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Negotiability, Electronic Commercial Practices, and a New Structure for the UCC Article 9 Filing System: Tapping the Private Market for Information Technology, (with C. Mooney, Jr.).

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NEGOTIABILITY, ELECTRONIC COMMERCIAL PRACTICES, AND A NEW STRUCTURE FOR THE UCC ARTICLE 9 FILING SYSTEM: TAPPING THE PRIVATE MARKET FOR INFORMATION TECHNOLOGY

STEVEN L. HARRIS & CHARLES W. MOONEY*

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This paper considers two seemingly unrelated aspects of commercial law and practice—the negotiability of investment securities and the Article 9 filing system. Drawing lessons from developing approaches and legal regulation in markets for negotiable paper, and in particular developments in the securities markets, we offer a new structure for the Uniform Commercial Code (UCC) Article 9 filing system.

I. THE PARADIGM: NEGOTIABILITY IN THE SECURITIES MARKETS

During the last 25 years or so, participants in securities markets have sought to accommodate trading and settlement practices to the demands of markets characterized by a large number of participants and a high volume of transactions.[1] As a result, the markets have become increasingly automated, following the ongoing revolution in information technology.[2] It is not surprising that changes in practice have been accompanied by almost continuous efforts to reform the legal regime governing transfers of interests in securities, UCC Article 8.[3] The most recent product of the law reform process is the complete overhaul of Article 8 that was completed in 1994.[4]

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1. Settlement is the process by which parties to a trade (*e.g.*, a buyer and a seller acting through a broker) transfer securities and pay for securities transferred.

2. For background and a brief overview of the process of clearance and settlement in the United States securities markets, see Charles W. Mooney, Jr., *Property, Credit, and Regulation Meet Information Technology: Clearance and Settlement in the Securities Markets*, 55 LAW & CONTEMP. PROBS. 131, 135-39 (1992).

3. On the heels of the "paperwork crunch" of the late-1960s, the Committee on Stock Certificates of the American Bar Association Section of Corporation, Banking and Business Law proposed a revised Article 8. *See* COMMITTEE ON STOCK CERTIFICATES, SECTION OF CORPORATION, BANKING & BUSINESS LAW, AMERICAN BAR ASSOCIATION, REPORT OF THE COMMITTEE ON STOCK CERTIFICATES 37-43 (1975). In 1978, a revised Article 8 was promulgated. Currently, the 1978 Article 8 is contained in the U.C.C. 1990 Official Version [hereinafter, all references and citations to the U.C.C. or the "Code" refer to the 1990 Official Version of the U.C.C. unless otherwise stated]. Ten years later, the Advisory Committee on Settlement of Market Transactions, ABA Section of Business Law, began its deliberations. The substantive recommendations contained in its report, AMERICAN BAR ASSOCIATION, SECTION OF BUSINESS LAW, INTERIM REPORT OF THE ADVISORY COMMITTEE ON SETTLEMENT OF MARKET TRANSACTIONS (Exposure Draft, Feb. 1991), helped prompt the creation of a new Article 8 Drafting Committee.

4. U.C.C. Revised Article 8 (1994) [hereinafter U.C.C. Revised Article 8 (1994)]. For background on developments leading to promulgation of the 1994 Article 8 see *Id.* at Prefatory Note; *see also* Charles W. Mooney, Jr., et al., *An Introduction to the Revised U.C.C. Article 8 and Review of Other Recent Developments*

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Every version of Article 8 has included the traditional negotiability model: Delivery of a security certificate with any necessary indorsement to a good faith purchaser for value who does not have notice of an adverse claim, anoints the purchaser with a special status.[5] A "bona fide purchaser" or "protected purchaser" takes the security free of adverse claims and certain defenses.[6]

The 1978 Article 8 sought to reduce the need for handling paper in the securities markets and to accommodate an increasing use of electronic information technology. It provided for paperless, intangible "uncertificated" securities.[7] Traditionally, a good faith purchaser for value of a negotiable instrument such as a security did not take free of claims and defenses unless the purchaser took possession of the instrument. Uncertificated securities are not represented by pieces of paper that can be delivered to a purchaser. Nevertheless, the 1978 Article 8 expanded the concept of "bona fide purchaser" to encompass the good faith purchaser for value of an uncertificated security.[8] As with certificated securities, the issuer of an uncertificated security keeps the official record of registered owners and certain adverse claims.[9] In lieu of taking delivery of an uncertificated security (which would be impossible), a purchaser who otherwise qualifies can become a "bona fide purchaser" by registering its interest on the books of the issuer.[10]

The legal framework for uncertificated securities created by the 1978 Article 8 had no material effect on the operation of the securities markets. Just as the markets had been unable to tolerate delivery of paper as a necessary component of the routine settlement of

with Investment Securities, 49 BUS. LAW. 1891 (1994).

5. *See* U.C.C. § 8-302(1), (3); U.C.C. Revised § 8-303 (1994).

6. *See* U.C.C. § 8-302(1), (3); U.C.C. Revised § 8-303 (1994); *see also* U.C.C. §§ 3-302, -305, -306 (providing similar protection to a holder in due course of a negotiable instrument); *Id.* §§ 7-501(4), 7-502(1) (providing similar protection to a holder to whom a negotiable document of title has been duly negotiated).

7. U.C.C. §§ 8-102(1)(b) (defining "uncertificated security"). The 1994 Article 8 retains the concept of a paperless security. *See* U.C.C. Revised § 8-102(a)(18) (defining "uncertificated security"), (15) (defining "security").

8. The 1994 Article 8 followed suit. U.C.C. Revised § 8-303(a) (1994) (defining "protected purchaser" to include purchaser of uncertificated security).

9. *See generally* U.C.C. Article 8, at § 4; U.C.C. Revised Article 8, at § 4.

10. U.C.C. § 8-302(1)(b). *See also* U.C.C. Revised §§ 8-106(c), -301(b), -303 (1994) (stating the requirements for becoming a "protected purchaser" by registration). Alternatively, under the 1978 Article 8, an otherwise qualifying purchaser can acquire bona fide purchaser status through the making of appropriate entries on the books of a clearing corporation. U.C.C. §§ 8-302(1)(c), -313(1)(g), -320(1). The 1994 Article 8 does not continue the special treatment for transferees on the books of a clearing corporation. *See* Revised Article 8, Prefatory Note, at 29-30 (1994).

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securities trades, so the large number of transactions and the need for prompt settlement precluded any reliance upon issuers having changed their books. Although both delivery and registration remained as occasional methods of transferring interests in securities, the markets began to rely increasingly on refinements to an "indirect" system for claiming securities through intermediaries, such as stockbrokers and banks.[11] The indirect system permits market participants to transfer interests in securities without moving paper, and, except when securities enter or leave the system, the issuers of securities have no role to play. Rather, transfers are effectuated by entries on the books of professional intermediaries.

Unlike the 1978 Article 8, which addressed the indirect system primarily by adjusting the old framework of the delivery-based system, the 1994 Article 8 embraces and regulates directly the private, commercial law aspects of the indirect system.[12] A purchaser's interest in securities is reflected by book entries on the records of the purchaser's stockbroker or other intermediary. In the terminology of the 1994 Article 8, the purchaser is an "entitlement holder,"[13] the intermediary is a "securities intermediary,"[14] the arrangement between the entitlement holder and the securities intermediary is a "securities account,"[15] and the interest of the entitlement holder is a "security entitlement."[16]

In the indirect system, the securities intermediary may or may not be the registered owner; it may claim the securities through its own securities account with another securities intermediary. The other securities intermediary often is a central depositary for securities intermediaries—a type of "clearing corporation."[17] The clearing corporation typically is the registered owner of the securities on the books of the issuer and maintains physical possession of any security certificates.[18] Much like a stockbroker or bank that maintains securities accounts for its customers, a clearing corporation can effectuate a transfer of an interest in a security by making appropriate entries

11. For a brief description of the indirect holding system, a comparison with the system for direct holding, and the approach of Revised Article 8 toward each, see U.C.C. Revised Article 8, Prefatory Note, at 2-8 (1994).

12. *See id.*, Prefatory Note, at 8-9, § 5.

13. *Id.* § 8-102(a)(7).

14. *Id.* § 8-102(14).

15. *Id.* § 8-501(a).

16. *Id.* § 8-102(a)(17).

17. *See id.* § 8-102(a)(5) (defining "clearing corporation").

18. Of course, the purchaser's securities intermediary must cause the purchaser itself to become the registered owner of securities when and if the purchaser so desires. *Id.* § 8-508.

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on its books. Thus, the rights to billions of dollars of securities are determined by the records of private institutions.

II. THE SECURITIES MARKET PARADIGM AND THE ARTICLE 9 FILING SYSTEM

Perfection of non-possessory security interests in personal property under Article 9 generally is accomplished by filing a financing statement in a governmental filing office.[19] The filing office indexes financing statements according to the names of debtors.[20] One generally accepted justification for perfection by filing is that it provides accessible public notice that the secured party may claim a security interest in property of the debtor; the filing office also provides verifiable records of filings.[21]

The Article 9 system has more in common with systems for non-possessory transfers of interests in securities than first might meet the eye. The role of the Article 9 filing office is somewhat analogous to the issuer's role in the transfer-by-registration system and the securities intermediary's role in the indirect system. Each "keeps score" concerning certain claims against certain types of assets. The issuer or securities intermediary maintains records of the status of ownership and adverse claims to a security or security entitlement, and the filing office maintains records of certain claims against most types of personal property. There are differences, of course. For example, an issuer deals with claims only to securities that it issues, and a securities intermediary deals only with claims to security entitlements held in securities accounts that it maintains for its entitlement holders. The filing office, however, deals with certain kinds of claims (generally, security interests) against almost any type of personal property owned by any debtor as to whom a financing statement is filed. Moreover, neither an issuer nor a securities intermediary need respond to inquiries of an officious intermeddler, whereas a filing office must provide information to anyone who inquires and pays the required fees.[22] But despite these and other dif-

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19. U.C.C. §§ 9-302(1) (filing a financing statement is necessary for perfection, with specified exceptions), 9-401 (stating a place to file financing statements). The principal consequence of perfection of a security interest is priority over a debtor's judicial lien creditors and trustee in bankruptcy. *Id.* § 9-301(1)(b); 11 U.S.C. § 544(a)(1) (1993).

20. U.C.C. § 9-403(4).

21. For a summary of plausible justifications for perfection by filing, see Steven L. Harris & Charles W. Mooney, Jr., *A Property-Based Theory of Security Interests: Taking Debtors' Choices Seriously*, 80 VA. L. REV. 2021, 2053-62 (1994).

22. *See* U.C.C. Revised § 8-106(g) (1994) (stating that neither an issuer nor a

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ferences, one important similarity remains: the records themselves directly affect the rights of third parties.[23]

The indirect system of intermediary control in the securities markets could be adapted to virtually any system for recordation or registration of claims to property. For example, participants in the securities markets can use the indirect system to take advantage of the negotiability of securities, should they wish to do so. By acquiring a security in such a way that it obtains good title, a securities intermediary can vouch for clear title to its entitlement holders and others.[24] Any other intermediary with control over other types of negotiable property, such as negotiable promissory notes and negotiable documents of title, could do likewise.[25] If, however, the property is goods, accounts receivable, or other nonnegotiable property, an intermediary could not vouch for good title because no general means exists that would enable the intermediary to assure itself that it has obtained good title. But, like a filing office, the intermediary could vouch for the form and substance of claims registered with it. The next section builds on these insights and outlines a new structure for the Article 9 filing system.

III. THE PROPOSED NEW STRUCTURE: PUBLICLY DESIGNATED, LICENSED, PRIVATE REGISTERED AGENTS AS FILING OFFICES

A. The Prevailing Problems and Proposed Solutions

The Article 9 Study Committee's description of prevailing prob-

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securities intermediary is required to enter into a control agreement (*i.e.*, an agreement to act on directions of a person other than the registered owner or entitlement holder, respectively)); U.C.C. § 9-407 (dealing with information and certificates from filing officer).

23. In rare cases, a financing statement that makes its way to the filing office may create rights even though it is not reflected in the official records. *See* U.C.C. § 9-403(1) (presentation for filing and tender of the filing fee, or acceptance of the financing statement by the filing officer, constitutes filing); *In re* Flagstaff Food Service Corp., 16 B.R. 132 (Bankr. S.D.N.Y. 1981) (filing officer's complete failure to index a financing statement did not impair the effectiveness of the filing).

24. An intermediary may obtain good title in its own right (*e.g.*, by taking delivery itself under appropriate circumstances) or derivatively through an intermediary that obtained good title. For example, a clearing corporation acting as a depository normally takes delivery of securities certificates in a form sufficient to confer bona fide purchaser (or protected purchaser) status.

25. For a description of a proposed book-entry clearinghouse for real estate mortgage loans, see Phyllis K. Slesinger and Daniel McLaughlin, *Mortgage Electronic Registration System*, 31 IDAHO L.R. 795 (1995).

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lems in the Article 9 filing system remains accurate today:

> The Article 9 Filing System Task Force provided substantial assistance to the Committee in its consideration of Article 9 filing issues. The task force's report (the "Filing Report") describes the results of its empirical study of the filing system in each jurisdiction that has enacted Article 9. Among other findings, the Filing Report indicates that some jurisdictions experience delays in indexing filed financing statements and that additional delays are encountered before filed financing statements are reflected in search reports. The Filing Report also describes problems arising out of inaccurate information in filing systems and indirect costs arising out of inefficiencies in the current systems.
>
> These "systemic" problems that the Filing Report identifies arise from causes such as inadequate computer systems (both hardware and software) and insufficient staffing. They cannot be solved through refinements to the text of Article 9. Moreover, the Committee recognizes that solutions, or even improvements, in this area are beyond its expertise and resources.[26]

The Article 9 Drafting Committee is not alone in pursuing improvements to the system. A task force operating under the auspices of the National Conference of Commissioners on Uniform State Laws and the Center for Law and Business Studies of University of Minnesota Law School also is working towards this end.[27] Although the Drafting Committee is considering an option under which a state would authorize a private contractor to operate its filing system, even the most ambitious proposals for reform cling to the traditional concept of a central filing office (or central set of records) in a given jurisdiction (although some would consider the relevant jurisdiction to be the United States and accordingly support a national filing

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26. PEB STUDY GROUP UNIFORM COMMERCIAL CODE ARTICLE 9, REPORT 88 (1992) (footnotes omitted). Lynn LoPucki put it more succinctly: "The Article 9 filing system is a mess." Lynn M. LoPucki, *Why the Debtor's State of Incorporation Should Be the Proper Place for Article 9 Filing*, 80 MINN. L. REV. (forthcoming 1995).

27. In October 1994 the *Minnesota Law Review* and the Center for Law and Business Studies of the University of Minnesota Law School sponsored a symposium devoted exclusively to the Article 9 filing system, *"Managing the Paper Trail:" Evaluating and Reforming the Article Nine Filing System*. Papers and commentary presented at the symposium will be published in volume 80 of the *Minnesota Law Review*.

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system). Our proposal follows a different model.

B. The Proposed System in a Nutshell

Our proposal contemplates that the existing filing system in each state would remain intact and fully operational. In addition, each debtor would have the option of choosing a private "scorekeeper" who, like a securities intermediary, would have information concerning security interests created by that debtor. The existing filing system would serve an additional function, as a master directory of these private scorekeepers. In the remainder of the paper, we outline our proposal in greater detail and discuss some of its advantages and disadvantages.

Under our proposal, a debtor could elect to designate a "registered agent." This designation would appear in the applicable UCC filing records as a filing against the named debtor (a "designation filing").[28] The designation filing would cover, as a matter of law (and pursuant to the description on the filing), all personal property of the debtor. Following a debtor's designation of a registered agent, the *office of the registered agent would be an appropriate place in which to make UCC filings against that debtor*. Thereafter, secured parties could file financing statements either with the registered agent or with the UCC filing office. However, we would create a priority rule to provide an incentive to file with the registered agent.

Article 9 would be revised so that any UCC filing made in the UCC filing office subsequent to the designation filing would be deemed made later-in-time than *all* filings made with the registered agent. For example, assume that a designation filing is made on May 1, SP-1 files in the UCC filing office on June 1, and SP-2 files with the registered agent on July 1. Under the new rule, SP-2's filing would be deemed to have been made earlier than SP-1's; in effect, the priority of SP-2's security interest (and that of all other security interests as to which filings are made with the registered agent) would derive from the designation filing made on May 1.[29]

To continue the example, May 1 is the applicable filing date as between any registered agent filer on the one hand, and any UCC

28. For example, one simple approach would be to permit designation of the registered agent as the secured party on a financing statement, *e.g.*, "XYZ Trust Co., Registered Agent."

29. A more drastic approach would be to provide that filings in the normal UCC filing office after the designation of a registered agent are ineffective for all purposes. Under that approach, SP-1's security interest, in the example, not only would be junior to SP-2's security interest but also would be unperfected.

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filing office filer on the other. Thus, if SP-3 had filed in the UCC filing office before that date (say, on April 1), SP-3's security interest would have priority over all those filed with the registered agent. As among secured parties who file with the registered agent, however, the normally applicable priority rules of Article 9 (first-to-file-or perfect, purchase money security interest (PMSI) priority, etc.) would apply.[30]

The proposal also would necessitate adjustments to the Article 9 PMSI priority rules. A PMSI perfected by filing in the UCC filing office after a designation filing is made would be subordinate to all secured parties who file with the registered agent. For example, assume that a designation filing is made on May 1 and that SP-A makes a filing covering "all equipment" with the registered agent on June 1. Assume also that SP-B takes a PMSI in specific new equipment acquired by the debtor thereafter. SP-B would obtain the special purchase money priority only if it makes a timely filing with the registered agent. But if SP-B files with the UCC filing office, its security interest would be subordinate not only to that of SP-A but also to that of any other secured party who files with the registered agent (whether before or after SP-B's filing with the UCC filing office).

The role of the debtor's registered agent in our scheme is somewhat analogous to the role of the debtor's securities intermediary under the 1994 Article 8. One way in which a secured party can perfect a security interest in a debtor's security entitlement is by becoming the "entitlement holder," *i.e.*, by being identified in the records of a securities intermediary as the person having a security entitlement against the intermediary.[31] Under our proposal, the registered agent is effectively the debtor's intermediary for *all of the debtor's personal property* for purposes of perfection by filing.

30. *See, e.g.* U.C.C. §§ 9-312(3) (describing purchase money priority for inventory collateral), (4) (establishing purchase money priority for non-inventory collateral), (5) (providing first-to-file-or-perfect priority rule).

31. *Id.* §§ 9-115(4)(a); 8-106(d)(2); U.C.C. Revised § 8-102(a)(7) (1994).

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C. Registered Agents

Jurisdictions that adopt our proposal will wish to ensure that registered agents comply with their filing office responsibilities and that they are financially able to respond in damages for a breach. Accordingly, we contemplate that only entities that meet certain criteria (*e.g.*, financial responsibility and character standards, adequate liability insurance) and are licensed by the state could serve as registered agents. For example, a state might permit only financial institutions that have trust powers under applicable state or federal banking laws to act as registered agents. Alternatively, a state might create a specially designed regulatory framework that would govern UCC registered agents.

The statute governing registered agents would require each registered agent to maintain an index of all filings made with it against each debtor for whom it acts, and to comply with other duties of a filing office. Registered agents also would be required to maintain on file with a licensing agency (*e.g.*, the Secretary of State) specified information concerning their recordkeeping system, search logic, accessibility (by telephone, modem, or fax), liability insurance coverage, and the like.

Once one is designated, no additional registered agent would be permitted; a debtor could have only one registered agent at any time. Unless the debtor and registered agent agree otherwise, the debtor would be free to change registered agents at will. The change would be accomplished by the debtor's designating a successor agent. The successor would take an assignment of the original designation, thereby maintaining the original date of the filing and designation. (The similarity of this approach to the filing and assignment of a financing statement is obvious.) No filing with the new registered agent would be effective until an appropriate assignment or other notice of the change is filed in the UCC filing office. The previous registered agent would be obligated to turn over to the new agent all filing data relating to the debtor. Similarly, if a debtor were to terminate a designation and not to designate a successor, the terminated registered agent would be obligated to provide its filing data to the UCC filing office.

D. Searching and Filing Under the Proposed System

Consider an example of how the system that we propose would function in practice. Assume that ABC Corp. wishes to obtain financing from DEF Finance Co., to be secured by ABC's accounts and inventory. DEF requests a search of the *UCC filing office* in New

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York (both ABC and its inventory are located in New York).[32] The search reveals the following three filings:

March 1, 1993
Secured party - YYY
Debtor - ABC Corp.
Collateral: All equipment

April 1, 1993
Secured party - ZZZ
Debtor - ABC Corp.
Collateral: Backhoe, S/N 123456789

May 1, 1994
Secured party - XYZ Trust Co., as Registered Agent
Debtor - ABC Corp.
Collateral: All assets

Untroubled by the two filings covering equipment, DEF next requests a search from *XYZ Trust, the registered agent.* DEF also files with XYZ Trust its own financing statement covering accounts and inventory. The search of the registered agent's records reveals only a few additional filings covering specific equipment and DEF's own financing statement. DEF now may proceed with the financing, assured that it has filed first on accounts and inventory.

In practice we doubt that DEF would feel compelled to undertake two searches. We expect that DEF would be satisfied to search only with XYZ, the registered agent, and not with the UCC filing office. An inquiry of the prospective debtor, ABC, would reveal that ABC has appointed XYZ as its registered agent. XYZ's response to DEF's search request would verify that XYZ is the registered agent. In addition, XYZ could provide information (based on an earlier search XYZ conducted) concerning the filings made in the UCC filing office before the designation filing.[33] This would give DEF the complete picture. Of course, if XYZ were dishonest, or had made an error (*e.g.*, if it had failed to note that a successor had assumed the duties as ABC's registered agent), then DEF could be misled unless it were to check the UCC filing office records. Given the contemplated licensing and regulation of registered agents, however, we suspect that

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32. *See* U.C.C. § 9-103(1) (providing perfection and priority of security interest in ordinary goods (such as inventory) governed by law of jurisdiction where goods are located), (3) (describing perfection and priority of security interest in intangibles (such as accounts) governed by law of jurisdiction where debtor is located).

33. Registered agents likely would adopt the standard procedure of searching for, and noting in their records, all filings of record at the time that the designation filing is made.

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most searchers would elect not to undertake a dual search.[34]

Other features of the system could further reduce the burdens on searchers. For example, a state might require each registered agent to share information in its registry with all other registered agents in a compatible electronic format. In such a universal system, one could search for filings against any debtor who has a registered agent by placing a search request with *any* licensed registered agent.

E. Some Disadvantages and Advantages of the Proposed System

In the abstract, we would advocate the creation of a single data base in which one could file and search against any debtor. But a unified system fraught with the inefficiencies and inaccuracies of the existing disparate systems would not necessarily be superior to a group of systems that function well. Clearly, our proposal advocates a "second best" solution. It reflects our suspicion that, for reasons we touch on below, the "best" may be the enemy of the "good" in the context of improving the Article 9 filing system (at least for the time being).

The principal disadvantage of the system we propose is obvious. It would create a second tier of records. In some cases it would be necessary or desirable for a prospective financier, buyer, or other interested party to incur the costs of searching *two* sets of records—the "official" state UCC filing office *and* the records of the debtor's registered agent.[35]

The two-tier feature of our proposed system also reflects the primary appeal of the proposal from the standpoint of political economics. First, our proposed system would not require states to dismantle existing systems in favor of new and improved ones—something that we doubt many states are prepared to do. Second, something like our proposal may be the only feasible means of achieving the potential benefits of a privatized market for UCC filing information. Assuming the improved quality of services justifies the

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34. The practices concerning real estate records in many jurisdictions, where private title insurance companies keep private records of documents recorded in the public records, suggest that interested persons would be willing to rely on a registered agent's records. Note that a buyer not in the ordinary course of business also could ask the debtor for the identity of the debtor's registered agent. Interested parties who do not wish to approach the debtor, such as trade creditors and credit reporting services, might find it necessary to search the public filing office first to determine whether a subsequent registered agent search would be necessary.

35. As explained above, however, in many situations interested parties might rely solely on one search conducted with the registered agent.

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costs, one would expect secured financers to insist that most businesses that are repeat players (as debtors) in the secured financing market designate a registered agent. Consequently, over a few years there would be fewer and fewer filings made in the official state UCC filing office against those debtors; registered agent filings would dominate. The official records would be continue to be used, but primarily for those debtors who are not repeat players and by those secured parties who wish to protect against the risks of being unperfected (*e.g.*, losing to the debtor's trustee in bankruptcy) but are not concerned about becoming subordinated to competing secured parties.[36]

The chief expected benefit of the proposed system would be an improvement in the quality (accuracy, speed, etc.) of services. Through competition and innovation, the well-known problems that plague many UCC filing systems could be addressed by a marketplace that might be substantially more responsive than a governmental bureaucracy. For example, registered agents could provide enhancements such as remote electronic searching and filing without the need for a change in law or additional governmental appropriations. Registered agents who provide the best services, *e.g.*, by responding to search requests quickly with information in a user-friendly form, would proper; those who do not would suffer. The state could address its interest in efficient and reliable systems through licensing standards and regulation.

Finally, if the proposed system were successful, states might expand upon it. In some states, the registered agent system could pave the way for a strictly private system under which the state's only roles would be licensing and providing an index through which one could determine the identity of a debtor's registered agent. Or, states might replace the proposed system of registered agents with one in which the state employs a single private contractor to perform all functions that state UCC filing offices perform today.

IV. CONCLUSION

Our proposal for including private registered agents in the Article 9 filing system may seem at first blush counterintuitive. It is less so, however, when viewed as a close cousin of the indirect system of controlling securities through intermediaries. We do not claim that

36. A decline in filings with the state registry would not necessarily cause a corresponding reduction of state revenues. Some or all of those revenues could be captured through licensing fees assessed against registered agents, perhaps based in part on the number of filings and searches processed by an agent.

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the system we propose is ideal. But our system would take advantage of competition and private market forces in the market for information technology, and it would be less threatening to entrenched interests than some more optimistic (even idealistic) proposals. We ask the Article 9 Drafting Committee to give our proposal serious consideration after taking into account the potential improvements in quality of services and the feasibility and likelihood of adoption.

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