

Permanent Editorial Board for the Uniform Commercial Code

PEB COMMENTARY NO. 19

**HAGUE SECURITIES CONVENTION'S EFFECT ON DETERMINING
THE APPLICABLE LAW FOR INDIRECTLY HELD SECURITIES**

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PREFACE TO PEB COMMENTARY

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A *PEB Commentary* should come within one or more of the following specific purposes, which should be made apparent at the inception of the Commentary: (1) to resolve an ambiguity in the Uniform Commercial Code by restating more clearly what the PEB considers to be the legal rule; (2) to state a preferred resolution of an issue on which judicial opinion or scholarly writing diverges; (3) to elaborate on the application of the Uniform Commercial Code where the statute and/or the Official Comment leaves doubt as to inclusion or exclusion of, or application to, particular circumstances or transactions; (4) consistent with U.C.C. § 1-102(2)(b),¹ to apply the principles of the Uniform Commercial Code to new or changed circumstances; (5) to clarify or elaborate upon the operation of the Uniform Commercial Code as it relates to other statutes (such as the Bankruptcy Code and various federal and state consumer protection statutes) and general principles of law and equity pursuant to U.C.C. § 1-103;² or (6) to otherwise improve the operation of the Uniform Commercial Code.

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¹ Current U.C.C. § 1-103(a)(2).

² Current U.C.C. § 1-103(b).

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HAGUE SECURITIES CONVENTION'S EFFECT ON DETERMINING
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Issue: How does the Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary, concluded on July 5, 2006 (the “Hague Securities Convention” or “Convention”) affect UCC Articles 8 and 9’s determination of the applicable law for investment securities in the indirect holding system?

Background and General Assessment: The Hague Securities Convention meshes very well with UCC Articles 8 and 9, and in most instances will not lead to different results. The Convention carries certain complexities in determining the applicable law, and in some instances it may designate the law of a jurisdiction different from that designated by UCC Articles 8 and 9 alone, but difficulties of this nature are inevitable in any instrument affecting intermediated securities and designed to apply across multiple national systems.

The resolution of commercial law questions often depends as much on the applicable choice of law rules as it does on the substantive law of the jurisdiction that those choice of law rules designate. For questions concerning indirectly held securities the United States choice of law rules are provided primarily by UCC sections 8-110 and 9-305, which depending on the circumstances may designate either a jurisdiction that has enacted the substantive law of UCC Articles 8 and 9 or another jurisdiction. Other nations’ choice of law rules differ, of course, and this diversity of choice of law rules with its corresponding diversity of possibly applicable substantive law may cause substantial difficulties in planning transactions and resolving disputes. To help ameliorate these problems, the Hague Securities Convention provides uniform choice of law rules among nations adhering to the Convention (“Contracting States”). The Convention has effect as a matter of United States law beginning on April 1, 2017 (the “Effective Date”).¹

This Commentary explains the Convention’s primary interactions with the UCC.² Where the Convention applies, it prevails to that extent over a contrary UCC rule because of the Supremacy

¹ See Convention art. 19(1) (Convention enters into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance, approval or accession). All article and paragraph references are to the Convention unless otherwise indicated, and all section and subsection references are to the 2014-2015 Official Text of the UCC.

The United States is implementing the Convention on a “self-executing” basis, so that the Convention itself will be controlling law within the United States with respect to cases or transactions to which it applies. See Senate Exec. Rept. 114-15, at 7 (2016) (Report of Senate Committee on Foreign Relations, setting forth a resolution that the Senate advises and consents to ratification of the Convention, with a declaration that the Convention is self-executing). No other declarations were made as a part of the United States ratification.

² Useful further sources on the Convention include Christophe Bernasconi and Harry C. Sigman, *The Hague Convention on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary* (Hague Securities Convention), 2005 Uniform L. Rev. 117; James S. Rogers, *Conflict of Laws for Transactions in Securities Held Through Intermediaries*, 39 Cornell Int’l L.J. 285 (2006); and Carl S. Bjerre and Sandra M. Rocks, *A Transactional Approach to the Hague Securities Convention*, 3 Capital Markets L. J. 109 (2008). A uniquely official and exhaustive resource is Roy Goode, Hideki Kanda, and Karl Kreuzer, with the assistance of Christophe Bernasconi (Permanent Bureau), *Explanatory Report on the Hague Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary* (2005) (hereinafter “Explanatory Report”).

Clause of the Constitution; but otherwise the applicable UCC provisions continue in full force and effect. The Convention's text is available at the Web site of the Hague Conference on Private International Law, <http://hcch.e-vision.nl>.

I. Overview of the Convention

The Convention applies to a broad range of issues affecting securities held with an intermediary, in any case or transaction involving a choice between the law of different nations. The Convention may apply to transactions that are not obviously or initially international in character. It applies even to transactions completed before the Effective Date, but it takes care to preserve the intended effect of pre-Effective Date account agreements under most circumstances.

Under the Convention's primary rule the applicable law is determined by either of two provisions appearing in the account agreement between a securities intermediary and its entitlement holder, namely a general governing law clause or a specialized clause that focuses directly on the group of commercial law issues in question. The Convention's primary rule is thus very similar to UCC subsections 8-110(b), (e)(1) and (2), and 9-305(a)(3). However this primary rule unlike the UCC rules operates only if the intermediary has, at the time of the agreement, an office in the applicable jurisdiction that is engaged in a regular activity of maintaining securities accounts (usually called a "Qualifying Office"). If the account agreement contains neither of the two above provisions, or if the Qualifying Office requirement is not met, the Convention provides a series of fall-back rules somewhat different from those of the UCC. For perfection of security interests by filing, the Convention accommodates UCC Article 9's choice of law rule designating the substantive law of the location of the debtor, with certain exceptions.

Though overall the Convention meshes very well with UCC Articles 8 and 9, in some instances it may designate the law of a different jurisdiction (whether a different nation or a different U.S. state). In addition to differences arising from the Qualifying Office requirement (see Part II for further discussion), differences could notably arise regarding the jurisdiction in which to perfect a security interest by filing when the account agreement designates the law of a non-U.S. jurisdiction, or when the debtor is located in a non-U.S. jurisdiction (see Part III), and regarding the continued perfection of a security interest following an amendment to the account agreement's designation of governing law (see Part IV). As indicated above, such instances are generally manageable by sound transactional planning.

II. The Convention's Scope and Primary Rule

The Convention applies to "securities held with an intermediary,"³ a scope generally comparable in UCC terms to security entitlements created by a securities intermediary's book-entry credit of

³ Convention arts. 2(1), 1(1)(f).

a security under section 8-501(b)(1).⁴ The Convention applies broadly to all instances “involving a choice between the laws of different States” (i.e. nations),⁵ and can accordingly apply by reason of any of many elements, including without limitation a non-U.S. location of a party involved in the transaction, a non-U.S. party asserting an adverse claim, non-U.S. securities being credited to the securities account, or non-U.S. law being specified by the account agreement or other transaction document. Indeed one may wish to plan all indirect holding system transactions with the Convention as well as UCC Article 8 in mind, because even in transactions that appear wholly domestic, international factors may in fact be present (for example, if the securities intermediary holds securities for the entitlement holder through a non-U.S. intermediary) or may later become present (for example, if a non-U.S. party acquires an interest in or asserts an adverse claim to assets credited to the account).

The Convention applies regardless of whether the law that it designates is that of a Contracting State, though of course the Convention itself is the law only of Contracting States.⁶ The Convention law applies to events that have occurred before an insolvency proceeding, notwithstanding the opening of the proceeding.⁷ As is standard in international instruments, the Convention is to be interpreted in light of the need to promote uniformity in its application.⁸ Contracting States may refuse the Convention’s choice of law rules only in very rare cases.⁹

⁴ However, the definition of security may differ as between the UCC and the Convention. Compare section 8-102(a)(15) with Convention art. 1(1)(a) (defining security as “any shares, bonds, or other financial instruments or financial assets (other than cash), or any interest therein.” The Convention definition is “intentionally drawn in very broad terms so as to accommodate changes in market practice”; the test is “a fluid one which is to be determined by reference to the practice and perception of the relevant market at the material time.” Explanatory Report ¶ 1-2, 1-3. The Explanatory Report suggests that financial futures and options, which may be commodity contracts under the UCC, are securities within the scope of the Convention. *Id.* ¶ 1-2.

There is no doubt that the Convention, like UCC Article 8, applies to multiple tier holding arrangements, such as where the account holder holds through a broker which in turn holds through a clearing corporation. See Explanatory Report ¶ 1-4 (“in light of the intermediated holding system, which may involve a chain of intermediaries between the account holder and the issuer, [the phrase ‘or any interest therein’ in article 1(1)(a)’s definition of securities] also refers to the interest which the account holder’s intermediary (or any other intermediary in the chain) has in securities held with its intermediary”).

On a related point, UCC Article 8 provides for security entitlements not only to securities (defined relatively narrowly in section 8-102(a)(15)) but also to a broad range of other financial assets, including “any property . . . held . . . in a securities account if the securities intermediary has expressly agreed . . . that the property is to be treated as a financial asset . . .” Section 8-102(a)(9)(iii). The Convention’s above-noted definition of security expressly includes financial assets and to that extent may be somewhat more expansive than UCC Article 8’s definition of security, but it is important to note that the Convention neither defines financial asset nor permits the parties’ agreement alone to be determinative.

⁵ Convention art. 3. The Convention refers to “cases” rather than “instances,” but the Convention’s term should not be misunderstood as suggesting that the Convention applies only in litigation.

⁶ Convention art. 9.

⁷ Convention art. 8. On the other hand, the Convention is not otherwise an insolvency choice of law convention. Except for the issues referred to in article 2(1), the Convention does not determine which jurisdiction’s law applies to insolvency issues such as the ranking of claims or the avoidability of transfers.

⁸ Convention art. 13. This may mean avoiding purely United States canons of interpretation and taking into account decisions of courts of other Contracting States. Cf. section 1-103(a)(3) (UCC to be applied to promote underlying purpose and policy of “mak[ing] uniform the law among the various jurisdictions”).

⁹ Convention art. 11(1) (“manifestly contrary to the public policy of the forum”), 11(2) (substantive provisions of the forum which, “irrespective of rules of conflict of laws, must be applied even to international situations”). Even these narrow exceptions are further limited by article 11(3).

For securities held with an intermediary the Convention determines the choice of law for a broad range of issues specified in article 2(1). These include all of the issues specified by sections 8-110(b), 9-305(a)(3) and the applicable portions of 9-305(c), relating to acquisition or disposition of interests, perfection and priority of security interests, and taking free of adverse claims. The table below shows the correlations between these two sets of issues, as well as highlighting other issues covered by Convention article 2(1) that reach further than those UCC sections. In this connection it is also important to note that the Convention’s issues affecting a “disposition” are not limited to security interests, because Convention article 1(h) defines that term as also including other transfers of limited interests plus outright transfers.

<i>UCC provision</i>	<i>Convention provision(s)</i>
subsection 8-110(b)(1): acquisition of a security entitlement from the securities intermediary	article 2(1)(a): legal nature and effects against the intermediary and third parties of the rights resulting from a credit of securities to a securities account
subsection 8-110(b)(2): rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement	article 2(1)(a): legal nature and effects <i>against the intermediary</i> and third parties of the rights resulting from a credit of securities to a securities account (emphasis added)
subsection 8-110(b)(3): whether the securities intermediary owes any duties to an adverse claimant to a security entitlement	article 2(1)(e): duties, if any, of an intermediary to a person other than the account holder who asserts in competition with the account holder or another person an interest in securities held with that intermediary
subsection 8-110(b)(4): whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder	article 2(1)(a): legal nature and effects <i>against the intermediary and third parties</i> of the rights resulting from a credit of securities to a securities account (emphasis added) article 2(1)(d): whether a person’s interest in securities held with an intermediary extinguishes or has priority over another person’s interest
subsection 9-305(a)(3): perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account subsection 9-201(a): the third-party rather than strictly bilateral effects of attachment of a security interest not statutorily addressed: the characterization of a transfer as being outright or by way of security	article 2(1)(b): legal nature and effects against the intermediary and <i>third parties</i> of a <i>disposition</i> of securities held with an intermediary (emphasis added) article 2(1)(c): requirements, if any, for perfection of a disposition of securities held with an intermediary article 2(1)(d): whether a person’s interest in securities held with an intermediary extinguishes or has priority over another person’s interest
subsection 9-305(c)(1): perfection of a security interest in investment property by filing	article 2(1)(c): requirements, if any, for perfection of a disposition of securities held with an intermediary
subsection 9-305(c)(2): automatic perfection of a security interest in investment property created by a broker or securities intermediary	article 2(1)(c): requirements, if any, for perfection of a disposition of securities held with an intermediary
subsection 1-301(a): requirements for foreclosure and the like of security interests and other dispositions	article 2(1)(f): requirements, if any, for the realization of an interest in securities held with an intermediary
subsection 1-301(a): transferee’s rights to proceeds and the like as against transferor	article 2(1)(g): whether a disposition of securities held with an intermediary extends to entitlements to dividends, income, or other distributions, or to redemption, sale or other proceeds

The Convention does not cover issues under UCC Article 8’s direct holding system, and does not cover rights or duties of the issuer even in the indirect holding system.¹⁰ The Convention also

¹⁰ Convention art. 2(3)(c).

does not cover purely contractual matters between the securities intermediary and its entitlement holder, such as the enforceability of an arbitration clause in the account agreement, or the purely two-party aspects of attachment of a security interest.¹¹

The Convention's primary choice of law rule for the issues above is highly parallel to that of the UCC, because under both bodies of law the rule depends directly on either of two provisions of the account agreement.¹² Under Convention article 4(1), just as under UCC sections 8-110(e)(2) and 9-305(a)(3), if the agreement contains an express governing law clause, then the law specified by that clause is also the law designated by the Convention.¹³ Alternatively, under Convention article 4(1) similarly to UCC sections 8-110(e)(1) and 9-305(a)(3), if the agreement contains a specialized clause expressly designating a certain jurisdiction's law for the group of commercial law issues in question, then that jurisdiction's law will control, even if the jurisdiction is different from the one specified in the governing law clause.¹⁴ Both bodies of law accommodate agreement provisions designating the law of either a nation (called a "State" in the Convention) or a U.S. state, Canadian province or the like (called a "territorial unit of a Multi-

¹¹ Convention art. 2(3)(a).

¹² The account agreement in question is the one between the account holder and the intermediary with which the account holder has its account, rather than another intermediary at a higher tier. See Convention article 1(1)(e) (agreement with "relevant intermediary") and (g) (defining relevant intermediary as "the intermediary that maintains the securities account for the account holder"); subsections 8-110(e)(1) and (2) (agreement between the entitlement holder and "its" intermediary); cf. subsection 8-112(c) (directing creditor process to "the securities intermediary with whom the debtor's securities account is maintained" as a matter of substantive law). If an original account agreement is later amended, for example by a control agreement providing that the account is now governed by a law different from that originally designated, then the term "account agreement" refers to the original agreement as amended. See Explanatory Report ¶ 1-15 ("The definition [of account agreement] does not require that the account agreement fulfil any formal requirements. . . . [I]f in writing [it] may consist of one or more documents."). Amendments to an account agreement changing the governing law are further discussed in Part IV below.

¹³ Convention art. 4(1), first sentence ("The law applicable to all the issues specified in Article 2(1) is the law in force in the State expressly agreed in the account agreement as the State whose law governs the account agreement . . ."). However, with respect to the Convention, the Qualifying Office test must also be met, as discussed below.

¹⁴ Convention art. 4(1), first sentence (" . . . or, if the account agreement expressly provides that another law is applicable to all such issues, that other law."). Here too, with respect to the Convention, the Qualifying Office test must also be met, as discussed below.

Because of the Convention's reference to "all such issues," a clause is ineffective if it singles out only certain issues for treatment under this choice of law rule.

In U.S. account agreements these specialized clauses will presumably be the exception rather than the rule, with parties usually using only the governing law clause just discussed. However when the account agreement uses the specialized clause to designate a jurisdiction different from that of the governing law clause (or for some reason uses the specialized clause without a governing law clause at all), drafters should note that a clause simply tracking the language of section 8-110(e)(1) might not satisfy the present provision of article 4(1), or vice versa. Under section 8-110(e)(1) the specialized clause should provide that a particular jurisdiction is the securities intermediary's jurisdiction, while under article 4(1) the specialized clause should provide that the particular jurisdiction's law is applicable to all issues specified in article 2(1). A clause satisfying both the UCC and Convention provisions might read, for example, "The parties hereto agree that the State of New York is the securities intermediary's jurisdiction for purposes of UCC Article 8 and that the law in force therein is applicable to all the issues specified in Article 2(1) of the Hague Securities Convention."

Nevertheless for account agreements entered into before the Effective Date a clause tracking the language of section 8-110(e)(1) does suffice under article 4(1), as discussed in Part IV below.

unit State” in the Convention).¹⁵ Both bodies of law also generally eliminate renvoi, meaning that only the jurisdiction’s substantive law applies, not its conflicts of law rules.¹⁶

The only notable exception to this parallelism between the Convention and the UCC is that the Convention’s primary rule applies only if the intermediary has, at the time of the agreement, a Qualifying Office in the applicable jurisdiction engaged in a regular activity of maintaining securities accounts.¹⁷ The Convention clarifies this requirement by specifying safe-harbor activities that satisfy the requirement¹⁸ and by also specifying certain mechanical functions that do not in and of themselves satisfy it.¹⁹ Of importance to agreements designating the law of a U.S. state, the Qualifying Office requirement is applied broadly to Multi-unit States, so that the office may be located in any territorial unit of the same Multi-unit State, rather than necessarily in the particular territorial unit designated by the agreement.²⁰ Thus an account agreement expressly governed by the law of New York and specifying no other jurisdiction as governing the Convention’s article 2(1) issues effectively designates New York law under the Convention even if the intermediary has a Qualifying Office only in New Jersey.

If the account agreement contains neither of the express clauses contemplated by the primary rule, or if the Qualifying Office test is not satisfied with respect to such a clause, the Convention

¹⁵ Convention arts. 1(1)(m) (defining Multi-unit State as “a State within which two or more territorial units of that State, or both the State and one or more of its territorial units, have their own rules of law in respect of any of the issues specified in Article 2(1)”), 12(1)(a) (“If the account holder and the relevant intermediary have agreed on the law of a specified territorial unit of a Multi-unit State . . . the references to “State” in the first sentence of Article 4(1) are to that territorial unit”); section 8-110(e)(1), (2) (“the law of a particular jurisdiction”).

To the extent that U.S. federal law applies to the article 2(1) issues, the Convention recognizes that an account agreement designating the law of a particular U.S. state also incorporates that federal law. See Convention arts. 12(2)(a) (applying “the law of the Multi-unit State itself”), 4(1), first sentence (designating “the law in force in” the jurisdiction rather than the law “of” the jurisdiction). For example, the TRADES Regulations governing book-entry interests in Treasury securities, 31 C.F.R. 357, contain substantive provisions addressing the perfection and super-priority of security interests in favor of the United States in security entitlements of Federal Reserve Bank participants. Such provisions are included within article 12(2)(a), as are the parallel provisions contained in regulations governing securities issued by various government-sponsored entities.

¹⁶ Convention art. 10 (“‘law’ means the law in force in a State other than its choice of law rules”); sections 8-110(b), 9-305(a)(3) and 9-305(c)(3) (“local law”). For perfection of security interests by filing, the Convention provides a rule on choice of law among the states of the United States that in most instances accommodates UCC Article 9’s usual location-of-the-debtor filing rule. See Part III below.

¹⁷ Convention art. 4(1), second sentence.

¹⁸ The Qualifying Office requirement is conclusively met if the office either “effects or monitors entries to securities accounts” or “administers payments or corporate actions relating to securities held with the intermediary”. *Id.* The securities accounts maintained by the office need not necessarily include the particular securities accounts to which the account agreement in question relates.

¹⁹ Convention art. 4(2) (mere location of technology supporting bookkeeping or data processing; mere operation of call centers for communication with account holders, etc.).

²⁰ Convention art. 12(1)(b).

provides certain fallback rules that differ in their details from the fallback rules of section 8-110(e).²¹

III. Preservation of UCC Article 9’s Location-of-Debtor Rule for Perfection of Security Interests by Filing

Though the Convention generally eliminates renvoi, it generally preserves UCC Article 9’s own choice of law rule for perfection of a security interest in indirectly held securities by the filing of a financing statement. This UCC Article 9 rule designates the law of the location of the debtor,²² which keeps the jurisdiction for filing for this type of collateral the same as that for virtually all other types of personal property.²³ Convention article 12(2)(b)’s preservation of the UCC Article 9 rule may be explained by example:

Debtor is using the Japanese securities credited to its securities account with Intermediary as collateral for a loan from Lender; Debtor is a registered organization organized solely under the law of Texas; and the account agreement between Debtor and Intermediary provides that the agreement is governed by the law of New York. If Lender wished to perfect by, for example, obtaining control by agreement under sections 8-106(d)(2) and 9-106, then the Convention’s primary rule would designate the applicable law as New York (assuming that the Qualifying Office requirement is met); but if Lender wishes to perfect by filing a financing statement (perhaps because the value of other personal property collateral in the transaction makes the securities account of secondary importance), then Convention article 12(2)(b) accommodates the UCC Article 9

²¹ The two sets of fallback rules are as follows:

	UCC § 8-110(e)	Convention
First fallback	subsection (e)(3): jurisdiction of an office at which the securities account is maintained, as expressly provided in the account agreement.	article 5(1): State of a particular office through which the intermediary entered into the account agreement, as expressly and unambiguously stated in the account agreement, if Qualifying Office requirement is met with respect to that office.
Second fallback	subsection (e)(4): jurisdiction in which the office serving the entitlement holder’s account is located, as identified in an account statement.	article 5(2): State in which the intermediary is organized.
Third fallback	subsection (e)(5): jurisdiction of the chief executive office of the intermediary.	article 5(3): State in which the intermediary has its principal place of business.

Seeking an abundance of clarity the Convention also enumerates criteria that do not determine the applicable law, just as UCC Article 8 does. See Convention art. 6; cf. section 8-110(f).

²² Section 9-305(c)(1).

²³ See generally section 9-301(1). The location of the debtor is determined under section 9-307.

location-of-debtor rule designating the applicable law for filing as Texas.²⁴ Accordingly Lender should file in Texas, in the office designated by section 9-501(a) as enacted in Texas, and should follow the substantive rules for financing statements set forth in part 5 of Article 9 as enacted in Texas.

It is important to note, however, that the Convention provision also narrows the UCC Article 9 rule somewhat. Specifically, the Convention provision does not apply to cases in which the account agreement designates the law of, or the debtor is located for UCC Article 9 purposes in, a jurisdiction other than a territorial unit of the United States.²⁵

It was noted above that the Qualifying Office rule applies broadly to Multi-unit States, and this same breadth applies when article 4(1) is applied with the overlay of article 12(2)(b). On the facts of the example above, the Convention designates Texas as the applicable law for filing even if Intermediary's only Qualifying Office is in New Jersey and not in Texas or New York.²⁶

²⁴ Convention article 12(2)(b) provides: "In applying this Convention [i.e. in following the account agreement's and article 4(1)'s designation of New York law] . . . if the law in force in a territorial unit of a Multi-unit State [i.e. New York's section 9-305(c)(1)] designates the law of another territorial unit of that State [i.e. Texas as the location of the debtor under section 9-307(e)] to govern perfection by public filing, recording or registration, the law of that other territorial unit [i.e. Texas's filing-office and substantive filing law] governs that issue."

²⁵ This is illustrated by two variations on the main example above. First, suppose that the account agreement designates the law of England rather than New York, with Debtor being located in Texas as in the main example. On these facts, UCC Article 9 standing alone formerly called for filing in Texas, but under the Convention English law applies, including any filing provisions thereunder. UCC section 9-305(c)(1)'s provision for filing in Texas is irrelevant because the Convention's primary rule does not in the first instance designate the law of any UCC jurisdiction and hence article 12(2)(b) is not triggered. The Convention's place-of-filing provision is limited by Convention articles 4 and 5 and UCC Article 9's place-of-filing provision is not similarly limited by sections 8-110 or 9-305(a)(3).

Second, suppose that the account agreement designates the law of New York as in the main example, but that Debtor is a non-U.S. corporation with its chief executive office in Ontario, Canada, and that the law of Ontario generally requires filing, recordation or the like as specified in UCC section 9-307(c). For Article 9 purposes Debtor is thus located in Ontario under section 9-307(b). On these facts, UCC Article 9 standing alone formerly caused Ontario law (including Ontario's substantive filing provisions) to apply; but under the Convention New York law applies, including New York's substantive filing provisions, and most notably New York's designation in § 9-501 of a New York filing office. The key to this result is that Convention article 12(2)(b) has no application here, because Ontario is not "another territorial unit of [the same] State [agreed upon in the account agreement]," and as a result the transaction is governed by the substantive law designated by Convention article 4(1) alone.

Many otherwise non-U.S. debtors are located in the District of Columbia under section 9-307(c)'s exception to section 9-307(b), and such cases are fully accommodated by Convention article 12(2)(b) so that the District of Columbia is the jurisdiction for perfection by filing (not unlike the main Texas example in the text above). But section 9-307(c) has no bearing on the Ontario example just discussed, because it applies only "[i]f subsection (b) does not apply," which is not the case here. That is, the fact that filing in Ontario is not effective as a matter of U.S. law results from the limitations of Convention article 12(2)(b) itself, rather than from any aspect of Ontario law addressed by section 9-307(c).

Separately from its limitations on section 9-305(c)(1), the Convention also does not preserve section 9-305(c)(2)'s choice of law rule for automatic perfection of a security interest in investment property created by a broker or securities intermediary, but this is of little practical importance because the rule is uniform across U.S. jurisdictions and by its nature requires no location-directed action such as filing.

²⁶ Convention art. 12(1)(b).

IV. Pre-Convention Account Agreements and Other Change of Law Matters

The Convention generally applies as described above to all account agreements even if they were entered into before the Effective Date.²⁷ However, most pre-Convention transactions do not need to be amended or renegotiated in order to retain their intended effects. To illustrate, suppose that an account agreement, entered into before the Effective Date, provides “This agreement shall be governed by the law of New York.” Until the Effective Date, New York was the applicable law under the UCC alone because of the agreement’s governing law clause under subsection 8-110(e)(2). From the Effective Date forward (provided only that the Convention’s usual Qualifying Office requirement is satisfied), New York continues to be the applicable law for Convention purposes under articles 16(1) and 4(1).

A slightly more complex variation is dealt with by Convention article 16(3). Suppose that the pre-Effective Date account agreement provides “This agreement shall be governed by the law of New York, except that California is the securities intermediary’s jurisdiction for purposes of the Uniform Commercial Code.” In this case, until the Effective Date, California was the applicable law under the UCC alone because of the agreement’s securities intermediary clause under subsection 8-110(e)(1). From the Effective Date forward (provided only that the Convention’s usual Qualifying Office requirement is satisfied), California continues to be the applicable law for Convention purposes under article 16(3).²⁸ Note that California would not be the applicable law for Convention purposes under articles 16(1) and 4(1) alone.²⁹

Convention article 15 addresses conflicts between a party that acquires rights before the Effective Date under the law that applies at that time, and another party that acquires rights after the Effective Date under the law designated by the Convention. Convention article 15 provides that such a conflict is to be resolved under the law designated by the Convention. This rule should rarely be disruptive to the first party, particularly in light of article 16 as just discussed. The rule promotes a quite substantial interest in the clarity of results that arises from the Convention’s prompt and broad application.

²⁷ Convention art. 16(1) (“References in this Convention to an account agreement include an account agreement entered into before this Convention entered into force in accordance with Article 19(1)”). The rules described are inapplicable to account agreements that expressly refer to the Convention. Convention art. 16(2).

²⁸ Convention article 16(3) provides in pertinent part: “Any express terms of an account agreement which would have the effect, under the rules of the State whose law governs that agreement, that the law in force in a particular State, or a territorial unit of a particular Multi-unit State, applies to any of the issues specified in Article 2(1), shall have the effect that such law governs all the issues specified in Article 2(1), provided that the relevant intermediary had, at the time the agreement was entered into, an office in that State which satisfied the condition specified in the second sentence of Article 4(1).” As applied to the example in the text, under New York law alone, the quoted clause would have the effect that California law governs the section 8-110(b) issues that are also included in article 2(1), and as a result (again subject to the Qualifying Office requirement) the clause is bootstrapped so as to govern all of the other issues in article 2(1) as well.

This rule does not apply to pre-Convention account agreements that contain an express reference to the Convention, and its scope may be further limited by declaration. See arts. 16(2) and (3). The United States is not making any such declaration, though of course on this point as elsewhere in the Convention, account should be taken of declarations made by a non-U.S. Contracting State to the extent enforcement in that Contracting State is foreseeable.

²⁹ After all, the reference to California satisfies neither of article 4(1)’s alternatives: it is not a governing law clause, and it does not “expressly provide that another law is applicable to all [the] issues [specified in article 2(1)]”.

Change of law matters can also arise after the Effective Date when an amendment to the account agreement designates a new applicable law. For example, if a securities account initially governed by English law is used as collateral for a U.S. lender that wishes to perfect the security interest using a control agreement under New York law, then the lender might build into the control agreement an amendment to the account agreement changing its governing law clause, with the debtor's and intermediary's consent to that amendment of course being necessary. Assuming such an amendment satisfies Convention article 4(1), including the Qualifying Office requirement applied at the time of the amendment, then article 7(3) provides for the law designated by the amendment to govern most of the Convention's article 2(1) issues. However, to protect pre-amendment interests of third parties, article 7(4) provides for the pre-amendment law to continue governing a handful of issues,³⁰ without limitation as to time. UCC Article 9 is broadly similar, with the law designated by the amendment generally governing,³¹ and protections for pre-amendment interests being a subject for the new jurisdiction's substantive law.³²

V. Amendment to Official Comments

Amendments to some of the Official Comments to the UCC sections affected by the Convention are appropriate in order to make better known the interactions discussed above. The Official Comments to section 8-110, 9-305, 9-301 and 1-301 are hereby amended as shown in Appendix A, effective on the Effective Date.

³⁰ The pre-amendment law notably continues to govern perfection of pre-amendment interests, and most issues of their priority as against competing pre-amendment interests. However these protections do not apply to a party that has consented to the amendment. Convention art. 7(4), (5).

³¹ See section 9-305(a)(3).

³² When the new jurisdiction's substantive law is the UCC, a party with a security interest perfected under the pre-amendment law has a limited grace period, usually of four months, within which the interest remains perfected and the secured party can re-perfect under the law of the new jurisdiction. Section 9-316(f), (g). The UCC has no explicit provision protecting pre-amendment interests other than security interests.

Appendix A

Amendments to Official Comments

Section 8-110:

1. This section deals with applicability and choice of law issues concerning Article 8. The distinction between the direct and indirect holding systems plays a significant role in determining the governing law. An investor in the direct holding system is registered on the books of the issuer and/or has possession of a security certificate. Accordingly, the jurisdiction of incorporation of the issuer or location of the certificate determine the applicable law. By contrast, an investor in the indirect holding system has a security entitlement, which is a bundle of rights against the securities intermediary with respect to a security, rather than a direct interest in the underlying security. Accordingly, in the rules for the indirect holding system, the jurisdiction of incorporation of the issuer of the underlying security or the location of any certificates that might be held by the intermediary or a higher tier intermediary, do not determine the applicable law.

For securities in the indirect holding system, but not the direct holding system, this section's provisions are subject to the Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary (the "Convention" or "Hague Securities Convention"), to which the United States is a party. The Convention's primary rule is highly similar to this section, though there are potential differences as well. See Comments 3 and 5 through 7 below and PEB Commentary No. 19, dated April 11, 2017.

The Hague Securities Convention applies broadly to all instances "involving a choice between the laws of different [nations]", and can accordingly apply by reason of any of many elements, including without limitation a non-U.S. location of a party involved in the transaction, a non-U.S. party asserting an adverse claim, non-U.S. securities being credited to the securities account, or non-U.S. law being specified by the account agreement or other transaction document. Indeed one may wish to plan all indirect holding system transactions with the Hague Securities Convention as well as UCC Article 8 in mind, because even in transactions that appear wholly domestic, international factors may in fact be present (for example, if the securities intermediary holds securities for the entitlement holder through a non-U.S. intermediary) or may later become present (for example, if a non-U.S. party acquires an interest in or asserts an adverse claim to assets credited to the account).

In each of subsections (a), (b) and (c), the phrase "local law" refers to the law of a jurisdiction other than its conflict of laws rules. See Restatement (Second) of Conflict of Laws § 4.

2. [...]

Although subsection (a) provides that the issuer's rights and duties concerning registration of transfer are governed by the law of the issuer's jurisdiction, other matters related to registration of transfer, such as appointment of a guardian for a registered owner or the existence of agency relationships, might be governed by another jurisdiction's law. Neither this

section nor Section 1-105 (Revised Section 1-301) deals with what law governs the appointment of the administrator or executor; that question is determined under generally applicable choice of law rules.

3. Subsection (b) ~~provides~~ and, where the Hague Securities Convention applies, article 2(1) thereof provide that the law ~~of the securities intermediary's jurisdiction governs~~ governing the issues concerning the indirect holding system that are dealt with in Article 8—are principally determined by the agreement between the securities intermediary and the entitlement holder governing the securities account.

Paragraphs (1) and (2) and Hague Securities Convention article 2(1)(a) cover the matters dealt with in the Article 8 rules defining the concept of security entitlement and specifying the duties of securities intermediaries. Paragraph (3) ~~provides that the law of the security intermediary's jurisdiction determines~~ and Convention article 2(1)(e) cover whether the intermediary owes any duties to an adverse claimant. Paragraph (4) ~~provides that the law of the security intermediary's jurisdiction determines~~ and Convention article 2(1)(a) and (d) cover whether adverse claims can be asserted against entitlement holders and others.

~~Subsection (e) determines what is a "securities intermediary's jurisdiction." The policy of subsection (b)~~ Subsection (e) and Hague Securities Convention article 4 provide that the account agreement may effectively determine the applicable law for the foregoing issues in either of two ways. Most directly and doubtless most frequently, under both subsection (e)(2) and article 4(1), the law chosen by the parties to govern the account agreement determines the applicable law. Alternatively, subsection (e)(1) and article 4(1) provide mutually comparable rules that require slightly different phrasing in the agreement. Under subsection (e)(1), if the account agreement expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of UCC Article 8, then that provision determines the applicable law, even if the agreement's overall governing law clause (if any) is different. Under Convention article 4(1)'s comparable rule, if the account agreement expressly provides that a particular jurisdiction's law is applicable to all the issues specified in article 2(1) of the Hague Securities Convention, then that provision determines the applicable law, even if the agreement's overall governing law clause (if any) is different. The policy is to ensure that a securities intermediary and all of its entitlement holders can look to a single, readily-identifiable body of law to determine their rights and duties. Accordingly, subsection (e) sets out a sequential series of tests to facilitate identification of that body of law. Paragraph (1) of subsection (e) permits specification of the securities intermediary's jurisdiction by agreement. In the absence of such a specification, the law chosen by the parties to govern the securities account determines the securities intermediary's jurisdiction. See paragraph (2). Because the policy of this section

Where the Hague Securities Convention applies, the foregoing provisions of an account agreement effectively determine the applicable law only if the intermediary, at the time of the agreement, had an office in the designated jurisdiction (which may be anywhere in the United States if the account agreement specifies a state of the United States) that is engaged in a regular activity of maintaining securities accounts (a "Qualifying Office"). However, because the policy of this section and the Convention is to enable parties to determine, in advance and with certainty, what law will apply to transactions governed by this Article, the validation of the

parties' selection of governing law by agreement is not conditioned upon a determination that the jurisdiction whose law is chosen bear a "reasonable relation" to the transaction. See Section 4A-507; compare Section 1-105(1) (Revised Section 1-301(a)). That is also true with respect to the similar provisions in subsection (d) of this section and in Section 9-305. The remaining paragraphs in subsection (e) and Convention article 5 contain additional default rules for determining the ~~securities intermediary's jurisdiction~~ applicable law.

The Hague Securities Convention applies regardless of whether the law that it designates is that of a nation adhering thereto, though of course the Convention itself is the law only of adhering nations. The Convention applies to account agreements entered into before as well as after the Convention's effectiveness in the United States. However, for pre-Convention agreements that specify that a state of the United States is the securities intermediary's jurisdiction for purposes of UCC Article 8 and that do not expressly refer to the Convention, article 16(3) preserves the agreements' intended effect, by treating them as providing that the specified state's law is applicable to all the issues specified in article 2(1), if the Qualifying Office test is met. There is no doubt that the Convention, like UCC Article 8, applies to multiple tier holding arrangements, such as where the account holder holds through a broker which in turn holds through a clearing corporation.

Subsection (f) makes explicit a point that is implicit in the UCC Article 8 description of a security entitlement as a bundle of rights against the intermediary with respect to a security or other financial asset, rather than as a direct interest in the underlying security or other financial asset. The governing law for relationships in the indirect holding system is not determined by such matters as the jurisdiction of incorporation of the issuer of the securities held through the intermediary, or the location of any physical certificates held by the intermediary or a higher tier intermediary. Hague Securities Convention article 6 is in accord.

[4. . . .]

5. The following examples illustrate how a ~~court in a jurisdiction which has enacted this section~~ forum applying these rules would determine the governing law:

Example 1: John Doe, a resident of Kansas, maintains a securities account with Able & Co. Able is incorporated in Delaware. Its chief executive offices are located in Illinois. The office where Doe transacts business with Able is located in Missouri. The agreement between Doe and Able ~~specifies~~ provides that it is generally governed by the law of New York but also that Illinois is the securities intermediary's (Able's) jurisdiction for purposes of UCC Article 8 and that Illinois law is applicable to all the issues specified in article 2(1) of the Hague Securities Convention. Through the account, Doe holds securities of a Colorado corporation, which Able holds through Clearing Corporation. The rules of Clearing Corporation provide that the rights and duties of Clearing Corporation and its participants are governed by New York law. Subsection (a) specifies that a controversy concerning the rights and duties as between the issuer and Clearing Corporation is governed by Colorado law. Subsections (b) and (e) specify that a controversy concerning the rights and duties as between the Clearing Corporation and Able is governed by New York law, and that a controversy concerning the rights and

duties as between Able and Doe is governed by Illinois law. Even if other facts cause the Hague Securities Convention to apply (see Comment 1), the Convention does not change the subsection (b) and (e) results, if at the time of the respective agreements Clearing Corporation and Able had offices in the United States engaged in a regular activity of maintaining securities accounts. The Convention does not apply to the subsection (a) result.

Example 2: Same facts as to Doe and Able as in Example 1. Through the account, Doe holds securities of a Senegalese corporation, which Able holds through Clearing Corporation. Clearing Corporation's operations are located in Belgium, and its rules and agreements with its participants provide that they are governed by Belgian law. Clearing Corporation holds the securities through a custodial account at the Paris branch office of Global Bank, which is organized under English law. The agreement between Clearing Corporation and Global Bank provides that it is governed by French law. Subsection (a) specifies that a controversy concerning the rights and duties as between the issuer and Global Bank is governed by Senegalese law. ~~Subsections (b) and (e) specify~~ Prior to United States implementation of the Hague Securities Convention, subsections (b) and (e) had the effect in a U.S. forum that a controversy concerning the rights and duties as between Global Bank and Clearing Corporation ~~is~~was governed by French law, that a controversy concerning the rights and duties as between Clearing Corporation and Able ~~is~~was governed by Belgian law, and that a controversy concerning the rights and duties as between Able and Doe ~~is governed by Illinois law~~was governed by Illinois law. Under the Convention, the subsection (b) and (e) results are unchanged, if at the time of the respective agreements Global Bank, Clearing Corporation and Able had offices in France, Belgium and the United States, respectively, engaged in a regular activity of maintaining securities accounts. The Convention does not apply to the subsection (a) result.

Example 3: John Doe, a resident of Kansas, maintains a securities account with Able & Co. Able is organized in Switzerland and has its chief executive offices there. The agreement between Doe and Able provides that New York is the securities intermediary's jurisdiction for purposes of UCC Article 8. The agreement was entered into before the Hague Securities Convention's effectiveness in the United States, does not expressly provide that New York or any other law is applicable to all the issues specified in article 2(1) of the Hague Securities Convention, and does not otherwise expressly refer to the Convention. Through the account, Doe holds securities of a Japanese issuer. Roe, who lives in Japan, claims ownership of the securities and seeks to hold Able liable for not transferring the asset to Roe. Because the agreement between Doe and Able was entered into before the Convention's effectiveness in the United States, Convention article 16(3) specifies that the controversy between Roe and Able is governed by the law of New York, but only if at the time of the agreement between Doe and Able, Able had an office in the United States engaged in a regular activity of maintaining securities accounts.

6. To the extent that this section ~~does not~~ or the Hague Securities Convention do not specify the governing law, general choice of law rules apply. For example, suppose that in ~~either of the e~~ Examples 1 or 2 in the preceding Comment, Doe enters into an agreement with Roe, ~~also~~

~~a resident of Kansas,~~ in which Doe agrees to transfer all of his interests in the securities held through Able to Roe. ~~Neither UCC Article 8 does not deal nor the Convention deals~~ with whether such an agreement is enforceable or whether it gives Roe some interest in Doe's security entitlement. This section ~~specifies~~ and the Convention specify what jurisdiction's law governs the issues that are dealt with in ~~UCC Article 8, or listed in Convention article 2(1) respectively.~~ UCC Article 8, however, does specify that securities intermediaries have only limited duties with respect to adverse claims. See Section 8-115. Subsection (b)(3) of this section ~~provides~~ and Convention article 2(1)(e) provide that Illinois law governs whether Able owes any duties to an adverse claimant. Thus, ~~if~~ because Illinois has adopted Revised Article 8, Section 8-115 as enacted in Illinois determines whether Roe has any rights against Able.

7. The UCC choice of law provisions concerning security interests in securities and security entitlements are set out in Section 9-305, and within its scope the Hague Securities Convention also applies to such transactions.

* * *
Section 9-305:

[1. . . .]

2. Investment Property: General Rules. This section specifies choice-of-law rules for perfection and priority of security interests in investment property. Subsection (a)(1) covers security interests in certificated securities. Subsection (a)(2) covers security interests in uncertificated securities. Subsection (a)(3) covers security interests in security entitlements and securities accounts, and where the Hague Securities Convention applies it may in occasional instances modify subsection (a)(3)'s results as discussed in Comments 3, 5 and 6 to Section 8-110. Subsection (a)(4) covers security interests in commodity contracts and commodity accounts. The approach of each of these paragraphs is essentially the same. They identify the jurisdiction's law that governs questions of perfection and priority by using the same principles that Article 8 uses to determine other questions concerning that form of investment property. Thus, for certificated securities, the law of the jurisdiction in which the certificate is located governs. Cf. Section 8-110(c). For uncertificated securities, the law of the issuer's jurisdiction governs. Cf. Section 8-110(a). For security entitlements and securities accounts, the law ~~of~~ designated by the securities intermediary's jurisdiction agreement between the securities intermediary and the entitlement holder governing the securities account generally governs. Cf. Section 8-110(b), (e)(1) and (2) and Convention article 4(1).

For commodity contracts and commodity accounts, the law of the commodity intermediary's jurisdiction governs, though if particular assets of this type qualify as securities held with an intermediary within the meaning of the Convention, the Convention would also apply. ~~Because commodity~~ Commodity contracts and commodity accounts are not governed by Article 8, and for this reason subsection (b) contains rules that specify the commodity intermediary's jurisdiction. ~~These that~~ are analogous to the rules in Section 8-110(e) specifying a securities intermediary's jurisdiction. Subsection (b)(1) affords the parties greater flexibility than did former Section 9-103(6)(3). See also Section 9-304(b) (bank's jurisdiction); Revised Section 8-110(e)(1) and (2) (securities intermediary's jurisdiction).

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

[The Hague Securities Convention generally preserves these rules for perfection by filing. However, if the debtor is located in a non-U.S. jurisdiction, or if the account agreement designates the law of a non-U.S. jurisdiction, then filing may be appropriate only in a different jurisdiction or altogether unavailable. See Convention articles 12\(2\)\(b\) and 4\(1\), respectively, and PEB Commentary No. 19, dated April 11, 2017, particularly footnote 25.](#)

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

Example 1: A customer residing in New Jersey maintains a securities account with Able & Co. The agreement between the customer and Able specifies that it is governed by Pennsylvania law but expressly provides that ~~the law of~~ California is Able's jurisdiction for purposes of the Uniform Commercial Code. Through the account the customer holds securities of a Massachusetts corporation, which Able holds through a clearing corporation located in New York. The customer obtains a margin loan from Able. Subsection (a)(3) provides that California law—the law of the securities intermediary's jurisdiction—governs perfection and priority of the security interest, even if California has no other relationship to the parties or the transaction. [Even if other facts cause the Hague Securities Convention to apply \(see Comment 1 to Section 8-110\), the Convention does not change this result, provided that the account agreement either was entered into before the Convention's effectiveness in the United States or expressly specifies that the law of California is applicable to all issues specified in Convention article 2\(1\), and also provided that at the time of the agreement Able had an office in the United States engaged in a regular activity of maintaining securities accounts.](#)

Example 2: A customer residing in New Jersey maintains a securities account with Able & Co. The agreement between the customer and Able specifies that it is governed by Pennsylvania law. Through the account the customer holds securities of a Massachusetts corporation, which Able holds through a clearing corporation located in New York. The customer obtains a loan from a lender located in Illinois. The lender takes a security interest and perfects by obtaining an agreement among the debtor, itself, and Able, which satisfies the requirement of Section 8-106(d)(2) to give the lender control. Subsection (a)(3) provides that Pennsylvania law—the law of the securities intermediary's jurisdiction—governs perfection and priority of the security interest, even if Pennsylvania has no other relationship to the parties or the transaction. [Even if other facts cause the Hague Securities Convention to apply, the Convention does not change this result, provided that at the time of the agreement between the customer and Able,](#)

Able had an office in the United States engaged in a regular activity of maintaining securities accounts.

Example 3: A customer residing in New Jersey maintains a securities account with Able & Co. The agreement between the customer and Able specifies that it is governed by Pennsylvania law. Through the account, the customer holds securities of a Massachusetts corporation, which Able holds through a clearing corporation located in New York. The customer borrows from SP-1, and SP-1 files a financing statement in New Jersey. Later, the customer obtains a loan from SP-2. SP-2 takes a security interest and perfects by obtaining an agreement among the debtor, itself, and Able, which satisfies the requirement of Section 8-106(d)(2) to give ~~the~~ SP-2 control. Subsection (c)(1) provides that perfection of SP-1's security interest by filing is governed by the location of the debtor, so the filing in New Jersey was appropriate. Even if other facts cause the Hague Securities Convention to apply, Convention article 12(2)(b) preserves this result. Subsection (a)(3), however, provides that Pennsylvania law—the law ~~of the securities intermediary's jurisdiction~~ designated by the agreement between the customer and Able—governs all other questions of perfection and priority, and the Convention preserves this result, provided that at the time of the agreement between the customer and Able, Able had an office in the United States engaged in a regular activity of maintaining securities accounts. Thus, Pennsylvania law governs perfection of SP-2's security interest, and Pennsylvania law also governs the priority of the security interests of SP-1 and SP-2.

Example 4: A customer maintains a securities account with Able & Co. The customer is an Ontario, Canada corporation with its chief executive office in Toronto. The agreement between the customer and Able specifies that it is governed by New York law, and at the time of the agreement Able had an office in the United States engaged in a regular activity of maintaining securities accounts. The customer obtains a loan secured by the securities account, and the lender wishes to perfect by filing. Subsection (c)(1) provides that perfection of the security interest by filing is generally governed by the law of the location of the debtor (in this case Ontario, assuming that it has a filing system described by Section 9-307(c)); however, Convention article 12(2)(b) recognizes Article 9's place-of-filing rules only when they designate a U.S. jurisdiction for the filing. As a result, subsection (c)(1) does not govern filing for this transaction, and perfection of the security interest is governed by the substantive law of the jurisdiction designated by the account agreement (in this case New York).

Example 5: A customer maintains a securities account with Able & Co. The customer is a Texas corporation. The agreement between the customer and Able specifies that it is governed by English law, and at the time of the agreement Able had an office in England engaged in a regular activity of maintaining securities accounts. The customer obtains a loan secured by the securities account, and the lender wishes to perfect by filing. Subsection (c)(1), if it applied, would provide that perfection of the security interest by filing is governed by the law of the location of the debtor (in this case Texas); however, under Convention article 4(1), perfection of the security interest is governed by the law of the jurisdiction designated by the account agreement (in this case England), rather than by the law of any UCC jurisdiction.

5. Change in Law Governing Perfection. When the issuer's jurisdiction, the securities intermediary's jurisdiction, or commodity intermediary's jurisdiction changes, the jurisdiction whose law governs perfection under subsection (a) changes, as well. Similarly, the law governing perfection of a possessory security interest in a certificated security changes when the collateral is removed to another jurisdiction, see subsection (a)(1), and the law governing perfection by filing changes when the debtor changes its location. See subsection (c). Nevertheless, under the UCC these changes will not result in an immediate loss of perfection. See Section 9-316. Along generally similar lines in cases to which the Hague Securities Convention applies, article 7 provides that when the account agreement is amended to designate a new jurisdiction's law under article 4(1), the new law governs perfection, except that the old law continues to govern the perfection of security or other property interests that arose before the amendment and a limited number of other issues affecting such interests, without limitation as to time.

* * *

Section 9-301:

[...]

2. Scope of This Subpart. Part 3, Subpart 1 (Sections 9-301 through 9-307) contains choice-of-law rules similar to those of former Section 9-103. Former Section 9-103 generally addresses which State's law governs "perfection and the effect of perfection or non-perfection of" security interests. See, e.g., former Section 9-103(1)(b). This Article follows the broader and more precise formulation in former Section 9-103(6)(b), which was revised in connection with the promulgation of Revised Article 8 in 1994: "perfection, the effect of perfection or non-perfection, and the priority of" security interests. Priority, in this context, subsumes all of the rules in Part 3, including "cut off" or "take free" rules such as Sections 9-317(b), (c), and (d), 9-320(a), (b), and (d), and 9-332. This subpart does not address choice of law for other purposes. For example, the law applicable to issues such as attachment, validity, characterization (e.g., true lease or security interest), and enforcement is governed by the rules in Section 1-105(1) (Revised Section 1-301(a) and (b)); that governing law typically is specified in the same agreement that contains the security agreement. In transactions to which the Hague Securities Convention applies, the requirements for foreclosure and the like, the characterization of a transfer as being outright or by way of security, and certain other issues will generally be governed by the law specified in the account agreement. See PEB Commentary No. 19, dated April 11, 2017. And, another jurisdiction's law may govern other third-party matters addressed in this Article. See Section 9-401, Comment 3.

[...]

* * *

Section 1-301:

[...]

4. Subsection (c) spells out essential limitations on the parties' right to choose the applicable law. Especially in Article 9 parties taking a security interest or asked to extend credit which may be subject to a security interest must have sure ways to find out whether and where to file and where to look for possible existing filings.

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

[...]