Amendments to Article 9 of the Uniform Commercial Code

This memorandum summarizes certain amendments to Article 9 of the Uniform Commercial Code (the "UCC") that are currently effective in Puerto Rico and, as of the date of this memo, will become effective in 40 states and the District of Columbia on July 1, 2013 (the "2013 Amendments"). The 2013 Amendments have been adopted in Delaware and District of Columbia, but have not yet been adopted in New York or California, although they have been introduced for adoption in New York and California. They are expected to be adopted in all 50 states in 2014.

1. The 2013 Amendments revise and simplify the form of UCC-1 financing statements and UCC-3 amendments. The financing statements will no longer need to identify the jurisdiction of incorporation of the debtor, its type of organization or its organizational identification number. Before the 2013 Amendments become effective in all states, two different forms of financing statements will need to be used; the old form in the states where the 2013 Amendments have not become effective, and the new form in the states where they have become effective.

2. The 2013 Amendments clarify that, in the case of a debtor that is a registered organization, the document that needs to be reviewed in order to determine the debtor's correct name to be used on the financing statements is the document that was filed with a state to form or organize an organization (referred to as a "Public Organic Record") or, if such document has been amended, the most recent amendment thereto that "purports to state, amend, or restate" the debtor's name. The 2013 Amendments also clarify that a good standing certificate is not a Public Organic Record. In the case of a debtor that is an individual or a trust, the 2013 Amendments also include complex rules on how to determine the debtor's correct name. The 2013 Amendments also provide for a five year transition period (which will be June 30, 2018 for those states with a July 1, 2013 effective date) during which a security interest that is perfected prior to the applicable effective date that does not comply with the 2013 Amendments will continue to be perfected through the date that such financing statement is scheduled to lapse.

3. The 2013 Amendments provide that a written authorization is no longer required in order to prefile a financing statement prior to the closing of the transaction. In any event, existing debt documents should be reviewed to determine if prefiling is permitted.

4. The 2013 Amendments provide that the term "Accounts" used to describe accounts receivable does not include any credit card receivables and as a result the credit card receivables constitute "Payment Intangibles" under the UCC. The definitions of accounts receivable in ABL credit agreements and ABL intercreditor agreements should include credit card receivables that constitute "Payment Intangibles" under the UCC as ABL priority collateral.

5. The 2013 Amendments clarify that a fixture filing for transmitting utilities (including broadcasting companies, railroad companies and gas and oil pipelines) needs to be filed in the central filing office in each state where fixtures are located in order to be perfected in fixtures by such fixture filing in such state. Fixture filings at the county level are not required for transmitting utilities.

6. The 2013 Amendments clarify that if the bank where a deposit account is maintained is acting as agent for other secured parties and a security interest in such deposit account was granted to such bank in its capacity as agent, such security interest is automatically perfected by control under the

UCC. This is how this rule was generally previously interpreted even though the UCC did not have an express provision addressing it.

7. The 2013 Amendments in New York introduce two new methods of perfection by control in deposit accounts. The 2013 Amendments in New York (which are based on provisions that were previously adopted in Delaware) provide that a secured party is perfected by control in a deposit account if "the name on the deposit account is the name of the secured party or indicates that the secured party has a security interest in the deposit account." While this appears to be an easy way to perfect by control, it is unclear if even after the adoption of the 2013 Amendments in New York, the account banks will agree to this and a secured party will still need some agreement with the account bank to ensure that the perfection is governed by New York law and that the account bank will not amend such name without the secured party's written consent. The New York amendments also provide that control can be achieved if another person has control on behalf of the secured party, or, having previously acquired control over the deposit account, acknowledges that it has control on behalf of the secured party. This provision can be very helpful in second lien deals, but it is limited to control agreements that establish that control is governed by New York law.

8. The Wyoming UCC amendments also provide that financing statements filed in Wyoming will be valid for 10 years. This amendment does not affect filings made in Wyoming prior to July 1, 2013.

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email Charles A. Gilman at 212.701.3403 or cgilman@cahill.com; Jon Mark at 212.701.3100 or jmark@cahill.com; John Schuster at 212.701.3323 or jschuster@cahill.com; or Anastasia Efimova at 212.701.3586 or aefimova@cahill.com;