

ASSEMBLY, No. 2019

STATE OF NEW JERSEY

INTRODUCED MAY 13, 1996

By Assemblyman BATEMAN

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11 supplements thereto) is repealed and replaced as follows: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
33 a certificate.

34 (5) "Clearing corporation" means:

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) a person that is registered as a "clearing agency" under the
2 federal securities laws;
- 3 (b) a federal reserve bank; or
- 4 (c) any other person that provides clearance or settlement services
5 with respect to financial assets that would require it to register as a
6 clearing agency under the federal securities laws but for an exclusion
7 or exemption from the registration requirement, if its activities as a
8 clearing corporation, including promulgation of rules, are subject to
9 regulation by a federal or state governmental authority.
- 10 (6) "Communicate" means to:
- 11 (a) send a signed writing; or
- 12 (b) transmit information by any mechanism agreed upon by the
13 persons transmitting and receiving the information.
- 14 (7) "Entitlement holder" means a person identified in the records
15 of a securities intermediary as the person having a security entitlement
16 against the securities intermediary. If a person acquires a security
17 entitlement by virtue of paragraphs (2) or (3) of subsection b. of
18 12A:8-501, that person is the entitlement holder.
- 19 (8) "Entitlement order" means a notification communicated to a
20 securities intermediary directing transfer or redemption of a financial
21 asset to which the entitlement holder has a security entitlement.
- 22 (9) "Financial asset," except as otherwise provided in 12A:8-103,
23 means:
- 24 (a) a security;
- 25 (b) an obligation of a person or a share, participation, or other
26 interest in a person or in property or an enterprise of a person, which
27 is, or is of a type, dealt in or traded on financial markets, or which is
28 recognized in any area in which it is issued or dealt in as a medium for
29 investment; or
- 30 (c) any property that is held by a securities intermediary for another
31 person in a securities account if the securities intermediary has
32 expressly agreed with the other person that the property is to be
33 treated as a financial asset under this chapter.
- 34 As context requires, the term means either the interest itself or the
35 means by which a person's claim to it is evidenced, including a
36 certificated or uncertificated security, a security certificate, or a
37 security entitlement.
- 38 (10) "Good faith," for purposes of the obligation of good faith in
39 the performance or enforcement of contracts or duties within this
40 chapter, means honesty in fact and the observance of reasonable
41 commercial standards of fair dealing.
- 42 (11) "Indorsement" means a signature that alone or accompanied
43 by other words is made on a security certificate in registered form or
44 on a separate document for the purpose of assigning, transferring, or
45 redeeming the security or granting a power to assign, transfer, or
46 redeem it.

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

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

6 (a) the security certificate specifies a person entitled to the security;
 7 and

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

11 (14) "Securities intermediary" means:

12 (a) a clearing corporation; or

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

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

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

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

24 (c) which:

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

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

29 (16) "Security certificate" means a certificate representing a
 30 security.

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

34 (18) "Uncertificated security" means a security that is not
 35 represented by a certificate.

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

38	Appropriate person	12A:8-107
39	Control	12A:8-106
40	Delivery	12A:8-301
41	Investment company security	12A:8-103
42	Issuer	12A:8-201
43	Overissue	12A:8-210
44	Protected purchaser	12A:8-303
45	Securities account	12A:8-501

46 c. In addition, chapter 1 contains general definitions and principles

1 of construction and interpretation applicable throughout this chapter.

2 d. The characterization of a person, business, or transaction for
3 purposes of this chapter does not determine the characterization of the
4 person, business, or transaction for purposes of any other law,
5 regulation, or rule.

6 12A:8-103. Rule for Determining whether Certain Obligations and
7 Interests are Securities or Financial Assets.

8 a. A share or similar equity interest issued by a corporation,
9 business trust, joint stock company, or similar entity is a security.

10 b. An "investment company security" is a security. "Investment
11 company security" means a share or similar equity interest issued by
12 an entity that is registered as an investment company under the federal
13 investment company laws, an interest in a unit investment trust that is
14 so registered, or a face-amount certificate issued by a face-amount
15 certificate company that is so registered. Investment company security
16 does not include an insurance policy or endowment policy or annuity
17 contract issued by an insurance company.

18 c. An interest in a partnership or limited liability company is not a
19 security unless it is dealt in or traded on securities exchanges or in
20 securities markets, its terms expressly provide that it is a security
21 governed by this chapter, or it is an investment company security.
22 However, an interest in a partnership or limited liability company is a
23 financial asset if it is held in a securities account.

24 d. A writing that is a security certificate is governed by this chapter
25 and not by chapter 3, even though it also meets the requirements of
26 that chapter. However, a negotiable instrument governed by chapter
27 3 is a financial asset if it is held in a securities account.

28 e. An option or similar obligation issued by a clearing corporation
29 to its participants is not a security, but is a financial asset.

30 f. A commodity contract, as defined in 12A:9-115, is not a security
31 or a financial asset.

32 12A:8-104. Acquisition of Security or Financial Asset or Interest
33 Therein.

34 a. A person acquires a security or an interest therein, under this
35 chapter, if:

36 (1) the person is a purchaser to whom a security is delivered
37 pursuant to 12A:8-301; or

38 (2) the person acquires a security entitlement to the security
39 pursuant to 12A:8-501.

40 b. A person acquires a financial asset, other than a security, or an
41 interest therein, under this chapter, if the person acquires a security
42 entitlement to the financial asset.

43 c. A person who acquires a security entitlement to a security or
44 other financial asset has the rights specified in 12A:8-501 through
45 12A:8-511, but is a purchaser of any security, security entitlement, or
46 other financial asset held by the securities intermediary only to the

1 extent provided in 12A:8-503.

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

9 12A:8-105. Notice of Adverse Claim.

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

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

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

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

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

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

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

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

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

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

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

45 e. Filing of a financing statement under chapter 9 is not notice of
46 an adverse claim to a financial asset.

1 12A:8-106. Control.

2 a. A purchaser has "control" of a certificated security in bearer
3 form if the certificated security is delivered to the purchaser.

4 b. A purchaser has "control" of a certificated security in registered
5 form if the certificated security is delivered to the purchaser, and:

6 (1) the certificate is indorsed to the purchaser or in blank by an
7 effective indorsement; or

8 (2) the certificate is registered in the name of the purchaser, upon
9 original issue or registration of transfer by the issuer.

10 c. A purchaser has "control" of an uncertificated security if:

11 (1) the uncertificated security is delivered to the purchaser; or

12 (2) the issuer has agreed that it will comply with instructions
13 originated by the purchaser without further consent by the registered
14 owner.

15 d. A purchaser has "control" of a security entitlement if:

16 (1) the purchaser becomes the entitlement holder; or

17 (2) the securities intermediary has agreed that it will comply with
18 entitlement orders originated by the purchaser without further consent
19 by the entitlement holder.

20 e. If an interest in a security entitlement is granted by the
21 entitlement holder to the entitlement holder's own securities
22 intermediary, the securities intermediary has control.

23 f. A purchaser who has satisfied the requirements of paragraph (2)
24 of subsection c. or paragraph (2) of subsection d. of this section has
25 control even if the registered owner in the case of paragraph (2) of
26 subsection c. or the entitlement holder in the case of paragraph (2) of
27 subsection d. of this section retains the right to make substitutions for
28 the uncertificated security or security entitlement, to originate
29 instructions or entitlement orders to the issuer or securities
30 intermediary, or otherwise to deal with the uncertificated security or
31 security entitlement.

32 g. An issuer or a securities intermediary may not enter into an
33 agreement of the kind described in of paragraph (2) subsection c. or
34 paragraph (2) of subsection d. of this section without the consent of
35 the registered owner or entitlement holder, but an issuer or a securities
36 intermediary is not required to enter into such an agreement even
37 though the registered owner or entitlement holder so directs. An
38 issuer or securities intermediary that has entered into such an
39 agreement is not required to confirm the existence of the agreement to
40 another party unless requested to do so by the registered owner or
41 entitlement holder.

42 12A:8-107. Whether Indorsement, Instruction, or Entitlement
43 Order is Effective.

44 a. "Appropriate person" means:

45 (1) with respect to an indorsement, the person specified by a
46 security certificate or by an effective special indorsement to be entitled

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

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

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

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

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

22 12A:8-109. Warranties in Indirect Holding.

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

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

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

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

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

40 12A:8-110. Applicability; Choice of Law.

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

43 (1) the validity of a security;

44 (2) the rights and duties of the issuer with respect to registration of
45 transfer;

46 (3) the effectiveness of registration of transfer by the issuer;

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

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

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

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

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

17 12A:8-112. Creditor's Legal Process.

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

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

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

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

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

44 12A:8-113. Statute of Frauds Inapplicable.

45 A contract or modification of a contract for the sale or purchase of
46 a security is enforceable whether or not there is a writing signed or

1 record authenticated by a party against whom enforcement is sought,
2 even if the contract or modification is not capable of performance
3 within one year of its making.

4 12A:8-114. Evidentiary Rules concerning Certificated Securities.

5 The following rules apply in an action on a certificated security
6 against the issuer:

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

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

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

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

20 12A:8-115. Securities Intermediary and Others not Liable to
21 Adverse Claimant.

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

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

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

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

37 12A:8-116. Securities Intermediary as Purchaser for Value.

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

1 PART 2
2 ISSUE AND ISSUER

3
4 12A:8-201. Issuer.

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

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

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

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

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

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

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

25 12A:8-202. Issuer's Responsibility and Defenses; Notice of Defect
26 or Defense.

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

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

42 (1) A security other than one issued by a government or
43 governmental subdivision, agency, or instrumentality, even though
44 issued with a defect going to its validity, is valid in the hands of a
45 purchaser for value and without notice of the particular defect unless
46 the defect involves a violation of a constitutional provision. In that

1 case, the security is valid in the hands of a purchaser for value and
2 without notice of the defect, other than one who takes by original
3 issue.

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

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

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

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

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

27 12A:8-203. Staleness as Notice of Defect or Defense.

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

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

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

43 12A:8-204. Effect of Issuer's Restriction on Transfer.

44 A restriction on transfer of a security imposed by the issuer, even
45 if otherwise lawful, is ineffective against a person without knowledge
46 of the restriction unless:

1 a. the security is certificated and the restriction is noted
2 conspicuously on the security certificate; or

3 b. the security is uncertificated and the registered owner has been
4 notified of the restriction.

5 12A:8-205. Effect of Unauthorized Signature on Security
6 Certificate.

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

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

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

19 12A:8-206. Completion or Alteration of Security Certificate.

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

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

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

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

30 12A:8-207. Rights and Duties of Issuer with Respect to Registered
31 Owners.

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

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

40

41 12A:8-208. Effect of Signature of Authenticating Trustee,
42 Registrar, or Transfer Agent.

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

- 1 (1) the certificate is genuine;
- 2 (2) the person's own participation in the issue of the security is
3 within the person's capacity and within the scope of the authority
4 received by the person from the issuer; and
- 5 (3) the person has reasonable grounds to believe that the
6 certificated security is in the form and within the amount the issuer is
7 authorized to issue.
- 8 b. Unless otherwise agreed, a person signing under subsection a.
9 of this section does not assume responsibility for the validity of the
10 security in other respects.
- 11 12A:8-209. Issuer's Lien.
- 12 A lien in favor of an issuer upon a certificated security is valid
13 against a purchaser only if the right of the issuer to the lien is noted
14 conspicuously on the security certificate.
- 15 12A:8-210. Overissue.
- 16 a. In this section, "overissue" means the issue of securities in
17 excess of the amount the issuer has corporate power to issue, but an
18 overissue does not occur if appropriate action has cured the overissue.
- 19 b. Except as otherwise provided in subsections c. and d. of this
20 section, the provisions of this chapter which validate a security or
21 compel its issue or reissue do not apply to the extent that validation,
22 issue, or reissue would result in overissue.
- 23 c. If an identical security not constituting an overissue is
24 reasonably available for purchase, a person entitled to issue or
25 validation may compel the issuer to purchase the security and deliver
26 it if certificated or register its transfer if uncertificated, against
27 surrender of any security certificate the person holds.
- 28 d. If a security is not reasonably available for purchase, a person
29 entitled to issue or validation may recover from the issuer the price the
30 person or the last purchaser for value paid for it with interest from the
31 date of the person's demand.
- 32

33 PART 3

34 TRANSFER OF CERTIFICATED AND UNCERTIFICATED
35 SECURITIES

36

- 37 12A:8-301. Delivery.
- 38 a. Delivery of a certificated security to a purchaser occurs when:
- 39 (1) the purchaser acquires possession of the security certificate;
- 40 (2) another person, other than a securities intermediary, either
41 acquires possession of the security certificate on behalf of the
42 purchaser or, having previously acquired possession of the certificate,
43 acknowledges that it holds for the purchaser; or
- 44 (3) a securities intermediary acting on behalf of the purchaser
45 acquires possession of the security certificate, only if the certificate is
46 in registered form and has been specially indorsed to the purchaser by

1 an effective indorsement.

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

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

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

10 12A:8-302. Rights of Purchaser.

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

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

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

20 12A:8-303. Protected Purchaser.

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

23 (1) gives value;

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

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

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

29 12A:8-304. Indorsement.

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

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

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

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

1 indorsement supplied.

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

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

8 12A:8-305. Instruction.

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

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

16 12A:8-306. Effect of Guaranteeing Signature, Indorsement, or
17 Instruction.

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

20 (1) the signature was genuine;

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

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

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

27 (1) the signature was genuine;

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

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

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

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

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

45 d. A guarantor under subsections a. and b. of this section or a
46 special guarantor under subsection c. of this section does not

1 otherwise warrant the rightfulness of the transfer.

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

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

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

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

20 12A:8-307. Purchaser's Right to Requisites for Registration of
21 Transfer.

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

29

30

PART 4

31

REGISTRATION

32

33 12A:8-401. Duty of Issuer to Register Transfer.

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

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

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

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

45 (4) any applicable law relating to the collection of taxes has been
46 complied with;

1 (5) the transfer does not violate any restriction on transfer imposed
2 by the issuer in accordance with 12A:8-204;

3 (6) a demand that the issuer not register transfer has not become
4 effective under 12A:8-403, or the issuer has complied with subsection
5 b. of 12A:8-403 but no legal process or indemnity bond is obtained as
6 provided in subsection d. of 12A:8-403; and

7 (7) the transfer is in fact rightful or is to a protected purchaser.

8 b. If an issuer is under a duty to register a transfer of a security, the
9 issuer is liable to a person presenting a certificated security or an
10 instruction for registration or to the person's principal for loss
11 resulting from unreasonable delay in registration or failure or refusal
12 to register the transfer.

13 12A:8-402. Assurance that Indorsement or Instruction is Effective.

14 a. An issuer may require the following assurance that each
15 necessary indorsement or each instruction is genuine and authorized:

16 (1) in all cases, a guaranty of the signature of the person making an
17 indorsement or originating an instruction including, in the case of an
18 instruction, reasonable assurance of identity;

19 (2) if the indorsement is made or the instruction is originated by an
20 agent, appropriate assurance of actual authority to sign;

21 (3) if the indorsement is made or the instruction is originated by a
22 fiduciary pursuant to paragraph (4) or (5) of subsection a. of
23 12A:8-107, appropriate evidence of appointment or incumbency;

24 (4) if there is more than one fiduciary, reasonable assurance that all
25 who are required to sign have done so; and

26 (5) if the indorsement is made or the instruction is originated by a
27 person not covered by another provision of this subsection, assurance
28 appropriate to the case corresponding as nearly as may be to the
29 provisions of this subsection.

30 b. An issuer may elect to require reasonable assurance beyond that
31 specified in this section.

32 c. In this section:

33 (1) "Guaranty of the signature" means a guaranty signed by or on
34 behalf of a person reasonably believed by the issuer to be responsible.
35 An issuer may adopt standards with respect to responsibility if they are
36 not manifestly unreasonable.

37 (2) "Appropriate evidence of appointment or incumbency" means:

38 (a) in the case of a fiduciary appointed or qualified by a court, a
39 certificate issued by or under the direction or supervision of the court
40 or an officer thereof and dated within 60 days before the date of
41 presentation for transfer; or

42 (b) in any other case, a copy of a document showing the
43 appointment or a certificate issued by or on behalf of a person
44 reasonably believed by an issuer to be responsible or, in the absence of
45 that document or certificate, other evidence the issuer reasonably
46 considers appropriate.

1 12A:8-403. Demand that Issuer not Register Transfer.

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

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

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

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

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

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

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

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

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

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

1 12A:8-404. Wrongful Registration.

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

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

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

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

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

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

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

28 12A:8-405. Replacement of Lost, Destroyed, or Wrongfully Taken
29 Security.

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

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

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

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

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

44 12A:8-406. Obligation to Notify Issuer of Lost, Destroyed, or
45 Wrongfully Taken Security Certificate.

46 If a security certificate has been lost, apparently destroyed, or

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

7 12A:8-407. Authenticating Trustee, Transfer Agent, and Registrar.

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

15

16

PART 5

17

SECURITY ENTITLEMENTS

18

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

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

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

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

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

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

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

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

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

1 12A:8-502. Assertion of Adverse Claim Against Entitlement
2 Holder.

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

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

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

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

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

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

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

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

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

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

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

1 asset from the purchaser.

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

10 12A:8-504. Duty of Securities Intermediary to Maintain Financial
11 Asset.

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

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

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

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

26 or

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

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

33 12A:8-505. Duty of Securities Intermediary with Respect to
34 Payments and Distributions.

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

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

40 or

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

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

1 12A:8-506. Duty of Securities Intermediary to Exercise Rights as
2 Directed by Entitlement Holder.

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

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

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

13 12A:8-507. Duty of Securities Intermediary to Comply with
14 Entitlement Order.

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

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

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

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

34 12A:8-508. Duty of Securities Intermediary to Change Entitlement
35 Holder's Position to Other Form of Security Holding.

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

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

44 b. in the absence of agreement, the securities intermediary
45 exercises due care in accordance with reasonable commercial
46 standards to follow the direction of the entitlement holder.

1 12A:8-509. Specification of Duties of Securities Intermediary by
2 Other Statute or Regulation; Manner of Performance of Duties of
3 Securities Intermediary and Exercise of Rights of Entitlement Holder.

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

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

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

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

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

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

27 12A:8-510. Rights of Purchaser of Security Entitlement from
28 Entitlement Holder.

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

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

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

1 12A:8-511. Priority among Security Interests and Entitlement
2 Holders.

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

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

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

22

23

PART 6

24

TRANSITION PROVISION

25

26 12A:8-603. Savings Clause.

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

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

43

44 2. 12A:9-103 is amended to read as follows:

45 12A:9-103. Perfection of Security Interests in Multiple State
46 Transactions.

1 (1) Documents, instruments and ordinary goods.

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

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

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

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

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

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

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

38 (2) Certificate of title.

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

43 (b) Except as otherwise provided in this subsection, perfection and
44 the effect of perfection or nonperfection of the security interest are
45 governed by the law (including the conflict of laws rules) of the
46 jurisdiction issuing the certificate until four months after the goods are

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

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

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

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

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

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

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

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

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

16 (4) Chattel paper.

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

22 (5) Minerals.

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

30 (6) [Uncertificated securities.

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

35 (a) This subsection applies to investment property.

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

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

46 (d) Except as otherwise provided in paragraph (f), perfection of a

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

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

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

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

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

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

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

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

41
42 3. N.J.S.12A:9-105 is amended to read as follows:

43 12A:9-105. Definitions and index of definitions.

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

45 (a) "Account debtor" means the person who is obligated on an
46 account, chattel paper or general intangible;

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

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

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

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

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

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

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

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

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

44	"Account."	12A:9-106.
45	"Attach."	12A:9-203.
46	<u>"Commodity contract."</u>	<u>12A:9-115.</u>

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

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

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

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

39

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

41 12A:9-106. Definitions: "Account"; "General Intangibles."

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

1 charter or contract are accounts. "General intangibles" means any
2 personal property (including things in action) other than goods,
3 accounts, chattel paper, documents, instruments, investment property
4 and money.

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

6

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

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

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

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

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

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

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

23 (d) "Commodity intermediary" means:

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

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

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

44 (f) "Investment property" means:

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

46 (ii) a security entitlement;

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

1 whom has control rank equally.

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

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

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

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

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

23

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

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

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

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

2 12A:9-203. Attachment and Enforceability of Security Interest;
3 Proceeds; Formal Requisites.

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

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

17 (b) value has been given; and

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

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

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

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

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

37

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

39 12A:9-301. Persons who take priority over unperfected security
40 interests; right of "lien creditor."

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

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

44 (b) A person who becomes a lien creditor before the security
45 interest is perfected;

46 (c) In the case of goods, instruments, documents, and chattel paper,

1 a person who is not a secured party and who is a transferee in bulk or
2 other buyer not in ordinary course of business, or is a buyer of farm
3 products in ordinary course of business, to the extent that he gives
4 value and receives delivery of the collateral without knowledge of the
5 security interest and before it is perfected;

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

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

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

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

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

26

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

28 12A:9-302. When Filing Is Required to Perfect Security Interests;
29 Security Interests to Which Filing Provisions of This Chapter Do Not
30 Apply.

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

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

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

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

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

44 (e) An assignment of accounts which does not alone or in
45 conjunction with other assignments to the same assignee transfer a
46 significant part of the outstanding accounts of the assignor;

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

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

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

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

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

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

19 (b) The following statutes of this State:

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

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

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

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

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

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

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

32 (4) Compliance with a statute or treaty described in subsection (3)
33 is equivalent to the filing of a financing statement under this chapter,
34 and a security interest in property subject to the statute or treaty can
35 be perfected only by compliance therewith except as provided in
36 12A:9-103 on multiple state transactions. Duration and renewal of
37 perfection of a security interest perfected by compliance with the
38 statute or treaty are governed by the provisions of the statute or
39 treaty; in other respects the security interest is subject to this chapter.
40 (cf: P.L.1995, c.28, s.9)

41
42 10. N.J.S.12A:9-303 is amended to read as follows:

43 12A:9-303. When security interest is perfected; Continuity of
44 perfection..

45 (1) A security interest is perfected when it has attached and when
46 all of the applicable steps required for perfection have been taken.

1 Such steps are specified in 12A:9-115, 12A:9-302, 9-304, 9-305, and
2 9-306. If such steps are taken before the security interest attaches, it
3 is perfected at the time when it attaches.

4 (2) If a security interest is originally perfected in any way permitted
5 under this chapter and is subsequently perfected in some other way
6 under this chapter, without an intermediate period when it was
7 unperfected, the security interest shall be deemed to be perfected
8 continuously for the purposes of this chapter.
9 (cf: N.J.S.12A:9-303)

10

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

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

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

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

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

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

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

42 (a) Makes available to the debtor the goods or documents
43 representing the goods for the purpose of ultimate sale or exchange or
44 for the purpose of loading, unloading, storing, shipping, transshipping,
45 manufacturing, processing or otherwise dealing with them in a manner
46 preliminary to their sale or exchange, but priority between conflicting

1 security interests in the goods is subject to subsection (3) of
2 12A:9-312; or

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

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

9

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

11 12A:9-305. When Possession by Secured Party Perfects Security
12 Interest Without Filing.

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

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

27

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

29 12A:9-306. "Proceeds"; Secured party's rights on disposition of
30 collateral.

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

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

45 (3) The security interest in proceeds is a continuously perfected
46 security interest if the interest in the original collateral was perfected

1 but it ceases to be a perfected security interest and becomes
2 unperfected 10 days after receipt of the proceeds by the debtor unless

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

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

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

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

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

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

21 (a) In identifiable noncash proceeds and in separate deposit
22 accounts containing only proceeds;

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

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

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

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

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

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

44 (a) If the goods were collateral at the time of sale or lease, for an
45 indebtedness of the seller or lessor which is still unpaid, the original
46 security interest attaches again to the goods covered by the sale or

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

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

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

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

19

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

21 12A:9-309. Protection of Purchasers of Instruments, Documents,
22 and Securities.

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

31

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

33 12A:9-312. Priorities Among Conflicting Security Interests in the
34 Same Collateral.

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

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

42 (3) A perfected purchase money security interest in inventory has
43 priority over a conflicting security interest in the same inventory and
44 also has priority in identifiable cash proceeds received on or before the
45 delivery of the inventory to a buyer if:

46 (a) The purchase money security interest is perfected at the time

1 the debtor receives possession of the inventory; and

2 (b) The purchase money secured party gives notification in writing
3 to the holder of the conflicting security interest if the holder had filed
4 a financing statement covering the same types of inventory (i) before
5 the date of the filing made by the purchase money secured party, or (ii)
6 before the beginning of the 21-day period where the purchase money
7 security interest is temporarily perfected without filing or possession
8 (subsection (5) of 12A:9-304); and

9 (c) The holder of the conflicting security interest receives the
10 notification within five years before the debtor receives possession of
11 the inventory; and

12 d) The notification states that the person giving the notice has or
13 expects to acquire a purchase money security interest in inventory of
14 the debtor, describing such inventory by item or type.

15 (4) A purchase money security interest in collateral other than
16 inventory has priority over a conflicting security interest in the same
17 collateral or its proceeds if the purchase money security interest is
18 perfected at the time the debtor receives possession of the collateral
19 or within 10 days thereafter.

20 (5) In all cases not governed by other rules stated in this section
21 (including cases of purchase money security interests which do not
22 qualify for the special priorities set forth in subsections (3) and (4) of
23 this section), priority between conflicting security interests in the same
24 collateral shall be determined according to the following rules:

25 (a) Conflicting security interests rank according to priority in time
26 of filing or perfection. Priority dates from the time a filing is first
27 made covering the collateral or the time the security interest is first
28 perfected, whichever is earlier, provided that there is no period
29 thereafter when there is neither filing nor perfection.

30 (b) So long as conflicting security interests are unperfected, the
31 first to attach has priority.

32 (6) For the purposes of subsection (5) a date of filing or perfection
33 as to collateral is also a date of filing or perfection as to proceeds.

34 (7) If future advances are made while a security interest is
35 perfected by filing, the taking of possession, or under [12A:8-321 on
36 securities] 12A:9-115 or 12A: 9-116 on investment property, the
37 security interest has the same priority for the purposes of subsection
38 (5) of this section or subsection (5) of 12A: 9-115 with respect to the
39 future advances as it does with respect to the first advance. If a
40 commitment is made before or while the security interest is so
41 perfected, the security interest has the same priority with respect to
42 advances made pursuant thereto. In other cases a perfected security
43 interest has priority from the date the advance is made.

44 (cf: P.L.1995, c.28, s.10)

45

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

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

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

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

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

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

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

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

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

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

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

24

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

26 12A:1-206. Statute of frauds for kinds of personal property not
27 otherwise covered.

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

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

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

39

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

41 12A:4-104. Definitions and Index of Definitions.

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

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

46 (2) "Afternoon" means the period of a day between noon and

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

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

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

19

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

21 12A:5-114. Issuer's Duty and Privilege to Honor; Right to
22 Reimbursement.

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

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

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

45 (b) In all other cases as against its customer, an issuer acting in
46 good faith may honor the draft or demand for payment despite

1 notification from the customer of fraud, forgery or other defect not
2 apparent on the face of the documents but a court of appropriate
3 jurisdiction may enjoin such honor.

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

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

10

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

12 14A:7-3. Subscription for shares.

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

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

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

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

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

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

45 (4) Unless otherwise provided by the subscription agreement

46 (a) Subscriptions for shares, whether made before or after the

1 organization of a corporation, shall be paid in full at such time, or in
2 such installments and at such times, as shall be determined by the
3 board;

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

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

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

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

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

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

45 The rights and duties set forth in subsection 14A:7-3(5) shall be
46 interpreted as cumulative so far as is consistent with the purpose of

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

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

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

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

14

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

17

18 22. This act shall take effect immediately.

19

20

21

STATEMENT

22

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

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

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

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

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

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

1 legal rights in providing financing to securities firms that may be
2 necessary to maintain liquidity in times of stress."

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

5

6

7

8

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