-201(37). Ordinarily, a debtor can
26 create a security interest in collateral only if it has "rights
in the collateral." See Section 9-203(b) [Maine cite section
28 9-1203, subsection (2)]. Other law determines whether a debtor
has a property interest ("rights in the collateral") and the
30 nature of that interest. For example, the nonexclusive license
addressed in Example 1 may not create any property interest
32 whatsoever in the intellectual property (e.g., copyright) that
underlies the license and that effectively enables the licensor
34 to grant the license. The debtor's property interest may be
confined solely to its interest in the promises made by the
36 licensor in the license agreement (e.g., a promise not to sue the
debtor for its use of the software).

38

4. Scope: Sales of Payment Intangibles and Other General
40 Intangibles; Assignments Unaffected by this Section. Subsections
(a) and (c) [Maine cite subsections (1) and (3)] render
42 ineffective restrictions on assignments only "to the extent" that
the assignments restrict the "creation, attachment, or perfection
44 of a security interest," including sales of payment intangibles
and promissory notes. This section does not render ineffective a
46 restriction on an assignment that does not create a security
interest. For example, if the debtor in Comment 2, Example 1
48 purported to assign the license to another entity that would use
the computer software itself, other law would govern the
50 effectiveness of the anti-assignment provisions.

2 Subsection (a) [Maine cite subsection (1)] applies to a
3 security interest in payment intangibles only if the security
4 interest arises out of sale of the payment intangibles.
5 Contractual restrictions directed to security interests in
6 payment intangibles which secure an obligation are subject to
7 Section 9-406(d) [Maine cite section 9-1406, subsection (4)].
8 Subsection (a) [Maine cite subsection (1)] also deals with sales
9 of promissory notes which also create security interests. See
10 Section 9-109(a) [Maine cite section 9-1109, subsection (1)].
11 Subsection (c) [Maine cite subsection (3)] deals with all
12 security interests in payment intangibles or promissory notes,
13 whether or not arising out of a sale.

14
15 Subsection (a) [Maine cite subsection (1)] does not render
16 ineffective any term, and subsection (c) [Maine cite subsection
17 (3)] does not render ineffective any law, statute or regulation,
18 that restricts outright sales of general intangibles other than
19 payment intangibles. They deal only with restrictions on
20 security interests. The only sales of general intangibles that
21 create security interests are sales of payment intangibles.

22
23 5. Terminology: "Account Debtor"; "Person Obligated on a
24 Promissory Note." This section uses the term "account debtor" as
25 it is defined in Section 9-102 [Maine cite section 9-1102]. The
26 term refers to the party, other than the debtor, to a general
27 intangible, including a permit, license, franchise, or the like,
28 and the person obligated on a health-care-insurance receivable,
29 which is a type of account. The definition of "account debtor"
30 does not limit the term to persons who are obligated to pay under
31 a general intangible. Rather, the term includes all persons who
32 are obligated on a general intangible, including those who are
33 obligated to render performance in exchange for payment. In some
34 cases, e.g., the creation of a security interest in a
35 franchisee's rights under a franchise agreement, the principal
36 payment obligation may be owed by the debtor (franchisee) to the
37 account debtor (franchisor). This section also refers to a
38 "person obligated on a promissory note," inasmuch as those
39 persons do not fall within the definition of "account debtor."

40
41 Example 2: A licensor and licensee enter into an agreement
42 for the nonexclusive license of computer software. The
43 licensee's interest in the license agreement is a general
44 intangible. If the licensee grants to a secured party a security
45 interest in its rights under the license agreement, the licensee
46 is the debtor and the licensor is the account debtor. On the
47 other hand, if the licensor grants to a secured party a security
48 interest in its right to payment (an account) under the license
49 agreement, the licensor is the debtor and the licensee is the
50 account debtor. (This section applies to the security interest

2 in the general intangible but not to the security interest in the
account, which is not a health-care-insurance receivable.)

4 6. Effects on Account Debtors and Persons Obligated on
Promissory Notes. Subsections (a) and (c) [Maine cite
6 subsections (1) and (3)] affect two classes of persons. These
subsections affect account debtors on general intangibles and
8 health-care-insurance receivables and persons obligated on
promissory notes. Subsection (c) [Maine cite subsection (3)]
10 also affects governmental entities that enact or determine rules
of law. However, subsection (d) [Maine cite subsection (4)]
12 ensures that these affected persons are not affected adversely.
That provision removes any burdens or adverse effects on these
14 persons for which any rational basis could exist to restrict the
effectiveness of an assignment or to exercise any remedies. For
16 this reason, the effects of subsections (a) and (c) [Maine cite
subsections (1) and (3)] are immaterial insofar as those persons
18 are concerned.

20 Subsection (a) [Maine cite subsection (1)] does not override
terms that do not directly prohibit, restrict, or require consent
22 to an assignment but which might, nonetheless, present a
practical impairment of the assignment. Properly read, however,
24 this section, like Section 9-406(d) [Maine cite section 9-1406,
subsection (4)], reaches only covenants that prohibit, restrict,
26 or require consents to assignments; it does not override all
terms that might "impair" an assignment in fact.

28
30 Example 3: A licensor and licensee enter into an agreement
for the nonexclusive license of valuable business software. The
license agreement includes terms (i) prohibiting the licensee
32 from assigning its rights under the license, (ii) prohibiting the
licensee from disclosing to anyone certain information relating
34 to the software and the licensor, and (iii) deeming prohibited
assignments and prohibited disclosures to be defaults. The
36 licensee wishes to obtain financing and, in exchange, is willing
to grant a security interest in its rights under the license
38 agreement. The secured party, reasonably, refuses to extend
credit unless the licensee discloses the information that it is
40 prohibited from disclosing under the license agreement. The
secured party cannot determine the value of the proposed
42 collateral in the absence of this information. Under this
section, the terms of the license prohibiting the assignment
44 (grant of the security interest) and making the assignment a
default are ineffective. However, the nondisclosure covenant is
46 not a term that prohibits the assignment or creation of a
security interest in the license. Consequently, the
48 nondisclosure term is enforceable even though the practical
effect is to restrict the licensee's ability to use its rights
50 under the license agreement as collateral.

2 The nondisclosure term also would be effective in the factual
3 setting of Comment 2, Example 1. If the secured party's
4 possession of the computers loaded with software would put it in
5 a position to discover confidential information that the debtor
6 was prohibited from disclosing, the licensor should be entitled
7 to enforce its rights against the secured party. Moreover, the
8 licensor could have required the debtor to obtain the secured
9 party's agreement that (i) it would immediately return all copies
10 of software loaded on the computers and that (ii) it would not
11 examine or otherwise acquire any information contained in the
12 software. This section does not prevent an account debtor from
13 protecting by agreement its independent interests that are
14 unrelated to the "creation, attachment, or perfection" of a
15 security interest. In Example 1, moreover, the secured party is
16 not in possession of copies of software by virtue of its security
17 interest or in connection with enforcing its security interest in
18 the debtor's license of the software. Its possession is
19 incidental to its possession of the computers, in which it has a
20 security interest. Enforcing against the secured party a
21 restriction relating to the software in no way interferes with
22 its security interest in the computers.

24 7. Effect in Assignor's Bankruptcy. This section could
25 have a substantial effect if the assignor enters bankruptcy.
26 Roughly speaking, Bankruptcy Code Section 552 invalidates
27 security interests in property acquired after a bankruptcy
28 petition is filed, except to the extent that the postpetition
29 property constitutes proceeds of prepetition collateral.

30 Example 4: A debtor is the owner of a cable television
31 franchise that, under applicable law, cannot be assigned without
32 the consent of the municipal franchisor. A lender wishes to
33 extend credit to the debtor, provided that the credit is secured
34 by the debtor's "going business" value. To secure the loan, the
35 debtor grants a security interest in all its existing and
36 after-acquired property. The franchise represents the principal
37 value of the business. The municipality refuses to consent to
38 any assignment for collateral purposes. If other law were given
39 effect, the security interest in the franchise would not attach;
40 and if the debtor were to enter bankruptcy and sell the business,
41 the secured party would receive but a fraction of the business's
42 value. Under this section, however, the security interest would
43 attach to the franchise. As a result, the security interest
44 would attach to the proceeds of any sale of the franchise while a
45 bankruptcy is pending. However, this section would protect the
46 interests of the municipality by preventing the secured party
47 from enforcing its security interest to the detriment of the
48 municipality.

50

2 8. Effect Outside of Bankruptcy. The principal effects of
3 this section will take place outside of bankruptcy. Compared to
4 the relatively few debtors that enter bankruptcy, there are many
5 more that do not. By making available previously unavailable
6 property as collateral, this section should enable debtors to
7 obtain additional credit. For purposes of determining whether to
8 extend credit, under some circumstances a secured party may
9 ascribe value to the collateral to which its security interest
10 has attached, even if this section precludes the secured party
11 from enforcing the security interest without the agreement of the
12 account debtor or person obligated on the promissory note. This
13 may be the case where the secured party sees a likelihood of
14 obtaining that agreement in the future. This may also be the
15 case where the secured party anticipates that the collateral will
16 give rise to a type of proceeds as to which this section would
not apply.

18 Example 5: Under the facts of Example 4, the debtor does
19 not enter bankruptcy. Perhaps in exchange for a fee, the
20 municipality agrees that the debtor may transfer the franchise to
21 a buyer. As consideration for the transfer, the debtor receives
22 from the buyer its check for part of the purchase price and its
23 promissory note for the balance. The security interest attaches
24 to the check and promissory note as proceeds. See Section
25 9-315(a)(2) [Maine cite section 9-1315, subsection (1), paragraph
26 (b)]. This section does not apply to the security interest in
27 the check, which is not a promissory note, health-care-insurance
28 receivable, or general intangible. Nor does it apply to the
29 security interest in the promissory note, inasmuch as it was not
30 sold to the secured party.

32 9. Contrary Federal Law. This section does not override
33 federal law to the contrary. However, it does reflect an
34 important policy judgment that should provide a template for
35 future federal law reforms.

38 **§9-1409. Restrictions on assignment of letter-of-credit rights**
39 **ineffective**

40 (1) A term in a letter of credit or a rule of law, statute,
41 regulation, custom or practice applicable to the letter of credit
42 that prohibits, restricts or requires the consent of an
43 applicant, issuer or nominated person to a beneficiary's
44 assignment of or creation of a security interest in a
45 letter-of-credit right is ineffective to the extent that the term
46 or rule of law, statute, regulation, custom or practice:

48 (a) Would impair the creation, attachment or perfection of
49 a security interest in the letter-of-credit right; or

2 under other law (e.g., Article 5), a restriction on transfer or
assignment were effective to block attachment and perfection.

4 3. Relationship to Letter-of-Credit Law. Although
6 restrictions on an assignment of a letter of credit are
ineffective to prevent creation, attachment, and perfection of a
8 security interest, subsection (b) [Maine cite subsection (2)]
protects the issuer and other parties from any adverse effects of
10 the security interest by preserving letter-of-credit law and
practice that limits the right of a beneficiary to transfer its
12 right to draw or otherwise demand performance (Section 5-112) and
limits the obligation of an issuer or nominated person to
14 recognize a beneficiary's assignment of letter-of-credit proceeds
(Section 5-114). Thus, this section's treatment of
16 letter-of-credit rights differs from this Article's treatment of
instruments and investment property. Moreover, under Section
18 9-109(c)(4) [Maine cite section 9-1109, subsection (3), paragraph
(d)], this Article does not apply to the extent that the rights
20 of a transferee beneficiary or nominated person are independent
and superior under Section 5-114, thereby preserving the
22 "independence principle" of letter-of-credit law.

24 **PART 5**
26 **FILING**
28 **SUBPART 1**
FILING OFFICE; CONTENTS AND
EFFECTIVENESS OF FINANCING STATEMENT

30 **§9-1501. Filing office**

32 (1) Except as otherwise provided in subsection (2), if the
34 local law of this State governs perfection of a security interest
or agricultural lien, the office in which to file a financing
36 statement to perfect the security interest or agricultural lien
is:

38 (a) The office designated for the filing or recording of a
40 record of a mortgage on the related real property, if:

42 (i) The collateral is as-extracted collateral or
timber to be cut; or

44 (ii) The financing statement is filed as a fixture
46 filing and the collateral is goods that are or are to
become fixtures; or

48 (b) The office of the Secretary of State, in all other
cases, including a case in which the collateral is goods

2 then becomes ordinary goods, and filing in the office specified
3 in subsection (a)(2) [Maine cite subsection (1), paragraph (b)]
4 is necessary for perfection. Note also that after the timber is
5 cut the law of the debtor's location, not the location of the
6 timber, governs perfection under Section 9-301 [Maine cite
7 section 9-1301].

8 4. Fixtures. There are two ways in which a secured party
9 may file a financing statement to perfect a security interest in
10 goods that are or are to become fixtures. It may file in the
11 Article 9 records, as with most other goods. See subsection
12 (a)(2)[Maine cite subsection (1), paragraph (b)]. Or it may file
13 the financing statement as a "fixture filing," defined in Section
14 9-102 [Maine cite section 9-1102], in the office in which a
15 record of a mortgage on the related real property would be
16 filed. See subsection(a)(1)(B) [Maine cite subsection (1),
17 paragraph (a), subparagraph (ii)].

18 5. Transmitting Utilities. The usual filing rules do not
19 apply well for a transmitting utility (defined in Section 9-102)
20 [Maine cite section 9-1102]. Many preUCC statutes provided
21 special filing rules for railroads and in some cases for other
22 public utilities, to avoid the requirements for filing with legal
23 descriptions in every county in which such debtors had property.
24 Former Section 9-401(5) recreated and broadened these provisions,
25 and subsection (b) [Maine cite subsection (2)] follows this
26 approach. The nature of the debtor will inform persons searching
27 the record as to where to make a search.

30 **§9-1502. Contents of financing statement; record of mortgage**
31 **as financing statement; time of filing financing**
32 **statement**

34 (1) Subject to subsection (2), a financing statement is
35 sufficient only if it:

36 (a) Provides the name of the debtor;

38 (b) Provides the name of the secured party or a
39 representative of the secured party; and

42 (c) Indicates the collateral covered by the financing
43 statement.

44 (2) Except as otherwise provided in section 9-1501,
45 subsection (2), to be sufficient, a financing statement that
46 covers as-extracted collateral or timber to be cut, or which is
47 filed as a fixture filing and covers goods that are or are to
48 become fixtures, must satisfy subsection (1) and also:

50

2 The notice itself indicates merely that a person may have a
3 security interest in the collateral indicated. Further inquiry
4 from the parties concerned will be necessary to disclose the
5 complete state of affairs. Section 9-210 [Maine cite section
6 9-1210] provides a statutory procedure under which the secured
7 party, at the debtor's request, may be required to make
8 disclosure. However, in many cases, information may be
9 forthcoming without the need to resort to the formalities of that
10 section.

11 Notice filing has proved to be of great use in financing
12 transactions involving inventory, accounts, and chattel paper,
13 because it obviates the necessity of refileing on each of a series
14 of transactions in a continuing arrangement under which the
15 collateral changes from day to day. However, even in the case of
16 filings that do not necessarily involve a series of transactions
17 (e.g., a loan secured by a single item of equipment), a financing
18 statement is effective to encompass transactions under a security
19 agreement not in existence and not contemplated at the time the
20 notice was filed, if the indication of collateral in the
21 financing statement is sufficient to cover the collateral
22 concerned. Similarly, a financing statement is effective to
23 cover afteracquired property of the type indicated and to perfect
24 with respect to future advances under security agreements,
25 regardless of whether after-acquired property or future advances
26 are mentioned in the financing statement and even if not in the
27 contemplation of the parties at the time the financing statement
28 was authorized to be filed.

29 3. Debtor's Signature; Required Authorization. Subsection
30 (a) [Maine cite subsection (1)] sets forth the simple formal
31 requirements for an effective financing statement. These
32 requirements are: (1) the debtor's name; (2) the name of a
33 secured party or representative of the secured party; and (3) an
34 indication of the collateral.

35 Whereas former Section 9-402(1) required the debtor's
36 signature to appear on a financing statement, this Article
37 contains no signature requirement. The elimination of the
38 signature requirement facilitates paperless filing. (However, as
39 PEB Commentary No. 15 indicates, a paperless financing statement
40 was sufficient under former Article 9.) Elimination of the
41 signature requirement also makes the exceptions provided by
42 former Section 9-402(2) unnecessary.

43 The fact that this Article does not require that an
44 authenticating symbol be contained in the public record does not
45 mean that all filings are authorized. Rather, Section 9-509(a)
46 [Maine cite section 9-1509, subsection (1)] entitles a person to
47 file an initial financing statement, an amendment that adds
48
49
50

2 collateral, or an amendment that adds a debtor only if the debtor
3 authorizes the filing, and Section 9-509(d) [Maine cite section
4 9-1509, subsection (4)] entitles a person other than the debtor
5 to file a termination statement only if the secured party of
6 record authorizes the filing. Of course, a filing has legal
7 effect only to the extent it is authorized. See Section 9-510
8 [Maine cite section 9-1510].

9
10 Law other than this Article, including the law with respect
11 to ratification of past acts, generally determines whether a
12 person has the requisite authority to file a record under this
13 Article. See Section 1-103. However, under Section 9-509(b)
14 [Maine cite section 9-1509, subsection (2)], the debtor's
15 authentication of (or becoming bound by) a security agreement
16 ipso facto constitutes the debtor's authorization of the filing
17 of a financing statement covering the collateral described in the
18 security agreement. The secured party need not obtain a separate
19 authorization.

20 Section 9-625 [Maine cite section 9-1625] provides a remedy
21 for unauthorized filings. Making an unauthorized filing also may
22 give rise to civil or criminal liability under other law. In
23 addition, this Article contains provisions that assist in the
24 discovery of unauthorized filings and the amelioration of their
25 practical effect. For example, Section 9-518 [Maine cite section
26 9-1518] provides a procedure whereby a person may add to the
27 public record a statement to the effect that a financing
28 statement indexed under the person's name was wrongfully filed,
29 and Section 9-509(d) [Maine cite section 9-1509, subsection (4)]
30 entitles any person to file a termination statement if the
31 secured party of record fails to comply with its obligation to
32 file or send one to the debtor, the debtor authorizes the filing,
33 and the termination statement so indicates. However, the filing
34 office is neither obligated nor permitted to inquire into issues
35 of authorization. See Section 9-520(a) [Maine cite section
36 9-1520, subsection (1)].

37
38 4. Certain Other Requirements. Subsection (a) [Maine cite
39 subsection (1)] deletes other provisions of former Section
40 9-402(1) because they seem unwise (real-property description for
41 financing statements covering crops), unnecessary (adequacy of
42 copies of financing statements), or both (copy of security
43 agreement as financing statement). In addition, the filing
44 office must reject a financing statement lacking certain other
45 information formerly required as a condition of perfection (e.g.,
46 an address for the debtor or secured party). See Sections
47 9-516(b), 9-520(a) [Maine cite section 9-1516, subsection (2),
48 section 9-1520, subsection (1)]. However, if the filing office
49 accepts the record, it is effective nevertheless. See Section
50 9-520(c) [Maine cite section 9-1520, subsection (3)].

2 5. Real-Property-Related Filings. Subsection (b) [Maine
4 cite subsection (2)] contains the requirements for financing
statements filed as fixture filings and financing statements
6 covering timber to be cut or minerals and minerals-related
accounts constituting as-extracted collateral. A description of
8 the related real property must be sufficient to reasonably
identify it. See Section 9-108 (Maine cite section 9-1108].
10 This formulation rejects the view that the real property
description must be by metes and bounds, or otherwise conforming
12 to traditional real-property practice in conveyancing, but, of
course, the incorporation of such a description by reference to
14 the recording data of a deed, mortgage or other instrument
containing the description should suffice under the most
16 stringent standards. The proper test is that a description of
real property must be sufficient so that the financing statement
18 will fit into the real-property search system and be found by a
real-property searcher. Under the optional language in
20 subsection (b)(3) [Maine cite subsection (2), paragraph (c)], the
test of adequacy of the description is whether it would be
22 adequate in a record of a mortgage of the real property. As
suggested in the Legislative Note, more detail may be required if
24 there is a tract indexing system or a land registration system.

26 If the debtor does not have an interest of record in the
real property, a real-property-related financing statement must
28 show the name of a record owner, and Section 9-519(d) [Maine cite
section 9-1519, subsection (4)] requires the financing statement
30 to be indexed in the name of that owner. This requirement also
enables financing statements covering as-extracted collateral or
32 timber to be cut and financing statements filed as fixture
filings to fit into the real-property search system.

34 6. Record of Mortgage Effective as Financing Statement.
Subsection (c) [Maine cite subsection (3)] explains when a record
36 of a mortgage is effective as a financing statement filed as a
fixture filing or to cover timber to be cut or as-extracted
38 collateral. Use of the term "record of a mortgage" recognizes
that in some systems the record actually filed is not the record
40 pursuant to which a mortgage is created. Moreover, "mortgage" is
defined in Section 9-102 [Maine cite section 9-1102] as an
42 "interest in real property," not as the record that creates or
evidences the mortgage or the record that is filed in the public
44 recording systems. A record creating a mortgage may also create
a security interest with respect to fixtures (or other goods) in
46 conformity with this Article. A single agreement creating a
mortgage on real property and a security interest in chattels is
48 common and useful for certain purposes. Under subsection (c)
[Maine cite subsection (3)], the recording of the record
50 evidencing a mortgage (if it satisfies the requirements for a

2 financing statement) constitutes the filing of a financing
statement as to the fixtures (but not, of course, as to other
4 goods). Section 9-515(g) [Maine cite section 9-1515, subsection
(7)] makes the usual fiveyear maximum life for financing
6 statements inapplicable to mortgages that operate as fixture
filings under Section 9-502(c) [Maine cite section 9-1502,
8 subsection (3)]. Such mortgages are effective for the duration
of the real-property recording.

10 Of course, if a combined mortgage covers chattels that are
not fixtures, a regular financing statement filing is necessary
12 with respect to the chattels, and subsection (c) [Maine cite
subsection (3)] is inapplicable. Likewise, a financing statement
14 filed as a "fixture filing" is not effective to perfect a security
interest in personal property other than fixtures.

16 In some cases it may be difficult to determine whether goods
18 are or will become fixtures. Nothing in this Part prohibits the
filing of a "precautionary" fixture filing, which would provide
20 protection in the event goods are determined to be fixtures. The
fact of filing should not be a factor in the determining whether
22 goods are fixtures. Cf. Section 9-505(b) [Maine cite section
9-1505, subsection (2)].

24 **§9-1503. Name of debtor and secured party**

26 (1) A financing statement sufficiently provides the name of
28 the debtor:

30 (a) If the debtor is a registered organization, only if the
32 financing statement provides the name of the debtor
indicated on the public record of the debtor's jurisdiction
of organization that shows the debtor to have been organized;

34 (b) If the debtor is a decedent's estate, only if the
36 financing statement provides the name of the decedent and
indicates that the debtor is an estate;

38 (c) If the debtor is a trust or a trustee acting with
40 respect to property held in trust, only if the financing
statement:

42 (i) Provides the name specified for the trust in its
44 organic documents or, if no name is specified, provides
the name of the settlor and additional information
46 sufficient to distinguish the debtor from other trusts
having one or more of the same settlors; and

2 name is the name shown on the public records of the debtor's
3 "jurisdiction of organization" (also defined in Section 9-102
4 [Maine cite section 9-1102]). Subsections (a)(2) and (a)(3)
5 [Maine cite subsection (1), paragraphs (b) and (c)] contain
6 special rules for decedent's estates and common-law trusts.
7 (Subsection (a)(1) [Maine cite subsection (1), paragraph (a)]
8 applies to business trusts that are registered organizations.)

10 Subsection (a)(4)(A) [Maine cite subsection (1), paragraph
11 (d), subparagraph (i)] essentially follows the first sentence of
12 former Section 9-402(7). Section 1-201(28) defines the term
13 "organization," which appears in subsection (a)(4) [Maine cite
14 subsection (1), paragraph (d)], very broadly, to include all
15 legal and commercial entities as well as associations that lack
16 the status of a legal entity. Thus, the term includes
17 corporations, partnerships of all kinds, business trusts, limited
18 liability companies, unincorporated associations, personal
19 trusts, governments, and estates. If the organization has a
20 name, that name is the correct name to put on a financing
21 statement. If the organization does not have a name, then the
22 financing statement should name the individuals or other entities
23 who comprise the organization.

24 Together with subsections (b) and (c) [Maine cite
25 subsections (2) and (3)], subsection (a) [Maine cite subsection
26 (1)] reflects the view prevailing under former Article 9 that the
27 actual individual or organizational name of the debtor on a
28 financing statement is both necessary and sufficient, whether or
29 not the financing statement provides trade or other names of the
30 debtor and, if the debtor has a name, whether or not the
31 financing statement provides the names of the partners, members,
32 or associates who comprise the debtor.

34 Note that, even if the name provided in an initial financing
35 statement is correct, the filing office nevertheless must reject
36 the financing statement if it does not identify an individual
37 debtor's last name (e.g., if it is not clear whether the debtor's
38 name is Perry Mason or Mason Perry). See Section 9-516(b)(3)(C)
39 [Maine cite section 9-1516, subsection (2), paragraph (c),
40 subparagraph (iii)].

42 3. Secured Party's Name. New subsection (d) [Maine cite
43 subsection (4)] makes clear that when the secured party is a
44 representative, a financing statement is sufficient if it names
45 the secured party, whether or not it indicates any representative
46 capacity. Similarly, a financing statement that names a
47 representative of the secured party is sufficient, even if it
48 does not indicate the representative capacity.

2 Example: Debtor creates a security interest in favor of
3 Bank X, Bank Y, and Bank Z, but not to their representative, the
4 collateral agent (Bank A). The collateral agent is not itself a
5 secured party. See Section 9-102 [Maine cite section 9-1102].
6 Under Sections 9-502(a) [Maine cite section 9-1502, subsection
7 (1)] and 9-503(d)[Maine cite section 9-1503, subsection (4)],
8 however, a financing statement is effective if it names as
9 secured party Bank A and not the actual secured parties, even if
10 it omits Bank A's representative capacity.

11 Each person whose name is provided in an initial financing
12 statement as the name of the secured party or representative of
13 the secured party is a secured party of record. See Section
14 9-511 [Maine cite section 9-1511].

15 4. Multiple Names. Subsection (e) [Maine cite subsection
16 (5)] makes explicit what is implicit under former Article 9: a
17 financing statement may provide the name of more than one debtor
18 and secured party. See Section 1-102(5)(a) (words in the
19 singular include the plural). With respect to records relating
20 to more than one debtor, see Section 9-520(d) [Maine cite section
21 9-1520, subsection (4)]. With respect to financing statements
22 providing the name of more than one secured party, see Sections
23 9-509(e) [Maine cite section 9-1509, subsection (5)] and 9-510(b)
24 [Maine cite section 9-1510, subsection (2)].

25 **§9-1504. Indication of collateral**

26 A financing statement sufficiently indicates the collateral
27 that it covers only if the financing statement provides:

28 (1) A description of the collateral pursuant to section
29 9-1108; or

30 (2) An indication that the financing statement covers all
31 assets or all personal property.

32 **Official Comment**

33 1. Source. Former Section 9-402(1).

34 2. Indication of Collateral. To comply with Section
35 9-502(a) [Maine cite section 9-1502, subsection (1)], a financing
36 statement must "indicate" the collateral it covers. This section
37 explains what suffices for an indication.

38 Paragraph (1) [Maine cite paragraph (a)] provides that a
39 "description" of the collateral (as the term is explained in
40 Section 9-108 [Maine cite section 9-1108]) suffices as an

2 indication for purposes of the sufficiency of a financing
statement.

4 Debtors sometimes create a security interest in all, or
substantially all, of their assets. To accommodate this
6 practice, paragraph (2) [Maine cite paragraph (b)] expands the
class of sufficient collateral references to embrace "an
8 indication that the financing statement covers all assets or all
personal property." If the property in question belongs to the
10 debtor and is personal property, any searcher will know that the
property is covered by the financing statement. Of course,
12 regardless of its breadth, a financing statement has no effect
with respect to property indicated but to which a security
14 interest has not attached. Note that a broad statement of this
kind (e.g., "all debtor's personal property") would not be a
16 sufficient "description" for purposes of a security agreement.
See Sections 9-203(b)(3)(A) [Maine cite section 9-1203,
18 subsection (2), paragraph (c), subparagraph (i)], 9-108 [Maine
cite section 9-1108]. It follows that a somewhat narrower
20 description than "all assets," e.g., "all assets other than
automobiles," is sufficient for purposes of this section, even if
22 it does not suffice for purposes of a security agreement.

24 **§9-1505. Filing and compliance with other statutes and**
26 **treaties for consignments, leases, other bailments**
and other transactions

28 (1) A consignor, lessor, or other bailor of goods, a
licensor or a buyer of a payment intangible or promissory note
30 may file a financing statement, or may comply with a statute or
treaty described in section 9-1311, subsection (1), using the
32 terms "consignor," "consignee," "lessor," "lessee," "bailor,"
"bailee," "licensor," "licensee," "owner," "registered owner,"
34 "buyer" or "seller," or words of similar import, instead of the
terms "secured party" and "debtor."

36
38 (2) This part applies to the filing of a financing
statement under subsection (1) and, as appropriate, to compliance
40 that is equivalent to filing a financing statement under section
9-1311, subsection (2), but the filing or compliance is not of
42 itself a factor in determining whether the collateral secures an
obligation. If it is determined for another reason that the
44 collateral secures an obligation, a security interest held by the
consignor, lessor, bailor, licensor, owner or buyer that attaches
46 to the collateral is perfected by the filing or compliance.

48 **Official Comment**

50 1. Source. Former Section 9-408.

2 2. Precautionary Filing. Occasionally, doubts arise
concerning whether a transaction creates a relationship to which
4 this Article or its filing provisions apply. For example,
questions may arise over whether a "lease" of equipment in fact
6 creates a security interest or whether the "sale" of payment
intangibles in fact secures an obligation, thereby requiring
8 action to perfect the security interest. This section, which
derives from former Section 9-408 [Maine cite section 9-1408],
10 affords the option of filing of a financing statement with
appropriate changes of terminology but without affecting the
12 substantive question of classification of the transaction.

14 3. Changes from Former Section 9-408. This section expands
the rule of Section 9-408 to embrace more generally other
16 bailments and transactions, as well as sales transactions,
primarily sales of payment intangibles and promissory notes. It
18 provides the same benefits for compliance with a statute or
treaty described in Section 9-311(a) [Maine cite section 9-1311,
20 subsection (1)] that former Section 9-408 provided for filing, in
connection with the use of terms such as "lessor," consignor,"
22 etc. The references to "owner" and "registered owner" are
intended to address, for example, the situation where a putative
24 lessor is the registered owner of an automobile covered by a
certificate of title and the transaction is determined to create
26 a security interest. Although this section provides that the
security interest is perfected, the relevant certificate-of-title
28 statute may expressly provide to the contrary or may be
ambiguous. If so, it may be necessary or advisable to amend the
30 certificate-of-title statute to ensure that perfection of the
security interest will be achieved.

32 As does Section 1-201, former Article 9 referred to
34 transactions, including leases and consignments, "intended as
security." This misleading phrase created the erroneous
36 impression that the parties to a transaction can dictate how the
law will classify it (e.g., as a bailment or as a security
38 interest) and thus affect the rights of third parties. This
Article deletes the phrase wherever it appears. Subsection (b)
40 [Maine cite subsection (2)] expresses the principle more
precisely by referring to a security interest that "secures an
42 obligation."

44 4. Consignments. Although a "true" consignment is a
bailment, the filing and priority provisions of former Article 9
46 applied to "true" consignments. See former Sections 2-326(3),
9-114. A consignment "intended as security" created a security
48 interest that was in all respects subject to former Article 9.
This Article subsumes most true consignments under the rubric of
50 "security interest." See Sections 9-102 [Maine cite section

2 9-1102] (definition of "consignment"), 9-109(a)(4) [Maine cite
3 section 9-1109, subsection (1), paragraph (d)], 1-201(37)
4 (definition of "security interest"). Nevertheless, it maintains
5 the distinction between a (true) "consignment," as to which only
6 certain aspects of Article 9 [Maine cite Article 9-A] apply, and
7 a so-called consignment that actually "secures an obligation," to
8 which Article 9 [Maine cite Article 9-A] applies in full. The
9 revisions to this section reflect the change in terminology.

10 **§9-1506. Effect of errors or omissions**

12 (1) A financing statement substantially satisfying the
13 requirements of this part is effective, even if it has minor
14 errors or omissions, unless the errors or omissions make the
15 financing statement seriously misleading.

16 (2) Except as otherwise provided in subsection (3), a
17 financing statement that fails sufficiently to provide the name
18 of the debtor in accordance with section 9-1503, subsection (1)
19 is seriously misleading.

20 (3) If a search of the records of the filing office under
21 the debtor's correct name, using the filing office's standard
22 search logic, if any, would disclose a financing statement that
23 fails sufficiently to provide the name of the debtor in
24 accordance with section 9-1503, subsection (1), the name provided
25 does not make the financing statement seriously misleading.

26 (4) For purposes of section 9-1508, subsection (2), the
27 "debtor's correct name" in subsection (3) means the correct name
28 of the new debtor.

29 **Official Comment**

30 1. Source. Former Section 9-402(8).

31 2. Errors. Like former Section 9-402(8), subsection (a)
32 [Maine cite subsection (1)] is in line with the policy of this
33 Article to simplify formal requisites and filing requirements.
34 It is designed to discourage the fanatical and impossibly refined
35 reading of statutory requirements in which courts occasionally
36 have indulged themselves. Subsection (a) [Maine cite subsection
37 (1)] provides the standard applicable to indications of
38 collateral. Subsections (b) and (c) [Maine cite subsections (2)
39 and (3)], which are new, concern the effectiveness of financing
40 statements in which the debtor's name is incorrect. Subsection
41 (b) [Maine cite subsection (2)] contains the general rule: a
42 financing statement that fails sufficiently to provide the
43 debtor's name in accordance with Section 9-503(a) [Maine cite
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2 section 9-1503, subsection (1)] is seriously misleading as a
3 matter of law. Subsection (c) [Maine cite subsection (3)]
4 provides an exception: If the financing statement nevertheless
5 would be discovered in a search under the debtor's correct name,
6 using the filing office's standard search logic, if any, then as
7 a matter of law the incorrect name does not make the financing
8 statement seriously misleading. A financing statement that is
9 seriously misleading under this section is ineffective even if it
10 is disclosed by (i) using a search logic other than that of the
11 filing office to search the official records, or (ii) using the
12 filing office's standard search logic to search a data base other
13 than that of the filing office.

14 In addition to requiring the debtor's name and an indication
15 of the collateral, Section 9-502(a) [Maine cite section 9-1502,
16 subsection (1)] requires a financing statement to provide the
17 name of the secured party or a representative of the secured
18 party. Inasmuch as searches are not conducted under the secured
19 party's name, and no filing is needed to continue the perfected
20 status of security interest after it is assigned, an error in the
21 name of the secured party or its representative will not be
22 seriously misleading. However, in an appropriate case, an error
23 of this kind may give rise to an estoppel in favor of a
24 particular holder of a conflicting claim to the collateral. See
25 Section 1-103.

26
27 3. New Debtors. Subsection (d) [Maine cite subsection (4)]
28 provides that, in determining the extent to which a financing
29 statement naming an original debtor is effective against a new
30 debtor, the sufficiency of financing statement should be tested
31 against the name of the new debtor.

32 **§9-1507. Effect of certain events on effectiveness of**
33 **financing statement**

34
35 (1) A filed financing statement remains effective with
36 respect to collateral that is sold, exchanged, leased, licensed
37 or otherwise disposed of and in which a security interest or
38 agricultural lien continues, even if the secured party knows of
39 or consents to the disposition.

40
41 (2) Except as otherwise provided in subsection (3) and
42 section 9-1508, a financing statement is not rendered ineffective
43 if, after the financing statement is filed, the information
44 provided in the financing statement becomes seriously misleading
45 under section 9-1506.

46
47 (3) If a debtor so changes its name that a filed financing
48 statement becomes seriously misleading under section 9-1506;
49

50

2 result in loss of perfection for other reasons. See Section
9-316 [Maine cite section 9-1316].

4 Example: Dee Corp. is an Illinois corporation. It creates
a security interest in its equipment in favor of Secured Party.
6 Secured Party files a proper financing statement in Illinois.
Dee Corp. sells an item of equipment to Bee Corp., a Pennsylvania
8 corporation, subject to the security interest. The security
interest continues, see Section 9-315(a) [Maine cite section
10 9-1315, subsection (1)], and remains perfected, see Section
9-507(a) [Maine cite section 9-1507, subsection (1)],
12 notwithstanding that the financing statement is filed under "D"
(for Dee Corp.) and not under "B." However, because Bee Corp. is
14 located in Pennsylvania and not Illinois, see Section 9-307
[Maine cite section 9-1307], unless Secured Party perfects under
16 Pennsylvania law within one year after the transfer, its security
interest will become unperfected and will be deemed to have been
18 unperfected against purchasers of the collateral. See Section
9-316 [Maine cite section 9-1316].

20
4. Other Post-Filing Changes. Subsection (b) [Maine cite
22 subsection (2)] provides that, as a general matter, post-filing
changes that render a financing statement inaccurate and
24 seriously misleading have no effect on a financing statement.
The financing statement remains effective. It is subject to two
26 exceptions: Section 9-508 [Maine cite section 9-1508] and
Section 9-507(c) [Maine cite section 9-1507, subsection (3)].
28 Section 9-508 [Maine cite section 9-1508] addresses the
effectiveness of a financing statement filed against an original
30 debtor when a new debtor becomes bound by the original debtor's
security agreement. It is discussed in the Comments to that
32 section. Section 9-507(c) [Maine cite section 9-1507, subsection
3] addresses a "pure" change of the debtor's name, i.e., a change
34 that does not implicate a new debtor. It clarifies former
Section 9-402(7). If a name change renders a filed financing
36 statement seriously misleading, the financing statement is not
effective as to collateral acquired more than four months after
38 the change, unless before the expiration of the four months an
amendment is filed that specifies the debtor's new correct name
40 (or provides an incorrect name that renders the financing
statement not seriously misleading under Section 9-506 [Maine
42 cite section 9-1506]). As under former Section 9-402(7), the
original financing statement would continue to be effective with
44 respect to collateral acquired before the name change as well as
collateral acquired within the four-month period.

46
48 **§9-1508. Effectiveness of financing statement if new debtor
becomes bound by security agreement**

2 (1) Except as otherwise provided in this section, a filed
3 financing statement naming an original debtor is effective to
4 perfect a security interest in collateral in which a new debtor
5 has or acquires rights to the extent that the financing statement
6 would have been effective had the original debtor acquired rights
7 in the collateral.

8 (2) If the difference between the name of the original
9 debtor and that of the new debtor causes a filed financing
10 statement that is effective under subsection (1) to be seriously
11 misleading under section 9-1506:

12 (a) The financing statement is effective to perfect a
13 security interest in collateral acquired by the new debtor
14 before, and within 4 months after, the new debtor becomes
15 bound under section 9-1203, subsection (4); and

16 (b) The financing statement is not effective to perfect a
17 security interest in collateral acquired by the new debtor
18 more than 4 months after the new debtor becomes bound under
19 section 9-1203, subsection (4) unless an initial financing
20 statement providing the name of the new debtor is filed
21 before the expiration of that time.

22 (3) This section does not apply to collateral as to which a
23 filed financing statement remains effective against the new
24 debtor under section 9-1507, subsection (1).

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29 **Official Comment**

30 1. Source. New.

31 2. The Problem. Section 9-203(d) and (e) [Maine cite
32 section 9-1203, subsections (4) and (5)] and this section deal
33 with situations where one party (the "new debtor") becomes bound
34 as debtor by a security agreement entered into by another person
35 (the "original debtor"). These situations often arise as a
36 consequence of changes in business structure. For example, the
37 original debtor may be an individual debtor who operates a
38 business as a sole proprietorship and then incorporates it. Or,
39 the original debtor may be a corporation that is merged into
40 another corporation. Under both former Article 9 and this
41 Article, collateral that is transferred in the course of the
42 incorporation or merger normally would remain subject to a
43 perfected security interest. See Sections 9-315(a), 9-507(a)
44 [Maine cite section 9-1315, subsection (1), and section 9-1507,
45 subsection (1)]. Former Article 9 was less clear with respect to
46 whether an after-acquired property clause in a security agreement
47 signed by the original debtor would be effective to create a
48

2 security interest in property acquired by the new corporation or
the merger survivor and, if so, whether a financing statement
4 filed against the original debtor would be effective to perfect
the security interest. This section and Sections 9-203(d) and
6 (e) [Maine cite section 9-1203, subsections (4) and (5)] are a
clarification.

8 3. How New Debtor Becomes Bound. Normally, a security
interest is unenforceable unless the debtor has authenticated a
10 security agreement describing the collateral. See Section
9-203(b) [Maine cite section 9-1203, subsection (2)]. New
12 Section 9-203(e) [Maine cite section 9-1203, subsection (5)]
creates an exception, under which a security agreement entered
14 into by one person is effective with respect to the property of
another. This exception comes into play if a "new debtor"
16 becomes bound as debtor by a security agreement entered into by
another person (the "original debtor"). (The quoted terms are
18 defined in Section 9-102 [Maine cite section 9-1102].) If a new
debtor does become bound, then the security agreement entered
20 into by the original debtor satisfies the security-agreement
requirement of Section 9-203(b)(3) [Maine cite section 9-1203,
22 subsection (2), paragraph (c)] as to existing or after-acquired
property of the new debtor to the extent the property is
24 described in the security agreement. In that case, no other
agreement is necessary to make a security interest enforceable in
26 that property. See Section 9-203(e) [Maine cite section 9-1203,
subsection (5)].

28 Section 9-203(d) [Maine cite section 9-1203, subsection (4)]
explains when a new debtor becomes bound by an original debtor's
30 security agreement. Under Section 9-203(d)(1) [Maine cite
section 9-1203, subsection (4), paragraph (a)], a new debtor
32 becomes bound as debtor if, by contract or operation of other
law, the security agreement becomes effective to create a
34 security interest in the new debtor's property. For example, if
the applicable corporate law of mergers provides that when A Corp
36 merges into B Corp, B Corp becomes a debtor under A Corp's
security agreement, then B Corp would become bound as debtor
38 following such a merger. Similarly, B Corp would become bound as
debtor if B Corp contractually assumes A's obligations under the
40 security agreement.

42 Under certain circumstances, a new debtor becomes bound for
44 purposes of this Article even though it would not be bound under
other law. Under Section 9-203(d)(2) [Maine cite section 9-1203,
46 subsection (4), paragraph (b)], a new debtor becomes bound when,
by contract or operation of other law, it (i) becomes obligated
48 not only for the secured obligation but also generally for the
obligations of the original debtor and (ii) acquires or succeeds
50 to substantially all the assets of the original debtor. For

2 example, some corporate laws provide that, when two corporations
merge, the surviving corporation succeeds to the assets of its
4 merger partner and "has all liabilities" of both corporations.
In the case where, for example, A Corp merges into B Corp (and A
6 Corp ceases to exist), some people have questioned whether A
Corp's grant of a security interest in its existing and
8 after-acquired property becomes a "liability" of B Corp, such
that B Corp's existing and after-acquired property becomes
subject to a security interest in favor of A Corp's lender. Even
10 if corporate law were to give a negative answer, under Section
9-203(d)(2) [Maine cite section 9-1203, subsection (4), paragraph
12 (b)], B Corp would become bound for purposes of Section 9-203(e)
[Maine cite section 9-1203, subsection (5)] and this section.
14 The "substantially all of the assets" requirement of Section
9-203(d)(2) [Maine cite section 9-1203, subsection (4), paragraph
16 (b)] excludes sureties and other secondary obligors as well as
persons who become obligated through veil piercing and other
18 non-successorship doctrines. In most cases, it will exclude
successors to the assets and liabilities of a division of a
20 debtor.

22 4. When Financing Statement Effective Against New Debtor.
Subsection (a) [Maine cite subsection (1)] provides that a filing
24 against the original debtor is effective to perfect a security
interest in collateral that a new debtor has at the time it
26 becomes bound by the original debtor's security agreement and
collateral that it acquires before the expiration of four months
28 after the new debtor becomes bound. Under subsection (b) [Maine
cite subsection (2)], however, if the filing against the original
30 debtor is seriously misleading as to the new debtor's name, the
filing is effective as to collateral acquired by the new debtor
32 after the four-month period only if a person files during the
four-month period an initial financing statement providing the
34 name of the new debtor. Compare Section 9-507(c) [Maine cite
section 9-1507, subsection (3)] (four-month period of
36 effectiveness with respect to collateral acquired by a debtor
after the debtor changes its name).

38 5. Transferred Collateral. This section does not apply to
40 collateral transferred by the original debtor to a new debtor.
Under those circumstances, the filing against the original debtor
42 continues to be effective until it lapses. See subsection (c)
[Maine cite subsection (3)]; Section 9-507(a) [Maine cite section
44 9-1507, subsection (1)].

46 6. Priority. Section 9-326 [Maine cite section 9-1326]
governs the priority contest between a secured creditor of the
48 original debtor and a secured creditor of the new debtor.

50 **§9-1509. Persons entitled to file a record**

1. Source. New.

2

2. Scope and Approach of This Section. This section
4 collects in one place most of the rules determining whether a
6 record may be filed. Section 9-510 [Maine cite section 9-1510]
8 explains the extent to which a filed record is effective. Under
10 these sections, the identity of the person who effects a filing
12 is immaterial. The filing scheme contemplated by this Part does
14 not contemplate that the identity of a "filer" will be a part of
16 the searchable records. This is consistent with, and a necessary
18 aspect of, eliminating signatures or other evidence of
20 authorization from the system. (Note that the 1972 amendments to
22 this Article eliminated the requirement that a financing
statement contain the signature of the secured party.) As long
as the appropriate person authorizes the filing, or, in the case
of a termination statement, the debtor is entitled to the
termination, it is insignificant whether the secured party or
another person files any given record. The question of
authorization is one for the court, not the filing office.
However, a filing office may choose to employ authentication
procedures in connection with electronic communications, e.g., to
verify the identity of a filer who seeks to charge the filing fee.

24 3. Unauthorized Filings. Records filed in the filing
office do not require signatures for their effectiveness.
26 Subsection (a)(1) [Maine cite subsection (1), paragraph (a)]
substitutes for the debtor's signature on a financing statement
28 the requirement that the debtor authorize in an authenticated
record the filing of an initial financing statement or an
30 amendment that adds collateral. Also, under subsection (a)(1)
[Maine cite subsection (1), paragraph (a)], if an amendment adds
32 a debtor, the debtor who is added must authorize the amendment.
A person who files an unauthorized record in violation of
34 subsection (a)(1) [Maine cite subsection (1), paragraph (a)] is
liable under Section 9-625 [Maine cite section 9-1625] for actual
36 and statutory damages. Of course, a filed financing statement is
ineffective to perfect a security interest if the filing is not
38 authorized. See Section 9-510(a) [Maine cite section 9-1510,
subsection (1)]. Law other than this Article, including the law
40 with respect to ratification of past acts, generally determines
whether a person has the requisite authority to file a record
42 under this section. See Sections 1-103, 9-502 [Maine cite
section 9-1502], Comment 3.

44

4. Ipso Facto Authorization. Under subsection (b) [Maine
46 cite subsection (2)], the authentication of a security agreement
ipso facto constitutes the debtor's authorization of the filing
48 of a financing statement covering the collateral described in the
security agreement. The secured party need not obtain a separate
50 authorization. Similarly, a new debtor's becoming bound by a

2 security agreement ipso facto constitutes the new debtor's
3 authorization of the filing of a financing statement covering the
4 collateral described in the security agreement by which the new
5 debtor has become bound. And, under subsection (c) [Maine cite
6 subsection (3)], the acquisition of collateral in which a
7 security interest continues after disposition under Section
8 9-315(a)(1) [Maine cite section 9-1315, subsection (1), paragraph
9 (a)] ipso facto constitutes an authorization to file an initial
10 financing statement against the person who acquired the
11 collateral. The authorization to file an initial financing
12 statement also constitutes an authorization to file a record
13 covering actual proceeds of the original collateral, even if the
14 security agreement is silent as to proceeds.

15
16 Example 1: Debtor authenticates a security agreement
17 creating a security interest in Debtor's inventory in favor of
18 Secured Party. Secured Party files a financing statement
19 covering inventory and accounts. The financing statement is
20 authorized insofar as it covers inventory and unauthorized
21 insofar as it covers accounts. (Note, however, that the
22 financing statement will be effective to perfect a security
23 interest in accounts constituting proceeds of the inventory to
24 the same extent as a financing statement covering only
inventory.)

25
26 Example 2: Debtor authenticates a security agreement
27 creating a security interest in Debtor's inventory in favor of
28 Secured Party. Secured Party files a financing statement
29 covering inventory. Debtor sells some inventory, deposits the
30 buyer's payment into a deposit account, and withdraws the funds
31 to purchase equipment. As long as the equipment can be traced to
32 the inventory, the security interest continues in the equipment.
33 See Section 9-315(a)(2) [Maine cite section 9-1315, subsection
34 (1), paragraph (b)]. However, because the equipment was acquired
35 with cash proceeds, the financing statement becomes ineffective
36 to perfect the security interest in the equipment on the 21st day
37 after the security interest attaches to the equipment unless
38 Secured Party continues perfection beyond the 20-day period by
39 filing a financing statement against the equipment or amending
40 the filed financing statement to cover equipment. See Section
41 9-315(d) [Maine section 9-1315, subsection (4)]. Debtor's
42 authentication of the security agreement authorizes the filing of
43 an initial financing statement or amendment covering the
44 equipment, which is "property that becomes collateral under
45 Section 9-315(a)(2) [Maine section 9-1315, subsection 1,
46 paragraph (b)]." See Section 9-509(b)(2) [Maine cite section
9-1509, subsection (2), paragraph (b)].

47
48
49 5. Agricultural Liens. Under subsection (a)(2) [Maine cite
50 subsection (1), paragraph (b)], the holder of an agricultural

2 lien may file a financing statement covering collateral subject
to the lien without obtaining the debtor's authorization.
4 Because the lien arises as matter of law, the debtor's consent is
not required. A person who files an unauthorized record in
6 violation of this subsection is liable under Section 9-625(e)
[Maine cite section 9-1625, subsection (5)] for a statutory
penalty and damages.

8
6. Amendments; Termination Statements Authorized by
10 Debtor. Most amendments may not be filed unless the secured
party of record, as determined under Section 9-511 [Maine cite
12 section 9-1511], authorizes the filing. See subsection (d)(1).
[Maine cite subsection (4), paragraph (a)]. However, under
14 subsection (d)(2) [Maine cite subsection 4, paragraph (b)], the
authorization of the secured party of record is not required for
16 the filing of a termination statement if the secured party of
record failed to send or file a termination statement as required
18 by Section 9-513 [Maine cite section 9-1513], the debtor
authorizes it to be filed, and the termination statement so
20 indicates.

22 7. Multiple Secured Parties of Record. Subsection (e)
[Maine cite subsection (5)] deals with multiple secured parties
24 of record. It permits each secured party of record to authorize
the filing of amendments. However, Section 9-510(b) [Maine cite
26 section 9-1510, subsection (2)] protects the rights and powers of
one secured party of record from the effects of filings made by
28 another secured party of record. See Section 9-510 [Maine cite
section 9-1510], Comment 3.

30
8. Successor to Secured Party of Record. A person may
32 succeed to the powers of the secured party of record by operation
of other law, e.g., the law of corporate mergers. In that case,
34 the successor has the power to authorize filings within the
meaning of this section.

36 **§9-1510. Effectiveness of filed record**

38
40 (1) A filed record is effective only to the extent that it
was filed by a person that may file it under section 9-1509.

42 (2) A record authorized by one secured party of record does
not affect the financing statement with respect to another
44 secured party of record.

46 (3) A continuation statement that is not filed within the
6-month period prescribed by section 9-1515, subsection (4) is
48 ineffective.

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Official Comment

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1. Source. New.

2. Ineffectiveness of Unauthorized or Overbroad Filings. Subsection (a) [Maine cite subsection (1)] provides that a filed financing statement is effective only to the extent it was filed by a person entitled to file it.

Example 1: Debtor authorizes the filing of a financing statement covering inventory. Under Section 9-509 [Maine cite section 9-1509], the secured party may file a financing statement covering only inventory; it may not file a financing statement covering other collateral. The secured party files a financing statement covering inventory and equipment. This section provides that the financing statement is effective only to the extent the secured party may file it. Thus, the financing statement is effective to perfect a security interest in inventory but ineffective to perfect a security interest in equipment.

3. Multiple Secured Parties of Record. Section 9-509(e) [Maine cite section 9-1509, subsection (5)] permits any secured party of record to authorize the filing of most amendments. Subsection (b) [Maine cite subsection (2)] of this section prevents a filing authorized by one secured party of record from affecting the rights and powers of another secured party of record without the latter's consent.

Example 2: Debtor creates a security interest in favor of A and B. The filed financing statement names A and B as the secured parties. An amendment deleting some collateral covered by the financing statement is filed pursuant to B's authorization. Although B's security interest in the deleted collateral becomes unperfected, A's security interest remains perfected in all the collateral.

Example 3: Debtor creates a security interest in favor of A and B. The financing statement names A and B as the secured parties. A termination statement is filed pursuant to B's authorization. Although the effectiveness of the financing statement terminates with respect to B's security interest, A's rights are unaffected. That is, the financing statement continues to be effective to perfect A's security interest.

4. Continuation Statements. A continuation statement may be filed only within the six months immediately before lapse. See Section 9-515(d) [Maine cite section 9-1515, subsection (4)]. The filing office is obligated to reject a continuation statement that is filed outside the six-month period. See

2 Sections 9-520(a) [Maine cite section 9-1520, subsection (1)],
9-516(b)(7) [Maine cite section 9-1516, subsection (2), paragraph
4 (g)]. Subsection (c) [Maine cite subsection (3)] provides that
6 if the filing office fails to reject a continuation statement
that is not filed in a timely manner, the continuation statement
is ineffective nevertheless.

8 **§9-1511. Secured party of record**

10 (1) A secured party of record with respect to a financing
12 statement is a person whose name is provided as the name of the
14 secured party or a representative of the secured party in an
16 initial financing statement that has been filed. If an initial
financing statement is filed under section 9-1514, subsection
(1), the assignee named in the initial financing statement is the
secured party of record with respect to the financing statement.

18 (2) If an amendment of a financing statement that provides
20 the name of a person as a secured party or a representative of a
22 secured party is filed, the person named in the amendment is a
24 secured party of record. If an amendment is filed under section
9-1514, subsection (2), the assignee named in the amendment is a
secured party of record.

26 (3) A person remains a secured party of record until the
28 filing of an amendment of the financing statement that deletes
the person.

30 **Official Comment**

32 1. Source. New.

34 2. Secured Party of Record. This new section explains how
36 the secured party of record is to be determined. If SP-1 is
named as the secured party in an initial financing statement, it
38 is the secured party of record. Similarly, if an initial
financing statement reflects a total assignment from SP-0 to
40 SP-1, then SP-1 is the secured party of record. See subsection
(a) [Maine cite subsection (1)]. If, subsequently, an amendment
42 is filed assigning SP-1's status to SP-2, then SP-2 becomes the
secured party of record in place of SP-1. The same result
44 obtains if a subsequent amendment deletes the reference to SP-1
and substitutes therefor a reference to SP-2. If, however, a
46 subsequent amendment adds SP-2 as a secured party but does not
purport to remove SP-1 as a secured party, then SP-2 and SP-1
48 each is a secured party of record. See subsection (b) [Maine
cite subsection (2)]. An amendment purporting to remove the only
50 secured party of record without providing a successor is
ineffective. See Section 9-512(e) [Maine cite section 9-1512,

2 subsection (5)]. At any point in time, all effective records
that comprise a financing statement must be examined to determine
4 the person or persons that have the status of secured party of
record.

6 3. Successor to Secured Party of Record. Application of
other law may result in a person succeeding to the powers of a
8 secured party of record. For example, if the secured party of
record (A) merges into another corporation (B) and the other
10 corporation (B) survives, other law may provide that B has all of
A's powers. In that case, B is authorized to take all actions
12 under this Part that A would have been authorized to take.
Similarly, acts taken by a person who is authorized under
14 generally applicable principles of agency to act on behalf of the
secured party of record are effective under this Part.

16 **§9-1512. Amendment of financing statement**

18 (1) Subject to Section 9-1509, a person may add or delete
20 collateral covered by, continue or terminate the effectiveness of
or, subject to subsection (5), otherwise amend the information
22 provided in a financing statement by filing an amendment that:

24 (a) Identifies, by its file number, the initial financing
statement to which the amendment relates; and

26 (b) If the amendment relates to an initial financing
28 statement filed in a filing office described in section
9-1501, subsection (1), paragraph (a), provides the date and
30 time that the initial financing statement was filed and the
information specified in section 9-1502, subsection (2).

32 (2) Except as otherwise provided in section 9-1515, the
34 filing of an amendment does not extend the period of
effectiveness of the financing statement.

36 (3) A financing statement that is amended by an amendment
38 that adds collateral is effective as to the added collateral only
from the date of the filing of the amendment.

40 (4) A financing statement that is amended by an amendment
42 that adds a debtor is effective as to the added debtor only from
the date of the filing of the amendment.

44 (5) An amendment is ineffective to the extent it:

46 (a) Purports to delete all debtors and fails to provide the
48 name of a debtor to be covered by the financing statement; or

2 See subsection (d) [Maine cite subsection (4)]. However, the
effectiveness of the financing statement lapses with respect to
4 added debtor at the time it lapses with respect to the original
debtor. See subsection (b) [Maine cite subsection (2)].

6 5. Deletion of All Debtors or Secured Parties of Record.
Subsection (e) [Maine cite subsection (5)] assures that there
8 will be a debtor and secured party of record for every financing
statement.

10 Example: A filed financing statement names A and B as
12 secured parties of record and covers inventory and equipment. An
amendment deletes equipment and purports to delete A and B as
14 secured parties of record without adding a substitute secured
party. The amendment is ineffective to the extent it purports to
16 delete the secured parties of record but effective with respect
to the deletion of collateral. As a consequence, the financing
18 statement, as amended, covers only inventory, but A and B remain
as secured parties of record.

20 **§9-1513. Termination statement**

22 (1) A secured party shall cause the secured party of record
24 for a financing statement to file a termination statement for the
financing statement if the financing statement covers consumer
26 goods and:

28 (a) There is no obligation secured by the collateral
covered by the financing statement and no commitment to make
30 an advance, incur an obligation or otherwise give value; or

32 (b) The debtor did not authorize the filing of the initial
financing statement.

34 (2) To comply with subsection (1), a secured party shall
36 cause the secured party of record to file the termination
statement:

38 (a) Within one month after there is no obligation secured
40 by the collateral covered by the financing statement and no
commitment to make an advance, incur an obligation or
42 otherwise give value; or

44 (b) If earlier, within 20 days after the secured party
receives an authenticated demand from a debtor.

46 (3) In cases not governed by subsection (1), within 20 days
48 after a secured party receives an authenticated demand from a
debtor, the secured party shall cause the secured party of record
50 for a financing statement to send to the debtor a termination

2 statement for the financing statement or file the termination
3 statement in the filing office if:

4 (a) Except in the case of a financing statement covering
5 accounts or chattel paper that has been sold or goods that
6 are the subject of a consignment, there is no obligation
7 secured by the collateral covered by the financing statement
8 and no commitment to make an advance, incur an obligation or
9 otherwise give value;

10 (b) The financing statement covers accounts or chattel
11 paper that has been sold but as to which the account debtor
12 or other person obligated has discharged its obligation;

13 (c) The financing statement covers goods that were the
14 subject of a consignment to the debtor but are not in the
15 debtor's possession; or

16 (d) The debtor did not authorize the filing of the initial
17 financing statement.

18 (4) Except as otherwise provided in section 9-1510, upon
19 the filing of a termination statement with the filing office, the
20 financing statement to which the termination statement relates
21 ceases to be effective.

22
23 **Official Comment**

24
25 1. Source. Former Section 9-404.

26
27 2. Duty to File or Send. This section specifies when a
28 secured party must cause the secured party of record to file or
29 send to the debtor a termination statement for a financing
30 statement. Because most financing statements expire in five
31 years unless a continuation statement is filed (Section 9515)
32 [Maine cite section 9-1515], no compulsion is placed on the
33 secured party to file a termination statement unless demanded by
34 the debtor, except in the case of consumer goods. Because many
35 consumers will not realize the importance to them of clearing the
36 public record, an affirmative duty is put on the secured party in
37 that case. But many purchase-money security interests in
38 consumer goods will not be filed, except for motor vehicles. See
39 Section 9309(1) [Maine cite section 9-1309, subsection (1)].
40 Under Section 9-311(b) [Maine cite section 9-1311, subsection
41 (2)], compliance with a certificate-of-title statute is
42 "equivalent to the filing of a financing statement under this
43 article." Thus, this section applies to a certificate of title
44 unless the section is superseded by a certificate-of-title
45 statute that contains a specific rule addressing a secured
46
47
48
49
50

2 party's duty to cause a notation of a security interest to be
removed from a certificate of title. In the context of a
4 certificate of title, however, the secured party could comply
with this section by causing the removal itself or providing the
debtor with documentation sufficient to enable the debtor to
6 effect the removal.

8 Subsections (a) and (b) [Maine cite subsections (1) and (2)]
apply to a financing statement covering consumer goods.
10 Subsection (c) [Maine cite subsection (3)] applies to other
financing statements. Subsection (a) and (c) [Maine cite
12 subsections (1) and (3)] each makes explicit what was implicit
under former Article 9: If the debtor did not authorize the
14 filing of a financing statement in the first place, the secured
party of record should file or send a termination statement. The
16 liability imposed upon a secured party that fails to comply with
subsection (a) or (c) [Maine cite subsection (1) or (3)] is
18 identical to that imposed for the filing of an unauthorized
financing statement or amendment. See Section 9-625(e) [Maine
20 cite section 9-1625, subsection (5)].

22 3. "Bogus" Filings. A secured party's duty to send a
termination statement arises when the secured party "receives" an
24 authenticated demand from the debtor. In the case of an
unauthorized financing statement, the person named as debtor in
26 the financing statement may have no relationship with the named
secured party and no reason to know the secured party's address.
28 Inasmuch as the address in the financing statement is "held out
by [the person named as secured party in the financing statement]
30 as the place for receipt of such communications [i.e.,
communications relating to security interests]," the putative
32 secured party is deemed to have "received" a notification
delivered to that address. See Section 1-201(26). If a
34 termination statement is not forthcoming, the person named as
debtor itself may authorize the filing of a termination
36 statement, which will be effective if it indicates that the
person authorized it to be filed. See Sections 9-509(d)(2),
38 9-510(c) [Maine cite section 9-1509, subsection (4), paragraph
(b), section 9-1510, subsection (3)].

40 4. Buyers of Receivables. Applied literally, former
42 Section 9-404(1) would have required many buyers of receivables
to file a termination statement immediately upon filing a
44 financing statement because "there is no outstanding secured
obligation and no commitment to make advances, incur obligations,
46 or otherwise give value." Subsections (c)(1) and (2) [Maine cite
subsection (3), paragraphs (a) and (b)] remedy this problem.
48 While the security interest of a buyer of accounts or chattel
paper (B-1) is perfected, the debtor is not deemed to retain an
50 interest in the sold receivables and thus could transfer no

2 interest in them to another buyer (B-2) or to a lien creditor
4 (LC). However, for purposes of determining the rights of the
6 debtor's creditors and certain purchasers of accounts or chattel
8 paper from the debtor, while B-1's security interest is
10 unperfected, the debtor-seller is deemed to have rights in the
12 sold receivables, and a competing security interest or judicial
14 lien may attach to those rights. See Sections 9-318, 9-109
16 [Maine cite section 9-1318, section 9-1109], Comment 5. Suppose
18 that B-1's security interest in certain accounts and chattel
20 paper is perfected by filing, but the effectiveness of the
22 financing statement lapses. Both before and after lapse, B-1
collects some of the receivables. After lapse, LC acquires a
lien on the accounts and chattel paper. B-1's unperfected
security interest in the accounts and chattel paper is
subordinate to LC's rights. See Section 9-317(a)(2) [Maine cite
section 9-1317, subsection (1), paragraph (b)]. But collections
on accounts and chattel paper are not "accounts" or "chattel
paper." Even if B-1's security interest in the accounts and
chattel paper is or becomes unperfected, neither the debtor nor
LC acquires rights to the collections that B-1 collects (and
owns) before LC acquires a lien.

24 5. Effect of Filing. Subsection (d) [Maine cite subsection
26 (4)] states the effect of filing a termination statement: the
28 related financing statement ceases to be effective. If one of
30 several secured parties of record files a termination statement,
32 subsection (d) [Maine cite subsection (4)] applies only with
34 respect to the rights of the person who authorized the filing of
36 the termination statement. See Section 9-510(b) [Maine cite
38 section 9-1510, subsection (2)]. The financing statement remains
effective with respect to the rights of the others. However,
even if a financing statement is terminated (and thus no longer
is effective) with respect to all secured parties of record, the
financing statement, including the termination statement, will
remain of record until at least one year after it lapses with
respect to all secured parties of record. See Section 9-519(g)
[Maine cite section 9-1519, subsection (7)].

40 **§9-1514. Assignment of powers of secured party of record**

42 (1) Except as otherwise provided in subsection (3), an
44 initial financing statement may reflect an assignment of all of
46 the secured party's power to authorize an amendment to the
financing statement by providing the name and mailing address of
the assignee as the name and address of the secured party.

48 (2) Except as otherwise provided in subsection (3), a
secured party of record may assign of record all or part of its
power to authorize an amendment to a financing statement by

2 filing in the filing office an amendment of the financing
3 statement that:

4 (a) Identifies, by its file number, the initial financing
5 statement to which it relates;

6 (b) Provides the name of the assignor; and

7 (c) Provides the name and mailing address of the assignee.

8
9
10
11 (3) An assignment of record of a security interest in a
12 fixture covered by a record of a mortgage that is effective as a
13 financing statement filed as a fixture filing under section
14 9-1502, subsection (3) may be made only by an assignment of
15 record of the mortgage in the manner provided by the laws of this
16 State other than this Title.

17
18 **Official Comment**

19
20 1. Source. Former Section 9-405.

21
22 2. Assignments. This section provides a permissive device
23 whereby a secured party of record may effectuate an assignment of
24 its power to affect a financing statement. It may also be useful
25 for a secured party who has assigned all or part of its security
26 interest or agricultural lien and wishes to have the fact noted
27 of record, so that inquiries concerning the transaction would be
28 addressed to the assignee. See Section 9-502 [Maine cite section
29 9-1502], Comment 2. Upon the filing of an assignment, the
30 assignee becomes the "secured party of record" and may authorize
31 the filing of a continuation statement, termination statement, or
32 other amendment. Note that under Section 9310(c) [Maine cite
33 section 9-1310, subsection (3)] no filing of an assignment is
34 required as a condition of continuing the perfected status of the
35 security interest against creditors and transferees of the
36 original debtor. However, if an assignment is not filed, the
37 assignor remains the secured party of record, with the power
38 (even if not the right) to authorize the filing of effective
39 amendments. See Sections 9-511(c), 9-509(d) [Maine cite section
40 9-1511, subsection (3), section 9-1509, subsection (4)].

41
42 Where a record of a mortgage is effective as a financing
43 statement filed as a fixture filing (Section 9502(c) [Maine cite
44 section 9-1502, subsection (3)]), then an assignment of record of
45 the security interest may be made only in the manner in which an
46 assignment of record of the mortgage may be made under local
47 real-property law.
48

2 3. Comparison to Prior Law. Most of the changes reflected
3 in this section are for clarification or to embrace
4 medium-neutral drafting. As a general matter, this section
5 preserves the opportunity given by former Section 9-405 to assign
6 a security interest of record in one of two different ways.
7 Under subsection (a) [Maine cite subsection (1)], a secured party
8 may assign all of its power to affect a financing statement by
9 naming an assignee in the initial financing statement. The
10 secured party of record may accomplish the same result under
11 subsection (b) [Maine cite subsection (2)] by making a subsequent
12 filing. Subsection (b) [Maine cite subsection (2)] also may be
13 used for an assignment of only some of the secured party of
14 record's power to affect a financing statement, e.g., the power
15 to affect the financing statement as it relates to particular
16 items of collateral or as it relates to an undivided interest in
17 a security interest in all the collateral. An initial financing
18 statement may not be used to change the secured party of record
19 under these circumstances. However, an amendment adding the
20 assignee as a secured party of record may be used.

21 **§9-1515. Duration and effectiveness of financing statement;**
22 **effect of lapsed financing statement**

23 (1) Except as otherwise provided in subsections (2), (5),
24 (6) and (7), a filed financing statement is effective for a
25 period of 5 years after the date of filing.

26 (2) Except as otherwise provided in subsections (5), (6)
27 and (7), an initial financing statement filed in connection with
28 a public-finance transaction or manufactured-home transaction is
29 effective for a period of 30 years after the date of filing if it
30 indicates that it is filed in connection with a public-finance
31 transaction or manufactured-home transaction.

32 (3) The effectiveness of a filed financing statement lapses
33 on the expiration of the period of its effectiveness unless
34 before the lapse a continuation statement is filed pursuant to
35 subsection (4). Upon lapse, a financing statement ceases to be
36 effective and any security interest or agricultural lien that was
37 perfected by the financing statement becomes unperfected, unless
38 the security interest is perfected otherwise. If the security
39 interest or agricultural lien becomes unperfected upon lapse, it
40 is deemed never to have been perfected as against a purchaser of
41 the collateral for value.

42 (4) A continuation statement may be filed only within 6
43 months before the expiration of the 5-year period specified in
44 subsection (1) or the 30-year period specified in subsection (2),
45 whichever is applicable.

50

2 only with respect to purchasers for value; unlike former Section
9-403(2), it does not apply with respect to lien creditors.

4 Example 1: SP-1 and SP-2 both hold security interests in
the same collateral. Both security interests are perfected by
6 filing. SP-1 filed first and has priority under Section
9322(a)(1) [Maine cite section 9-1322, subsection (1), paragraph
8 (a)]. The effectiveness of SP-1's filing lapses. As long as
SP-2's security interest remains perfected thereafter, SP-2 is
10 entitled to priority over SP-1's security interest, which is
deemed never to have been perfected as against a purchaser for
12 value (SP-2). See Section 9-322(a)(2) [Maine cite section
9-1322, subsection (1), paragraph (b)].

14 Example 2: SP holds a security interest perfected by
16 filing. On July 1, LC acquires a judicial lien on the
collateral. Two weeks later, the effectiveness of the financing
18 statement lapses. Although the security interest becomes
unperfected upon lapse, it was perfected when LC acquired its
20 lien. Accordingly, notwithstanding the lapse, the perfected
security interest has priority over the rights of LC, who is not
22 a purchaser. See Section 9-317(a)(2) [Maine cite section 9-1317,
subsection (1), paragraph (b)].

24 4. Effect of Debtor's Bankruptcy. Under former Section
26 9-403(2), lapse was tolled if the debtor entered bankruptcy or
another insolvency proceeding. Nevertheless, being unaware that
28 insolvency proceedings had been commenced, filing offices
routinely removed records from the files as if lapse had not been
30 tolled. Subsection (c) [Maine cite subsection (3)] deletes the
former tolling provision and thereby imposes a new burden on the
32 secured party: to be sure that a financing statement does not
lapse during the debtor's bankruptcy. The secured party can
34 prevent lapse by filing a continuation statement, even without
first obtaining relief from the automatic stay. See Bankruptcy
36 Code Section 362(b)(3). Of course, if the debtor enters
bankruptcy before lapse, the provisions of this Article with
38 respect to lapse would be of no effect to the extent that federal
bankruptcy law dictates a contrary result (e.g., to the extent
40 that the Bankruptcy Code determines rights as of the date of the
filing of the bankruptcy petition).

42 5. Continuation Statements. Subsection (d) [Maine cite
44 subsection (4)] explains when a continuation statement may be
filed. A continuation statement filed at a time other than that
46 prescribed by subsection (d) [Maine cite subsection (4)] is
ineffective, see Section 9-510(c) [Maine cite section 9-1510,
48 subsection (3)], and the filing office may not accept it. See
Sections 9-520(a), 9-516(b) [Maine cite section 9-1520,
50 subsection (1), section 9-1516, subsection (2)]. Subsection (e)

2 [Maine cite subsection (5)] specifies the effect of a
continuation statement and provides for successive continuation
statements.

4
6 **§9-1516. What constitutes filing; effectiveness of filing**

8 (1) Except as otherwise provided in subsection (2),
communication of a record to a filing office and tender of the
filing fee or acceptance of the record by the filing office
10 constitutes filing.

12 (2) Filing does not occur with respect to a record that a
filing office refuses to accept because:

14 (a) The record is not communicated by a method or medium of
16 communication authorized by the filing office;

18 (b) An amount equal to or greater than the applicable
20 filing fee is not tendered;

22 (c) The filing office is unable to index the record because:

24 (i) In the case of an initial financing statement, the
record does not provide a name for the debtor;

26 (ii) In the case of an amendment or correction
28 statement, the record:

30 (A) Does not identify the initial financing
statement as required by section 9-1512 or 9-1518,
as applicable; or

32 (B) Identifies an initial financing statement
34 whose effectiveness has lapsed under section
36 9-1515;

38 (iii) In the case of an initial financing statement
that provides the name of a debtor identified as an
individual or an amendment that provides a name of a
debtor identified as an individual that was not
40 previously provided in the financing statement to which
42 the record relates, the record does not identify the
debtor's last name; or

44 (iv) In the case of a record filed in the filing
46 office described in section 9-1501, subsection (1),
paragraph (a), the record does not provide a sufficient
48 description of the real property to which it relates;

2 (d) In the case of an initial financing statement or an
4 amendment that adds a secured party of record, the record
does not provide a name and mailing address for the secured
party of record;

6 (e) In the case of an initial financing statement or an
8 amendment that provides a name of a debtor that was not
previously provided in the financing statement to which the
amendment relates, the record does not:

10 (i) Provide a mailing address for the debtor;

12 (ii) Indicate whether the debtor is an individual or
14 an organization; or

16 (iii) If the financing statement indicates that the
18 debtor is an organization, provide:

20 (A) A type of organization for the debtor;

22 (B) A jurisdiction of organization for the
debtor; or

24 (C) An organizational identification number for
26 the debtor or indicate that the debtor has none;

28 (f) In the case of an assignment reflected in an initial
financing statement under section 9-1514, subsection (1) or
30 an amendment filed under section 9-1514, subsection (2), the
record does not provide a name and mailing address for the
32 assignee; or

34 (g) In the case of a continuation statement, the record is
not filed within the 6-month period prescribed by section
36 9-1515, subsection (4).

38 (3) For purposes of subsection (2):

40 (a) A record does not provide information if the filing
office is unable to read or decipher the information; and

42 (b) A record that does not indicate that it is an amendment
44 or identify an initial financing statement to which it
relates, as required by section 9-1512, 9-1514 or 9-1518, is
46 an initial financing statement.

48 (4) A record that is communicated to the filing office with
tender of the filing fee, but which the filing office refuses to
accept for a reason other than one set forth in subsection (2),
50 is effective as a filed record except as against a purchaser of

2 the collateral that gives value in reasonable reliance upon the
3 absence of the record from the files.

4
5 **Official Comment**

6
7 1. Source. Subsection (a) [Maine cite subsection (1)]:
8 former Section 9-403(1); the remainder is new.

10 2. What Constitutes Filing. Subsection (a) [Maine cite
11 subsection (1)] deals generically with what constitutes filing of
12 a record, including an initial financing statement and amendments
13 of all kinds (e.g., assignments, termination statements, and
14 continuation statements). It follows former Section 9-403(1),
15 under which either acceptance of a record by the filing office or
16 presentation of the record and tender of the filing fee
17 constitutes filing.

18
19 3. Effectiveness of Rejected Record. Subsection (b) [Maine
20 cite subsection (2)] provides an exclusive list of grounds upon
21 which the filing office may reject a record. See Section
22 9-520(a)[Maine cite section 9-1520, subsection (1)]. Although
23 some of these grounds would also be grounds for rendering a filed
24 record ineffective (e.g., an initial financing statement does not
25 provide a name for the debtor), many others would not be (e.g.,
26 an initial financing statement does not provide a mailing address
27 for the debtor or secured party of record). Neither this section
28 nor Section 9-520 [Maine cite section 9-1520] requires or
29 authorizes the filing office to determine, or even consider, the
30 accuracy of information provided in a record. For example, the
31 State A filing office may not reject under subsection (b)(5)(C)
32 [Maine cite subsection (2), paragraph (e), subparagraph (iii)] an
33 initial financing statement indicating that the debtor is a State
34 A corporation and providing a three-digit organizational
35 identification number, even if all State A organizational
36 identification numbers contain at least five digits and two
37 letters.

38
39 A financing statement or other record that is communicated
40 to the filing office but which the filing office refuses to
41 accept provides no public notice, regardless of the reason for
42 the rejection. However, this section distinguishes between
43 records that the filing office rightfully rejects and those that
44 it wrongfully rejects. A filer is able to prevent a rightful
45 rejection by complying with the requirements of subsection (b)
46 [Maine cite subsection (2)]. No purpose is served by giving
47 effect to records that justifiably never find their way into the
48 system, and subsection (b) [Maine cite subsection (2)] so
49 provides.

2 Subsection (d) [Maine cite subsection (4)] deals with the
filing office's unjustified refusal to accept a record. Here,
4 the filer is in no position to prevent the rejection and as a
general matter should not be prejudiced by it. Although
6 wrongfully rejected records generally are effective, subsection
(d) [Maine cite subsection (4)] contains a special rule to
8 protect a third-party purchaser of the collateral (e.g., a buyer
or competing secured party) who gives value in reliance upon the
apparent absence of the record from the files. As against a
10 person who searches the public record and reasonably relies on
what the public record shows, subsection (d) [Maine cite
12 subsection (4)] imposes upon the filer the risk that a record
failed to make its way into the filing system because of the
14 filing office's wrongful rejection of it. (Compare Section 9-517
[Maine cite subsection 9-1517], under which a mis-indexed
16 financing statement is fully effective.) This risk is likely to
be small, particularly when a record is presented electronically,
18 and the filer can guard against this risk by conducting a
post-filing search of the records. Moreover, Section 9-520(b)
20 [Maine cite section 9-1520, subsection (2)] requires the filing
office to give prompt notice of its refusal to accept a record
22 for filing.

24 4. Method or Medium of Communication. Rejection pursuant
to subsection (b)(1) [Maine cite subsection (2), paragraph (a)]
26 for failure to communicate a record properly should be understood
to mean noncompliance with procedures relating to security,
28 authentication, or other communication-related requirements that
the filing office may impose. Subsection (b)(1) [Maine cite
30 subsection (2), paragraph (a)] does not authorize a filing office
to impose additional substantive requirements. See Section 9-520
32 [Maine cite section 9-1520], Comment 2.

34 5. Address for Secured Party of Record. Under subsection
(b)(4) [Maine cite subsection (2), paragraph (d)] and Section
36 9-520(a) [Maine cite section 9-1520, subsection (1)], the lack of
a mailing address for the secured party of record requires the
38 filing office to reject an initial financing statement. The
failure to include an address for the secured party of record no
40 longer renders a financing statement ineffective. See Section
9-502(a) [Maine cite section 9-1502, subsection (1)]. The
42 function of the address is not to identify the secured party of
record but rather to provide an address to which others can send
44 required notifications, e.g., of a purchase-money security
interest in inventory or of the disposition of collateral.
46 Inasmuch as the address shown on a filed financing statement is
an "address that is reasonable under the circumstances," a person
48 required to send a notification to the secured party may satisfy
the requirement by sending a notification to that address, even
50 if the address is or becomes incorrect. See Section 9-102 [Maine

2 cite section 9-1102] (definition of "send"). Similarly, because
4 the address is "held out by [the secured party] as the place for
6 receipt of such communications [i.e., communications relating to
security interests]," the secured party is deemed to have
received a notification delivered to that address. See Section
1-201(26).

8 6. Uncertainty Concerning Individual Debtor's Last Name.
10 Subsection (b)(3)(C) [Maine cite subsection (2), paragraph (c),
subparagraph (iii)] requires the filing office to reject an
12 initial financing statement or amendment adding an individual
debtor if the office cannot index the record because it does not
14 identify the debtor's last name (e.g., it is unclear whether the
debtor's name is Elton John or John Elton).

16 7. Inability of Filing Office to Read or Decipher
18 Information. Under subsection (c)(1) [Maine cite subsection (3),
paragraph (a)], if the filing office cannot read or decipher
20 information, the information is not provided by a record for
purposes of subsection (b) [Maine cite subsection (2)].

22 8. Classification of Records. For purposes of subsection
24 (b) [Maine cite subsection (2)], a record that does not indicate
it is an amendment or identify an initial financing statement to
26 which it relates is deemed to be an initial financing statement.
See subsection (c)(2) [Maine cite subsection (3), paragraph (b)].

28 9. Effectiveness of Rejectable But Unrejected Record.
30 Section 9-520(a) [Maine cite section 9-1520, subsection (1)]
requires the filing office to refuse to accept an initial
32 financing statement for a reason set forth in subsection (b)
[Maine cite subsection (2)]. However, if the filing office
34 accepts such a financing statement nevertheless, the financing
statement generally is effective if it complies with the
36 requirements of Section 9-502(a) and (b) [Maine cite section
9-1502, subsections (1) and (2)]. See Section 9-520(c) [Maine
38 cite section 1520, subsection (3)]. Similarly, an otherwise
effective financing statement generally remains so even though
40 the information in the financing statement becomes incorrect.
See Section 9-507(b) [Maine cite section 9-1507, subsection
42 (2)]. (Note that if the information required by subsection
(b)(5) [Maine cite subsection (2), paragraph (e)] is incorrect
44 when the financing statement is filed, Section 9-338 [Maine cite
section 9-1338] applies.)

46 **§9-1517. Effect of indexing errors**

48 The failure of the filing office to index a record correctly
50 does not affect the effectiveness of the filed record.

2

Official Comment

4

1. Source. New.

6

2. Effectiveness of Mis-Indexed Records. This section provides that the filing office's error in mis-indexing a record does not render ineffective an otherwise effective record. As did former Section 9-401, this section imposes the risk of filing-office error on those who search the files rather than on those who file.

8

10

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§9-1518. Claim concerning inaccurate or wrongfully filed record

14

(1) A person may file in the filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

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18

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(2) A correction statement must:

22

(a) Identify the record to which it relates by:

24

(i) The file number assigned to the initial financing statement to which the record relates; and

26

28

(ii) If the correction statement relates to a record filed in a filing office described in section 9-1501, subsection (1), paragraph (a), the date and time that the initial financing statement was filed and the information specified in section 9-1502, subsection (2);

30

32

(b) Indicate that it is a correction statement; and

34

36

(c) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

38

40

42

Official Comment

44

1. Source. New.

46

2. Correction Statements. Former Article 9 did not afford a nonjudicial means for a debtor to correct a financing statement or other record that was inaccurate or wrongfully filed. Subsection (a) [Maine cite subsection (1)] affords the debtor the right to file a correction statement. Among other requirements,

48

50

2 the correction statement must provide the basis for the debtor's
3 belief that the public record should be corrected. See
4 subsection (b) [Maine cite subsection (2)]. These provisions,
5 which resemble the analogous remedy in the Fair Credit Reporting
6 Act, 15 U.S.C. § 1681i, afford an aggrieved person the
7 opportunity to state its position on the public record. They do
8 not permit an aggrieved person to change the legal effect of the
9 public record. Thus, although a filed correction statement
10 becomes part of the "financing statement," as defined in Section
11 9-102 [Maine cite section 9-1102], the filing does not affect the
12 effectiveness of the initial financing statement or any other
13 filed record. See subsection (c) [Maine cite subsection (3)].

14 This section does not displace other provisions of this
15 Article that impose liability for making unauthorized filings or
16 failing to file or send a termination statement. See Section
17 9-625(e) [Maine cite section 9-1625, subsection (5)]. Nor does
18 it displace any available judicial remedies.

20 3. Resort to Other Law. This Article cannot provide a
21 satisfactory or complete solution to problems caused by misuse of
22 the public records. The problem of "bogus" filings is not
23 limited to the UCC filing system but extends to the real-property
24 records, as well. A summary judicial procedure for correcting
25 the public record and criminal penalties for those who misuse the
26 filing and recording systems are likely to be more effective and
27 put less strain on the filing system than provisions authorizing
28 or requiring action by filing and recording offices.

30

SUBPART 2

32

DUTIES AND OPERATION OF FILING OFFICE

34

§9-1519. Numbering, maintaining and indexing records; communicating information provided in records

36

37 (1) For each record filed in a filing office, the filing
38 office shall:

40

(a) Assign a unique number to the filed record;

42

(b) Create a record that bears the number assigned to the
filed record and the date and time of filing;

44

(c) Maintain the filed record for public inspection; and

46

47 (d) Index the filed record in accordance with subsections
48 (3), (4) and (5).

2 (2) A file number assigned after January 1, 2002 must
3 include a digit that:

4 (a) Is mathematically derived from or related to the other
5 digits of the file number; and

6 (b) Aids the filing office in determining whether a number
7 communicated as the file number includes a single-digit or
8 transpositional error.

9 (3) Except as otherwise provided in subsections (4) and
10 (5), the filing office shall:

11 (a) Index an initial financing statement according to the
12 name of the debtor and index all filed records relating to
13 the initial financing statement in a manner that associates
14 with one another an initial financing statement and all
15 filed records relating to the initial financing statement;
16 and

17 (b) Index a record that provides a name of a debtor that
18 was not previously provided in the financing statement to
19 which the record relates also according to the name that was
20 not previously provided.

21 (4) If a financing statement is filed as a fixture filing
22 or covers as-extracted collateral or timber to be cut, it must be
23 filed and the filing office shall index it:

24 (a) Under the names of the debtor and of each owner of
25 record shown on the financing statement as if they were the
26 mortgagors under a mortgage of the real property described;
27 and

28 (b) To the extent that the law of this State provides for
29 indexing of records of mortgages under the name of the
30 mortgagee, under the name of the secured party as if the
31 secured party were the mortgagee thereunder, or, if indexing
32 is by description, as if the financing statement were a
33 record of a mortgage of the real property described.

34 (5) If a financing statement is filed as a fixture filing
35 or covers as-extracted collateral or timber to be cut, the filing
36 office shall index an assignment filed under section 9-1514,
37 subsection (1) or an amendment filed under section 9-1514,
38 subsection (2):

39 (a) Under the name of the assignor as grantor; and

2 (b) To the extent that the law of this State provides for
3 indexing a record of the assignment of a mortgage under the
4 name of the assignee, under the name of the assignee.

6 (6) The filing office shall maintain a capability:

8 (a) To retrieve a record by the name of the debtor and:

10 (i) If the filing office is described in section
11 9-1501, subsection (1), paragraph (a), by the file
12 number assigned to the initial financing statement to
13 which the record relates and the date and time that the
14 record was filed; or

16 (ii) If the filing office is described in section
17 9-1501, subsection (1), paragraph (b), by the file
18 number assigned to the initial financing statement to
19 which the record relates; and

20 (b) To associate and retrieve with one another an initial
21 financing statement and each filed record relating to the
22 initial financing statement.

24 (7) The filing office may not remove a debtor's name from
25 the index until one year after the effectiveness of a financing
26 statement naming the debtor lapses under section 9-1515 with
27 respect to all secured parties of record.

28 (8) The filing office shall perform the acts required by
29 subsections (1) to (5) at the time and in the manner prescribed
30 by filing-office rule, but not later than 2 business days after
31 the filing office receives the record in question.

34 (9) Subsections (2) and (8) do not apply to a filing office
35 described in section 9-1501, subsection (1), paragraph (a).

38 **Official Comment**

40 1. Source. Former Sections 9-403(4), (7), 9-405(2).

42 2. Filing Office's Duties. Subsections (a) through (e)
43 [Maine cite subsections (1) through (5)] set forth the duties of
44 the filing office with respect to filed records. Subsection (h),
45 which is new, imposes a minimum standard of performance for those
46 duties. Prompt indexing is crucial to the effectiveness of any
47 filing system. An accepted but un-indexed record affords no
48 public notice. Subsection (f) [Maine cite subsection (6)]
requires the filing office to maintain appropriate storage and

2 retrieval facilities, and subsection (g) [Maine cite subsection
(7)] contains minimum requirements for the retention of records.

4 3. File Number. Subsection (a)(1) [Maine cite subsection
6 (1), paragraph (a)] requires the filing office to assign a unique
8 number to each filed record. That number is the "file number"
only if the record is an initial financing statement. See
Section 9-102 [Maine cite section 9-1102].

10 4. Time of Filing. Subsection (a)(2) [Maine cite
12 subsection (1), paragraph (b)] and Section 9-523 [Maine cite
14 section 9-1523] refer to the "date and time" of filing. The
16 statutory text does not contain any instructions to a filing
office as to how the time of filing is to be determined. The
method of determining or assigning a time of filing is an
appropriate matter for filling-office rules to address.

18 5. Related Records. Subsections (c) and (f) [Maine cite
20 subsections (3) and (6)] are designed to ensure that an initial
22 financing statement and all filed records relating to it are
24 associated with one another, indexed under the name of the
debtor, and retrieved together. To comply with subsection (f)
[Maine cite subsection (6)], a filing office (other than a
real-property recording office in a State that enacts subsection
(f) [Maine cite subsection (6)], Alternative B) must be capable
26 of retrieving records in each of two ways: by the name of the
debtor and by the file number of the initial financing statement
28 to which the record relates.

30 6. Prohibition on Deleting Names from Index. This Article
32 contemplates that the filing office will not delete the name of a
debtor from the index until at least one year passes after the
34 effectiveness of the financing statement lapses as to all secured
parties of record. See subsection (g) [Maine cite subsection
(7)]. This rule applies even if the filing office accepts an
36 amendment purporting to delete or modify the name of a debtor or
terminate the effectiveness of the financing statement. If an
38 amendment provides a modified name for a debtor, the amended name
should be added to the index, see subsection (c)(2) [Maine cite
40 subsection (3), paragraph (b)], but the pre-amendment name should
42 remain in the index.

44 Compared to former Article 9, the rule in subsection (g)
[Maine cite subsection (7)] increases the amount of information
46 available to those who search the public records. The rule also
contemplates that searchers-not the filing office-will determine
48 the significance and effectiveness of filed records.

50 **§9-1520. Acceptance and refusal to accept record**

2 record is not communicated by a method (e.g., it is MIME- rather
than UU-encoded) or medium (e.g., it is written rather than
4 electronic) that the filing office accepts, or because the filer
fails to tender an amount equal to or greater than the filing fee.

6 3. Consequences of Accepting Rejectable Record. Section
9-516(b) [Maine cite section 9-1516, subsection (2)] includes
8 among the reasons for rejecting an initial financing statement
the failure to give certain information that is not required as a
10 condition of effectiveness. In conjunction with Section
9-516(b)(5) [Maine cite section 9-1516, subsection (2), paragraph
12 (e)], this section requires the filing office to refuse to accept
a financing statement that is legally sufficient to perfect a
14 security interest under Section 9-502 [Maine cite section 9-1502]
but does not contain a mailing address for the debtor, does not
16 disclose whether the debtor is an individual or an organization
(e.g., a partnership or corporation) or, if the debtor is an
18 organization, does not give certain specified information
concerning the organization. The information required by Section
20 9-516(b)(5) [Maine cite section 9-1516, subsection (2), paragraph
(e)] assists searchers in weeding out "false positives," i.e.,
22 records that a search reveals but which do not pertain to the
debtor in question. It assists filers by helping to ensure that
24 the debtor's name is correct and that the financing statement is
filed in the proper jurisdiction.

26
28 If the filing office accepts a financing statement that does
not give this information at all, the filing is fully effective.
Section 9-520(c) [Maine cite section 9-1520, subsection (3)].
30 The financing statement also generally is effective if the
information is given but is incorrect; however, Section 9-338
32 [Maine cite section 9-1338] affords protection to buyers and
holders of a perfected security interests who gives value in
34 reasonable reliance upon the incorrect information.

36 4. Filing Office's Duties with Respect to Rejected Record.
Subsection (b) [Maine cite subsection (2)] requires the filing
38 office to communicate the fact of rejection and the reason
therefor within a fixed period of time. Inasmuch as a rightfully
40 rejected record is ineffective and a wrongfully rejected record
is not fully effective, prompt communication concerning any
42 rejection is important.

44 5. Partial Effectiveness of Record. Under subsection (d)
[Maine cite subsection (4)], the provisions of this Part apply to
46 each debtor separately. Thus, a filing office may reject an
initial financing statement or other record as to one named
48 debtor but accept it as to the other.

2 Example: An initial financing statement is communicated to
the filing office. The financing statement names two debtors,
4 John Smith and Jane Smith. It contains all of the information
described in Section 9-516(b)(5) [Maine cite section 9-1516,
6 subsection (2), paragraph (e)] with respect to John but lacks
some of the information with respect to Jane. The filing office
8 must accept the financing statement with respect to John, reject
it with respect to Jane, and notify the filer of the rejection.

10 **§9-1521. Uniform form of written financing statement and**
12 **amendment**

14 (1) A filing office that accepts written records may not
16 refuse to accept a written initial financing statement in the
following form and format except for a reason set forth in
section 9-1516, subsection (2):

18 UCC FINANCING STATEMENT

20 FOLLOW INSTRUCTIONS (front and back) CAREFULLY

22 A. NAME AND PHONE OF CONTACT AT FILER [optional]

24 _____

26 B. SEND ACKNOWLEDGMENT TO: (Name and Address)

28 _____

30 _____

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

32

34 1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name
(1a or 1b) - Do not abbreviate or combine names

36 1a. ORGANIZATION'S NAME

38 _____

40 OR 1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

42 _____

44 1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

46 _____

2 OR 3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

4

6 3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

8

10 4. This FINANCING STATEMENT covers the following collateral:

12

14 5. ALTERNATIVE DESIGNATION [if applicable]: [] LESSEE/LESSOR

16 [] CONSIGNEE/CONSIGNOR [] BAILEE/BAILOR [] SELLER/BUYER

18 [] AG. LIEN [] NON-UCC FILING

20 6. [] This FINANCING STATEMENT is to be filed (for record)

22 (or recorded) in the REAL ESTATE RECORDS.

24 Attach Addendum [if applicable]

26 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s)

28 [] All Debtors [] Debtor 1 [] Debtor 2

30 [ADDITIONAL FEE] [optional]

32

34 8. OPTIONAL FILER REFERENCE DATA

36

38 FILING OFFICE COPY - NATIONAL UCC FILING STATEMENT (FORM UCC 1)
40 (REV. 07/29/98)

42

[BACK OF FORM]

44

UCC FINANCING STATEMENT ADDENDUM

46

Follow instructions (front and back) CAREFULLY

48

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

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9a. ORGANIZATION'S NAME

OR 9b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME

OR 11b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

11c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

11d. TAX ID NO. ADD'L INFO. RE 11e. TYPE OF ORGANIZATION
SSN OR EIN ORGANIZATION
DEBTOR

11f. JURISDICTION OF ORGANIZATION 11g. ORGANIZATIONAL ID
NO., if any
_____ [] NONE

12. [] ADDITIONAL SECURED PARTY'S or [] ASSIGNOR S/P'S NAME
- insert only one name (12a or 12b)

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12a. ORGANIZATION'S NAME

OR 12b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

12c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

13. This FINANCING STATEMENT covers [] timber to be cut or [] as-extracted collateral, or is filed as a [] fixture filing.

14. Description of real estate:

15. Name and address of a RECORD OWNER of the above-described real estate (if Debtor does not have record interest):

16. Additional collateral description:

17. Check **only** if applicable and check **only** one box:
Debtor is a [] Trust or [] Trustee acting with respect to property held in trust or [] Decedent's Estate

18. Check **only** if applicable and check **only** one box:

[] Debtor is a TRANSMITTING UTILITY

[] Filed in connection with a Manufactured-Home Transaction - effective 30 years

[] Filed in connection with a Public-Finance Transaction - effective 30 years

FILING OFFICE COPY - NATIONAL UCC FILING STATEMENT

(FORM UCC 1Ad) (REV. 07/29/98)

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(2) A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in section 9-1516, subsection (2):

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME AND PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NO.

1b. [] This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS.

2. [] TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. [] CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. [] ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects [] Debtor or [] Secured Party of record. Check only one of these two boxes. Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

2 [] CHANGE name and/or address: Give current record name
3 in item 6a or 6b; also give new name (if name change) in item 7a
4 or 7b and/or new address (if address change) in item 7c.

6 [] DELETE name: Give record name to be deleted in item 6a
7 or 6b.

8 [] ADD name: Complete item 7a or 7b, and also item 7c;
9 also complete items 7d-7g (if applicable).

10 6. CURRENT RECORD INFORMATION:

12 6a. ORGANIZATION'S NAME

14 _____
16 OR 6b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

18 _____
20 7. CHANGED (NEW) OR ADDED INFORMATION:

22 7a. ORGANIZATION'S NAME

24 _____
26 OR 7b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

28 _____
30 7c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

32 _____
34 7d. TAX ID NO. ADD'L INFO. RE 7e. TYPE OF ORGANIZATION
36 SSN OR EIN ORGANIZATION
38 DEBTOR

40 _____
42 7f. JURISDICTION OF 7g. ORGANIZATIONAL ID NO.,
44 ORGANIZATION if any

46 _____ [] NONE

48 8. AMENDMENT (COLLATERAL CHANGE): check only one box

2 Describe collateral [] deleted or [] added, or give
entire [] restated collateral description, or describe
collateral [] assigned.
4

6
9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT
8 (name of assignor, if this is an Assignment). If this is an
Amendment authorized by a Debtor that adds collateral or adds the
10 authorizing Debtor, or if this is a Termination authorized by a
Debtor, check here [] and enter name of DEBTOR authorizing this
12 Amendment.

14 9a. ORGANIZATION'S NAME

16

18 OR 9b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

20

22 10. OPTIONAL FILE REFERENCE DATA

24

26 FILING OFFICE COPY - NATIONAL UCC FINANCING STATEMENT AMENDMENT
(FORM UCC3) (REV. 07/29/98)

28

[BACK OF FORM]

30

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

32

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

34

36 11. INITIAL FINANCING STATEMENT FILE NO. (same as item 1a on
Amendment form)

38

40 12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as item 9 on
Amendment form)

42

12a. ORGANIZATION'S NAME

44

2 OR 12b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

4

6 13. USE THIS SPACE FOR ADDITIONAL INFORMATION

8

10

THIS SPACE IS FOR FILING OFFICE USE ONLY

12

14 FILING OFFICE COPY - NATIONAL UCC FINANCING STATEMENT AMENDMENT
ADDENDUM (FORM UCC3Ad) (REV. 07/29/98)

16 (3) A form that a filing office may not refuse to accept
18 under subsection (1) or (2) must conform to the format prescribed
for the form by the National Conference of Commissioners on
20 Uniform State Laws.

20

22

Official Comment

24

1. Source. New.

26

2. "Safe Harbor" Written Forms. Although Section 9-520
[Maine cite section 9-1520] limits the bases upon which the
filing office can refuse to accept records, this section provide
sample written forms that must be accepted in every filing office
in the country, as long as the filing office's rules permit it to
accept written communications. By completing one of the forms in
this section, a secured party can be certain that the filing
office is obligated to accept it.

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The forms in this section are based upon national financing
statement forms that were in use under former Article 9. Those
forms were developed over an extended period and reflect the
comments and suggestions of filing officers, secured parties and
their counsel, and service companies. The formatting of those
forms and of the ones in this section has been designed to reduce
error by both filers and filing offices.

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A filing office that accepts written communications may not
reject, on grounds of form or format, a filing using these
forms. Although filers are not required to use the forms, they
are encouraged and can be expected to do so, inasmuch as the
forms are well designed and avoid the risk of rejection on the
basis of form or format. As their use expands, the forms will
rapidly become familiar to both filers and filing-office

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2 personnel. Filing offices may and should encourage the use of
these forms by declaring them to be the "standard" (but not
4 exclusive) forms for each jurisdiction, albeit without in any way
suggesting that alternative forms are unacceptable.

6 The multi-purpose form in subsection (b) [Maine cite
subsection (2)] covers changes with respect to the debtor, the
8 secured party, the collateral, and the status of the financing
statement (termination and continuation). A single form may be
10 used for several different types of amendments at once (e.g.,
both to change a debtor's name and continue the effectiveness of
12 the financing statement).

14 **§9-1522. Maintenance and destruction of records**

16 (1) The filing office shall maintain a record of the
information provided in a filed financing statement for at least
one year after the effectiveness of the financing statement has
lapsed under section 9-1515 with respect to all secured parties
of record. The record must be retrievable by using the name of
the debtor and:

22 (a) If the record was filed in the filing office described
in section 9-1501, subsection (1), paragraph (a), by using
the file number assigned to the initial financing statement
to which the record relates and the date and time that the
record was filed; or

28 (b) If the record was filed in the filing office described
in section 9-1501, subsection (1), paragraph (b), by using
the file number assigned to the initial financing statement
to which the record relates.

34 (2) Except to the extent that a statute governing
disposition of public records provides otherwise, the filing
office immediately may destroy any written record evidencing a
financing statement. However, if the filing office destroys a
written record, it shall maintain another record of the financing
statement that complies with subsection (1).

42 **Official Comment**

44 1. Source. Former Section 9-403(3), revised substantially.

46 2. Maintenance of Records. Section 9-523 [Maine cite
section 9-1523] requires the filing office to provide information
48 concerning certain lapsed financing statements. Accordingly,
subsection (a) [Maine cite subsection (1)] requires the filing
50 office to maintain a record of the information in a financing

2 statement for at least one year after lapse. During that time,
3 the filing office may not delete any information with respect to
4 a filed financing statement; it may only add information. This
5 approach relieves the filing office from any duty to determine
6 whether to substitute or delete information upon receipt of an
7 amendment. It also assures searchers that they will receive all
8 information with respect to financing statements filed against a
9 debtor and thereby be able themselves to determine the state of
10 the public record.

11 The filing office may maintain this information in any
12 medium. Subsection (b) [Maine cite subsection (2)] permits the
13 filing office immediately to destroy written records evidencing a
14 financing statement, provided that the filing office maintains
15 another record of the information contained in the financing
16 statement as required by subsection (a) [Maine cite subsection
17 (1)].

18 **§9-1523. Information from filing office; sale or license of**
19 **records**

20
21 (1) If a person that files a written record requests an
22 acknowledgment of the filing, the filing office shall send to the
23 person an image of the record showing the number assigned to the
24 record pursuant to section 9-1519, subsection (1), paragraph (a)
25 and the date and time of the filing of the record. However, if
26 the person furnishes a copy of the record to the filing office,
27 the filing office may instead:

28
29 (a) Note upon the copy the number assigned to the record
30 pursuant to section 9-1519, subsection (1), paragraph (a)
31 and the date and time of the filing of the record; and

32
33 (b) Send the copy to the person.

34
35 (2) If a person files a record other than a written record,
36 the filing office shall communicate to the person an
37 acknowledgment that provides:

38
39 (a) The information in the record;

40
41 (b) The number assigned to the record pursuant to section
42 9-1519, subsection (1), paragraph (a); and

43
44 (c) The date and time of the filing of the record.

45
46 (3) The filing office shall communicate or otherwise make
47 available in a record the following information to any person
48 that requests it:

2 (a) Whether there is on file on a date and time specified
3 by the filing office, but not a date earlier than 3 business
4 days before the filing office receives the request, any
5 financing statement that:

6 (i) Designates a particular debtor;

8 (ii) Has not lapsed under section 9-1515 with respect
9 to all secured parties of record; and

10 (iii) If the request so states, has lapsed under
11 section 9-1515 and a record of which is maintained by
12 the filing office under section 9-1522, subsection (1);

14 (b) The date and time of filing of each financing
15 statement; and

17 (c) The information provided in each financing statement.

19 (4) In complying with its duty under subsection (3), the
20 filing office may communicate information in any medium.
21 However, if requested, the filing office shall communicate
22 information by issuing its written certificate.

23 (5) The filing office shall perform the acts required by
24 subsections (1) to (4) at the time and in the manner prescribed
25 by filing-office rule, but, in the case of a filing office
26 described in section 9-1501, subsection (1), paragraph (b), not
27 later than 2 business days after the filing office receives the
28 request.

29 (6) At least weekly, the filing office described in section
30 9-1501, subsection (1), paragraph (b) shall offer to sell or
31 license to the public on a nonexclusive basis, in bulk, copies of
32 all records filed in it under this part, in every medium from
33 time to time available to the filing office.

34
35
36
37
38 **Official Comment**

39
40
41 1. Source. Former Section 9-407; subsections (d) and (e)
42 [Maine cite subsections (4) and (5)] are new.

43
44 2. Filing Office's Duty to Provide Information. Former
45 Section 9-407, dealing with obtaining information from the filing
46 office, was bracketed to suggest to legislatures that its
47 enactment was optional. Experience has shown that the method by
48 which interested persons can obtain information concerning the
49 public records should be uniform. Accordingly, the analogous
50 provisions of this Article are not in brackets.

2 Most of the other changes from former Section 9-407 are for
clarification, to embrace medium-neutral drafting, or to impose
4 standards of performance on the filing office.

6 3. Acknowledgments of Filing. Subsections (a) and (b)
[Maine cite subsections (1) and (2)] require the filing office to
8 acknowledge the filing of a record. Under subsection (a) [Maine
cite subsection (1)], the filing office is required to
10 acknowledge the filing of a written record only upon request of
the filer. Subsection (b) [Maine cite subsection (2)] requires
12 the filing office to acknowledge the filing of a non-written
record even in the absence of a request from the filer.

14 4. Response to Search Request. Subsection (c)(3) [Maine
16 cite subsection 3, paragraph (c)] requires the filing office to
provide "the information contained in each financing statement"
18 to a person who requests it. This requirement can be satisfied
by providing copies, images, or reports. The requirement does
20 not in any manner inhibit the filing office from also offering to
provide less than all of the information (presumably for a lower
22 fee) to a person who asks for less. Thus, subsection (c) [Maine
cite subsection (3)] accommodates the practice of providing only
24 the type of record (e.g., initial financing statement,
continuation statement), number assigned to the record, date and
26 time of filing, and names and addresses of the debtor and secured
party when a requesting person asks for no more (i.e., when the
28 person does not ask for copies of financing statements). In
contrast, the filing office's obligation under subsection (b)
30 [Maine cite subsection (2)] to provide an acknowledgment
containing "the information contained in the record" is not
32 defined by a customer's request. Thus unless the filer
stipulates otherwise, to comply with subsection (b) [Maine cite
34 subsection (2)] the filing office's acknowledgment must contain
all of the information in a record.

36 Subsection (c) [Maine cite subsection (3)] assures that a
38 minimum amount of information about filed records will be
available to the public. It does not preclude a filing office
40 from offering additional services.

42 5. Lapsed and Terminated Financing Statements. This
section reflects the policy that terminated financing statements
44 will remain part of the filing office's data base. The filing
office may remove from the data base only lapsed financing
46 statements, and then only when at least a year has passed after
lapse. See Section 9-519(g) [Maine cite section 9-1519,
48 subsection (7)]. Subsection (c)(1)(C) [Maine cite subsection
(3), paragraph (a), subparagraph (iii)] requires a filing office

2 to conduct a search and report as to lapsed financing statements
that have not been removed from the data base, when requested.

4 6. Search by Debtor's Address. Subsection (c)(1)(A) [Maine
cite subsection (3), paragraph (a), subparagraph (i)]
6 contemplates that, by making a single request, a searcher will
receive the results of a search of the entire public record
8 maintained by any given filing office. Addition of the bracketed
language in subsection (c)(1)(A) [Maine cite subsection (3),
10 paragraph (a), subparagraph (i)] would permit a search report
limited to financing statements showing a particular address for
12 the debtor, but only if the search request is so limited. With
or without the bracketed language, this subsection does not
14 permit the filing office to compel a searcher to limit a request
by address.

16
18 7. Medium of Communication; Certificates. Former Article 9
provided that the filing office respond to a request for
information by providing a certificate. The principle of
20 medium-neutrality would suggest that the statute not require a
written certificate. Subsection (d) [Maine cite subsection (4)]
22 follows this principle by permitting the filing office to respond
by communicating "in any medium." By permitting communication
24 "in any medium," subsection (d) [Maine cite subsection (4)] is
not inconsistent with a system in which persons other than filing
26 office staff conduct searches of the filing office's (computer)
records.

28
30 Some searchers find it necessary to introduce the results of
their search into evidence. Because official written
32 certificates might be introduced into evidence more easily than
official communications in another medium, subsection (d) [Maine
cite subsection (4)] affords States the option of requiring the
34 filing office to issue written certificates upon request. The
alternative bracketed language in subsection (d) [Maine cite
36 subsection (4)] recognizes that some States may prefer to permit
the filing office to respond in another medium, as long as the
38 response can be admitted into evidence in the courts of that
State without extrinsic evidence of its authenticity.

40
42 8. Performance Standard. The utility of the filing system
depends on the ability of searchers to get current information
quickly. Accordingly, subsection (e) [Maine cite subsection (5)]
44 requires that the filing office respond to a request for
information no later than two business days after it receives the
46 request. The information contained in the response must be
current as of a date no earlier than three business days before
48 the filing office receives the request. See subsection (c)(1)
[Maine cite subsection (3), paragraph (a)]. The failure of the
50 filing office to comply with performance standards, such as

2 subsection (e) [Maine cite subsection (5)], has no effect on the
private rights of persons affected by the filing of records.

4 9. Sales of Records in Bulk. Subsection (f) [Maine cite
6 subsection (6)], which is new, mandates that the appropriate
official or the filing office sell or license the filing records
8 to the public in bulk, on a nonexclusive basis, in every medium
available to the filing office. The details of implementation
are left to filing-office rules.

10 **§9-1524. Delay by filing office**

12 Delay by the filing office beyond a time limit prescribed by
14 this part is excused if:

16 (1) The delay is caused by interruption of communication or
18 computer facilities, war, emergency conditions, failure of
equipment or other circumstances beyond control of the filing
office; and

20 (2) The filing office exercises reasonable diligence under
22 the circumstances.

24 **Official Comment**

26 Source. New; derived from Section 4-109.

28 **§9-1525. Fees**

30 (1) Except as otherwise provided in subsection (5), the fee
32 for filing and indexing a record under this part, other than an
initial financing statement of the kind described in section
34 9-1502, subsection (3) is:

36 (a) Twenty dollars if the record is communicated in writing
and consists of one or 2 pages;

38 (b) Forty dollars if the record is communicated in writing
40 and consists of more than 2 pages; and

42 (c) Ten dollars if the record is communicated by another
44 medium authorized by filing-office rule.

46 (2) Except as otherwise provided in subsection (5), the fee
for filing and indexing an initial financing statement of the
48 kind described in section 9-1502, subsection (3) is:

2 To make the relevant information included in a filed record
3 more accessible once the record is found, this section mandates a
4 higher fee for longer written records than for shorter ones.
5 Finally, recognizing that financing statements naming more than
6 one debtor are most often filed against a husband and wife, any
7 additional charge for multiple debtors applies to records filed
8 with respect to more than two debtors, rather than with respect
9 to more than one.

10 **§9-1526. Filing-office rules**

12 (1) The Secretary of State shall adopt and publish rules to
13 implement this Article. The filing-office rules must be:

14 (a) Consistent with this Article; and

15 (b) Adopted and published in accordance with Title 5,
16 chapter 375.

17 Rules adopted pursuant to this section are routine technical
18 rules as defined in Title 5, chapter 375, subchapter II-A.

19 (2) To keep the filing-office rules and practices of the
20 filing office in harmony with the rules and practices of filing
21 offices in other jurisdictions that enact substantially this part
22 and to keep the technology used by the filing office compatible
23 with the technology used by filing offices in other jurisdictions
24 that enact substantially this part, the Secretary of State, so
25 far as is consistent with the purposes, policies and provisions
26 of this Article, in adopting, amending and repealing
27 filing-office rules, shall:

28 (a) Consult with filing offices in other jurisdictions that
29 enact substantially this part; and

30 (b) Consult the most recent version of the Model Rules
31 promulgated by the International Association of Corporate
32 Administrators or any successor organization; and

33 (c) Take into consideration the rules and practices of and
34 the technology used by filing offices in other jurisdictions
35 that enact substantially this part.

36 **Official Comment**

37 1. Source. New; subsection (b) [Maine cite subsection (2)]
38 derives in part from the Uniform Consumer Credit Code (1974).
39

2 2. Rules Required. Operating a filing office is a
3 complicated business, requiring many more rules and procedures
4 than this Article can usefully provide. Subsection (a) [Maine
5 cite subsection (1)] requires the adoption of rules to carry out
6 the provisions of Article 9 [Maine cite Article 9-A]. The
7 filing-office rules must be consistent with the provisions of the
8 statute and adopted in accordance with local procedures. The
9 publication requirement informs secured parties about
10 filing-office practices, aids secured parties in evaluating
11 filing-related risks and costs, and promotes regularity of
12 application within the filing office.

13
14 3. Importance of Uniformity. In today's national economy,
15 uniformity of the policies and practices of the filing offices
16 will reduce the costs of secured transactions substantially. The
17 International Association of Corporate Administrators (IACA),
18 referred to in subsection (b) [Maine cite subsection (2)], is an
19 organization whose membership includes filing officers from every
20 State. These individuals are responsible for the proper
21 functioning of the Article 9 [Maine cite Article 9-A] filing
22 system and have worked diligently to develop model filing-office
23 rules, with a view toward efficiency and uniformity.

24 Although uniformity is an important desideratum, subsection
25 (a) [Maine cite subsection (1)] affords considerable flexibility
26 in the adoption of filing-office rules. Each State may adopt a
27 version of subsection (a) [Maine cite subsection (1)] that
28 reflects the desired relationship between the statewide filing
29 office described in Section 9-501(a)(2) [Maine cite 9-1501,
30 subsection (1), paragraph (b)] and the local filing offices
31 described in Section 9-501(a)(1) [Maine cite section 9-1501,
32 subsection (1), paragraph (a)] and that takes into account the
33 practices of its filing offices. Subsection (a) [Maine cite
34 subsection (1)] need not designate a single official or agency to
35 adopt rules applicable to all filing offices, and the rules
36 applicable to the statewide filing office need not be identical
37 to those applicable to the local filing office. For example,
38 subsection (a) [Maine cite subsection (1)] might provide for the
39 statewide filing office to adopt filing-office rules, and, if not
40 prohibited by other law, the filing office might adopt one set of
41 rules for itself and another for local offices. Or, subsection
42 (a) [Maine cite subsection (1)] might designate one official or
43 agency to adopt rules for the statewide filing office and another
44 to adopt rules for local filing offices.

46

PART 6

48

DEFAULT

50

SUBPART 1

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DEFAULT AND ENFORCEMENT OF SECURITY INTEREST

§9-1601. Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles or promissory notes

(1) After default, a secured party has the rights provided in this part and, except as otherwise provided in section 9-1602, those provided by agreement of the parties. A secured party:

(a) May reduce a claim to judgment or foreclose or otherwise enforce the claim, security interest or agricultural lien by any available judicial procedure; and

(b) If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(2) A secured party in possession of collateral or control of collateral under section 9-1104, 9-1105, 9-1106 or 9-1107 has the rights and duties provided in section 9-1207.

(3) The rights under subsections (1) and (2) are cumulative and may be exercised simultaneously.

(4) Except as otherwise provided in subsection (7) and section 9-1605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(5) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(a) The date of perfection of the security interest or agricultural lien in the collateral;

(b) The date of filing a financing statement covering the collateral; or

(c) Any date specified in a statute under which the agricultural lien was created.

(6) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article.

2 5. Cumulative Remedies. Former Section 9-501(1) provided
4 that the secured party's remedies were cumulative, but it did not
6 explicitly provide whether the remedies could be exercised
8 simultaneously. Subsection (c) [Maine cite subsection (3)]
10 permits the simultaneous exercise of remedies if the secured
12 party acts in good faith. The liability scheme of Subpart 2
14 affords redress to an aggrieved debtor or obligor. Moreover,
16 permitting the simultaneous exercise of remedies under subsection
18 (c) [Maine cite subsection (3)] does not override any non-UCC
20 law, including the law of tort and statutes regulating collection
22 of debts, under which the simultaneous exercise of remedies in a
24 particular case constitutes abusive behavior or harassment giving
26 rise to liability.

28 6. Judicial Enforcement. Under subsection (a) [Maine cite
30 subsection (1)] a secured party may reduce its claim to judgment
32 or foreclose its interest by any available procedure outside this
34 Article under applicable law. Subsection (e) [Maine cite
36 subsection (5)] generally follows former Section 9-501(5). It
38 makes clear that any judicial lien that the secured party may
40 acquire against the collateral effectively is a continuation of
42 the original security interest (if perfected) and not the
44 acquisition of a new interest or a transfer of property on
46 account of a preexisting obligation. Under former Section
48 9-501(5), the judicial lien was stated to relate back to the date
of perfection of the security interest. Subsection (e) [Maine
cite subsection (5)], however, provides that the lien relates
back to the earlier of the date of filing or the date of
perfection. This provides a secured party who enforces a
security interest by judicial process with the benefit of the
"first-to-file-or-perfect" priority rule of Section 9-322(a)(1)
[Maine cite section 9-1322, subsection (1), paragraph (a)].

34 7. Agricultural Liens. Part 6 provides parallel treatment
36 for the enforcement of agricultural liens and security
38 interests. Because agricultural liens are statutory rather than
40 consensual, this Article does draw a few distinctions between
42 these liens and security interests. Under subsection (e) [Maine
44 cite subsection (5)], the statute creating an agricultural lien
46 would govern whether and the date to which an execution lien
48 relates back. Section 9-606 [Maine cite section 9-1606] explains
when a "default" occurs in the agricultural lien context.

44 8. Execution Sales. Subsection (f) [Maine cite subsection
46 (6)] also follows former Section 9-501(5). It makes clear that
48 an execution sale is an appropriate method of foreclosure
contemplated by this Part. However, the sale is governed by
other law and not by this Article, and the limitations under

2 Section 9-610 [Maine cite section 9-1610] on the right of a
secured party to purchase collateral do not apply.

4 9. Sales of Receivables; Consignments. Subsection (g)
[Maine cite subsection (7)] provides that, except as provided in
6 Section 9-607(c) [Maine cite section 9-1607, subsection (3)], the
duties imposed on secured parties do not apply to buyers of
8 accounts, chattel paper, payment intangibles, or promissory
notes. Although denominated "secured parties," these buyers own
10 the entire interest in the property sold and so may enforce their
rights without regard to the seller ("debtor") or the seller's
12 creditors. Likewise, a true consignor may enforce its ownership
interest under other law without regard to the duties that this
14 Part imposes on secured parties. Note, however, that Section
9-615 [Maine cite section 9-1615] governs cases in which a
16 consignee's secured party (other than a consignor) is enforcing a
security interest that is senior to the security interest (i.e.,
18 ownership interest) of a true consignor.

20 **§9-1602. Waiver and variance of rights and duties**

22 Except as otherwise provided in section 9-1624, to the
24 extent that they give rights to a debtor or obligor and impose
duties on a secured party, the debtor or obligor may not waive or
26 vary the rules stated in the following listed sections:

28 (1) Section 9-1207, subsection (2), paragraph (d),
subparagraph (iii), which deals with use and operation of the
30 collateral by the secured party;

32 (2) Section 9-1210, which deals with requests for an
accounting and requests concerning a list of collateral and
34 statement of account;

36 (3) Section 9-1607, subsection (3), which deals with
collection and enforcement of collateral;

38 (4) Section 9-1608, subsection (1) and section 9-1615,
subsection (3) to the extent that they deal with application or
40 payment of noncash proceeds of collection, enforcement or
disposition;

42 (5) Section 9-1608, subsection (1) and section 9-1615,
subsection (4) to the extent that they require accounting for or
44 payment of surplus proceeds of collateral;

46 (6) Section 9-1609 to the extent that it imposes upon a
48 secured party that takes possession of collateral without
judicial process the duty to do so without breach of the peace;
50

2 Section 9-207(c)(4)(C) [Maine cite section 9-1207, subsection
3 (3), paragraph (d), subparagraph (iii)], which deals with the use
4 and operation of consumer goods, (ii) the right to a response to
5 a request for an accounting, concerning a list of collateral, or
6 concerning a statement of account (Section 9-210) [Maine cite
7 section 9-1210], (iii) the duty to collect collateral in a
8 commercially reasonable manner (Section 9-607) [Maine cite
9 section 9-1607], (iv) the implicit duty to refrain from a breach
10 of the peace in taking possession of collateral under Section
11 9-609 [Maine cite section 9-1609], (v) the duty to apply noncash
12 proceeds of collection or disposition in a commercially
13 reasonable manner (Sections 9-608 and 9-615) [Maine cite sections
14 9-1608 and 9-1615], (vi) the right to a special method of
15 calculating a surplus or deficiency in certain dispositions to a
16 secured party, a person related to secured party, or a secondary
17 obligor (Section 9-615) [Maine cite section 9-1615], (vii) the
18 duty to give an explanation of the calculation of a surplus or
19 deficiency (Section 9-616) [Maine cite 9-1616], (viii) the right
20 to limitations on the effectiveness of certain waivers (Section
21 9-624) [Maine cite section 9-1624], and (ix) the right to hold a
22 secured party liable for failure to comply with this Article
23 (Sections 9-625 and 9-626) [Maine cite section 9-1625 and
24 9-1626]. For clarity and consistency, this Article uses the term
25 "waive or vary" instead of "renounc[e] or modify[]," which
26 appeared in former Section 9-504(3).

27 This section provides generally that the specified rights
28 and duties "may not be waived or varied" However, it does not
29 restrict the ability of parties to agree to settle, compromise,
30 or renounce claims for past conduct that may have constituted a
31 violation or breach of those rights and duties, even if the
32 settlement involves an express "waiver."

33 4. Waiver by Debtors and Obligors. The restrictions on
34 waiver contained in this section apply to obligors as well as
35 debtors. This resolves a question under former Article 9 as to
36 whether secondary obligors, assuming that they were "debtors" for
37 purposes of former Part 5, were permitted to waive, under the law
38 of suretyship, rights and duties under that Part.

39 5. Certain Post-Default Waivers. Section 9-624 [Maine cite
40 section 9-1624] permits post-default waivers in limited
41 circumstances. These waivers must be made in agreements that are
42 authenticated. Under Section 1-201, an "'agreement' means the
43 bargain of the parties in fact." In considering waivers under
44 Section 9-624 [Maine cite section 9-1624] and analogous
45 agreements in other contexts, courts should carefully scrutinize
46 putative agreements that appear in records that also address many
47 additional or unrelated matters.
48
49
50

2 **§9-1603. Agreement on standards concerning rights and duties**

4 (1) The parties may determine by agreement the standards
6 measuring the fulfillment of the rights of a debtor or obligor
8 and the duties of a secured party under a rule stated in section
10 9-1602 if the standards are not manifestly unreasonable.

12 (b) Subsection (1) does not apply to the duty under section
14 9-1609 to refrain from breaching the peace.

16 **Official Comment**

18 1. Source. Former Section 9-501(3).

20 2. Limitation on Ability to Set Standards. Subsection (a)
22 [Maine cite subsection (1)], like former Section 9-501(3),
24 permits the parties to set standards for compliance with the
rights and duties under this Part if the standards are not
"manifestly unreasonable." Under subsection (b) [Maine cite
subsection (2)], the parties are not permitted to set standards
measuring fulfillment of the secured party's duty to take
collateral without breaching the peace.

26 **§9-1604. Procedure if security agreement covers real property or**
28 **fixtures**

30 (1) If a security agreement covers both personal and real
32 property, a secured party may proceed:

34 (a) Under this part as to the personal property without
36 prejudicing any rights with respect to the real property; or

38 (b) As to both the personal property and the real property
40 in accordance with the rights with respect to the real
42 property, in which case the other provisions of this part do
44 not apply.

46 (2) Subject to subsection (3), if a security agreement
48 covers goods that are or become fixtures, a secured party may
50 proceed:

(a) Under this part; or

(b) In accordance with the rights with respect to real
property, in which case the other provisions of this part do
not apply.

(3) Subject to the other provisions of this part, if a
secured party holding a security interest in fixtures has

2 priority over all owners and encumbrancers of the real property,
3 the secured party, after default, may remove the collateral from
4 the real property.

6 (4) A secured party that removes collateral shall promptly
7 reimburse any encumbrancer or owner of the real property, other
8 than the debtor, for the cost of repair of any physical injury
9 caused by the removal. The secured party need not reimburse the
10 encumbrancer or owner for any diminution in value of the real
11 property caused by the absence of the goods removed or by any
12 necessity of replacing them. A person entitled to reimbursement
13 may refuse permission to remove until the secured party gives
14 adequate assurance for the performance of the obligation to
15 reimburse.

16 **Official Comment**

18 1. Source. Former Sections 9-501(4), 9-313(8).

20 2. Real-Property-Related Collateral. The collateral in
22 many transactions consists of both real and personal property.
23 In the interest of simplicity, speed, and economy, subsection (a)
24 [Maine cite subsection (1)], like former Section 9-501(4),
25 permits (but does not require) the secured party to proceed as to
26 both real and personal property in accordance with its rights and
27 remedies with respect to the real property. Subsection (a)
28 [Maine cite subsection (1)] also makes clear that a secured party
29 who exercises rights under Part 6 with respect to personal
30 property does not prejudice any rights under real-property law.

32 This Article does not address certain other
33 real-property-related problems. In a number of States, the
34 exercise of remedies by a creditor who is secured by both real
35 property and non-real property collateral is governed by special
36 legal rules. For example, under some anti-deficiency laws,
37 creditors risk loss of rights against personal property
38 collateral if they err in enforcing their rights against the real
39 property. Under a "one-form-of-action" rule (or rule against
40 splitting a cause of action), a creditor who judicially enforces
41 a real property mortgage and does not proceed in the same action
42 to enforce a security interest in personalty may (among other
43 consequences) lose the right to proceed against the personalty.
44 Although statutes of this kind create impediments to enforcement
45 of security interests, this Article does not override these
46 limitations under other law.

48 3. Fixtures. Subsection (b) [Maine cite subsection (2)] is
49 new. It makes clear that a security interest in fixtures may be
50 enforced either under real-property law or under any of the

2 applicable provisions of Part 6, including sale or other
3 disposition either before or after removal of the fixtures (see
4 subsection (c) [Maine cite subsection (3)]). Subsection (b)
5 [Maine cite subsection (2)] also serves to overrule cases holding
6 that a secured party's only remedy after default is the removal
7 of the fixtures from the real property. See, e.g., Maplewood
8 Bank & Trust v. Sears, Roebuck & Co., 625 A.2d 537 (N.J. Super.
9 Ct. App. Div. 1993).

10 Subsection (c) [Maine cite subsection (3)] generally follows
11 former Section 9-313(8). It gives the secured party the right to
12 remove fixtures under certain circumstances. A secured party
13 whose security interest in fixtures has priority over owners and
14 encumbrancers of the real property may remove the collateral from
15 the real property. However, subsection (d) [Maine cite
16 subsection (4)] requires the secured party to reimburse any owner
17 (other than the debtor) or encumbrancer for the cost of repairing
18 any physical injury caused by the removal. This right to
19 reimbursement is implemented by the last sentence of subsection
20 (d) [Maine cite subsection (4)], which gives the owner or
21 encumbrancer a right to security or indemnity as a condition for
22 giving permission to remove.

24 **§9-1605. Unknown debtor or secondary obligor**

26 A secured party does not owe a duty based on its status as
27 secured party:

28 (1) To a person that is a debtor or obligor unless the
29 secured party knows:

32 (a) That the person is a debtor or obligor;

34 (b) The identity of the person; and

36 (c) How to communicate with the person; or

38 (2) To a secured party or lienholder that has filed a
39 financing statement against a person unless the secured party
40 knows:

42 (a) That the person is a debtor; and

44 (b) The identity of the person.

46 **Official Comment**

48 1. Source. New.

50

2 2. Duties to Unknown Persons. This section relieves a
3 secured party from duties owed to a debtor or obligor, if the
4 secured party does not know about the debtor or obligor.
5 Similarly, it relieves a secured party from duties owed to a
6 secured party or lienholder who has filed a financing statement
7 against the debtor, if the secured party does not know about the
8 debtor. For example, a secured party may be unaware that the
9 original debtor has sold the collateral subject to the security
10 interest and that the new owner has become the debtor. If so,
11 the secured party owes no duty to the new owner (debtor) or to a
12 secured party who has filed a financing statement against the new
13 owner. This section should be read in conjunction with the
14 exculpatory provisions in Section 9-628 [Maine cite section
15 9-1628]. Note that it relieves a secured party not only from
16 duties arising under this Article but also from duties arising
17 under other law by virtue of the secured party's status as such
18 under this Article, unless the other law otherwise provides.

19 **§9-1606. Time of default for agricultural lien**

20
21 For purposes of this part, a default occurs in connection
22 with an agricultural lien at the time the secured party becomes
23 entitled to enforce the lien in accordance with the statute under
24 which it was created.

25

26 **Official Comment**

27

28 1. Source. New.

29

30 2. Time of Default. Remedies under this Part become
31 available upon the debtor's "default." See Section 9-601 [Maine
32 cite section 9-1601]. This section explains when "default"
33 occurs in the agricultural-lien context. It requires one to
34 consult the enabling statute to determine when the lienholder is
35 entitled to enforce the lien.
36

37 **§9-1607. Collection and enforcement by secured party**

38 (1) If so agreed, and in any event after default, a secured
39 party:

40

41 (a) May notify an account debtor or other person obligated
42 on collateral to make payment or otherwise render
43 performance to or for the benefit of the secured party;

44

45 (b) May take any proceeds to which the secured party is
46 entitled under section 9-1315;
47

48

2 (c) May enforce the obligations of an account debtor or
4 other person obligated on collateral and exercise the rights
6 of the debtor with respect to the obligation of the account
8 debtor or other person obligated on collateral to make
 payment or otherwise render performance to the debtor and
 with respect to any property that secures the obligations of
 the account debtor or other person obligated on the
 collateral;

10 (d) If it holds a security interest in a deposit account
12 perfected by control under section 9-1104, subsection (1),
14 paragraph (a), may apply the balance of the deposit account
 to the obligation secured by the deposit account; and

16 (e) If it holds a security interest in a deposit account
18 perfected by control under section 9-1104, subsection (1),
20 paragraph (c) or (d), may instruct the bank to pay the
 balance of the deposit account to or for the benefit of the
 secured party.

22 (2) If necessary to enable a secured party to exercise
24 under subsection (1), paragraph (c) the right of a debtor to
 enforce a mortgage nonjudicially, the secured party may record in
 the office in which a record of the mortgage is recorded:

26 (a) A copy of the security agreement that creates or
28 provides for a security interest in the obligation secured
 by the mortgage; and

30 (b) The secured party's sworn affidavit in recordable form
32 stating that:

34 (i) A default has occurred; and

36 (ii) The secured party is entitled to enforce the
 mortgage nonjudicially.

38 (3) A secured party shall proceed in a commercially
40 reasonable manner if the secured party:

42 (a) Undertakes to collect from or enforce an obligation of
44 an account debtor or other person obligated on collateral;
 and

46 (b) Is entitled to charge back uncollected collateral or
48 otherwise to full or limited recourse against the debtor or
 a secondary obligor.

50 (4) A secured party may deduct from the collections made
 pursuant to subsection (3) reasonable expenses of collection and

2 enforcement, including reasonable attorney's fees and legal
3 expenses incurred by the secured party.

4 (5) This section does not determine whether an account
5 debtor, bank or other person obligated on collateral owes a duty
6 to a secured party.

8
9 **Official Comment**

10
11 1. Source. Former Section 9-502; subsections (b), (d), and
12 (e) [Maine cite subsections (2), (4) and (5)] are new.

13 2. Collections: In General. Collateral consisting of
14 rights to payment is not only the most liquid asset of a typical
15 debtor's business but also is property that may be collected
16 without any interruption of the debtor's business. This situation
17 is far different from that in which collateral is inventory or
18 equipment, whose removal may bring the business to a halt.
19 Furthermore, problems of valuation and identification, present
20 with collateral that is tangible personal property, frequently
21 are not as serious in the case of rights to payment and other
22 intangible collateral. Consequently, this section, like former
23 Section 9-502, recognizes that financing through assignments of
24 intangibles lacks many of the complexities that arise after
25 default in other types of financing. This section allows the
26 assignee to liquidate collateral by collecting whatever may
27 become due on the collateral, whether or not the method of
28 collection contemplated by the security arrangement before
29 default was direct (i.e., payment by the account debtor to the
30 assignee, "notification" financing) or indirect (i.e., payment by
31 the account debtor to the assignor, "nonnotification" financing).

32
33 3. Scope. The scope of this section is broader than that
34 of former Section 9-502. It applies not only to collections from
35 account debtors and obligors on instruments but also to
36 enforcement more generally against all persons obligated on
37 collateral. It explicitly provides for the secured party's
38 enforcement of the debtor's rights in respect of the account
39 debtor's (and other third parties') obligations and for the
40 secured party's enforcement of supporting obligations with
41 respect to those obligations. (Supporting obligations are
42 components of the collateral under Section 9-203(f) [Maine cite
43 section 9-1203, subsection (6)].) The rights of a secured party
44 under subsection (a) [Maine cite subsection (1)] include the
45 right to enforce claims that the debtor may enjoy against
46 others. For example, the claims might include a breach-
47 of-warranty claim arising out of a defect in equipment that is
48 collateral or a secured party's action for an injunction against
49 infringement of a patent that is collateral. Those claims
50

typically would be proceeds of original collateral under Section 9-315 [Maine cite section 9-1315].

4. Collection and Enforcement Before Default. Like Part 6 generally, this section deals with the rights and duties of secured parties following default. However, as did former Section 9-502 with respect to collection rights, this section also applies to the collection and enforcement rights of secured parties even if a default has not occurred, as long as the debtor has so agreed. It is not unusual for debtors to agree that secured parties are entitled to collect and enforce rights against account debtors prior to default.

5. Collections by Junior Secured Party. A secured party who holds a security interest in a right to payment may exercise the right to collect and enforce under this section, even if the security interest is subordinate to a conflicting security interest in the same right to payment. Whether the junior secured party has priority in the collected proceeds depends on whether the junior secured party qualifies for priority as a purchaser of an instrument (e.g., the account debtor's check) under Section 9-330(d) [Maine cite section 9-1330, subsection (4)], as a holder in due course of an instrument under Sections 3-305 and 9-331(a) [Maine cite section 9-1331, subsection (1)], or as a transferee of money under Section 9-332(a) [Maine cite section 9-1332, subsection (1)]. See Sections 9-330 [Maine cite section 9-1330], Comment 7, 9-331, Comment 5, and 9-332 [Maine cite section 9-1332, subsection (1)].

6. Relationship to Rights and Duties of Persons Obligated on Collateral. This section permits a secured party to collect and enforce obligations included in collateral in its capacity as a secured party. It is not necessary for a secured party first to become the owner of the collateral pursuant to a disposition or acceptance. However, the secured party's rights, as between it and the debtor, to collect from and enforce collateral against account debtors and others obligated on collateral under subsection (a) [Maine cite subsection (1)] are subject to Section 9-341 [Maine cite section 9-1341], Part 4, and other applicable law. Neither this section nor former Section 9-502 should be understood to regulate the duties of an account debtor or other person obligated on collateral. Subsection (e) [Maine cite subsection (5)] makes this explicit. For example, the secured party may be unable to exercise the debtor's rights under an instrument if the debtor is in possession of the instrument, or under a non-transferable letter of credit if the debtor is the beneficiary. Unless a secured party has control over a letter-of-credit right and is entitled to receive payment or performance from the issuer or a nominated person under Article 5, its remedies with respect to the letter-of-credit right may be

2 limited to the recovery of any identifiable proceeds from the
debtor. This section establishes only the baseline rights of the
secured party vis-a-vis the debtor-the secured party is entitled
4 to enforce and collect after default or earlier if so agreed.

6 7. Deposit Account Collateral. Subsections (a)(4) and (5)
[Maine cite subsection (1), paragraphs (d) and (e)] set forth the
8 self-help remedy for a secured party whose collateral is a
deposit account. Subsection (a)(4) [Maine cite subsection (1),
10 paragraph (d)] addresses the rights of a secured party that is
the bank with which the deposit account is maintained. That
12 secured party automatically has control of the deposit account
under Section 9-104(a)(1) [Maine cite section 9-1104, subsection
14 (1), paragraph (a)]. After default, and otherwise if so agreed,
the bank/secured party may apply the funds on deposit to the
16 secured obligation.

18 If a security interest of a third party is perfected by
control (Section 9-104(a)(2) or (a)(3) [Maine cite section
20 9-1104, subsection (1), paragraph (b) or (c)]), then after
default, and otherwise if so agreed, the secured party may
22 instruct the bank to pay out the funds in the account. If the
third party has control under Section 9-104(a)(3) [Maine cite
24 section 9-1104, subsection (1), paragraph (c)], the depository
institution is obliged to obey the instruction because the
26 secured party is its customer. See Section 4-401. If the third
party has control under Section 9-104(a)(2) [Maine cite section
28 9-1104, subsection (1), paragraph (b)], the control agreement
determines the depository institution's obligation to obey.
30

32 If a security interest in a deposit account is unperfected,
or is perfected by filing by virtue of the proceeds rules of
Section 9-315 [Maine cite section 9-1315], the depository
34 institution ordinarily owes no obligation to obey the secured
party's instructions. See Section 9-341 [Maine cite section
36 9-1341]. To reach the funds without the debtor's cooperation,
the secured party must use an available judicial procedure.
38

40 8. Rights Against Mortgagor of Real Property. Subsection
(b) [Maine cite subsection (2)] addresses the situation in which
the collateral consists of a mortgage note (or other obligation
42 secured by a mortgage on real property). After the debtor's
(mortgagee's) default, the secured party (assignee) may wish to
44 proceed with a nonjudicial foreclosure of the mortgage securing
the note but may be unable to do so because it has not become the
46 assignee of record. The assignee/secured party may not have
taken a recordable assignment at the commencement of the
48 transaction (perhaps the mortgage note in question was one of
hundreds assigned to the secured party as collateral). Having
50 defaulted, the mortgagee may be unwilling to sign a recordable

2 assignment. This section enables the secured party (assignee) to
3 become the assignee of record by recording in the applicable
4 real-property records the security agreement and an affidavit
5 certifying default. Of course, the secured party's rights derive
6 from those of its debtor. Subsection (b) [Maine cite subsection
7 (2)] would not entitle the secured party to proceed with a
8 foreclosure unless the mortgagor also were in default or the
9 debtor (mortgagee) otherwise enjoyed the right to foreclose.

10 9. Commercial Reasonableness. Subsection (c) [Maine cite
11 subsection (3)] provides that the secured party's collection and
12 enforcement rights under subsection (a) [Maine cite subsection
13 (1)] must be exercised in a commercially reasonable manner.
14 These rights include the right to settle and compromise claims
15 against the account debtor. The secured party's failure to
16 observe the standard of commercial reasonableness could render it
17 liable to an aggrieved person under Section 9-625 [Maine cite
18 section 9-1625], and the secured party's recovery of a deficiency
19 would be subject to Section 9-626 [Maine cite section 9-1626].
20 Subsection (c) [Maine cite subsection (3)] does not apply if, as
21 is characteristic of most sales of accounts, chattel paper,
22 payment intangibles, and promissory notes, the secured party
23 (buyer) has no right of recourse against the debtor (seller) or a
24 secondary obligor. However, if the secured party does have a
25 right of recourse, the commercial-reasonableness standard applies
26 to collection and enforcement even though the assignment to the
27 secured party was a "true" sale. The obligation to proceed in a
28 commercially reasonable manner arises because the collection
29 process affects the extent of the seller's recourse liability,
30 not because the seller retains an interest in the sold collateral
31 (the seller does not).

32 10. Attorney's Fees and Legal Expenses. The phrase
33 "reasonable attorney's fees and legal expenses," which appears in
34 subsection (d) [Maine cite subsection (4)], includes only those
35 fees and expenses incurred in proceeding against account debtors
36 or other third parties. The secured party's right to recover
37 these expenses from the collections arises automatically under
38 this section. The secured party also may incur other attorney's
39 fees and legal expenses in proceeding against the debtor or
40 obligor. Whether the secured party has a right to recover those
41 fees and expenses depends on whether the debtor or obligor has
42 agreed to pay them, as is the case with respect to attorney's
43 fees and legal expenses under Sections 9-608(a)(1)(A) [Maine cite
44 section 9-1608, subsection (1), paragraph (a), subparagraph (i)]
45 and 9-615(a)(1) [Maine cite section 9-1615, subsection (1),
46 paragraph (a)]. The parties also may agree to allocate a portion
47 of the secured party's overhead to collection and enforcement
48 under subsection (d) [Maine cite subsection (4)] or Section
49 9-608(a) [Maine cite section 9-1608, subsection (1)].
50

2 **§9-1608. Application of proceeds of collection or enforcement;**
4 **liability for deficiency and right to surplus**

6 (1) If a security interest or agricultural lien secures
8 payment or performance of an obligation, the following rules
10 apply.

12 (a) A secured party shall apply or pay over for application
14 the cash proceeds of collection or enforcement under this
16 section in the following order to:

18 (i) The reasonable expenses of collection and
20 enforcement and, to the extent provided for by
22 agreement and not prohibited by law, reasonable
24 attorney's fees and legal expenses incurred by the
26 secured party;

28 (ii) The satisfaction of obligations secured by the
30 security interest or agricultural lien under which the
32 collection or enforcement is made; and

34 (iii) The satisfaction of obligations secured by any
36 subordinate security interest in or other lien on the
38 collateral subject to the security interest or
40 agricultural lien under which the collection or
42 enforcement is made if the secured party receives an
44 authenticated demand for proceeds before distribution
46 of the proceeds is completed.

48 (b) If requested by a secured party, a holder of a
subordinate security interest or other lien shall furnish
reasonable proof of the interest or lien within a reasonable
time. Unless the holder complies, the secured party need
not comply with the holder's demand under paragraph (a),
subparagraph (iii).

(c) A secured party need not apply or pay over for
application noncash proceeds of collection and enforcement
under this section unless the failure to do so would be
commercially unreasonable. A secured party that applies or
pays over for application noncash proceeds shall do so in a
commercially reasonable manner.

(d) A secured party shall account to and pay a debtor for
any surplus, and the obligor is liable for any deficiency.

(2) If the underlying transaction is a sale of accounts,
chattel paper, payment intangibles or promissory notes, the

2 debtor is not entitled to any surplus, and the obligor is not
3 liable for any deficiency.

4
5 **Official Comment**

6
7 1. Source. Subsection (a) [Maine cite subsection (1)] is
8 new; subsection (b) [Maine cite subsection (2)] derives from
9 former Section 9-502(2).

10
11 2. Modifications of Prior Law. Subsections (a) and (b)
12 [Maine cite subsections (1) and (2)] modify former Section
13 9-502(2) by explicitly providing for the application of proceeds
14 recovered by the secured party in substantially the same manner
15 as provided in Section 9-615(a) and (e) [Maine cite section
16 9-1615, subsections (1) and (5)] for dispositions of collateral.

17
18 3. Surplus and Deficiency. Subsections (a)(4) and (b)
19 [Maine cite subsection (1), paragraph (d) and subsection (2)]
20 omit, as unnecessary, the references contained in former Section
21 9-502(2) to agreements varying the baseline rules on surplus and
22 deficiency. The parties are always free to agree that an obligor
23 will not be liable for a deficiency, even if the collateral
24 secures an obligation, and that an obligor is liable for a
25 deficiency, even if the transaction is a sale of receivables.
26 For parallel provisions, see Section 9-615(d) and (e) [Maine cite
27 section 9-1615, subsections (4) and (5)].

28
29 4. Noncash Proceeds. Subsection (a)(3) [Maine cite
30 subsection (1), paragraph (c)] addresses the situation in which
31 an enforcing secured party receives noncash proceeds.

32
33 Example: An enforcing secured party receives a promissory
34 note from an account debtor who is unable to pay an account when
35 it is due. The secured party accepts the note in exchange for
36 extending the date on which the account debtor's obligation is
37 due. The secured party may wish to credit its debtor (the
38 assignor) with the principal amount of the note upon receipt of
39 the note, but probably will prefer to credit the debtor only as
40 and when the note is paid.

41
42 Under subsection (a)(3), [Maine cite subsection (1), paragraph
43 (c)] the secured party is under no duty to apply the note or its
44 value to the outstanding obligation unless its failure to do so
45 would be commercially unreasonable. If the secured party does
46 apply the note to the outstanding obligation, however, it must do
47 so in a commercially reasonable manner. The parties may provide
48 for the method of application of noncash proceeds by agreement,
49 if the method is not manifestly unreasonable. See Section 9-603
50 [Maine cite section 9-1603]. This section does not explain when

2 the failure to apply noncash proceeds would be commercially
unreasonable; it leaves that determination to case-by-case
4 adjudication. In the example, the secured party appears to have
accepted the account debtor's note in order to increase the
6 likelihood of payment and decrease the likelihood that the
account debtor would dispute its obligation. Under these
8 circumstances, it may well be commercially reasonable for the
secured party to credit its debtor's obligations only as and when
10 cash proceeds are collected from the account debtor, especially
given the uncertainty that attends the account debtor's eventual
12 payment. For an example of a secured party's receipt of noncash
proceeds in which it may well be commercially unreasonable for
14 the secured party to delay crediting its debtor's obligations
with the value of noncash proceeds, see Section 9-615 [Maine cite
16 section 9-1615], Comment 3.

18 When the secured party is not required to "apply or pay over
for application noncash proceeds," the proceeds nonetheless
20 remain collateral subject to this Article. If the secured party
were to dispose of them, for example, appropriate notification
22 would be required (see Section 9-611 [Maine cite section
9-1611]), and the disposition would be subject to the standards
24 provided in this Part (see Section 9-610 [Maine cite section
9-1610]). Moreover, a secured party in possession of the noncash
26 proceeds would have the duties specified in Section 9-207 [Maine
cite section 9-1207].

28 5. No Effect on Priority of Senior Security Interest. The
application of proceeds required by subsection (a) [Maine cite
30 subsection (1)] does not affect the priority of a security
interest in collateral which is senior to the interest of the
32 secured party who is collecting or enforcing collateral under
Section 9-607 [Maine cite section 9-1607]. Although subsection
34 (a) [Maine cite subsection (1)] imposes a duty to apply proceeds
to the enforcing secured party's expenses and to the satisfaction
36 of the secured obligations owed to it and to subordinate secured
parties, that duty applies only among the enforcing secured party
38 and those persons. Concerning the priority of a junior secured
party who collects and enforces collateral, see Section 9-607
40 [Maine cite section 9-1607], Comment 5.

42 **§9-1609. Secured party's right to take possession after default**

44 (1) After default, a secured party:

46 (a) May take possession of the collateral; and

48 (b) Without removal, may render equipment unusable and
50 dispose of collateral on a debtor's premises under section
9-1610.

in connection with taking possession of collateral, see Section 9-625 [Maine cite section 9-1625], Comment 3.

5. Multiple Secured Parties. More than one secured party may be entitled to take possession of collateral under this section. Conflicting rights to possession among secured parties are resolved by the priority rules of this Article. Thus, a senior secured party is entitled to possession as against a junior claimant. Non-UCC law governs whether a junior secured party in possession of collateral is liable to the senior in conversion. Normally, a junior who refuses to relinquish possession of collateral upon the demand of a secured party having a superior possessory right to the collateral would be liable in conversion.

6. Secured Party's Right to Disable and Dispose of Equipment on Debtor's Premises. In the case of some collateral, such as heavy equipment, the physical removal from the debtor's plant and the storage of the collateral pending disposition may be impractical or unduly expensive. This section follows former Section 9-503 by providing that, in lieu of removal, the secured party may render equipment unusable or may dispose of collateral on the debtor's premises. Unlike former Section 9-503, however, this section explicitly conditions these rights on the debtor's default. Of course, this section does not validate unreasonable action by a secured party. Under Section 9-610 [Maine cite section 9-1610], all aspects of a disposition must be commercially reasonable.

7. Debtor's Agreement to Assemble Collateral. This section follows former Section 9-503 also by validating a debtor's agreement to assemble collateral and make it available to a secured party at a place that the secured party designates. Similar to the treatment of agreements to permit collection prior to default under Section 9-607 [Maine cite section 9-1607] and former 9-502, however, this section validates these agreements whether or not they are conditioned on the debtor's default. For example, a debtor might agree to make available to a secured party, from time to time, any instruments or negotiable documents that the debtor receives on account of collateral. A court should not infer from this section's validation that a debtor's agreement to assemble and make available collateral would not be enforceable under other applicable law.

8. Agreed Standards. Subject to the limitation imposed by Section 9-603(b) [Maine cite section 9-1603, subsection (2)], this section's provisions concerning agreements to assemble and make available collateral and a secured party's right to disable equipment and dispose of collateral on a debtor's premises are

likely topics for agreement on standards as contemplated by
Section 9-603 [Maine cite section 9-1603].

§9-1610. Disposition of collateral after default

(1) After default, a secured party may sell, lease, license or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(2) Every aspect of a disposition of collateral, including the method, manner, time, place and other terms, must be commercially reasonable. If it is commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels and at any time and place and on any terms.

(3) A secured party may purchase collateral:

(a) At a public disposition; or

(b) At a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(4) A contract for sale, lease, license or other disposition includes the warranties relating to title, possession, quiet enjoyment and the like that by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(5) A secured party may disclaim or modify warranties under subsection (4):

(a) In a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(b) By communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(6) A record is sufficient to disclaim warranties under subsection (5) if it indicates "There is no warranty relating to title, possession, quiet enjoyment or the like in this disposition" or uses words of similar import.

Official Comment

1. Source. Former Section 9-504(1), (3)

2
3 2. Commercially Reasonable Dispositions. Subsection (a)
4 [Maine cite subsection (1)] follows former Section 9-504 by
5 permitting a secured party to dispose of collateral in a
6 commercially reasonable manner following a default. Although
7 subsection (b) [Maine cite subsection (2)] permits both public
8 and private dispositions, "every aspect of a disposition . . .
9 must be commercially reasonable." This section encourages
10 private dispositions on the assumption that they frequently will
11 result in higher realization on collateral for the benefit of all
12 concerned. Subsection (a) [Maine cite subsection (1)] does not
13 restrict dispositions to sales; collateral may be sold, leased,
14 licensed, or otherwise disposed. Section 9-627 [Maine cite
15 section 9-1627] provides guidance for determining the
16 circumstances under which a disposition is "commercially
17 reasonable."

18
19 3. Time of Disposition. This Article does not specify a
20 period within which a secured party must dispose of collateral.
21 This is consistent with this Article's policy to encourage
22 private dispositions through regular commercial channels. It
23 may, for example, be prudent not to dispose of goods when the
24 market has collapsed. Or, it might be more appropriate to sell a
25 large inventory in parcels over a period of time instead of in
26 bulk. Of course, under subsection (b) [Maine cite subsection
27 (2)] every aspect of a disposition of collateral must be
28 commercially reasonable. This requirement explicitly includes
29 the "method, manner, time, place and other terms." For example,
30 if a secured party does not proceed under Section 9-620 [Maine
31 cite section 9-1620] and holds collateral for a long period of
32 time without disposing of it, and if there is no good reason for
33 not making a prompt disposition, the secured party may be
34 determined not to have acted in a "commercially reasonable"
35 manner. See also Section 1-203 (general obligation of good
36 faith).

37
38 4. Pre-Disposition Preparation and Processing. Former
39 Section 9-504(1) appeared to give the secured party the choice of
40 disposing of collateral either "in its then condition or
41 following any commercially reasonable preparation or
42 processing." Some courts held that the "commercially reasonable"
43 standard of former Section 9-504(3) nevertheless could impose an
44 affirmative duty on the secured party to process or prepare the
45 collateral prior to disposition. Subsection (a) [Maine cite
46 subsection (1)] retains the substance of the quoted language.
47 Although courts should not be quick to impose a duty of
48 preparation or processing on the secured party, subsection (a)
49 [Maine cite subsection (1)] does not grant the secured party the
50 right to dispose of the collateral "in its then condition" under

2 all circumstances. A secured party may not dispose of collateral
3 "in its then condition" when, taking into account the costs and
4 probable benefits of preparation or processing and the fact that
5 the secured party would be advancing the costs at its risk, it
6 would be commercially unreasonable to dispose of the collateral
7 in that condition.

8 5. Disposition by Junior Secured Party. Disposition rights
9 under subsection (a) [Maine cite subsection (1)] are not limited
10 to first-priority security interests. Rather, any secured party
11 as to whom there has been a default enjoys the right to dispose
12 of collateral under this subsection. The exercise of this right
13 by a secured party whose security interest is subordinate to that
14 of another secured party does not of itself constitute a
15 conversion or otherwise give rise to liability in favor of the
16 holder of the senior security interest. Section 9-615 [Maine
17 cite section 9-1615] addresses application of the proceeds of a
18 disposition by a junior secured party. Under Section 9-615(a)
19 [Maine cite section 9-1615, subsection (1)], a junior secured
20 party owes no obligation to apply the proceeds of disposition to
21 the satisfaction of obligations secured by a senior security
22 interest. Section 9-615(g) [Maine cite section 9-1615,
23 subsection (7)] builds on this general rule by protecting certain
24 juniors from claims of a senior concerning cash proceeds of the
25 disposition. Even if a senior were to have a non-Article 9 claim
26 to proceeds of a junior's disposition, Section 9-615(g) [Maine
27 cite section 9-1615, subsection (7)] would protect a junior that
28 acts in good faith and without knowledge that its actions violate
29 the rights of a senior party. Because the disposition by a
30 junior would not cut off a senior's security interest or other
31 lien (see Section 9-617 [Maine cite section 9-1617]), in many
32 (probably most) cases the junior's receipt of the cash proceeds
33 would not violate the rights of the senior.

34
35 The holder of a senior security interest is entitled, by
36 virtue of its priority, to take possession of collateral from the
37 junior secured party and conduct its own disposition, provided
38 that the senior enjoys the right to take possession of the
39 collateral from the debtor. See Section 9-609 [Maine cite
40 section 9-1609]. The holder of a junior security interest
41 normally must notify the senior secured party of an impending
42 disposition. See Section 9-611 [Maine cite section 9-1611].
43 Regardless of whether the senior receives a notification from the
44 junior, the junior's disposition does not of itself discharge the
45 senior's security interest. See Section 9-617 [Maine cite
46 section 9-1617]. Unless the senior secured party has authorized
47 the disposition free and clear of its security interest, the
48 senior's security interest ordinarily will survive the
49 disposition by the junior and continue under Section 9-315(a)
50 [Maine cite section 9-1315, subsection (1)]. If the senior

2 enjoys the right to repossess the collateral from the debtor, the
2 senior likewise may recover the collateral from the transferee.

4 When a secured party's collateral is encumbered by another
6 security interest or other lien, one of the claimants may seek to
8 invoke the equitable doctrine of marshaling. As explained by the
10 Supreme Court, that doctrine "rests upon the principle that a
12 creditor having two funds to satisfy his debt, may not by his
14 application of them to his demand, defeat another creditor, who
16 may resort to only one of the funds." Meyer v. United States,
18 375 U.S. 233, 236 (1963), quoting Sowell v. Federal Reserve Bank,
20 268 U.S. 449, 45657 (1925). The purpose of the doctrine is "to
prevent the arbitrary action of a senior lienor from destroying
the rights of a junior lienor or a creditor having less
security." Id. at 237. Because it is an equitable doctrine,
marshaling "is applied only when it can be equitably fashioned as
to all of the parties" having an interest in the property. Id.
This Article leaves courts free to determine whether marshaling
is appropriate in any given case. See Section 1-103.

22 6. Security Interests of Equal Rank. Sometimes two
24 security interests enjoy the same priority. This situation may
26 arise by contract, e.g., pursuant to "equal and ratable"
28 provisions in indentures, or by operation of law. See Section
30 9-328(6) [Maine cite section 9-1328, subsection (6)]. This
32 Article treats a security interest having equal priority like a
34 senior security interest in many respects. Assume, for example,
36 that SPX and SPY enjoy equal priority, SPW is senior to them, and
SPZ is junior. If SPX disposes of the collateral under this
section, then (i) SPW's and SPY's security interests survive the
disposition but SPZ's does not, see Section 9-617 [Maine cite
section 9-1617], and (ii) neither SPW nor SPY is entitled to
receive a distribution of proceeds, but SPZ is. See Section
9-615(a)(3) [Maine cite section 9-1615, subsection (1), paragraph
(c)].

38 When one considers the ability to obtain possession of the
40 collateral, a secured party with equal priority is unlike a
42 senior secured party. As the senior secured party, SPW should
44 enjoy the right to possession as against SPX. See Section 9-609
46 [Maine cite section 9-1609], Comment 5. If SPW takes possession
48 and disposes of the collateral under this section, it is entitled
to apply the proceeds to satisfy its secured claim. SPY,
however, should not have such a right to take possession from
SPX; otherwise, once SPY took possession from SPX, SPX would have
the right to get possession from SPY, which would be obligated to
redeliver possession to SPX, and so on. Resolution of this
problem is left to the parties and, if necessary, the courts.

2 7. Public vs. Private Dispositions. This Part maintains
4 two distinctions between "public" and other dispositions: (i)
6 the secured party may buy at the former, but normally not at the
8 latter (Section 9-610(c) [Maine cite section 9-1610, subsection
10 (3)]), and (ii) the debtor is entitled to notification of "the
12 time and place of a public disposition" and notification of "the
14 time after which" a private disposition or other intended
16 disposition is to be made (Section 9-613(1)(E) [Maine cite
18 section 9-1613, subsection (1), paragraph (e)]). It does not
20 retain the distinction under former Section 9-504(4), under which
22 transferees in a noncomplying public disposition could lose
 protection more easily than transferees in other noncomplying
 dispositions. Instead, Section 9-617(b) [Maine cite section
 9-1617, subsection (2)] adopts a unitary standard. Although the
 term is not defined, as used in this Article, a "public
 disposition" is one at which the price is determined after the
 public has had a meaningful opportunity for competitive bidding.
 "Meaningful opportunity" is meant to imply that some form of
 advertisement or public notice must precede the sale (or other
 disposition) and that the public must have access to the sale
 (disposition).

24 8. Investment Property. Dispositions of investment
26 property may be regulated by the federal securities laws.
28 Although a "public" disposition of securities under this Article
30 may implicate the registration requirements of the Securities Act
32 of 1933, it need not do so. A disposition that qualifies for a
34 "private placement" exemption under the Securities Act of 1933
 nevertheless may constitute a "public" disposition within the
 meaning of this section. Moreover, the "commercially reasonable"
 requirements of subsection (b) [Maine cite subsection (2)] need
 not prevent a secured party from conducting a foreclosure sale
 without the issuer's compliance with federal registration
 requirements.

36 9. "Recognized Market." A "recognized market," as used in
38 subsection (c) [Maine cite subsection (3)] and Section 9-611(d)
40 [Maine cite section 9-1611, subsection (4)], is one in which the
42 items sold are fungible and prices are not subject to individual
44 negotiation. For example, the New York Stock Exchange is a
 recognized market. A market in which prices are individually
 negotiated or the items are not fungible is not a recognized
 market, even if the items are the subject of widely disseminated
 price guides or are disposed of through dealer auctions.

46 10. Relevance of Price. While not itself sufficient to
48 establish a violation of this Part, a low price suggests that a
50 court should scrutinize carefully all aspects of a disposition to
 ensure that each aspect was commercially reasonable. Note also
 that even if the disposition is commercially reasonable, Section

2 9-615(f) [Maine cite section 9-1615, subsection (6)] provides a
4 special method for calculating a deficiency or surplus if (i) the
6 transferee in the disposition is the secured party, a person
8 related to the secured party, or a secondary obligor, and (ii)
the amount of proceeds of the disposition is significantly below
the range of proceeds that a complying disposition to a person
other than the secured party, a person related to the secured
party, or a secondary obligor would have brought.

10 11. Warranties. Subsection (d) [Maine cite subsection (4)]
12 affords the transferee in a disposition under this section the
14 benefit of any title, possession, quiet enjoyment, and similar
16 warranties that would have accompanied the disposition by
18 operation of non-Article 9 law had the disposition been conducted
20 under other circumstances. For example, the Article 2 warranty
of title would apply to a sale of goods, the analogous warranties
of Article 2A would apply to a lease of goods, and any common-law
warranties of title would apply to dispositions of other types of
collateral. See, e.g., Restatement (2d), Contracts § 333
(warranties of assignor).

22 Subsection (e) [Maine cite subsection (5)] explicitly
24 provides that these warranties can be disclaimed either under
26 other applicable law or by communicating a record containing an
28 express disclaimer. The record need not be written, but an oral
30 communication would not be sufficient. See Section 9-102 [Maine
cite section 9-1102] (definition of "record"). Subsection (f)
[Maine cite subsection (6)] provides a sample of wording that
will effectively exclude the warranties in a disposition under
this section, whether or not the exclusion would be effective
under non-Article 9 law.

32 The warranties incorporated by subsection (d) [Maine cite
34 subsection (4)] are those relating to "title, possession, quiet
36 enjoyment, and the like." Depending on the circumstances, a
38 disposition under this section also may give rise to other
40 statutory or implied warranties, e.g., warranties of quality or
42 fitness for purpose. Law other than this Article determines
44 whether such other warranties apply to a disposition under this
section. Other law also determines issues relating to disclaimer
of such warranties. For example, a foreclosure sale of a car by
a car dealer could give rise to an implied warranty of
merchantability (Section 2-314) unless effectively disclaimed or
modified (Section 2-316).

46 This section's approach to these warranties conflicts with
48 the former Comment to Section 2-312. This Article rejects the
baseline assumption that commercially reasonable dispositions
under this section are out of the ordinary commercial course or

2 peculiar. The Comment to Section 2-312 has been revised
accordingly.

4 **§9-1611. Notification before disposition of collateral**

6 (1) In this section, "notification date" means the earlier
8 of the date on which:

10 (a) A secured party sends to the debtor and any secondary
obligor an authenticated notification of disposition; or

12 (b) The debtor and any secondary obligor waive the right to
14 notification.

16 (2) Except as otherwise provided in subsection (4), a
secured party that disposes of collateral under section 9-1610
18 shall send to the persons specified in subsection (3) a
reasonable authenticated notification of disposition.

20 (3) To comply with subsection (2), the secured party shall
22 send an authenticated notification of disposition to:

24 (a) The debtor;

26 (b) Any secondary obligor; and

28 (c) If the collateral is other than consumer goods:

30 (i) Any other person from which the secured party has
32 received, before the notification date, an
authenticated notification of a claim of an interest in
the collateral;

34 (ii) Any other secured party or lienholder that, 10
36 days before the notification date, held a security
interest in or other lien on the collateral perfected
38 by the filing of a financing statement that:

40 (A) Identified the collateral;

42 (B) Was indexed under the debtor's name as of
that date; and

44 (C) Was filed in the appropriate office in which
46 to file a financing statement against the debtor
covering the collateral as of that date; and

48 (iii) Any other secured party that, 10 days before the
50 notification date, held a security interest in the
collateral perfected by compliance with a statute.

2 regulation or treaty described in section 9-1311,
3 subsection (1).

4 (4) Subsection (2) does not apply if the collateral is
5 perishable or threatens to decline speedily in value or is of a
6 type customarily sold on a recognized market.

7 (5) A secured party complies with the requirement for
8 notification prescribed by subsection (3), paragraph (c),
9 subparagraph (ii) if:

10 (a) Not later than 20 days or earlier than 30 days before
11 the notification date, the secured party requests, in a
12 commercially reasonable manner, information concerning
13 financing statements indexed under the debtor's name in the
14 office indicated in subsection (3), paragraph (c),
15 subparagraph (ii); and

16 (b) Before the notification date, the secured party:
17 (i) Did not receive a response to the request for
18 information; or

19 (ii) Received a response to the request for
20 information and sent an authenticated notification of
21 disposition to each secured party or other lienholder
22 named in that response whose financing statement
23 covered the collateral.

24 **Official Comment**

25 1. Source. Former Section 9-504(3).

26 2. Reasonable Notification. This section requires a
27 secured party who wishes to dispose of collateral under Section
28 9-610 [Maine cite section 9-1610] to send "a reasonable
29 authenticated notification of disposition" to specified
30 interested persons, subject to certain exceptions. The
31 notification must be reasonable as to the manner in which it is
32 sent, its timeliness (i.e., a reasonable time before the
33 disposition is to take place), and its content. See Sections
34 9-612 [Maine cite section 9-1612] (timeliness of notification),
35 9-613 [Maine cite section 9-1613] (contents of notification
36 generally), 9-614 [Maine cite section 9-1614] (contents of
37 notification in consumer-goods transactions).

38 3. Notification to Debtors and Secondary Obligors. This
39 section imposes a duty to send notification of a disposition not
40 only to the debtor but also to any secondary obligor.

2 Subsections (b) and (c) [Maine cite subsections (2) and (3)]
3 resolve an uncertainty under former Article 9 by providing that
4 secondary obligors (sureties) are entitled to receive
5 notification of an intended disposition of collateral, regardless
6 of who created the security interest in the collateral. If the
7 surety created the security interest, it would be the debtor. If
8 it did not, it would be a secondary obligor. (This Article also
9 resolves the question of the secondary obligor's ability to
10 waive, pre-default, the right to notification-waiver generally is
11 not permitted. See Section 9-602 [Maine cite section 9-1602]).
12 Section 9-605 [Maine cite section 9-1605] relieves a secured
13 party from any duty to send notification to a debtor or secondary
14 obligor unknown to the secured party.

15 Under subsection (b) [Maine cite subsection (2)], the
16 principal obligor (borrower) is not always entitled to
17 notification of disposition.

18 Example: Behnfeltd borrows on an unsecured basis, and Bruno
19 grants a security interest in her car to secure the debt.
20 Behnfeltd is a primary obligor, not a secondary obligor. As
21 such, she is not entitled to notification of disposition under
22 this section.

23
24 4. Notification to Other Secured Parties. Prior to the
25 1972 amendments to Article 9, former Section 9-504(3) required
26 the enforcing secured party to send reasonable notification of
27 the disposition:

28
29 except in the case of consumer goods to any other person who
30 has a security interest in the collateral and who has duly filed
31 a financing statement indexed in the name of the debtor in this
32 State or who is known by the secured party to have a security
33 interest in the collateral.

34
35 The 1972 amendments eliminated the duty to give notice to secured
36 parties other than those from whom the foreclosing secured party
37 had received written notice of a claim of an interest in the
38 collateral.

39
40 Many of the problems arising from dispositions of collateral
41 encumbered by multiple security interests can be ameliorated or
42 solved by informing all secured parties of an intended
43 disposition and affording them the opportunity to work with one
44 another. To this end, subsection (c)(3)(B) [Maine cite
45 subsection (3), paragraph (c), subparagraph (ii)] expands the
46 duties of the foreclosing secured party to include the duty to
47 notify (and the corresponding burden of searching the files to
48 discover) certain competing secured parties. The subsection
49 imposes a search burden that in some cases may be greater than
50

2 the pre1972 burden on foreclosing secured parties but certainly
is more modest than that faced by a new secured lender.

4 To determine who is entitled to notification, the
foreclosing secured party must determine the proper office for
6 filing a financing statement as of a particular date, measured by
reference to the "notification date," as defined in subsection
8 (a) [Maine cite subsection (1)]. This determination requires
reference to the choice-of-law provisions of Part 3. The secured
10 party must ascertain whether any financing statements covering
the collateral and indexed under the debtor's name, as the name
12 existed as of that date, in fact were filed in that office. The
foreclosing secured party generally need not notify secured
14 parties whose effective financing statements have become more
difficult to locate because of changes in the location of the
16 debtor, proceeds rules, or changes in the debtor's name.

18 Under subsection (c)(3)(C) [Maine cite subsection (3),
paragraph (c), subparagraph (iii)], the secured party also must
20 notify a secured party who has perfected a security interest by
complying with a statute or treaty described in Section 9-311(a)
22 [Maine cite section 9-1311, subsection (1)], such as a
certificate-of-title statute.

24 Subsection (e) [Maine cite subsection (5)] provides a "safe
26 harbor" that takes into account the delays that may be attendant
to receiving information from the public filing offices. It
28 provides, generally, that the secured party will be deemed to
have satisfied its notification duty under subsection (c)(3)(B)
30 [Maine cite subsection (3), paragraph (c), subparagraph (ii)] if
it requests a search from the proper office at least 20 but not
32 more than 30 days before sending notification to the debtor and
if it also sends a notification to all secured parties (and other
34 lienholders) reflected on the search report. The secured party's
duty under subsection (c)(3)(B) [Maine cite subsection (3),
36 paragraph (c), subparagraph (ii)] also will be satisfied if the
secured party requests but does not receive a search report
38 before the notification is sent to the debtor. Thus, if
subsection (e) [Maine cite subsection (5)] applies, a secured
40 party who is entitled to notification under subsection (c)(3)(B)
[Maine cite subsection (3), paragraph (c), subparagraph (ii)] has
42 no remedy against a foreclosing secured party who does not send
the notification. The foreclosing secured party has complied
44 with the notification requirement. Subsection (e) [Maine cite
subsection (5)] has no effect on the requirements of the other
46 paragraphs of subsection (c) [Maine cite subsection (3)]. For
example, if the foreclosing secured party received a notification
48 from the holder of a conflicting security interest in accordance
with subsection (c)(3)(A) [Maine cite subsection (3), paragraph
50 (c), subparagraph (i)] but failed to send to the holder a

2 notification of the disposition, the holder of the conflicting
security interest would have the right to recover any loss under
Section 9-625(b) [Maine cite section 9-1625, subsection (2)].

4
5. Authentication Requirement. Subsections (b) and (c)
6 [Maine cite subsections (2) and (3)] explicitly provide that a
notification of disposition must be "authenticated." Some cases
8 read former Section 9-504(3) as validating oral notification.

10 6. Second Try. This Article leaves to judicial resolution,
based upon the facts of each case, the question whether the
12 requirement of "reasonable notification" requires a "second try,"
i.e., whether a secured party who sends notification and learns
14 that the debtor did not receive it must attempt to locate the
debtor and send another notification.

16 7. Recognized Market; Perishable Collateral. New
18 subsection (d) [Maine cite subsection (4)] makes it clear that
there is no obligation to give notification of a disposition in
20 the case of perishable collateral or collateral customarily sold
on a recognized market (e.g., marketable securities). Former
22 Section 9-504(3) might be read (incorrectly) to relieve the
secured party from its duty to notify a debtor but not from its
24 duty to notify other secured parties in connection with
dispositions of such collateral.

26 8. Failure to Conduct Notified Disposition. Nothing in
28 this Article prevents a secured party from electing not to
conduct a disposition after sending a notification. Nor does
30 this Article prevent a secured party from electing to send a
revised notification if its plans for disposition change. This
32 assumes, however, that the secured party acts in good faith, the
revised notification is reasonable, and the revised plan for
34 disposition and any attendant delay are commercially reasonable.

36 9. Waiver. A debtor or secondary obligor may waive the
right to notification under this section only by a post-default
38 authenticated agreement. See Section 9-624(a) [Maine cite
section 9-1624, subsection (1)].

40 **§9-1612. Timeliness of notification before disposition of**
42 **collateral**

44 (1) Except as otherwise provided in subsection (2), whether
a notification is sent within a reasonable time is a question of
46 fact.

48 (2) In a transaction other than a consumer transaction, a
notification of disposition sent after default and 10 days or
50 more before the earliest time of disposition set forth in the

2 notification is sent within a reasonable time before the
3 disposition.

4
5 **Official Comment**

6 1. Source. New.

8
9 2. Reasonable Notification. Section 9-611(b) [Maine cite
10 section 9-1611, subsection (2)] requires the secured party to
11 send a "reasonable authenticated notification." Under that
12 section, as under former Section 9-504(3), one aspect of a
13 reasonable notification is its timeliness. This generally means
14 that the notification must be sent at a reasonable time in
15 advance of the date of a public disposition or the date after
16 which a private disposition is to be made. A notification that
17 is sent so near to the disposition date that a notified person
18 could not be expected to act on or take account of the
19 notification would be unreasonable.

20
21 3. Timeliness of Notification: Safe Harbor. The 10-day
22 notice period in subsection (b) [Maine cite subsection (2)] is
23 intended to be a "safe harbor" and not a minimum requirement. To
24 qualify for the "safe harbor" the notification must be sent after
25 default. A notification also must be sent in a commercially
26 reasonable manner. See Section 9-611(b) [Maine cite section
27 9-1611, subsection (2)] ("reasonable authenticated
28 notification"). Those requirements prevent a secured party from
29 taking advantage of the "safe harbor" by, for example, giving the
30 debtor a notification at the time of the original extension of
31 credit or sending the notice by surface mail to a debtor overseas.

32 **§9-1613. Contents and form of notification before disposition of**
33 **collateral: general**

34
35 Except in a consumer-goods transaction, the following rules
36 apply.

37
38 (1) The contents of a notification of disposition are
39 sufficient if the notification:

40
41 (a) Describes the debtor and the secured party;

42
43 (b) Describes the collateral that is the subject of the
44 intended disposition;

45
46 (c) States the method of intended disposition;
47
48

2 You can get the property back at any time before we sell it by
4 paying us the full amount you owe (not just the past due
6 payments), including our expenses. To learn the exact amount you
8 must pay, call us at [telephone number].

10 If you want us to explain to you in writing how we have figured
12 the amount that you owe us, you may call us at [telephone number]
14 [or write us at [secured party's address]] and request a written
16 explanation. [We will charge you \$ _____ for the explanation if
18 we sent you another written explanation of the amount you owe us
20 within the last 6 months.]

22 If you need more information about the sale, call us at
24 [telephone number] [or write us at [secured party's address]].

26 We are sending this notice to the following other people who have
28 an interest in [describe collateral] or who owe money under your
30 agreement.

32 [Names of all other debtors and obligors, if any]

34 [End of Form]

36 (4) A notification in the form of subsection (3) is
38 sufficient, even if additional information appears at the end of
40 the form.

42 (5) A notification in the form of subsection (3) is
44 sufficient, even if it includes errors in information not
46 required by subsection (1), unless the error is misleading with
48 respect to rights arising under this Article.

50 (6) If a notification under this section is not in the form
of subsection (3), law other than this Article determines the
effect of including information not required by subsection (1).

38

Official Comment

40

1. Source. New.

42

44 2. Notification in Consumer-Goods Transactions. Paragraph
46 (1) [Maine cite subsection (1)] sets forth the information
48 required for a reasonable notification in a consumer-goods
transaction. A notification that lacks any of the information
set forth in paragraph (1) [Maine cite subsection (1)] is
insufficient as a matter of law. Compare Section 9-613(2) [Maine
cite section 9-1613, subsection (2)], under which the trier of
fact may find a notification to be sufficient even if it lacks

2 some information listed in paragraph (1) [Maine cite subsection
2 (1)] of that section.

4 3. Safe-Harbor Form of Notification; Errors in
Information. Although paragraph (2) [Maine cite subsection (2)]
6 provides that a particular phrasing of a notification is not
required, paragraph (3) [Maine cite subsection (3)] specifies a
8 safe-harbor form that, when properly completed, satisfies
paragraph (1) [Maine cite subsection (1)]. Paragraphs (4), (5),
10 and (6) [Maine cite subsections (4), (5) and (6)] contain special
rules applicable to erroneous and additional information. Under
12 paragraph (4) [Maine cite subsection (4)], a notification in the
safe-harbor form specified in paragraph (3) [Maine cite
14 subsection (3)] is not rendered insufficient if it contains
additional information at the end of the form. Paragraph (5)
16 [Maine cite subsection (5)] provides that non-misleading errors
in information contained in a notification are permitted if the
18 safe-harbor form is used and if the errors are in information not
required by paragraph (1) [Maine cite subsection (1)]. Finally,
20 if a notification is in a form other than the paragraph (3)
[Maine cite subsection (3)] safe-harbor form, other law
22 determines the effect of including in the notification
information other than that required by paragraph (1) [Maine cite
24 subsection (1)].

26 **§9-1615. Application of proceeds of disposition; liability for**
28 **deficiency and right to surplus**

30 (1) A secured party shall apply or pay over for application
the cash proceeds of disposition in the following order to:

32 (a) The reasonable expenses of retaking, holding, preparing
for disposition, processing and disposing and, to the extent
34 provided for by agreement and not prohibited by law,
reasonable attorney's fees and legal expenses incurred by
36 the secured party;

38 (b) The satisfaction of obligations secured by the security
interest or agricultural lien under which the disposition is
40 made;

42 (c) The satisfaction of obligations secured by any
subordinate security interest in or other subordinate lien
44 on the collateral if:

46 (i) The secured party receives from the holder of the
subordinate security interest or other lien an
48 authenticated demand for proceeds before distribution
of the proceeds is completed; and

50

2 (ii) In a case in which a consignor has an interest in
3 the collateral, the subordinate security interest or
4 other lien is senior to the interest of the consignor;
5 and

6 (d) A secured party that is a consignor of the collateral
7 if the secured party receives from the consignor an
8 authenticated demand for proceeds before distribution of the
9 proceeds is completed.

10 (2) If requested by a secured party, a holder of a
11 subordinate security interest or other lien shall furnish
12 reasonable proof of the interest or lien within a reasonable
13 time. Unless the holder does so, the secured party need not
14 comply with the holder's demand under subsection (1), paragraph
15 (c).

16 (3) A secured party need not apply or pay over for
17 application noncash proceeds of disposition under this section
18 unless the failure to do so would be commercially unreasonable.
19 A secured party that applies or pays over for application noncash
20 proceeds shall do so in a commercially reasonable manner.

21 (4) If the security interest under which a disposition is
22 made secures payment or performance of an obligation, after
23 making the payments and applications required by subsection (1)
24 and permitted by subsection (3):

25 (a) Unless subsection (1), paragraph (d) requires the
26 secured party to apply or pay over cash proceeds to a
27 consignor, the secured party shall account to and pay a
28 debtor for any surplus; and

29 (b) The obligor is liable for any deficiency.

30 (5) If the underlying transaction is a sale of accounts,
31 chattel paper, payment intangibles or promissory notes:

32 (a) The debtor is not entitled to any surplus; and

33 (b) The obligor is not liable for any deficiency.

34 (6) The surplus or deficiency following a disposition is
35 calculated based on the amount of proceeds that would have been
36 realized in a disposition complying with this part to a
37 transferee other than the secured party, a person related to the
38 secured party or a secondary obligor if:

39

2 consignor's interest will not be entitled to any proceeds. In
3 like fashion, under subsection (d)(1) [Maine cite subsection (4),
4 paragraph (a)] the debtor is not entitled to a surplus when the
5 enforcing secured party is required to pay over proceeds to a
6 consignor.

7
8 3. Noncash Proceeds. Subsection (c) [Maine cite subsection
9 (3)] addresses the application of noncash proceeds of a
10 disposition, such as a note or lease. The explanation in Section
11 9-608 [Maine cite section 9-1608], Comment 4, generally applies
12 to this subsection.

13
14 Example: A secured party in the business of selling or
15 financing automobiles takes possession of collateral (an
16 automobile) following its debtor's default. The secured party
17 decides to sell the automobile in a private disposition under
18 Section 9-610 [Maine cite section 9-1610] and sends appropriate
19 notification under Section 9-611 [Maine cite section 9-1611].
20 After undertaking its normal credit investigation and in
21 accordance with its normal credit policies, the secured party
22 sells the automobile on credit, on terms typical of the credit
23 terms normally extended by the secured party in the ordinary
24 course of its business. The automobile stands as collateral for
25 the remaining balance of the price. The noncash proceeds
26 received by the secured party are chattel paper. The secured
27 party may wish to credit its debtor (the assignor) with the
28 principal amount of the chattel paper or may wish to credit the
29 debtor only as and when the payments are made on the chattel
30 paper by the buyer.

31
32 Under subsection (c) [Maine cite subsection (3)], the secured
33 party is under no duty to apply the noncash proceeds (here, the
34 chattel paper) or their value to the secured obligation unless
35 its failure to do so would be commercially unreasonable. If a
36 secured party elects to apply the chattel paper to the
37 outstanding obligation, however, it must do so in a commercially
38 reasonable manner. The facts in the example indicate that it
39 would be commercially unreasonable for the secured party to fail
40 to apply the value of the chattel paper to the original debtor's
41 secured obligation. Unlike the example in Comment 4 to Section
42 9-608 [Maine cite section 9-1608], the noncash proceeds received
43 in this example are of the type that the secured party regularly
44 generates in the ordinary course of its financing business in
45 nonforeclosure transactions. The original debtor should not be
46 exposed to delay or uncertainty in this situation. Of course,
47 there will be many situations that fall between the examples
48 presented in the Comment to Section 9-608 [Maine cite section
49 9-1608] and in this Comment. This Article leaves their
50 resolution to the court based on the facts of each case.

2 One would expect that where noncash proceeds are or may be
3 material, the secured party and debtor would agree to more
4 specific standards in an agreement entered into before or after
5 default. The parties may agree to the method of application of
6 noncash proceeds if the method is not manifestly unreasonable.
7 See Section 9-603 [Maine cite section 9-1603].

8 When the secured party is not required to "apply or pay over
9 for application noncash proceeds," the proceeds nonetheless
10 remain collateral subject to this Article. See Section 9-608
11 [Maine cite section 9-1608], Comment 4.

12 4. Surplus and Deficiency. Subsection (d) [Maine cite
13 subsection (4)] deals with surplus and deficiency. It revises
14 former Section 9-504(2) by imposing an explicit requirement that
15 the secured party "pay" the debtor for any surplus, while
16 retaining the secured party's duty to "account." Inasmuch as the
17 debtor may not be an obligor, subsection (d) [Maine cite
18 subsection (4)] provides that the obligor (not the debtor) is
19 liable for the deficiency. The special rule governing surplus
20 and deficiency when receivables have been sold likewise takes
21 into account the distinction between a debtor and an obligor.
22 Subsection (d) [Maine cite subsection (4)] also addresses the
23 situation in which a consignor has an interest that is
24 subordinate to the security interest being enforced.

25 5. Collateral Under New Ownership. When the debtor sells
26 collateral subject to a security interest, the original debtor
27 (creator of the security interest) is no longer a debtor inasmuch
28 as it no longer has a property interest in the collateral; the
29 buyer is the debtor. See Section 9-102 [Maine cite section
30 9-1102]. As between the debtor (buyer of the collateral) and the
31 original debtor (seller of the collateral), the debtor (buyer)
32 normally would be entitled to the surplus following a
33 disposition. Subsection (d) [Maine cite subsection (4)]
34 therefore requires the secured party to pay the surplus to the
35 debtor (buyer), not to the original debtor (seller) with which it
36 has dealt. But, because this situation typically arises as a
37 result of the debtor's wrongful act, this Article does not expose
38 the secured party to the risk of determining ownership of the
39 collateral. If the secured party does not know about the buyer
40 and accordingly pays the surplus to the original debtor, the
41 exculpatory provisions of this Article exonerate the secured
42 party from liability to the buyer. See Sections 9-605, 9-628(a),
43 (b) [Maine cite section 9-1605 and section 9-1628, subsections
44 (1), (2)]. If a debtor sells collateral free of a security
45 interest, as in a sale to a buyer in ordinary course of business
46 (see Section 9-320(a) [Maine cite section 9-1320, subsection
47 (1)]), the property is no longer collateral and the buyer is not
48 a debtor.
49
50

2 6. Certain "Low-Price" Dispositions. Subsection (f) [Maine
3 cite subsection (6)] provides a special method for calculating a
4 deficiency or surplus when the secured party, a person related to
5 the secured party (defined in Section 9-102 [Maine cite section
6 9-1102]), or a secondary obligor acquires the collateral at a
7 foreclosure disposition. It recognizes that when the foreclosing
8 secured party or a related party is the transferee of the
9 collateral, the secured party sometimes lacks the incentive to
10 maximize the proceeds of disposition. As a consequence, the
11 disposition may comply with the procedural requirements of this
12 Article (e.g., it is conducted in a commercially reasonable
13 manner following reasonable notice) but nevertheless fetch a low
14 price.

16 Subsection (f) [Maine cite subsection (6)] adjusts for this
17 lack of incentive. If the proceeds of a disposition of
18 collateral to a secured party, a person related to the secured
19 party, or a secondary obligor are "significantly below the range
20 of proceeds that a complying disposition to a person other than
21 the secured party, a person related to the secured party, or a
22 secondary obligor would have brought," then instead of
23 calculating a deficiency (or surplus) based on the actual net
24 proceeds, the calculation is based upon the amount that would
25 have been received in a commercially reasonable disposition to a
26 person other than the secured party, a person related to the
27 secured party, or a secondary obligor. Subsection (f) [Maine
28 cite subsection (6)] thus rejects the view that the secured
29 party's receipt of such a price necessarily constitutes
30 noncompliance with Part 6. However, such a price may suggest the
31 need for greater judicial scrutiny. See Section 9-610 [Maine
32 cite section 9-1610], Comment 10.

34 7. "Person Related To." Section 9-102 [Maine cite section
35 9-1102] defines "person related to." That term is a key element
36 of the system provided in subsection (f) [Maine cite subsection
37 (6)] for low-price dispositions. One part of the definition
38 applies when the secured party is an individual, and the other
39 applies when the secured party is an organization. The
40 definition is patterned closely on the corresponding definition
41 in Section 1.301(32) of the Uniform Consumer Credit Code.

42 **§9-1616. Explanation of calculation of surplus or deficiency**

44 (1) In this section:

46 (a) "Explanation" means a writing that:

48 (i) States the amount of the surplus or deficiency;

50

2 (ii) Provides an explanation in accordance with
3 subsection (3) of how the secured party calculated the
4 surplus or deficiency;

6 (iii) States, if applicable, that future debits,
7 credits, charges including additional credit service
8 charges or interest, rebates and expenses may affect
9 the amount of the surplus or deficiency; and

10 (iv) Provides a telephone number or mailing address
11 from which additional information concerning the
12 transaction is available; and

14 (b) "Request" means a record:

16 (i) Authenticated by a debtor or consumer obligor;

18 (ii) Requesting that the recipient provide an
19 explanation; and

20 (iii) Sent after disposition of the collateral under
21 section 9-1610.

24 (2) In a consumer-goods transaction in which the debtor is
25 entitled to a surplus or a consumer obligor is liable for a
26 deficiency under section 9-1615, the secured party shall:

28 (a) Send an explanation to the debtor or consumer obligor,
29 as applicable, after the disposition and:

30 (i) Before or when the secured party accounts to the
31 debtor and pays any surplus or first makes written
32 demand on the consumer obligor after the disposition
33 for payment of the deficiency; and

34 (ii) Within 14 days after receipt of a request; or

36 (b) In the case of a consumer obligor who is liable for a
37 deficiency, within 14 days after receipt of a request, send
38 to the consumer obligor a record waiving the secured party's
39 right to a deficiency.

40 (3) To comply with subsection (1), paragraph (a),
41 subparagraph (ii), a writing must provide the following
42 information in the following order:

43 (a) The aggregate amount of obligations secured by the
44 security interest under which the disposition was made and,
45 if the amount reflects a rebate of unearned interest or
46 if the amount reflects a rebate of unearned interest or
47 if the amount reflects a rebate of unearned interest or
48 if the amount reflects a rebate of unearned interest or

2 credit service charge, an indication of that fact,
calculated as of a specified date:

4 (i) If the secured party takes or receives possession
of the collateral after default, not more than 35 days
6 before the secured party takes or receives possession;
8 or

10 (ii) If the secured party takes or receives possession
of the collateral before default or does not take
12 possession of the collateral, not more than 35 days
before the disposition;

14 (b) The amount of proceeds of the disposition;

16 (c) The aggregate amount of the obligations after deducting
the amount of proceeds;

18 (d) The amount, in the aggregate or by type, and types of
20 expenses, including expenses of retaking, holding, preparing
for disposition, processing and disposing of the collateral,
22 and attorney's fees secured by the collateral that are known
to the secured party and relate to the current disposition;

24 (e) The amount, in the aggregate or by type, and types of
26 credits, including rebates of interest or credit service
charges, to which the obligor is known to be entitled and
28 that are not reflected in the amount in paragraph (a); and

30 (f) The amount of the surplus or deficiency.

32 (4) A particular phrasing of the explanation is not
required. An explanation complying substantially with the
34 requirements of subsection (1) is sufficient, even if it includes
minor errors that are not seriously misleading.

36 (5) A debtor or consumer obligor is entitled without charge
38 to one response to a request under this section during any
6-month period in which the secured party did not send to the
40 debtor or consumer obligor an explanation pursuant to subsection
(2), paragraph (a). The secured party may require payment of a
42 charge not exceeding \$25 for each additional response.

44

Official Comment

46

1. Source. New.

48

50 2. Duty to Send Information Concerning Surplus or
Deficiency. This section reflects the view that, in every

2 consumer-goods transaction, the debtor or obligor is entitled to
3 know the amount of a surplus or deficiency and the basis upon
4 which the surplus or deficiency was calculated. Under subsection
5 (b)(1) [Maine cite subsection (2), paragraph (a)], a secured
6 party is obligated to provide this information (an "explanation,"
7 defined in subsection (a)(1) [Maine cite subsection (1),
8 paragraph (a)]) no later than the time that it accounts for and
9 pays a surplus or the time of its first written attempt to
10 collect the deficiency. The obligor need not make a request for
11 an accounting in order to receive an explanation. A secured
12 party who does not attempt to collect a deficiency in writing or
13 account for and pay a surplus has no obligation to send an
14 explanation under subsection (b)(1) [Maine cite subsection (2),
15 paragraph (a)] and, consequently, cannot be liable for
16 noncompliance.

17 A debtor or secondary obligor need not wait until the
18 secured party commences written collection efforts in order to
19 receive an explanation of how a deficiency or surplus was
20 calculated. Subsection (b)(2) [Maine cite subsection (2),
21 paragraph (b)] obliges the secured party to send an explanation
22 within 14 days after it receives a "request" (defined in
23 subsection (a)(2) [Maine cite subsection (1), paragraph (b)]).

24
25 3. Explanation of Calculation of Surplus or Deficiency.
26 Subsection (c) [Maine cite subsection (3)] contains the
27 requirements for how a calculation of a surplus or deficiency
28 must be explained in order to satisfy subsection (a)(1)(B) [Maine
29 cite subsection (1), paragraph (a), subparagraph (ii)]. It gives
30 a secured party some discretion concerning rebates of interest or
31 credit service charges. The secured party may include these
32 rebates in the aggregate amount of obligations secured, under
33 subsection (c)(1) [Maine cite subsection (3), paragraph (a)], or
34 may include them with other types of rebates and credits under
35 subsection (c)(5) [Maine cite subsection (3), paragraph (e)].
36 Rebates of interest or credit service charges are the only types
37 of rebates for which this discretion is provided. If the secured
38 party provides an explanation that includes rebates of
39 pre-computed interest, its explanation must so indicate. The
40 expenses and attorney's fees to be described pursuant to
41 subsection (c)(4) [Maine cite subsection (3), paragraph (d)] are
42 those relating to the most recent disposition, not those that may
43 have been incurred in connection with earlier enforcement efforts
44 and which have been resolved by the parties.

45
46 4. Liability for Noncompliance. A secured party who fails
47 to comply with subsection (b)(2) [Maine cite subsection (2),
48 paragraph (b)] is liable for any loss caused plus \$500. See
49 Section 9-625(b), (c), (e)(6) [Maine cite section 9-1625,
50 subsection (2), subsection (3), subsection (5), paragraph (f)].

2 A secured party who fails to send an explanation under subsection
3 (b)(1) [Maine cite subsection (2), paragraph (a)] is liable for
4 any loss caused plus, if the noncompliance was "part of a
5 pattern, or consistent with a practice of noncompliance," \$500.
6 See Section 9-625(b), (c), (e)(5) [Maine cite section 9-1625,
7 subsection (2), subsection (3), subsection (5), paragraph (e)].
8 However, a secured party who fails to comply with this section is
9 not liable for statutory minimum damages under Section
10 9-625(c)(2) [Maine cite section 9-1625, subsection (3), paragraph
11 (b)]. See Section 9-628(d) [Maine cite section 9-1628,
12 subsection (4)].

13 **§9-1617. Rights of transferee of collateral**

14 (1) A secured party's disposition of collateral after
15 default:

16 (a) Transfers to a transferee for value all of the debtor's
17 rights in the collateral;

18 (b) Discharges the security interest under which the
19 disposition is made; and

20 (c) discharges any subordinate security interest or other
21 subordinate lien.

22 (2) A transferee that acts in good faith takes free of the
23 rights and interests described in subsection (1), even if the
24 secured party fails to comply with this Article or the
25 requirements of any judicial proceeding.

26 (3) If a transferee does not take free of the rights and
27 interests described in subsection (1), the transferee takes the
28 collateral subject to:

29 (a) The debtor's rights in the collateral;

30 (b) The security interest or agricultural lien under which
31 the disposition is made; and

32 (c) Any security interest or other lien.

33 **Official Comment**

34 1. Source. Former Section 9504(4).

35 2. Title Taken by Good-Faith Transferee. Subsection (a)
36 [Maine cite subsection (1)] sets forth the rights acquired by
37 persons who qualify under subsection (b)-transferees [Maine cite
38

2 subsection (2) - transferees] who act in good faith. Such a
person is a "transferee," inasmuch as a buyer at a foreclosure
4 sale does not meet the definition of "purchaser" in Section 1-201
(the transfer is not, vis-a-vis the debtor, "voluntary"). By
6 virtue of the expanded definition of the term "debtor" in Section
9-102 [Maine cite section 9-1102], subsection (a) [Maine cite
8 subsection (1)] makes clear that the ownership interest of a
person who bought the collateral subject to the security interest
10 is terminated by a subsequent disposition under this Part. Such
a person is a debtor under this Article. Under former Article 9,
12 the result arguably was the same, but the statute was less
clear. Under subsection (a) [Maine cite subsection (1)], a
14 disposition normally discharges the security interest being
foreclosed and any subordinate security interests and other liens.

16 A disposition has the effect specified in subsection (a)
[Maine cite subsection (1)], even if the secured party fails to
18 comply with this Article. An aggrieved person (e.g., the holder
of a subordinate security interest to whom a notification
20 required by Section 9-611 [Maine cite section 9-1611] was not
sent) has a right to recover any loss under Section 9-625(b)
22 [Maine cite section 9-1625, subsection (2)].

24 3. Unitary Standard in Public and Private Dispositions.
Subsection (b) [Maine cite subsection (2)] now contains a unitary
26 standard that applies to transferees in both private and public
dispositions--acting in good faith. However, this change from
28 former Section 9-504(4) should not be interpreted to mean that a
transferee acts in good faith even though it has knowledge of
30 defects or buys in collusion, standards applicable to public
dispositions under the former section. Properly understood,
32 those standards were specific examples of the absence of good
faith.

34 4. Title Taken by Nonqualifying Transferee. Subsection (c)
36 [Maine cite subsection (3)] specifies the consequences for a
transferee who does not qualify for protection under subsections
38 (a) and (b) [Maine cite subsections (1) and (2)] (i.e., a
transferee who does not act in good faith). The transferee takes
40 subject to the rights of the debtor, the enforcing secured party,
and other security interests or other liens.

42 **§9-1618. Rights and duties of certain secondary obligors**

44 (1) A secondary obligor acquires the rights and becomes
46 obligated to perform the duties of the secured party after the
secondary obligor:

48 (a) Receives an assignment of a secured obligation from the
50 secured party;

2 subsection (a)(1) [Maine cite subsection (1), paragraph (a)] is
not implicated. Similarly, subsection (a)(3) [Maine cite
4 subsection (1), paragraph (c)] applies only when the secondary
obligor is subrogated to the secured party's rights with respect
6 to collateral. Thus, this subsection will not be implicated if a
secondary obligor discharges the debtor's unsecured obligation
8 for a post-disposition deficiency. Similarly, if the secured
party disposes of some of the collateral and the secondary
10 obligor thereafter discharges the remaining obligation,
subsection (a) [Maine cite subsection (1)] applies only with
12 respect to rights and duties concerning the remaining collateral,
and, under subsection (b) [Maine cite subsection (2)], the
subrogation is not a disposition of the remaining collateral.
14

As discussed more fully in Comment 3, a secondary obligor
16 may receive a transfer of collateral in a disposition under
Section 9-610 [Maine cite section 9-1610] in exchange for a
18 payment that is applied against the secured obligation.
However, a secondary obligor who pays and receives a transfer of
20 collateral does not necessarily become subrogated to the rights
of the secured party as contemplated by subsection (a)(3) [Maine
22 cite subsection (1), paragraph (c)]. Only to the extent the
secondary obligor makes a payment in satisfaction of its
24 secondary obligation would it become subrogated. To the extent
its payment constitutes the price of the collateral in a Section
26 9-610 [Maine cite section 9-1610] disposition by the secured
party, the secondary obligor would not be subrogated. Thus, if
28 the amount paid by the secondary obligor for the collateral in a
Section 9-610 [Maine cite section 9-1610] disposition is itself
30 insufficient to discharge the secured obligation, but the
secondary obligor makes an additional payment that satisfies the
32 remaining balance, the secondary obligor would be subrogated to
the secured party's deficiency claim. However, the duties of the
34 secured party as such would have come to an end with respect to
that collateral. In some situations the capacity in which the
36 payment is made may be unclear. Accordingly, the parties should
in their relationship provide clear evidence of the nature and
38 circumstances of the payment by the secondary obligor.

40 3. Transfer of Collateral to Secondary Obligor. It is
possible for a secured party to transfer collateral to a
42 secondary obligor in a transaction that is a disposition under
Section 9-610 [Maine cite section 9-1610] and that establishes a
44 surplus or deficiency under Section 9-615 [Maine cite section
9-1615]. Indeed, this Article includes a special rule, in
46 Section 9-615(f) [Maine cite section 9-1615, subsection (6)], for
establishing a deficiency in the case of some dispositions to,
48 inter alia, secondary obligors. This Article rejects the view,
which some may have ascribed to former Section 9-504(5), that a
50 transfer of collateral to a recourse party can never constitute a

2 disposition of collateral which discharges a security interest.
3 Inasmuch as a secured party could itself buy collateral at its
4 own public sale, it makes no sense to prohibit a recourse party
ever from buying at the sale.

6 4. Timing and Scope of Obligations. Under subsection (a)
7 [Maine cite subsection (1)], a recourse party acquires rights and
8 incurs obligations only "after" one of the specified
9 circumstances occurs. This makes clear that when a successor
10 assignee, transferee, or subrogee becomes obligated it does not
11 assume any liability for earlier actions or inactions of the
12 secured party whom it has succeeded unless it agrees to do so.
13 Once the successor becomes obligated, however, it is responsible
14 for complying with the secured party's duties thereafter. For
15 example, if the successor is in possession of collateral, then it
16 has the duties specified in Section 9-207 [Maine cite section
9-1207].

18 Under subsection (b) [Maine cite subsection (2)], the same
19 event (assignment, transfer, or subrogation) that gives rise to
20 rights to, and imposes obligations on, a successor relieves its
21 predecessor of any further duties under this Article. For
22 example, if the security interest is enforced after the secured
23 obligation is assigned, the assignee-but not the assignor-has the
24 duty to comply with this Part. Similarly, the assignment does
25 not excuse the assignor from liability for failure to comply with
26 duties that arose before the event or impose liability on the
27 assignee for the assignor's failure to comply.

30 **§9-1619. Transfer of record or legal title**

32 (1) In this section, "transfer statement" means a record
33 authenticated by a secured party stating:

34 (a) That the debtor has defaulted in connection with an
35 obligation secured by specified collateral;

36 (b) That the secured party has exercised its post-default
37 remedies with respect to the collateral;

38 (c) That, by reason of the exercise, a transferee has
39 acquired the rights of the debtor in the collateral; and

40 (d) The name and mailing address of the secured party,
41 debtor and transferee.

42 (2) A transfer statement entitles the transferee to the
43 transfer of record of all rights of the debtor in the collateral
44 specified in the statement in any official filing, recording,
45 registration or certificate-of-title system covering the

2 collateral. If a transfer statement is presented with the
3 applicable fee and request form to the official or office
4 responsible for maintaining the system, the official or office
5 shall:

6 (a) Accept the transfer statement;

8 (b) Promptly amend its records to reflect the transfer; and

10 (c) If applicable, issue a new appropriate certificate of
11 title in the name of the transferee.

12 (3) A transfer of the record or legal title to collateral
13 to a secured party under subsection (2) or otherwise is not of
14 itself a disposition of collateral under this Article and does
15 not of itself relieve the secured party of its duties under this
16 Article.

18 **Official Comment**

20 1. Source. New.

22 2. Transfer of Record or Legal Title. Potential buyers of
23 collateral that is covered by a certificate of title (e.g., an
24 automobile) or is subject to a registration system (e.g., a
25 copyright) typically require as a condition of their purchase
26 that the certificate or registry reflect their ownership. In
27 many cases, this condition can be met only with the consent of
28 the record owner. If the record owner is the debtor and, as may
29 be the case after the default, the debtor refuses to cooperate,
30 the secured party may have great difficulty disposing of the
31 collateral.

32 Subsection (b) [Maine cite subsection (2)] provides a simple
33 mechanism for obtaining record or legal title, for use primarily
34 when other law does not provide one. Of course, use of this
35 mechanism will not be effective to clear title to the extent that
36 subsection (b) [Maine cite subsection (2)] is preempted by
37 federal law. Subsection (b) [Maine cite subsection (2)]
38 contemplates a transfer of record or legal title to a third
39 party, following a secured party's exercise of its disposition or
40 acceptance remedies under this Part, as well as a transfer by a
41 debtor to a secured party prior to the secured party's exercise
42 of those remedies. Under subsection (c) [Maine cite subsection
43 (3)], a transfer of record or legal title (under subsection (b)
44 [Maine cite subsection (2)] or under other law) to a secured
45 party prior to the exercise of those remedies merely puts the
46 secured party in a position to pass legal or record title to a
47 transferee at foreclosure. A secured party who has obtained
48 record or legal title retains its duties with respect to
49

2 enforcement of its security interest, and the debtor retains its
rights as well.

4 3. Title-Clearing Systems Under Other Law. Applicable
6 non-UCC law (e.g., a certificate-of-title statute, federal
registry rules, or the like) may provide a means by which the
8 secured party may obtain or transfer record or legal title for
the purpose of a disposition of the property under this Article.
10 The mechanism provided by this section is in addition to any
title-clearing provision under law other than this Article.

12 **§9-1620. Acceptance of collateral in full or partial**
14 **satisfaction of obligation; compulsory**
disposition of collateral

16 (1) Except as otherwise provided in subsection (7), a
18 secured party may accept collateral in full or partial
satisfaction of the obligation it secures only if:

20 (a) The debtor consents to the acceptance under subsection
22 (3);

24 (b) The secured party does not receive, within the time set
forth in subsection (4), a notification of objection to the
26 proposal authenticated by:

28 (i) A person to which the secured party was required
to send a proposal under section 9-1621; or

30 (ii) Any other person, other than the debtor, holding
32 an interest in the collateral subordinate to the
security interest that is the subject of the proposal;

34 (c) If the collateral is consumer goods, the collateral is
36 not in the possession of the debtor when the debtor consents
to the acceptance; and

38 (d) Subsection (5) does not require the secured party to
40 dispose of the collateral or the debtor waives the
requirement pursuant to section 9-1624.

42 (2) A purported or apparent acceptance of collateral under
44 this section is ineffective unless:

46 (a) The secured party consents to the acceptance in an
authenticated record or sends a proposal to the debtor; and

48 (b) The conditions of subsection (1) are met.

50 (3) For purposes of this section:

2 (a) A debtor consents to an acceptance of collateral in
4 partial satisfaction of the obligation it secures only if
 the debtor agrees to the terms of the acceptance in a record
6 authenticated after default; and

8 (b) A debtor consents to an acceptance of collateral in
 full satisfaction of the obligation it secures only if the
10 debtor agrees to the terms of the acceptance in a record
 authenticated after default or the secured party:

12 (i) Sends to the debtor after default a proposal that
 is unconditional or subject only to a condition that
14 collateral not in the possession of the secured party
 be preserved or maintained;

16 (ii) In the proposal, proposes to accept collateral in
18 full satisfaction of the obligation it secures; and

20 (iii) Does not receive a notification of objection
22 authenticated by the debtor within 20 days after the
24 proposal is sent.

26 (4) To be effective under subsection (1), paragraph (b), a
 notification of objection must be received by the secured party:

28 (a) In the case of a person to which the proposal was sent
30 pursuant to section 9-1621 within 20 days after notification
 was sent to that person; and

32 (b) In other cases:

34 (i) Within 20 days after the last notification was
 sent pursuant to section 9-1621; or

36 (ii) If a notification was not sent, before the debtor
38 consents to the acceptance under subsection (3).

40 (5) A secured party that has taken possession of collateral
42 shall dispose of the collateral pursuant to section 9-1610 within
 the time specified in subsection (6) if:

44 (a) Sixty percent of the cash price has been paid in the
46 case of a purchase-money security interest in consumer
 goods; or

48 (b) Sixty percent of the principal amount of the obligation
50 secured has been paid in the case of a nonpurchase-money
 security interest in consumer goods.

2 cite section 9-1622, subsection (1)] sets forth the effect of an
acceptance of collateral.

4 3. Conditions to Effective Acceptance. Subsection (a)
[Maine cite subsection (1)] contains the conditions necessary to
6 the effectiveness of an acceptance of collateral. Subsection
(a)(1) [Maine cite subsection (1), paragraph (a)] requires the
8 debtor's consent. Under subsections (c)(1) and (c)(2) [Maine
cite subsection (3), paragraphs (a) and (b)], the debtor may
10 consent by agreeing to the acceptance in writing after default.
Subsection (c)(2) [Maine cite subsection (3), paragraph
12 (b)] contains an alternative method by which to satisfy the
debtor's-consent condition in subsection (a)(1) [Maine cite
14 subsection (1), paragraph (a)]. It follows the
proposal-and-objection model found in former Section 9-505: The
16 debtor consents if the secured party sends a proposal to the
debtor and does not receive an objection within 20 days. Under
18 subsection (c)(1) [Maine cite subsection (3), paragraph (a)],
however, that silence is not deemed to be consent with respect to
20 acceptances in partial satisfaction. Thus, a secured party who
wishes to conduct a "partial strict foreclosure" must obtain the
22 debtor's agreement in a record authenticated after default. In
all other respects, the conditions necessary to an effective
24 partial strict foreclosure are the same as those governing
acceptance of collateral in full satisfaction. (But see
26 subsection (g) [Maine cite subsection (7)], prohibiting partial
strict foreclosure of a security interest in consumer
28 transactions.)

30 The time when a debtor consents to a strict foreclosure is
significant in several circumstances under this section and the
32 following one. See Sections 9-620(a)(1), (d)(2) [Maine cite
section 9-1620, subsection (1), paragraph (a), subsection (4),
34 paragraph (b)], 9-621(a)(1), (a)(2), (a)(3) [Maine cite section
9-1621, subsection (1), paragraphs (a), (b) and (c)]. For
36 purposes of determining the time of consent, a debtor's
conditional consent constitutes consent.

38 Subsection (a)(2) [Maine cite subsection (1), paragraph (b)]
40 contains the second condition to the effectiveness of an
acceptance under this section-the absence of a timely objection
42 from a person holding a junior interest in the collateral or from
a secondary obligor. Any junior party-secured party or
44 lienholder-is entitled to lodge an objection to a proposal, even
if that person was not entitled to notification under Section
46 9-621 [Maine cite section 9-1621]. Subsection (d) [Maine cite
subsection (4)], discussed below, indicates when an objection is
48 timely.

2 Subsections (a)(3) and (a)(4) [Maine cite subsection (1),
paragraphs (c) and (d)] contain special rules for transactions in
4 which consumers are involved. See Comment 12.

6 4. Proposals. Section 9-102 [Maine cite section 9-1102]
defines the term "proposal." It is necessary to send a
8 "proposal" to the debtor only if the debtor does not agree to an
acceptance in an authenticated record as described in subsection
10 (c)(1) or (c)(2)[Maine cite subsection (3), paragraph (a) or
(b)]. Section 9-621(a) [Maine cite section 9-1621, subsection
12 (1)] determines whether it is necessary to send a proposal to
third parties. A proposal need not take any particular form as
14 long as it sets forth the terms under which the secured party is
willing to accept collateral in satisfaction. A proposal to
16 accept collateral should specify the amount (or a means of
calculating the amount, such as by including a per diem accrual
18 figure) of the secured obligations to be satisfied, state the
conditions (if any) under which the proposal may be revoked, and
20 describe any other applicable conditions. Note, however, that a
conditional proposal generally requires the debtor's agreement in
22 order to take effect. See subsection (c) [Maine cite subsection
(3)].

24 5. Secured Party's Agreement; No "Constructive" Strict
Foreclosure. The conditions of subsection (a) [Maine cite
26 subsection (1)] relate to actual or implied consent by the debtor
and any secondary obligor or holder of a junior security interest
28 or lien. To ensure that the debtor cannot unilaterally cause an
acceptance of collateral, subsection (b) [Maine cite subsection
30 (2)] provides that compliance with these conditions is necessary
but not sufficient to cause an acceptance of collateral. Rather,
32 under subsection (b) [Maine cite subsection (2)], acceptance does
not occur unless, in addition, the secured party consents to the
34 acceptance in an authenticated record or sends to the debtor a
proposal. For this reason, a mere delay in collection or
36 disposition of collateral does not constitute a "constructive"
strict foreclosure. Instead, delay is a factor relating to
38 whether the secured party acted in a commercially reasonable
manner for purposes of Section 9-607 or 9-610 [Maine cite section
40 9-1607 or section 9-1610]. A debtor's voluntary surrender of
collateral to a secured party and the secured party's acceptance
42 of possession of the collateral does not, of itself, necessarily
raise an implication that the secured party intends or is
44 proposing to accept the collateral in satisfaction of the secured
obligation under this section.

46 6. When Acceptance Occurs. This section does not impose
48 any formalities or identify any steps that a secured party must
take in order to accept collateral once the conditions of
50 subsections (a) and (b) [Maine cite subsections (1) and (2)] have

2 been met. Absent facts or circumstances indicating a contrary
4 intention, the fact that the conditions have been met provides a
6 sufficient indication that the secured party has accepted the
8 collateral on the terms to which the secured party has consented
10 or proposed and the debtor has consented or failed to object.
12 Following a proposal, acceptance of the collateral normally is
14 automatic upon the secured party's becoming bound and the time
16 for objection passing. As a matter of good business practice, an
enforcing secured party may wish to memorialize its acceptance
following a proposal, such as by notifying the debtor that the
strict foreclosure is effective or by placing a written record to
that effect in its files. The secured party's agreement to
accept collateral is self-executing and cannot be breached. The
secured party is bound by its agreement to accept collateral and
by any proposal to which the debtor consents.

18 7. No Possession Requirement. This section eliminates the
20 requirement in former Section 9-505 that the secured party be "in
22 possession" of collateral. It clarifies that intangible
24 collateral, which cannot be possessed, may be subject to a strict
foreclosure under this section. However, under subsection (a)(3)
[Maine cite subsection (1), paragraph (c)], if the collateral is
consumer goods, acceptance does not occur unless the debtor is
not in possession.

26 8. When Objection Timely. Subsection (d) [Maine cite
28 subsection (4)] explains when an objection is timely and thus
prevents an acceptance of collateral from taking effect. An
objection by a person to which notification was sent under
30 Section 9-621 [Maine cite section 9-1621] is effective if it is
received by the secured party within 20 days from the date the
32 notification was sent to that person. Other objecting parties
(i.e., third parties who are not entitled to notification) may
34 object at any time within 20 days after the last notification is
sent under Section 9-621 [Maine cite section 9-1621]. If no such
36 notification is sent, third parties must object before the debtor
agrees to the acceptance in writing or is deemed to have
38 consented by silence. The former may occur any time after
default, and the latter requires a 20day waiting period. See
40 subsection (c) [Maine cite subsection (3)].

42 9. Applicability of Other Law. This section does not
44 purport to regulate all aspects of the transaction by which a
secured party may become the owner of collateral previously owned
46 by the debtor. For example, a secured party's acceptance of a
motor vehicle in satisfaction of secured obligations may require
48 compliance with the applicable motor vehicle certificate-of-title
law. State legislatures should conform those laws so that they
50 mesh well with this section and Section 9-610 [Maine cite section
9-1610], and courts should construe those laws and this section

2 harmoniously. A secured party's acceptance of collateral in the
possession of the debtor also may implicate statutes dealing with
4 a seller's retention of possession of goods sold.

6 10. Accounts, Chattel Paper, Payment Intangibles, and
Promissory Notes. If the collateral is accounts, chattel paper,
8 payment intangibles, or promissory notes, then a secured party's
acceptance of the collateral in satisfaction of secured
10 obligations would constitute a sale to the secured party. That
sale normally would give rise to a new security interest (the
12 ownership interest) under Sections 1-201(37) and 9-109 [Maine
cite section 9-1109]. In the case of accounts and chattel paper,
14 the new security interest would remain perfected by a filing that
was effective to perfect the secured party's original security
16 interest. In the case of payment intangibles or promissory
notes, the security interest would be perfected when it
18 attaches. See Section 9-309 [Maine cite 9-1309]. However, the
procedures for acceptance of collateral under this section
20 satisfy all necessary formalities and a new security agreement
authenticated by the debtor would not be necessary.

22 11. Role of Good Faith. Section 1-203 imposes an
obligation of good faith on a secured party's enforcement under
24 this Article. This obligation may not be disclaimed by
agreement. See Section 1-102. Thus, a proposal and acceptance
26 made under this section in bad faith would not be effective. For
example, a secured party's proposal to accept marketable
28 securities worth \$1,000 in full satisfaction of indebtedness in
the amount of \$100, made in the hopes that the debtor might
30 inadvertently fail to object, would be made in bad faith. On the
other hand, in the normal case proposals and acceptances should
32 be not second-guessed on the basis of the "value" of the
collateral involved. Disputes about valuation or even a clear
34 excess of collateral value over the amount of obligations
satisfied do not necessarily demonstrate the absence of good
36 faith.

38 12. Special Rules in Consumer Cases. Subsection (e) [Maine
cite subsection (5)] imposes an obligation on the secured party
40 to dispose of consumer goods under certain circumstances.
Subsection (f) [Maine cite subsection (6)] explains when a
42 disposition that is required under subsection (e) [Maine cite
subsection (5)] is timely. An effective acceptance of collateral
44 cannot occur if subsection (e) [Maine cite subsection (5)]
requires a disposition unless the debtor waives this requirement
46 pursuant to Section 9-624(b) [Maine cite section 9-1624,
subsection (2)]. Moreover, a secured party who takes possession
48 of collateral and unreasonably delays disposition violates
subsection (e) [Maine cite subsection (5)], if applicable, and
50 may also violate Section 9-610 [Maine cite section 9-1610] or

2 other provisions of this Part. Subsection (e) [Maine cite
3 subsection (5)] eliminates as superfluous the express statutory
4 reference to "conversion" found in former Section 9-505.
5 Remedies available under other law, including conversion, remain
6 available under this Article in appropriate cases. See Sections
7 1-103, 1-106.

8 Subsection (g) [Maine cite subsection (7)] prohibits
9 the secured party in consumer transactions from accepting
10 collateral in partial satisfaction of the obligation it secures.
11 If a secured party attempts an acceptance in partial satisfaction
12 in a consumer transaction, the attempted acceptance is void.

14 **§9-1621. Notification of proposal to accept collateral**

16 (1) A secured party that desires to accept collateral in
17 full or partial satisfaction of the obligation it secures shall
18 send its proposal to:

20 (a) Any person from which the secured party has received,
21 before the debtor consented to the acceptance, an
22 authenticated notification of a claim of an interest in the
23 collateral;

24 (b) Any other secured party or lienholder that, 10 days
25 before the debtor consented to the acceptance, held a
26 security interest in or other lien on the collateral
27 perfected by the filing of a financing statement that:

30 (i) Identified the collateral;

32 (ii) Was indexed under the debtor's name as of that
33 date; and

34 (iii) Was filed in the office or offices in which to
35 file a financing statement against the debtor covering
36 the collateral as of that date; and

37 (c) Any other secured party that, 10 days before the debtor
38 consented to the acceptance, held a security interest in the
39 collateral perfected by compliance with a statute,
40 regulation or treaty described in section 9-1311, subsection
41 (1).

42 (2) A secured party that desires to accept collateral in
43 partial satisfaction of the obligation it secures shall send its
44 proposal to any secondary obligor in addition to the persons
45 described in subsection (1).

50 **Official Comment**

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1. Source. Former Section 9-505.

2. Notification Requirement. Subsection (a) [Maine cite subsection (1)] specifies three classes of competing claimants to whom the secured party must send notification of its proposal: (i) those who notify the secured party that they claim an interest in the collateral, (ii) holders of certain security interests and liens who have filed against the debtor, and (iii) holders of certain security interests who have perfected by compliance with a statute (including a certificate-of-title statute), regulation, or treaty described in Section 9-311(a) [Maine cite section 9-1311, subsection (1)]. With regard to (ii), see Section 9-611 [Maine cite section 9-1611], Comment 4. Subsection (b) [Maine cite subsection (2)] also requires notification to any secondary obligor if the proposal is for acceptance in partial satisfaction.

Unlike Section 9-611 [Maine cite section 9-1611], this section contains no "safe harbor," which excuses an enforcing secured party from notifying certain secured parties and other lienholders. This is because, unlike Section 9-610 [Maine section 9-1610], which requires that a disposition of collateral be commercially reasonable, Section 9-620 [Maine cite section 9-1620] permits the debtor and secured party to set the amount of credit the debtor will receive for the collateral subject only to the requirement of good faith. An effective acceptance discharges subordinate security interests and other subordinate liens. See Section 9-622 [Maine cite section 9-1622]. If collateral is subject to several liens securing debts much larger than the value of the collateral, the debtor may be disinclined to refrain from consenting to an acceptance by the holder of the senior security interest, even though, had the debtor objected and the senior disposed of the collateral under Section 9-610 [Maine cite section 9-1610], the collateral may have yielded more than enough to satisfy the senior security interest (but not enough to satisfy all the liens). Accordingly, this section imposes upon the enforcing secured party the risk of the filing office's errors and delay. The holder of a security interest who is entitled to notification under this section but does not receive it has the right to recover under Section 9-625(b) [Maine cite section 9-1625, subsection (2)] any loss resulting from the enforcing secured party's noncompliance with this section.

§9-1622. Effect of acceptance of collateral

(1) A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

2 complies with this Article. Thus, subordinate interests are
3 discharged regardless of whether a proposal was required to be
4 sent or, if required, was sent. However, a secured party's
5 failure to send a proposal or otherwise to comply with this
6 Article may subject the secured party to liability under Section
7 9-625 [Maine cite section 9-1625].

8 **§9-1623. Right to redeem collateral**

10 (1) A debtor, any secondary obligor or any other secured
11 party or lienholder may redeem collateral.

12 (2) To redeem collateral, a person shall tender:

14 (a) Fulfillment of all obligations secured by the
15 collateral; and

16 (b) The reasonable expenses and attorney's fees described
17 in section 9-1615, subsection (1), paragraph (a).

18 (3) A redemption may occur at any time before a secured
19 party:

20 (a) Has collected collateral under section 9-1607;

21 (b) Has disposed of collateral or entered into a contract
22 for its disposition under section 9-1610; or

23 (c) Has accepted collateral in full or partial satisfaction
24 of the obligation it secures under section 9-1622.

25 **Official Comment**

26 1. Source. Former Section 9-506.

27 2. Redemption Right. Under this section, as under former
28 Section 9-506, the debtor or another secured party may redeem
29 collateral as long as the secured party has not collected
30 (Section 9-607 [Maine cite section 9-1607]), disposed of or
31 contracted for the disposition of (Section 9-610 [Maine cite
32 section 9-1610]), or accepted (Section 9-620 [Maine cite section
33 9-1620]) the collateral. Although this section generally follows
34 former Section 9506, it extends the right of redemption to
35 holders of nonconsensual liens. To redeem the collateral a
36 person must tender fulfillment of all obligations secured, plus
37 certain expenses. If the entire balance of a secured obligation
38 has been accelerated, it would be necessary to tender the entire
39 balance. A tender of fulfillment obviously means more than a new
40 promise to perform an existing promise. It requires payment in
41 full of all monetary obligations then due and performance in full
42

2 of all other obligations then matured. If unmatured secured
obligations remain, the security interest continues to secure
them (i.e., as if there had been no default).

4
6 3. Redemption of Remaining Collateral Following Partial
Enforcement. Under Section 9-610 [Maine cite section 9-1610] a
secured party may make successive dispositions of portions of its
8 collateral. These dispositions would not affect the debtor's,
another secured party's, or a lienholder's right to redeem the
10 remaining collateral.

12 4. Effect of "Repledging." Section 9-207 [Maine cite
section 9-1207] generally permits a secured party having
14 possession or control of collateral to create a security interest
in the collateral. As explained in the Comments to that section,
16 the debtor's right (as opposed to its practical ability) to
redeem collateral is not affected by, and does not affect, the
18 priority of a security interest created by the debtor's secured
party.

20 **§9-1624. Waiver**

22
24 (1) A debtor or secondary obligor may waive the right to
notification of disposition of collateral under section 9-1611
only by an agreement to that effect entered into and
26 authenticated after default.

28 (2) A debtor may waive the right to require disposition of
collateral under section 9-1620, subsection (5) only by an
30 agreement to that effect entered into and authenticated after
default.

32
34 (3) Except in a consumer-goods transaction, a debtor or
secondary obligor may waive the right to redeem collateral under
section 9-1623 only by an agreement to that effect entered into
36 and authenticated after default.

38 **Official Comment**

40 1. Source. Former Sections 9-504(3), 9-505, 9-506.

42 2. Waiver. This section is a limited exception to Section
9-602 [Maine cite section 9-1602], which generally prohibits
44 waiver by debtors and obligors. It makes no provision for waiver
of the rule prohibiting a secured party from buying at its own
46 private disposition. Transactions of this kind are equivalent to
"strict foreclosures" and are governed by Sections 9-620, 9-621,
48 and 9-622 [Maine cite sections 9-1620, 9-1621 and 9-1622].

50 **SUBPART 2**

2 (d) Fails to cause the secured party of record to file or
3 send a termination statement as required by section 9-1513,
4 subsection (1) or (3);

5 (e) Fails to comply with section 9-1616, subsection (2),
6 paragraph (a) and whose failure is part of a pattern, or
7 consistent with a practice, of noncompliance; or

8 (f) Fails to comply with section 9-1616, subsection (2),
9 paragraph (b).

10
11 (6) A debtor or consumer obligor may recover damages under
12 subsection (2) and, in addition, \$500 in each case from a person
13 that, without reasonable cause, fails to comply with a request
14 under section 9-1210. A recipient of a request under section
15 9-1210 that never claimed an interest in the collateral or
16 obligations that are the subject of a request under that section
17 has a reasonable excuse for failure to comply with the request
18 within the meaning of this subsection.

19
20 (7) If a secured party fails to comply with a request
21 regarding a list of collateral or a statement of account under
22 section 9-1210, the secured party may claim a security interest
23 only as shown in the statement included in the request as against
24 a person that is reasonably misled by the failure.

25 **Official Comment**

26
27 1. Source. Former Section 9-507.

28
29 2. Remedies for Noncompliance; Scope. Subsections (a) and
30 (b) [Maine cite subsections (1) and (2)] provide the basic
31 remedies afforded to those aggrieved by a secured party's failure
32 to comply with this Article. Like all provisions that create
33 liability, they are subject to Section 9-628 [Maine cite section
34 9-1628], which should be read in conjunction with Section 9-605
35 [Maine cite section 9-1605]. The principal limitations under
36 this Part on a secured party's right to enforce its security
37 interest against collateral are the requirements that it proceed
38 in good faith (Section 1-203), in a commercially reasonable
39 manner (Sections 9-607 and 9-610 [Maine cite sections 9-1607 and
40 9-1610]), and, in most cases, with reasonable notification
41 (Sections 9-611 through 9-614 [Maine cite sections 9-1611 to
42 9-1614]). Following former Section 9-507, under subsection (a)
43 [Maine cite subsection (1)] an aggrieved person may seek
44 injunctive relief, and under subsection (b) [Maine cite
45 subsection (2)] the person may recover damages for losses caused
46 by noncompliance. Unlike former Section 9-507, however,
47 subsections (a) and (b) [Maine cite subsections (1) and (2)] are
48 not limited to noncompliance with provisions of this Part of
49
50

2 Article 9 [Maine cite Article 9-A]. Rather, they apply to
3 noncompliance with any provision of this Article. The change
4 makes this section applicable to noncompliance with Sections
5 9-207 [Maine cite section 9-1207] (duties of secured party in
6 possession of collateral), 9-208 [Maine cite section 9-1208]
7 (duties of secured party having control over deposit account),
8 9-209 [Maine cite section 9-1209] (duties of secured party if
9 account debtor has been notified of an assignment), 9-210 [Maine
10 cite section 9-1210] (duty to comply with request for accounting,
11 etc.), 9-509(a) [Maine cite section 9-1509, subsection (1)] (duty
12 to refrain from filing unauthorized financing statement), and
13 9-513(a) or (c) [Maine cite section 9-1513, subsection (1) or
14 (3)] (duty to provide termination statement). Subsection (a)
15 [Maine cite subsection (1)] also modifies the first sentence of
16 former Section 9-507(1) by adding the references to "collection"
17 and "enforcement." Subsection (c)(2) [Maine cite subsection (3),
18 paragraph (b)], which gives a minimum damage recovery in
19 consumer-goods transactions, applies only to noncompliance with
20 the provisions of this Part.

21
22 3. Damages for Noncompliance with This Article. Subsection
23 (b) [Maine cite subsection (2)] sets forth the basic remedy for
24 failure to comply with the requirements of this Article: a
25 damage recovery in the amount of loss caused by the
26 noncompliance. Subsection (c) [Maine cite subsection (3)]
27 identifies who may recover under subsection (b) [Maine cite
28 subsection (2)]. It affords a remedy to any aggrieved person who
29 is a debtor or obligor. However, a principal obligor who is not
30 a debtor may recover damages only for noncompliance with Section
31 9-616 [Maine cite section 9-1616], inasmuch as none of the other
32 rights and duties in this Article run in favor of such a
33 principal obligor. Such a principal obligor could not suffer any
34 loss or damage on account of noncompliance with rights or duties
35 of which it is not a beneficiary. Subsection (c) [Maine cite
36 subsection (3)] also affords a remedy to an aggrieved person who
37 holds a competing security interest or other lien, regardless of
38 whether the aggrieved person is entitled to notification under
39 Part 6. The remedy is available even to holders of senior
40 security interests and other liens. The exercise of this remedy
41 is subject to the normal rules of pleading and proof. A person
42 who has delegated the duties of a secured party but who remains
43 obligated to perform them is liable under this subsection. The
44 last sentence of subsection (d) [Maine cite subsection (4)]
45 eliminates the possibility of double recovery or other
46 over-compensation arising out of a reduction or elimination of a
47 deficiency under Section 9-626 [Maine cite section 9-1626], based
48 on noncompliance with the provisions of this Part relating to
49 collection, enforcement, disposition, or acceptance. Assuming no
50 double recovery, a debtor whose deficiency is eliminated under
Section 9-626 [Maine cite section 9-1626] may pursue a claim for

2 a surplus. Because Section 9-626 [Maine cite section 9-1626]
4 does not apply to consumer transactions, the statute is silent as
to whether a double recovery or other over-compensation is
possible in a consumer transaction.

6 Damages for violation of the requirements of this Article,
8 including Section 9-609 [Maine cite section 9-1609], are those
reasonably calculated to put an eligible claimant in the position
10 that it would have occupied had no violation occurred. See
12 Section 1-106. Subsection (b) [Maine cite subsection (2)]
supports the recovery of actual damages for committing a breach
of the peace in violation of Section 9-609 [Maine cite section
14 9-1609], and principles of tort law supplement this subsection.
See Section 1-103. However, to the extent that damages in tort
16 compensate the debtor for the same loss dealt with by this
Article, the debtor should be entitled to only one recovery.

18 4. Minimum Damages in Consumer-Goods Transactions.
Subsection (c)(2) [Maine cite subsection (3), paragraph (b)]
20 provides a minimum, statutory, damage recovery for a debtor and
secondary obligor in a consumer-goods transaction. It is
22 patterned on former Section 9-507(1) and is designed to ensure
that every noncompliance with the requirements of Part 6 in a
24 consumer-goods transaction results in liability, regardless of
any injury that may have resulted. Subsection (c)(2) [Maine cite
26 subsection (3), paragraph (b)] leaves the treatment of statutory
damages as it was under former Article 9. A secured party is not
28 liable for statutory damages under this subsection more than once
with respect to any one secured obligation. See Section 9-628(e)
30 [Maine cite section 9-1628, subsection (5)]. Nor is a secured
party liable under this subsection for failure to comply with
32 Section 9-616 [Maine cite section 9-1616]. See Section 9-628(d)
[Maine cite section 9-1628, subsection (4)].

34 Following former Section 9-507(1), this Article does not
36 include a definition or explanation of the terms "credit service
charge," "principal amount," "time-price differential," or "cash
38 price," as used in subsection (c)(2) [Maine cite subsection (3),
paragraph (b)]. It leaves their construction and application to
40 the court, taking into account the subsection's purpose of
providing a minimum recovery in consumer-goods transactions.

42 5. Supplemental Damages. Subsections (e) and (f) [Maine
44 cite subsections (5) and (6)] provide damages that supplement the
recovery, if any, under subsection (b) [Maine cite subsection
46 (2)]. Subsection (e) [Maine cite subsection (5)] imposes an
additional \$500 liability upon a person who fails to comply with
48 the provisions specified in that subsection, and subsection (f)
[Maine cite subsection (6)] imposes like damages on a person who,
50 without reasonable excuse, fails to comply with a request for an

2 accounting or a request regarding a list of collateral or
statement of account under Section 9-210 [Maine cite section
4 9-1210]. However, under subsection (f) [Maine cite subsection
6 (6)], a person has a reasonable excuse for the failure if the
person never claimed an interest in the collateral or obligations
that were the subject of the request.

8 6. Estoppel. Subsection (g) [Maine cite subsection (7)]
limits the extent to which a secured party who fails to comply
10 with a request regarding a list of collateral or statement of
account may claim a security interest.

12 **§9-1626. Action in which deficiency or surplus is in issue**

14 (1) In an action arising from a transaction, other than a
16 consumer transaction, in which the amount of a deficiency or
surplus is in issue, the following rules apply.

18 (a) A secured party need not prove compliance with the
20 provisions of this part relating to collection, enforcement,
disposition or acceptance unless the debtor or a secondary
22 obligor places the secured party's compliance in issue.

24 (b) If the secured party's compliance is placed in issue,
26 the secured party has the burden of establishing that the
collection, enforcement, disposition or acceptance was
28 conducted in accordance with this part.

30 (c) Except as otherwise provided in section 9-1628, if a
secured party fails to prove that the collection,
32 enforcement, disposition or acceptance was conducted in
accordance with the provisions of this part relating to
34 collection, enforcement, disposition or acceptance, the
liability of a debtor or a secondary obligor for a
36 deficiency is limited to an amount by which the sum of the
secured obligation, expenses and attorney's fees exceeds the
38 greater of:

40 (i) The proceeds of the collection, enforcement,
disposition or acceptance; or

42 (ii) The amount of proceeds that would have been
44 realized had the noncomplying secured party proceeded
in accordance with the provisions of this part relating
46 to collection, enforcement, disposition or acceptance.

48 (d) For purposes of paragraph (c), subparagraph (ii), the
amount of proceeds that would have been realized is equal to
the sum of the secured obligation, expenses and attorney's

2 transactions other than consumer transactions. Under paragraph
3 (1) [Maine cite paragraph (a)], the secured party need not prove
4 compliance with the relevant provisions of this Part as part of
5 its prima facie case. If, however, the debtor or a secondary
6 obligor raises the issue (in accordance with the forum's rules of
7 pleading and practice), then the secured party bears the burden
8 of proving that the collection, enforcement, disposition, or
9 acceptance complied. In the event the secured party is unable to
10 meet this burden, then paragraph (3) [Maine cite paragraph (c)]
11 explains how to calculate the deficiency. Under this rebuttable
12 presumption rule, the debtor or obligor is to be credited with
13 the greater of the actual proceeds of the disposition or the
14 proceeds that would have been realized had the secured party
15 complied with the relevant provisions. If a deficiency remains,
16 then the secured party is entitled to recover it. The references
17 to "the secured obligation, expenses, and attorney's fees" in
18 paragraphs (3) and (4) [Maine cite paragraphs (c) and (d)]
19 embrace the application rules in Sections 9-608(a) and 9-615(a)
20 [Maine cite section 9-1608, subsection (1) and section 9-1615,
21 subsection (1)].

22 Unless the secured party proves that compliance with the
23 relevant provisions would have yielded a smaller amount, under
24 paragraph (4) [Maine cite paragraph (d)] the amount that a
25 complying collection, enforcement, or disposition would have
26 yielded is deemed to be equal to the amount of the secured
27 obligation, together with expenses and attorney's fees. Thus,
28 the secured party may not recover any deficiency unless it meets
29 this burden.

30
31 4. Consumer Transactions. Although subsection (a) [Maine
32 cite subsection (1)] adopts a version of the rebuttable
33 presumption rule for transactions other than consumer
34 transactions, with certain exceptions Part 6 does not specify the
35 effect of a secured party's noncompliance in consumer
36 transactions. (The exceptions are the provisions for the
37 recovery of damages in Section 9-625 [Maine cite section
38 9-1625].) Subsection (b) [Maine cite section (2)] provides that
39 the limitation of subsection (a) [Maine cite subsection (1)] to
40 transactions other than consumer transactions is intended to
41 leave to the court the determination of the proper rules in
42 consumer transactions. It also instructs the court not to draw
43 any inference from the limitation as to the proper rules for
44 consumer transactions and leaves the court free to continue to
45 apply established approaches to those transactions.

46
47 Courts construing former Section 9-507 disagreed about the
48 consequences of a secured party's failure to comply with the
49 requirements of former Part 5. Three general approaches
50 emerged. Some courts have held that a noncomplying secured party

2 may not recover a deficiency (the "absolute bar" rule). A few
3 courts held that the debtor can offset against a claim to a
4 deficiency all damages recoverable under former Section 9-507
5 resulting from the secured party's noncompliance (the "offset"
6 rule). A plurality of courts considering the issue held that the
7 noncomplying secured party is barred from recovering a deficiency
8 unless it overcomes a rebuttable presumption that compliance with
9 former Part 5 would have yielded an amount sufficient to satisfy
10 the secured debt. In addition to the nonuniformity resulting
11 from court decisions, some States enacted special rules governing
12 the availability of deficiencies.

13
14 5. Burden of Proof When Section 9-615(f) [Maine cite
15 section 9-1615, subsection (6)] Applies. In a non-consumer
16 transaction, subsection (a)(5) [Maine cite subsection (1),
17 paragraph (e)] imposes upon a debtor or obligor the burden of
18 proving that the proceeds of a disposition are so low that, under
19 Section 9-615(f) [Maine cite section 9-1615, subsection (6)], the
20 actual proceeds should not serve as the basis upon which a
21 deficiency or surplus is calculated. Were the burden placed on
22 the secured party, then debtors might be encouraged to challenge
23 the price received in every disposition to the secured party, a
24 person related to the secured party, or a secondary obligor.

25
26 6. Delay in Applying This Section. There is an inevitable
27 delay between the time a secured party engages in a noncomplying
28 collection, enforcement, disposition, or acceptance and the time
29 of a subsequent judicial determination that the secured party did
30 not comply with Part 6. During the interim, the secured party,
31 believing that the secured obligation is larger than it
32 ultimately is determined to be, may continue to enforce its
33 security interest in collateral. If some or all of the secured
34 indebtedness ultimately is discharged under this section, a
35 reasonable application of this section would impose liability on
36 the secured party for the amount of any excess, unwarranted
recoveries but would not make the enforcement efforts wrongful.

37 **§9-1627. Determination of whether conduct was commercially**
38 **reasonable**

39
40 (1) The fact that a greater amount could have been obtained
41 by a collection, enforcement, disposition or acceptance at a
42 different time or in a different method from that selected by the
43 secured party is not of itself sufficient to preclude the secured
44 party from establishing that the collection, enforcement,
45 disposition or acceptance was made in a commercially reasonable
46 manner.

47
48 (2) A disposition of collateral is made in a commercially
49 reasonable manner if the disposition is made:

2 related to the secured party, or a secondary obligor. It
contains a special rule for calculating a deficiency or surplus
4 in a complying disposition that yields a price that is
"significantly below the range of proceeds that a complying
6 disposition to a person other than the secured party, a person
related to the secured party, or a secondary obligor would have
brought."

8
3. Determination of Commercial Reasonableness; Advance
10 Approval. It is important to make clear the conduct and
procedures that are commercially reasonable and to provide a
12 secured party with the means of obtaining, by court order or
negotiation with a creditors' committee or a representative of
14 creditors, advance approval of a proposed method of enforcement
as commercially reasonable. This section contains rules that
16 assist in that determination and provides for advance approval in
appropriate situations. However, none of the specific methods of
18 disposition specified in subsection (b) [Maine cite subsection
(2)] is required or exclusive.

20
4. "Recognized Market." As in Sections 9-610(c) and
22 9-611(d) [Maine cite section 9-1610, subsection (3) and section
9-1611, subsection (4)], the concept of a "recognized market" in
24 subsections (b)(1) and (2) [Maine cite subsection (1), paragraphs
(a) and (b)] is quite limited; it applies only to markets in
26 which there are standardized price quotations for property that
is essentially fungible, such as stock exchanges.

28
**§9-1628. Nonliability and limitation on liability of secured
30 party; liability of secondary obligor**

32 (1) Unless a secured party knows that a person is a debtor
or obligor, knows the identity of the person and knows how to
34 communicate with the person:

36 (a) The secured party is not liable to the person or to a
secured party or lienholder that has filed a financing
38 statement against the person for failure to comply with this
Article; and

40 (b) The secured party's failure to comply with this Article
42 does not affect the liability of the person for a deficiency.

44 (2) A secured party is not liable because of its status as
secured party:

46 (a) To a person that is a debtor or obligor, unless the
48 secured party knows:

50 (i) That the person is a debtor or obligor;

2 if the secured party's belief is based on its reasonable reliance
3 on a representation of the type specified in subsection (c)(1) or
4 (c)(2) [Maine cite subsection (3), paragraph (1) or (2)], then
5 this Article should be applied as if the facts reasonably
6 believed and reasonably relied upon were true. For example, if a
7 secured party reasonably believed that a transaction was a
8 non-consumer transaction and its belief was based on reasonable
9 reliance on the debtor's misrepresentation that the collateral
10 secured an obligation incurred for business purposes, the
11 rebuttable presumption rule would apply under 9-626(b) [Maine
12 cite section 9-1626, subsection (2)]. Of course, if the secured
13 party's belief is not reasonable or, even if reasonable, is not
14 based on reasonable reliance on the debtor's misrepresentation,
15 this limitation on liability is inapplicable.

16 3. Inapplicability of Statutory Damages to Section 9-616,
17 Subsection (d) [Maine cite section 9-1616, subsection (4)]
18 excludes noncompliance with Section 9-616 [Maine cite section
19 9-1616] entirely from the scope of statutory damage liability
20 under Section 9-625(c)(2) [Maine cite section 9-1625, subsection
21 (3), paragraph (b)].

22 4. Single Liability for Statutory Minimum Damages.
23 Subsection (e) [Maine cite subsection (5)] ensures that a secured
24 party will incur statutory damages only once in connection with
25 any one secured obligation.

28 **PART 7**
29 **TRANSITION**

30 **§9-1701. Effective date**

31 This Article takes effect on July 1, 2001.

34 **Official Comment**

35 A uniform law as complex as Article 9 [Maine cite Article
36 9-A] necessarily gives rise to difficult problems and
37 uncertainties during the transition to the new law. As is
38 customary for uniform laws, this Article is based on the general
39 assumption that all States will have enacted substantially
40 identical versions. While always important, uniformity is
41 essential to the success of this Article. If former Article 9 is
42 in effect in some jurisdictions, and this Article is in effect in
43 others, horrendous complications may arise. For example, the
44 proper place in which to file to perfect a security interest (and
45 thus the status of a particular security interest as perfected or
46 unperfected) would depend on whether the matter was litigated in
47 a State in which former Article 9 was in effect or a State in
48 which this Article was in effect. Accordingly, this section
49
50

2 contemplates that States will adopt a uniform effective date for
3 this Article. Any one State's failure to adopt the uniform
4 effective date will greatly increase the cost and uncertainty
5 surrounding the transition.

6 Other problems arise from transactions and relationships
7 that were entered into under former Article 9 or under non-UCC
8 law and which remain outstanding on the effective date of this
9 Article. The difficulties arise primarily because this Article
10 expands the scope of former Article 9 to cover additional types
11 of collateral and transactions and because it provides new
12 methods of perfection for some types of collateral, different
13 priority rules, and different choice-of-law rules governing
14 perfection and priority. This Section and the other sections in
15 this Part address primarily this second set of problems.

16 **§9-1702. Savings clause**

17
18 (1) Except as otherwise provided in this part, this Article
19 applies to a transaction or lien within its scope, even if the
20 transaction or lien was entered into or created before this
21 Article takes effect.

22
23 (2) Except as otherwise provided in subsection (c) and
24 sections 9-1703 to 9-1708:

25
26
27 (a) Transactions and liens that were not governed by former
28 Article 9, were validly entered into or created before this
29 Article takes effect and would be subject to this Article if
30 they had been entered into or created after this Article
31 takes effect and the rights, duties and interests flowing
32 from those transactions and liens remain valid after this
33 Article takes effect; and

34
35 (b) The transactions and liens may be terminated,
36 completed, consummated and enforced as required or permitted
37 by this Article or by the law that otherwise would apply if
38 this Article had not taken effect.

39
40 (3) This Article does not affect an action, case or
41 proceeding commenced before this Article takes effect.

42
43 **Official Comment**

44
45 1. Pre-Effective-Date Transactions. Subsection (a) [Maine
46 cite subsection (1)] contains the general rule that this Article
47 applies to transactions, security interests, and other liens
48 within its scope (see Section 9-109 [Maine cite section 9-1109]),
49 even if the transaction or lien was entered into or created
50 before the effective date. Thus, secured transactions entered

2 into under former Article 9 must be terminated, completed,
3 consummated, and enforced under this Article. Subsection (b)
4 [Maine cite subsection (2)] is an exception to the general rule.
5 It applies to valid, pre-effective-date transactions and liens
6 that were not governed by former Article 9 but would be governed
7 by this Article if they had been entered into or created after
8 this Article takes effect. Under subsection (b) [Maine cite
9 subsection (2)], these valid transactions, such as the creation
10 of agricultural liens and security interests in commercial tort
11 claims, retain their validity under this Article and may be
12 terminated, completed, consummated, and enforced under this
13 Article. However, these transactions also may be terminated,
14 completed, consummated, and enforced by the law that otherwise
15 would apply had this Article not taken effect.

16 2. Judicial Proceedings Commenced Before Effective Date.
17 As is usual in transition provisions, subsection (c) [Maine cite
18 subsection (3)] provides that this Article does not affect
19 litigation pending on the effective date.

20 **§9-1703. Security interest perfected before effective date**

21 (1) A security interest that is enforceable immediately
22 before this Article takes effect and would have priority over the
23 rights of a person that becomes a lien creditor at that time is a
24 perfected security interest under this Article if, when this
25 Article takes effect, the applicable requirements for
26 enforceability and perfection under this Article are satisfied
27 without further action.

28 (2) Except as otherwise provided in section 9-1705, if,
29 immediately before this Article takes effect, a security interest
30 is enforceable and would have priority over the rights of a
31 person that becomes a lien creditor at that time, but the
32 applicable requirements for enforceability or perfection under
33 this Article are not satisfied when this Article takes effect,
34 the security interest:

35 (a) Is a perfected security interest for one year after
36 this Article takes effect;

37 (b) Remains enforceable thereafter only if the security
38 interest becomes enforceable under section 9-1203 before the
39 year expires; and

40 (c) Remains perfected thereafter only if the applicable
41 requirements for perfection under this Article are satisfied
42 before the year expires.

43 **Official Comment**

2 1. Perfected Security Interests Under Former Article 9 and
This Article. This section deals with security interests that
4 are perfected (i.e., that are enforceable and have priority over
the rights of a lien creditor) under former Article 9 or other
6 applicable law immediately before this Article takes effect.
Subsection (a) [Maine cite subsection (1)] provides, not
8 surprisingly, that if the security interest would be a perfected
security interest under this Article (i.e., if the transaction
10 satisfies this Article's requirements for enforceability
(attachment) and perfection), no further action need be taken for
12 the security interest to be a perfected security interest.

14 2. Security Interests Enforceable and Perfected Under
Former Article 9 but Unenforceable or Unperfected Under This
16 Article. Subsection (b) [Maine cite subsection (2)] deals with
security interests that are enforceable and perfected under
18 former Article 9 or other applicable law immediately before this
Article takes effect but do not satisfy the requirements for
20 enforceability (attachment) or perfection under this Article.
Except as otherwise provided in Section 9-705 [Maine cite section
22 9-1705], these security interests are perfected security
interests for one year after the effective date. If the security
24 interest satisfies the requirements for attachment and perfection
within that period, the security interest remains perfected
26 thereafter. If the security interest satisfies only the
requirements for attachment within that period, the security
28 interest becomes unperfected at the end of the one-year period.

30 Example 1: A pre-effective-date security agreement in a
consumer transaction covers "all securities accounts." The
32 security interest is properly perfected. The collateral
description was adequate under former Article 9 (see former
34 Section 9-115(3)) but is insufficient under this Article (see
Section 9-108(e)(2) [Maine cite section 9-1108, subsection (5),
36 paragraph (b)]). Unless the debtor authenticates a new security
agreement describing the collateral other than by "type" (or
38 Section 9-203(b)(3) [Maine cite section 9-1203, subsection (2),
paragraph (c)] otherwise is satisfied) within the one-year period
40 following the effective date, the security interest becomes
unenforceable at the end of that period.

42
44 Other examples under former Article 9 or other applicable law
that may be effective as attachment or enforceability steps but
46 may be ineffective under this Article include an oral agreement
to sell a payment intangible or possession by virtue of a
48 notification to a bailee under former Section 9-305. Neither the
oral agreement nor the notification would satisfy the revised
Section 9-203 [Maine cite section 9-1203] requirements for
50 attachment.

2 Example 2: A pre-effective-date possessory security
4 interest in instruments is perfected by a bailee's receipt of
6 notification under former 9-305. The bailee has not, however,
8 acknowledged that it holds for the secured party's benefit under
10 revised Section 9-313 [Maine cite section 9-1313]. Unless the
bailee authenticates a record acknowledging that it holds for the
secured party (or another appropriate perfection step is taken)
within the one-year period following the effective date, the
security interest becomes unperfected at the end of that period.

12 3. Interpretation of Pre-Effective-Date Security
14 Agreements. Section 9-102 [Maine cite section 9-1102] defines
16 "security agreement" as "an agreement that creates or provides
18 for a security interest." Under Section 1-201(3), an "agreement"
20 is a "bargain of the parties in fact." If parties to a
pre-effective-date security agreement describe the collateral by
using a term defined in former Article 9 in one way and defined
in this Article in another way, in most cases it should be
presumed that the bargain of the parties contemplated the meaning
of the term under former Article 9.

22 Example 3: A pre-effective-date security agreement covers
24 "all accounts" of a debtor. As defined under former Article 9,
an "account" did not include a right to payment for lottery
26 winnings. These rights to payment are "accounts" under this
Article, however. The agreement of the parties presumptively
28 created a security interest in "accounts" as defined in former
Article 9. A different result might be appropriate, for example,
30 if the security agreement explicitly contemplated future changes
in the article 9 [Maine cite Article 9-A] definitions of types of
32 collateral-e.g., "'Accounts' means 'accounts' as defined in the
UCC Article 9 of [State X], as that definition may be amended
34 from time to time." Whether a different approach is appropriate
in any given case depends on the bargain of the parties, as
36 determined by applying ordinary principles of contract
construction.

38 **§9-1704. Security interest unperfected before effective date**

40 A security interest that is enforceable immediately before
42 this Article takes effect but which would be subordinate to the
44 rights of a person that becomes a lien creditor at that time:

46 (1) Remains an enforceable security interest for one year
48 after this Article takes effect;

48 (2) Remains enforceable thereafter if the security interest
50 becomes enforceable under section 9-1203 when this Article takes
effect or within one year thereafter; and

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(3) Becomes perfected:

(a) Without further action, when this Article takes effect if the applicable requirements for perfection under this Article are satisfied before or at that time; or

(b) When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

Official Comment

This section deals with security interests that are enforceable but unperfected (i.e., subordinate to the rights of a person who becomes a lien creditor) under former Article 9 or other applicable law immediately before this Article takes effect. These security interests remain enforceable for one year after the effective date, and thereafter if the appropriate steps for attachment under this Article are taken before the one-year period expires. (This section's treatment of enforceability is the same as that of Section 9-703 [Maine cite section 9-1703].) The security interest becomes a perfected security interest on the effective date if, at that time, the security interest satisfies the requirements for perfection under this Article. If the security interest does not satisfy the requirements for perfection until sometime thereafter, it becomes a perfected security interest at that later time.

Example: A security interest has attached under former Article 9 but is unperfected because the filed financing statement covers "all of debtor's personal property" and controlling case law in the applicable jurisdiction has determined that this identification of collateral in a financing statement is insufficient. Upon the effective date of this Article, the financing statement becomes sufficient under Section 9-504(2) [Maine cite section 9-1504, subsection (2)]. On that date the security interest becomes perfected. (This assumes, of course, that the financing statement is filed in the proper filing office under this Article.)

§9-1705. Effectiveness of action taken before effective date

(1) If action, other than the filing of a financing statement, is taken before this Article takes effect and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before this Article takes effect, the action is effective to perfect a security interest that attaches under this Article within one year after this Article takes effect. An attached security interest becomes

2 unperfected one year after this Article takes effect unless the
3 security interest becomes a perfected security interest under
4 this Article before the expiration of that period.

6 (2) The filing of a financing statement before this Article
7 takes effect is effective to perfect a security interest to the
8 extent the filing would satisfy the applicable requirements for
9 perfection under this Article.

10 (3) This Article does not render ineffective an effective
11 financing statement that, before this Article takes effect, is
12 filed and satisfies the applicable requirements for perfection
13 under the law of the jurisdiction governing perfection as
14 provided in former section 9-103. However, except as otherwise
15 provided in subsections (4) and (5) and section 9-1706, the
16 financing statement ceases to be effective at the earlier of:

18 (a) The time the financing statement would have ceased to
19 be effective under the law of the jurisdiction in which it
20 is filed; or

22 (b) June 30, 2006.

24 (4) The filing of a continuation statement after this
25 Article takes effect does not continue the effectiveness of the
26 financing statement filed before this Article takes effect.
27 However, upon the timely filing of a continuation statement after
28 this Article takes effect and in accordance with the law of the
29 jurisdiction governing perfection as provided in part 3, the
30 effectiveness of a financing statement filed in the same office
31 in that jurisdiction before this Article takes effect continues
32 for the period provided by the law of that jurisdiction.

34 (5) Subsection (3), paragraph (b) applies to a financing
35 statement that, before this Article takes effect, is filed
36 against a transmitting utility and satisfies the applicable
37 requirements for perfection under the law of the jurisdiction
38 governing perfection as provided in former section 9-103 only to
39 the extent that Part 3 provides that the law of a jurisdiction
40 other than jurisdiction in which the financing statement is filed
41 governs perfection of a security interest in collateral covered
42 by the financing statement.

44 (6) A financing statement that includes a financing
45 statement filed before this Article takes effect and a
46 continuation statement filed after this Article takes effect is
47 effective only to the extent that it satisfies the requirements
48 of part 5 for an initial financing statement.

50 **Official Comment**

2 1. General. This section addresses primarily the situation
4 in which the perfection step is taken under former Article 9 or
6 other applicable law before the effective date of this Article,
8 but the security interest does not attach until after that date.

10 2. Perfection Other Than by Filing. Subsection (a) [Maine
12 cite subsection (1)] applies when the perfection step is a step
14 other than the filing of a financing statement. If the step that
16 would be a valid perfection step under former Article 9 or other
18 law is taken before this Article takes effect, and if a security
20 interest attaches within one year after this Article takes
22 effect, then the security interest becomes a perfected security
24 interest upon attachment. However, the security interest becomes
26 unperfected one year after the effective date unless the
28 requirements for attachment and perfection under this Article are
30 satisfied within that period.

32 3. Perfection by Filing: Ineffective Filings Made
34 Effective. Subsection (b) [Maine cite subsection (2)] deals with
36 financing statements that were filed under former Article 9 and
38 which would not have perfected a security interest under the
40 former Article (because, e.g., they did not accurately describe
42 the collateral or were filed in the wrong place), but which would
44 perfect a security interest under this Article. Under subsection
46 (b) [Maine cite subsection (2)], such a financing statement is
48 effective to perfect a security interest to the extent it
50 complies with this Article. Subsection (b) [Maine cite
subsection (2)] applies regardless of the reason for the filing.
For example, a secured party need not wait until the effective
date to respond to the change this Article makes with respect to
the jurisdiction whose law governs perfection of certain security
interests. Rather, a secured party may wish to prepare for this
change by filing a financing statement before the effective date
in the jurisdiction whose law governs perfection under this
Article. When this Article takes effect, the filing becomes
effective to perfect a security interest (assuming the filing
satisfies the perfection requirements of this Article). Note,
however, that Section 9-706 [Maine cite section 9-1706]
determines whether a financing statement filed before the
effective date operates to continue the effectiveness of a
financing statement filed in another office before the effective
date.

 4. Perfection by Filing: Change in Applicable Law.
Subsection (c) [Maine cite subsection (3)] provides that a
financing statement filed in the proper jurisdiction under former
Section 9-103 remains effective for all purposes, despite the
fact that Part 3 of this Article would require filing of a
financing statement in a different jurisdiction. This means

2 that, during the early years of this Article's effectiveness, it
3 may be necessary to search the files not only in the jurisdiction
4 whose law governs perfection under this Article but also (if
5 different) in the jurisdiction(s) whose law governed perfection
6 under former Article 9. To limit this burden, subsection (c)
7 [Maine cite subsection (3)] provides that a financing statement
8 filed in the jurisdiction determined by former Section 9-103
9 becomes ineffective at the earlier of the time it would become
10 ineffective under the law of that jurisdiction or June 30, 2006.
11 The June 30, 2006, limitation addresses some nonuniform versions
12 of former Article 9 that extended the effectiveness of a
13 financing statement beyond five years. Note that a financing
14 statement filed before the effective date may remain effective
15 beyond June 30, 2006, if subsection (d) [Maine cite subsection
16 (4)] (concerning continuation statements) or (e) [Maine cite
17 subsection (5)] (concerning transmitting utilities) or Section
18 9-706 [Maine cite section 9-1706] (concerning initial financing
19 statements that operate to continue pre-effective-date financing
20 statements) so provides.

21 Subsection (c) [Maine cite subsection (3)] is an exception
22 to Section 9-703(b) [Maine cite section 9-1703, subsection (2)].
23 Under the general rule in Section 9-703(b) [Maine cite section
24 9-1703, subsection (2)], a security interest that is enforceable
25 and perfected on the effective date of this Article is a
26 perfected security interest for one year after this Article takes
27 effect, even if the security interest is not enforceable under
28 this Article and the applicable requirements for perfection under
29 this Article have not been met. However, in some cases
30 subsection (c) [Maine cite subsection (3)] may shorten the
31 one-year period of perfection; in others, if the security
32 interest is enforceable under Section 9-203 [Maine cite section
33 9-1203], it may extend the period of perfection. A financing
34 statement that remains effective under subsection (c) [Maine cite
35 subsection (3)] may be amended (but generally may not be
36 continued) after this Article takes effect by filing an amendment
37 in the office where the financing statement was filed.

38 Example 1: On July 3, 1996, D, a State X corporation,
39 creates a security interest in certain manufacturing equipment
40 located in State Y. On July 6, 1996, SP perfects a security
41 interest in the equipment under former Article 9 by filing in the
42 office of the State Y Secretary of State. See former Section
43 9-103(1)(b). This Article takes effect in States X and Y on July
44 1, 2001. Under Section 9-705(c) [Maine cite section 9-1705,
45 subsection (3)], the financing statement remains effective for
46 the first five days of July, 2001, after which it lapses. See
47 former Section 9-403. Had SP continued the effectiveness of the
48 financing statement by filing a continuation statement in State Y
49 under former Article 9 before July 1, 2001, the financing
50

statement would have remained effective to perfect the security interest through June 30, 2006. See subsection (c)(2) [Maine cite subsection (3), paragraph (b)]. Alternatively, SP could have filed an initial financing statement in State X under subsection (b) [Maine cite subsection (2)] or Section 9-706 [Maine cite section 9-1706] before the State Y financing statement lapsed. Had SP done so, the security interest would have remained perfected without interruption until the State X financing statement lapsed.

5. Continuing Effectiveness of Filed Financing Statement.

A financing statement filed before the effective date of this Article may be continued only by filing in the State and office designated by this Article. This result is accomplished in the following manner: Subsection (d) [Maine cite subsection (4)] indicates that, as a general matter, a continuation statement filed after the effective date of this Article does not continue the effectiveness of a financing statement filed under the law designated by former Section 9-103. Instead, an initial financing statement must be filed under Section 9-706 [Maine cite section 9-1706]. The second sentence of subsection (d) [Maine cite subsection (4)] contains an exception to the general rule. It provides that a continuation statement is effective to continue the effectiveness of a financing statement filed before this Article takes effect if this Article prescribes not only the same jurisdiction but also the same filing office.

Example 2: On November 8, 2000, D, a State X corporation, creates a security interest in certain manufacturing equipment located in State Y. On November 15, 2000, SP perfects a security interest in the equipment under former Article 9 by filing in office of the State Y Secretary of State. See former Section 9-103(1)(b). This Article takes effect in States X and Y on July 1, 2001. Under Section 9-705(c) [Maine cite section 9-1705, subsection (3)], the financing statement ceases to be effective in November, 2005, when it lapses. See Section 9-515 [Maine cite section 9-1515]. Under this Article, the law of D's location (State X, see Section 9-307 [Maine cite section 9-1307]) governs perfection. See Section 9-301 [Maine cite section 9-1301]. Thus, the filing of a continuation statement in State Y after the effective date would not continue the effectiveness of the financing statement. See subsection (d) [Maine cite subsection (4)]. However, the effectiveness of the financing statement could be continued under Section 9-706 [Maine cite section 9-1706].

Example 3: The facts are as in Example 2, except that D is a State Y corporation. Assume State Y adopted former Section 9-401(1) (second alternative). State Y law governs perfection under Part 3 of this Article. (See Sections 9-301, 9-307 [Maine

2 cite sections 9-1301, 9-1307].) Under the second sentence of
3 subsection (d) [Maine cite subsection (4)], the timely filing of
4 a continuation statement in accordance with the law of State Y
5 continues the effectiveness of the financing statement.

6 Example 4: The facts are as in Example 3, except that the
7 collateral is equipment used in farming operations and, in
8 accordance with former Section 9-401(1) (second alternative) as
9 enacted in State Y, the financing statement was filed in State Y,
10 in the office of the Shelby County Recorder of Deeds. Under this
11 Article, a continuation statement must be filed in the office of
12 the State Y Secretary of State. See Section 9-501(a)(2) [Maine
13 cite section 9-1501, subsection (1), paragraph (b)]. Under the
14 second sentence of subsection (d) [Maine cite subsection (4)],
15 the timely filing of a continuation statement in accordance with
16 the law of State Y operates to continue a pre-effective-date
17 financing statement only if the continuation statement is filed
18 in the same office as the financing statement. Accordingly, the
19 continuation statement is not effective in this case, but the
20 financing statement may be continued under Section 9-706 [Maine
21 cite section 9-1706].
22

23 Example 5: The facts are as in Example 3, except that State
24 Y enacted former Section 9-401(1) (third alternative). As
25 required by former Section 9-401(1), SP filed financing
26 statements in both the office of the State Y Secretary of State
27 and the office of the Shelby County Recorder of Deeds. Under
28 this Article, a continuation statement must be filed in the
29 office of the State Y Secretary of State. See Section
30 9-501(a)(2) [Maine cite section 9-1501, subsection (1), paragraph
31 (b)]. The timely filing of a continuation statement in that
32 office after this Article takes effect would be effective to
33 continue the effectiveness of the financing statement (and thus
34 continue the perfection of the security interest), even if the
35 financing statement filed with the County Recorder lapses.
36

37 6. Continuation Statements. In some cases, this Article
38 reclassifies collateral covered by a financing statement filed
39 under former Article 9. For example, collateral consisting of
40 the right to payment for real property sold would be a "general
41 intangible" under the former Article but an "account" under this
42 Article. To continue perfection under those circumstances, a
43 continuation statement must comply with the normal requirements
44 for a continuation statement. See Section 9-515 [Maine cite
45 section 9-1515]. In addition, the pre-effective-date financing
46 statement and continuation statement, taken together, must
47 satisfy the requirements of this Article concerning the
48 sufficiency of the debtor's name, secured party's name, and
49 indication of collateral. See subsection (f) [Maine cite
50 subsection (6)].

2 Example 6: A pre-effective-date financing statement covers
4 "all general intangibles" of a debtor. As defined under former
6 Article 9, a "general intangible," would include rights to
8 payment for lottery winnings. These rights to payment are
10 "accounts" under this Article, however. A post-effective-date
12 continuation statement will not continue the effectiveness of the
14 pre-effective-date financing statement with respect to lottery
16 winnings unless it amends the indication of collateral covered to
include lottery winnings (e.g., by adding "accounts," "rights to
payment for lottery winnings," or the like). If the continuation
statement does not amend the indication of collateral, the
continuation statement will be effective to continue the
effectiveness of the financing statement only with respect to
"general intangibles" as defined in this Article.

18 Example 7: The facts are as in Example 6, except that the
20 pre-effective-date financing statement covers "all accounts and
22 general intangibles." Even though rights to payment for lottery
24 winnings are "general intangibles" under former Article 9 and
26 "accounts" under this Article, a post-effective-date continuation
statement would continue the effectiveness of the
pre-effective-date financing statement with respect to lottery
winnings. There would be no need to amend the indication of
collateral covered, inasmuch as the indication ("accounts")
satisfies the requirements of this Article.

28 **§9-1706. When initial financing statement suffices to**
30 **continue effectiveness of financing statement**

32 (1) The filing of an initial financing statement in the
34 office specified in section 9-1501 continues the effectiveness of
a financing statement filed before this Article takes effect if:

36 (a) The filing of an initial financing statement in that
38 office would be effective to perfect a security interest
under this Article;

40 (b) The pre-effective-date financing statement was filed in
42 an office in another state or another office in this State;
and

44 (c) The initial financing statement satisfies subsection
(3).

46 (2) The filing of an initial financing statement under
48 subsection (1) continues the effectiveness of the
pre-effective-date financing statement;

2 (a) If the initial financing statement is filed before this
3 Article takes effect, for the period provided in former
4 section 9-403 with respect to a financing statement; and

5 (b) If the initial financing statement is filed after this
6 Article takes effect, for the period provided in section
7 9-1515 with respect to an initial financing statement.

8
9
10 (3) To be effective for purposes of subsection (1), an
11 initial financing statement must:

12 (a) Satisfy the requirements of Part 5 for an initial
13 financing statement;

14
15 (b) Identify the pre-effective-date financing statement by
16 indicating the office in which the financing statement was
17 filed and providing the dates of filing and file numbers, if
18 any, of the financing statement and of the most recent
19 continuation statement filed with respect to the financing
20 statement; and

21 (c) Indicate that the pre-effective-date financing
22 statement remains effective.

23
24
25 **Official Comment**

26
27
28 1. Continuation of Financing Statements Not Filed in Proper
29 Filing Office Under This Article. This section deals with
30 continuing the effectiveness of financing statements that are
31 filed in the proper State and office under former Article 9, but
32 which would be filed in the wrong State or in the wrong office of
33 the proper State under this Article. Section 9-705(d) [Maine
34 cite section 9-1705, subsection (4)] provides that, under these
35 circumstances, filing a continuation statement after the
36 effective date of this Article in the office designated by former
37 Article 9 would not be effective. This section provides the
38 means by which the effectiveness of such a financing statement
39 can be continued if this Article governs perfection under the
40 applicable choice-of-law rule: filing an initial financing
41 statement in the office specified by Section 9-501 [Maine cite
42 section 9-1501].

43
44 Although it has the effect of continuing the effectiveness
45 of a pre-effective-date financing statement, an initial financing
46 statement described in this section is not a continuation
47 statement. Rather, it is governed by the rules applicable to
48 initial financing statements. (However, the debtor need not
49 authorize the filing. See Section 9-707 [Maine cite section
50 9-1707].) Unlike a continuation statement, the initial financing
statement described in this section may be filed any time during

2 the effectiveness of the pre-effective-date financing
3 statement-even before this Article is enacted- and not only
4 within the six months immediately prior to lapse. In contrast to
5 a continuation statement, which extends the lapse date of a filed
6 financing statement for five years, the initial financing
7 statement has its own lapse date, which bears no relation to the
8 lapse date of the pre-effective-date financing statement whose
9 effectiveness the initial financing statement continues. See
10 subsection (b) [Maine cite subsection (2)].

11
12 As subsection (a) [Maine cite subsection (1)] makes clear,
13 the filing of an initial financing statement under this section
14 continues the effectiveness of a pre-effective-date financing
15 statement. If the effectiveness of a pre-effective-date
16 financing statement lapses before the initial financing statement
17 is filed, the effectiveness of the pre-effective-date financing
18 statement cannot be continued. Rather, unless the security
19 interest is perfected otherwise, there will be a period during
20 which the security interest is unperfected before becoming
21 perfected again by the filing of the initial financing statement
22 under this section.

23
24 If an initial financing statement is filed under this
25 section before the effective date of this Article, it takes
26 effect when this Article takes effect (assuming that it is
27 ineffective under former Article 9). Note, however, that former
28 Article 9 determines whether the filing office is obligated to
29 accept such an initial financing statement. For the reason given
30 in the preceding paragraph, an initial financing statement filed
31 before the effective date of this Article does not continue the
32 effectiveness of a pre-effective-date financing statement unless
33 the latter remains effective on the effective date of this
34 Article. Thus, for example, if the effectiveness of the
35 pre-effective-date financing statement lapses before this Article
36 takes effect, the initial financing statement would not continue
its effectiveness.

37
38 2. Requirements of Initial Financing Statement Filed in
39 Lieu of Continuation Statement. Subsection (c) [Maine cite
40 subsection (3)] sets forth the requirements for the initial
41 financing statement under subsection (a) [Maine cite subsection
42 (1)]. These requirements are needed to inform searchers that the
43 initial financing statement operates to continue a financing
44 statement filed elsewhere and to enable searchers to locate and
45 discover the attributes of the other financing statement. A
46 single initial financing statement may continue the effectiveness
47 of more than one financing statement filed before this Article's
48 effective date. See Section 1-102(5)(a) (words in the singular
49 include the plural). If under this Article the collateral is of
50 a type different from its type under former Article 9 as would be

2 the case, e.g., with a right to payment of lottery winnings (a
"general intangible" under former Article 9 and an "account"
4 under this Article), then subsection (c) [Maine cite subsection
(3)] requires that the initial financing statement indicate the
type under this Article.

6
8 **§9-1707. Persons entitled to file initial financing statement
or continuation statement**

10 A person may file an initial financing statement or a
continuation statement under this part if:

12 (1) The secured party of record authorizes the filing; and

14 (2) The filing is necessary under this part:

16 (a) To continue the effectiveness of a financing statement
18 filed before this Article takes effect; or

20 (b) To perfect or continue the perfection of a security
22 interest.

24 **Official Comment**

26 This section permits a secured party to file an initial
financing statement or continuation statement necessary under
this Part to continue the effectiveness of a financing statement
28 filed before this Article takes effect or to perfect or otherwise
continue the perfection of a security interest. Because a filing
30 described in this section typically operates to continue the
effectiveness of a financing statement whose filing the debtor
32 already has authorized, this section does not require
authorization from the debtor.

34 **§9-1708. Priority**

36 (1) This Article determines the priority of conflicting
38 claims to collateral. However, if the relative priorities of the
40 claims were established before this Article takes effect, former
Article 9 determines priority.

42 (2) For purposes of section 9-1322, subsection (1), the
44 priority of a security interest that becomes enforceable under
46 section 9-1203 of this Article dates from the time this Article
48 takes effect if the security interest is perfected under this
50 Article by the filing of a financing statement before this
Article takes effect that would not have been effective to
perfect the security interest under former Article 9. This
subsection does not apply to conflicting security interests, each
of which is perfected by the filing of such a financing statement.

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Official Comment

1. Law Governing Priority. Ordinarily, this Article determines the priority of conflicting claims to collateral. However, when the relative priorities of the claims were established before this Article takes effect, former Article 9 governs.

Example 1: In 1999, SP1 obtains a security interest in a right to payment for goods sold ("account"). SP1 fails to file a financing statement. This Article takes effect on July 1, 2001. Thereafter, on August 1, 2001, D creates a security interest in the same account in favor of SP2, who files a financing statement. This Article determines the relative priorities of the claims. SP-2's security interest has priority under Section 9-322(a)(1) [Maine cite section 9-1322, subsection (1), paragraph (a)].

Example 2: In 1999, SP1 obtains a security interest in a right to payment for goods sold ("account"). SP1 fails to file a financing statement. In 2000, D creates a security interest in the same account in favor of SP2, who likewise fails to file a financing statement. This Article takes effect on July 1, 2001. Because the relative priorities of the security interests were established before the effective date of this Article, former Article 9 governs priority, and SP-1's security interest has priority under former Section 9-312(5)(b).

Example 3: The facts are as in Example 2, except that, on August 1, 2001, SP-2 files a proper financing statement under this Article. Until August 1, 2001, the relative priorities of the security interests were established before the effective date of this Article, as in Example 2. However, by taking the affirmative step of filing a financing statement, SP-2 established anew the relative priority of the conflicting claims after the effective date. Thus, this Article determines priority. SP-2's security interest has priority under Section 9-322(a)(1). [Maine cite section 9-1322, subsection (1), paragraph (a)]

As Example 3 illustrates, relative priorities that are "established" before the effective date do not necessarily remain unchanged following the effective date. Of course, unlike priority contests among unperfected security interests, some priorities are established permanently, e.g., the rights of a buyer of property who took free of a security interest under former Article 9.

2 One consequence of the rule in subsection (a) [Maine cite
3 subsection (1)] is that the mere taking effect of this Article
4 does not of itself adversely affect the priority of conflicting
5 claims to collateral.

6 Example 4: In 1999, SP1 obtains a security interest in a
7 right to payment for lottery winnings (a "general intangible" as
8 defined in former Article 9 but an "account" as defined in this
9 Article). SP1's security interest is unperfected because its
10 filed financing statement covers only "accounts." In 2000, D
11 creates a security interest in the same right to payment in favor
12 of SP2, who files a financing statement covering "accounts and
13 general intangibles." Before this Article takes effect on July
14 1, 2001, SP2's perfected security interest has priority over
15 SP1's unperfected security interest under former 9-312(5).
16 Because the relative priorities of the security interests were
17 established before the effective date of this Article, former
18 Article 9 continues to govern priority after this Article takes
19 effect. Thus, SP-2's priority is not adversely affected by this
20 Article's having taken effect.

22 Note that were this Article to govern priority, SP2 would become
23 subordinated to SP-1 under Section 9-322(a)(1) [Maine cite
24 section 9-1322, subsection (1), paragraph (a)], even though
25 nothing changes other than this Article's having taken effect.
26 Under Section 9-704 [Maine cite section 9-1704], SP-1's security
27 interest would become perfected; the financing statement covering
28 "accounts" adequately covers the lottery winnings and complies
29 with the other perfection requirements of this Article, e.g., it
30 is filed in the proper office.

32 Example 5: In 1999, SP1 obtains a security interest in a
33 right to payment for lottery winnings—a "general intangible" (as
34 defined under former Article 9). SP1's security interest is
35 unperfected because its filed financing statement covers only
36 "accounts." In 2000, D creates a security interest in the same
37 right to payment in favor of SP2, who makes the same mistake and
38 also files a financing statement covering only "accounts."
39 Before this Article takes effect on July 1, 2001, SP1's
40 unperfected security interest has priority over SP2's unperfected
41 security interest, because SP-1's security interest was the first
42 to attach. See former Section 9-312(5)(b). Because the relative
43 priorities of the security interests were established before the
44 effective date of this Article, former Article 9 continues to
45 govern priority after this Article takes effect. Although
46 Section 9704 [Maine cite section 9-1704] makes both security
47 interests perfected for purposes of this Article, both are
48 unperfected under former Article 9, which determines their
49 relative priorities.
50

2 2. Financing Statements Ineffective Under Former Article 9
3 but Effective Under This Article. If this Article determines
4 priority, subsection (b) [Maine cite subsection (2)] may apply.
5 It deals with the case in which a filing that occurs before the
6 effective date of this Article would be ineffective to perfect a
7 security interest under former Article 9 but effective under this
8 Article. For purposes of Section 9-322(a) [Maine cite section
9-1322, subsection (1)], the priority of a security interest that
10 attaches after this Article takes effect and is perfected in this
11 manner dates from the time this Article takes effect.

12 Example 6: In 1999, SP1 obtains a security interest in D's
13 existing and after-acquired instruments and files a financing
14 statement covering "instruments." In 2000, D grants a security
15 interest in its existing and after-acquired accounts in favor of
16 SP2, who files a financing statement covering "accounts." After
17 this Article takes effect on July 1, 2001, one of D's account
18 debtors gives D a negotiable note to evidence its obligation to
19 pay an overdue account. Under the first-to-file-or-perfect rule
20 in Section 9-322(a) [Maine cite section 9-1322, subsection (1)],
21 SP1 would have priority in the instrument, which constitutes
22 SP2's proceeds. SP1's filing in 1999 was earlier than SP2's in
23 2000. However, subsection (b) [Maine cite subsection (2)]
24 provides that, for purposes of Section 9-322(a) [Maine cite
25 section 9-1322, subsection (1)], SP1's priority dates from the
26 time this Article takes effect (July 1, 2001). Under Section
27 9-322(b) [Maine cite section 9-1322, subsection (2)], SP2's
28 priority with respect to the proceeds (instrument) dates from its
29 filing as to the original collateral (accounts). Accordingly,
30 SP2's security interest would be senior.

31 Subsection (b) [Maine cite subsection (2)] does not apply to
32 conflicting security interests each of which is perfected by a
33 pre-effective-date filing that was not effective under former
34 Article 9 but is effective under this Article.

35

36 Example 7: In 1999, SP1 obtains a security interest in D's
37 existing and after-acquired instruments and files a financing
38 statement covering "instruments." In 2000, D grants a security
39 interest in its existing and after-acquired instruments in favor
40 of SP2, who files a financing statement covering "instruments."
41 After this Article takes effect on July 1, 2001, one of D's
42 account debtors gives D a negotiable note to evidence its
43 obligation to pay an overdue account. Under the
44 first-to-file-or-perfect rule in Section 9-322(a) [Maine cite
45 section 9-1322, subsection (1)], SP1 would have priority in the
46 instrument. Both filings are effective under this Article, see
47 Section 9-705(b) [Maine cite section 9-1705, subsection (2)], and
48 SP1's filing in 1999 was earlier than SP2's in 2000. Subsection
49 (b) [Maine cite subsection (2)] does not change this result.
50

2 **Sec. A-3. Legislative intent.** This Act is the Maine enactment of
4 the Uniform Commercial Code, Article 9 as revised by the National
6 Conference of Commissioners on Uniform State Laws. The text of
8 the uniform act has been changed to conform to Maine statutory
10 conventions and the article is enacted as Article 9-A. Unless
otherwise noted in a Maine comment, the changes are technical in
nature and it is the intent of the Legislature that this Act be
interpreted as substantively the same as the revised Article 9 of
the uniform act.

12 **Sec. A-4. Effective date.** This Part takes effect July 1, 2001.

14

PART B

16

18 **Sec. B-1. 11 MRSA §1-105, sub-§(2),** as amended by PL 1997, c.
429, Pt. C, §2, is further amended to read:

20 (2) When one of the following provisions of this Title
22 specifies the applicable law, that provision governs a contrary
agreement only to the extent permitted by the law (including the
conflict of laws rules) so specified:

24

Rights of creditors against sold goods. Section 2-402.

26

Applicability of the Article on Leases. Sections 2-1105 and
2-1106.

28

30 Applicability of the Article on Bank Deposits and
Collections. Section 4-102.

32

Governing law in the Article on Funds Transfers. Section
4-1507.

34

36 Letters of Credit. Section 5-1116.

38 Applicability of the Article on Investment Securities.
Section 8-1110.

40

~~Perfection---provisions---of---the---Article---on---Secured
42 Transactions,--Section-9-103.~~

44 Law governing perfection, the effect of perfection or
46 nonperfection and the priority of security interests and
agricultural liens. Sections 9-1301 to 9-1307.

48

Official Comment

2 6. ~~Section--9-103~~ Sections 9-301 to 9-307 [Maine cite
3 sections 9-1301 to 9-1307] should be consulted as to the rules
4 for perfection of security interests and ~~the-effects~~ agricultural
5 liens, the effect of perfection and nonperfection, and priority.

6 **Sec. B-2. 11 MRSA §1-201, sub-§(9)**, as amended by PL 1979, c.
7 541, Pt. A, §100, is further amended to read:

8 **(9) Buyer in ordinary course of business.** "Buyer in
9 ordinary course of business" means a person ~~who that buys goods~~
10 in good faith ~~and,~~ without knowledge that the sale ~~to him is in~~
11 ~~violation of~~ violates the ownership rights ~~or security interest~~
12 of ~~a third party~~ another person in the goods ~~buys,~~ and in the
13 ordinary course from a person, ~~other than a pawnbroker,~~ in the
14 business of selling goods of that kind ~~but does not include a~~
15 ~~pawnbroker.~~ ~~All persons who sell minerals or the like, including~~
16 ~~oil and gas, at wellhead or minehead shall be deemed to be~~
17 ~~persons~~ A person buys goods in the ordinary course if the sale to
18 the person comports with the usual or customary practices in the
19 kind of business in which the seller is engaged or with the
20 seller's own usual or customary practices. A person that sells
21 oil, gas or other minerals at the wellhead or minehead is a
22 person in the business of selling goods of that kind. "Buying" A
23 "buyer in ordinary course of business" may be buy for cash or, by
24 exchange of other property or on secured or unsecured credit and
25 includes receiving may acquire goods or documents of title under
26 a preexisting contract for sale but does not include a transfer
27 in bulk or as security for or in total or partial satisfaction of
28 a money debt. Only a buyer that takes possession of the goods or
29 has a right to recover the goods from the seller under Article 2
30 may be a "buyer in ordinary course of business." A person that
31 acquires goods in a transfer in bulk or as security for or in
32 total or partial satisfaction of a money debt is not a "buyer in
33 ordinary course of business."

34 **Sec. B-3. 11 MRSA §1-201, sub-§(32)** is amended to read:

35 **(32) Purchase.** "Purchase" includes taking by sale,
36 discount, negotiation, mortgage, pledge, lien, security interest,
37 issue or reissue, gift or any other voluntary transaction
38 creating an interest in property.

39 **Sec. B-4. 11 MRSA §1-201, sub-§(37)**, as corrected by RR 1991,
40 c. 2, §35, is amended by amending the first paragraph to read:

41 **(37) Security interest.** "Security interest" means an
42 interest in personal property or fixtures that secures payment or
43 performance of an obligation. ~~The retention or reservation of~~
44 ~~title by a seller of goods notwithstanding shipment or delivery~~

2 to--the--buyer--(section--2-401)--is--limited--in--effect--to--a
reservation-of-a-"security-interest." The term also includes any
4 interest of a consignor and a buyer of accounts or, chattel
paper, which a payment intangible or a promissory note in a
6 transaction that is subject to Article 9 9-A. The special
property interest of a buyer of goods on identification of such
8 goods to a contract for sale under section 2-401 is not a
"security interest", but a buyer may also acquire a "security
10 interest" by complying with Article 9 9-A. ~~Unless a lease or~~
~~consignment--is--intended--as--security,--reservation--of--title~~
12 ~~thereunder is not a "security interest" but a consignment is in~~
any event subject to the provisions on consignment sales (section
14 2-326). Except as otherwise provided in section 2-505, the right
of a seller or lessor of goods under Article 2 or 2-A to retain
or acquire possession of the goods is not a "security interest,"
16 but a seller or lessor may also acquire a "security interest" by
complying with Article 9-A. The retention or reservation of
18 title by a seller of goods notwithstanding shipment or delivery
to the buyer (section 2-401) is limited in effect to a
20 reservation of a "security interest."

22 **Official Comment**

24 9. "Buyer in Ordinary Course of Business." From Section 1,
Uniform Trust Receipts Act. The definition has been expanded to
26 make clear the type of person protected. Its major significance
lies in Section 2-403 and in the Article on Secured Transactions
28 (Article 9 [Maine cite Article 9-A]).

30 ~~The reference to minerals and the like makes clear that a~~
~~buyer in ordinary course buying minerals under the circumstances~~
32 ~~described takes free of a prior mortgage created by the sellers.~~
~~See Comment to Section 9103.~~

34 ~~A pawnbroker cannot be a buyer in ordinary course of~~
36 ~~business because the person from whom he buys goods (or acquires~~
ownership ~~after foreclosing an initial pledge) is typically an~~
38 ~~ordinary user and not a person engaged in selling goods of that~~
kind.

40 The first sentence of paragraph (9) makes clear that a buyer
42 from a pawnbroker cannot be a buyer in ordinary course of
business. The second sentence tracks Section 6-102(1)(m). It
44 explains what it means to buy "in the ordinary course." The
penultimate sentence prevents a buyer that does not have the
46 right to possession as against the seller from being a buyer in
ordinary course of business. Concerning when a buyer obtains
48 possessory rights, see Sections 2-502 and 2-716. However, the
penultimate sentence is not intended to affect a buyer's status
50 as a buyer in ordinary course of business in cases (such as a

2 "drop shipment") involving delivery by the seller to a person
3 buying from the buyer or a donee from the buyer. The requirement
4 relates to whether as against the seller the buyer or one taking
5 through the buyer has possessory rights.

6 32. "Purchase." Section 58, Uniform Warehouse Receipts
7 Act; Section 76, Uniform Sales Act; Section 53, Uniform Bills
8 of Lading Act; Section 22, Uniform Stock Transfer Act; Section
9 1, Uniform Trust Receipts Act. Rephrased. With the addition of
10 taking "by . . . security interest," the revised definition makes
11 explicit what formerly was implicit.

12 37. "Security Interest." See Section 1, Uniform Trust
13 Receipts Act. ~~The present definition is elaborated, in view~~
14 ~~especially of the complete coverage of the subject in Article 9.~~
15 ~~Notice that in view of the Article the term includes the interest~~
16 ~~of certain outright buyers of certain kinds of property. Section~~
17 ~~1201(37) is being amended at the same time that the Article on~~
18 ~~Leases (Article 2A) is being promulgated as an amendment to this~~
19 ~~Act. The definition of "security interest" was revised in~~
20 connection with the promulgation of Article 2A and also to take
21 account of the expanded scope of Article 9 [Maine cite article
22 9-A] as revised in the 1998 Official Text. It includes the
23 interest of a consignor and the interest of a buyer of accounts,
24 chattel paper, payment intangibles, or promissory notes. See
25 Section 9-109 [Maine cite section 9-1109]. It also makes clear
26 that, with certain exceptions, in rem rights of sellers and
27 lessors under Articles 2 and 2A are not "security interests."
28 Among the rights that are not security interests are the right to
29 withhold delivery under Section 2-702(1), 2-703(a), or 2A-525
30 [Maine cite section 2-1525], the right to stop delivery under
31 Section 2-705 or 2A-526 [Maine cite section 2-1526], and the
32 right to reclaim under Section 2-507(2) or 2-702(2).

34 **Sec. B-5. 11 MRSA §2-103, sub-§(3) is amended to read:**

35 (3) The following definitions in other Articles apply to
36 this Article:

37 "Check." Section 3-104.
38 "Consignee." Section 7-102.
39 "Consignor." Section 7-102.
40 "Consumer goods." Section 9-109 9-1102.
41 "Dishonor." Section 3-507 3-1502.
42 "Draft." Section 3-104.

43 **Sec. B-6. 11 MRSA §2-210, sub-§(2) is amended to read:**

44 (2) Unless Except as otherwise provided in section 9-1406,
45 unless otherwise agreed, all rights of either seller or buyer can

2 be assigned except where the assignment would materially change
the duty of the other party, or increase materially the burden or
4 risk imposed on him the buyer or seller by his the contract, or
impair materially his the chance of obtaining return
6 performance. A right to damages for breach of the whole contract
or a right arising out of the assignor's due performance of his
the assignor's entire obligation can be assigned despite
8 agreement otherwise.

10 **Sec. B-7. 11 MRSA §2-210, sub-§(2-A)** is enacted to read:

12 (2-A) The creation, attachment, perfection or enforcement
14 of a security interest in the seller's interest under a contract
is not a transfer that materially changes the duty of or
16 increases materially the burden or risk imposed on the buyer or
impairs materially the buyer's chance of obtaining return
18 performance within the purview of subsection (2) unless, and then
only to the extent that, enforcement actually results in a
20 delegation of material performance of the seller. Even in that
event, the creation, attachment, perfection and enforcement of
22 the security interest remain effective, but:

24 (i) The seller is liable to the buyer for damages
caused by the delegation to the extent that the damages
26 could not reasonably be prevented by the buyer; and

28 (ii) A court having jurisdiction may grant other
appropriate relief, including cancellation of the
30 contract for sale or an injunction against enforcement
of the security interest or consummation of the
32 enforcement.

34 **Official Comment**

36 3. Under subsection (2) rights which are no longer executory
such as a right to damages for breach ~~of a right to payment of an~~
38 ~~"account" as defined in the Article on Secured Transactions~~
(~~Article 9~~) may be assigned although the agreement prohibits
40 assignment. In such cases no question of delegation of any
performance is involved. ~~The assignment of a "contract right" as~~
42 ~~defined in the Article on Secured Transactions (Article 9) is not~~
~~covered by this subsection.~~ Subsection (2) is subject to Section
44 9-406 [Maine cite section 9-1406], which makes rights to payment
for goods sold ("accounts"), whether or not earned, freely
46 alienable notwithstanding a contrary agreement or rule of law.

48 **Official Comment for §2-312**

50 5. Subsection (2) recognizes that sales by sheriffs,
executors, certain foreclosing lienors and persons similarly

2 situated are may be so out of the ordinary commercial course that
their peculiar character is immediately apparent to the buyer and
4 therefore no personal obligation is imposed upon the seller who
is purporting to sell only an unknown or limited right. This
6 subsection does not touch upon and leaves open all questions of
restitution arising in such cases, when a unique article so sold
is reclaimed by a third party as the rightful owner.

8
10 Foreclosure sales under Article 9 [Maine cite Article 9-A]
are another matter. Section 9-610 [Maine cite section 9-1610]
12 provides that a disposition of collateral under that section
includes warranties such as those imposed by this section on a
14 voluntary disposition of property of the kind involved.
Consequently, unless properly excluded under subsection (2) or
16 under the special provisions for exclusion in Section 9-610
[Maine cite section 9-1610], a disposition under Section 9-610
18 [Maine cite section 9-1610] of collateral consisting of goods
includes the warranties imposed by subsection (1) and, if
applicable, subsection (3).

20
22 **Sec. B-8. 11 MRSA §2-326 is amended to read:**

24 **§2-326. Sale on approval and sale or return; rights of
creditors**

26 (1) Unless otherwise agreed, if delivered goods may be
returned by the buyer even though they conform to the contract,
28 the transaction is:

30 (a) A "sale on approval," if the goods are delivered
primarily for use; and

32 (b) A "sale or return," if the goods are delivered
34 primarily for resale.

36 (2) ~~Except as provided in subsection (3),~~ Goods held
on approval are not subject to the claims of the buyer's
38 creditors until acceptance; goods held on sale or return are
subject to such claims while in the buyer's possession.

40
42 ~~(3) -- Where goods are delivered to a person for sale and such~~
~~person maintains a place of business at which he deals in goods~~
44 ~~of the kind involved, -- under a name other than the name of the~~
~~person making delivery, -- then with respect to claims of creditors~~
46 ~~of the person conducting the business the goods are deemed to be~~
~~on -- sale -- or -- return. -- The -- provisions -- of -- this -- subsection -- are~~
48 ~~applicable even though an agreement purports to reserve title to~~
~~the person making delivery until payment or resale or uses such~~
50 ~~words -- as -- "on consignment" -- or -- "on memorandum." -- However, -- this~~
~~subsection is not applicable if the person making delivery~~

2 against a delivery to a merchant for resale being a "sale on approval."

4 2. The right to return goods for failure to conform to the
6 contract of sale does not make the transaction a "sale on
8 approval" or "sale or return" and has nothing to do with this
10 section ~~and the following section or Section 2-327~~. ~~The present~~
12 This section is not concerned with remedies for breach of
14 contract. It deals instead with a power given by the contract to
turn back the goods even though they are wholly as warranted.
This section nevertheless presupposes that a contract for sale is
contemplated by the parties, although that contract may be of the
particular character ~~here described that this section addresses~~
(i.e., a sale on approval or a sale or return).

16 ~~Where the~~ If a buyer's obligation as a buyer is conditioned
18 not on its personal approval but on the article's passing a
described objective test, the risk of loss by casualty pending
20 the test is properly the seller's and proper return is at its
expense. On the point of "satisfaction" as meaning "reasonable
22 satisfaction" ~~where~~ when an industrial machine is involved, this
Article takes no position.

24 ~~2. Pursuant to the general policies of this Act which~~
26 ~~require good faith not only between the parties to the sales~~
~~contract, but as against interested third parties, subsection (3)~~
28 ~~resolves all reasonable doubts as to the nature of the~~
~~transaction in favor of the general creditors of the buyer. As~~
30 ~~against such creditors words such as "on consignment" or "on~~
~~memorandum", with or without words of reservation of title in the~~
32 ~~seller, are disregarded when the buyer has a place of business at~~
~~which he deals in goods of the kind involved. A necessary~~
34 ~~exception is made where the buyer is known to be engaged~~
~~primarily in selling the goods of others or is selling under a~~
36 ~~relevant sign law, or the seller complies with the filing~~
~~provisions of Article 9 as if his interest were a security~~
38 ~~interest. However, there is no intent in this Section to narrow~~
~~the protection afforded to third parties in any jurisdiction~~
40 ~~which has a selling Factors Act. The purpose of the exception is~~
~~merely to limit the effect of the present subsection itself, in~~
42 ~~the absence of any such Factors Act, to cases in which creditors~~
~~of the buyer may reasonably be deemed to have been misled by the~~
~~secret reservation.~~

44 3. Subsection (4) (3) resolves a conflict in the
46 pre-existing preUCC case law by ~~reognition~~ recognizing that an
48 "or return" provision is so definitely at odds with any ordinary
contract for sale of goods that ~~where written agreements are~~ if a
50 written agreement is involved it the "or return" term must be
contained in a written memorandum. The "or return" aspect of a

2 sales contract must be treated as a separate contract under the
Statute of Frauds section and as contradicting the sale insofar
as questions of parol or extrinsic evidence are concerned.

4
6 4. Certain true consignment transactions were dealt with in
former Sections 2-326(3) and 9-114 [Maine cite section 9-1114].
8 These provisions have been deleted and have been replaced by new
provisions in Article 9 [Maine cite article 9-A]. See, e.g.,
10 Sections 9-109(a)(4); 9-103(b); 9-319 [Maine cite section 9-1109,
subsection (1), paragraph (d); section 9-1103, subsection (2);
section 9-1319].

12
14 **Sec. B-9. 11 MRSA §2-502** is repealed and the following
enacted in its place:

16 **§2-502. Buyer's right to goods on seller's repudiation,**
18 **failure to deliver or insolvency**

20 (1) Subject to subsections (2) and (3) and even though the
goods have not been shipped, a buyer who has paid a part or all
22 of the price of goods in which the buyer has a special property
under the provisions of section 2-501 may, on making and keeping
24 good a tender of any unpaid portion of the price of the goods,
recover the goods from the seller if:

26 (a) In the case of goods bought for personal, family or
household purposes, the seller repudiates or fails to
28 deliver as required by the contract; or

30 (b) In all cases, the seller becomes insolvent within 10
days after receipt of the first installment on the price of
32 the goods.

34 (2) The buyer's right to recover the goods under subsection
(1), paragraph (a) vests upon acquisition of a special property,
36 even if the seller had not then repudiated or failed to deliver.

38 (3) If the identification creating the buyer's special
property has been made by the buyer, the buyer acquires the right
40 to recover the goods only if they conform to the contract for
sale.

42
44 **Official Comment**

46 1. This section gives an additional right to the buyer as a
result of identification of the goods to the contract in the
manner provided in Section 2-501. The buyer is given a right to
48 recover the goods on--the--seller's--insolvency--occurring,
conditioned upon making and keeping good a tender of any unpaid
50 portion of the price, in two limited circumstances. First, the

2 buyer may recover goods bought for personal, family, or household
3 purposes if the seller repudiates the contract or fails to
4 deliver the goods. Second, in any case, the buyer may recover
5 the goods if the seller becomes insolvent within 10 days after he
6 the seller receives the first installment on their price. The
7 buyer's right to recover the goods under this section is an
8 exception to the usual rule, under which the disappointed buyer
9 must resort to an action to recover damages.

10 2. The question of whether the buyer also acquires a
11 security interest in identified goods and has rights to the goods
12 when insolvency takes place after the ten-day period provided in
13 this section depends upon compliance with the provisions of the
14 Article on Secured Transactions (Article 9 [Maine cite Article
15 9-A]).

16 3. Under subsection (2), the buyer's right to recover
17 consumer goods under subsection (1)(a) vests upon acquisition of
18 a special property, which occurs upon identification of the goods
19 to the contract. See Section 2-501. Inasmuch as a secured party
20 normally acquires no greater rights in its collateral than its
21 debtor had or had power to convey, see Section 2-403(1) (first
22 sentence), a buyer who acquires a right to recover under this
23 section will take free of a security interest created by the
24 seller if it attaches to the goods after the goods have been
25 identified to the contract. The buyer will take free, even if
26 the buyer does not buy in ordinary course and even if the
27 security interest is perfected. Of course, to the extent that
28 the buyer pays the price after the security interest attaches,
29 the payments will constitute proceeds of the security interest.

30 3. 4. Subsection (2) (3) is included to preclude the
31 possibility of unjust enrichment, which exists would exist if the
32 buyer were permitted to recover goods even though they were
33 greatly superior in quality or quantity to that called for by the
34 contract for sale.

35 **Sec. B-10. 11 MRSA §2-716, sub-§(3) is amended to read:**

36 (3) The buyer has a right of replevin for goods identified
37 to the contract if after reasonable effort he the buyer is unable
38 to effect cover for such goods or the circumstances reasonably
39 indicate that such effort will be unavailing, or if the goods
40 have been shipped under reservation and satisfaction of the
41 security interest in them has been made or tendered. In the case
42 of goods bought for personal, family or household purposes, the
43 buyer's right of replevin vests upon acquisition of a special
44 property, even if the seller had not then repudiated or failed to
45 deliver.

2 Official Comment

4 3. The legal remedy of replevin is given to the buyer in
6 cases in which cover is reasonably unavailable and goods have
8 been identified to the contract. This is in addition to the
10 buyer's right to recover identified goods ~~en--the--seller's~~
~~insolvency--(Section--2-502)~~ under Section 2-502. For consumer
12 goods, the buyer's right to replevin vests upon the buyer's
14 acquisition of a special property, which occurs upon
16 identification of the goods to the contract. See Section 2501.
18 Inasmuch as a secured party normally acquires no greater rights
20 in its collateral that its debtor had or had power to convey, see
22 Section 2-403(1) (first sentence), a buyer who acquires a right
of replevin under subsection (3) will take free of a security
interest created by the seller if it attaches to the goods after
the goods have been identified to the contract. The buyer will
take free, even if the buyer does not buy in ordinary course and
even if the security interest is perfected. Of course, to the
extent that the buyer pays the price after the security interest
attaches, the payments will constitute proceeds of the security
interest.

24 **Sec. B-11. 11 MRSA §2-1103, sub-§(3),** as enacted by PL 1991, c.
26 805, §4, is amended to read:

28 (3) The following definitions in other Articles apply to
this Article:

30 "Account."	Section 9- 106 <u>9-1102</u> , subsection (2).
32 "Between merchants."	Section 2-104, subsection (3).
34 "Buyer."	Section 2-103, subsection (1), paragraph (a).
36 "Chattel paper."	Section 9- 105 <u>9-1102</u> , subsection (1), paragraph-(b) (11).
40 "Consumer goods."	Section 9- 109 <u>9-1102</u> , subsection (1) (23).
42 "Document."	Section 9- 105 <u>9-1102</u> , subsection (1), paragraph-(f) (30).
44 "Entrusting."	Section 2-403, subsection (3).
46 "General intangibles 48 <u>intangible."</u>	Section 9- 106 <u>9-1102</u> , subsection (42).

2 "Good faith." Section 2-103, subsection (1),
 4 paragraph (b).
 6 "Instrument." Section 9-105 ~~9-1102~~, subsection
 8 (1), ~~paragraph-(i)~~ (47).
 10 "Merchant." Section 2-104, subsection (1).
 12 "Mortgage." Section 9-105 ~~9-1102~~, subsection
 14 (1), ~~paragraph-(j)~~ (55).
 16 "Pursuant to commitment." Section 9-105 ~~9-1102~~, subsection
 18 (1), ~~paragraph-(k)~~ (60).
 20 "Receipt." Section 2-103, subsection (1),
 22 paragraph (c).
 24 "Sale." Section 2-106, subsection (1).
 26 "Sale on approval." Section 2-326.
 "Sale or return." Section 2-326.
 "Seller." Section 2-103, subsection (1),
 paragraph (d).

28 **Sec. B-12. 11 MRSA §2-1303, sub-§§(1) and (2)**, as enacted by PL
 30 1991, c. 805, §4, are amended to read:

32 (1) As used in this section, "creation of a security
 34 interest" includes the sale of a lease contract that is subject
 to Article 9 9-A, section 9-102 ~~9-1109~~, subsection (1), paragraph
 (b) (c).

36 (2) Except as provided in ~~subsections~~ subsection (3) and
 38 (4) section 9-1407, a provision in a lease agreement that:
 40 prohibits the voluntary or involuntary transfer, including a
 42 transfer by sale, sublease, creation or enforcement of a security
 interest, or attachment, levy or other judicial process, of an
 44 interest of a party under the lease contract or of the lessor's
 residual interest in the goods; or makes such a transfer an event
 of default, gives rise to the rights and remedies provided in
 subsection (5), but a transfer that is prohibited or is an event
 of default under the lease agreement is otherwise effective.

46 **Sec. B-13. 11 MRSA §2-1303, sub-§(3)**, as enacted by PL 1991, c.
 48 805, §4, is repealed.

2 event of default, the prejudiced party may recover damages; or,
4 if the damage remedy would be ineffective adequately to protect
6 that party, the court can order cancellation of the lease
8 contract or enjoin the transfer. This rule that such provisions
generally are enforceable is subject to ~~subsections (3) and (4)~~
subsection (3) and Section 9-407 [Maine cite section 9-1407],
which make such provisions unenforceable in certain instances.

10 2. ~~The first such instance is described in subsection (3).~~
A Under Section 9-407, [Maine cite section 9-1407] a provision in
12 a lease agreement which prohibits the creation or enforcement of
a security interest, including sales of lease contracts subject
14 to Article 9 (~~Sections 9-102(1)(b) and 9-104(f)~~ Section
9-109(a)(3)) [Maine cite section 9-1109, subsection (1),
paragraph (c)], or makes it an event of default is generally not
16 enforceable, reflecting the policy of Section 9-406 [Maine cite
section 9-1406] and former Section 9-318(4). However, ~~inasmuch~~
18 ~~as the creation of a security interest includes the sale of a~~
~~lease contract, if there are then unperformed duties on the part~~
20 ~~of the lessor/seller, there could be a delegation of duties in~~
~~the sale, and, if such a delegation actually takes place and is~~
22 ~~of a material performance, a provision in a lease agreement~~
~~prohibiting it or making it an event of default would be~~
24 ~~enforceable, giving rise to the rights and remedies stated in~~
~~subsection (5). The statute does not define "material." The~~
26 ~~parties may set standards to determine its meaning. The term is~~
~~intended to exclude delegations of matters such as accounting to~~
28 ~~a professional accountant and the performance of, as opposed to~~
~~the responsibility for, maintenance duties to a person in the~~
30 ~~maintenance service industry.~~

32 3. ~~For similar reasons, the lessor is entitled to protect~~
~~its residual interest in the goods by prohibiting anyone but the~~
34 ~~lessee from possessing or using them. Accordingly, under~~
~~subsection (3) if there is an actual transfer by the lessee of~~
36 ~~its right of possession or use of the goods in violation of a~~
~~provision in the lease agreement, such a provision likewise is~~
38 ~~enforceable, giving rise to the rights and remedies stated in~~
~~subsection (5). A transfer of the lessee's right of possession~~
40 ~~or use of the goods resulting from the enforcement of a security~~
~~interest granted by the lessee in its leasehold interest is a~~
42 ~~"transfer by the lessee" under this subsection.~~

44 4. ~~Finally, subsection (3) protects against a claim that the~~
~~creation or enforcement of a security interest in the lessor's~~
46 ~~interest under the lease contract or in the residual interest is~~
~~a transfer that materially impairs the prospect of obtaining~~
48 ~~return performance by, materially changes the duty of, or~~
~~materially increases the burden or risk imposed on the lessee so~~
50 ~~as to give rise to the rights and remedies stated in subsection~~

2 (5), unless the transfer involves an actual delegation of a
material performance of the lessor.

4 5. While it is not likely that a transfer by the lessor of
6 its right to payment under the lease contract would impair at a
8 future time the ability of the lessee to obtain the performance
10 due the lessee under the lease contract from the lessor, if under
12 the circumstances reasonable grounds for insecurity as to
receiving that performance arise, the lessee may employ the
provision of this Article for demanding adequate assurance of due
performance and has the remedy provided in that circumstance.
Section 2A-401.

14 6. Sections 9-206 and 9-318(1) through (3) also are
16 relevant. Section 9-206 sanctions an agreement by a lessee not
to assert certain types of claims or defenses against the
18 lesser's assignee. Section 9-318(1) through (3) deal with, among
20 other things, the other party's rights against the assignee where
22 Section 9-206(1) does not apply. Since the definition of
24 contract under Section 1-201(11) includes a lease agreement, the
26 definition of account debtor under Section 9-105(1)(a) includes a
28 lessee of goods. As a result, Section 9-206 applies to lease
agreements, and there is no need to restate these sections in
this Article. The reference to "defenses or claims arising out
of a sale" in Section 9-318(1) should be interpreted broadly to
include defenses or claims arising out of a lease inasmuch as
that section codifies the common-law rule with respect to
contracts, including lease contracts.

30 7. 3. Subsection (4) (3) is based upon Section 2-210(2) and
32 Section 9-318(4) 9-406 [Maine cite section 9-1406]. It makes
unenforceable a prohibition against transfers of certain rights
34 to payment or a provision making the transfer an event of
36 default. It also provides that such transfers do not materially
impair the prospect of obtaining return performance by,
38 materially change the duty of, or materially increase the burden
or risk imposed on, the other party to the lease contract so as
40 to give rise to the rights and remedies stated in subsection (5)
42 (4). Accordingly, a transfer of a right to payment cannot be
44 prohibited or made an event of default, or be one that materially
impairs performance, changes duties or increases risk, if the
46 right is already due or will become due without further
performance being required by the party to receive payment.
48 Thus, a lessor can transfer the right to future payments under
the lease contract, including by way of a grant of a security
50 interest, and the transfer will not give rise to the rights and
remedies stated in subsection (5) (4) if the lessor has no
remaining performance under the lease contract. The mere fact
that the lessor is obligated to allow the lessee to remain in
possession and to use the goods as long as the lessee is not in

2 default does not mean that there is "remaining performance" on
the part of the lessor. Likewise, the fact that the lessor has
4 potential liability under a "nonoperating" lease contract for
breaches of warranty does not mean that there is "remaining
6 performance". In contrast, the lessor would have "remaining
performance" under a lease contract requiring the lessor to
8 regularly maintain and service the goods or to provide "upgrades"
of the equipment on a periodic basis in order to avoid
10 obsolescence. The basic distinction is between a mere potential
duty to respond which is not "remaining performance," and an
12 affirmative duty to render stipulated performance. Although the
distinction may be difficult to draw in some cases, it is
14 instructive to focus on the difference between "operating" and
"nonoperating" leases as generally understood in the
16 marketplace. Even if there is "remaining performance" under a
lease contract, a transfer for security of a right to payment
18 that is made an event of default or that is in violation of a
prohibition against transfer does not give rise to the rights and
20 remedies under subsection ~~(5)~~ (4) if it does not constitute an
actual delegation of a material performance under ~~subsection (3)~~
Section 9-407 [Maine cite section 9-1407].

22
24 8. 4. The application of either the rule of ~~subsection (3)~~
Section 9-407 [Maine cite section 9-1407] or the rule of
26 subsection ~~(4)~~ (3) to the grant by the lessor of a security
interest in the lessor's right to future payment under the lease
28 contract may produce the same result. Both ~~subsections~~
provisions generally protect security transfers by the lessor in
30 particular because the creation by the lessor of a security
interest or the enforcement of that interest generally will not
32 prejudice the lessee's rights if it does not result in a
delegation of the lessor's duties. To the contrary, the receipt
34 of loan proceeds or relief from the enforcement of an antecedent
debt normally should enhance the lessor's ability to perform its
36 duties under the lease contract. Nevertheless, there are
circumstances where relief might be justified. For example, if
38 ownership of the goods is transferred pursuant to enforcement of
a security interest to a party whose ownership would prevent the
40 lessee from continuing to possess the goods, relief might be
warranted. See 49 U.S.C. § 1401(a) and (b) which places
42 limitations on the operation of aircraft in the United States
based on the citizenship or corporate qualification of the
44 registrant.

46 9. 5. Relief on the ground of material prejudice when the
lease agreement does not prohibit the transfer or make it an
48 event of default should be afforded only in extreme
circumstances, considering the fact that the party asserting
material prejudice did not insist upon a provision in the lease
50 agreement that would protect against such a transfer.

2 10. 6. Subsection ~~(5)~~ (4) implements the rule of subsection
4 (2). Subsection (2) provides that, even though a transfer is
6 effective, a provision in the lease agreement prohibiting it or
8 making it an event of default may be enforceable as provided in
10 subsection ~~(5)~~ (4). See *Brummond v. First National Bank of*
12 *Clovis*, 656 P.2d 884, 35 U.C.C.Rep.Serv. (Callaghan) 1311
14 (N.Mex.1983), stating the analogous rule for Section 9-311 [Maine
16 cite section 9-1311]. If the transfer prohibited by the lease
18 agreement is made an event of default, then, under subsection
20 ~~5(a)~~ (4)(a), unless the default is waived or there is an
22 agreement otherwise, the aggrieved party has the rights and
24 remedies referred to in Section 2A-501(2), viz. those in this
26 Article and, except as limited in the Article, those provided in
28 the lease agreement. In the unlikely circumstance that the lease
30 agreement prohibits the transfer without making a violation of
the prohibition an event of default or, even if there is no
prohibition against the transfer, and the transfer is one that
materially impairs performance, changes duties, or increases risk
(for example, a sublease or assignment to a party using the goods
improperly or for an illegal purpose), then subsection ~~5(b)~~
(4)(b) is applicable. In that circumstance, unless the party
aggrieved by the transfer has otherwise agreed in the lease
contract, such as by assenting to a particular transfer or to
transfers in general, or agrees in some other manner, the
aggrieved party has the right to recover damages from the
transferor and a court may, in appropriate circumstances, grant
other relief, such as cancellation of the lease contract or an
injunction against the transfer.

32 11. 7. If a transfer gives rise to the rights and remedies
34 provided in subsection ~~(5)~~ (4), the transferee as an alternative
36 may propose, and the other party may accept, adequate cure or
38 compensation for past defaults and adequate assurance of future
40 due performance under the lease contract. Subsection ~~(5)~~ (4)
does not preclude any other relief that may be available to a
party to the lease contract aggrieved by a transfer subject to an
enforceable prohibition, such as an action for interference with
contractual relations.

42 12. 8. Subsection ~~(8)~~ (7) requires that a provision in a
44 consumer lease prohibiting a transfer, or making it an event of
46 default, must be specific, written and conspicuous. See Section
1-201(10). This assists in protecting a consumer lessee against
surprise assertions of default.

48 13. 9. Subsection ~~(6)~~ (5) is taken almost verbatim from the
50 provisions of Section ~~2-210(4)~~ 2-210(5). The subsection states a
rule of construction that distinguishes a commercial assignment,
which substitutes the assignee for the assignor as to rights and

2 duties, and an assignment for security or financing assignment,
3 which substitutes the assignee for the assignor only as to
4 rights. Note that the assignment for security or financing
5 assignment is a subset of all security interests. Security
6 interest is defined to include "any interest of a buyer of ___
7 chattel paper". Section 1-201(37). Chattel paper is defined to
8 include a lease. Section 9-105(1)(b) 9-102 [Maine cite section
9-1102]. Thus, a buyer of leases is the holder of a security
10 interest in the leases. That conclusion should not influence
11 this issue, as the policy is quite different. Whether a buyer of
12 leases is the holder of a commercial assignment, or an assignment
13 for security or financing assignment should be determined by the
14 language of the assignment or the circumstances of the assignment.

15 **Sec. B-15. 11 MRSA §2-1307**, as enacted by PL 1991, c. 805,
16 §4, is repealed and the following enacted in its place:

17 **§2-1307. Priority of liens arising by attachment or**
18 **levy on, security interests in and other**
19 **claims to goods**

20 (1) Except as otherwise provided in section 2-1306, a
21 creditor of a lessee takes subject to the lease contract.

22 (2) Except as otherwise provided in subsection (3) and in
23 sections 2-1306 and 2-1308, a creditor of a lessor takes subject
24 to the lease contract unless the creditor holds a lien that
25 attached to the goods before the lease contract became
26 enforceable.

27 (5) Except as otherwise provided in section 9-1317, 9-1321
28 and 9-1323, a lessee takes a leasehold interest subject to a
29 security interest held by a creditor of the lessor.

30 **Official Comment**

31 3. To take priority over the lease contract, and the
32 interests derived therefrom, the creditor must come within one of
33 three exceptions the exception stated within the rule. First, in
34 subsection (2)(a) or within one of the provisions of Article 9
35 [Maine cite Article 9-A] mentioned in subsection (3). Subsection
36 (2) provides that where the creditor holds a lien (Section
37 2A-103(1)(r)) that attached before the lease contract became
38 enforceable (Section 2A-301), the creditor does not take subject
39 to the lease. Second, ~~subsection (2)(b) provides that when the~~
40 ~~creditor holds a security interest (Section 1-201(37)), whether~~
41 ~~or not perfected, the creditor has priority over a lessee who did~~
42 ~~not give value (Section 1-201(44)) and receive delivery of the~~
43 ~~goods without knowledge (Section 1-201(25)) of the security~~
44 ~~interest. As to other lessees, under subsection (2)(c) a secured~~
45 ~~creditor takes subject to the lease contract.~~

2 creditor holding a perfected security interest before the time
the lease contract became enforceable (Section 2A-301) does not
4 take subject to the lease. With respect to this provision, the
lessee in these circumstances is treated like a buyer so that
6 perfection of a purchase money security interest does not relate
back (Section 9-301). Subsection (3) provides that a lessee
8 takes its leasehold interest subject to a security interest
except as otherwise provided in Sections 9-317, 9-321, or 9-323
[Maine cite section 9-1317, 9-1321 or 9-1323].

10
12 4. The rules of this section operate in favor of whichever
party to the lease contract may enforce it, even if one party
perhaps may not, e.g., under Section 2A-201(1)(b).

14
16 5. The rules stated in subsections (2)(b) and (c), and the
rule in subsection (3), are is best understood by reviewing a
18 hypothetical. Assume that a merchant engaged in the business of
selling and leasing musical instruments obtained possession of a
20 truck load of musical instruments on deferred payment terms from
a supplier of musical instruments on January 6. To secure
22 payment of such credit the merchant granted the supplier a
security interest in the instruments; the security interest was
24 perfected by filing on January 15. The merchant, as lessor,
entered into a lease to an individual of one of the musical
26 instruments supplied by the supplier; the lease became
enforceable on January 10. Under subsection (2)(b) the lessee
will prevail (assuming the lessee qualifies thereunder) unless
28 subsection (c) provides otherwise. Under the rule stated in
subsection (2)(c) a priority dispute between the supplier, as the
30 lessor's secured creditor, and the lessee would be determined by
ascertaining on January 10 (the day the lease became enforceable)
32 the validity and perfected status of the security interest in the
musical instrument and the enforceability of the lease contract
34 by the lessee. Nothing more appearing, under the rule stated in
subsection (2)(c), the supplier's security interest in the
36 musical instrument would not have priority over the lease
contract. Moreover, subsection (2) states that its rules are
38 subject to the rules of subsections (3) and (4). Under this
hypothetical the lessee should qualify as a "lessee in the
40 ordinary course of business". Section 2A-103(1)(c). Subsection
42 (3) also makes clear that the lessee in the ordinary course of
business will win even if he or she knows of the existence of the
44 supplier's security interest.

46 6. Subsections (3) and (4), which are modeled on the
provisions of Section 9-307(1) and (3), respectively, state two
48 exceptions to the priority rule stated in subsection (2) with
respect to a creditor who holds a security interest. The lessee
50 in the ordinary course of business will be treated in the same
fashion as the buyer in the ordinary course of business, given a

2 ~~priority dispute with a secured creditor over goods subject to a~~
3 ~~lease contract.~~

4 **Sec. B-16. 11 MRSA §2-1309, sub-§(1), ¶(b)**, as enacted by PL
5 1991, c. 805, §4, is amended to read:

6 (b) A "fixture filing" is the filing, in the office where a
7 record of a mortgage on the real estate would be filed or
8 recorded, of a financing statement covering goods that are
9 or are to become fixtures and conforming to the requirements
10 of section 9-402 9-1502, subsection-~~(5)~~ subsections (1) and
11 (2);

12
13 **Sec. B-17. 11 MRSA §4-208, sub-§(3), ¶(a)** is amended to read:

14 (a) No security agreement is necessary to make the security
15 interest enforceable (section 9-203 9-1203, subsection ~~(1)~~
16 (2), paragraph ~~(b)~~ (c), subparagraph (i)); and

17
18 **Sec. B-18. 11 MRSA §5-1118** is enacted to read:

19 **§5-1118. Security interest of issuer or nominated person**

20 (1) An issuer or nominated person has a security interest
21 in a document presented under a letter of credit to the extent
22 that the issuer or nominated person honors or gives value for the
23 presentation.

24 (2) So long as and to the extent that an issuer or
25 nominated person has not been reimbursed or has not otherwise
26 recovered the value given with respect to a security interest in
27 a document under subsection (1), the security interest continues
28 and is subject to Article 9-A, but:

29 (a) A security agreement is not necessary to make the
30 security interest enforceable under section 9-1203,
31 subsection (2), paragraph (c);

32 (b) If the document is presented in a medium other than a
33 written or other tangible medium, the security interest is
34 perfected; and

35 (c) If the document is presented in a written or other
36 tangible medium and is not a certificated security, chattel
37 paper, a document of title, an instrument or a letter of
38 credit, the security interest is perfected and has priority
39 over a conflicting security interest in the document so long
40 as the debtor does not have possession of the document.

Official Comment

2

4 1. This section gives the issuer of a letter of credit or a
6 nominated person thereunder an automatic perfected security
8 interest in a "document" (as that term is defined in Section
10 5-102(a)(6)). The security interest arises only if the document
12 is presented to the issuer or nominated person under the letter
14 of credit and only to the extent of the value that is given.
16 This security interest is analogous to that awarded to a
18 collecting bank under Section 4-210. Subsection (b) contains
20 special rules governing the security interest arising under this
22 section. In all other respects, a security interest arising
24 under this section is subject to Article 9 [Maine cite Article
26 9-A]. See Section 9-109 [Maine cite section 9-1109]. Thus, for
28 example, a security interest arising under this section may give
30 rise to a security interest in proceeds under Section 9-315
32 [Maine cite section 9-1315].

18

20 2. Subsection (b)(1) makes a security agreement unnecessary
22 to the creation of a security interest under this section. Under
24 subsection (b)(2), a security interest arising under this section
26 is perfected if the document is presented in a medium other than
28 a written or tangible medium. Documents that are written and
30 that are not an otherwise-defined type of collateral under
32 Article 9 (e.g., an invoice or inspection certificate) may be
34 goods, in which an issuer or nominated person could perfect its
36 security interest by possession. Because the definition of
38 document in Section 5-102(a)(6) includes records (e.g.,
40 electronic records) that may not be goods, subsection (b)(2)
42 provides for automatic perfection (i.e., without filing or
44 possession).

32

34 Under subsection (b)(3), if the document (i) is in a written
36 or tangible medium, (ii) is not a certificated security, chattel
38 paper, a document of title, an instrument, or a letter of credit,
40 and (iii) is not in the debtor's possession, the security
42 interest is perfected and has priority over a conflicting
44 security interest. If the document is a type of tangible
46 collateral that subsection (b)(3) excludes from its perfection
48 and priority rules, the issuer or nominated person must comply
50 with the normal method of perfection (e.g., possession of an
 instrument) and is subject to the applicable Article 9 [Maine
 cite Article 9-A] priority rules. Documents to which subsection
 (b)(3) applies may be important to an issuer or nominated
 person. For example, a confirmer who pays the beneficiary must
 be assured that its rights to all documents are not impaired. It
 will find it necessary to present all of the required documents
 to the issuer in order to be reimbursed. Moreover, when a
 nominated person sends documents to an issuer in connection with
 the nominated person's reimbursement, that activity is not a

2 collection, enforcement, or disposition of collateral under
3 Article 9 [Maine cite Article 9-A].

4 One purpose of this section is to protect an issuer or
5 nominated person from claims of a beneficiary's creditors. It is
6 a fallback provision inasmuch as issuers and nominated persons
7 frequently may obtain and perfect security interests under the
8 usual Article 9 [Maine cite Article 9-A] rules, and, in many
9 cases, the documents will be owned by the issuer, nominated
10 person, or applicant.

11 **Sec. B-19. 11 MRSA §7-503, sub-§(1), ¶(a)** is amended to read:

12 (a) Delivered or entrusted them or any document of title
13 covering them to the bailor or his the bailor's nominee with
14 actual or apparent authority to ship, store or sell or with
15 power to obtain delivery under this Article (section 7-403)
16 or with power of disposition under this Title (sections
17 2-403 and 9-307 9-1320) or other statute or rule of law; nor

18 **Official Comment §8-1102**

19 7. "Entitlement holder." This term designates those who
20 hold financial assets through intermediaries in the indirect
21 holding system. Because many of the rules of Part 5 impose
22 duties on securities intermediaries in favor of entitlement
23 holders, the definition of entitlement holder is, in most cases,
24 limited to the person specifically designated as such on the
25 records of the intermediary. The last sentence of the definition
26 covers the relatively unusual cases where a person may acquire a
27 security entitlement under Section 8501 even though the person
28 may not be specifically designated as an entitlement holder on
29 the records of the securities intermediary.

30 A person may have an interest in a security entitlement, and
31 may even have the right to give entitlement orders to the
32 securities intermediary with respect to it, even though the
33 person is not the entitlement holder. For example, a person who
34 holds securities through a securities account in its own name may
35 have given discretionary trading authority to another person,
36 such as an investment adviser. Similarly, the control provisions
37 in Section 8-106 and the related provisions in Article 9 [Maine
38 cite Article 9-A] are designed to facilitate transactions in
39 which a person who holds securities through a securities account
40 uses them as collateral in an arrangement where the securities
41 intermediary has agreed that if the secured party so directs the
42 intermediary will dispose of the positions. In such
43 arrangements, the debtor remains the entitlement holder but has
44 agreed that the secured party can initiate entitlement orders.

2 Moreover, an entitlement holder may be acting for another person
4 as a nominee, agent, trustee, or in another capacity. Unless the
6 entitlement holder is itself acting as a securities intermediary
8 for the other person, in which case the other person would be an
entitlement holder with respect to the securities entitlement,
the relationship between an entitlement holder and another person
for whose benefit the entitlement holder holds a securities
entitlement is governed by other law.

10 8. "Entitlement order." This term is defined as a
12 notification communicated to a securities intermediary directing
14 transfer or redemption of the financial asset to which an
16 entitlement holder has a security entitlement. The term is used
18 in the rules for the indirect holding system in a fashion
20 analogous to the use of the terms "indorsement" and "instruction"
22 in the rules for the direct holding system. If a person directly
24 holds a certificated security in registered form and wishes to
26 transfer it, the means of transfer is an indorsement. If a
28 person directly holds an uncertificated security and wishes to
30 transfer it, the means of transfer is an instruction. If a
32 person holds a security entitlement, the means of disposition is
34 an entitlement order. An entitlement order includes a direction
under Section 8-508 [Maine cite section 8-1508] to the securities
intermediary to transfer a financial asset to the account of the
entitlement holder at another financial intermediary or to cause
the financial asset to be transferred to the entitlement holder
in the direct holding system (e.g., the delivery of a securities
certificate registered in the name of the former entitlement
holder). As noted in Comment 7, an entitlement order need not be
initiated by the entitlement holder in order to be effective, so
long as the entitlement holder has authorized the other party to
initiate entitlement orders. See Section 8-107(b) [Maine cite
section 8-1107].

36 **Sec. B-20. 11 MRSA §8-1103, sub-§(6),** as enacted by PL 1997, c.
429, Pt. B, §2, is amended to read:

38 (6) A commodity contract, as defined in section 9-115
40 9-1102, subsection (15), is not a security or a financial asset.

42 **Sec. B-21. 11 MRSA §8-1106, sub-§§(4) and (6),** as enacted by PL
1997, c. 429, Pt. B, §2, are amended to read:

44 (4) A purchaser has control of a security entitlement if:

46 (a) The purchaser becomes the entitlement holder; ~~or~~

48 (b) The securities intermediary has agreed that it will
50 comply with entitlement orders originated by the purchaser
without further consent by the entitlement holder; or

2 (c) Another person has control of the security entitlement
4 on behalf of the purchaser or, having previously acquired
6 control of the security entitlement, acknowledges that it
 has control on behalf of the purchaser.

8 (6) A purchaser who has satisfied the requirements of
10 subsection (3)~~, paragraph-(b)~~ or subsection (4)~~, paragraph-(b)~~
12 has control, even if the registered owner in the case of
14 subsection (3)~~, paragraph-(b)~~ or the entitlement holder in the
16 case of subsection (4)~~, paragraph-(b)~~ retains the right to make
substitutions for the uncertificated security or security
entitlement, to originate instructions or entitlement orders to
the issuer or securities intermediary or otherwise to deal with
the uncertificated security or security entitlement.

Official Comment

18 1. The concept of "control" plays a key role in various
20 provisions dealing with the rights of purchasers, including
22 secured parties. See Sections 8303 (protected purchasers);
24 8503(e) (purchasers from securities intermediaries); 8510
26 (purchasers of security entitlements from entitlement holders);
9-115(4) 9-314 [Maine cite section 9-1314] (perfection of
security interests); 9-115(5) 9-328 [Maine cite section 9-1328]
(priorities among conflicting security interests).

28 Obtaining "control" means that the purchaser has taken
30 whatever steps are necessary, given the manner in which the
32 securities are held, to place itself in a position where it can
have the securities sold, without further action by the owner.

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

2 securities under Section 8-301. Of course, the acknowledging
3 person cannot be the debtor.

4 This section specifies only the minimum requirements that
5 such an arrangement must meet to confer "control"; the details of
6 the arrangement can be specified by agreement. The arrangement
7 might cover all of the positions in a particular account or
8 subaccount, or only specified positions. There is no requirement
9 that the control party's right to give entitlement orders be
10 exclusive. The arrangement might provide that only the control
11 party can give entitlement orders, or that either the entitlement
12 holder or the control party can give entitlement orders. See
13 subsection (f).

14 The following examples illustrate the rules application of
15 subsection (d):

16 Example 1. Debtor grants Alpha Bank a security interest in
17 a security entitlement that includes 1000 shares of XYZ Co. stock
18 that Debtor holds through an account with Able & Co. Alpha also
19 has an account with Able. Debtor instructs Able to transfer the
20 shares to Alpha, and Able does so by crediting the shares to
21 Alpha's account. Alpha Bank has control of the 1000 shares
22 under subsection (d)(1). Although Debtor may have become the
23 beneficial owner of the new securities entitlement, as between
24 Debtor and Alpha, Able has agreed to act on Alpha's entitlement
25 orders because, as between Able and Alpha,--because Alpha Bank--is
26 has become the entitlement holder. See Section 8-506.

27 Example 2. Debtor grants Alpha Bank a security interest in
28 a security entitlement that includes 1000 shares of XYZ Co. stock
29 that Debtor holds through an account with Able & Co. Alpha Bank
30 does not have an account with Able. Alpha Bank uses Beta as its
31 securities custodian. Debtor instructs Able to transfer the
32 shares to Beta, for the account of Alpha Bank, and Able does so.
33 Alpha Bank has control of the 1000 shares under subsection
34 (d)(1). As in Example 1, although Debtor may have become the
35 beneficial owner of the new securities entitlement, as between
36 Debtor and Alpha, Beta has agreed to act on Alpha's entitlement
37 orders because, as between Beta and Alpha, because Alpha is
38 has become the entitlement holder.

39 Example 3. Debtor grants Alpha Bank a security interest in
40 a security entitlement that includes 1000 shares of XYZ Co. stock
41 that Debtor holds through an account with Able & Co. Debtor,
42 Able, and Alpha Bank enter into an agreement under which Debtor
43 will continue to receive dividends and distributions, and will
44 continue to have the right to direct dispositions, but Alpha Bank
45 also has the right to direct dispositions. Alpha Bank has
46 control of the 1000 shares under subsection (d)(2).
47
48
49
50

2 Example 4. Able & Co., a securities dealer, grants Alpha
3 Bank a security interest in a security entitlement that includes
4 1000 shares of XYZ Co. stock that Able holds through an account
5 with Clearing Corporation. Able causes Clearing Corporation to
6 transfer the shares into Alpha-Bank's Alpha's account at Clearing
7 Corporation. As in Example 1, Alpha Bank has control of the 1000
8 shares under subsection (d)(1).

10 Example 5. Able & Co., a securities dealer, grants Alpha
11 Bank a security interest in a security entitlement that includes
12 1000 shares of XYZ Co. stock that Able holds through an account
13 with Clearing Corporation. Alpha Bank does not have an account
14 with Clearing Corporation. It holds its securities through Beta
15 Bank, which does have an account with Clearing Corporation. Able
16 causes Clearing Corporation to transfer the shares into Beta
17 Bank's Beta's account at Clearing Corporation. Beta Bank
18 credits the position to Alpha's account with Beta Bank. As in
19 Example 2, Alpha Bank has control of the 1000 shares under
20 subsection (d)(1).

22 Example 6. Able & Co. a securities dealer, grants Alpha
23 Bank a security interest in a security entitlement that includes
24 1000 shares of XYZ Co. stock that Able holds through an account
25 with Clearing Corporation. Able causes Clearing Corporation to
26 transfer the shares into a pledge account, pursuant to an
27 agreement under which Able will continue to receive dividends,
28 distributions, and the like, but Alpha Bank has the right to
29 direct dispositions. As in Example 3, Alpha Bank has control of
30 the 1000 shares under subsection (d)(2).

32 Example 7. Able & Co. a securities dealer, grants Alpha
33 Bank a security interest in a security entitlement that includes
34 1000 shares of XYZ Co. stock that Able holds through an account
35 with Clearing Corporation. Able, Alpha, and Clearing Corporation
36 enter into an agreement under which Clearing Corporation will act
37 on instructions from Alpha with respect to the XYZ Co. stock
38 carried in Able's account, but Able will continue to receive
39 dividends, distributions, and the like, and will also have the
40 right to direct dispositions. As in Example 3, Alpha Bank has
41 control of the 1000 shares under subsection (d)(2).

42 Example 8. Able & Co. a securities dealer, holds a wide
43 range of securities through its account at Clearing Corporation.
44 Able enters into an arrangement with Alpha Bank pursuant to which
45 Alpha provides financing to Able secured by securities identified
46 as the collateral on lists provided by Able to Alpha on a daily
47 or other periodic basis. Able, Alpha, and Clearing Corporation
48 enter into an agreement under which Clearing Corporation agrees
49 that if at any time Alpha directs Clearing Corporation to do so,
50

2 Clearing Corporation will transfer any securities from Able's
4 account at Alpha's instructions. Because Clearing Corporation
6 has agreed to act on Alpha's instructions with respect to any
8 securities carried in Able's account, at the moment that Alpha's
security interest attaches to securities listed by Able, Alpha
obtains control of those securities under subsection (d)(2).
There is no requirement that Clearing Corporation be informed of
which securities Able has pledged to Alpha.

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

26 7. The term "control" is used in a particular defined
28 sense. The requirements for obtaining control are set out in
30 this section. The concept is not to be interpreted by reference
32 to similar concepts in other bodies of law. In particular, the
34 requirements for "possession" derived from the common law of
36 pledge are not to be used as a basis for interpreting subsection
(c)(2) or (d)(2). Those provisions are designed to supplant the
concepts of "constructive possession" and the like. A principal
purpose of the "control" concept is to eliminate the uncertainty
and confusion that results from attempting to apply common law
possession concepts to modern securities holding practices.

38 The key to the control concept is that the purchaser has the
40 present ability to have the securities sold or transferred
42 without further action by the transferor. There is no
44 requirement that the powers held by the purchaser be exclusive.
46 For example, in a secured lending arrangement, if the secured
48 party wishes, it can allow the debtor to retain the right to make
50 substitutions, or to direct the disposition of the uncertificated
security or security entitlement, or otherwise to give
instructions or entitlement orders. (As explained in Section
8-102, Comment 8, an entitlement order includes a direction under
Section 8-508 to the securities intermediary to transfer a
financial asset to the account of the entitlement holder at
another financial intermediary or to cause the financial asset to

2 be transferred to the entitlement holder in the direct holding
3 system (e.g., by delivery of a securities certificate registered
4 in the name of the former entitlement holder). Subsection (f)
5 is included to make clear the general point stated in subsection
6 subsections (c) and (d) that the test of control is whether the
7 purchaser has obtained the requisite power, not whether the
8 debtor has retained other powers. There is no implication that
9 retention by the debtor of powers other than those mentioned in
10 subsection (f) is inconsistent with the purchaser having
11 control. Nor is there a requirement that the purchaser's powers
12 be unconditional, provided that further consent of the
13 entitlement holder is not a condition.

14 Example 10. Debtor grants to Alpha Bank and to Beta Bank a
15 security interest in a security entitlement that includes 1000
16 shares of XYZ Co. stock that Debtor holds through an account with
17 Able & Co. By agreement among the parties, Alpha's security
18 interest is senior and Beta's is junior. Able agrees to act on
19 the entitlement orders of either Alpha or Beta. Alpha and Beta
20 each has control under subsection (d)(2). Moreover, Beta has
21 control notwithstanding a term of Able's agreement to the effect
22 that Able's obligation to act on Beta's entitlement orders is
23 conditioned on the Alpha's consent. The crucial distinction is
24 that Able's agreement to act on Beta's entitlement orders is not
25 conditioned on Debtor's further consent.

26 Example 11. Debtor grants to Alpha Bank a security interest
27 in a security entitlement that includes 1000 shares of XYZ Co.
28 stock that Debtor holds through an account with Able & Co. Able
29 agrees to act on the entitlement orders of Alpha, but Alpha's
30 right to give entitlement orders to the securities intermediary
31 is conditioned on the Debtor's default. Alternatively, Alpha's
32 right to give entitlement orders is conditioned upon Alpha's
33 statement to Able that Debtor is in default. Because Able's
34 agreement to act on Beta's entitlement orders is not conditioned
35 on Debtor's further consent, Alpha has control of the securities
36 entitlement under either alternative.

37 In many situations, it will be better practice for both the
38 securities intermediary and the purchaser to insist that any
39 conditions relating in any way to the entitlement holder be
40 effective only as between the purchaser and the entitlement
41 holder. That practice would avoid the risk that the securities
42 intermediary could be caught between conflicting assertions of
43 the entitlement holder and the purchaser as to whether the
44 conditions in fact have been met. Nonetheless, the existence of
45 unfulfilled conditions effective against the intermediary would
46 not preclude the purchaser from having control.

2 3. Subsection (b) provides that the law of the securities
intermediary's jurisdiction governs the issues concerning the
indirect holding system that are dealt with in Article 8.
4 Paragraphs (1) and (2) cover the matters dealt with in the
Article 8 rules defining the concept of security entitlement and
6 specifying the duties of securities intermediaries. Paragraph
(3) provides that the law of the security intermediary's
8 jurisdiction determines whether the intermediary owes any duties
to an adverse claimant. Paragraph (4) provides that the law of
10 the security intermediary's jurisdiction determines whether
adverse claims can be asserted against entitlement holders and
12 others.

14 Subsection (e) determines what is a "securities
intermediary's jurisdiction." The policy of subsection (b) is to
16 ensure that a securities intermediary and all of its entitlement
holders can look to a single, readily-identifiable body of law to
18 determine their rights and duties. Accordingly, subsection (e)
sets out a sequential series of tests to facilitate
20 identification of that body of law. Paragraph (1) of subsection
(e) permits specification of the ~~governing--law~~ securities
22 intermediary's jurisdiction by agreement. In the absence of such
a specification, the law chosen by the parties to govern the
24 securities account determines the securities intermediary's
jurisdiction. See paragraph (2). Because the policy of this
26 section is to enable parties to determine, in advance and with
certainty, what law will apply to transactions governed by this
28 Article, the validation of the parties' selection of governing
law by agreement is not conditioned upon a determination that the
30 jurisdiction whose law is chosen bear a "reasonable relation" to
the transaction. See Section 4A-507; compare Section 1-105(1).
32 That is also true with respect to the similar provisions in
subsection (d) of this section and in Section 9103(6) 9-305
34 [Maine cite section 9-1305]. The remaining paragraphs in
subsection (e) contain additional default rules for determining
36 the securities intermediary's jurisdiction.

38 5. The following examples illustrate how a court in a
jurisdiction which has enacted this section would determine the
40 governing law:

42 Example 1. John Doe, a resident of Kansas, maintains a
securities account with Able & Co. Able is incorporated in
44 Delaware. Its chief executive offices are located in Illinois.
The office where Doe transacts business with Able is located in
46 Missouri. The agreement between Doe and Able specifies that ~~it~~
~~is--governed--by~~ Illinois law is the securities intermediary's
48 (Able's) jurisdiction. Through the account, Doe holds securities
of a Colorado corporation, which Able holds through Clearing
50 Corporation. The rules of Clearing Corporation provide that the

2 rights and duties of Clearing Corporation and its participants
are governed by New York law. Subsection (a) specifies that a
4 controversy concerning the rights and duties as between the
issuer and Clearing Corporation is governed by Colorado law.
6 Subsections (b) and (e) specify that a controversy concerning the
rights and duties as between the Clearing Corporation and Able is
governed by New York law, and that a controversy concerning the
8 rights and duties as between Able and Doe is governed by Illinois
law.

10
12 7. The choice of law provisions concerning security
interests in securities and security entitlements are set out in
Section ~~9-103(6)~~ 9-305 [Maine cite section 9-1305].

14 **Sec. B-23. 11 MRSA §8-1301, sub-§(1), ¶(c)**, as enacted by PL
16 1997, c. 429, Pt. B, §2, is amended to read:

18 (c) A securities intermediary acting on behalf of the
purchaser acquires possession of the security certificate,
20 only if the certificate is in registered form and ~~has been~~
~~specially--indorsed--to--the--purchaser--by--an--effective~~
22 ~~indorsement is;~~

24 (i) Registered in the name of the purchaser;

26 (ii) Payable to the order of the purchaser; or

28 (iii) Specially indorsed to the purchaser by an
30 effective indorsement and has not been indorsed to the
securities intermediary or in blank.

32 **Official Comment**

34 2. Subsection (a) defines delivery with respect to
certificated securities. Paragraph (1) deals with simple cases
36 where purchasers themselves acquire physical possession of
certificates. Paragraphs (2) and (3) of subsection (a) specify
38 the circumstances in which delivery to a purchaser can occur
although the certificate is in the possession of a person other
40 than the purchaser. Paragraph (2) contains the general rule that
a purchaser can take delivery through another person, so long as
42 the other person is actually acting on behalf of the purchaser or
acknowledges that it is holding on behalf of the purchaser.
44 Paragraph (2) does not apply to acquisition of possession by a
securities intermediary, because a person who holds securities
46 through a securities account acquires a security entitlement,
rather than having a direct interest. See Section 8-501.
48 Subsection (a)(3) specifies the limited circumstances in which
delivery of security certificates to a securities intermediary is
50 treated as a delivery to the customer. Note that delivery is a

2 method of perfecting a security interest in a certificated
3 security. See Section 9-313(a), (e) [Maine cite section 9-1313,
4 subsection (1), (5)].

6 **Sec. B-24. 11 MRSA §8-1302, sub-§(1)**, as enacted by PL 1997, c.
7 429, Pt. B, §2, is amended to read:

8 (1) Except as otherwise provided in subsections (2) and
9 (3), ~~upon---delivery~~ a purchaser of a certificated or
10 uncertificated security ~~to--a--purchaser,--the--purchaser~~ acquires
11 all rights in the security that the transferor had or had power
12 to transfer.

14 **Official Comment**

16 1. Subsection (a) provides that ~~if~~ a purchaser of a
17 certificated or uncertificated security is--delivered--(Section
18 8301)--to--a--purchaser--in--a--transfer,--the--purchaser acquires all
19 rights that the transferor had or had power to transfer. This
20 statement of the familiar "shelter" principle is qualified by the
21 exceptions that a purchaser of a limited interest acquires only
22 that interest, subsection (b), and that a person who does not
23 qualify as a protected purchaser cannot improve its position by
24 taking from a subsequent protected purchaser, subsection (c).

26 2. Although this section provides that a purchaser acquires
27 a property interest in a certificated or uncertificated security
28 ~~upon--"delivery,"~~ it does not state that a person can acquire an
29 interest in a security only by delivery purchase. Article 8 also
30 is not a comprehensive codification of all of the law governing
31 the creation or transfer of interests in securities by purchase.
32 For example, the grant of a security interest is a transfer of a
33 property interest, but the formal steps necessary to effectuate
34 such a transfer are governed by Article 9 [Maine cite article
35 9-A] not by Article 8. Under the Article 9 [Maine cite article
36 9-A] rules, a security interest in a certificated or
37 uncertificated security can be created by execution of a security
38 agreement under Section 9-203 [Maine cite section 9-1203] and can
39 be perfected by filing. A transfer of an Article 9 [Maine cite
40 article 9-A] security interest can be implemented by an Article 8
41 delivery, but need not be.

42 Similarly, Article 8 does not determine whether a property
43 interest in certificated or uncertificated security is acquired
44 under other law, such as the law of gifts, trusts, or equitable
45 remedies. Nor does Article 8 deal with transfers by operation of
46 law. For example, transfers from decedent to administrator, from
47 ward to guardian, and from bankrupt to trustee in bankruptcy are
48 governed by other law as to both the time they occur and the
49 substance of the transfer. The Article 8 rules do, however,

2 determine whether the issuer is obligated to recognize the rights
that a third party, such as a transferee, may acquire under other
4 law. See Sections 8-207, 8-401, and 8-404.

6 **Official Comment §8-1502**

8 3. The following examples illustrate the operation of
Section 8-502.

10 Example 4. Debtor holds XYZ Co. shares in a securities
account with Able & Co. As collateral for a loan from Bank,
12 Debtor grants Bank a security interest in the security
entitlement to the XYZ Co. shares. Bank perfects by a method
14 which leaves Debtor with the ability to dispose of the shares.
See Section 9-115 9-312 [Maine cite section 9-1312]. In
16 violation of the security agreement, Debtor sells the XYZ Co.
shares and absconds with the proceeds. Assume - implausibly -
18 that Bank is able to trace the XYZ Co. shares and show that the
"same shares" ended up in Buyer's securities account with Baker &
20 Co. Section 8-502 precludes any action by Bank against Buyer,
whether framed in constructive trust or other theory, provided
22 that Buyer acquired the security entitlement for value and
without notice of adverse claims.

24 Example 6. Debtor grants Alpha Co. a security interest in a
26 security entitlement that includes 1000 shares of XYZ Co. stock
that Debtor holds through an account with Able & Co. Alpha also
28 has an account with Able. Debtor instructs Able to transfer the
shares to Alpha, and Able does so by crediting the shares to
30 Alpha's account. Alpha has control of the 1000 shares under
Section 8-106(d). (The facts to this point are identical to
32 those in Section 8-106, Comment 4, Example 1, except that Alpha
Co. was Alpha Bank.) Alpha next grants Beta Co. a security
34 interest in the 1000 shares included in Alpha's security
entitlement. See Section 9-207(c)(3)[Maine cite section 9-1207,
36 subsection (3), paragraph (c)]. Alpha instructs Able to transfer
the shares to Gamma Co., Beta's custodian. Able does so, and
38 Gamma credits the 1000 shares to Beta's account. Beta now has
control under Section 8-106(d). By virtue of Debtor's explicit
40 permission or by virtue of the permission inherent in Debtor's
creation of a security interest in favor of Alpha and Alpha's
42 resulting power to grant a security interest under Section 9-207
[Maine cite section 9-1207], Debtor has no adverse claim to
44 assert against Beta, assuming implausibly that Debtor could
"trace" an interest to the Gamma account. Moreover, even, if
46 Debtor did hold an adverse claim, if Beta did not have notice of
Debtor's claim, Section 8-502 will preclude any action by Debtor
48 against Beta, whether framed in constructive trust or other
theory.

50

2 same principle as the Article 9 [Maine cite Article 9-A] priority
rule for investment property, that is, control trumps
4 non-control. Indeed, the most significant category of
conflicting "purchasers" may be secured parties. Priority
6 questions for security interests, however, are governed by the
rules in Article 9 [Maine cite Article 9-A]. Subsection (c)
8 applies only to cases not covered by the Article 9 [Maine cite
Article 9-A] rules. It is intended primarily for disputes over
10 conflicting claims arising out of repurchase agreement
transactions that are not covered by the other rules set out in
Articles 8 and 9 [Maine cite Article 9-A].

12 The following example illustrates subsection (c):

14 Example 4. Dealer holds securities through an account at
Alpha Bank. Alpha Bank in turns holds through a clearing
16 corporation account. Dealer transfers securities to RP1 in a
"hold in custody" repo transaction. Dealer then transfers the
18 same securities to RP2 in another repo transaction. The repo to
RP2 is implemented by transferring the securities from Dealer's
20 regular account at Alpha Bank to a special account maintained by
Alpha Bank for Dealer and RP2. The agreement among Dealer, RP2,
22 and Alpha Bank provides that Dealer can make substitutions for
the securities but RP2 can direct Alpha Bank to sell any
24 securities held in the special account. Dealer becomes
insolvent. RP1 claims a prior interest in the securities
26 transferred to RP2.

28 In this example Dealer remained the entitlement holder but
30 agreed that RP2 could initiate entitlement orders to Dealer's
security intermediary, Alpha Bank. If RP2 had become the
32 entitlement holder, the adverse claim rule of Section 8-502 would
apply. Even if RP2 does not become the entitlement holder, the
34 arrangement among Dealer, Alpha Bank, and RP2 does suffice to
give RP2 control. Thus, under Section 8-510(c), RP2 has priority
36 over RP1, because RP2 is a purchaser who obtained control, and
RP1 is a purchaser who did not obtain control. The same result
38 could be reached under Section 8-510(a) which provides that RP1's
earlier in time interest cannot be asserted as an adverse claim
40 against RP2. The same result would follow under the Article 9
[Maine cite Article 9-A] priority rules if the interests of RP1
42 and RP2 are characterized as "security interests," see Section
9-~~115(5)(a)~~ 9-328(1) [Maine cite section 9-1328, subsection
44 (1)]. The main point of the rules of Section 8-510(c) is to
ensure that there will be clear rules to cover the conflicting
46 claims of RP1 and RP2 without characterizing their interests as
Article 9 [Maine cite Article 9-A] security interests.

48 The priority rules in Article 9 [Maine cite Article 9-A] for
50 conflicting security interests also include a default temporal

2 priority rule of--pro-rata-treatment for cases where multiple
3 secured parties have obtained control but omitted to specify
4 their respective rights by agreement. See Section 9-~~115~~(5)(b)
5 9-328(2) [Maine cite section 9-1328, subsection (2)] and Comment
6 6 5 to Section 9-~~115~~ 9-328 [Maine cite section 9-1328]. Because
7 the purchaser priority rule in Section 8-510(c) is intended to
8 track the Article 9 [Maine cite Article 9-A] priority rules, it
9 too has a pre--rata temporal priority rule for cases where
10 multiple non-secured party purchasers have obtained control but
11 omitted to specify their respective rights by agreement. The
12 rule is patterned on Section 9-328(2) [Maine cite section 1328,
subsection (2)].

14 5. If a securities intermediary itself is a purchaser,
15 subsection (d) provides that it has priority over the interest of
16 another purchaser who has control. Article 9 [Maine cite Article
17 9-A] contains a similar rule. See Section 9-328(3) [Maine cite
18 section 9-1328, subsection (3)].

20 **Sec. B-26. Effective date.** This Part takes effect July 1, 2001.

22 PART C

24 **Sec. C-1. Rules.** Notwithstanding that Parts A and B of this
26 Act do not take effect until July 1, 2001, the Secretary of State
27 may adopt rules in accordance with the Maine Revised Statutes,
28 Title 5, chapter 375 that are necessary to carry out this Act in
29 preparation for the effective date of July 1, 2001 of Article
30 9-A. Rules adopted pursuant to this section are routine
31 technical rules for the purposes of Title 5, chapter 375,
32 subchapter II-A.

34 SUMMARY

36 This bill enacts changes recommended by the National
38 Conference of Commissioners on Uniform State Laws as revisions to
39 the Uniform Commercial Code, Article 9, on secured transactions.
40 Part A of this bill repeals the Maine Revised Statutes, Title 11,
41 Article 9 and enacts a new Title 11, Article 9-A to accomplish
42 those revisions. Part B of this bill makes necessary conforming
43 amendments and recommended changes to the Uniform Commercial Code
44 to provide consistency with the new Article 9-A. Parts A and B
45 take effect July 1, 2001. Part C gives the Secretary of State
46 rulemaking authority to adopt rules prior to July 1, 2001 to
carry out Article 9-A as soon as it is in effect.