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Proposed Revisions to the Georgia Uniform Commercial Code: A Status Report

by Albert H. Conrad, Jr.*
and
Richard P. Kessler, Jr.**

The Uniform Commercial Code (the "Code" or "U.C.C."), as promulgated in the 1950s through the joint efforts of the National Conference of Commissioners on Uniform State Laws (the "NCCUSL") and the American Law Institute (the "A.L.I."), represented an attempt to integrate all facets of commercial transactions involving personal property in a comprehensive law that could be adopted by all the states.¹ The drafters of the Code did not envision, however, that multistate uniformity, once achieved by the Code, would remain fixed and inflexible. Changes in business practices and technology, developments in related areas of the law (both national and international), and the need for correction and clarification of the law as demonstrated by practical experience and judicial decisions, were recognized as inevitable forces for periodic revision of the Code.

Since the Code's enactment in virtually all states in the late 1950s and early 1960s, there have been a number of major revisions to the Official Text of the U.C.C. ("Official Text"). Georgia adopted many, although not

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all, of the miscellaneous amendments to the Official Text recommended by the Permanent Editorial Board ("PEB") in 1962 and 1966, as well as the comprehensive revision of Article 9—Secured Transactions recommended in 1972. However, Georgia has not enacted any of the other revisions approved by the PEB since 1972: the 1977 revision of Article 8—Investment Securities to accommodate certificateless securities, the 1987 adoption of new Article 2A—Leases to govern personal property leasing transactions, the 1988 recommendation to repeal Article 6—Bulk Transfers or, alternatively, to revise Article 6 substantially, the 1989 adoption of new Article 4A—Funds Transfers to govern wire transfers, and the 1990 revision of Article 3—Commercial Paper (with conforming amendments to Article 4—Bank Deposits and Collections) to modernize those payment statutes.

The Georgia Uniform Commercial Code Committee (the "Georgia U.C.C. Committee") of the Georgia State Bar's Corporate and Banking Law Section has been considering these various revisions to the Code for possible adoption in Georgia. In the case of new Article 4A and revised Article 8, the Committee participated in the drafting of the legislation that was enacted in the 1992 Session of the Georgia General Assembly to incorporate these revisions in Georgia's Code. The following is a report on the Georgia U.C.C. Committee's efforts.

I. Article 2A—Leases

A. Background

Despite the Code's comprehensive treatment of commercial transactions, leases of personal property were not covered in the early versions of the Code, presumably due to the relatively low incidence of leasing activity during that period. However, propelled by favorable tax laws, bank regulatory changes and accounting conventions, as well as an increase in capital investment generally, the personal property leasing business ex-

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2. 1963 Ga. Laws 188.
5. On May 4, 1992, Zell Miller, Governor of Georgia, signed House Bills 762 and 761 adopting Article 4A and revised Article 8 with only minor variations from the Official Texts as the law in Georgia (to be codified as amended at O.C.G.A. §§ 11-8-101 to -408 (1982) and O.C.G.A. §§ 11-4A-101 to -507 (1992)). The sections appearing in House Bills 762 and 761 as adopted are the same sections appearing in the O.C.G.A. [hereinafter respectively Article 4A and revised Article 8].
experienced enormous growth from the 1950s to the 1980s. But while leasing played an increasingly important role in modern commercial transactions, the lease relationship itself continued to be governed largely by centuries old common law principles of bailments and contracts, occasional analogies to real estate lease law and Article 2 of the Code, and a handful of provisions of Article 9 of the Code.

By 1981, both the NCCUSL and the American Bar Association's Uniform Commercial Code Committee, through its newly formed Subcommittee on Personal Property Leasing, were actively considering adoption of a uniform statute to govern personal property leasing. The NCCUSL approved a new "freestanding" Uniform Personal Property Leasing Act in 1985, but elected not to encourage adoption by the states until the Act could be incorporated as a new article of the Code. In 1987 the NCCUSL and A.L.I. approved the Official Text of Article 2A—Leases.

B. Overview of Article 2A

The drafters of the 1987 Official Text of Article 2A had used Article 2—Sales as the statutory model for governing personal property leases.

Article 2A consists of five basic parts:

Part 1 (General Provisions) includes definitions of key terms (such as "finance lease" and "consumer lease") and provisions dealing with such matters as the relationship between Article 2A and other laws affecting leasing, limitations on the selection of governing law and judicial forums in consumer leases, and the doctrine of unconscionability.

Part 2 (Formation and Construction of Lease Contract) covers such areas as express and implied warranties in leases (including special rules for "finance leases") and application of the principles of the statute of

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7. See Edwin E. Huddleson, III, Old Wine in New Bottles: UCC Article 2A—Leases, 39 Ala. L. Rev. 615, 616 (1988); 3 J. Equipment Lease Financing 48, 51-61 (1985). During 1986, the year preceding the adoption of Article 2A by the NCCUSL and A.L.I., it was estimated that over $310 billion in lease receivables were outstanding, and that equipment valued in excess of $90 billion was the subject of lease financing in the United States in 1986 alone. Id. n.1.

8. See White & Summers, supra note 6, at 2.

9. See Boss, supra note 6, at 585-88. The Georgia Bar was well represented on the Subcommittee on Personal Property Leasing, whose membership included Robert D. Strauss, Frank B. Wilensky, and Gerald T. Woods, all of the Georgia Bar.


frauds, parol evidence, offer and acceptance, and allocation of risk of loss, all in the context of personal property leases.

Part 3 (Effect of Lease Contract) includes provisions relating to the filing of financing statements, enforceability of leases, alienability of rights under leases, and competing rights and claims of third parties.

Part 4 (Performance of Lease Contract: Repudiated, Substituted and Excused) contains provisions relating to adequate assurance of performance, anticipatory repudiation, and substituted and executed performance, as well as an automatic "hell or high water" obligation for payment of rent under "finance leases."

Part 5 (Default) specifies statutory remedies for both lessor and lessee upon default, including provisions for the appropriate measure of damages.13

Article 2A is accompanied by an amendment to the definition of the term "security interest" contained in Article 1 of the Code.14 The amendment is designed to bring greater certainty to the distinction between true leases, governed by Article 2A, and leases intended as security that are subject to Article 9.15

C. 1990 Amendments

One of the first states to enact Article 2A was California. The Uniform Commercial Code Committee of the California Bar’s Business Law Section issued a detailed report on Article 2A in December 1987 and recommended that it be adopted only with a number of amendments to the 1987 Official Text. The California amendments included significant changes in three areas of Article 2A: (1) expansion of transactions qualifying as "finance leases" for purposes of Article 2A; (2) restrictions against contractual limitations on security assignments of the lessor’s interest under a lease, and (3) distinctions between certain types of default and related remedies and computation of damages.16 Other states, nota-

15. U.C.C. § 1-201(37).
16. See REPORT OF THE UNIFORM COMMERCIAL CODE COMMITTEE OF THE BUSINESS LAW SECTION OF THE STATE BAR OF CALIFORNIA ON PROPOSED CALIFORNIA COMMERCIAL CODE DIVI-
bly New York and Massachusetts, also began considering various amend-
ments to the 1987 Official Text, many of which tracked the California amend-
ments.

In response to this trend away from uniformity, albeit limited and by
no means fundamental, the NCCUSL and A.L.I. revised Article 2A to in-
corporate the principal amendments that originated in California." The
1990 Official Text has now replaced the 1987 version, and three of the
states that had previously adopted the 1987 Official Text have already
made conforming amendments to convert to the 1990 Official Text." As
of November 1991, a total of twenty-four states had enacted Article 2A."

D. Status in Georgia

The Leasing Subcommittee of the Georgia U.C.C. Committee" has fol-
lowed the development of Article 2A, particularly the recent resolution of
the differences between the 1987 Official Text and the California amend-
ments. With the promulgation of the 1990 Official Text, the Leasing Sub-
committee anticipates completion of its analysis of Article 2A and the
drafting of proposed legislation for approval by the Board of Governors of
the Georgia State Bar during 1992. If approved, the Leasing Subcommit-
tee expects that a bill to enact Article 2A would be introduced in the 1993
Georgia General Assembly.

II. Article 3—Commercial Paper (With Conforming Amendments
to Article 4)

A. Background

The predecessor of Article 3, the Negotiable Instruments Law ("N.I.L.") of 1896, was the first uniform state law promulgated by the

18. The three states are Minnesota, Nevada, and Oklahoma. See U.C.C. Rep. Serv.,
State Correlation Tables (Callaghan) and by the NCCUSL in November 1991.
19. The 19 states generally following the 1990 Official Text are California, Colorado, Ha-
awaii, Illinois, Indiana, Kansas, Kentucky, Maine, Minnesota, Montana, Nebraska, Nevada,
New Mexico, North Dakota, Oklahoma, Rhode Island, Virginia, Wisconsin, and Wyoming;
the three states generally following the 1987 Official Text are Florida, Oregon, and Utah;
South Dakota partially follows both versions (as reported by the American Law Institute).
NCCUSL.\textsuperscript{21} The N.I.L. itself was largely drawn from the codification of English common law of “bills and notes” set forth in the British Bills of Exchange Act.\textsuperscript{22} Although there was some effort made to modernize Article 3 when the Code was initially drafted, much of its approach and substance still reflected eighteenth and nineteenth century common law.\textsuperscript{23}

The sweeping changes in technology and finance since the early 1950s made Articles 3 and 4 prime candidates for revision. One major effort in the late 1970s and early 1980s was the A.L.I.’s wide ranging “Payments Code” project. Although the project was not successful in all areas, it did inspire the NCCUSL and A.L.I. to begin a separate effort to revise Article 3, which was completed in 1990.

B. Summary of Revisions to Article 3

An in-depth discussion of revised Article 3 and the amendments to Article 4 is beyond the scope of this article. A review, however, of some of the more significant sections of revised Article 3 and the amendments to Article 4 is in order. The revised Article 3 drops the title “Commercial Paper” and returns to “Negotiable Instruments,” reflecting its N.I.L. origin and avoiding confusion with the modern usage of the term commercial paper in the context of the short term debt frequently issued by major corporations for operating funds.

In revised Article 3, the number of parts into which it is divided are reduced from eight to six. Part seven in existing Article 3 is eliminated, and part eight is eliminated in part and incorporated into other parts of revised Article 3.\textsuperscript{24}

Under revised Article 3, a negotiable instrument is either a “draft” or a “note.”\textsuperscript{25} Money, payment orders governed by Article 4A, and securities governed by Article 8 are expressly excluded from revised Article 3.\textsuperscript{26}

The scope of existing Article 3 is partially narrowed in revised Article 3. The question of what is a negotiable instrument is answered by covering, in theory, fewer instruments. Existing Article 3 applies to instruments that have certain characteristics of negotiable instruments, except that they are not made out “to order or bearer.”\textsuperscript{27} Under existing Article 3,

\begin{itemize}
  \item \textsuperscript{21} See Robert G. Ballen et al., Commercial Paper, Bank Deposits and Collections, and Other Payment Systems, 44 Bus. Law. 1515, 1539 (1989).
  \item \textsuperscript{22} Id.
  \item \textsuperscript{23} Id.
  \item \textsuperscript{24} U.C.C. Art. 3 (1990) Correlation Table, reprinted in 2 U.L.A. 16 (1991).
  \item \textsuperscript{25} U.C.C. § 3-104(e) (1990).
  \item \textsuperscript{26} Id. § 3-102(a).
  \item \textsuperscript{27} U.C.C. § 3-805 (1962). (The 1990 revision to U.C.C. Article 3 omitted this section.)
\end{itemize}
such instruments are covered, but no holder of such instruments can be a
"holder in due course."28

This treatment of these hybrid negotiable instruments has created am-
biguity in existing Article 3. In revised Article 3, the ambiguity is re-
moved. The only instrument to which Article 3 would apply that is not a
bearer or order instrument is a check—an instrument payable at a bank.29
Checks, whether made out to order or to bearer, are treated as negotiable
instruments.30 Holders of such instruments can be holders in due course
also.31

Existing Article 3 requires that a negotiable instrument state a "sum
certain."32 The requirement of a sum certain is completely eliminated in
revised Article 3.33 Rather than a sum certain, an instrument must show a
"fixed amount of money, with or without interest or other charges de-
scribed in the promise or order."34 Rates of interest may be stated as
"fixed or variable."35 Revised Article 3 assures that variable rate instru-
m ents will be negotiable.36

The concept of good faith is expanded in revised Article 3. Under sec-
tion 3-103(a)(4), the definition of "good faith" is expanded to include the
observance of "reasonable commercial standards of fair dealing."37 This
makes it harder for the holder of a note or a check to enforce the pay-
ment obligation when the maker of the note or the drawer of a check has
a good reason not to make payment, such as fraud, want of consideration,
or breach of warranty.

Revised Article 3 classifies money orders as ordinary checks so as to
preserve the right to stop payment if the instrument is lost or there is a
problem in the transaction.38 Revised Article 3 also clarifies that traveler's
checks are subject to Article 3.39

Existing Article 3 provides rules for determining when a cause of action
arises or accrues under Article 3.40 Revised Article 3 adds a statute of limitat ions41 prescribing the time periods within which any action under

28. Id.
29. U.C.C. § 3-104(c) (1990).
30. Id.
31. Id. § 3-104 cmt. 2.
34. Id. § 3-104(a).
35. Id. § 3-112(b).
36. Id. §§ 3-104(a), 3-112(b).
37. Id. § 3-103(a)(4).
38. Id. § 3-104(f).
39. Id. § 3-104(i).
40. U.C.C. § 3-122 (1962). (The 1990 revision to U.C.C. Article 3 omitted this section.)
Article 3 must be brought. Also, under revised Article 3, the drawer of a check that has been stolen from a payee is protected under section 3-310 against suit on both the instrument and the underlying obligation, allowing only the former which requires protection from double liability by bond.

Existing Article 3 is silent on the question of accord and satisfaction. Revised Article 3 creates a framework within which the rights of the parties are protected. Section 3-311 protects the drawer of a full settlement check from it being endorsed with protest, thereby losing the money, and still being liable on the balance of the claim. Creditor-payees under section 3-310 can avoid unintentional accord and satisfaction by returning the funds or by giving a notice that requires checks to be sent to a particular office where such proposals can be handled.

Revised Article 3 in section 3-307 better protects drawers and persons owing fiduciary responsibilities by imposing stricter standards for obtaining holder in due course rights by a person dealing with a dishonest agent or fiduciary. As revised, Article 3 also spells out the circumstances under which a person receiving funds has notice of a breach of fiduciary duty and the resulting liability.

An employee under section 3-402 of revised Article 3 is permitted to show that the parties did not intend the employee to be personally liable on an instrument he or she signs. Section 3-402 affords full protection to an employee signing a corporate check who does not show agency status, except as against a holder in due course. Revised Article 3, in section 3-403(b), makes it clear that a signature of an organization is considered unauthorized if two or more signatures are required and one signature is missing.

As in the existing Article 3, the risk of endorsements by impostors and those of dishonest employees who are allowed to sign checks is placed on the drawer or employer, but revised Article 3 does not ignore any negligence of the person or bank that takes the check. Revised Article 3 in section 3-405 also clarifies and limits the scope of the per se negligence

42. Id.
43. See id. § 3-310 cmt. 3.
44. Id. § 3-311.
45. Id. § 3-311(c)(2).
46. Id. § 3-311(c)(1).
47. Id. § 3-307(b).
48. Id.
49. Id. § 3-402(b)(2).
50. Id. § 3-402.
51. Id. § 3-403(b).
52. Id. § 3-404.
53. Id. § 3-404(d).
rule that imposes on employers the risk of forged endorsements by faithless employees who supply names of payees and makes relevant the negligence of the person or bank who later takes the instrument.\textsuperscript{44}

By allowing compensation to the holder in the case of wrongful dishonor by the bank, revised Article 3 in section 3-411 and related provisions considerably improve the acceptability of bank obligations like cashier's checks or teller's checks as cash equivalents to close deals and pay off loans.\textsuperscript{45} In addition, revised Article 3 clarifies in section 3-420 that a person whose endorsement is forged, such as a payee whose check is stolen, can sue one depositary bank with which the culprit dealt, rather than having to sue each drawee on the checks involved.\textsuperscript{46}

Revised Article 3 also adds a definition of ordinary care in section 3-103(a)(7) which makes clear that financial institutions taking checks for processing or payment by automated means need not manually handle the instrument if that is consistent with the institution's procedures and does not vary unreasonably from general usage designed to accommodate and facilitate efficiency, lowering costs, and lowering expedited funds availability risk.\textsuperscript{47} The definition of ordinary care relates to those specific instances in Article 3 where the standard of ordinary care is set forth.\textsuperscript{48}

In section 3-501(b)(1), revised Article 3 permits presentment by electronic communication.\textsuperscript{49} One of the impediments to truncation of checks is eliminated by this revision.

C. Summary of Revisions to Article 4

Article 4, entitled "Bank Deposits and Collections," the companion to Article 3, has been amended to take care of immediate problems that have developed since Article 4 has been in effect and to update the law pertaining to certain banking practices. The amendments to Article 4, for example, give banks the opportunity to utilize the best technology in the processing of checks.

The majority of the amendments to Article 4 are for clarification and do not amount to any substantive change in existing sections of Article 4. There are some key amendments that should be noted. Amended Article 4 permits "electronic presentment" agreements,\textsuperscript{50} a concept never contemplated in existing Article 4.\textsuperscript{51} An electronic presentment agreement
between a bank and a customer allows a bank to present an “item” for payment by “transmission of an image of an item or information describing the item (‘presentment notice’) rather than delivery of the item itself.” Rather than deliver the check itself, an image of the check or encoded information of some sort is transmitted. The technology is available to permit such truncation of actual delivery of an instrument. The use of the technology saves time and money.

Amended Article 4 contains a statute of limitations upon actions to enforce an obligation, duty, or right arising under Article 4. The statute of limitations is three years after the cause of action accrues. Existing Article 4 has no express statute of limitations, and this omission is corrected in the amended version.

Amended Article 4 sets forth “encoding” and “retention” warranties. Encoding warranties are warranties from one who encodes information with respect to an item that the information is correctly encoded. Retention warranties refer to those who present items pursuant to an electronic presentment agreement and retain the original instrument while transmitting an image of it as presentation for payment.

Amended Article 4 in section 4-401 relieves a joint account customer from liability for an overdraft drawn by the other customer unless otherwise agreed, or unless the customer benefitted from it. It also gives the customer a way to protect against the early cashing of a post-dated check or a right of recovery if the bank pays the check after notice to it by the customer.

Amended Article 4 in section 4-403 allows a customer on an account or any person authorized to draw on the account to stop payment or to close the account and clarifies that damages for failure to obey a valid stop include damages for the wrongful dishonor of later items that are dishonored because the stop order was ignored and the earlier check was paid.

Section 4-406, in amended Article 4, increases the outside time a customer has to report forgeries or alterations by the same wrongdoer to
It also requires item retention or the capacity to furnish legible copies for seven years in the case of truncation.  

D. Reasons for Revisions

The NCCUSL in adopting revised Article 3 and the miscellaneous and conforming amendments to Articles 1 and 4 did so after a lengthy process that began in 1978. Revised Article 3 and the amendments to Article 4 are a necessary modernization to accommodate changing business practices. At the time Articles 3 and 4 were drafted, only banks offered checking accounts. Today, banks, savings and loans, credit unions, and other institutions offer accounts upon which checks and other payment orders can be drawn, but only banks and checks are clearly governed under existing Article 3.

Much of the language in existing Article 3 is unnecessarily technical and archaic. Revised Article 3 substitutes language that can be understood in the twentieth century business world. The revision reorganizes the material in a more logical sequence and significantly modernizes the area.

Revised Article 3 and the amendments to Article 4 fix problems that have arisen after the past forty years of experience with the U.C.C. and negotiable instruments, and provide a framework for check truncation.

E. Status in Georgia

The Georgia U.C.C. Committee will be reviewing revised Article 3 and the miscellaneous and corresponding amendments to Articles 1 and 4. A thorough analysis of Georgia’s version of existing Articles 3 and 4 will be undertaken, and the Committee expects to submit its report and recommendations to the Board of Governors of the State Bar in the fall of 1992. Of special concern to the Committee will be the existing nonuniform amendments to existing Articles 3 and 4 that have been adopted in Georgia, and the impact, if any, adoption of revised Article 3 and the corresponding and miscellaneous amendments to Articles 1 and 4 would have on these nonuniform amendments. The earliest that revised Article 3 and the amendments to Articles 1 and 4 would be introduced into the Georgia General Assembly would be in January 1993.

74. Id. § 4-406(d).
75. Id. § 4-406(b).
III. ARTICLE 4A—FUNDS TRANSFERS

A. Background

Another outgrowth of the A.L.I.'s "Payments Code" project was the drafting of new Article 4A governing wholesale wire transfers of funds.76 Payment by check is governed by Articles 3 and 4. Payment by credit card, as well as other point-of-sale consumer transactions, is largely the subject of federal regulation.77 Another type of payment, which has overtaken in dollar volume payments made by checks and credit cards, is the wire transfer, principally through the Federal Reserve wire transfer network ("Fedwire") and the New York Clearing House Interbank Payments System ("CHIPS"). Despite its significance to the economy, prior to the advent of Article 4A, wholesale wire transfers were not subject to comprehensive treatment by state or federal law.

B. Summary of Article 4A

The following is a summary of Article 4A (references to section numbers in Article 4A begin with "4A").

Scope and Definitions. Article 4A is divided into five parts: part 1, subject matter and definitions; part 2, issue and acceptance of payment orders; part 3, execution of sender's payment order by receiving bank; part 4, payment; part 5, miscellaneous provisions.

Generally, Article 4A applies only to wholesale wire transfers.78 It does not apply to any transfer any part of which is governed by the Electronic Funds Transfer Act ("EFTA") or Regulation E.79 Consequently, any transfer involving a consumer-purpose account and governed by Regulation E would not be governed by Article 4A.80


79. Id. § 4A-108.

80. The Board of Governors of the Federal Reserve System in 1990 adopted amendments to Regulation J, which governs funds transfers through the Federal Reserve's funds transfer system known as Fedwire. The amendments incorporated the uniform version of Article 4A in whole with minor variations and took effect January 1, 1991. Thus, all funds transfers that take place through Fedwire are governed by Article 4A. The Board of Governors took this action based upon its assumption that the various states would enact Article 4A in its uniform version and with the desire to have all funds transfers governed by the same set of rules. Article 4A was incorporated into Subpart B of Regulation J, 12 C.F.R. § 210. All funds transfers through Fedwire, including those involving beneficiaries or originators that are consumers, are now governed by Article 4A as incorporated into Regulation J.
Article 4A does apply to funds transfers through an automated clearinghouse ("ACH"), as long as they are not covered by EFTA or Regulation E. Only credit transfers are covered by Article 4A; not debit transfers. Thus, Article 4A only covers a transfer initiated by the payor transferring funds out of the payor's account.

Article 4A provides that most, but not all, of its provisions can be varied by agreement or a funds transfer system rule. Additionally, a funds transfer system rule can bind parties to a funds transfer that used the funds transfer system but were not direct participants in the system, if such parties are put on notice.

A "funds transfer" means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. A "payment order" is an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary. The instruction may not contain any conditions, other than the time of payment, and the receiving bank must have a right of reimbursement from the sender.

The parties to a payment order are the sender, receiving bank, beneficiary, and beneficiary's bank. The "sender" is the person giving the instruction to the receiving bank, and the "receiving bank" is the bank to which a sender's instruction is addressed. The "beneficiary" is the person to be paid by the beneficiary's bank. The "beneficiary's bank" is the bank identified in a payment order in which an account of the beneficiary is to be credited or which is otherwise to


82. Id. § 4A-103(a)(1)(ii).
83. Id. § 4A-501.
84. Id. § 4A-404(b). Subpart B of Regulation J permits Fedwire participants to provide this notice. Subpart B will govern all parties to a funds transfer that utilizes Fedwire if notice is given. 12 C.F.R. § 210.28(c), § 210.29(b) (1990). In addition, Subpart B will preempt any other agreements or rules. Id. § 210.25(b).
86. Id. § 4A-103(a)(1).
87. Id. § 4A-103(a)(1)(i), (ii). Pursuant to Subpart B of Regulation J, some messages through Fedwire will not be treated as payment orders. 12 C.F.R. § 210.26(i) (1990). Automated clearinghouse messages and others described in the Operating Circulars are not payment orders. Id.
89. Id. § 4A-103(a)(5).
90. Id. § 4A-103(a)(4).
91. Id. § 4A-103(a)(2).
make payment to the beneficiary. An "[i]ntermediary bank" [is] a receiving bank other than the originator's bank or the beneficiary's bank.

The parties to a complete funds transfer include the originator, originator's bank, any intermediary banks, beneficiary, and beneficiary's bank. The "[o]riginator" [is] the sender of the first payment order in a funds transfer. The "[o]riginator's bank" is the receiving bank on the first payment order in a funds transfer or the originator if the originator is a bank.

A "[f]unds-transfer business day" of a receiving bank [is] the part of a day during which the receiving bank is open for receipt, processing, and transmittal of payment orders and cancellations and amendments . . . . A receiving bank may fix a cut-off time or times on a funds-transfer business day for receiving and processing payment orders, cancellations, or amendments. Different cut-off times may apply to different types of communications such as payment orders, cancellations or amendments, and different senders or different categories of payment orders. If a payment order, or other communication, arrives after the close of a funds-transfer business day or a specified cut-off time, the receiving bank may treat it as having been received at the opening of the next funds-transfer business day.

The following are examples of several funds transfers and the parties involved.

1. X sends a payment order to her bank, Friendly Bank, to pay $1,000 to Y, who also has an account at Friendly Bank. X is the sender and originator. Friendly Bank is the receiving bank, originator's bank, and beneficiary's bank. Y is the beneficiary.

2. X sends a payment order to her bank, Friendly Bank, ordering credit of $1,000 to Y's account at Best Bank. Friendly Bank then sends a payment order to its correspondent, Best Bank, ordering a credit of $1,000 to the account of Y. X is the originator of the funds transfer and sender of the first payment order. Friendly Bank is the originator's bank, the receiving bank of the first payment order, and the sender of the second

92. Id. § 4A-103(a)(3). Pursuant to Subpart B of Regulation J, a "beneficiary's bank" includes a Federal Reserve Bank that receives a payment order as a beneficiary. 12 C.F.R. § 210.26(d) (1990). A Federal Reserve Bank also need not be identified in a payment order as a beneficiary's bank if it functions as one. Id.
94. See id. § 4A-104.
95. Id. § 4A-104(c).
96. Id. § 4A-104(d).
97. Id. § 4A-105(a)(4).
98. Id. § 4A-106(3).
99. Id.
100. Id.
payment order. Best Bank is the receiving bank of the second payment order and the beneficiary's bank. Y is the beneficiary.

3. X sends a payment order to her bank, Friendly Bank, ordering credit of $1,000 to Y's account at Best Bank. Friendly Bank is not a correspondent of Best Bank, so Friendly Bank sends a payment order to Federal Reserve Bank which then sends a payment order to Best Bank. X is the originator and sender of the first payment order. Friendly Bank is the originator's bank, receiving bank of the first payment order, and sender of the second payment order. Federal Reserve Bank is an intermediary bank, receiving bank of the second payment order, and sender of the third payment order. Best Bank is the beneficiary's bank and receiving bank of the third payment order. Y is the beneficiary.

**Payment Orders.** A receiving bank and a beneficiary's bank are under no obligation to the sender or beneficiary of a payment order until the bank "accepts" the payment order.\(^{101}\) "[A] receiving bank other than the beneficiary's bank accepts a payment order when it executes the order."\(^{102}\) A payment order is "executed" when the receiving bank issues a payment order intended to carry out the payment order received by that bank.\(^{103}\) A receiving bank has no duty to execute a payment order without an agreement to the contrary.\(^{104}\)

A beneficiary's bank accepts a payment order at the earliest of the following events: (1) when the bank either pays the beneficiary or notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited, unless the notice indicates that the bank is rejecting the order or that the funds may not be withdrawn;\(^{105}\) (2) "when the bank receives payment of the entire amount of the sender's order;"\(^{106}\) or, (3) the opening of the next funds-transfer business day following the payment date of the order if at that time the beneficiary's bank has been paid in full, unless the payment order was rejected before that time or within one hour after that time, or one hour after opening of the next funds-transfer business day of the sender, if that is later.\(^{107}\) A beneficiary's bank that does not reject a payment order eventually becomes obligated to the beneficiary by passage of time if the beneficiary's bank is paid.\(^{108}\)

101. *Id.* §§ 4A-403, -404, -209, cmts. 3, 5.
102. *Id.* § 4A-209(a).
103. *Id.* § 4A-301(a).
104. *Id.* § 4A-209 cmt. 3.
105. *Id.* § 4A-209(b)(1).
106. *Id.* § 4A-209(b)(2).
107. *Id.* § 4A-209(b)(3).
108. *Id.*
A receiving bank may reject a payment order by a notice of rejection given to the sender orally, electronically, or in writing. Rejection is effective when the notice is given if it is transmitted by a reasonable means under the circumstances. The sender and receiving bank can establish a means of transmission for rejections by an agreement. Acceptance of a payment order precludes a later rejection and vice versa.

There is no requirement that a receiving bank, other than the beneficiary's bank, reject a payment order because there is no acceptance unless it executes the order. If the receiving bank, however, does not reject or accept a payment order and there were sufficient withdrawable credit in a noninterest-bearing account of the sender with the receiving bank on the execution date, the receiving bank would be obligated to pay interest to the sender from the execution date until the order is cancelled or the sender receives notice.

A payment order may be cancelled or amended. A communication cancelling or amending a payment order is effective if given to the receiving bank in a time and manner affording the receiving bank a reasonable opportunity to act on it before acceptance of the original payment order. An unaccepted payment order is deemed cancelled at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date.

"After a payment order has been accepted, a cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement . . . ." A cancellation or amendment will not be effective as to a receiving bank, other than the beneficiary's bank, unless the receiving bank issues a conforming cancellation or amendment. A cancellation or amendment of a payment order already accepted by a benefici-
ciary’s bank is not effective unless the original payment order was unauthorized or a mistake.\textsuperscript{120}

**Unauthorized or Erroneous Payment Orders.** Article 4A provides for use of a “security procedure.”\textsuperscript{121} A security procedure is a procedure established by an agreement between a customer having an account with a bank and a receiving bank.\textsuperscript{122} The purpose of this procedure is to verify that a payment order, amendment, or cancellation is authorized or to detect errors in transmission or content of the payment order, amendment, or cancellation.\textsuperscript{123} Signature comparison is not by itself a security procedure.\textsuperscript{124} A security procedure is used to verify the authenticity or accuracy of a payment order or other communication.\textsuperscript{125} It can also be used to allocate risk of loss to the receiving bank if it is not used properly or was not adequate.\textsuperscript{126}

A payment order is authorized if the customer or an agent authorized it.\textsuperscript{127} In addition, a payment order is effective, where the customer and the bank agree to use security procedures to verify it, if the security procedure is commercially reasonable to detect unauthorized payment orders and the bank accepts it in good faith and in compliance with the security procedure and any other written agreement or instructions that are not inconsistent with the security procedure or existing agreement.\textsuperscript{128}

Whether a security procedure is commercially reasonable will depend upon the wishes of the customer, circumstances known to the bank including size, type, and frequency of payment orders normally issued by the customer, and security procedures generally in use among similarly situated parties.\textsuperscript{129} A security procedure will be deemed commercially reasonable if it was chosen by the customer after the customer refused another commercially reasonable security procedure offered by the bank and expressly agreed in writing to be bound by any payment order accepted by the bank in compliance with the customer’s security procedure.\textsuperscript{130}

120. *Id.* § 4A-211(c)(2).
121. *Id.* § 4A-201.
122. *Id.*
123. *Id.*
124. *Id.*
125. *Id.*
126. *Id.* § 4A-201 cmt.
127. *Id.* § 4A-202(a).
128. *Id.* § 4A-202(b).
129. *Id.* § 4A-202(c).
130. *Id.*
The receiving bank may, by express written agreement, agree to limit its ability to retain payment for a verified payment order. Even if verified, the receiving bank will be required to repay such amount to the customer if the customer can prove that the payment order was not initiated by anyone within its control.

If a payment order accepted by the bank were not authorized or effective as the order of the customer, the bank would have to refund the amount of the order plus interest. The customer would not, however, be entitled to interest if it were not diligent in determining that the order was unauthorized within a reasonable time not to exceed ninety days. The bank would still be required to refund the amount of the payment order.

An erroneous payment order is one accepted pursuant to a security procedure for the detection of errors that was a duplicate of the original or instructed payment to the wrong beneficiary or in a greater amount. If the sender can prove compliance with the security procedure and that the error would not have occurred had the bank complied, then the sender will not be liable to pay the order or any amount in excess of the correct amount. If the sender, however, negligently fails to discover the error within a reasonable time not to exceed ninety days of receipt of notice as to the acceptance of the order, the sender will be liable to the receiving bank for any loss incurred by the bank as a result of the delay, up to the amount of the original order.

If a payment order received by the beneficiary's bank describes a non-existent or unidentifiable person or account, there would be no beneficiary, and the payment order could not be accepted. A payment order may describe the beneficiary by name and account number and the name and account number could describe different persons. If the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number. If the beneficiary's bank pays the person identified by name, or knows of the discrepancy, no person has rights as the beneficiary except the person paid if it was the person in-
tended to be paid by the originator.142 When the beneficiary’s bank right-
fully pays a person identified by number, the originator, if it is a bank, is
required to pay.143 If the originator is not a bank, and it proves the person
paid was not the intended beneficiary, the originator is not required to
pay unless the originator’s bank proves the originator had notice that the
beneficiary’s bank might rely on the number.144 If the person paid was
not entitled to be paid, either the originator or the originator’s bank may
recover from that person.145

What happens if there are discrepancies in describing intermediary
banks and beneficiary’s banks? Article 4A responds to this question by
stating that if the bank is only described by number, the receiving bank
may rely on the number and need not investigate further.146 The sender
must reimburse the receiving bank for any losses or expenses incurred
due to the bank’s reliance on the number.147

The intermediary or beneficiary’s bank may be identified by name and
number where the name and number identify different persons.148 If the
sender is a bank, the receiving bank may rely on the number to identify
the bank if the receiving bank does not know of the discrepancy; the
sender must reimburse the receiving bank for any losses or expenses due
to its reliance on the number.149 If the sender is not a bank, and the
sender had prior notice that the receiving bank might rely on the number,
then the receiving bank may rely on the number.150 In any case, the re-
ceiving bank may rely on the name if it does not know of the discrep-
ancy.151 If the receiving bank knows of the discrepancy, it may not rely on
either the name or number.152

Execution of Payment Orders. Article 4A, as previously men-
tioned, places on a receiving bank no duty to execute a payment order.153
If it does execute, however, it must do so properly. The receiving bank
must issue, on the execution date, a payment order complying with the

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142. Id. § 4A-207(b)(2).
143. Id. § 4A-207(c)(1).
144. Id. § 4A-207(c)(2). Subpart B of Regulation J provides this notice to originators
that are not banks, such as the Department of the Treasury. 12 C.F.R. § 210.27 & Appendix
A, Commentary to § 210.27 (1990).
146. Id. § 4A-208(a)(1).
147. Id. § 4A-208(a)(2).
148. Id. § 4A-208(b)(1).
149. Id.
150. Id. § 4A-208(b)(2). Subpart B of Regulation J provides notice to nonbank senders
that a receiving bank may rely on the number. 12 C.F.R. § 210.27(a) (1990).
152. Id. § 4A-208(b)(4).
153. See supra note 85.
sender's order and follow the sender’s instructions regarding an interme-

diary or funds-transfer system to be used or the means for transmis-
sion.\textsuperscript{154} The receiving bank need not, however, use the funds-transfer sys-
tem designated if it determines in good faith that its use would cause
delay.\textsuperscript{155}

If the payment order requires telephonic, wire, or the most expeditious
means of transmission, the receiving bank must use the most expeditious
means available and must so instruct intermediaries.\textsuperscript{156} If the payment
order specifies a payment date, the receiving bank must act to allow pay-
ment on or as soon after the payment date as feasible.\textsuperscript{157} If there is no
such instruction, it may transmit by first class mail or any other reasona-
ble method.\textsuperscript{158} Unless otherwise instructed, a receiving bank may use any
funds-transfer system reasonable under the circumstances and issue pay-
ment orders to an intermediary bank as long as reasonable care is used in
selecting the bank.\textsuperscript{159}

A receiving bank, unless instructed by the sender, may not collect its
fees and expenses for the transfer by reducing the amount of the payment
order it issues.\textsuperscript{160}

If a receiving bank executes an order for a greater amount than the
order it received, including a duplicate order, it may be paid only in the
amount of the order it received.\textsuperscript{161} If the receiving bank executes the pay-
ment order in a lesser amount, it may be paid the full amount if it issues
a correcting order.\textsuperscript{162} Otherwise, the receiving bank is only entitled to
payment in the amount of the order it issued.\textsuperscript{163} If a receiving bank issues
a payment order to the wrong beneficiary, all prior senders are released
from any obligation to pay.\textsuperscript{164}

A sender of an erroneous payment order who receives notice from the
receiving bank that the payment order was executed has a duty to exer-
cise ordinary care to discover and report the error within a reasonable

\textsuperscript{155} Id. § 4A-302(b). In addition, Subpart B of Regulation J provides that a sender may
not require a Federal Reserve Bank to use a funds-transfer system other than Fedwire un-
less it agrees in writing. 12 C.F.R. § 210.30(b) (1990).
\textsuperscript{157} Id.
\textsuperscript{158} Id. § 4A-302(c). Subpart B of Regulation J provides that unless otherwise agreed,
senders may not require execution on a day other than the day the payment order is issued.
12 C.F.R. § 210.30(c) (1990).
\textsuperscript{159} U.C.C. § 4A-302(b) (1989).
\textsuperscript{160} Id. § 4A-302(d).
\textsuperscript{161} Id. § 4A-303(a).
\textsuperscript{162} Id. § 4A-303(b).
\textsuperscript{163} Id.
\textsuperscript{164} Id. § 4A-303(c).
A reasonable time means not greater than ninety days after receipt of the notice. If the sender fails to exercise ordinary care in discovering whether the order was erroneously executed, it is not entitled to interest.

If a funds transfer is completed, but was delayed due to a receiving bank’s failure to execute promptly or properly, the bank must pay interest to either the originator or the beneficiary for the period of delay caused by the improper execution. Where the error in execution results in noncompletion of the funds transfer, failure to use a designated intermediary, issuance of a noncomplying payment order, or where a receiving bank violates an agreement to accept a payment order, the bank is liable to the originator for its expenses and interest losses. Consequential damages are only recoverable to the extent provided for in an express written agreement. Reasonable attorney fees may be recovered if demand for compensation for lost interest and expenses is made and refused before suit. Liability under this provision for basic interest and expenses cannot be varied by agreement.

**Payment.** The payment date, the day on which the amount of the order is payable to the beneficiary by the beneficiary’s bank, may be specified in the order, but cannot be earlier than the date the order is received by the beneficiary’s bank. If no payment date is specified, it will be the day of receipt by the beneficiary’s bank.

Generally, the sender of a payment order becomes obligated to pay the beneficiary’s bank the amount of the order on acceptance, but payment is not due until the payment date. Similarly, a sender is obligated to pay

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165. *Id.* § 4A-304.
166. *Id.* Subpart B of Regulation J provides for 30 calendar days. 12 C.F.R. § 210.28(c) (1990).
168. *Id.* § 4A-305(a).
169. *Id.* § 4A-305(b).
170. *Id.* § 4A-305(c). Subpart B of Regulation J provides that a Federal Reserve Bank shall not agree to be liable for consequential damages. 12 C.F.R. § 210.32(a) (1990).
172. *Id.* § 4A-305(f). Subpart B of Regulation J provides that where interest is payable to or by a Federal Reserve Bank, the Federal Reserve Bank may apply an “as of adjustment” or pay interest to the appropriate party. 12 C.F.R. § 210.32(b)(1) (1990). An “as of adjustment” is an adjustment to a reserve or clearing account to the appropriate party for reserve or clearing balance maintenance only. If the sender or receiving bank that receives the “as of adjustment” is not the party entitled to the payment, it shall pass it through as interest. *Id.* § 210.32(b)(2).
174. *Id.*
175. *Id.* § 4A-402(b).
the amount of a payment order to a receiving bank other than the beneficiary's bank upon acceptance, but payment is not due until the execution date. The obligation to pay, however, is excused if the funds transfer is not completed due to the beneficiary's bank not accepting the order.

In cases where a sender paid the amount of an order it was not obligated to pay, the bank receiving payment must refund any amounts the sender was not obligated to pay, together with interest, if applicable. If an intermediary bank suspends payments and thus cannot make a refund as required, a sender which sent an order to that intermediary bank pursuant to instructions is entitled to receive or retain payment from its sender. Otherwise, where the sender chose the intermediary bank, the sender would bear the loss.

Payment by the sender to the receiving bank occurs in one of the following ways: (1) if the sender is a bank, when final settlement occurs through Fedwire or a funds-transfer system; (2) if the sender is a bank and the payment is credited to an account of the receiving bank, when the credit is withdrawn or at midnight on the day on which the credit is withdrawable and the receiving bank learns of that fact; or, (3) if the receiving bank debits an account of the sender, when the debit of withdrawable credit is made. A funds-transfer system that settles by netting payments is permitted. Any such netting or set off is payment when it becomes final. When a beneficiary's bank accepts a payment order, it is obligated to pay the beneficiary. Payment is due on the payment date, unless acceptance occurs after the close of the funds-transfer business day, in which case payment is due the next funds-transfer busi-

176. Id. § 4A-402(c).
177. Id.
178. Id. § 4A-402(d).
179. Id. § 4A-402(e).
180. Id.
181. Id. § 4A-403(a)(1).
182. Id. § 4A-403(a)(2).
183. Id. § 4A-403(a)(3).
184. Id. § 4A-403(b).
185. Id. Subpart B of Regulation J provides that payment shall be made by a sender to a Federal Reserve Bank. 12 C.F.R. § 210.28(a) (1990). There is no right to overdraw an account with a Federal Reserve Bank. Id. § 210.28(b)(1). If an overdraft is created, it is due and payable immediately without demand at the earliest of the end of the funds-transfer business day or when the Federal Reserve Bank deems itself insecure and gives notice to the sender, or when the sender suspends payments. Id. By sending a payment order to a Federal Reserve Bank, a sender grants the bank a security interest in all of the sender's assets in possession of or held for the account of the Federal Reserve Bank to secure any overdrafts. Id. § 210.28(b)(2).
ness day. If the beneficiary’s bank fails to pay, after demand and notice of particular circumstances giving rise to consequential damages, it may be liable for consequential damages. However, if the beneficiary’s bank proves it did not pay because of a reasonable doubt regarding the right of the beneficiary to payment, then the beneficiary’s bank will not be liable for consequential damages.

If the payment order provides for payment to an account of the beneficiary, the beneficiary’s bank must provide notice to the beneficiary before midnight of the next funds-transfer business day after the payment date. Failure to give such notice or other notice required in an order gives rise to an obligation to pay interest to the beneficiary. The beneficiary can also recover attorney fees if it demands interest and the demand is refused. The right to receive these damages cannot be varied by agreement or a funds-transfer system rule.

The obligation of the beneficiary’s bank to pay the beneficiary after acceptance cannot be made subject to conditions or an agreement to return the funds if the bank is not paid, and any such condition or agreement is not enforceable. A funds-transfer system rule, however, may provide that payments are provisional until the bank is paid. The beneficiary’s bank may obtain a refund from the beneficiary if it and the originator were on notice that the transfer was provisional, the beneficiary, the beneficiary’s bank, and originator’s bank agreed to be bound by the rule, and the beneficiary’s bank did not receive payment. There is also a special rule for funds-transfer systems that net payments multilaterally among the participants and have a loss-sharing agreement to complete settlement.

Except for payment orders that are cancelled or where a beneficiary is required to refund a payment, the originator pays the beneficiary when the beneficiary’s bank accepts the payment order for the benefit of the

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187. Id.
188. Id.
189. Id.
190. Id. § 4A-404(b).
191. Id.
192. Id.
193. Id. § 4A-404(c). Subpart B of Regulation J provides that payment to a beneficiary where the Federal Reserve Bank is the beneficiary’s bank occurs on the earlier of when the amount is credited to the beneficiary’s account or notice is sent to the beneficiary. 12 C.F.R. §210.31(b) (1990).
195. Id. § 4A-405(d).
196. Id.
197. Id. § 4A-405(e).
beneficiary and in the amount of that order.\textsuperscript{198} Such payment discharges
the originator's obligation to the beneficiary unless payment was not
made in accordance with their agreement and such action resulted in a
loss to the beneficiary.\textsuperscript{199}

\textbf{Miscellaneous.} The rate of interest to be applied when interest is
required to be paid is set forth in section 4A-506.\textsuperscript{200} The rate can be
determined by agreement or funds-transfer system rule.\textsuperscript{201} If the interest
rate is not so determined, the applicable Federal Funds rate will be
applied.\textsuperscript{202}

Article 4A also provides rules for handling creditor process such as le-
vies, garnishments, and attachments with respect to the funds transfer.\textsuperscript{203}
There are also restrictions on injunctions or restraining orders that may
only affect the origination of a payment order to start a funds transfer,
the originator's bank from executing it, or a beneficiary's bank from re-
leasing the funds.\textsuperscript{204} Banks may charge items and payment orders to an
account in any order and may treat credits first made as first withdrawn.\textsuperscript{205}

Article 4A has also established a limitations period, similar to that for
checks in Article 4.\textsuperscript{206} If a customer does not notify his bank regarding an
improper debit to his account resulting from a payment order within one
year, he is precluded from doing so.\textsuperscript{207} Article 4A also sets out choice of

\begin{itemize}
\item \textsuperscript{198} Id. § 4A-406(a).
\item \textsuperscript{199} Id. § 4A-406(b). Pursuant to Subpart B of Regulation J, a receiving bank of a pay-
ment order from a Federal Reserve Bank will be paid by a credit to that bank's Fed ac-
count. 12 C.F.R. § 210.31(a) (1990). A payment occurs at the earlier of the time when the
payment order is credited to the receiving bank's account or when it is sent to the receiving
bank. \textit{Id.}
\item Some banks that receive payment orders from Federal Reserve Banks are “off-line
banks.” An “off-line bank” transmits to or receives payment orders from a Federal Reserve
Bank by telephone or some means other than electronic data transmission. An off-line bank
that does not expressly notify its Federal Reserve Bank in writing that it maintains an ac-
count for a respondent bank warrants under Subpart B to Regulation J that it does not act
as a beneficiary's bank for a beneficiary that is a bank. \textit{Id.} § 210.29(a)(4). The reason for this
section is to provide for prompt notice, by telephone, in cases where a payment order is
addressed to an off-line bank that is an intermediary or beneficiary's bank, rather than a
beneficiary. Prompt notice is necessary so that the off-line bank can then accept the order to
complete the funds transfer in a timely manner. \textit{Id.} § 210.29 cmt.
\item \textsuperscript{200} U.C.C. § 4A-506 (1989).
\item \textsuperscript{201} Id. § 4A-506(a).
\item \textsuperscript{202} Id. § 4A-506(b).
\item \textsuperscript{203} Id. § 4A-502.
\item \textsuperscript{204} Id. § 4A-503.
\item \textsuperscript{205} Id. § 4A-504.
\item \textsuperscript{206} See id., § 4-111 (1990).
\item \textsuperscript{207} Id. § 4A-505 (1989).
\end{itemize}
law provisions that permit the parties to a funds transfer to choose the applicable law, even though the chosen jurisdiction has no relationship to the parties or the funds transfer.\textsuperscript{208}

C. Reasons for Adoption

Although large sums of money are transferred through wire transfers and other electronic means, with an average of one trillion dollars on a daily basis, previously only a patchwork of rules (such as previous Regulation J and private system rules, some customer agreements, and a very small amount of case law) governed the rights and responsibilities of the parties to such transfers.\textsuperscript{208} Judges have often had to resolve disputes by referring to general principles of common law or equity, or they have sought guidance in statutes such as Article 4, which are applicable to other payment methods. These attempts to define rights and obligations in funds transfers by general principles of law, by analogy to negotiable instrument law, or by the law of check collection have been unsatisfactory because of the unique characteristics of wholesale wire transfers. Some of these characteristics are: the large dollar amounts of wholesale wire transfers and therefore the risk related thereto; the speed with which wire transfers are effected; the cost of effecting wire transfers; and the sophistication of the parties to wholesale wire transfers.\textsuperscript{210}

Article 4A, when enacted into law by the various states, will provide a comprehensive legal structure for a class of payments known as wholesale funds transfers.\textsuperscript{211} The provisions of Article 4A were drafted through the joint efforts of the NCCUSL, academics, bankers, corporate users of funds transfers, and regulators. The final version of Article 4A represents a compromise that attempts to strike a balance between the interest of the public, the interest of the providers of funds-transfer services, and the

\textsuperscript{208} Id. § 4A-507.
\textsuperscript{210} Id.
The need for a comprehensive law governing the area of wholesale electronic funds transfers is apparent. It is also important, however, that the laws in the various states be uniform to avoid uncertainty with respect to the rules that may affect the parties to a particular transfer. Such parties are very likely to be in different states. The need to avoid uncertainty is heightened by the fact that large sums of money are transferred through funds transfer networks in a fast, efficient, and inexpensive manner. If the parties cannot be certain about the rules that will govern their actions and relationships, the process will become less efficient and certainly more expensive. Thus, it is very important that Article 4A be adopted uniformly.

D. Status in Georgia

Article 4A was introduced into the Georgia General Assembly in February 1991 as House Bill 762. House Bill 762 contains no substantive variations from the 1989 Official Text of Article 4A. There are, however, certain changes that have been made to the headings and cross-reference notations in Article 4A that were required in order to make Article 4A consistent with the formatting style used throughout Title 11 of the Georgia Code. The minor changes in style do not affect the substantive context of Article 4A.

Article 4A, prior to being introduced in the General Assembly, was reviewed by the Georgia U.C.C. Committee and was approved by the Board of Governors of the State Bar of Georgia.

212. Id.
213. As of November 1991, Article 4A had been adopted by the following states in its uniform version: Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming as well as the District of Columbia. (as reported by the American Law Institute).
216. Id.; U.C.C. Art. 4A (1989).
IV. ARTICLE 6—BULK TRANSFERS

A. Background

Debtor misconduct during the Panic of 1893 was the motivating force behind the enactment of bulk sales laws during the late 1890s and early 1900s. Failing merchants, saddled with depreciating goods and desperate to avoid creditors, liquidated their inventories in bulk. They then abandoned the proceeds and began business anew in distant locations. Their apparent success inspired similar tactics by others who observed the profit potential in such schemes. This continued until the practice became widespread. Fraudulent conveyance laws, which at that time had been in effect for hundreds of years, were unavailing where the purchaser in bulk gave adequate consideration and purchased in good faith. In an effort to protect against these abuses, an organization known as the National Association of Credit Men developed the bulk sale statutes and lobbied for their enactment in the various states.

During the time that the Code was being drafted, the NCCUSL came under pressure to produce a uniform law on bulk sales. Deciding that it would be more efficient legislatively to include the bulk sales law in the Code rather than having it separately enacted as a second uniform statute, the NCCUSL asked that the law be incorporated into the Code. This marriage of convenience, which occurred in the late stages of the drafting of the Code and was not met with enthusiasm by the drafters, may explain in part why Article 6 has been widely viewed as the most poorly drafted portion of the Code.

B. Summary of Existing Article 6 and Problems in Application

Article 6 requires that the parties to a bulk transfer not otherwise exempt from the article’s coverage comply with four basic requirements: (1) the seller must furnish the purchaser with a complete list of the seller’s creditors; (2) the parties must prepare in reasonable detail a schedule of the property being transferred; (3) the purchaser must retain the list and schedule and must either permit inspection and copying of the list and schedule or file them in the public records; and (4) the purchaser must


218. State fraudulent conveyance laws had their origins in the 16th century Statute of Elizabeth, 13 Eliz., ch. 5 (1570), which rendered invalid any transfer of property made with the intent of hindering, delaying, or defrauding creditors. See Note, Good Faith and Fraudulent Conveyances, 97 HARV. L. REV. 495, 495-97 (1983).

219. See Billig, supra note 217, at 82-83.

notify the seller's creditors of the transfer. Failure by the parties to comply with these requirements renders the transfer ineffective against creditors of the seller.

Despite its apparent simplicity, Article 6 proved burdensome to the parties to bulk sales, particularly in transactions involving substantial businesses having multiple locations and a large number of creditors. Moreover, the parties often had legitimate business reasons for their reluctance to make detailed disclosures of the transaction to creditors. Consequently, the parties frequently structured their transactions to either avoid the status of a statutory "bulk transfer" or to qualify for an exemption from Article 6's coverage. In other cases, the parties affirmatively elected not to comply with Article 6, relying instead on indemnification agreements, escrow arrangements, and other contractual means to insure the purchaser against loss from the claims of the seller's creditors.

Legal commentators and courts have had an equally difficult time with Article 6. Problems in the interpretation and application of Article 6 in

222. Id. § 6-104(1). Article 6 does not set forth any procedure that a creditor must use in exercising its rights in connection with a bulk transfer. However, Official Comment 2 to U.C.C. § 6-104 indicates that the creditor may "disregard the transfer and levy on the goods as still belonging to the transferor, or a receiver representing them can take them by whatever procedure the local law provides." Id. § 6-104 cmt. 2. Official Comment 2 to U.C.C. § 6-111 provides that "levy" should be broadly construed to include not only levies of execution, but also attachment, garnishment, receivership "or whatever proceeding, under the state's practice, is used to apply a debtor's property to payment of his debts." Id. § 6-111 cmt. 2. See generally William D. Hawkland, Remedies of Bulk Transfer Creditors Where There Has Been Compliance With Article 6, 74 Com. L.J. 257 (1969).
223. For example, the parties might omit all or a major portion of the inventory from a sale of the business generally. Alternatively, the purchaser might assume the debts of the seller and otherwise qualify for one of the exemptions from the Article 6 requirements afforded by U.C.C. § 6-103(6) or § 6-103(7) (1962) (amended 1989). The latter alternatives are unattractive, however, since the statutory exemptions appear to require the assumption of all debts, including both unknown and contingent claims.
224. In Mercantile Fin. Corp. v. P&F Indus., Inc., 63 A.D.2d 1014, 406 N.Y.S.2d 357 (2d Dept. 1978), the court indicated that a contractual indemnification, provided in lieu of Article 6 compliance, represented "standard business practice" and did not constitute a violation of the statute. 63 A.D.2d at 1015, 406 N.Y.S.2d at 358. Of course, indemnity agreements are only as good as the creditworthiness of the indemnitor. There is also some risk that a court would determine that conscious noncompliance constitutes concealment of the transfer so as to toll the applicable statute of limitations. See, e.g., In re Seminole Motors, Inc., 86 B.R. 245 (E.D. Okla. 1987); Columbian Rope Co. v. Rinek Cordage Co., 461 A.2d 312 (Pa. Super. 1983); but see In re Dell Norte Depot, Inc., 716 F.2d 557 (9th Cir. 1983).
particular cases were unsettling to potential bulk sale purchasers and their lenders, who feared that noncompliance would subject the newly acquired assets to superior claims from the seller's creditors. These fears turned to nightmares when the seller became the debtor in a bankruptcy proceeding. Under Section 544(b) of the Bankruptcy Code, the trustee (or Chapter 11 debtor) could exercise the Article 6 rights of any actual unsecured creditor who did not receive proper notice of the bulk sale, permitting avoidance of the entire transaction for the benefit of the bankruptcy estate. This result followed regardless of the size of the creditor's claim.

C. Recommendations for Repeal or Revision

Efforts to reform Article 6 commenced in the late 1970s. By 1982, the Uniform Commercial Code Committee of the American Bar Association had called for substantial revision of Article 6. The Article 6 Subcommittee report, undoubtedly coupled with the increased attention given to Article 6 matters in the booming merger and acquisition days of the mid-1980s, led to its reconsideration by the NCCUSL and A.L.I. beginning in 1985.

The NCCUSL and A.L.I. completed their study of Article 6 in 1988 with a joint recommendation that calls for the repeal of that portion of the Code. In their judgment, Article 6 could no longer survive a cost-benefit analysis. Devices such as credit reporting services, audited financial statements, and ready access to public lien filings enabled suppliers and other creditors to make more informed decisions on extending credit. Security, whether in the form of purchase money security interests in inventory or otherwise, was available to a concerned creditor on an inexpen-
sive basis. In addition, modern jurisdictional statutes and ease of inter-
state service of process made it unlikely that a fraudulent seller in a bulk
sale could avoid the legal consequences of that misconduct. Based on
these and other changes in the business and legal environment, and the
relatively low incidence of fraudulent bulk sales, the NCCUSL and A.L.I.
concluded that the burden placed on good faith transactions by Article 6
was no longer justified.\textsuperscript{288}

Mindful of the political realities of the state legislative process, the NC-
CUSL and A.L.I. recognized that outright repeal of Article 6 might not be
a viable course in every state. Accordingly, as an alternative to repeal, the
NCCUSL and A.L.I. issued a substantial revision of Article 6 designed to
"reduce the burdens and risks imposed upon good-faith buyers of busi-
ness assets while increasing the protection afforded to creditors."\textsuperscript{288}
The principal changes made in revised Article 6 include the following: (1) ap-
plicability of Article 6 only where the purchaser has notice, or would have
had notice upon reasonable inquiry, that the seller will discontinue busi-
ness operations after the sale; (2) exclusion of sales where the value of the
property otherwise available to creditors is less than $10,000 or greater
than $25,000,000; (3) inclusion of a choice of law provision specifying one
state’s law as governing the entire transaction; (4) notification to creditors
by filing, rather than individual mailings, where the seller has a large
number of creditors; (5) increase in the notice period from ten days to
forty-five days; (6) required disclosure of how consideration for the bulk
sale is to be distributed; (7) exclusion of liability for buyers making good
faith efforts to comply with Article 6 or acting on the good faith belief
that Article 6 is inapplicable; and (8) substitution of a damages remedy
against the buyer for noncompliance in lieu of any claim against title to
the assets sold.\textsuperscript{288}

The action taken by the first three states on the Article 6 recommenda-
tion occurred during 1989 and 1990. It confirmed the political instincts of
the NCCUSL and A.L.I.—all three states adopted revised Article 6.\textsuperscript{288}
The tide took a definite turn in 1991, however, as ten of eleven states
addressing the issue voted to repeal Article 6.\textsuperscript{288}

\begin{itemize}
\item \textsuperscript{232} Id.
\item \textsuperscript{233} U.C.C. § 6-101 cmt. (1989).
\item \textsuperscript{234} Id.
\item \textsuperscript{235} California, Oklahoma and Utah (as reported in State Correlation Tables, U.C.C.
\textsc{Rep. Ser.} (Callaghan) xv (Dec. 1991)).
\item \textsuperscript{236} Arkansas, Colorado, Illinois, Louisiana, Minnesota, Montana, Nebraska, Nevada,
Oregon, and Wyoming. Hawaii was the only state enacting revised Article 6 during 1991.
Kentucky, Maine, New Mexico, and West Virginia are expected to repeal Article 6 in 1992
(as reported by the American Law Institute).
\end{itemize}
D. Status in Georgia

The Article 6 Subcommittee of the Georgia U.C.C. Committee has not yet made a final recommendation on the course that should be taken in Georgia. The preliminary view has clearly been that Article 6, in its present form, should not remain in effect. Although the repeal-or-revise debate is ongoing, the recent wave of states approving repeal of Article 6 should provide additional ammunition to the proponents of repeal in Georgia. The Article 6 Subcommittee expects to make its decision on repeal or revision and to submit proposed legislation for approval by the Board of Governors of the Georgia State Bar by late 1992. If approved, Article 6 legislation could be introduced in the 1993 Georgia General Assembly.

V. Article 8—Investment Securities

A. Background

The "paperwork crunch" experienced in the securities industry during the late 1960s resulted in the formation of the American Bar Association Committee on Stock Certificates. This committee was charged with evaluating the possible elimination or reduction in the use of stock certificates in paper form. In its 1975 report, the Committee recommended that (1) the Model Business Corporation Act be amended to permit issuance of stock in uncertificated form, and (2) Article 8 of the Code be revised to regulate the rights, duties, and obligations of issuers of, and persons dealing in, uncertificated investment securities. The NCCUSL and A.L.I. complied by drafting the 1977 Official Text of Article 8.

B. Reasons for Revisions

In each of the fifty states, the trading of corporate securities, typically stocks and bonds, is governed by the transfer rules found in Article 8 of the U.C.C. The transfer system established by the original Article 8 is based on the "certificate." Transfer takes place when the certificate is indorsed and delivered by one party to another. The original Article 8

237. Chaired by John B. Miller, Jr., of Sutherland, Asbill & Brennan, Atlanta, Georgia.
241. Id. § 8-102.
242. Id. §§ 8-307 to -311.
provided the rules for the indorsement and delivery of the certificate\textsuperscript{243} and the "warranties of transfer" or guarantees of the transfer's validity,\textsuperscript{244} but Article 9 provided the rules for the use of securities to secure debts.\textsuperscript{245}

While the certificated system still dominates securities transfers, electronic transfers are expanding. Revised Article 8 was drafted to establish regulations for the newer system that is evolving: one that eliminates certificates and accomplishes transfers by entry on the issue books and appropriate notices to the parties involved.\textsuperscript{246}

Revised Article 8 includes the same features as existing Article 8, with the important exception of the certificate requirements. Revised Article 8 parallels the legal framework existing Article 8 established for certificates and gives priority in the law to neither system of transfer.\textsuperscript{247}

The practical advantages of an uncertificated system are clear: they allow issuers to take advantage of the efficiency and speed of computer technology that can eliminate the sea of paper that afflicts the securities market. The vast majority of states (forty-six) have already recognized the need to adopt revised Article 8.\textsuperscript{248} These states include: New York, the nation's trading capital; Delaware, the state of incorporation for large businesses across the country; and most recently, Massachusetts.\textsuperscript{249}

In states that do not adopt revised Article 8, traders will be less equipped to do business with uncertificated companies. New firms desiring the benefits of certificateless transfer may choose to go elsewhere to incorporate.

Another potential disadvantage for states that do not adopt revised Article 8 stems from the practice of pledging securities to obtain credit. Lenders in any state need an adequate legal basis for transactions involving uncertificated transactions before entering into them. Without such legal basis, lenders will withhold credit secured by perfectly valid collateral, and business will suffer.

The Revised Model Business Corporation Act, which has been adopted in many states, including Georgia, authorizes corporations to issue shares of stock without certificates.\textsuperscript{250} States that have adopted the Revised Model Business Corporation Act but have not adopted revised Article 8 are in the position of empowering their corporations to issue uncertifi-
cated securities, but fail to provide a mechanism for their transfer or pledge.

C. Status in Georgia

Revised Article 8 was introduced in the Georgia General Assembly in February 1991 as House Bill 761.\textsuperscript{251} House Bill 761 contains several substantive variations from the official text, in addition to minor variations that reflect mere changes in style that are necessary to maintain consistency with other articles of Georgia’s Code. Georgia’s version of section 8-102 varies from the official text in that it contains a new subsection dealing with partnership interests in a limited partnership.\textsuperscript{252} This Georgia variation makes clear that, except in the case of a “public” limited partnership, a partnership interest in a limited partnership does not fall within the definition of an uncertificated security.\textsuperscript{253}

Georgia’s new section 11-8-106 varies from the official text in that it includes a final paragraph that excludes a number of Article 8’s provisions applying to securities issued by a municipal corporation, county or other political subdivision, authority or other similar public corporation, governmental agency, or unit of the state.\textsuperscript{254} These securities are governed by provisions of the “Revenue Bond Law.”\textsuperscript{255} This Georgia variation was in existing section 11-8-106 adopted in Georgia and is carried forward into the revised Article 8.\textsuperscript{256}

Georgia’s new section 11-8-316 varies from the official text by substituting the phrase “the purchaser of a security” for the phrase “his purchaser.”\textsuperscript{257} This variation makes it clear that a purchaser can demand proof of authority not only from such purchaser’s own immediate transferee, but also from any pledgee who retained a lien on the security involved, even if the purchaser had no direct dealings with such pledgee.

Georgia’s new section 8-320 varies from the official text in that the phrase “another clearing corporation” is added to subparagraph (1)(a)(2)(ii).\textsuperscript{258} This variation was added to the text to make clear that this subparagraph covers securities that one clearing corporation may control through its account with another clearing corporation. This clarification is important in light of the growing system of interfacing depositories.

\textsuperscript{251} Revised Article 8, supra note 5 (to be codified at O.C.G.A. Title 11, Chap. 8).
\textsuperscript{252} Id. (to be codified at O.C.G.A. § 11-8-102).
\textsuperscript{253} Id.
\textsuperscript{254} Id. (to be codified at O.C.G.A. § 11-8-106).
\textsuperscript{256} Id. § 11-8-106 (1982).
\textsuperscript{257} Proposed Legislation, supra note 251, at Line No. 1296.
\textsuperscript{258} Id. at Line No. 1405.
Revised Article 8, prior to being introduced in the General Assembly, was reviewed by the Georgia U.C.C. Committee and was approved by the Board of Governors of the State Bar of Georgia.

VI. FINANCING STATEMENT FILINGS UNDER GEORGIA'S ARTICLE 9

A. Local Filing Issues

The 1972 Official Text of Article 9 provided three alternatives for designating the appropriate locations for filing of financing statements. The first alternative provides for local filing only in the case of timber, minerals (including oil, gas, and related accounts), and fixtures; all other filings are done in a central location, typically with the Secretary of State.259 The second alternative expands the list of “local filing” collateral to include consumer goods, farm equipment, farm products and related accounts, general intangibles, and crops growing or to be grown—with all other collateral to be covered by a central filing.260 The third alternative, generally referred to as the “dual filing” alternative, is similar to the second alternative, but also requires a local filing where the debtor has only one place of business in the state or, if the debtor has no place of business in the state but resides in the state, also locally where the debtor resides.261

Georgia, alone among the fifty states, has continued to maintain a completely local filing system for financing statements.262 Apart from financing statements covering crops, minerals and related accounts, or fixtures, all of which are to be filed in the office where a mortgage on the real estate would be filed or recorded, financing statements are to be filed in Georgia in the following locations:

(b) . . . when the debtor is a resident individual, then in the county where he resides; or when the debtor is a partnership, a corporation, other business entity not an individual, or a nonresident individual, then in the county of the debtor’s principal place of business in this state, but if he has no place of business in this state then in the county where the property is kept or used in this state. If the debtor has more than one

260. Id.
261. Id.
place of business in this state, his principal place of business shall be
deemed to be located at his chief executive office in this state.\textsuperscript{262}

In most cases, it is not difficult to determine the proper county for fil-
ing where the debtor is a resident individual or where the debtor has a
single place of business in Georgia. In other cases, however, the secured
party frequently faces uncertainty.

Which of the debtor's places of business will constitute its chief exec-
tutive office in Georgia? The term "chief executive office" is not defined in
Article 9 or elsewhere in the Code. Official Comment 5(c) to section 9-103
indicates that the chief executive office is not the place of incorpora-
tion.\textsuperscript{264} Instead, the term is intended to mean "the place from which in
fact the debtor manages the main part of its business operations."\textsuperscript{265}
According to the official comment, this is the place where persons dealing
with the debtor would normally look for credit information and is the
appropriate place for filing.\textsuperscript{266} In order to ascertain the location of a
debtor's chief executive office, courts have focused on a variety of factors,
including (1) the existence of office autonomy, (2) the location of officers
and directors, (3) the office from which the annual report is generated, (4)
the location of financial records, (5) the office from which business is ne-
gotiated and contracts executed, (6) the location that generates greater
revenues, (7) the area in which a majority of the debtor's creditors are
located, and (8) the location from which primary accounting and legal
services are rendered.\textsuperscript{267} Where the debtor clearly has a chief executive
office outside the state of Georgia, it may be difficult, if not impossible, to
determine that any place of business in Georgia constitutes its chief exec-
tutive office \textit{in Georgia}.

Where the debtor has no place of business in Georgia, the financing
statement must be filed in the county where the collateral is "kept or
used."\textsuperscript{268} This requirement places an investigative burden on the secured
party.

\begin{itemize}
  \item \textsuperscript{263} O.C.G.A. § 11-9-401(1)(b) (1982).
  \item \textsuperscript{264} U.C.C. § 9-103, cmt. 5(c) (1977).
  \item \textsuperscript{265} Id.
  \item \textsuperscript{266} Id.
  \item \textsuperscript{267} \textit{See, e.g., In re Metro Communications, Inc.}, 95 B.R. 921 (W.D. Pa. 1989). In a
  recent Georgia case, the secured party's filing of a financing statement in the county where
  the debtor's "principal office" and registered agent were located (as shown in the records of
  the Secretary of State) was held to be ineffective where the evidence showed that some
  business-related activities had already commenced in another county. The court concluded
  that the principal place of business of the debtor existed in the second county even though
  the debtor had not begun charging for its services in that county. \textit{Intertrust Corp. v. Fischer
  \item \textsuperscript{268} O.C.G.A. § 11-9-401(1)(b) (1982).
\end{itemize}
Attorneys representing secured parties filing financing statements in Georgia have learned to cope with these various dilemmas by following a simple rule: file in every county where it is remotely possible that a filing might be deemed necessary. The risk of losing lien priority to a subsequent secured party or other lien creditor, as well as the risk of a total loss of the security interest in a bankruptcy proceeding, dictates such a conservative approach.

Georgia's local filing requirements present an even greater difficulty in conducting lien searches. A filing originally made in the proper county continues to be effective even though the debtor's residence, place of business, or the location of the collateral or its use (whichever controlled the original filing location), is subsequently changed. Thus, the secured party must conduct a thorough investigation of the debtor's history for at least the past five years, determining the location of all residences, places of businesses, chief executive offices, and locations of collateral. The risk of missing one or more prior financing statements and the resulting loss of lien priority dictate the same conservative approach when conducting lien searches as for filing of financing statements. Prudent secured parties will have lien searches performed in all counties where, under any set of facts reasonably possible, a filing could properly have been made against the debtor or a prior owner of the collateral.

B. Central Filing on Farm Products

Section 9-307(1) of the Code states that a buyer in the ordinary course of business takes free of a security interest created by his seller, even though the security interest is perfected and the buyer knows of its existence. However, an exception to this general rule is made for purchasers of farm products from a person engaged in farming operations. As a result, purchasers of farm products who do not conduct the requisite inquiry regarding outstanding security interests may find themselves subject to claims from their seller's secured creditors if the seller fails to repay those creditors.

In the Food Security Act of 1985, the United States Congress preempted the farm products exception and provided two alternatives by

269. Id. § 11-9-401(3).
271. U.C.C. § 9-307(1) (1972). Dissatisfaction with the farm products exception led more than 20 states to pass nonuniform amendments to Section 9-307(1). See State Correlation Tables, U.C.C. Rep. Serv. (Callaghan). Georgia was not one of those states.
which the exception could, in effect, be restored. The first alternative requires the filing of an "effective financing statement" by the secured party in a central filing system adopted by the state and certified by the United States Department of Agriculture.\footnote{273} The second alternative requires direct notification by the secured party to a potential purchaser of farm products, so that prior to the sale the purchaser is made aware of the secured party's interest in the farm products.\footnote{274}

Among other requirements for certification, the state's central filing system must provide for compilation of the "effective financing statements" into a master list organized by farm product and arranged within the farm product category alphabetically by the debtor, numerically by the debtor's social security number or taxpayer identification number, geographically by county, and by crop year.\footnote{275} The master list must also contain the names and addresses of both the debtor and the secured party, a description of the farm products subject to the security interest including amount, if applicable, and a description of the property where the farm products are located.\footnote{276} The Secretary of State must maintain a list of buyers, commission merchants, and selling agents who register with the Secretary and distribute to those so registered the portion(s) of the master list that the registrant has expressed an interest in receiving.\footnote{277} In addition, the system must be able to provide to those not registered oral confirmation of any effective financing statement within twenty-four hours of a request, followed by written confirmation.\footnote{278}

A buyer, commission merchant, or selling agent takes subject to a security interest in farm products produced in a state where the buyer, commission merchant, or selling agent has failed to register with the Secretary of State in order to receive such list and the secured creditor has filed an effective financing statement covering the farm products.\footnote{279} A buyer, commission merchant, or selling agent will also take subject to a security interest in farm products produced in a state having a central filing system when the buyer, commission merchant, or selling agent has

\footnote{273}{7 U.S.C. § 1631(e) (Supp. 1991).}
\footnote{274}{Id. The "effective financing statement" contemplated by the Food Security Act must contain more information than is currently required by Article 9 of the Code. Currently, the U.S. Department of Agriculture has certified central filing systems in 17 states: Alabama, Idaho, Louisiana, Maine, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Vermont, West Virginia, and Wyoming; certification for an eighteenth state, Colorado, is pending (as reported by the U.S. Dept. of Agriculture in November 1991).}
\footnote{275}{Id. § 1631(c)(2).}
\footnote{276}{Id.}
\footnote{277}{Id.}
\footnote{278}{Id.}
\footnote{279}{Id. § 1631(e).}
received written notice (either through the list or written confirmation of an oral request) of the secured creditor’s interest and does not obtain a waiver or release of that interest.280

C. Status in Georgia

The additional costs created by multiple filings of financing statements and multiple lien searches, all of which are typically passed along to the debtor, together with the investigative burden and increased risks to secured parties of loss of lien priority or secured status, provide strong arguments for adoption of a central filing system for financing statements in Georgia. In prior years, when consideration has been given to the adoption of a central filing system for Georgia, two major obstacles have been identified: (1) the lack of computer capacity in the Office of Secretary of State to handle a statewide central filing system; and (2) the lack of ready access to information in the central filing system by parties conducting records examinations on a local level.

Substantial progress has been made in overcoming these obstacles. The Office of Secretary of State has expanded its computer capacity sufficiently to accommodate a central filing system. As part of the recent centralization of corporation and limited partnership filings in that office, arrangements have been made to have “on line” computer terminals in the offices of each of the clerks of superior courts in Georgia, thereby providing local access to the Secretary of State’s central filing system.

During 1990, the Article 9 Subcommittee of the Georgia U.C.C. Committee recommended that Georgia amend its Article 9 to provide for central filing of financing statements in a manner consistent with the “first alternative” contained in the 1972 Official Text. The Article 9 Subcommittee further recommended that the central filing system include financing statements for farm products to permit the restoration of the farm products exception in Section 9-307. Although recognizing that much work would have to be done to design and implement a computerized filing system that would adequately serve the needs of secured creditors and other interested parties in Georgia, the Subcommittee concluded that the benefits of such a system merited a serious and concerted effort to begin the legislative and operational processes for central filing as soon as possible.

At its meeting in January 1991, the Board of Governors of the Georgia State Bar deferred action on the Article 9 Subcommittee’s recommendations. As a result, no Bar-sponsored legislation to adopt a central filing system was introduced in the 1991 Georgia General Assembly. However, a bill providing for central filing was separately introduced late in the 1991

280. Id.
The Article 9 Subcommittee believes that the bill should provide a suitable vehicle for the serious examination of the issues relating to central filing. Indeed, a study committee on central filing, including representatives of the Georgia U.C.C. Committee, the Georgia Bankers Association, the clerks of the various superior courts, and the Secretary of State's Office, has been formed and will be meeting during 1992 to develop further recommendations and possible legislation.

The challenges facing a shift to central filing are significant. Although filing and search fees should be more than sufficient to offset the operational costs of a central filing system, the current strains on the State budget may make it difficult to fund the "front end" design and implementation costs of a central filing system. The even greater challenge will be to design a central filing system that will convince lenders, attorneys, and other interested parties that adequate information can be retrieved from the system accurately, conveniently, and promptly on a cost-efficient basis.

VII. OTHER PROSPECTIVE REVISIONS TO THE CODE

As one might expect, changes to the Code will not cease with the adoption of the new articles and revisions discussed above. The NCCUSL, as "keeper" of the Code together with the A.L.I. and the PEB, has established drafting and/or study committees to further revise and update various articles of the Code.

A newly formed NCCUSL Article 2 Drafting Committee is considering whether that article should be expanded to cover computer software, sales of services (or at least mixed sales of goods and services), and licensing of intellectual property and other intangible rights. In addition, the Committee is considering whether consumer sales should be distinguished from commercial sales.

The NCCUSL Article 5 Drafting Committee is considering whether to draft new rules for the standby letter of credit (a practice not in existence when current Article 5 was drafted); when a bank must honor a letter of credit (existing law provides that the bank pays only if the letter of credit conforms precisely to bank documents); and how Article 5 should relate to and harmonize with the Uniform Customs and Practice for Documentary Credits, the UNCITRAL Rules, and the regulations of the Federal Reserve Board.

The NCCUSL Article 8 Drafting Committee is considering what securities should be included under Article 8 (i.e., options and futures, treasury securities, etc.); rules for security interests in securities (creation, perfect-
tion, and priorities); and whether there should be a new approach to rights and liabilities of those holding through financial intermediaries.

The PEB Article 9 Study Committee is considering, inter alia, the procedure for filing trade names, chattel paper buyers vs. secured party rules, and the "knowledge" requirement.

As citizens, we can be thankful that the dedicated men and women of the NCCUSL, A.L.I. and PEB are ever vigilant with respect to the Code entrusted to them.