

[Corrected Copy]  
ASSEMBLY, No. 2019

STATE OF NEW JERSEY

INTRODUCED MAY 13, 1996

By Assemblymen BATEMAN, WEINGARTEN,  
Senators Inverso and Bryant

1 AN ACT concerning commercial transactions, replacing chapter 8 of  
2 Title 12A of the New Jersey Statutes, enacting additional sections  
3 of chapter 9 of Title 12A of the New Jersey Statutes and revising  
4 various parts of the statutory law.

5  
6 **BE IT ENACTED** by the Senate and General Assembly of the State  
7 of New Jersey:

8  
9 1. Chapter 8 of Title 12A of the New Jersey Statutes  
10 (N.J.S.12A:8-101 through 12A:8-805, including any amendments or  
11 supplements thereto) is repealed and replaced as follows:

12  
13 CHAPTER 8. INVESTMENT SECURITIES

14  
15 PART 1

16 SHORT TITLE AND GENERAL MATTERS

17 12A:8-101. Short Title

18 This chapter may be cited as Uniform Commercial  
19 Code--Investment Securities.

20 12A:8-102. Definitions.

21 a. In this chapter:

22 (1) "Adverse claim" means a claim that a claimant has a property  
23 interest in a financial asset and that it is a violation of the rights of the  
24 claimant for another person to hold, transfer, or deal with the financial  
25 asset.

26 (2) "Bearer form," as applied to a certificated security, means a  
27 form in which the security is payable to the bearer of the security  
28 certificate according to its terms but not by reason of an indorsement.

29 (3) "Broker" means a person defined as a broker or dealer under  
30 the federal securities laws, but without excluding a bank acting in that  
31 capacity.

32 (4) "Certificated security" means a security that is represented by

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 a certificate.

2 (5) "Clearing corporation" means:

3 (a) a person that is registered as a "clearing agency" under the  
4 federal securities laws;

5 (b) a federal reserve bank; or

6 (c) any other person that provides clearance or settlement services  
7 with respect to financial assets that would require it to register as a  
8 clearing agency under the federal securities laws but for an exclusion  
9 or exemption from the registration requirement, if its activities as a  
10 clearing corporation, including promulgation of rules, are subject to  
11 regulation by a federal or state governmental authority.

12 (6) "Communicate" means to:

13 (a) send a signed writing; or

14 (b) transmit information by any mechanism agreed upon by the  
15 persons transmitting and receiving the information.

16 (7) "Entitlement holder" means a person identified in the records  
17 of a securities intermediary as the person having a security entitlement  
18 against the securities intermediary. If a person acquires a security  
19 entitlement by virtue of paragraphs (2) or (3) of subsection b. of  
20 12A:8-501, that person is the entitlement holder.

21 (8) "Entitlement order" means a notification communicated to a  
22 securities intermediary directing transfer or redemption of a financial  
23 asset to which the entitlement holder has a security entitlement.

24 (9) "Financial asset," except as otherwise provided in 12A:8-103,  
25 means:

26 (a) a security;

27 (b) an obligation of a person or a share, participation, or other  
28 interest in a person or in property or an enterprise of a person, which  
29 is, or is of a type, dealt in or traded on financial markets, or which is  
30 recognized in any area in which it is issued or dealt in as a medium for  
31 investment; or

32 (c) any property that is held by a securities intermediary for another  
33 person in a securities account if the securities intermediary has  
34 expressly agreed with the other person that the property is to be  
35 treated as a financial asset under this chapter.

36 As context requires, the term means either the interest itself or the  
37 means by which a person's claim to it is evidenced, including a  
38 certificated or uncertificated security, a security certificate, or a  
39 security entitlement.

40 (10) "Good faith," for purposes of the obligation of good faith in  
41 the performance or enforcement of contracts or duties within this  
42 chapter, means honesty in fact and the observance of reasonable  
43 commercial standards of fair dealing.

44 (11) "Indorsement" means a signature that alone or accompanied  
45 by other words is made on a security certificate in registered form or  
46 on a separate document for the purpose of assigning, transferring, or

1 redeeming the security or granting a power to assign, transfer, or  
2 redeem it.

3 (12) "Instruction" means a notification communicated to the issuer  
4 of an uncertificated security which directs that the transfer of the  
5 security be registered or that the security be redeemed.

6 (13) "Registered form," as applied to a certificated security, means  
7 a form in which:

8 (a) the security certificate specifies a person entitled to the security;  
9 and

10 (b) a transfer of the security may be registered upon books  
11 maintained for that purpose by or on behalf of the issuer, or the  
12 security certificate so states.

13 (14) "Securities intermediary" means:

14 (a) a clearing corporation; or

15 (b) a person, including a bank or broker, that in the ordinary course  
16 of its business maintains securities accounts for others and is acting in  
17 that capacity.

18 (15) "Security," except as otherwise provided in 12A:8-103, means  
19 an obligation of an issuer or a share, participation, or other interest in  
20 an issuer or in property or an enterprise of an issuer:

21 (a) which is represented by a security certificate in bearer or  
22 registered form, or the transfer of which may be registered upon books  
23 maintained for that purpose by or on behalf of the issuer;

24 (b) which is one of a class or series or by its terms is divisible into  
25 a class or series of shares, participations, interests, or obligations; and

26 (c) which:

27 (A) is, or is of a type, dealt in or traded on securities exchanges or  
28 securities markets; or

29 (B) is a medium for investment and by its terms expressly provides  
30 that it is a security governed by this chapter.

31 (16) "Security certificate" means a certificate representing a  
32 security.

33 (17) "Security entitlement" means the rights and property interest  
34 of an entitlement holder with respect to a financial asset specified in  
35 12A:8-501 through 12A:8-511.

36 (18) "Uncertificated security" means a security that is not  
37 represented by a certificate.

38 b. Other definitions applying to this chapter and the sections in  
39 which they appear are:

40	Appropriate person	12A:8-107
41	Control	12A:8-106
42	Delivery	12A:8-301
43	Investment company security	12A:8-103
44	Issuer	12A:8-201
45	Overissue	12A:8-210
46	Protected purchaser	12A:8-303



1 12A:8-511, but is a purchaser of any security, security entitlement, or  
2 other financial asset held by the securities intermediary only to the  
3 extent provided in 12A:8-503.

4 d. Unless the context shows that a different meaning is intended,  
5 a person who is required by other law, regulation, rule, or agreement  
6 to transfer, deliver, present, surrender, exchange, or otherwise put in  
7 the possession of another person a security or financial asset satisfies  
8 that requirement by causing the other person to acquire an interest in  
9 the security or financial asset pursuant to subsection a. or b. of this  
10 section.

11 12A:8-105. Notice of Adverse Claim.

12 a. A person has notice of an adverse claim if:

13 (1) the person knows of the adverse claim;

14 (2) the person is aware of facts sufficient to indicate that there is a  
15 significant probability that the adverse claim exists and deliberately  
16 avoids information that would establish the existence of the adverse  
17 claim; or

18 (3) the person has a duty, imposed by statute or regulation, to  
19 investigate whether an adverse claim exists, and the investigation so  
20 required would establish the existence of the adverse claim.

21 b. Having knowledge that a financial asset or interest therein is or  
22 has been transferred by a representative imposes no duty of inquiry  
23 into the rightfulness of a transaction and is not notice of an adverse  
24 claim. However, a person who knows that a representative has  
25 transferred a financial asset or interest therein in a transaction that is,  
26 or whose proceeds are being used, for the individual benefit of the  
27 representative or otherwise in breach of duty has notice of an adverse  
28 claim.

29 c. An act or event that creates a right to immediate performance of  
30 the principal obligation represented by a security certificate or sets a  
31 date on or after which the certificate is to be presented or surrendered  
32 for redemption or exchange does not itself constitute notice of an  
33 adverse claim except in the case of a transfer more than:

34 (1) one year after a date set for presentment or surrender for  
35 redemption or exchange; or

36 (2) six months after a date set for payment of money against  
37 presentation or surrender of the certificate, if money was available for  
38 payment on that date.

39 d. A purchaser of a certificated security has notice of an adverse  
40 claim if the security certificate:

41 (1) whether in bearer or registered form, has been indorsed "for  
42 collection" or "for surrender" or for some other purpose not involving  
43 transfer; or

44 (2) is in bearer form and has on it an unambiguous statement that  
45 it is the property of a person other than the transferor, but the mere  
46 writing of a name on the certificate is not such a statement.

- 1 e. Filing of a financing statement under chapter 9 is not notice of  
2 an adverse claim to a financial asset.
- 3 12A:8-106. Control.
- 4 a. A purchaser has "control" of a certificated security in bearer  
5 form if the certificated security is delivered to the purchaser.
- 6 b. A purchaser has "control" of a certificated security in registered  
7 form if the certificated security is delivered to the purchaser, and:
- 8 (1) the certificate is indorsed to the purchaser or in blank by an  
9 effective indorsement; or
- 10 (2) the certificate is registered in the name of the purchaser, upon  
11 original issue or registration of transfer by the issuer.
- 12 c. A purchaser has "control" of an uncertificated security if:
- 13 (1) the uncertificated security is delivered to the purchaser; or
- 14 (2) the issuer has agreed that it will comply with instructions  
15 originated by the purchaser without further consent by the registered  
16 owner.
- 17 d. A purchaser has "control" of a security entitlement if:
- 18 (1) the purchaser becomes the entitlement holder; or
- 19 (2) the securities intermediary has agreed that it will comply with  
20 entitlement orders originated by the purchaser without further consent  
21 by the entitlement holder.
- 22 e. If an interest in a security entitlement is granted by the  
23 entitlement holder to the entitlement holder's own securities  
24 intermediary, the securities intermediary has control.
- 25 f. A purchaser who has satisfied the requirements of paragraph (2)  
26 of subsection c. or paragraph (2) of subsection d. of this section has  
27 control even if the registered owner in the case of paragraph (2) of  
28 subsection c. or the entitlement holder in the case of paragraph (2) of  
29 subsection d. of this section retains the right to make substitutions for  
30 the uncertificated security or security entitlement, to originate  
31 instructions or entitlement orders to the issuer or securities  
32 intermediary, or otherwise to deal with the uncertificated security or  
33 security entitlement.
- 34 g. An issuer or a securities intermediary may not enter into an  
35 agreement of the kind described in of paragraph (2) subsection c. or  
36 paragraph (2) of subsection d. of this section without the consent of  
37 the registered owner or entitlement holder, but an issuer or a securities  
38 intermediary is not required to enter into such an agreement even  
39 though the registered owner or entitlement holder so directs. An  
40 issuer or securities intermediary that has entered into such an  
41 agreement is not required to confirm the existence of the agreement to  
42 another party unless requested to do so by the registered owner or  
43 entitlement holder.
- 44 12A:8-107. Whether Indorsement, Instruction, or Entitlement  
45 Order is Effective.
- 46 a. "Appropriate person" means:

- 1 (1) with respect to an indorsement, the person specified by a  
2 security certificate or by an effective special indorsement to be entitled  
3 to the security;
- 4 (2) with respect to an instruction, the registered owner of an  
5 uncertificated security;
- 6 (3) with respect to an entitlement order, the entitlement holder;
- 7 (4) if the person designated in paragraph (1), (2), or (3) of this  
8 subsection a. is deceased, the designated person's successor taking  
9 under other law or the designated person's personal representative  
10 acting for the estate of the decedent; or
- 11 (5) if the person designated in paragraph (1), (2), or (3) of this  
12 subsection a. lacks capacity, the designated person's guardian,  
13 conservator, or other similar representative who has power under  
14 other law to transfer the security or financial asset.
- 15 b. An indorsement, instruction, or entitlement order is effective if:
- 16 (1) it is made by the appropriate person;
- 17 (2) it is made by a person who has power under the law of agency  
18 to transfer the security or financial asset on behalf of the appropriate  
19 person, including, in the case of an instruction or entitlement order, a  
20 person who has control under paragraph (2) of subsection c. or  
21 paragraph (2) of subsection d. of 12A:8-106; or
- 22 (3) the appropriate person has ratified it or is otherwise precluded  
23 from asserting its ineffectiveness.
- 24 c. An indorsement, instruction, or entitlement order made by a  
25 representative is effective even if:
- 26 (1) the representative has failed to comply with a controlling  
27 instrument or with the law of the State having jurisdiction of the  
28 representative relationship, including any law requiring the  
29 representative to obtain court approval of the transaction; or
- 30 (2) the representative's action in making the indorsement,  
31 instruction, or entitlement order or using the proceeds of the  
32 transaction is otherwise a breach of duty.
- 33 d. If a security is registered in the name of or specially indorsed to  
34 a person described as a representative, or if a securities account is  
35 maintained in the name of a person described as a representative, an  
36 indorsement, instruction, or entitlement order made by the person is  
37 effective even though the person is no longer serving in the described  
38 capacity.
- 39 e. Effectiveness of an indorsement, instruction, or entitlement  
40 order is determined as of the date the indorsement, instruction, or  
41 entitlement order is made, and an indorsement, instruction, or  
42 entitlement order does not become ineffective by reason of any later  
43 change of circumstances.
- 44 12A:8-108. Warranties in Direct Holding.
- 45 a. A person who transfers a certificated security to a purchaser for  
46 value warrants to the purchaser, and an indorser, if the transfer is by

- 1 indorsement, warrants to any subsequent purchaser, that:
- 2 (1) the certificate is genuine and has not been materially altered;
- 3 (2) the transferor or indorser does not know of any fact that might
- 4 impair the validity of the security;
- 5 (3) there is no adverse claim to the security;
- 6 (4) the transfer does not violate any restriction on transfer;
- 7 (5) if the transfer is by indorsement, the indorsement is made by an
- 8 appropriate person, or if the indorsement is by an agent, the agent has
- 9 actual authority to act on behalf of the appropriate person; and
- 10 (6) the transfer is otherwise effective and rightful.
- 11 b. A person who originates an instruction for registration of
- 12 transfer of an uncertificated security to a purchaser for value warrants
- 13 to the purchaser that:
- 14 (1) the instruction is made by an appropriate person, or if the
- 15 instruction is by an agent, the agent has actual authority to act on
- 16 behalf of the appropriate person;
- 17 (2) the security is valid;
- 18 (3) there is no adverse claim to the security; and
- 19 (4) at the time the instruction is presented to the issuer:
- 20 (a) the purchaser will be entitled to the registration of transfer;
- 21 (b) the transfer will be registered by the issuer free from all liens,
- 22 security interests, restrictions, and claims other than those specified in
- 23 the instruction;
- 24 (c) the transfer will not violate any restriction on transfer; and
- 25 (d) the requested transfer will otherwise be effective and rightful.
- 26 c. A person who transfers an uncertificated security to a purchaser
- 27 for value and does not originate an instruction in connection with the
- 28 transfer warrants that:
- 29 (1) the uncertificated security is valid;
- 30 (2) there is no adverse claim to the security;
- 31 (3) the transfer does not violate any restriction on transfer; and
- 32 (4) the transfer is otherwise effective and rightful.
- 33 d. A person who indorses a security certificate warrants to the
- 34 issuer that:
- 35 (1) there is no adverse claim to the security; and
- 36 (2) the indorsement is effective.
- 37 e. A person who originates an instruction for registration of
- 38 transfer of an uncertificated security warrants to the issuer that:
- 39 (1) the instruction is effective; and
- 40 (2) at the time the instruction is presented to the issuer the
- 41 purchaser will be entitled to the registration of transfer.
- 42 f. A person who presents a certificated security for registration of
- 43 transfer or for payment or exchange warrants to the issuer that the
- 44 person is entitled to the registration, payment, or exchange, but a
- 45 purchaser for value and without notice of adverse claims to whom
- 46 transfer is registered warrants only that the person has no knowledge

1 of any unauthorized signature in a necessary indorsement.

2 g. If a person acts as agent of another in delivering a certificated  
3 security to a purchaser, the identity of the principal was known to the  
4 person to whom the certificate was delivered, and the certificate  
5 delivered by the agent was received by the agent from the principal or  
6 received by the agent from another person at the direction of the  
7 principal, the person delivering the security certificate warrants only  
8 that the delivering person has authority to act for the principal and  
9 does not know of any adverse claim to the certificated security.

10 h. A secured party who redelivers a security certificate received,  
11 or after payment and on order of the debtor delivers the security  
12 certificate to another person, makes only the warranties of an agent  
13 under subsection g. of this section.

14 i. Except as otherwise provided in subsection g. of this section, a  
15 broker acting for a customer makes to the issuer and a purchaser the  
16 warranties provided in subsections a. through f. of this section. A  
17 broker that delivers a security certificate to its customer, or causes its  
18 customer to be registered as the owner of an uncertificated security,  
19 makes to the customer the warranties provided in subsection a. or b.  
20 of this section, and has the rights and privileges of a purchaser under  
21 this section. The warranties of and in favor of the broker acting as an  
22 agent are in addition to applicable warranties given by and in favor of  
23 the customer.

24 12A:8-109. Warranties in Indirect Holding.

25 a. A person who originates an entitlement order to a securities  
26 intermediary warrants to the securities intermediary that:

27 (1) the entitlement order is made by an appropriate person, or if the  
28 entitlement order is by an agent, the agent has actual authority to act  
29 on behalf of the appropriate person; and

30 (2) there is no adverse claim to the security entitlement.

31 b. A person who delivers a security certificate to a securities  
32 intermediary for credit to a securities account or originates an  
33 instruction with respect to an uncertificated security directing that the  
34 uncertificated security be credited to a securities account makes to the  
35 securities intermediary the warranties specified in subsection a. or b.  
36 of 12A:8-108.

37 c. If a securities intermediary delivers a security certificate to its  
38 entitlement holder or causes its entitlement holder to be registered as  
39 the owner of an uncertificated security, the securities intermediary  
40 makes to the entitlement holder the warranties specified in subsection  
41 a. or b. of 12A:8-108.

42 12A:8-110. Applicability; Choice of Law.

43 a. The local law of the issuer's jurisdiction, as specified in  
44 subsection d. of this section, governs:

45 (1) the validity of a security;

46 (2) the rights and duties of the issuer with respect to registration of

- 1 transfer;
- 2 (3) the effectiveness of registration of transfer by the issuer;
- 3 (4) whether the issuer owes any duties to an adverse claimant to a  
4 security; and
- 5 (5) whether an adverse claim can be asserted against a person to  
6 whom transfer of a certificated or uncertificated security is registered  
7 or a person who obtains control of an uncertificated security.
- 8 b. The local law of the securities intermediary's jurisdiction, as  
9 specified in subsection e. of this section, governs:
- 10 (1) acquisition of a security entitlement from the securities  
11 intermediary;
- 12 (2) the rights and duties of the securities intermediary and  
13 entitlement holder arising out of a security entitlement;
- 14 (3) whether the securities intermediary owes any duties to an  
15 adverse claimant to a security entitlement; and
- 16 (4) whether an adverse claim can be asserted against a person who  
17 acquires a security entitlement from the securities intermediary or a  
18 person who purchases a security entitlement or interest therein from  
19 an entitlement holder.
- 20 c. The local law of the jurisdiction in which a security certificate is  
21 located at the time of delivery governs whether an adverse claim can  
22 be asserted against a person to whom the security certificate is  
23 delivered.
- 24 d. "Issuer's jurisdiction" means the jurisdiction under which the  
25 issuer of the security is organized or, if permitted by the law of that  
26 jurisdiction, the law of another jurisdiction specified by the issuer. An  
27 issuer organized under the law of this State may specify the law of  
28 another jurisdiction as the law governing the matters specified in  
29 paragraphs (2) through (5) of subsection a. of this section.
- 30 e. The following rules determine a "securities intermediary's  
31 jurisdiction" for purposes of this section:
- 32 (1) If an agreement between the securities intermediary and its  
33 entitlement holder specifies that it is governed by the law of a  
34 particular jurisdiction, that jurisdiction is the securities intermediary's  
35 jurisdiction.
- 36 (2) If an agreement between the securities intermediary and its  
37 entitlement holder does not specify the governing law as provided in  
38 paragraph (1) of this subsection e., but expressly specifies that the  
39 securities account is maintained at an office in a particular jurisdiction,  
40 that jurisdiction is the securities intermediary's jurisdiction.
- 41 (3) If an agreement between the securities intermediary and its  
42 entitlement holder does not specify a jurisdiction as provided in  
43 paragraph (1) or (2) of this subsection e., the securities intermediary's  
44 jurisdiction is the jurisdiction in which is located the office identified  
45 in an account statement as the office serving the entitlement holder's  
46 account.

1 (4) If an agreement between the securities intermediary and its  
2 entitlement holder does not specify a jurisdiction as provided in  
3 paragraph (1) or (2) of this subsection e. and an account statement  
4 does not identify an office serving the entitlement holder's account as  
5 provided in paragraph (3) of this subsection e., the securities  
6 intermediary's jurisdiction is the jurisdiction in which is located the  
7 chief executive office of the securities intermediary.

8 f. A securities intermediary's jurisdiction is not determined by the  
9 physical location of certificates representing financial assets, or by the  
10 jurisdiction in which is organized the issuer of the financial asset with  
11 respect to which an entitlement holder has a security entitlement, or by  
12 the location of facilities for data processing or other record keeping  
13 concerning the account.

14 12A:8-111. Clearing Corporation Rules.

15 A rule adopted by a clearing corporation governing rights and  
16 obligations among the clearing corporation and its participants in the  
17 clearing corporation is effective even if the rule conflicts with this  
18 chapter and affects another party who does not consent to the rule.

19 12A:8-112. Creditor's Legal Process.

20 a. The interest of a debtor in a certificated security may be reached  
21 by a creditor only by actual seizure of the security certificate by the  
22 officer making the attachment or levy, except as otherwise provided  
23 in subsection d. of this section. However, a certificated security for  
24 which the certificate has been surrendered to the issuer may be reached  
25 by a creditor by legal process upon the issuer.

26 b. The interest of a debtor in an uncertificated security may be  
27 reached by a creditor only by legal process upon the issuer at its chief  
28 executive office in the United States, except as otherwise provided in  
29 subsection d. of this section.

30 c. The interest of a debtor in a security entitlement may be reached  
31 by a creditor only by legal process upon the securities intermediary  
32 with whom the debtor's securities account is maintained, except as  
33 otherwise provided in subsection d. of this section.

34 d. The interest of a debtor in a certificated security for which the  
35 certificate is in the possession of a secured party, or in an  
36 uncertificated security registered in the name of a secured party, or a  
37 security entitlement maintained in the name of a secured party, may be  
38 reached by a creditor by legal process upon the secured party.

39 e. A creditor whose debtor is the owner of a certificated security,  
40 uncertificated security, or security entitlement is entitled to aid from  
41 a court of competent jurisdiction, by injunction or otherwise, in  
42 reaching the certificated security, uncertificated security, or security  
43 entitlement or in satisfying the claim by means allowed at law or in  
44 equity in regard to property that cannot readily be reached by other  
45 legal process.

46 12A:8-113. Statute of Frauds Inapplicable.

1 A contract or modification of a contract for the sale or purchase of  
2 a security is enforceable whether or not there is a writing signed or  
3 record authenticated by a party against whom enforcement is sought,  
4 even if the contract or modification is not capable of performance  
5 within one year of its making.

6 12A:8-114. Evidentiary Rules concerning Certificated Securities.

7 The following rules apply in an action on a certificated security  
8 against the issuer:

9 (1) Unless specifically denied in the pleadings, each signature on  
10 a security certificate or in a necessary indorsement is admitted.

11 (2) If the effectiveness of a signature is put in issue, the burden of  
12 establishing effectiveness is on the party claiming under the signature,  
13 but the signature is presumed to be genuine or authorized.

14 (3) If signatures on a security certificate are admitted or  
15 established, production of the certificate entitles a holder to recover  
16 on it unless the defendant establishes a defense or a defect going to the  
17 validity of the security.

18 (4) If it is shown that a defense or defect exists, the plaintiff has  
19 the burden of establishing that the plaintiff or some person under  
20 whom the plaintiff claims is a person against whom the defense or  
21 defect cannot be asserted.

22 12A:8-115. Securities Intermediary and Others not Liable to  
23 Adverse Claimant.

24 A securities intermediary that has transferred a financial asset  
25 pursuant to an effective entitlement order, or a broker or other agent  
26 or bailee that has dealt with a financial asset at the direction of its  
27 customer or principal, is not liable to a person having an adverse claim  
28 to the financial asset, unless the securities intermediary, or broker or  
29 other agent or bailee:

30 (1) took the action after it had been served with an injunction,  
31 restraining order, or other legal process enjoining it from doing so,  
32 issued by a court of competent jurisdiction, and had a reasonable  
33 opportunity to act on the injunction, restraining order, or other legal  
34 process; or

35 (2) acted in collusion with the wrongdoer in violating the rights of  
36 the adverse claimant; or

37 (3) in the case of a security certificate that has been stolen, acted  
38 with notice of the adverse claim.

39 12A:8-116. Securities Intermediary as Purchaser for Value.

40 A securities intermediary that receives a financial asset and  
41 establishes a security entitlement to the financial asset in favor of an  
42 entitlement holder is a purchaser for value of the financial asset. A  
43 securities intermediary that acquires a security entitlement to a  
44 financial asset from another securities intermediary acquires the  
45 security entitlement for value if the securities intermediary acquiring  
46 the security entitlement establishes a security entitlement to the

1 financial asset in favor of an entitlement holder.

2

3

PART 2

4

ISSUE AND ISSUER

5

6 12A:8-201. Issuer.

7 a. With respect to an obligation on or a defense to a security, an  
8 "issuer" includes a person that:

9 (1) places or authorizes the placing of its name on a security  
10 certificate, other than as authenticating trustee, registrar, transfer  
11 agent, or the like, to evidence a share, participation, or other interest  
12 in its property or in an enterprise, or to evidence its duty to perform  
13 an obligation represented by the certificate;

14 (2) creates a share, participation, or other interest in its property or  
15 in an enterprise, or undertakes an obligation, that is an uncertificated  
16 security;

17 (3) directly or indirectly creates a fractional interest in its rights or  
18 property, if the fractional interest is represented by a security  
19 certificate; or

20 (4) becomes responsible for, or in place of, another person  
21 described as an issuer in this section.

22 b. With respect to an obligation on or defense to a security, a  
23 guarantor is an issuer to the extent of its guaranty, whether or not its  
24 obligation is noted on a security certificate.

25 c. With respect to a registration of a transfer, issuer means a  
26 person on whose behalf transfer books are maintained.

27 12A:8-202. Issuer's Responsibility and Defenses; Notice of Defect  
28 or Defense.

29 a. Even against a purchaser for value and without notice, the terms  
30 of a certificated security include terms stated on the certificate and  
31 terms made part of the security by reference on the certificate to  
32 another instrument, indenture, or document or to a constitution,  
33 statute, ordinance, rule, regulation, order, or the like, to the extent the  
34 terms referred to do not conflict with terms stated on the certificate.  
35 A reference under this subsection does not of itself charge a purchaser  
36 for value with notice of a defect going to the validity of the security,  
37 even if the certificate expressly states that a person accepting it admits  
38 notice. The terms of an uncertificated security include those stated in  
39 any instrument, indenture, or document or in a constitution, statute,  
40 ordinance, rule, regulation, order, or the like, pursuant to which the  
41 security is issued.

42 b. The following rules apply if an issuer asserts that a security is  
43 not valid:

44 (1) A security other than one issued by a government or  
45 governmental subdivision, agency, or instrumentality, even though  
46 issued with a defect going to its validity, is valid in the hands of a

1 purchaser for value and without notice of the particular defect unless  
2 the defect involves a violation of a constitutional provision. In that  
3 case, the security is valid in the hands of a purchaser for value and  
4 without notice of the defect, other than one who takes by original  
5 issue.

6 (2) Paragraph (1) of this subsection b. applies to an issuer that is  
7 a government or governmental subdivision, agency, or instrumentality  
8 only if there has been substantial compliance with the legal  
9 requirements governing the issue or the issuer has received a  
10 substantial consideration for the issue as a whole or for the particular  
11 security and a stated purpose of the issue is one for which the issuer  
12 has power to borrow money or issue the security.

13 c. Except as otherwise provided in 12A:8-205, lack of genuineness  
14 of a certificated security is a complete defense, even against a  
15 purchaser for value and without notice.

16 d. All other defenses of the issuer of a security, including  
17 nondelivery and conditional delivery of a certificated security, are  
18 ineffective against a purchaser for value who has taken the certificated  
19 security without notice of the particular defense.

20 e. This section does not affect the right of a party to cancel a  
21 contract for a security "when, as and if issued" or "when distributed"  
22 in the event of a material change in the character of the security that  
23 is the subject of the contract or in the plan or arrangement pursuant to  
24 which the security is to be issued or distributed.

25 f. If a security is held by a securities intermediary against whom an  
26 entitlement holder has a security entitlement with respect to the  
27 security, the issuer may not assert any defense that the issuer could not  
28 assert if the entitlement holder held the security directly.

29 12A:8-203. Staleness as Notice of Defect or Defense.

30 After an act or event, other than a call that has been revoked,  
31 creating a right to immediate performance of the principal obligation  
32 represented by a certificated security or setting a date on or after  
33 which the security is to be presented or surrendered for redemption or  
34 exchange, a purchaser is charged with notice of any defect in its issue  
35 or defense of the issuer, if the act or event:

36 a. requires the payment of money, the delivery of a certificated  
37 security, the registration of transfer of an uncertificated security, or  
38 any of them on presentation or surrender of the security certificate, the  
39 money or security is available on the date set for payment or exchange,  
40 and the purchaser takes the security more than one year after that date;  
41 or

42 b. is not covered by subsection a. of this section and the purchaser  
43 takes the security more than two years after the date set for surrender  
44 or presentation or the date on which performance became due.

45 12A:8-204. Effect of Issuer's Restriction on Transfer.

46 A restriction on transfer of a security imposed by the issuer, even

1 if otherwise lawful, is ineffective against a person without knowledge  
2 of the restriction unless:

3 a. the security is certificated and the restriction is noted  
4 conspicuously on the security certificate; or

5 b. the security is uncertificated and the registered owner has been  
6 notified of the restriction.

7 12A:8-205. Effect of Unauthorized Signature on Security  
8 Certificate.

9 An unauthorized signature placed on a security certificate before or  
10 in the course of issue is ineffective, but the signature is effective in  
11 favor of a purchaser for value of the certificated security if the  
12 purchaser is without notice of the lack of authority and the signing has  
13 been done by:

14 a. an authenticating trustee, registrar, transfer agent, or other  
15 person entrusted by the issuer with the signing of the security  
16 certificate or of similar security certificates, or the immediate  
17 preparation for signing of any of them; or

18 b. an employee of the issuer, or of any of the persons listed in  
19 subsection a. of this section, entrusted with responsible handling of the  
20 security certificate.

21 12A:8-206. Completion or Alteration of Security Certificate.

22 a. If a security certificate contains the signatures necessary to its  
23 issue or transfer but is incomplete in any other respect:

24 (1) any person may complete it by filling in the blanks as  
25 authorized; and

26 (2) even if the blanks are incorrectly filled in, the security  
27 certificate as completed is enforceable by a purchaser who took it for  
28 value and without notice of the incorrectness.

29 b. A complete security certificate that has been improperly altered,  
30 even if fraudulently, remains enforceable, but only according to its  
31 original terms.

32 12A:8-207. Rights and Duties of Issuer with Respect to Registered  
33 Owners.

34 a. Before due presentment for registration of transfer of a  
35 certificated security in registered form or of an instruction requesting  
36 registration of transfer of an uncertificated security, the issuer or  
37 indenture trustee may treat the registered owner as the person  
38 exclusively entitled to vote, receive notifications, and otherwise  
39 exercise all the rights and powers of an owner.

40 b. This chapter does not affect the liability of the registered owner  
41 of a security for a call, assessment, or the like.

42 12A:8-208. Effect of Signature of Authenticating Trustee,  
43 Registrar, or Transfer Agent.

44 a. A person signing a security certificate as authenticating trustee,  
45 registrar, transfer agent, or the like, warrants to a purchaser for value  
46 of the certificated security, if the purchaser is without notice of a

1 particular defect, that:

2 (1) the certificate is genuine;

3 (2) the person's own participation in the issue of the security is  
4 within the person's capacity and within the scope of the authority  
5 received by the person from the issuer; and

6 (3) the person has reasonable grounds to believe that the  
7 certificated security is in the form and within the amount the issuer is  
8 authorized to issue.

9 b. Unless otherwise agreed, a person signing under subsection a.  
10 of this section does not assume responsibility for the validity of the  
11 security in other respects.

12 12A:8-209. Issuer's Lien.

13 A lien in favor of an issuer upon a certificated security is valid  
14 against a purchaser only if the right of the issuer to the lien is noted  
15 conspicuously on the security certificate.

16 12A:8-210. Overissue.

17 a. In this section, "overissue" means the issue of securities in  
18 excess of the amount the issuer has corporate power to issue, but an  
19 overissue does not occur if appropriate action has cured the overissue.

20 b. Except as otherwise provided in subsections c. and d. of this  
21 section, the provisions of this chapter which validate a security or  
22 compel its issue or reissue do not apply to the extent that validation,  
23 issue, or reissue would result in overissue.

24 c. If an identical security not constituting an overissue is  
25 reasonably available for purchase, a person entitled to issue or  
26 validation may compel the issuer to purchase the security and deliver  
27 it if certificated or register its transfer if uncertificated, against  
28 surrender of any security certificate the person holds.

29 d. If a security is not reasonably available for purchase, a person  
30 entitled to issue or validation may recover from the issuer the price the  
31 person or the last purchaser for value paid for it with interest from the  
32 date of the person's demand.

33

34

### PART 3

35

## TRANSFER OF CERTIFICATED AND UNCERTIFICATED SECURITIES

36

37

38 12A:8-301. Delivery.

39 a. Delivery of a certificated security to a purchaser occurs when:

40 (1) the purchaser acquires possession of the security certificate;

41 (2) another person, other than a securities intermediary, either  
42 acquires possession of the security certificate on behalf of the  
43 purchaser or, having previously acquired possession of the certificate,  
44 acknowledges that it holds for the purchaser; or

45 (3) a securities intermediary acting on behalf of the purchaser  
46 acquires possession of the security certificate, only if the certificate is

1 in registered form and has been specially indorsed to the purchaser by  
2 an effective indorsement.

3 b. Delivery of an uncertificated security to a purchaser occurs  
4 when:

5 (1) the issuer registers the purchaser as the registered owner, upon  
6 original issue or registration of transfer; or

7 (2) another person, other than a securities intermediary, either  
8 becomes the registered owner of the uncertificated security on behalf  
9 of the purchaser or, having previously become the registered owner,  
10 acknowledges that it holds for the purchaser.

11 12A:8-302. Rights of Purchaser.

12 a. Except as otherwise provided in subsections b. and c. of this  
13 section, upon delivery of a certificated or uncertificated security to a  
14 purchaser, the purchaser acquires all rights in the security that the  
15 transferor had or had power to transfer.

16 b. A purchaser of a limited interest acquires rights only to the  
17 extent of the interest purchased.

18 c. A purchaser of a certificated security who as a previous holder  
19 had notice of an adverse claim does not improve its position by taking  
20 from a protected purchaser.

21 12A:8-303. Protected Purchaser.

22 a. "Protected purchaser" means a purchaser of a certificated or  
23 uncertificated security, or of an interest therein, who:

24 (1) gives value;

25 (2) does not have notice of any adverse claim to the security; and

26 (3) obtains control of the certificated or uncertificated security.

27 b. In addition to acquiring the rights of a purchaser, a protected  
28 purchaser also acquires its interest in the security free of any adverse  
29 claim.

30 12A:8-304. Indorsement.

31 a. An indorsement may be in blank or special. An indorsement in  
32 blank includes an indorsement to bearer. A special indorsement  
33 specifies to whom a security is to be transferred or who has power to  
34 transfer it. A holder may convert a blank indorsement to a special  
35 indorsement.

36 b. An indorsement purporting to be only of part of a security  
37 certificate representing units intended by the issuer to be separately  
38 transferable is effective to the extent of the indorsement.

39 c. An indorsement, whether special or in blank, does not constitute  
40 a transfer until delivery of the certificate on which it appears or, if the  
41 indorsement is on a separate document, until delivery of both the  
42 document and the certificate.

43 d. If a security certificate in registered form has been delivered to  
44 a purchaser without a necessary indorsement, the purchaser may  
45 become a protected purchaser only when the indorsement is supplied.  
46 However, against a transferor, a transfer is complete upon delivery and

1 the purchaser has a specifically enforceable right to have any necessary  
2 indorsement supplied.

3 e. An indorsement of a security certificate in bearer form may give  
4 notice of an adverse claim to the certificate, but it does not otherwise  
5 affect a right to registration that the holder possesses.

6 f. Unless otherwise agreed, a person making an indorsement  
7 assumes only the obligations provided in 12A:8-108 and not an  
8 obligation that the security will be honored by the issuer.

9 12A:8-305. Instruction.

10 a. If an instruction has been originated by an appropriate person  
11 but is incomplete in any other respect, any person may complete it as  
12 authorized and the issuer may rely on it as completed, even though it  
13 has been completed incorrectly.

14 b. Unless otherwise agreed, a person initiating an instruction  
15 assumes only the obligations imposed by 12A:8-108 and not an  
16 obligation that the security will be honored by the issuer.

17 12A:8-306. Effect of Guaranteeing Signature, Indorsement, or  
18 Instruction.

19 a. A person who guarantees a signature of an indorser of a security  
20 certificate warrants that at the time of signing:

21 (1) the signature was genuine;

22 (2) the signer was an appropriate person to indorse, or if the  
23 signature is by an agent, the agent had actual authority to act on behalf  
24 of the appropriate person; and

25 (3) the signer had legal capacity to sign.

26 b. A person who guarantees a signature of the originator of an  
27 instruction warrants that at the time of signing:

28 (1) the signature was genuine;

29 (2) the signer was an appropriate person to originate the  
30 instruction, or if the signature is by an agent, the agent had actual  
31 authority to act on behalf of the appropriate person, if the person  
32 specified in the instruction as the registered owner was, in fact, the  
33 registered owner, as to which fact the signature guarantor does not  
34 make a warranty; and

35 (3) the signer had legal capacity to sign.

36 c. A person who specially guarantees the signature of an originator  
37 of an instruction makes the warranties of a signature guarantor under  
38 subsection b. of this section and also warrants that at the time the  
39 instruction is presented to the issuer:

40 (1) the person specified in the instruction as the registered owner  
41 of the uncertificated security will be the registered owner; and

42 (2) the transfer of the uncertificated security requested in the  
43 instruction will be registered by the issuer free from all liens, security  
44 interests, restrictions, and claims other than those specified in the  
45 instruction.

46 d. A guarantor under subsections a. and b. of this section or a

1 special guarantor under subsection c. of this section does not  
2 otherwise warrant the rightfulness of the transfer.

3 e. A person who guarantees an indorsement of a security certificate  
4 makes the warranties of a signature guarantor under subsection a. of  
5 this section and also warrants the rightfulness of the transfer in all  
6 respects.

7 f. A person who guarantees an instruction requesting the transfer  
8 of an uncertificated security makes the warranties of a special  
9 signature guarantor under subsection c. of this section and also  
10 warrants the rightfulness of the transfer in all respects.

11 g. An issuer may not require a special guaranty of signature, a  
12 guaranty of indorsement, or a guaranty of instruction as a condition to  
13 registration of transfer.

14 h. The warranties under this section are made to a person taking or  
15 dealing with the security in reliance on the guaranty, and the  
16 guarantor is liable to the person for loss resulting from their breach.  
17 An indorser or originator of an instruction whose signature,  
18 indorsement, or instruction has been guaranteed is liable to a guarantor  
19 for any loss suffered by the guarantor as a result of breach of the  
20 warranties of the guarantor.

21 12A:8-307. Purchaser's Right to Requisites for Registration of  
22 Transfer.

23 Unless otherwise agreed, the transferor of a security on due demand  
24 shall supply the purchaser with proof of authority to transfer or with  
25 any other requisite necessary to obtain registration of the transfer of  
26 the security, but if the transfer is not for value, a transferor need not  
27 comply unless the purchaser pays the necessary expenses. If the  
28 transferor fails within a reasonable time to comply with the demand,  
29 the purchaser may reject or rescind the transfer.

30

31

#### PART 4

32

#### REGISTRATION

33

34 12A:8-401. Duty of Issuer to Register Transfer.

35 a. If a certificated security in registered form is presented to an  
36 issuer with a request to register transfer or an instruction is presented  
37 to an issuer with a request to register transfer of an uncertificated  
38 security, the issuer shall register the transfer as requested if:

39 (1) under the terms of the security the person seeking registration  
40 of transfer is eligible to have the security registered in its name;

41 (2) the indorsement or instruction is made by the appropriate  
42 person or by an agent who has actual authority to act on behalf of the  
43 appropriate person;

44 (3) reasonable assurance is given that the indorsement or instruction  
45 is genuine and authorized (12A:8-402);

46 (4) any applicable law relating to the collection of taxes has been

- 1 complied with;
- 2 (5) the transfer does not violate any restriction on transfer imposed
- 3 by the issuer in accordance with 12A:8-204;
- 4 (6) a demand that the issuer not register transfer has not become
- 5 effective under 12A:8-403, or the issuer has complied with subsection
- 6 b. of 12A:8-403 but no legal process or indemnity bond is obtained as
- 7 provided in subsection d. of 12A:8-403; and
- 8 (7) the transfer is in fact rightful or is to a protected purchaser.
- 9 b. If an issuer is under a duty to register a transfer of a security, the
- 10 issuer is liable to a person presenting a certificated security or an
- 11 instruction for registration or to the person's principal for loss
- 12 resulting from unreasonable delay in registration or failure or refusal
- 13 to register the transfer.
- 14 12A:8-402. Assurance that Indorsement or Instruction is Effective.
- 15 a. An issuer may require the following assurance that each
- 16 necessary indorsement or each instruction is genuine and authorized:
- 17 (1) in all cases, a guaranty of the signature of the person making an
- 18 indorsement or originating an instruction including, in the case of an
- 19 instruction, reasonable assurance of identity;
- 20 (2) if the indorsement is made or the instruction is originated by an
- 21 agent, appropriate assurance of actual authority to sign;
- 22 (3) if the indorsement is made or the instruction is originated by a
- 23 fiduciary pursuant to paragraph (4) or (5) of subsection a. of
- 24 12A:8-107, appropriate evidence of appointment or incumbency;
- 25 (4) if there is more than one fiduciary, reasonable assurance that all
- 26 who are required to sign have done so; and
- 27 (5) if the indorsement is made or the instruction is originated by a
- 28 person not covered by another provision of this subsection, assurance
- 29 appropriate to the case corresponding as nearly as may be to the
- 30 provisions of this subsection.
- 31 b. An issuer may elect to require reasonable assurance beyond that
- 32 specified in this section.
- 33 c. In this section:
- 34 (1) "Guaranty of the signature" means a guaranty signed by or on
- 35 behalf of a person reasonably believed by the issuer to be responsible.
- 36 An issuer may adopt standards with respect to responsibility if they are
- 37 not manifestly unreasonable.
- 38 (2) "Appropriate evidence of appointment or incumbency" means:
- 39 (a) in the case of a fiduciary appointed or qualified by a court, a
- 40 certificate issued by or under the direction or supervision of the court
- 41 or an officer thereof and dated within 60 days before the date of
- 42 presentation for transfer; or
- 43 (b) in any other case, a copy of a document showing the
- 44 appointment or a certificate issued by or on behalf of a person
- 45 reasonably believed by an issuer to be responsible or, in the absence of
- 46 that document or certificate, other evidence the issuer reasonably

1 considers appropriate.

2 12A:8-403. Demand that Issuer not Register Transfer.

3 a. A person who is an appropriate person to make an indorsement  
4 or originate an instruction may demand that the issuer not register  
5 transfer of a security by communicating to the issuer a notification that  
6 identifies the registered owner and the issue of which the security is a  
7 part and provides an address for communications directed to the  
8 person making the demand. The demand is effective only if it is  
9 received by the issuer at a time and in a manner affording the issuer  
10 reasonable opportunity to act on it.

11 b. If a certificated security in registered form is presented to an  
12 issuer with a request to register transfer or an instruction is presented  
13 to an issuer with a request to register transfer of an uncertificated  
14 security after a demand that the issuer not register transfer has become  
15 effective, the issuer shall promptly communicate to the person who  
16 initiated the demand at the address provided in the demand and the  
17 person who presented the security for registration of transfer or  
18 initiated the instruction requesting registration of transfer a  
19 notification stating that:

20 (1) the certificated security has been presented for registration of  
21 transfer or the instruction for registration of transfer of the  
22 uncertificated security has been received;

23 (2) a demand that the issuer not register transfer had previously  
24 been received; and

25 (3) the issuer will withhold registration of transfer for a period of  
26 time stated in the notification in order to provide the person who  
27 initiated the demand an opportunity to obtain legal process or an  
28 indemnity bond.

29 c. The period described in paragraph (3) of subsection b. of this  
30 section may not exceed 30 days after the date of communication of the  
31 notification. A shorter period may be specified by the issuer if it is not  
32 manifestly unreasonable.

33 d. An issuer is not liable to a person who initiated a demand that  
34 the issuer not register transfer for any loss the person suffers as a  
35 result of registration of a transfer pursuant to an effective indorsement  
36 or instruction if the person who initiated the demand does not, within  
37 the time stated in the issuer's communication, either:

38 (1) obtain an appropriate restraining order, injunction, or other  
39 process from a court of competent jurisdiction enjoining the issuer  
40 from registering the transfer; or

41 (2) file with the issuer an indemnity bond, sufficient in the issuer's  
42 judgment to protect the issuer and any transfer agent, registrar, or  
43 other agent of the issuer involved from any loss it or they may suffer  
44 by refusing to register the transfer.

45 e. This section does not relieve an issuer from liability for  
46 registering transfer pursuant to an indorsement or instruction that was

1 not effective.

2 12A:8-404. Wrongful Registration.

3 a. Except as otherwise provided in 12A:8-406, an issuer is liable  
4 for wrongful registration of transfer if the issuer has registered a  
5 transfer of a security to a person not entitled to it, and the transfer was  
6 registered:

7 (1) pursuant to an ineffective indorsement or instruction;

8 (2) after a demand that the issuer not register transfer became  
9 effective under subsection a. of 12A:8-403 and the issuer did not  
10 comply with subsection b. of 12A:8-403;

11 (3) after the issuer had been served with an injunction, restraining  
12 order, or other legal process enjoining it from registering the transfer,  
13 issued by a court of competent jurisdiction, and the issuer had a  
14 reasonable opportunity to act on the injunction, restraining order, or  
15 other legal process; or

16 (4) by an issuer acting in collusion with the wrongdoer.

17 b. An issuer that is liable for wrongful registration of transfer under  
18 subsection a. of this section on demand shall provide the person  
19 entitled to the security with a like certificated or uncertificated  
20 security, and any payments or distributions that the person did not  
21 receive as a result of the wrongful registration. If an overissue would  
22 result, the issuer's liability to provide the person with a like security is  
23 governed by 12A:8-210.

24 c. Except as otherwise provided in subsection a. of this section or  
25 in a law relating to the collection of taxes, an issuer is not liable to an  
26 owner or other person suffering loss as a result of the registration of  
27 a transfer of a security if registration was made pursuant to an  
28 effective indorsement or instruction.

29 12A:8-405. Replacement of Lost, Destroyed, or Wrongfully Taken  
30 Security.

31 a. If an owner of a certificated security, whether in registered or  
32 bearer form, claims that the certificate has been lost, destroyed, or  
33 wrongfully taken, the issuer shall issue a new certificate if the owner:

34 (1) so requests before the issuer has notice that the certificate has  
35 been acquired by a protected purchaser;

36 (2) files with the issuer a sufficient indemnity bond; and

37 (3) satisfies other reasonable requirements imposed by the issuer.

38 b. If, after the issue of a new security certificate, a protected  
39 purchaser of the original certificate presents it for registration of  
40 transfer, the issuer shall register the transfer unless an overissue would  
41 result. In that case, the issuer's liability is governed by 12A:8-210. In  
42 addition to any rights on the indemnity bond, an issuer may recover the  
43 new certificate from a person to whom it was issued or any person  
44 taking under that person, except a protected purchaser.

45 12A:8-406. Obligation to Notify Issuer of Lost, Destroyed, or  
46 Wrongfully Taken Security Certificate.

1 If a security certificate has been lost, apparently destroyed, or  
2 wrongfully taken, and the owner fails to notify the issuer of that fact  
3 within a reasonable time after the owner has notice of it and the issuer  
4 registers a transfer of the security before receiving notification, the  
5 owner may not assert against the issuer a claim for registering the  
6 transfer under 12A:8-404 or a claim to a new security certificate under  
7 12A:8-405.

8 12A:8-407. Authenticating Trustee, Transfer Agent, and Registrar.

9 A person acting as authenticating trustee, transfer agent, registrar,  
10 or other agent for an issuer in the registration of a transfer of its  
11 securities, in the issue of new security certificates or uncertificated  
12 securities, or in the cancellation of surrendered security certificates,  
13 has the same obligation to the holder or owner of a certificated or  
14 uncertificated security with regard to the particular functions  
15 performed as the issuer has in regard to those functions.

16  
17 PART 5

18 SECURITY ENTITLEMENTS

19  
20 12A:8-501. Securities Account; Acquisition of Security  
21 Entitlement from Securities Intermediary.

22 a. "Securities account" means an account to which a financial asset  
23 is or may be credited in accordance with an agreement under which the  
24 person maintaining the account undertakes to treat the person for  
25 whom the account is maintained as entitled to exercise the rights that  
26 comprise the financial asset.

27 b. Except as otherwise provided in subsections d. and e. of this  
28 section, a person acquires a security entitlement if a securities  
29 intermediary:

30 (1) indicates by book entry that a financial asset has been credited  
31 to the person's securities account;

32 (2) receives a financial asset from the person or acquires a financial  
33 asset for the person and, in either case, accepts it for credit to the  
34 person's securities account; or

35 (3) becomes obligated under other law, regulation, or rule to credit  
36 a financial asset to the person's securities account.

37 c. If a condition of subsection b. of this section has been met, a  
38 person has a security entitlement even though the securities  
39 intermediary does not itself hold the financial asset.

40 d. If a securities intermediary holds a financial asset for another  
41 person, and the financial asset is registered in the name of, payable to  
42 the order of, or specially indorsed to the other person, and has not  
43 been indorsed to the securities intermediary or in blank, the other  
44 person is treated as holding the financial asset directly rather than as  
45 having a security entitlement with respect to the financial asset.

46 e. Issuance of a security is not establishment of a security

1 entitlement.

2 12A:8-502. Assertion of Adverse Claim Against Entitlement  
3 Holder.

4 An action based on an adverse claim to a financial asset, whether  
5 framed in conversion, replevin, constructive trust, equitable lien, or  
6 other theory, may not be asserted against a person who acquires a  
7 security entitlement under 12A:8-501 for value and without notice of  
8 the adverse claim.

9 12A:8-503. Property Interest of Entitlement Holder in Financial  
10 Asset held by Securities Intermediary.

11 a. To the extent necessary for a securities intermediary to satisfy  
12 all security entitlements with respect to a particular financial asset, all  
13 interests in that financial asset held by the securities intermediary are  
14 held by the securities intermediary for the entitlement holders, are not  
15 property of the securities intermediary, and are not subject to claims  
16 of creditors of the securities intermediary, except as otherwise  
17 provided in 12A:8-511.

18 b. An entitlement holder's property interest with respect to a  
19 particular financial asset under subsection a. of this section is a pro  
20 rata property interest in all interests in that financial asset held by the  
21 securities intermediary, without regard to the time the entitlement  
22 holder acquired the security entitlement or the time the securities  
23 intermediary acquired the interest in that financial asset.

24 c. An entitlement holder's property interest with respect to a  
25 particular financial asset under subsection a. may be enforced against  
26 the securities intermediary only by exercise of the entitlement holder's  
27 rights under 12A:8-505 through 12A:8-508.

28 d. An entitlement holder's property interest with respect to a  
29 particular financial asset under subsection a. of this section may be  
30 enforced against a purchaser of the financial asset or interest therein  
31 only if:

32 (1) insolvency proceedings have been initiated by or against the  
33 securities intermediary;

34 (2) the securities intermediary does not have sufficient interests in  
35 the financial asset to satisfy the security entitlements of all of its  
36 entitlement holders to that financial asset;

37 (3) the securities intermediary violated its obligations under  
38 12A:8-504 by transferring the financial asset or interest therein to the  
39 purchaser; and

40 (4) the purchaser is not protected under subsection e. of this  
41 section.

42 The trustee or other liquidator, acting on behalf of all entitlement  
43 holders having security entitlements with respect to a particular  
44 financial asset, may recover the financial asset, or interest therein,  
45 from the purchaser. If the trustee or other liquidator elects not to  
46 pursue that right, an entitlement holder whose security entitlement

1 remains unsatisfied has the right to recover its interest in the financial  
2 asset from the purchaser.

3 e. An action based on the entitlement holder's property interest  
4 with respect to a particular financial asset under subsection a. of this  
5 section, whether framed in conversion, replevin, constructive trust,  
6 equitable lien, or other theory, may not be asserted against any  
7 purchaser of a financial asset or interest therein who gives value,  
8 obtains control, and does not act in collusion with the securities  
9 intermediary in violating the securities intermediary's obligations under  
10 12A:8-504.

11 12A:8-504. Duty of Securities Intermediary to Maintain Financial  
12 Asset.

13 a. A securities intermediary shall promptly obtain and thereafter  
14 maintain a financial asset in a quantity corresponding to the aggregate  
15 of all security entitlements it has established in favor of its entitlement  
16 holders with respect to that financial asset. The securities intermediary  
17 may maintain those financial assets directly or through one or more  
18 other securities intermediaries.

19 b. Except to the extent otherwise agreed by its entitlement holder,  
20 a securities intermediary may not grant any security interests in a  
21 financial asset it is obligated to maintain pursuant to subsection a. of  
22 this section.

23 c. A securities intermediary satisfies the duty in subsection a. of  
24 this section if:

25 (1) the securities intermediary acts with respect to the duty as  
26 agreed upon by the entitlement holder and the securities intermediary;  
27 or

28 (2) in the absence of agreement, the securities intermediary  
29 exercises due care in accordance with reasonable commercial  
30 standards to obtain and maintain the financial asset.

31 d. This section does not apply to a clearing corporation that is  
32 itself the obligor of an option or similar obligation to which its  
33 entitlement holders have security entitlements.

34 12A:8-505. Duty of Securities Intermediary with Respect to  
35 Payments and Distributions.

36 a. A securities intermediary shall take action to obtain a payment  
37 or distribution made by the issuer of a financial asset. A securities  
38 intermediary satisfies the duty if:

39 (1) the securities intermediary acts with respect to the duty as  
40 agreed upon by the entitlement holder and the securities intermediary;  
41 or

42 (2) in the absence of agreement, the securities intermediary  
43 exercises due care in accordance with reasonable commercial  
44 standards to attempt to obtain the payment or distribution.

45 b. A securities intermediary is obligated to its entitlement holder  
46 for a payment or distribution made by the issuer of a financial asset if

1 the payment or distribution is received by the securities intermediary.  
2 12A:8-506. Duty of Securities Intermediary to Exercise Rights as  
3 Directed by Entitlement Holder.

4 A securities intermediary shall exercise rights with respect to a  
5 financial asset if directed to do so by an entitlement holder. A  
6 securities intermediary satisfies the duty if:

7 a. the securities intermediary acts with respect to the duty as  
8 agreed upon by the entitlement holder and the securities intermediary;  
9 or

10 b. in the absence of agreement, the securities intermediary either  
11 places the entitlement holder in a position to exercise the rights  
12 directly or exercises due care in accordance with reasonable  
13 commercial standards to follow the direction of the entitlement holder.

14 12A:8-507. Duty of Securities Intermediary to Comply with  
15 Entitlement Order.

16 a. A securities intermediary shall comply with an entitlement order  
17 if the entitlement order is originated by the appropriate person, the  
18 securities intermediary has had reasonable opportunity to assure itself  
19 that the entitlement order is genuine and authorized, and the securities  
20 intermediary has had reasonable opportunity to comply with the  
21 entitlement order. A securities intermediary satisfies the duty if:

22 (1) the securities intermediary acts with respect to the duty as  
23 agreed upon by the entitlement holder and the securities intermediary;  
24 or

25 (2) in the absence of agreement, the securities intermediary  
26 exercises due care in accordance with reasonable commercial  
27 standards to comply with the entitlement order.

28 b. If a securities intermediary transfers a financial asset pursuant to  
29 an ineffective entitlement order, the securities intermediary shall  
30 reestablish a security entitlement in favor of the person entitled to it,  
31 and pay or credit any payments or distributions that the person did not  
32 receive as a result of the wrongful transfer. If the securities  
33 intermediary does not reestablish a security entitlement, the securities  
34 intermediary is liable to the entitlement holder for damages.

35 12A:8-508. Duty of Securities Intermediary to Change Entitlement  
36 Holder's Position to Other Form of Security Holding.

37 A securities intermediary shall act at the direction of an entitlement  
38 holder to change a security entitlement into another available form of  
39 holding for which the entitlement holder is eligible, or to cause the  
40 financial asset to be transferred to a securities account of the  
41 entitlement holder with another securities intermediary. A securities  
42 intermediary satisfies the duty if:

43 a. the securities intermediary acts as agreed upon by the  
44 entitlement holder and the securities intermediary; or

45 b. in the absence of agreement, the securities intermediary  
46 exercises due care in accordance with reasonable commercial

1 standards to follow the direction of the entitlement holder.

2 12A:8-509. Specification of Duties of Securities Intermediary by  
3 Other Statute or Regulation; Manner of Performance of Duties of  
4 Securities Intermediary and Exercise of Rights of Entitlement Holder.

5 a. If the substance of a duty imposed upon a securities intermediary  
6 by 12A:8-504 through 12A:8-508 is the subject of other statute,  
7 regulation, or rule, compliance with that statute, regulation, or rule  
8 satisfies the duty.

9 b. To the extent that specific standards for the performance of the  
10 duties of a securities intermediary or the exercise of the rights of an  
11 entitlement holder are not specified by other statute, regulation, or rule  
12 or by agreement between the securities intermediary and entitlement  
13 holder, the securities intermediary shall perform its duties and the  
14 entitlement holder shall exercise its rights in a commercially reasonable  
15 manner.

16 c. The obligation of a securities intermediary to perform the duties  
17 imposed by 12A:8-504 through 12A:8-508 is subject to:

18 (1) rights of the securities intermediary arising out of a security  
19 interest under a security agreement with the entitlement holder or  
20 otherwise; and

21 (2) rights of the securities intermediary under other law, regulation,  
22 rule, or agreement to withhold performance of its duties as a result of  
23 unfulfilled obligations of the entitlement holder to the securities  
24 intermediary.

25 d. The provisions of 12A:8-504 through 12A:8-508 do not require  
26 a securities intermediary to take any action that is prohibited by other  
27 statute, regulation, or rule.

28 12A:8-510. Rights of Purchaser of Security Entitlement from  
29 Entitlement Holder.

30 a. An action based on an adverse claim to a financial asset or  
31 security entitlement, whether framed in conversion, replevin,  
32 constructive trust, equitable lien, or other theory, may not be asserted  
33 against a person who purchases a security entitlement, or an interest  
34 therein, from an entitlement holder if the purchaser gives value, does  
35 not have notice of the adverse claim, and obtains control.

36 b. If an adverse claim could not have been asserted against an  
37 entitlement holder under 12A:8-502, the adverse claim cannot be  
38 asserted against a person who purchases a security entitlement, or an  
39 interest therein, from the entitlement holder.

40 c. In a case not covered by the priority rules in chapter 9, a  
41 purchaser for value of a security entitlement, or an interest therein,  
42 who obtains control has priority over a purchaser of a security  
43 entitlement, or an interest therein, who does not obtain control.  
44 Purchasers who have control rank equally, except that a securities  
45 intermediary as purchaser has priority over a conflicting purchaser  
46 who has control unless otherwise agreed by the securities

1 intermediary.

2 12A:8-511. Priority among Security Interests and Entitlement  
3 Holders.

4 a. Except as otherwise provided in subsections b. and c. of this  
5 section, if a securities intermediary does not have sufficient interests  
6 in a particular financial asset to satisfy both its obligations to  
7 entitlement holders who have security entitlements to that financial  
8 asset and its obligation to a creditor of the securities intermediary who  
9 has a security interest in that financial asset, the claims of entitlement  
10 holders, other than the creditor, have priority over the claim of the  
11 creditor.

12 b. A claim of a creditor of a securities intermediary who has a  
13 security interest in a financial asset held by a securities intermediary  
14 has priority over claims of the securities intermediary's entitlement  
15 holders who have security entitlements with respect to that financial  
16 asset if the creditor has control over the financial asset.

17 c. If a clearing corporation does not have sufficient financial assets  
18 to satisfy both its obligations to entitlement holders who have security  
19 entitlements with respect to a financial asset and its obligation to a  
20 creditor of the clearing corporation who has a security interest in that  
21 financial asset, the claim of the creditor has priority over the claims of  
22 entitlement holders.

23

24

## PART 6

25

### TRANSITION PROVISION

26

27 12A:8-603. Savings Clause.

28 a. This act does not affect an action or proceeding commenced  
29 before this act takes effect.

30 b. If a security interest in a security is perfected at the date this act  
31 takes effect, and the action by which the security interest was  
32 perfected would suffice to perfect a security interest under this act, no  
33 further action is required to continue perfection. If a security interest  
34 in a security is perfected at the date this act takes effect but the action  
35 by which the security interest was perfected would not suffice to  
36 perfect a security interest under this act, the security interest remains  
37 perfected for a period of four months after the effective date and  
38 continues perfected thereafter if appropriate action to perfect under  
39 this act is taken within that period. If a security interest is perfected  
40 at the date this act takes effect and the security interest can be  
41 perfected by filing under this act, a financing statement signed by the  
42 secured party instead of the debtor may be filed within that period to  
43 continue perfection or thereafter to perfect.

44

45 2. 12A:9-103 is amended to read as follows:

46 12A:9-103. Perfection of Security Interests in Multiple State

1 Transactions.

2 (1) Documents, instruments and ordinary goods.

3 (a) This subsection applies to documents and instruments and to  
4 goods other than those covered by a certificate of title described in  
5 subsection (2), mobile goods described in subsection (3), and minerals  
6 described in subsection (5).

7 (b) Except as otherwise provided in this subsection, perfection and  
8 the effect of perfection or nonperfection of a security interest in  
9 collateral are governed by the law of the jurisdiction where the  
10 collateral is when the last event occurs on which is based the assertion  
11 that the security interest is perfected or unperfected.

12 (c) If the parties to a transaction creating a purchase money  
13 security interest in goods in one jurisdiction understand at the time  
14 that the security interest attaches that the goods will be kept in another  
15 jurisdiction, then the law of the other jurisdiction governs the  
16 perfection and the effect of perfection or nonperfection of the security  
17 interest from the time it attaches until 30 days after the debtor receives  
18 possession of the goods and thereafter if the goods are taken to the  
19 other jurisdiction before the end of the 30-day period.

20 (d) When collateral is brought into and kept in this State while  
21 subject to a security interest perfected under the law of the jurisdiction  
22 from which the collateral was removed, the security interest remains  
23 perfected, but if action is required by subchapter 3 of this chapter to  
24 perfect the security interest,

25 (i) if the action is not taken before the expiration of the period of  
26 perfection in the other jurisdiction or the end of four months after the  
27 collateral is brought into this State, whichever period first expires, the  
28 security interest becomes unperfected at the end of that period and is  
29 thereafter deemed to have been unperfected as against a person who  
30 became a purchaser after removal;

31 (ii) if the action is taken before the expiration of the period  
32 specified in subparagraph (i), the security interest continues perfected  
33 thereafter;

34 (iii) for the purpose of priority over a buyer of consumer goods  
35 (subsection (2) of 12A:9-307), the period of the effectiveness of a  
36 filing in the jurisdiction from which the collateral is removed is  
37 governed by the rules with respect to perfection in subparagraphs (i)  
38 and (ii).

39 (2) Certificate of title.

40 (a) This subsection applies to goods covered by a certificate of title  
41 issued under a statute of this State or of another jurisdiction under the  
42 law of which indication of a security interest on the certificate is  
43 required as a condition of perfection.

44 (b) Except as otherwise provided in this subsection, perfection and  
45 the effect of perfection or nonperfection of the security interest are  
46 governed by the law (including the conflict of laws rules) of the

1 jurisdiction issuing the certificate until four months after the goods are  
2 removed from that jurisdiction and thereafter until the goods are  
3 registered in another jurisdiction, but in any event not beyond  
4 surrender of the certificate. After the expiration of that period, the  
5 goods are not covered by the certificate of title within the meaning of  
6 this section.

7 (c) Except with respect to the rights of a buyer described in the  
8 next paragraph, a security interest, perfected in another jurisdiction  
9 otherwise than by notation on a certificate of title, in goods brought  
10 into this State and thereafter covered by a certificate of title issued by  
11 this State is subject to the rules stated in paragraph (d) of subsection  
12 (1).

13 (d) If goods are brought into this State while a security interest  
14 therein is perfected in any manner under the law of the jurisdiction  
15 from which the goods are removed and a certificate of title is issued  
16 by this State and the certificate does not show that the goods are  
17 subject to the security interest or that they may be subject to security  
18 interests not shown on the certificate, the security interest is  
19 subordinate to the rights of a buyer of the goods who is not in the  
20 business of selling goods of that kind to the extent that he gives value  
21 and receives delivery of the goods after issuance of the certificate and  
22 without the knowledge of the security interest.

23 (3) Accounts, general intangibles and mobile goods.

24 (a) This subsection applies to accounts (other than an account  
25 described in subsection (5) on minerals) and general intangibles (other  
26 than uncertificated securities) and to goods which are mobile and  
27 which are of a type normally used in more than one jurisdiction, such  
28 as motor vehicles, trailers, rolling stock, airplanes, shipping containers,  
29 road building and construction machinery and commercial harvesting  
30 machinery and the like, if the goods are equipment or are inventory  
31 leased or held for lease by the debtor to others, and are not covered by  
32 a certificate of title described in subsection (2).

33 (b) The law (including the conflict of laws rules) of the jurisdiction  
34 in which the debtor is located governs the perfection and the effect of  
35 perfection or nonperfection of the security interest.

36 (c) If, however, the debtor is located in a jurisdiction which is not  
37 a part of the United States, and which does not provide for perfection  
38 of the security interest by filing or recording in that jurisdiction, the  
39 law of the jurisdiction in the United States in which the debtor has its  
40 major executive office in the United States governs the perfection and  
41 the effect of perfection or nonperfection of the security interest  
42 through filing. In the alternative, if the debtor is located in a  
43 jurisdiction which is not a part of the United States or Canada and the  
44 collateral is accounts or general intangibles for money due or to  
45 become due, the security interest may be perfected by notification to  
46 the account debtor. As used in this paragraph, "United States" includes

1 its territories and possessions and the Commonwealth of Puerto Rico.

2 (d) A debtor shall be deemed located at his place of business if he  
3 has one, at his chief executive office if he has more than one place of  
4 business, otherwise at his residence. If, however, the debtor is a  
5 foreign air carrier under the Federal Aviation Act of 1958, 49U.S.C.  
6 §1301 et seq., as amended, it shall be deemed located at the designated  
7 office of the agent upon whom service of process may be made on  
8 behalf of the foreign air carrier.

9 (e) A security interest perfected under the law of the jurisdiction  
10 of the location of the debtor is perfected until the expiration of four  
11 months after a change of the debtor's location to another jurisdiction,  
12 or until perfection would have ceased by the law of the first  
13 jurisdiction, whichever period first expires. Unless perfected in the  
14 new jurisdiction before the end of that period, it becomes unperfected  
15 thereafter and is deemed to have been unperfected as against a person  
16 who became a purchaser after the change.

17 (4) Chattel paper.

18 The rules stated for goods in subsection (1) apply to a possessory  
19 security interest in chattel paper. The rules stated for accounts in  
20 subsection (3) apply to a nonpossessory security interest in chattel  
21 paper, but the security interest may not be perfected by notification to  
22 the account debtor.

23 (5) Minerals.

24 Perfection and the effect of perfection or nonperfection of a  
25 security interest which is created by a debtor who has an interest in  
26 minerals or the like (including oil and gas) before extraction and which  
27 attaches thereto as extracted, or which attaches to an account resulting  
28 from the sale thereof at the wellhead or minehead are governed by the  
29 law (including the conflict of laws rules) of the jurisdiction wherein the  
30 wellhead or minehead is located.

31 (6) [Uncertificated securities.

32 The law (including the conflict of laws rules) of the jurisdiction of  
33 organization of the issuer governs the perfection and the effect of  
34 perfection or non-perfection of a security interest in uncertificated  
35 securities.] Investment property.

36 (a) This subsection applies to investment property.

37 (b) Except as otherwise provided in paragraph (f), during the time  
38 that a security certificate is located in a jurisdiction, perfection of a  
39 security interest, the effect of perfection or non-perfection, and the  
40 priority of a security interest in the certificated security represented  
41 thereby are governed by the local law of that jurisdiction.

42 (c) Except as otherwise provided in paragraph (f), perfection of a  
43 security interest, the effect of perfection or non-perfection, and the  
44 priority of a security interest in an uncertificated security are governed  
45 by the local law of the issuer's jurisdiction as specified in subsection d.  
46 of 12A:8-110.

1       (d) Except as otherwise provided in paragraph (f), perfection of a  
2 security interest, the effect of perfection or non-perfection, and the  
3 priority of a security interest in a security entitlement or securities  
4 account are governed by the local law of the securities intermediary's  
5 jurisdiction as specified in subsection e. of 12A:8-110.

6       (e) Except as otherwise provided in paragraph (f), perfection of a  
7 security interest, the effect of perfection or non-perfection, and the  
8 priority of a security interest in a commodity contract or commodity  
9 account are governed by the local law of the commodity intermediary's  
10 jurisdiction. The following rules determine a "commodity  
11 intermediary's jurisdiction" for purposes of this paragraph:

12       (i) If an agreement between the commodity intermediary and  
13 commodity customer specifies that it is governed by the law of a  
14 particular jurisdiction, that jurisdiction is the commodity intermediary's  
15 jurisdiction.

16       (ii) If an agreement between the commodity intermediary and  
17 commodity customer does not specify the governing law as provided  
18 in subparagraph (i) of this paragraph, but expressly specifies that the  
19 commodity account is maintained at an office in a particular  
20 jurisdiction, that jurisdiction is the commodity intermediary's  
21 jurisdiction.

22       (iii) If an agreement between the commodity intermediary and  
23 commodity customer does not specify a jurisdiction as provided in  
24 subparagraphs (i) or (ii) of this paragraph, the commodity  
25 intermediary's jurisdiction is the jurisdiction in which is located the  
26 office identified in an account statement as the office serving the  
27 commodity customer's account.

28       (iv) If an agreement between the commodity intermediary and  
29 commodity customer does not specify a jurisdiction as provided in  
30 subparagraphs (i) or (ii) of this paragraph and an account statement  
31 does not identify an office serving the commodity customer's account  
32 as provided in subparagraph (iii) of this paragraph, the commodity  
33 intermediary's jurisdiction is the jurisdiction in which is located the  
34 chief executive office of the commodity intermediary.

35       (f) Perfection of a security interest by filing, automatic perfection  
36 of a security interest in investment property granted by a broker or  
37 securities intermediary, and automatic perfection of a security interest  
38 in a commodity contract or commodity account granted by a  
39 commodity intermediary are governed by the local law of the  
40 jurisdiction in which the debtor is located.

41 (cf: P.L.1989, c.348, s.48)

42  
43 3. N.J.S.12A:9-105 is amended to read as follows:

44 12A:9-105. Definitions and index of definitions.

45 (1) In this chapter unless the context otherwise requires:

46 (a) "Account debtor" means the person who is obligated on an

1 account, chattel paper or general intangible;

2 (b) "Chattel paper" means a writing or writings which evidence  
3 both a monetary obligation and a security interest in or a lease of  
4 specific goods, but a charter or other contract involving the use or hire  
5 of a vessel is not chattel paper. When a transaction is evidenced both  
6 by such a security agreement or a lease and by an instrument or a  
7 series of instruments, the group of writings taken together constitutes  
8 chattel paper;

9 (c) "Collateral" means the property subject to a security interest,  
10 and includes accounts and chattel paper which have been sold;

11 (d) "Debtor" means the person who owes payment or other  
12 performance of the obligation secured, whether or not he owns or has  
13 rights in the collateral, and includes the seller of accounts or chattel  
14 paper. Where the debtor and the owner of the collateral are not the  
15 same person, the term "debtor" means the owner of the collateral in  
16 any provision of the chapter dealing with the collateral, the obligor in  
17 any provision dealing with the obligation, and may include both where  
18 the context so requires;

19 (e) "Deposit account" means a demand, time, savings, passbook or  
20 like account maintained with a bank, savings and loan association,  
21 credit union or like organization, other than an account evidenced by  
22 a certificate of deposit;

23 (f) "Document" means document of title as defined in the general  
24 definitions of chapter 1 (12A:1-201) , and a receipt of the kind  
25 described in subsection (2) of 12A:7-201;

26 (g) "Encumbrance" includes real estate mortgages and other liens  
27 on real estate and all other rights in real estate that are not ownership  
28 interests;

29 (h) "Goods" includes all things which are movable at the time the  
30 security interest attaches or which are fixtures (12A:9-313), but does  
31 not include money, documents, instruments, investment property,  
32 accounts, chattel paper, general intangibles, or minerals or the like  
33 (including oil and gas) before extraction. "Goods" also includes  
34 standing timber which is to be cut and removed under a conveyance or  
35 contract for sale, the unborn young of animals, and growing crops;

36 (i) "Instrument" means a negotiable instrument (defined in  
37 12A:3-104), or [a certificated security (defined in 12A:8-102) or] any  
38 other writing which evidences a right to the payment of money and is  
39 not itself a security agreement or lease and is of a type which is in  
40 ordinary course of business transferred by delivery with any necessary  
41 indorsement or assignment. The term does not include investment  
42 property;

43 (2) Other definitions applying to this chapter and the sections in  
44 which they appear are:

45 "Account." 12A:9-106.

46 "Attach." 12A:9-203.

1	<u>"Commodity contract."</u>	<u>12A:9-115.</u>
2	<u>"Commodity customer."</u>	<u>12A:9-115.</u>
3	<u>"Commodity intermediary."</u>	<u>12A:9-115.</u>
4	"Construction mortgage."	12A:9-313(1).
5	"Consumer goods."	12A:9-109(1).
6	<u>"Control."</u>	<u>12A:9-115.</u>
7	"Equipment."	12A:9-109(2).
8	"Farm products."	12A:9-109(3).
9	"Fixture."	12A:9-313(1).
10	"Fixture filing."	12A:9-313(1).
11	"General intangibles."	12A:9-106.
12	"Inventory."	12A:9-109(4)
13	<u>"Investment property."</u>	<u>12A:9-115.</u>
14	"Lien creditor."	12A:9-301(3).
15	"Proceeds."	12A:9-306(1).
16	"Purchase money security interest."	12A:9-107.
17	"United States."	12A:9-103 (3).

18 (3) The following definitions in other chapters apply to this  
19 chapter:

20	<u>"Broker."</u>	<u>12A:8-102.</u>
21	<u>"Certificated security."</u>	<u>12A:8-102.</u>
22	"Check."	12A:3-104.
23	<u>"Clearing corporation."</u>	<u>12A:8-102.</u>
24	"Contract for sale."	12A:2-106.
25	<u>"Control."</u>	<u>12A:8-106.</u>
26	<u>"Delivery."</u>	<u>12A:8-301.</u>
27	<u>"Entitlement holder."</u>	<u>12A:8-102.</u>
28	<u>"Financial asset."</u>	<u>12A:8-102.</u>
29	"Holder in due course."	12A:3-302.
30	"Note."	12A:3-104.
31	"Sale."	12A:2-106.
32	<u>"Securities intermediary."</u>	<u>12A:8-102.</u>
33	<u>"Security."</u>	<u>12A:8-102.</u>
34	<u>"Security certificate."</u>	<u>12A:8-102.</u>
35	<u>"Security entitlement."</u>	<u>12A:8-102.</u>
36	<u>"Uncertificated security."</u>	<u>12A:8-102.</u>

37 (4) In addition chapter 1 contains general definitions and principles  
38 of construction and interpretation applicable throughout this chapter.  
39 (cf: P.L.1989, c.348, s.49)

40

41 4. N.J.S.12A:9-106 is amended to read as follows:

42 12A:9-106. Definitions: "Account"; "General Intangibles."

43 "Account" means any right to payment for goods sold or leased or  
44 for services rendered which is not evidenced by an instrument or  
45 chattel paper, whether or not it has been earned by performance. All  
46 rights to payment earned or unearned under a charter or other contract

1 involving the use or hire of a vessel and all rights incident to the  
2 charter or contract are accounts. "General intangibles" means any  
3 personal property (including things in action) other than goods,  
4 accounts, chattel paper, documents, instruments, investment property  
5 and money.

6 (cf: P.L.1981, c.138, s.10)

7

8 5. (New section) N.J.S.12A:9-115. Investment Property.

9 (1) In this chapter 9 of Title 12A of the New Jersey Statutes:

10 (a) "Commodity account" means an account maintained by a  
11 commodity intermediary in which a commodity contract is carried for  
12 a commodity customer.

13 (b) "Commodity contract" means a commodity futures contract, an  
14 option on a commodity futures contract, a commodity option, or other  
15 contract that, in each case, is:

16 (i) traded on or subject to the rules of a board of trade that has been  
17 designated as a contract market for such a contract pursuant to the  
18 federal commodities laws; or

19 (ii) traded on a foreign commodity board of trade, exchange, or  
20 market, and is carried on the books of a commodity intermediary for  
21 a commodity customer.

22 (c) "Commodity customer" means a person for whom a commodity  
23 intermediary carries a commodity contract on its books.

24 (d) "Commodity intermediary" means:

25 (i) a person who is registered as a futures commission merchant  
26 under the federal commodities laws; or

27 (ii) a person who in the ordinary course of its business provides  
28 clearance or settlement services for a board of trade that has been  
29 designated as a contract market pursuant to the federal commodities  
30 laws.

31 (e) "Control" with respect to a certificated security, uncertificated  
32 security, or security entitlement has the meaning specified in  
33 12A:8-106. A secured party has control over a commodity contract  
34 if by agreement among the commodity customer, the commodity  
35 intermediary, and the secured party, the commodity intermediary has  
36 agreed that it will apply any value distributed on account of the  
37 commodity contract as directed by the secured party without further  
38 consent by the commodity customer. If a commodity customer grants  
39 a security interest in a commodity contract to its own commodity  
40 intermediary, the commodity intermediary as secured party has  
41 control. A secured party has control over a securities account or  
42 commodity account if the secured party has control over all security  
43 entitlements or commodity contracts carried in the securities account  
44 or commodity account.

45 (f) "Investment property" means:

46 (i) a security, whether certificated or uncertificated;

- 1 (ii) a security entitlement;  
2 (iii) a securities account;  
3 (iv) a commodity contract; or  
4 (v) a commodity account.
- 5 (2) Attachment or perfection of a security interest in a securities  
6 account is also attachment or perfection of a security interest in all  
7 security entitlements carried in the securities account. Attachment or  
8 perfection of a security interest in a commodity account is also  
9 attachment or perfection of a security interest in all commodity  
10 contracts carried in the commodity account.
- 11 (3) A description of collateral in a security agreement or financing  
12 statement is sufficient to create or perfect a security interest in a  
13 certificated security, uncertificated security, security entitlement,  
14 securities account, commodity contract, or commodity account  
15 whether it describes the collateral by those terms, or as investment  
16 property, or by description of the underlying security, financial asset,  
17 or commodity contract. A description of investment property  
18 collateral in a security agreement or financing statement is sufficient  
19 if it identifies the collateral by specific listing, by category, by quantity,  
20 by a computational or allocational formula or procedure, or by any  
21 other method, if the identity of the collateral is objectively  
22 determinable.
- 23 (4) Perfection of a security interest in investment property is  
24 governed by the following rules:
- 25 (a) A security interest in investment property may be perfected by  
26 control.
- 27 (b) Except as otherwise provided in paragraphs (c) and (d), a  
28 security interest in investment property may be perfected by filing.
- 29 (c) If the debtor is a broker or securities intermediary, a security  
30 interest in investment property is perfected when it attaches. The  
31 filing of a financing statement with respect to a security interest in  
32 investment property granted by a broker or securities intermediary has  
33 no effect for purposes of perfection or priority with respect to that  
34 security interest.
- 35 (d) If a debtor is a commodity intermediary, a security interest in a  
36 commodity contract or a commodity account is perfected when it  
37 attaches. The filing of a financing statement with respect to a security  
38 interest in a commodity contract or a commodity account granted by  
39 a commodity intermediary has no effect for purposes of perfection or  
40 priority with respect to that security interest.
- 41 (5) Priority between conflicting security interests in the same  
42 investment property is governed by the following rules:
- 43 (a) A security interest of a secured party who has control over  
44 investment property has priority over a security interest of a secured  
45 party who does not have control over the investment property.
- 46 (b) Except as otherwise provided in paragraphs (c) and (d) of this

1 subsection, conflicting security interests of secured parties each of  
2 whom has control rank equally.

3 (c) Except as otherwise agreed by the securities intermediary, a  
4 security interest in a security entitlement or a securities account  
5 granted to the debtor's own securities intermediary has priority over  
6 any security interest granted by the debtor to another secured party.

7 (d) Except as otherwise agreed by the commodity intermediary, a  
8 security interest in a commodity contract or a commodity account  
9 granted to the debtor's own commodity intermediary has priority over  
10 any security interest granted by the debtor to another secured party.

11 (e) Conflicting security interests granted by a broker, a securities  
12 intermediary, or a commodity intermediary which are perfected  
13 without control rank equally.

14 (f) In all other cases, priority between conflicting security interests  
15 in investment property is governed by subsections (5), (6) and (7) of  
16 12A:9-312. The provisions of subsection (4) of 12A:9-312 do not  
17 apply to investment property.

18 (6) If a security certificate in registered form is delivered to a  
19 secured party pursuant to agreement, a written security agreement is  
20 not required for attachment or enforceability of the security interest,  
21 delivery suffices for perfection of the security interest, and the security  
22 interest has priority over a conflicting security interest perfected by  
23 means other than control, even if a necessary indorsement is lacking.

24

25 6. (New section) N.J.S.12A:9-116. Security Interest Arising in  
26 Purchase or Delivery of Financial Asset.

27 (1) If a person buys a financial asset through a securities  
28 intermediary in a transaction in which the buyer is obligated to pay the  
29 purchase price to the securities intermediary at the time of the  
30 purchase, and the securities intermediary credits the financial asset to  
31 the buyer's securities account before the buyer pays the securities  
32 intermediary, the securities intermediary has a security interest in the  
33 buyer's security entitlement securing the buyer's obligation to pay. A  
34 security agreement is not required for attachment or enforceability of  
35 the security interest, and the security interest is automatically  
36 perfected.

37 (2) If a certificated security, or other financial asset represented by  
38 a writing which in the ordinary course of business is transferred by  
39 delivery with any necessary indorsement or assignment, is delivered  
40 pursuant to an agreement between persons in the business of dealing  
41 with such securities or financial assets and the agreement calls for  
42 delivery versus payment, the person delivering the certificate or other  
43 financial asset has a security interest in the certificated security or  
44 other financial asset securing the seller's right to receive payment. A  
45 security agreement is not required for attachment or enforceability of  
46 the security interest, and the security interest is automatically

1 perfected.

2

3 7. N.J.S.12A:9-203 is amended to read as follows:

4 12A:9-203. Attachment and Enforceability of Security Interest;  
5 Proceeds; Formal Requisites.

6 (1) Subject to the provisions of 12A:4-210 on the security interest  
7 of a collecting bank, [12A:8-321 on security interests in securities  
8 and] 12A:9-113 on a security interest arising under the chapter on  
9 sales and 12A:9-115 and 12A:9-116 on security interests in investment  
10 property , a security interest is not enforceable against the debtor or  
11 third parties with respect to the collateral and does not attach unless:

12 (a) the collateral is in the possession of the secured party  
13 pursuant to agreement, the collateral is investment property and the  
14 secured party has control pursuant to agreement, or the debtor has  
15 signed a security agreement which contains a description of the  
16 collateral and in addition, when the security interest covers crops  
17 growing or to be grown or timber to be cut, a description of the land  
18 concerned;

19 (b) value has been given; and

20 (c) the debtor has rights in the collateral.

21 (2) A security interest attaches when it becomes enforceable  
22 against the debtor with respect to the collateral. Attachment occurs  
23 as soon as all of the events specified in subsection (1) have taken place  
24 unless explicit agreement postpones the time of attaching.

25 (3) Unless otherwise agreed a security agreement gives the secured  
26 party the rights to proceeds provided by 12A:9-306.

27 (4) A transaction, although subject to this chapter, is also subject  
28 to the provisions of those statutes set forth as saved from repeal by  
29 this subtitle in section 12A:10-104, and in case of conflict between the  
30 provisions of this chapter and any such statute so saved from repeal,  
31 the provisions of such statute control. Failure to comply with any  
32 such applicable statute has only the effect which is specified therein.

33 (5) In case of conflict between this chapter and the provisions of  
34 "The Credit Union Act of 1984," P.L.1984, c.171, [ss.] §2 to 46  
35 (C.17:13-79 to C.17:13-124), concerning a transaction subject to this  
36 chapter and also subject to the provisions of "The Credit Union Act of  
37 1984," the provisions of "The Credit Union Act of 1984" shall control.  
38 (cf: P.L.1995, c.28, s.7)

39

40 8. N.J.S.12A:9-301 is amended to read as follows:

41 12A:9-301. Persons who take priority over unperfected security  
42 interests; right of "lien creditor."

43 (1) Except as otherwise provided in subsection (2), an unperfected  
44 security interest is subordinate to the rights of

45 (a) Persons entitled to priority under 12A:9-312;

46 (b) A person who becomes a lien creditor before the security

1 interest is perfected;

2 (c) In the case of goods, instruments, documents, and chattel paper,  
3 a person who is not a secured party and who is a transferee in bulk or  
4 other buyer not in ordinary course of business, or is a buyer of farm  
5 products in ordinary course of business, to the extent that he gives  
6 value and receives delivery of the collateral without knowledge of the  
7 security interest and before it is perfected;

8 (d) in the case of accounts [and] general intangibles, and  
9 investment property, a person who is not a secured party and who is  
10 a transferee to the extent that he gives value without knowledge of the  
11 security interest and before it is perfected.

12 (2) If the secured party files with respect to a purchase money  
13 security interest before or within 10 days after the debtor receives  
14 possession of the collateral, he takes priority over the rights of a  
15 transferee in bulk or of a lien creditor which arise between the time the  
16 security interest attaches and the time of filing.

17 (3) A "lien creditor" means a creditor who has acquired a lien on  
18 the property involved by attachment, levy or the like and includes an  
19 assignee for benefit of creditors from the time of assignment, and a  
20 trustee in bankruptcy from the date of the filing of the petition or a  
21 receiver in equity from the time of appointment.

22 (4) A person who becomes a lien creditor while a security interest  
23 is perfected takes subject to the security interest only to the extent that  
24 it secures advances made before he becomes a lien creditor or within  
25 45 days thereafter or made without knowledge of the lien or pursuant  
26 to a commitment entered into without knowledge of the lien.

27 (cf: P.L.1981, c.138, s.15)

28

29 9. N.J.S.12A:9-302 is amended to read as follows:

30 12A:9-302. When Filing Is Required to Perfect Security Interests;  
31 Security Interests to Which Filing Provisions of This Chapter Do Not  
32 Apply.

33 (1) A financing statement shall be filed to perfect all security  
34 interests except the following:

35 (a) A security interest in collateral in possession of the secured  
36 party under 12A:9-305;

37 (b) a security interest temporarily perfected in instruments and  
38 certificated securities or documents without delivery under 12A:9-304  
39 or in proceeds for a 10 day period under 12A: 9-306;

40 (c) A security interest created by an assignment of a beneficial  
41 interest in a trust or a decedent's estate;

42 (d) A purchase money security interest in consumer goods; but  
43 filing is required for a motor vehicle required to be registered; and  
44 fixture filing is required for priority over conflicting interests in  
45 fixtures to the extent provided in 12A:9-313;

46 (e) An assignment of accounts which does not alone or in

1 conjunction with other assignments to the same assignee transfer a  
2 significant part of the outstanding accounts of the assignor;

3 (f) a security interest of a collecting bank (12A:4-210) [or in  
4 securities (12A: 8-321)] or arising under the chapter on sales (see  
5 12A:9-113) or covered in subsection (3) of this section;

6 (g) an assignment for the benefit of all the creditors of the  
7 transferor, and subsequent transfers by the assignee thereunder ;

8 (h) a security interest in investment property which is perfected  
9 without filing under 12A:9-115 or 12A: 9-116.

10 (2) If a secured party assigns a perfected security interest, no filing  
11 under this chapter is required in order to continue the perfected status  
12 of the security interest against creditors of and transferees from the  
13 original debtor.

14 (3) The filing of a financing statement otherwise required by this  
15 chapter is not necessary or effective to perfect a security interest in  
16 property subject to:

17 (a) A statute or treaty of the United States which provides for a  
18 national or international registration or a national or international  
19 certificate of title or which specifies a place of filing different from that  
20 specified in this chapter for filing of the security interest; or

21 (b) The following statutes of this State:

22 R.S.39:10-1 to R.S.39:10-9 both inclusive;

23 P.L.1971, c.311 (C.39:10-9.1 and C.39:10-9.2);

24 R.S.39:10-10 to R.S.39:10-16 both inclusive;

25 R.S.39:10-18 to R.S.39:10-25 both inclusive;

26 P.L.1984, c.152 (C.12:7A-1 to C.12:7A-29 both inclusive);

27 but during any period in which collateral is inventory held for sale by  
28 a person who is in the business of selling goods of that kind, the filing  
29 provisions of this chapter (subchapter 4) apply to a security interest in  
30 that collateral created by him as debtor; or

31 (c) A certificate of title statute of another jurisdiction under the  
32 law of which indication of a security interest on the certificate is  
33 required as a condition of perfection (subsection (2) of 12A:9-103).

34 (4) Compliance with a statute or treaty described in subsection (3)  
35 is equivalent to the filing of a financing statement under this chapter,  
36 and a security interest in property subject to the statute or treaty can  
37 be perfected only by compliance therewith except as provided in  
38 12A:9-103 on multiple state transactions. Duration and renewal of  
39 perfection of a security interest perfected by compliance with the  
40 statute or treaty are governed by the provisions of the statute or  
41 treaty; in other respects the security interest is subject to this chapter.

42 (cf: P.L.1995, c.28, s.9)

43

44 10. N.J.S.12A:9-303 is amended to read as follows:

45 12A:9-303. When security interest is perfected; Continuity of  
46 perfection.

1 (1) A security interest is perfected when it has attached and when  
2 all of the applicable steps required for perfection have been taken.  
3 Such steps are specified in 12A:9-115, 12A:9-302, 9-304, 9-305, and  
4 9-306. If such steps are taken before the security interest attaches, it  
5 is perfected at the time when it attaches.

6 (2) If a security interest is originally perfected in any way permitted  
7 under this chapter and is subsequently perfected in some other way  
8 under this chapter, without an intermediate period when it was  
9 unperfected, the security interest shall be deemed to be perfected  
10 continuously for the purposes of this chapter.

11 (cf: N.J.S.12A:9-303)

12  
13 11. N.J.S.12A:9-304 is amended to read as follows:

14 12A:9-304. Perfection of Security Interest In Instruments,  
15 Documents, and Goods Covered by Documents; Perfection by  
16 Permissive Filing; Temporary Perfection Without Filing or Transfer of  
17 Possession.

18 (1) A security interest in chattel paper or negotiable documents  
19 may be perfected by filing. A security interest in money or instruments  
20 (other than [certificated securities or] instruments which constitute  
21 part of chattel paper) can be perfected only by the secured party's  
22 taking possession, except as provided in subsections (4) and (5) of this  
23 section and subsections (2) and (3) of 12A:9-306 on proceeds.

24 (2) During the period that goods are in the possession of the issuer  
25 of a negotiable document therefor, a security interest in the goods is  
26 perfected by perfecting a security interest in the document, and any  
27 security interest in the goods otherwise perfected during such period  
28 is subject thereto.

29 (3) A security interest in goods in the possession of a bailee other  
30 than one who has issued a negotiable document therefor is perfected  
31 by issuance of a document in the name of the secured party or by the  
32 bailee's receipt of notification of the secured party's interest or by  
33 filing as to the goods.

34 (4) A security interest in instruments [(other than certificated  
35 securities)], certificated securities, or negotiable documents is  
36 perfected without filing or the taking of possession for a period of 21  
37 days from the time it attaches to the extent that it arises for new value  
38 given under a written security agreement.

39 (5) A security interest remains perfected for a period of 21 days  
40 without filing where a secured party having a perfected security  
41 interest in an instrument [(other than a certificated security)], a  
42 certificated security, a negotiable document, or goods in possession of  
43 a bailee other than one who has issued a negotiable document therefor:

44 (a) Makes available to the debtor the goods or documents  
45 representing the goods for the purpose of ultimate sale or exchange or  
46 for the purpose of loading, unloading, storing, shipping, transshipping,

1 manufacturing, processing or otherwise dealing with them in a manner  
2 preliminary to their sale or exchange, but priority between conflicting  
3 security interests in the goods is subject to subsection (3) of  
4 12A:9-312; or

5 (b) delivers the instrument or certificated security to the debtor for  
6 the purpose of ultimate sale or exchange or of presentation, collection,  
7 renewal, or registration of transfer.

8 (6) After the 21-day period in subsections (4) and (5) perfection  
9 depends upon compliance with applicable provisions of this chapter.  
10 (cf: P.L.1989, c.348, s.52)

11

12 12. N.J.S.12A:9-305 is amended to read as follows:

13 12A:9-305. When Possession by Secured Party Perfects Security  
14 Interest Without Filing.

15 A security interest in letters of credit and advices of credit  
16 (subsection (2)(a) of 12A: 5-116), goods, instruments [(other than  
17 certificated securities)], money, negotiable documents, or chattel  
18 paper may be perfected by the secured party's taking possession of the  
19 collateral. If such collateral other than goods covered by a negotiable  
20 document is held by a bailee, the secured party is deemed to have  
21 possession from the time the bailee receives notification of the secured  
22 party's interest. A security interest is perfected by possession from the  
23 time possession is taken without a relation back and continues only so  
24 long as possession is retained, unless otherwise specified in this  
25 chapter. The security interest may be otherwise perfected as provided  
26 in this chapter before or after the period of possession by the secured  
27 party.

28 (cf: P.L.1989, c.348, s.53)

29

30 13. N.J.S.12A:9-306 is amended to read as follows:

31 12A:9-306. "Proceeds"; Secured party's rights on disposition of  
32 collateral.

33 (1) "Proceeds" includes whatever is received upon the sale, lease,  
34 exchange, collection, or other disposition of collateral or proceeds.  
35 Insurance payable by reason of loss or damage to the collateral is  
36 proceeds, except to the extent that it is payable to a person other than  
37 a party to the security agreement. Any payments or distributions made  
38 with respect to investment property collateral are proceeds. Money,  
39 checks, deposit accounts, and the like, are "cash proceeds". All other  
40 proceeds are "non-cash proceeds".

41 (2) Except where this chapter or the chapter on leases (2A)  
42 otherwise provides, a security interest continues in collateral  
43 notwithstanding sale, lease, exchange or other disposition thereof  
44 unless the disposition was authorized by the secured party in the  
45 security agreement or otherwise, and also continues in any identifiable  
46 proceeds including collections received by the debtor.

1 (3) The security interest in proceeds is a continuously perfected  
2 security interest if the interest in the original collateral was perfected  
3 but it ceases to be a perfected security interest and becomes  
4 unperfected 10 days after receipt of the proceeds by the debtor unless

5 (a) A filed financing statement covers the original collateral and the  
6 proceeds are collateral in which a security interest may be perfected by  
7 filing in the office or offices where the financing statement has been  
8 filed and, if the proceeds are acquired with cash proceeds, the  
9 description of collateral in the financing statement indicates the types  
10 of property constituting the proceeds; or

11 (b) A filed financing statement covers the original collateral and the  
12 proceeds are identifiable cash proceeds; [or]

13 (c) The original collateral was investment property and the  
14 proceeds are identifiable cash proceeds; or

15 (d) The security interest in the proceeds is perfected before the  
16 expiration of the 10-day period.

17 Except as provided in this section, a security interest in proceeds  
18 can be perfected only by the methods or under the circumstances  
19 permitted in this chapter for original collateral of the same type.

20 (4) In the event of insolvency proceedings instituted by or against  
21 a debtor, a secured party with a perfected security interest in proceeds  
22 has a perfected security interest only in the following proceeds:

23 (a) In identifiable noncash proceeds and in separate deposit  
24 accounts containing only proceeds;

25 (b) In identifiable cash proceeds in the form of money which is  
26 neither commingled with other money nor deposited in a deposit  
27 account prior to the insolvency proceedings;

28 (c) In identifiable cash proceeds in the form of checks and the like  
29 which are not deposited in a deposit account prior to the insolvency  
30 proceedings; and

31 (d) In all cash and deposit accounts of the debtor in which proceeds  
32 have been commingled with other funds, but the perfected security  
33 interest under this paragraph (d) is

34 (i) Subject to any right of set-off; and

35 (ii) Limited to an amount not greater than the amount of any cash  
36 proceeds received by the debtor within 10 days before the institution  
37 of the insolvency proceedings less the sum of (I) the payments to the  
38 secured party on account of cash proceeds received by the debtor  
39 during that period and (II) the cash proceeds received by the debtor  
40 during that period to which the secured party is entitled under  
41 paragraphs (a) through (c) of this subsection (4).

42 (5) If a sale or lease of goods results in an account or chattel paper  
43 which is transferred by the seller or lessor to a secured party, and if the  
44 goods are returned to or are repossessed by the seller or lessor or the  
45 secured party, the following rules determine priorities:

46 (a) If the goods were collateral at the time of sale or lease, for an

1 indebtedness of the seller or lessor which is still unpaid, the original  
2 security interest attaches again to the goods covered by the sale or  
3 lease and continues as a perfected security interest if it was perfected  
4 at the time when the goods were sold or leased. If the security interest  
5 was originally perfected by a filing which is still effective, nothing  
6 further is required to continue the perfected status; in any other case,  
7 the secured party shall take possession of the returned or repossessed  
8 goods or shall file.

9 (b) An unpaid transferee of the chattel paper has a security interest  
10 in the goods against the transferor. This security interest is prior to a  
11 security interest asserted under paragraph (a) to the extent that the  
12 transferee of the chattel paper was entitled to priority under  
13 12A:9-308.

14 (c) An unpaid transferee of the account has a security interest in the  
15 goods against the transferor. This security interest is subordinate to  
16 a security interest asserted under paragraph (a).

17 (d) A security interest of an unpaid transferee asserted under  
18 paragraph (b) or (c) shall be perfected for protection against creditors  
19 of the transferor and purchasers of the returned or repossessed goods.  
20 (cf: P.L.1994, c.114, s.8)

21

22 14. N.J.S.12A:9-309 is amended to read as follows:

23 12A:9-309. Protection of Purchasers of Instruments, Documents,  
24 and Securities.

25 Nothing in this chapter limits the rights of a holder in due course of  
26 a negotiable instrument (12A:3-302) or a holder to whom a negotiable  
27 document of title has been duly negotiated (12A:7-501) or a [bona  
28 fide] protected purchaser of a security ([12A:8-302] 12A:8-303) and  
29 such holders or purchasers take priority over an earlier security  
30 interest even though perfected. Filing under this chapter does not  
31 constitute notice of the security interest to such holders or purchasers.  
32 (cf: P.L.1989, c.348, s.54)

33

34 15. N.J.S.12A:9-312 is amended to read as follows:

35 12A:9-312. Priorities Among Conflicting Security Interests in the  
36 Same Collateral.

37 (1) The rules of priority stated in other sections of this subchapter,  
38 and in the following sections shall govern when applicable: 12A:4-210  
39 with respect to the security interests of collecting banks in items being  
40 collected, accompanying documents and proceeds; 12A:9-103 on  
41 security interests related to other jurisdictions; 12A:9-114 on  
42 consignments; 12A:9-115 on security interests in investment property.

43 (2) (Deleted by amendment, P.L.1962, c.203, s.4.)

44 (3) A perfected purchase money security interest in inventory has  
45 priority over a conflicting security interest in the same inventory and  
46 also has priority in identifiable cash proceeds received on or before the

- 1 delivery of the inventory to a buyer if:
- 2 (a) The purchase money security interest is perfected at the time  
3 the debtor receives possession of the inventory; and
- 4 (b) The purchase money secured party gives notification in writing  
5 to the holder of the conflicting security interest if the holder had filed  
6 a financing statement covering the same types of inventory (i) before  
7 the date of the filing made by the purchase money secured party, or (ii)  
8 before the beginning of the 21-day period where the purchase money  
9 security interest is temporarily perfected without filing or possession  
10 (subsection (5) of 12A:9-304); and
- 11 (c) The holder of the conflicting security interest receives the  
12 notification within five years before the debtor receives possession of  
13 the inventory; and
- 14 (d) The notification states that the person giving the notice has or  
15 expects to acquire a purchase money security interest in inventory of  
16 the debtor, describing such inventory by item or type.
- 17 (4) A purchase money security interest in collateral other than  
18 inventory has priority over a conflicting security interest in the same  
19 collateral or its proceeds if the purchase money security interest is  
20 perfected at the time the debtor receives possession of the collateral  
21 or within 10 days thereafter.
- 22 (5) In all cases not governed by other rules stated in this section  
23 (including cases of purchase money security interests which do not  
24 qualify for the special priorities set forth in subsections (3) and (4) of  
25 this section), priority between conflicting security interests in the same  
26 collateral shall be determined according to the following rules:
- 27 (a) Conflicting security interests rank according to priority in time  
28 of filing or perfection. Priority dates from the time a filing is first  
29 made covering the collateral or the time the security interest is first  
30 perfected, whichever is earlier, provided that there is no period  
31 thereafter when there is neither filing nor perfection.
- 32 (b) So long as conflicting security interests are unperfected, the  
33 first to attach has priority.
- 34 (6) For the purposes of subsection (5) a date of filing or perfection  
35 as to collateral is also a date of filing or perfection as to proceeds.
- 36 (7) If future advances are made while a security interest is  
37 perfected by filing, the taking of possession, or under [12A:8-321 on  
38 securities] 12A:9-115 or 12A: 9-116 on investment property, the  
39 security interest has the same priority for the purposes of subsection  
40 (5) of this section or subsection (5) of 12A: 9-115 with respect to the  
41 future advances as it does with respect to the first advance. If a  
42 commitment is made before or while the security interest is so  
43 perfected, the security interest has the same priority with respect to  
44 advances made pursuant thereto. In other cases a perfected security  
45 interest has priority from the date the advance is made.
- 46 (cf: P.L.1995, c.28, s.10)

1 16. N.J.S.12A:1-105 is amended to read as follows:

2 12A:1-105. Territorial application of the act; Parties' power to  
3 choose applicable law.

4 (1) Except as provided hereafter in this section, when a transaction  
5 bears a reasonable relation to this State and also to another state or  
6 nation the parties may agree that the law either of this State or of such  
7 other state or nation shall govern their rights and duties. Failure such  
8 agreement this act applies to transactions bearing an appropriate  
9 relation to this State.

10 (2) Where one of the following provisions of this act specifies the  
11 applicable law, that provision governs and a contrary agreement is  
12 effective only to the extent permitted by the law (including the conflict  
13 of laws rules) so specified:

14 Rights of creditors against sold goods. 12A:2-402.

15 Applicability of the Chapter on Leases. 12A:2A-105 and 12A:2A-  
16 106.

17 Applicability of the Chapter on Bank Deposits and Collections.  
18 12A:4-102.

19 Governing law in the Chapter on Funds Transfers. 12A:4A-507.

20 Applicability of the Chapter on Investment Securities. [12A:8-106]  
21 12A:8-110.

22 Perfection provisions of the Chapter on Secured Transactions.  
23 12A:9-103.

24 (cf: P.L.1994, c.114, s.3)

25

26 17. N.J.S.12A:1-206 is amended to read as follows:

27 12A:1-206. Statute of frauds for kinds of personal property not  
28 otherwise covered.

29 (1) Except in the cases described in subsection (2) of this section a  
30 contract for the sale of personal property is not enforceable by way of  
31 action or defense beyond five thousand dollars in amount or value of  
32 remedy unless there is some writing which indicates that a contract for  
33 sale has been made between the parties at a defined or stated price,  
34 reasonably identifies the subject matter, and is signed by the party  
35 against whom enforcement is sought or by his authorized agent.

36 (2) Subsection (1) of this section does not apply to contracts for the  
37 sale of goods (12A:2-201) nor of securities ([12A:8-319] 12A:8-113)  
38 nor to security agreements (12A:9-203).

39 (cf: P.L.1961, c.120, s.1-206)

40

41 18. N.J.S.12A:4-104 is amended to read as follows:

42 12A:4-104. Definitions and Index of Definitions.

43 a. In this chapter, unless the context otherwise requires:

44 (1) "Account" means any deposit or credit account with a bank,  
45 including a demand, time, savings, passbook, share draft, or like  
46 account, other than an account evidenced by a certificate of deposit;

- 1 (2) "Afternoon" means the period of a day between noon and  
 2 midnight;
- 3 (3) "Banking day" means the part of a day on which a bank is open  
 4 to the public for carrying on substantially all of its banking functions;
- 5 (4) "Clearing house" means an association of banks or other payors  
 6 regularly clearing items;
- 7 (5) "Customer" means a person having an account with a bank or  
 8 for whom a bank has agreed to collect items, including a bank that  
 9 maintains an account at another bank
- 10 (6) "Documentary draft" means a draft to be presented for  
 11 acceptance or payment if specified documents, certificated securities  
 12 (12A:8-102) or instructions for uncertificated securities ([12A:8-308]  
 13 12A:8-102), or other certificates, statements, or the like are to be  
 14 received by the drawee or other payor before acceptance or payment  
 15 of the draft;
- 16 (7) "Draft" means a draft as defined in 12A:3-104 or an item, other  
 17 than an instrument, that is an order.
- 18 (8) "Drawee" means a person ordered in a draft to make payment.
- 19 (9) "Item" means an instrument or a promise or order to pay  
 20 money handled by a bank for collection or payment. The term does  
 21 not include a payment order governed by chapter 4A or a credit or  
 22 debit card slip;
- 23 (10) "Midnight deadline" with respect to a bank is midnight on its  
 24 next banking day following the banking day on which it receives the  
 25 relevant item or notice or from which the time for taking action  
 26 commences to run, whichever is later;
- 27 (11) "Settle" means to pay in cash, by clearing-house settlement,  
 28 in a charge or credit or by remittance, or otherwise as agreed. A  
 29 settlement may be either provisional or final;
- 30 (12) "Suspends payments" with respect to a bank means that it has  
 31 been closed by order of the supervisory authorities, that a public  
 32 officer has been appointed to take it over or that it ceases or refuses  
 33 to make payments in the ordinary course of business.
- 34 b. Other definitions applying to this chapter and the sections in  
 35 which they appear are:
- |   |            |
|---|------------|
| 36 "Agreement for electronic presentment" | 12A:4-110. |
| 37 "Bank"                                 | 12A:4-105. |
| 38 "Collecting bank"                      | 12A:4-105. |
| 39 "Depository bank"                      | 12A:4-105. |
| 40 "Intermediary bank"                    | 12A:4-105. |
| 41 "Payor bank"                           | 12A:4-105. |
| 42 "Presenting bank"                      | 12A:4-105. |
| 43 "Presentment notice"                   | 12A:4-110. |
- 44 c. The following definitions in other chapters apply to this chapter:
- |                 |            |
|-----------------|------------|
| 45 "Acceptance" | 12A:3-409. |
| 46 "Alteration" | 12A:3-407. |

1	"Cashier's check"	12A:3-104.
2	"Certificate of deposit"	12A:3-104.
3	"Certified check"	12A:3-409.
4	"Check"	12A:3-104.
5	"Good faith"	12A:3-103.
6	"Holder in due course"	12A:3-302.
7	"Instrument"	12A:3-104.
8	"Notice of dishonor"	12A:3-503.
9	"Order"	12A:3-103.
10	"Ordinary care"	12A:3-103.
11	"Person entitled to enforce"	12A:3-301.
12	"Presentment"	12A:3-501.
13	"Promise"	12A:3-103.
14	"Prove"	12A:3-103.
15	"Teller's check"	12A:3-104.
16	"Unauthorized signature"	12A:3-403.

17 d. In addition chapter 1 contains general definitions and principles  
18 of construction and interpretation applicable throughout this chapter.  
19 (cf: N.J.S.12:4A-104)

20

21 19. N.J.S.12A:5-114 is amended to read as follows:

22 12A:5-114. Issuer's Duty and Privilege to Honor; Right to  
23 Reimbursement.

24 (1) An issuer shall honor a draft or demand for payment which  
25 complies with the terms of the relevant credit regardless of whether  
26 the goods or documents conform to the underlying contract for sale or  
27 other contract between the customer and the beneficiary. The issuer  
28 is not excused from honor of such a draft or demand by reason of an  
29 additional general term that all documents shall be satisfactory to the  
30 issuer, but an issuer may require that specified documents shall be  
31 satisfactory to it.

32 (2) Unless otherwise agreed when documents appear on their face  
33 to comply with the terms of a credit but a required document does not  
34 in fact conform to the warranties made on negotiation or transfer of a  
35 document of title (12A:7-507) or of a certificated security  
36 ([12A:8-306] 12A:8-108) or is forged or fraudulent or there is fraud  
37 in the transaction:

38 (a) The issuer shall honor the draft on demand for payment if honor  
39 is demanded by a negotiating bank or other holder of the draft or  
40 demand which has taken the draft or demand under the credit and  
41 under circumstances which would make it a holder in due course  
42 (12A:3-302) and in an appropriate case would make it a person to  
43 whom a document of title has been duly negotiated (12A:7-502) or a  
44 [bona fide] protected purchaser of a certificated security  
45 ([12A:8-302] 12A:8-302); and

46 (b) In all other cases as against its customer, an issuer acting in

1 good faith may honor the draft or demand for payment despite  
2 notification from the customer of fraud, forgery or other defect not  
3 apparent on the face of the documents but a court of appropriate  
4 jurisdiction may enjoin such honor.

5 (3) Unless otherwise agreed an issuer which has duly honored a  
6 draft or demand for payment is entitled to immediate reimbursement  
7 of any payment made under the credit and to be put in effectively  
8 available funds not later than the day before maturity of any  
9 acceptance made under the credit.

10 (cf: P.L.1989, c.348, s.2)

11

12 20. N.J.S.14A:7-3 is amended to read as follows:

13 14A:7-3. Subscription for shares.

14 (1) Unless otherwise provided by the subscription agreement or  
15 unless all of the subscribers consent to the revocation of such  
16 subscription, a subscription for shares of a corporation to be formed  
17 shall be irrevocable for a period of six months if no certificate of  
18 incorporation shall be filed within such period. If the certificate of  
19 incorporation is filed within such period, or if it is filed at any later  
20 time before revocation, such subscription shall also be irrevocable until  
21 60 days after the filing of the certificate of incorporation.  
22 Subscriptions for shares, whether made before or after the  
23 organization of a corporation, shall be accepted or rejected by the  
24 board, unless the certificate of incorporation or the by-laws require  
25 action by the shareholders.

26 (2) [A subscription agreement, whether made before or after the  
27 formation of a corporation, shall not be enforceable unless it satisfies  
28 the requirements provided in N.J.S. 12A:8-319 with respect to a  
29 contract for the sale of securities.] (Deleted by amendment, P.L. \_\_\_\_\_, c.  
30 \_\_\_\_\_.)

31 (3) A subscriber shall not become a holder of any shares for which  
32 the full consideration has not been paid. Unless otherwise provided by  
33 the subscription agreement

34 (a) Any payment made by the subscriber, in accordance with the  
35 subscription agreement or as called for by the board, shall be applied  
36 to pay the full consideration for as many whole shares as possible and  
37 any remaining balance of such payment shall be applied as part  
38 payment of a share;

39 (b) A share certificate shall be registered in the name of the  
40 subscriber for the number of shares so paid for in full; and

41 (c) The corporation shall be entitled to retain such share certificate  
42 as security for the performance by the subscriber of his obligations  
43 under the subscription agreement and subject to the power of sale or  
44 rescission upon default provided in paragraphs 14A:7-3(5)(b) and  
45 14A:7-3(5)(c).

46 (4) Unless otherwise provided by the subscription agreement

1 (a) Subscriptions for shares, whether made before or after the  
2 organization of a corporation, shall be paid in full at such time, or in  
3 such installments and at such times, as shall be determined by the  
4 board;

5 (b) Any call made by the board for payment on subscriptions shall  
6 be uniform as to all shares of the same class or as to all shares of the  
7 same series, as the case may be;

8 (c) All such calls for payments on subscriptions shall be upon 30  
9 days' notice thereof and of the time and place of payment, which notice  
10 shall be given personally or by registered or certified mail.

11 (5) In the event of default in the payment of any installment or call  
12 or other amount due under the terms of the subscription agreement,  
13 including any amount which may become due as a result of a default  
14 in the performance of any provision thereof, the corporation shall have  
15 the following rights and duties:

16 (a) It may proceed to collect the amount due in the same manner  
17 as any other debt owing to it. At any time before full satisfaction of  
18 the claim or any judgment therefor, it may proceed as provided in  
19 paragraph 14A:7-3(5)(b).

20 (b) It may sell the shares in any reasonable manner. Notice of the  
21 time and place of any public sale or of the time after which any private  
22 sale may be had, together with a statement of the amount due upon  
23 each share, shall be given in writing to the subscriber personally or by  
24 registered or certified mail at least 20 days before any such time stated  
25 in the notice. Unless otherwise provided in the subscription  
26 agreement, the corporation may not be the purchaser at any sale. Any  
27 excess of net proceeds realized over the amount due plus interest shall  
28 be paid over to the subscriber. If the sale is made in good faith, in a  
29 reasonable manner and upon the notice required by this paragraph, the  
30 corporation may recover the difference between the amount due plus  
31 interest and the net proceeds of the sale. A good faith purchaser for  
32 value shall acquire title to the sold shares free of any rights of the  
33 subscriber even though the corporation fails to comply with one or  
34 more of the requirements of this subsection.

35 (c) It may rescind the subscription, with the effect provided in  
36 subsection 14A:7-3(6), and may recover damages for breach of  
37 contract. Unless special circumstances show proximate damages of a  
38 different amount, the measure of damages shall be the difference  
39 between the market price at the time and place for tender of the shares  
40 and the unpaid contract price. Liquidated damages may be provided  
41 for in the subscription agreement in an amount which is reasonable  
42 under the circumstances, including the difficulties of proof of loss.  
43 The subscriber shall be entitled to restitution of any amount by which  
44 the sum of his payments exceeds the corporation's damages for breach  
45 of contract, whether fixed by agreement or judgment.

46 The rights and duties set forth in subsection 14A:7-3(5) shall be

1 interpreted as cumulative so far as is consistent with the purpose of  
2 entitling the corporation to a full and single recovery of the amount  
3 due or its damages. The subscription agreement may limit the rights  
4 and remedies of the corporation set forth in subsection 14A:7-3(5),  
5 and may add to them so far as is consistent with the preceding  
6 sentence.

7 (6) The rescission by the corporation of a subscription under which  
8 a portion of the shares subscribed for have been issued and in which  
9 the corporation retains a security interest, as provided in subsection  
10 14A:7-3(3), shall effect the cancellation of such shares.

11 (7) A contract made with a corporation to purchase its shares is a  
12 subscription agreement and not an executory contract to purchase  
13 shares, unless otherwise provided in the agreement.

14 (cf: P.L.1988, c.94, s.35)

15

16 21. Sections 1 through 12 of P.L.1959, c.200 (C.14:18-1 through  
17 14:18-12) are repealed.

18

19 22. This act shall take effect immediately.

20

21

## 22 STATEMENT

23

24 This bill enacts Uniform Commercial Code Revised Article 8  
25 "Investment Securities." The revision was approved by the National  
26 Conference of Commissioners on Uniform State Laws (NCCUSL) at  
27 its 1994 Annual Meeting. The New Jersey Law Revision Commission  
28 has examined Revised Article 8 pursuant to its statutory obligation to  
29 consider uniform state laws for adoption in New Jersey. The Law  
30 Revision Commission recommends its enactment. Revised Article 8  
31 has already been adopted in many states. The Chairman of the Federal  
32 Reserve Board and the Chairman of the Securities and Exchange  
33 Commission support Revised Article 8 and have urged states to adopt  
34 it because the legal uncertainties that arise when existing Article 8 is  
35 applied to the indirect holding system prevent banks from making  
36 loans to securities firms in times of financial crisis.

37 Revised Article 8 deals with the transfer of investment securities  
38 such as stocks and bonds. The revision was necessitated by the  
39 development of the indirect holding system for securities. Under this  
40 system, securities are mainly held through a chain of securities  
41 intermediaries starting with a central depository holding an  
42 immobilized certificate representing a large number of shares of the  
43 issuer. Existing Article 8 is based on the assumption that securities are  
44 held directly from the issuer. Since this assumption is completely at  
45 odds with how securities actually are held, existing Article 8 impedes  
46 the transfer of securities and affects the ability of securities firms to

1 obtain bank financing.

2 The bill establishes legal rules for the settlement of securities trades.  
3 "It sets the ground rules for implementing transfers and resolves  
4 disputes that may arise when different people claim conflicting  
5 interests." While federal securities law establishes disclosure  
6 requirements of financial information for the sale of securities and  
7 regulates brokers, dealers and other market place participants, Article  
8 8 supplements this scheme of regulation by setting rules about the  
9 transfer of securities.

10 The revision was necessitated by major changes in the way  
11 securities are held. Article 8 assumes that a person who owns  
12 securities has a direct relationship with the company that issued the  
13 security. It assumes that if the securities are evidenced by physical  
14 certificates, the owner holds them. If the securities are uncertificated,  
15 the company transfers ownership on its own books. While both of  
16 these situations occur, a third possibility is far more common. Almost  
17 all forms of publicly traded securities are issued in certificated form.  
18 However, these certificates are held, not by individual investors, but  
19 by clearing corporations in what is called an "immobilized" form,  
20 designating that the physical document remains in the possession of  
21 the clearing corporation and does not change hands to indicate  
22 transfers in ownership. This type of securities holding system is called  
23 the indirect holding system. "Settlement of securities trading occurs  
24 not by delivery of certificates or by registration of transfer on the  
25 records of the issuers or their transfer agents, but by computer entries  
26 in the records of clearing corporations and securities intermediaries."  
27 Current Article 8 does not deal effectively with the indirect holding  
28 system.

29 Revised Article 8 accommodates the indirect holding system. It  
30 takes a neutral position on the evolution of securities holding  
31 practices. The revision assumes that "the path of development will be  
32 determined by market and regulatory forces and that the Article 8 rules  
33 should not seek to influence the development in any specific  
34 direction." As a result, the rules of existing Article 8 have been  
35 retained for the direct holding system and a new Part 5 added to set  
36 forth the commercial law rules for the indirect holding system. In  
37 addition, the rules for obtaining a security interest in securities have  
38 been moved to Article 9.

39 Equally important are the rules addressing the question of systemic  
40 risk, "that is, the risk that a failure of one securities firm might cause  
41 others to fail." If securities transactions are not final, and if a  
42 securities firm fails, persons injured by the failure may seek to unwind  
43 the transaction and thus threaten the solvency of other firms. Revised  
44 Article 8 reduces systemic risk by establishing rules to finalize  
45 securities transactions. As a further precaution, Revised Article 8  
46 "establishes simple rules on the use of securities as collateral for loans

1 in order to ensure that financial institutions can be assured of their  
2 legal rights in providing financing to securities firms that may be  
3 necessary to maintain liquidity in times of stress."

4 Sections 1 through 12 of P.L.1959, c.200 (C.14:18-1 through  
5 14:18-12), concerning fiduciary security transfers are repealed.

6

7

8

9

10 Concerns transfer of investment securities and establishes rules for  
11 settlement of securities trades.