# Dissonance in the Attempt to Harmonize LLC Series and Article 9

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**Abstract**

*This article summarizes the difficulties presented by the interface of laws facilitating the establishment of limited liability company series with secured-transactions law. It considers the two primary mechanisms by which states may seek to lessen those difficulties: amendments to the various LLC acts that permit establishment of series, and amendments to the UCC as enacted in states whose LLC acts permit series. It concludes that the latter approach is likely to obscure, and far less likely to cure, these difficulties.*

## Introduction.

Writing earlier this year,[1] the author took a broad approach to the issues presented by lending to limited liability company ("LLC") series formed under the laws of 14 jurisdictions offering them (generally, "Series"),[2] discussing the differing statutory approaches, the choice of law issues, and the

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[1]Secured Lending to Series of LLCs: Beware What You Do Not (and Cannot) Know, 46 UCC L.J. 95 (2015).

[2]The 14 jurisdictions currently offering series LLCs are the following (with, in each case, citation to the statutory section or sections in which provisions dealing with the formation of LLC series are primarily to be

persisting (and nearly universal) uncertainties of Series' interface with secured-transactions law. These uncertainties arise because while most Series can have their own assets and liabilities, and can conduct their affairs in their own names, most Series are not entities.[3] While this lack of entity status may be important, even vital, in some applications, it gives rise to difficulties where Series purport to be debtors under Uniform Commercial Code ("UCC") Article 9 ("Article 9").[4] This article summarizes these difficulties, and considers the two primary mechanisms by which states may seek to lessen them: amendments to the various LLC acts, and amendments to the UCC as enacted in such states. It concludes that the latter approach is likely to obscure, and far less likely to cure, these difficulties. While little data is available on the number of Series of members, managers, assets, and economic rights ("Delaware Series") established under the Delaware Limited Liability Company Act, Del. Code Ann. tit. 6, §§ 18-101 to 18-1109 (the "Delaware LLC Act"), it seems reasonable to assume many readers may have familiarity with the Series indigenous to their jurisdictions, and would benefit from greater familiarity with Delaware Series. Thus, this article discusses Series generally and Del-

found): Alabama (Ala. Code § 10A-5A-11.01 (2015)); Delaware (Del. Code Ann. tit. 6, § 18-215 (2015)); the District of Columbia (D.C. Code § 29-802.06 (2015)); Illinois (805 Ill. Comp. Stat. Ann. 180/37-40 (2014)); Iowa (Iowa Code Ann. § 489.1201 (2013)); Kansas (Kan. Stat. Ann. § 17-76,143 (2013); Missouri (Mo. Rev. Stat. § 347.186 (2014)); Montana (Mont. Code Ann. § 35-8-202 (2013)); Nevada (Nev. Rev. Stat. § 86.161 (2014)); Oklahoma (Okla. Stat. Ann. tit. 18, § 2054.4 (2014)); Puerto Rico (P.R. Laws Ann. tit. 14, § 3967 (2011)); Tennessee (Tenn. Code Ann. § 48-249-309 (2015)); Texas (Tex. Bus. Orgs. Code Ann. §§ 101.601 to 101.622 (2014)); and Utah (Utah Code Ann. § 48-2c-606 (2014)).

[3]Almost all currently available Series present the entity issue. A notable exception is found in the Illinois statute, under which Series can be not only entities, but registered organizations. See 805 Ill. Comp. Stat. Ann. 180/37-40.

[4]This interface has received considerable attention from the Uniform Law Commission's Series of Unincorporated Business Entities Committee. Established in 2012, the Committee is tasked with drafting a uniform or model act dealing with series of unincorporated business entities. It is chaired by Steven G. Frost, Partner, Chapman and Cutler, LLP, Chicago, Illinois; its reporter is Daniel S. Kleinberger, Professor, William Mitchell College of Law, St. Paul, Minnesota.

aware Series specifically and for certain illustrative purposes. It is generally applicable to any Series that is not, or may not be, an entity.

## I. Background: LLC Series and UCC Article 9.

When taking a security interest in assets associated with a Series, a secured party must be particularly careful in identifying the "debtor" and addressing each consideration that follows. The Delaware LLC Act provides that "[a] series . . . shall have the power and capacity to, in its own name, hold title to assets (including real, personal and intangible property), [and] grant liens and security interests . . ."[5] Under the Delaware LLC Act, "[a]ssets associated with a series may be held directly or indirectly, including in the name of such series, in the name of the limited liability company, through a nominee, or otherwise."[6] Thus, because the Delaware LLC Act provides alternatives for the holding of assets associated with a Delaware Series, other sources (e.g., deeds, bills or sale, the records of such Delaware Series) must be reviewed to determine which alternative has been chosen in a given instance. The same can generally be said of all Series currently available. That is, having identified the possibilities under the applicable LLC act, secured parties must determine which has been chosen in a given instance and, thus, what in fact is the debtor (or purportedly the debtor) within the meaning of Article 9. Under Article 9, by definition, the "debtor" is the person having an interest in the collateral at issue.[7]

### A. LLC with Series as Debtor.

Limited liability companies generally, and Delaware LLCs in particular, are "registered organizations" within the meaning of Article 9.[8] Their formation requires the filing of a cer-

[5] Del. Code Ann. tit. 6, § 18-215(c).

[6] Del. Code Ann. tit. 6, § 18-215(b).

[7] U.C.C. § 9-102(a)(28). References to UCC Article 9 (hereinafter, "UCC RA9") are to the official text promulgated in 1998 by the Uniform Law Commission and the American Law Institute, as amended through the 2010 Amendments thereto, which generally took effect on July 1, 2013.

[8] UCC RA9 § 102(a)(71).

tificate of formation in the office of the Secretary of State.[9] Thus, Delaware LLCs are "located" in Delaware for Article 9 filing purposes,[10] just as LLCs formed in other states are located in such states. By reason of such location, Delaware law (and, specifically, Delaware Article 9) generally governs perfection, the effect of perfection or nonperfection, and the priority of security interests granted by Delaware LLCs.[11] Financing statements on form UCC1 must generally be filed with the Delaware Secretary of State,[12] and identify the Delaware LLC as "debtor" by featuring its name (only) in box 1a. Where an LLC with Series is the debtor with respect to assets associated with a particular Series, matters unique to the Series might be addressed in the collateral description, or in box 17 (miscellaneous) of a financing statement addendum on form UCC1Ad (Rev. 04/20/11), as appropriate.

**B. Nominee as Debtor.**

If a nominee is the debtor, the secured party must determine whether the nominee is an organization, a registered organization, or an individual, and, next, the nominee's location for Article 9 purposes under the applicable subsection of Article 9 § 307.[13] The law of such location (and, specifically, Article 9 as adopted in such location) generally governs perfection, the effect of perfection or nonperfection, and the priority of security interests granted by a nominee acting on behalf of a Series. An effective filing would name the nominee in box 1a or 1b, as appropriate.

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[9] See, e.g., Del. Code Ann. tit. 6, § 18-201(a).

[10] UCC RA9 § 307(e).

[11] For special rules applicable to goods subject to a certificate of title, deposit accounts, investment property, and letter-of-credit rights, see Del. Code Ann. tit. 6, §§ 9-303 to 9-306.

[12] See Del. Code Ann. tit. 6, § 9-501(a), for both this general rule, and exceptions directing filing elsewhere for as-extracted collateral, timber to be cut, and fixture filings.

[13] Generally, an organization is located at its place or business or, if it has more than one, at its chief executive office (UCC RA9 § 307(b)(2), (3)); a registered organization organized under the law of a state is located in that state (UCC RA9 § 307(e)); and an individual is located at his or her principal residence (UCC RA9 § 307(b)(1)).

### C. Series as Debtor.

Article 9 contemplates that all debtors to which it applies are either individuals or organizations (see, e.g., UCC RA9 § 307(b)), sometimes referred to collectively as persons.[14] Though the term "individual" is not defined in the UCC, under commonly accepted rules of statutory construction it would seem axiomatic that a Series is not an individual.[15] We are therefore left to consider whether a Series is an "organization." "Organization" is defined in UCC § 1-201(b)(25) as "a person other than an individual." "Person," in turn, is defined in UCC § 1-201(b)(27), as "an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, *or any other legal or commercial entity*" (emphasis supplied). Thus, for UCC purposes, a person must be an individual, one of the types of non-natural persons specified in the foregoing definition, or some (other) legal entity or commercial entity. Arguably, many Series are none of these things, and simply fall outside the scope of Article 9.[16]

Assuming, *arguendo*, that a given Series is found to be an organization for Article 9 purposes, the analysis continues, with the goal of determining the Series' location within the meaning of Article 9 § 307. As with all debtors, the law of

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[14] By definition, a debtor must generally be a person. See UCC RA9 § 102(a)(28).

[15] See, e.g., U.C.C. § 1-201 cmt. 27 (2001) (explaining that the definition of "person" is "the standard definition used in acts prepared by the National Conference of Commissioners on Uniform State Laws"); Unif. Limited P'ship Act § 102(14) (2001) (providing same definition of "person" as found in U.C.C. § 1-201(27)); Unif. Limited P'ship Act § 103(g) (2001) (providing rules for attributing knowledge from an "individual" to "a person other than an individual" for which the individual is conducting a transaction).

[16] The LLC Acts of the District of Columbia, Illinois, Iowa, Kansas, and Utah provide that Series (but only those with liability shields) are to be "treated as" entities, a phrasing giving rise, simultaneously, to both comfort and further questions (e.g., treated as entities *when*, and *for what purposes*?). See D.C. Code § 29-802.06 (2015); 805 Ill. Comp. Stat. Ann. 180/37-40 (2014); Iowa Code Ann. § 489.1201 (2013); Kan. Stat. Ann. § 17-76,143 (2013); Utah Code Ann. § 48-2c-606 (2014).

the jurisdiction in which a Series is located (and, specifically, such location's Article 9) will generally govern perfection, the effect of perfection or nonperfection, and the priority of security interests in its associated assets.[17] The location of a registered organization formed under the law of a state is that state.[18] However, even if a Series is found to be an organization, under current law it will not be found to be a registered organization.[19] Article 9 § 102(a)(71) defines a registered organization as:

> an organization formed or organized solely under the law of a single state or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the State or the United States.

This definition simply does not fit most Series, including Delaware Series. The Delaware Secretary of State need not receive any record showing a particular Delaware Series to have been formed or organized. Section 18-215(b) of the Delaware LLC Act requires that notice of the limitation on liabilities of a Delaware Series be set forth in the certificate of formation of the related Delaware LLC, but requires nothing more. The notice may refer to the relevant LLC agreement's establishment, or provision for future establishment, of Series. The Delaware LLC Act provides that such notice "shall be sufficient for all purposes of this subsection [i.e., § 18-215(b), pertaining to 'shielded' Delaware Series] whether or not the limited liability company has established any series when such notice is included in the certificate of formation, and there shall be no requirement that any specific series of the limited liability company be referenced in such notice."[20] Simple notice that one or more (as-yet-unnamed) Series might come into existence at some unspecified time in the future will suffice. Thus, most Series (includ-

[17] See UCC RA9 § 301.

[18] UCC RA9 § 307(e).

[19] As discussed, see supra note 3, the Illinois Limited Liability Company Act is a notable exception. It contemplates that certain series may be registered organizations, not only assuring the applicability of Article 9, but providing certainty in determining their locations and names.

[20] *Id.* § 18-215(b).

ing all Delaware Series) are not registered organizations within the meaning of Article 9 § 102(a)(71), and therefore are not located in their jurisdictions of formation or establishment by reason of Article 9 § 307(e). Instead, a Series would presumably be located at its place of business if it has only one,[21] or at its chief executive office if it has more than one place of business.[22] Its name would need to be determined under the appropriate subsection of Article 9 § 503 (subsection (a)(6) under alternative A, subsection (a)(5) under alternative B).[23]

## II. Legislative Responses.

### A. Possible Methods to Address the Issue.

Though each has its limitations, there are essentially two possible methods to address the quandary of Series as Article 9 debtors: (i) amendment of the relevant LLC Act to provide that Series, or at least those Series taking additional specified steps, are organizations, and (ii) amendment of certain definitions in UCC Article 1 and Article 9 to better assure applicability of Article 9 to Series as debtors, and perhaps to clarify their locations for filing purposes. As discussed below, this second option may prove largely ineffective unless widely enacted.

### B. The LLC Act Approach.

Generally speaking, the UCC takes all debtors as they are. That is, it does not decree whether a particular association of assets and liabilities constitutes an entity, let alone a particular type of entity, but defers to other law on the point. Instead, the UCC is intended to pick up smoothly where such other law leaves off. Something possessed of such attributes that it meets the UCC Article 1 definition of organization, the Article 9 definition of registered organization, and the Article 9 definition of debtor, is treated as such under

[21] UCC RA9 § 307(b)(2).

[22] UCC RA9 § 307(b)(3).

[23] Alternative A and Alternative B are generally known as the two alternative approaches to the naming of individual debtors provided in the 2010 Amendments to Article 9, which generally took effect on July 1, 2013. They apply, as well, to organizations other than registered organizations, and differ slightly insofar as may be relevant in the Series context.

Article 9, located in the jurisdiction specified by application of the relevant rules, and identified in filings as specified by the relevant rules. As discussed above, many Series, including Delaware Series, are arguably not organizations, and if so, would be ineligible to be debtors within the meaning of Article 9. A given jurisdiction could unambiguously provide legal or commercial entity status to Series under its LLC act, or to a subset of such Series meeting certain specified requirements.[24] This approach could be taken further, such that relevant Series would fit within the Article 9 definition of registered organizations (as was done in Illinois). Article 9 provides very clear and easily applied rules for determining the location (for choice of law and filing purposes) and name (for debtor identification in a financing statement) of a registered organization.[25] While this approach requires separate, if similar, action in each jurisdiction whose Series statute(s) present the issue, it offers the promise of solutions crafted to the unique parameters of such statute and the interests sought to be served. Moreover, it is consistent with the traditional scope of state entity law and state secured transactions law. For example, the Delaware General Corporation Law[26] tells us what constitutes a Delaware corporation, while Article 9 tells us where such an entity, being a registered organization, is located, how to identify it as a debtor in a financing statement, etc.

### C. The UCC Approach.

Alternatively, the interface between Series and secured transactions law might be adjusted by revision to the UCC. Presumably, this approach would entail clarifying Article 9's applicability to Series (e.g., by augmenting UCC Article 1's definition of "person" and thereby augmenting its definition of "organization," which would provide greater certainty in the application of Article 9 § 307 to determine the location of

[24]For certain regulatory reasons beyond the scope of this article, it remains very important to certain Series users that their Series be or not be treated as entities for state law purposes. Hence the suggestion of a bifurcated approach—one size seldom truly fits all.

[25]This is the approach taken by the Illinois Limited Liability Company Act. See supra note 3.

[26]Del. Code Ann. tit. 8, § 101-398 (2015).

Series and Article 9 § 503 to determine a Series' name for filing purposes). While the UCC is state law, enacted in each jurisdiction and subject to such non-uniform text as the legislative body in such jurisdiction deemed necessary or appropriate, it is overwhelmingly uniform and reflects the official text promulgated by its two sponsoring organizations, the Uniform Law Commission (formerly the National Conference of Commissioners on Uniform Commercial Laws) and the American Law Institute. Interested parties approach the possibility of non-uniformity from different doctrinal positions, with some advocating for what others eschew. For some, though, non-uniformity is a more nuanced issue, to be favored or disfavored in each instance based upon careful consideration of its advantages and disadvantages, including the salience or obscurity of issues resulting from such non-uniformity.

**D. The Choice of Law Problem.**

A threshold question under Article 9 is what law governs perfection and the effect of perfection of a given security interest. Under the UCC, "when a transaction bears a reasonable relation to this State . . . the parties may agree that the law . . . of this State . . . shall govern their rights and duties."[27] Many secured transactions involving Delaware Series are documented under the laws of other states (e.g., New York). It has been suggested that Delaware law be chosen to govern security agreements to which Delaware Series are party, and that would seem a sound and viable choice, likely to satisfy UCC § 1-301(a)'s requirement that the transaction bear a reasonable relationship to Delaware. But parties' freedom to choose governing law under Article 9 is not without limits. Laws under which liens are created "almost invariably" require that the existence of the lien be public and easily discoverable.[28] Consistent with this tenet, the law governing perfection and priority of security interests cannot be chosen or changed by the parties, except to the limited extent permitted by such law. This limitation reflects an understanding that the secured credit system is severely

[27] U.C.C. § 1-301(a) (2001).

[28] Lynn M. LoPucki & Elizabeth Warren, Secured Credit: A Systems Approach 282 (7th ed. 2012).

compromised when potentially relevant laws point to different filing offices for public notice filings.

Accordingly, Article 9 provides that "while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral."[29] Thus, regardless of which state's version of Article 9 may apply to a secured transaction generally (e.g., by reason of the parties' selection of such law to govern the security agreement), the state whose version of Article 9 will govern issues of perfection and priority by filing is not subject to selection by the parties' agreement. Rather, mandatory choice-of-law rules, currently in effect in every state,[30] dictate what jurisdiction's law governs issues of perfection and priority by filing. Although Article 9 might be amended in any given jurisdiction to provide that Series are located in such jurisdiction for filing purposes, Article 9 as in effect in all other jurisdictions may point to a different location.

Consider, for example, a scenario in which Delaware has adopted a non-uniform amendment to Article 9 stating that a Series is an organization located in the same state as the LLC to which it is related. Litigation is subsequently commenced in a non-Delaware court regarding the perfection by filing or priority of Article 9 security interests in property associated with a Delaware Series. If the parties were to disagree regarding which state's substantive law governs these issues, the court would typically start with the choice-of-law rules of its forum state.[31] Thus, the court would look first to the non-Delaware forum's version of Article 9 for guidance in determining which state's law governs the substantive issues regarding perfection or priority. And if Delaware Series lack the characteristics that would cause them to be

[29]UCC RA9 § 301(1).

[30]U.C.C. § 9-301, 3 U.L.A. 217-19 (2010), 45 (Supp. 2013) (noting the non-uniformities in 12 states' versions of § 9-301 are largely limited to types of collateral respecting which security interests are not typically perfected by the filing of a financing statement in a central filing office).

[31]E.g., Klaxon Co. v. Stentor Electric Mfg. Co., 313 U.S. 487, 496, 61 S. Ct. 1020, 85 L. Ed. 1477, 49 U.S.P.Q. 515 (1941); Tanges v. Heidelberg North America, Inc., 93 N.Y.2d 48, 687 N.Y.S.2d 604, 710 N.E.2d 250, 252 (1999).

registered organizations under Article 9 as in effect in the forum state, the court would have no occasion to apply Delaware's version of Article 9 to the substantive issues—unless, perhaps, application of the forum's choice-of-law rules coincidentally pointed to Delaware. In most cases, the court considering the question would ignore the (hypothetical) non-uniform provision of Delaware Article 9 in deciding where a UCC1 financing statement naming the Delaware Series as debtor had to be filed to be effective.

### E. What's Past is Prologue.

Writing in 2009, United States Bankruptcy Judge Brendan Linehan Shannon considered a remarkably similar perfection/choice-of-law issue. In re SemCrude, L.P., 407 B.R. 112, 69 U.C.C. Rep. Serv. 2d 245, 172 O.G.R. 1 (Bankr. D. Del. 2009) (hereinafter, "*SemCrude*"). A non-uniform provision of Article 9 as in effect in Texas provided for automatic perfection of certain security interests in oil and gas assets owned by a Delaware registered organization. In declining to apply Texas law on the issue of perfection, the court noted its obligation to examine the law of all relevant jurisdictions (here, Texas, Delaware, and Oklahoma) when presented with an issue on which the jurisdictions' laws are in conflict.[32] The court observed that, absent circumstances requiring the application of federal choice-of-law rules, it is "well settled in this Circuit that a bankruptcy court faced with the issue of which substantive state law to apply to a claim for relief in an adversary proceeding applies the choice of law rules of the forum state."[33] Indeed, " 'federal law may not be applied to questions which arise in federal court but whose determination is not a matter of federal law[.]' "[34] Dismissing urgings that it approach the choice of law issue differently, Judge Shannon wrote, "This Court is not free to disregard Article 9's choice of law rules and engage in its own *ad hoc* assessment of which states have the most significant contacts

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[32] *SemCrude*, 407 B.R. at 132.

[33] *In re SemCrude, L.P.,* 407 B.R. at 133.

[34] *In re SemCrude, L.P.*, 407 B.R. at 133 (quoting In re Merritt Dredging Co., Inc., 839 F.2d 203, 206, 1988 A.M.C. 2339, 5 U.C.C. Rep. Serv. 2d 900 (4th Cir. 1988)).

here."[35] Noting that Delaware courts apply the Restatement (Second) of Conflict of Laws,[36] the Court was obliged to " 'follow a statutory directive of its own state on choice of law[,]' "[37] and explicitly recognized Article 9 § 301 as such a statutory directive:

> Delaware § 9-301 governs choice of law determinations with respect to non-uniform amendments to the UCC regarding the perfection and priority of security interests, such as Texas 9.343. Delaware § 9-301 must be applied as written.[38]

Article 9 § 301 is enacted in all states.[39] In resolving choice-of-law issues relating to contract claims, courts in at least 38 states have followed the Second Restatement's approach or given it weight.[40] As a result, regardless of whether a security interest in assets associated with and held by a Delaware Series is perfected under Delaware law, there is a high likelihood that such security interests will be assessed first under the law of the forum, which in each case would mandate application of the law of the debtor's location as determined under such law. Thus, we are left to determine whether, under such applicable law, a Series is an organization to which Article 9 applies, whether its location can be determined under such jurisdiction's Article 9 § 307, and whether, under Article 9 of such jurisdiction, perfection has been achieved. The non-uniformity at issue in *SemCrude* was an attempt to export Texas state law to other jurisdictions. Any state's non-uniform revision of the UCC to harmonize its secured transactions and series laws would likewise be an attempt to export such state's law to other jurisdictions.

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[35] *Id.*

[36] *In re SemCrude, L.P.,* 407 B.R. at 134.

[37] *In re SemCrude, L.P.,* 407 B.R. at 134 (quoting Restatement Second, Conflict of Laws § 6(1) (1971)).

[38] *Id.* In a companion opinion issued on the same day as *SemCrude*, the court conducted a parallel analysis with respect to a non-uniform Article 9 provision enacted in Kansas. In re SemCrude, L.P., 407 B.R. 82, 69 U.C.C. Rep. Serv. 2d 212, 171 O.G.R. 658 (Bankr. D. Del. 2009).

[39] U.C.C. § 9-301, supra note 30.

[40] Research on file with author.

### F. History Repeats Itself.

Earlier this year, Texas' 84$^{th}$ Legislature enacted Senate Bill 1077 amending the Texas law corresponding to UCC § 1-201(b)(27) to include within the definition of "person" "a particular series of a for-profit entity."[41] Thus, by its non-uniform text, which took effect when signed by Governor Greg Abbott on May 26, 2015, Texas law constitutes a Series, or rather, a Series of a for-profit LLC,[42] a person and, thus (since a Series is manifestly not an individual) an "organization." It would appear to solve the problem, at least for some Series, under Texas law. But, for the reasons stated above, Texas law may not be relevant. There is no reason to expect this sort of approach to fare any better than did the Texas non-uniform provision that gave rise to the issue adjudicated in *SemCrude*. State sovereignty has its limits, among them the sovereignty of other states.

### G. Where Are We Now?

State law coverage in third party closing opinions is usually limited to the laws of the state in which opining counsel is admitted to practice or respecting which opining counsel is otherwise sufficiently knowledgeable. Perfection-by-filing opinions are often further limited to perfection that can be achieved by the filing of a financing statement in such state. That is to say, a "clean" opinion under Texas law (as amended by Senate Bill 1077) on perfection of a security interest granted by a series of a for-profit LLC located in Texas premised on the filing of a financing statement with the Texas Secretary of State could well be correct. Its value as a predictive tool, however, would be severely limited, as the question of perfection would be governed by Texas law only in an action in a Texas court—because Texas choice-of-law rules could be expected to lead the court to apply the UCC as in effect in Texas regarding perfection—or in an action in another jurisdiction where the facts, when viewed through that jurisdiction's choice-of-law rules, happen to

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[41] S.B. 1077, 84th Leg. (Tex. 2015), *available at* https://legiscan.com/TX/research/SB1077/2015.

[42] Not all LLCs are "for profit." It seems clear, for example, that a Delaware LLC need not be "for profit." See Del. Code Ann. tit. 6, § 18-106(a) (2015).

point to Texas Article 9 as governing perfection. It will be interesting to see whether a market for the issuance and acceptance of such opinions develops, and secondarily to see whether and how they are understood by those providing them and those to whom they are provided.

## III. Conclusion.

Limited liability company series are creatures of contract, and can currently be established under the laws of more than a dozen jurisdictions. While consistently called "series," those established under different laws can differ significantly, as can different series established under the same law. While some statutes deem series, or certain series, entities, others emphatically do not, whether explicitly or implicitly. Where series are not entities, or are not treated as entities, it is unclear whether they can be debtors in the Article 9 sense, what law governs perfection of any security interests they grant, where to file to perfect such security interests, and how to identify the series debtor on any such filing. Attempts to harmonize the law of series and the law of secured transactions are understandable, perhaps commendable. But *ad hoc* amendments to Article 9 are not nearly as effective as they may at first appear.