Missouri Law Review

Volume 30
Issue 2 *Spring 1965*

Article 7

Spring 1965

Letters of Credit--Article 5 of the Uniform Commercial Code

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LETTERS OF CREDIT—ARTICLE 5 OF THE UNIFORM COMMERCIAL CODE

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I. INTRODUCTION—A SALE OF FRENCH WINE

"Letters of credit" is surely the least familiar and most exotic of the subjects covered by the nine articles of the *Uniform Commercial Code*. While Missouri lawyers may be acquainted with the importance of "credits," as they are more commonly called, in international and foreign trade, perhaps few understand the mechanics of "credit" use. The purpose of this article is to describe the operation of a credit in a typical purchase from a foreign seller, to suggest how credits may be usefully applied in everyday domestic transactions, and to offer a warning respecting the use of credits under Article 5.

A letter of credit is an agreement which in basic outline resembles a third-party beneficiary contract. Thus a customer,[1] usually a buyer of goods, and an issuer, usually a bank or commercial lender, agree in writing that the issuer will pay a beneficiary, usually a seller of goods, if he meets certain terms and conditions which have been agreed to by the customer and the issuer. This basic form of the credit has been changed, however, by the imposition of business custom and usage. It is this custom and usage which in large measure the provisions of Article 5 codify and expose.[2]

A sale of French wine will demonstrate how a letter of credit is used. A buyer of wine in the United States promises a French seller that it will

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1. The terms "customer," "issuer" and "beneficiary" have been assigned by the Code to the parties to the basic third-party beneficiary contract. § 400.5-103, RSMo 1963 Supp.

2. The New York Bankers Commercial Credit Conference formulated regulations in 1920 to establish a uniform practice respecting the interpretation and enforcement of letters of credit. This attempt to standardize the practice was confined, however, to a handful of domestic bankers, located principally in New York City. In 1930 the International Chamber of Commerce adopted the *Uniform Customs and Practice for Commercial Documentary Credits*, which have been amended from time to time. Article 5 of the Code codifies these rules for the first time.

buy several hundred gallons of 1959 vintage Burgundy. To insure payment, the seller requests that the buyer secure a letter of credit naming the seller as beneficiary. In effect, the seller wants the promise of a reliable bank or financial house that he will be paid if he performs his part of the bargain. The buyer and the seller agree that the seller will be required to produce with his demand for payment a number of pieces of paper, including a document of title evidencing shipment of the wine, an invoice, a certificate of insurance, and, in this transaction, a certificate of inspection from the proper French official authenticating the vintage and purity of the wine.

In our hypothetical situation, the customer-buyer then engages an issuer of the credit. The issuer is either a commercial lender or a bank. In many instances the "customer," in the parlance of Article 5, will be another bank: the buyer of the wine will arrange with his local bank to secure a credit from some other bank engaged in this rather special line of business.[3] The customer signs an agreement with the issuer wherein the terms and conditions under which the credit is to be issued and the issuer is to be reimbursed for its service are set out. As far as the customer is concerned the most important part of this agreement contains the terms and conditions establishing the documentary performance which will satisfy the issuer and thus provide for payment of the seller's draft. As far as the issuer is concerned the most important provisions of this agreement are those which limit its exposure and liability.[4]

The customer provides funds for the issuance of the credit through the deposit of covering funds, or it may promise to pay the bank after the letter of credit has been paid, or it may enter into any number of secured transactions with the bank employing the goods to be purchased as collateral. The issuer-bank agrees to pay the purchase price of the wine by honoring the draft or demand for payment presented with the required documents.

The beneficiary of the agreement between the issuer and its customer is the seller of the wine. On presentation of the seller's draft together with the document of title, the invoice, the insurance certificate and the inspection certificate, the bank honors the draft. Historically, because the letter of credit was treated as a third-party beneficiary contract, and because of a failure to recognize the rules of the law merchant which in practice

3. § 400.5-103(1)(g), RSMo 1963 Supp. defines "customer" to include a bank acting on behalf of its customer.

4. See discussion at notes 22-26 *infra*.

governed credits, courts confronted with problems involving credits attempted to reach solutions employing notions of contract and consideration, with the result that frequently credits were said to be invalid for lack of consideration between the issuer and the beneficiary. The Code eliminates that possibility by emphatically declaring that consideration is unnecessary to establish a credit, or to enlarge or modify its terms.[5]

But the opening of the credit by the communication of one bank to another does not create any obligation on the part of either bank enforceable by the proposed beneficiary. That obligation arises only when a letter of credit is actually received by or, as the Code puts it, "advised" to the beneficiary. Any one of these acts "establishes" the credit as to the beneficiary.[6] The credit is established as to the customer when the credit is sent to him, or when it is sent or advised to the beneficiary.[7]

Once established the customer of the issuer may have second thoughts about the credit, and he may ask the issuer to change its terms. In the example of the wine purchase, the domestic buyer may feel insecure with the inspection certificates required to accompany the seller's draft. The buyer concludes that another inspection certificate, perhaps provided by an independent commercial inspector, might also be desirable. The question then arises under what circumstances the established credit may be modified. An irrevocable credit can be modified or cancelled only by agreement of all the parties.[8] Revocable credits on the other hand may be modified or cancelled at any time without notice to either the customer or the beneficiary.[9] No consideration is necessary to modify the terms of a credit.[10] Since such changes are apt to occur, the agreement between the customer

5. § 400.5-108, RSMo 1963 Supp. The problem of consideration as between the issuer and the beneficiary of the credit must be distinguished from another problem, failure of consideration as between the issuer and its customer. The failure of the customer to reimburse the issuer or to pay its commission has not in the past excused the issuer from honoring the credit. American Steel Co. v. Irving Nat'l Bank, 266 Fed. 41, 43 (2d Cir. 1920), *cert. denied,* 258 U.S. 617 (1922). The Code appears to make no change in this result.

6. § 400.5-106(1)(b), RSMo 1963 Supp. Bril v. Suomen Pankki Finland's Bank, 99 N.Y.S.2d 22, 32 (Sup. Ct. 1950).

7. § 400.5-106(1), RSMo 1963 Supp.

8. § 400.5-106(2), RSMo 1963 Supp. See Dulien Steel Products, Inc. v. Bankers Trust Co., 189 F. Supp. 922, 927 (S.D.N.Y. 1960).

9. Even if the credit is modified or revoked, any person, who is authorized to present a draft for honor under the terms of the credit and who has no notice of such modification or revocation, is entitled to honor of this draft. The issuer in such a situation is also entitled to reimbursement from its customer. § 400.5-106(4), RSMo 1963 Supp.

10. § 400.5-105, RSMo 1963 Supp.

and the issuer should expressly state whether the credit is to be revocable or irrevocable and the credit itself should so state. Difficult and unpleasant factual disputes may thus be avoided.[11]

As our wine purchase illustrates, the issuer undertakes to examine the documents required by the credit and to determine whether they are regular and proper on their face and comply with the terms of the credit. The issuer does not undertake to open the wine casks and inspect their contents, or otherwise to assure performance of the sales contract; it agrees to assure performance of the underlying sales agreement only insofar as performance can be represented and measured by documents. If the documents are in good order the Code imposes no liability on the issuer for a fraudulent document apparently regular on its face.[12]

Indeed an issuer must honor a draft or demand for payment which apparently complies with the terms of the credit whether or not the goods conform to the underlying contract for sale between the customer and the beneficiary.[13] In the situation where the documents on their face seem to satisfy the terms of the credit, but a particular document, such as the inspection certificate in our wine purchase, is forged or fraudulent, the issuer *must* honor the draft if honor is demanded by a presenting bank or any other holder of the draft in the position of a holder in due course. In all other cases and even where apparent on the face of the documents, an issuer *may* honor the draft if he acts in good faith,[14] and he is entitled to immediate reimbursement of any payment made under the credit.[15] The Code leaves it open to the customer to seek injunctive relief against the issuer's honor of the draft in such a situation.[16]

These Code provisions confining the issuer's responsibility to the documents presented under a credit and requiring the issuer to honor drafts presented under such credits in all but a few exceptional situations in-

11. Article I of the *Uniform Customs and Practice* states that in the absence of an indication that a credit is revocable or irrevocable, a credit is deemed to be revocable. On the other hand the law of New York appears to be that there is a presumption of irrevocability. Ernesto Foglino & Co. v. Webster, 216 N.Y. Supp. 225 (App. Div. 1926), *modified,* 224 N.Y. 16, 155 N.E. 878 (1926); Laudisi v. American Exchange Nat'l Bank, 239 N.Y. 234, 146 N.E. 347 (1924).

12. § 400.5-109, RSMo 1963 Supp.

13. § 400.5-114(1), RSMo 1963 Supp.

14. See § 400.1-201(19), RSMo 1963 Supp. for the definition of this phrase.

15. § 400.5-114(2) and (3), RSMo 1963 Supp. See Decker Steel Co. v. Exchange Nat'l Bank, 330 F. 2d 82, 86-87 (7th Cir. 1964).

16. § 400.5-114(2)(b), RSMo 1963 Supp. See Sztejn v. Schroder Banking Corp., 177 Misc. 719, 722, 31 N.Y.S.2d 631, 634 (1941).

crease the usefulness of credits and assure the confidence of those who use them. As the court said in *Decker Steel Co. v. Exchange Nat'l Bank*:

> To impose on banks a duty to look beyond the documents acquired by the letter of credit and the conditions specified therein would not only unduly burden traditional banking operations, but would seriously hamper the conduct of business in general.[17]

Of course, this general account of the way in which a credit operates should not obscure difficult questions as to whether a given document complies with the terms of the credit. Such questions are the stuff of lawsuits. In *Pacific Financial Corp. v. Central Bank & Trust Co.*,[18] the credit required that the seller's draft be accompanied by a "certificate of title issued in blank." The bank accepted a *bill of sale* issued in blank. In a suit brought by the customer for breach of an agreement to open a credit, the court held that the meaning of the former term was for the jury and affirmed a verdict for the bank.

In the hypothetical wine purchase the seller's draft was presented to the issuer in the course of the collection process. The transaction may not be so simple. Thus the issuer, a New York bank, might arrange for a Paris bank to "confirm" the credit to the seller-beneficiary. The confirming bank becomes obligated to the same extent as the issuer.[19] As an alternative the issuer might arrange for the Paris bank merely to advise the beneficiary of the availability of the credit. An advising bank is responsible to both the beneficiary and the issuer for the accuracy of its advice.[20] But as between the issuer and the beneficiary and unless the agreement between them provides otherwise, the customer bears the risks of transmission and translation of any credit or message relating to the credit.[21]

The distribution of risks as between customer and issuer effected by section 400.5-107(4) is duplicated in other provisions of Article 5. The most significant of these provisions is found in section 400.5-109. Though that particular section sets out the issuer's general obligation of good faith[22] and the observance of general banking usage,[23] it is more important for its limits on the issuer's responsibilities. Thus, as we have seen, an

17. 330 F.2d 82, 87 (7th Cir. 1964).
18. 296 F.2d 68 (5th Cir. 1961).
19. § 400.5-107(2), RSMo 1963 Supp.
20. § 400.5-107(1), RSMo 1963 Supp.
21. § 400.5-107(4), RSMo 1963 Supp.
22. §§ 400.1-102(3), .1-201, .1-203, RSMo 1963 Supp.
23. § 400.1-205, RSMo 1963 Supp.

issuer is not responsible for performance of the underlying contract for sale between the customer and the beneficiary. Nor is the issuer responsible for any act or omission of any person other than itself or for the loss or destruction of a draft or document in transit or in the possession of others.[24] And as the wine purchase example shows, an issuer assumes no liability for the genuineness of a document which appears to be regular on its face. Finally, in apparent contradiction of the very language of section 400.5-109, an issuer's obligation does not include responsibility based on knowledge or lack of knowledge of any commercial usage of any particular trade.[25]

Notwithstanding these limitations on the issuer's obligation to its customer, the extent of that obligation may be varied by agreement between these parties. The Code clearly anticipates such agreements not only in section 400.5-109 but in other sections which limit the exposure of the issuer.[26] The distribution of risks accomplished by these provisions of Article 5 should be understood by every potential "customer" and its counsel, whether the customer is a bank or a depositor in that bank. With such understanding and in the circumstances of a particular transaction the customer and the issuer can agree on a credit which will vary these rules and thus provide additional protection for the customer, at least in those areas where the issuer's knowledge of commercial usage and credit mechanics exceeds that of its customer.

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24. § 400.5-109(1)(b), RSMo 1963 Supp. If, however, the issuer selects agents, such as the advising bank, who may be involved in the transaction, it may be liable to that extent. The Comments point out that even in the latter situation the customer entering the underlying transaction—the wine purchase—assumes the risks inherent in it including the risk of loss or destruction of documents involved. Comment 1 to § 5-109, UNIFORM COMMERCIAL CODE, 1962 OFFICIAL TEXT WITH COMMENTS, published by the American Law Institute and the National Conference of Commissioners on Uniform State Laws [hereinafter cited UCC (1962) with a section number, *e.g.*, UCC § 5-109 (1962)].

25. § 400.5-109(1)(c), RSMo 1963 Supp. But the Comment points out that the issuing bank is responsible only for banking usage and any other issuer is responsible only for trade usage peculiar to its business.

26. See § 400.5-106(1), RSMo 1963 Supp., dealing with the time a credit is established; § 400.5-106(3), RSMo 1963 Supp., dealing with the power of the issuer to modify or revoke revocable credits without notice to or consent of the customer; § 400.5-107(4), RSMo 1963 Supp., dealing with the risks of transmission which the customer bears as against the issuer; § 400.5-114(2), RSMo 1963 Supp. dealing with the right of the issuer to honor a draft when the documents accompanynig the draft appear to comply with the terms of the credit; § 400.5-114(3), RSMo 1963 Supp. dealing with the issuer's right of immediate reimbursement after honor. See also §§ 400.5-107(1), .5-110, .5-111 and .5-113, RSMo 1963 Supp. which provide for agreements varying the terms of the relationship between the issuer and the beneficiary, and presenting, collecting or advising banks.

The Code establishes for the first time a three-day period in which a bank called on to honor drafts presented under a credit may decide whether the accompanying documents are satisfactory.[27] Prior law was confused on this matter.[28] Even if a particular document is deficient in a minor respect, a bank need not dishonor a draft on that account alone. In a significant improvement and clarification of existing practice section 400.5-113 permits a bank seeking to obtain honor or negotiation under a credit to give an indemnity to induce such honor or negotiation. Such an indemnity applies only to defects in the documents and not to defects in the goods. In the wine sale, should the issuer find that one of a set of bills of lading is missing, the presenting bank might offer such an indemnity to cover loss to the issuer or its customer resulting from the missing documents.[29] This indemnity would probably be given only where the deficiency in the documents was minor and unlikely to prejudice the issuer or its customer in completion of the transaction.

There are also various warranties which arise during the collection process and which further insure certainty and reliability in the use of credits. In addition to giving the warranties arising under other articles of the Code,[30] the beneficiary by transferring or presenting a draft warrants to the issuer and other parties in the collection chain that he has complied with the conditions of the credit.[31] A bank in the collection chain, on the other hand, presenting a draft under a credit makes only those warranties required for a collecting bank under Article 4. If the bank also transfers, as it will in the great majority of cases, a "document,"[32] it also provides the warranties stated in Articles 7 and 8 of the Code.[33]

The Code makes two other important contributions to the codification of the law of credits which the wine purchase does not illustrate. First, the Code introduces rules to cope with "notation credits" and the exhaustion of a credit.[34] This section deals with two situations: (1) where an issuer provides a credit available in parts and not requiring nota-

27. § 400.5-112, RSMo 1963 Supp.
28. Some courts applied the 24 hour rule of NIL § 224. The *Uniform Customs and Practice,* Article 10, on the other hand, gave the issuer "a reasonable time" to satisfy itself that the accompanying documents were in good order.
29. See Dixon, Irmaos & Cia, Ltd. v. Chase Nat'l Bank, 144 F.2d 759 (2d Cir. 1944), *cert. denied,* 324 U.S. 850 (1945).
30. Articles 3, 4, 7 and 8.
31. § 400.5-111(1), RSMo 1963 Supp.
32. As defined in § 400.5-103(1)(b), RSMo 1963 Supp.
33. §§ 400.4-207, .7-507, .7-508, .8-306, RSMo 1963 Supp.
34. § 400.5-108, RSMo 1963 Supp.

tion on the credit of the drafts drawn under it, and (2) where the issuer opens a credit specifying that any person purchasing or paying drafts under it must note the amount of the draft on the credit. The Code makes it clear that in the former case the issuer may honor drafts in the order in which the drafts are presented and that as between competing good faith purchasers of drafts the person first purchasing has priority over a subsequent purchaser even though the later purchased draft has been first honored. In any case, unless otherwise specified, a credit may be used in parts if the beneficiary wishes.[35]

With respect to notation credits a person paying the beneficiary or purchasing a draft from him acquires a right to honor only if the appropriate notation is made on the credit and if that person transfers the documents under the credit together with a warranty to the issuer that the proper notation has been made. Unless the credit or a signed statement that a notation has been made accompanies the draft, the issuer may delay honor until evidence of notation has been produced.[36]

Interestingly enough the only case involving the liability of an issuer on an allegedly overdrawn "notation credit" is a Missouri case, *Bank of Seneca v. First Nat'l Bank*.[37] This case illustrates the common use of notation credits by travelers. The customer was a traveling horse buyer. He presented certain drafts to the plaintiff bank and they were accepted on the basis of the credit. Before plaintiff presented the drafts to the defendant issuer for honor, however, the customer drew more drafts on a second bank but without presenting the credit for notation. The second bank's drafts were honored, so that when plaintiff presented its drafts, defendant refused to pay them saying the credit was exhausted. The Kansas City Court of Appeals held that the second bank's payment was not based on the credit and that therefore the issuer was liable to plaintiff.

The other significant addition to the law of credits made by the Code is the provision for preferences where a bank holding funds for a documentary credit becomes insolvent.[38] This section regards the outstanding liabilities under a credit, the security held by the issuer and funds provided to indemnify against those liabilities, and related drafts and documents, as separate from the bank's deposit liabilities and general assets.

35. § 400.5-110(1), RSMo 1963 Supp.
36. § 400.5-108(2), RSMo 1963 Supp.
37. 105 Mo. App. 722, 78 S.W. 1092 (K.C. Ct. App. 1904).
38. § 400.5-117, RSMo 1963 Supp.

Thus drafts under a credit are entitled to payment in preference over depositors or other general creditors of the issuer or bank.

II. The Use of Credits as a Lending Tool

By clarifying terminology and mechanics peculiar to usage of letters of credit, the Code not only simplifies their use in international and foreign commerce but also suggests interesting possibilities for their use in domestic commerce. In our hypothetical situation we left off at the point where the bank honored the letter of credit by accepting the documents tendered by the seller or its agent and paying the seller's draft. Of course, the transaction does not necessarily end there and, as far as the issuer and its customer are concerned, the really important consequences may in fact be only beginning. Thus the bank and its customer may decide to use the credit as the first step in the financing by the bank of the sale to the customer. The bank releases the documents of title to the buyer after the buyer executes a security agreement in favor of the issuer. Since the bank has provided new money for the purchase of the collateral, it has a purchase money security interest with the attendant advantages conferred by Article 9 on one with such an interest. The customer sells the property as provided in the security agreement and delivers the proceeds to the bank for payment of its debt and hence the credit.[39]

But the use of the letter of credit as a financing tool for the buyer is only one side of the coin. The credit is also of substantial assistance in seller financing. This happy result follows from one of the most significant clarifications in the law effected by Article 5. Section 400.5-116 states that although the right to draw under a credit can be transferred or assigned only when the credit is expressly designated as transferable or assignable, the beneficiary, or seller in our case, may assign his right to the proceeds of the credit even where the credit expressly states that it is non-transferable or non-assignable.[40] Because the proceeds under such a letter of credit are assignable, the seller has an additional asset which might in turn be used to finance some phase of its operations or indeed to acquire the goods which the seller must supply under the original sales

39. As Soia Mentschikoff points out in her article, *How to Handle Letters of Credit*, 19 Bus. Law. 107 (1963), a letter of credit insures that the lender (the bank in our discussion) will have a purchase money security wherever the lender promises he will make payment to a seller on a documentary draft which is accompanied by a document of title.

40. An assignment of the right to proceeds would be an assignment of "contract rights" within the meaning of § 400.9-106, RSMo 1963 Supp.

contract with the customer-buyer.[41] The beneficiary is able, because of the provisions of section 400.5-116, to assign the right to proceeds of the first credit as security for the issue of a second credit in favor of his supplier, another beneficiary. This series of transactions is known as the issue of letters of credit "back-to-back."

The use of credits "back-to-back" in a secured transaction is illustrated by *Decker Steel Co. v. Exchange Nat'l Bank*.[42] There a steel buyer contracted to buy 500 tons of steel from a Chicago steel broker. Through its own local bank, the buyer caused an irrevocable credit to be opened at the First National Bank in favor of "drawers, endorsers, and bona-fide holders of drafts negotiable thereunder." This credit was delivered to the broker who in turn applied to the Exchange Bank for a credit to be opened in favor of the steel supplier. The First National credit was assigned to Exchange as security for its credit. Difficulties between the buyer and the steel broker developed and the banks were notified that drafts submitted under the credit should not be honored, but both Exchange and First National honored the drafts presented under their respective credits. Because the broker was a bankrupt, the steel buyer sought to hold Exchange for the loss on the underlying transaction, arguing that somehow Exchange stood in the same position as the bankrupt steel broker. Plaintiff contended that since Exchange has actual notice of the dispute concerning the broker's performance, it could not be a holder in due course. The court rejected plaintiff's contentions, holding that a bank in a secured transaction involving a credit is in a position no different from that of any other issuer:

> Exchange was in no sense a party to the contract between plaintiff [the buyer] and Associated [the broker]. Exchange was the assignee of Associated's interest under the First National letter of credit, not of Associated's interest under the contract. The letters of credit described documents to be presented. The respective

41. The right to transfer the proceeds under a credit must be distinguished from transfer of a credit itself. § 400.5-116(1), RSMo 1963 Supp. This provision raises interesting questions respecting the beneficiary's transfer of his duty of performance under such a credit. This Code provision does not purport to allow assignment of the underlying contract through the device of transferring the credit. Comment 2 to UCC § 5-116 (1962) makes it clear that this is not a situation where the tail is wagging the dog:

> If it is so designated, the normal rules of assignment apply and both the right to draw and the performance of the beneficiary can be transferred, subject to the beneficiary's continuing liability, if any, for the nature of the performance.

42. 330 F.2d 82 (7th Cir. 1964).

banks were not obligated to ascertain the existence or status of any dispute between the parties to the contract.[43]

III. A WARNING

The Code definition of "credit" or "letter of credit" is straightforward and simple: an engagement by a bank or other person (the issuer) made at the request of a customer that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. No elaborate form is required: the agreement need only be in writing and signed by the issuer.[44] Indeed a telegram will serve very well.[45]

But one seeking to conform a proposed credit to this definition must not overlook the fact that its language may cover a good many more credits than Article 5 will in fact govern. Article 5 credits are restricted to those issued (1) by banks and which require documentary drafts or demands for payment or (2) by persons other than banks which require that drafts or demands for payment be accompanied by documents of title. This distinction between credits which a bank may issue and those which persons other than banks may issue is an important one for users of the Code since a failure to follow the requirements for each type of credit has the effect of leaving to non-Code sources the regulation of a credit. The Code includes one additional provision which may avoid this predicament. Article 5 also applies to a credit other than those just mentioned if it conspicuously states that it is a letter of credit.[46]

The difficulties created by these limits on the application of Article 5 are compounded by New York's amendment of its UCC section 5-102.[47] This amendment allows the issuer and its customer to choose the *Uniform Customs and Practice* as the law governing the credit rather than Article 5. The amendment specifically provides that Article 5 does not apply to a credit if by its terms or by agreement, course of dealing or trade usage the credit is subject to the *Uniform Customs and Practice* fixed by the International Chamber of Commerce. The intended irony of this amendment is that while the *Uniform Customs and Practice* apply only to so-called documentary credits, and other varieties are left to some

43. *Id.* at 86.
44. §§ 400.5-103(1)(a), .5-104(1), RSMo 1963 Supp.
45. § 400.5-104(2), RSMo 1963 Supp.
46. § 400.5-102(1)(c), RSMo 1963 Supp. As to what is "conspicuous," see § 400.1-201(1D), RSMo 1963 Supp.
47. N.Y. LAWS of 1962, c. 553; N.Y. U.C.C. LAW CODE § 5-102(1) and (4).

undefined and uncertain body of rules, Article 5 may not be used, under this amendment, as an aid in dealing with those credits not governed by the *Uniform Customs and Practice.*

Thus far no state has followed the example of New York, but the significance of this amendment is no less great.[48] Indeed this change in Article 5 by the New York legislature is of such importance that a provision notifying lawyers of its substance might well be enacted as a part of Article 5 in all other states adopting the Code. Many issuers of letters of credit have heretofore been commercial banks concentrated in New York City. Thus, one engaging for the issue of a credit may expect to find in his agreement with the issuer just such a provision as is authorized by the New York amendment.[49] The law of New York will govern rights and duties of the issuer, and the law of New York provides that the *Uniform Customs and Practice* govern such rights and duties rather than Article 5. The effect of the New York amendment is thus to avoid the codification of the law of credits which Article 5 was intended to accomplish. Lawyers and their clients who expect to make use of credits are given fair warning that the effect of Article 5 on a given transaction in foreign commerce may be more shadow than substance. Of course, the New York amendment has no effect on the use of credits in domestic commerce where the law of New York is inapplicable or even in international transactions where the issuing bank is located in a state which has no such amendment to UCC section 5-102.

48. The 73d General Assembly is now considering just such an amendment to § 400.5-102 along with other amendments to the Code. House Bill No. 647, § 400.5-102(4), 73d Gen'l Assembly.

49. If Missouri enacts H.B. No. 467, such a provision might appear in credits of Missouri issuers.