

Revised UCC Article 9 Transition Rules

Gary A. Goodman
Sonnenschein Nath & Rosenthal

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General Transition Rules

- Revised UCC Article 9 ("Revised Article") must have a uniform effective date of July 1, 2001 (in all states, except Connecticut, where it is October 1, 2001, and Alabama, Florida and Mississippi, where it is January 1, 2002) regardless of the date of enactment by the relevant state legislature (Revised Section 9-701). Advantages of a uniform effective date include:
 - having a uniform effective date that will potentially avoid the adverse consequences and confusion that could occur around a staggered date
 - avoiding the problems that could arise if the Revised Article were in force in some, but not all states at a given time. (With the exception of Alabama, Connecticut, Florida and Mississippi, these problems have been avoided).

General Transition Rules

- From the effective date, the Revised Article will govern all secured transactions within its scope, even secured transactions consummated prior to such date, excepting:
 - secured transactions that are not governed by the old UCC Article 9 (meaning that they are governed by common law or other statute)
 - legal proceedings that are initiated prior to the effective date (Revised Section 9-702).
- The Revised Article will apply, including its transition rules:
 - ◆ with respect to amendments to secured transactions after the effective date, as well as
 - ◆ requirements for attachment and perfection.

General Transition Rules

- Following the effective date, secured transactions that are not subject to the old UCC Article 9, will be "terminated, completed, consummated, and enforced" either in accordance with:
 - current secured transactions statutory and case law, collectively known as prior law ("PL") or
 - the Revised Article, including:
 - ◆ security interests in deposit accounts
 - ◆ commercial tort claims and letter of credit rights
 - ◆ security interests granted by governmental entities.

General Transition Rules

- Ambiguous features of the Revised Article pertain to:
 - which of the parties—the secured party, the debtor, or both—can determine which law shall apply
 - what role PL will play with regard to such transactions, assuming the parties opt to have them continue to be governed by it after the effective date.

The "Do Nothing Rule"

- The "Do Nothing" Rule (Revised Section 9-703) applies when no further action is required to maintain a valid and perfected security interest in the relevant collateral, if requirements for attachment and perfection are satisfied at all relevant times both before and after the effective date. This does not, however, assure the secured party that it will maintain the same level of priority, even if perfected:
 - another perfection method may be available under the Revised Article for that type of collateral, which would afford priority over the current perfection method, in which case the secured party would want to perfect by the other method to ensure that it will enjoy the highest level of priority under the Revised Article:

The "Do Nothing Rule"

- ◆ **example:** D was incorporated in State X, had its CEO in State X and its collateral was located there. Under PL, SC perfected by filing a financing in State X. Since D is a registered organization, State X is also the proper place to file under the Revised Article. Therefore, nothing further needs to be done to continue perfection until the earlier to occur of :
 - lapse under PL or
 - the day before the fifth anniversary of the effective date.

The "One-Year Rule"

- Security interests that (immediately before effective date) have attached and/or have been perfected (whether or not attached) other than by filing, remain unaffected by the Revised Article for up to one year following the effective date (the "One-Year Rule") [June 30, 2002, in all states, except Connecticut, where it is September 20, 2002, and Alabama, Florida and Mississippi, where it is December 31, 2002]. The One-Year Rule:
 - imposes the first fixed deadline for bringing certain pre-effective-date secured transactions into compliance with the Revised Article

The "One-Year Rule"

- applies to virtually all aspects of the validity and perfection of a pre-effective date security interest, other than perfection by filing, which is governed by the Five-Year Rule (see below)
 - ◆ operates on a simple principle: if, prior to effective date a security interest has attached, but is not perfected, the security interest remains attached, even if the requirements for attachment under the Revised Article have not been satisfied until June 30, 2002:
 - after that date, the security interest must attach in accordance with the Revised Article or
 - be rendered unenforceable.

The "One-Year Rule"

- A pre-effective-date security interest that has validly attached and is perfected under PL will continue to be a perfected security interest for up to one year following the effective date, even if the requirements for attachment or perfection, or both, are not satisfied under the Revised Article:
 - for security interests in which the act of perfection has taken place prior to the effective date, but which have not attached as of such date (e.g., security interests in after-acquired property), the method of perfection will continue to be effective for up to one year following the effective date for:

The "One-Year Rule"

- ◆ collateral in which the security interest attaches during that period, even if the requirements for perfection under the Revised Article have not been satisfied:
 - however, when the security interest in the collateral attaches, it must attach in accordance with the Revised Article, even if this occurs during the first year following the effective date.

The "One-Year Rule"

- ◆ **example:** D granted to SC a security interest in a promissory note under PL by simple notice to a bailee, which was effective under PL, to give SC a perfected security interest. But under the Revised Article, SC has until the day before the first anniversary of the effective date to obtain an acknowledgement from the bailee in order for its security interest to remain effective.

The "Five-Year Rule"

- Financing statements, including applicable continuation statements, which do not otherwise satisfy all Revised Article 9 criteria for effectiveness, but which are effective under old UCC Article 9, remain effective until the earlier of:
 - the date on which they would lapse in accordance with old UCC Article 9 - usually five years after filing
 - June 30, 2006 (the "Five-Year Rule") [June 30, 2006, in all states, except Connecticut, where it is September 20, 2006, and Alabama, Florida and Mississippi, where it is December 31, 2006].

The "Five-Year Rule"

- Under the Five-Year Rule:
 - secured parties are allowed to transition to the Revised Article filing scheme in an orderly fashion, and in accordance with the schedule for taking action pursuant to the filing tickler systems maintained by most institutional lenders
 - a maximum five-year grace period is provided for complying with the Revised Article, but not a minimum grace period:

The "Five-Year Rule"

- once the financing statement lapses by its terms, it becomes ineffective immediately (which, depending on the circumstances, could be as soon as the effective date) unless action is taken prior thereto in accordance with the Revised Article.

The "Five-Year Rule"

- ◆ financing statements remain effective until they lapse in accordance with their terms, or until June 30, 2006 (June 30, 2006, in all states, except Connecticut, where it is September 20, 2006, and Alabama, Florida and Mississippi, where it is December 31, 2006), whichever is earlier:
 - thereafter, they must be renewed in accordance with the Revised Article.

The "Five-Year Rule"

- ◆ pre-effective date financing statements may be continued by way of a continuation statement that complies with the requirements of the Revised Article, as long as:
 - they would be filed in the same jurisdiction and office within that jurisdiction under both, the old UCC Article 9 and the Revised Article
 - if not, then, in lieu of a continuation statement, an Initial Financing Statement (an "In Lieu Statement") must be filed in the correct jurisdiction and office as determined under the Revised Article:

The "Five-Year Rule"

- In Lieu Statements:
 - ✦ must comply in all respects with the Revised Article's requirements for initial financing statements and
 - ✦ must specifically refer to the pre-effective date financing statement being continued by the In Lieu Statement.
- if all such requirements are satisfied, the perfection of the security interest will "relate back" to the date on which the pre-effective date financing statement initially became effective under PL, provided it has remained continuously perfected since then.

The "Five-Year Rule"

- **example:** if D was incorporated in State X, but its chief executive office is located in State Y, a State Y filing valid under PL must be replaced by a State X filing under the "birth certificate" standard of the Revised Article. For this filing to continue the earlier filing, it must:
 - meet all the requirements of the Revised Article
 - identify the filing being continued and
 - state that the earlier filing remains effective.

The "Five-Year Rule"

The filing of the "In Lieu Statement" in State X must be accomplished within five years after the State Y filing. It need not be made within the six-month window normally required for continuation statements. Once the In Lieu Statement is filed, it has the normal five-year duration, and can be continued by filing a continuation statement within the six-month window at the end of the five years.

Preserving the Status Quo for Secured Parties

- The One- and Five- Year Rules operate to preserve the status quo for the secured party as it existed immediately prior to the effective date, at least for a limited period of time following the effective date:
 - they do not overcome defects existing as of the effective date
 - if an aspect of attachment or perfection was not satisfied under PL immediately prior to the effective date, to achieve attachment or perfection after the effective date, the requirements under the Revised Article must be satisfied in all relevant respects.

The "Priority Transition Rule"

- The Revised Article does not per se alter priorities established under PL, but priorities can be altered by actions taken on or after the effective date (the "Priority Transition Rule").
- The Priority Transition Rule, found at Revised Section 9-708, declares that:
 - if nothing further is done by any party on or after the effective date, with respect to a pre-effective date transaction, priority between conflicting security interests will be determined in accordance with old UCC Article 9's priority rules

The "Priority Transition Rule"

- however, if any party takes action on or after the effective date that would alter the status quo (e.g., perfects a security interest that was previously unperfected or perfects under a different method entitled to priority over other available methods), the Revised Article's priority rules will govern

The "Priority Transition Rule"

- **example:** in 1999, SC-1 obtains a security interest in D's existing and after-acquired instruments and files a financing statement covering "instruments." In 2000, D grants a security interest in its existing and after-acquired accounts in favor of SC-2, which files a financing statement covering "accounts." After the effective date, one of D's account debtors gives D a negotiable note to evidence its obligation to pay an overdue account:
 - under the first-to-file-or-perfect rule in Revised Section 9-322(a), SC-1 would have priority in the instrument, which constitutes SC-2's proceeds. SC-1's filing in 1999 was earlier than SC-2's in 2000

The "Priority Transition Rule"

- however, Revised Section 9-322(b) provides that, for purposes of Revised Section 9-322(a), SC-1's priority dates from the Effective Date. Under Revised Section 9-322(b), SC-2's priority with respect to the proceeds (instrument) dates from its filing as to the original collateral (accounts).