

SENATE, No. 1155

STATE OF NEW JERSEY

INTRODUCED MAY 16, 1996

By Senator INVERSO

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11 supplements thereto) is repealed and replaced as follows: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
18 12A:8-101. Short Title

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

21 12A:8-102. Definitions.

22 a. In this chapter:

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

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

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

33 (4) "Certificated security" means a security that is represented by
34 a certificate.

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

1 redeem it.

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

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

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

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

12 (14) "Securities intermediary" means:

13 (a) a clearing corporation; or

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

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

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

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

25 (c) which:

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

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

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

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

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

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

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

1 c. In addition, chapter 1 contains general definitions and principles
2 of construction and interpretation applicable throughout this chapter.

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

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

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

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

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

25 d. A writing that is a security certificate is governed by this chapter
26 and not by chapter 3, even though it also meets the requirements of
27 that chapter. However, a negotiable instrument governed by chapter
28 3 is a financial asset if it is held in a securities account.

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

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

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

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

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

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

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

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

1 other financial asset held by the securities intermediary only to the
2 extent provided in 12A:8-503.

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

10 12A:8-105. Notice of Adverse Claim.

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

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

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

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

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

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

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

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

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

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

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

46 e. Filing of a financing statement under chapter 9 is not notice of

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

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

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

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

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

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

23 12A:8-109. Warranties in Indirect Holding.

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

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

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

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

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

41 12A:8-110. Applicability; Choice of Law.

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

44 (1) the validity of a security;

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

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

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

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

13 12A:8-111. Clearing Corporation Rules.

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

18 12A:8-112. Creditor's Legal Process.

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

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

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

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

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

45 12A:8-113. Statute of Frauds Inapplicable.

46 A contract or modification of a contract for the sale or purchase of

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

5 12A:8-114. Evidentiary Rules concerning Certificated Securities.

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

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

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

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

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

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

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

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

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

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

38 12A:8-116. Securities Intermediary as Purchaser for Value.

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

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. and the purchaser takes the
41 security more than two years after the date set for surrender or
42 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 12A:8-208. Effect of Signature of Authenticating Trustee,
41 Registrar, or Transfer Agent.

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

46 (1) the certificate is genuine;

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

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

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

10 12A:8-209. Issuer's Lien.

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

14 12A:8-210. Overissue.

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

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

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

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

31
32 PART 3

33 TRANSFER OF CERTIFICATED AND UNCERTIFICATED
34 SECURITIES

35
36 12A:8-301. Delivery.

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

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

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

43 (3) a securities intermediary acting on behalf of the purchaser
44 acquires possession of the security certificate, only if the certificate is
45 in registered form and has been specially indorsed to the purchaser by
46 an effective indorsement.

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

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

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

9 12A:8-302. Rights of Purchaser.

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

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

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

19 12A:8-303. Protected Purchaser.

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

22 (1) gives value;

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

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

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

28 12A:8-304. Indorsement.

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

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

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

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

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

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

7 12A:8-305. Instruction.

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

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

15 12A:8-306. Effect of Guaranteeing Signature, Indorsement, or
16 Instruction.

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

19 (1) the signature was genuine;

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

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

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

26 (1) the signature was genuine;

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

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

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

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

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

44 d. A guarantor under subsections a. and b. of this section or a
45 special guarantor under subsection c. of this section does not
46 otherwise warrant the rightfulness of the transfer.

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

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

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

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

19 12A:8-307. Purchaser's Right to Requisites for Registration of
20 Transfer.

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

28

29

PART 4

30

REGISTRATION

31

32 12A:8-401. Duty of Issuer to Register Transfer.

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

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

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

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

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

46 (5) the transfer does not violate any restriction on transfer imposed

1 by the issuer in accordance with 12A:8-204;

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

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

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

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

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

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

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

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

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

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

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

31 c. In this section:

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

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

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

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

46 12A:8-403. Demand that Issuer not Register Transfer.

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

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

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

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

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

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

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

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

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

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

46 12A:8-404. Wrongful Registration.

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

- 5 (1) pursuant to an ineffective indorsement or instruction;
6 (2) after a demand that the issuer not register transfer became
7 effective under subsection a. of 12A:8-403 and the issuer did not
8 comply with subsection b. of 12A:8-403;
9 (3) after the issuer had been served with an injunction, restraining
10 order, or other legal process enjoining it from registering the transfer,
11 issued by a court of competent jurisdiction, and the issuer had a
12 reasonable opportunity to act on the injunction, restraining order, or
13 other legal process; or
14 (4) by an issuer acting in collusion with the wrongdoer.

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

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

27 12A:8-405. Replacement of Lost, Destroyed, or Wrongfully Taken
28 Security.

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

- 32 (1) so requests before the issuer has notice that the certificate has
33 been acquired by a protected purchaser;
34 (2) files with the issuer a sufficient indemnity bond; and
35 (3) satisfies other reasonable requirements imposed by the issuer.

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

43 12A:8-406. Obligation to Notify Issuer of Lost, Destroyed, or
44 Wrongfully Taken Security Certificate.

45 If a security certificate has been lost, apparently destroyed, or
46 wrongfully taken, and the owner fails to notify the issuer of that fact

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

6 12A:8-407. Authenticating Trustee, Transfer Agent, and Registrar.

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

15 PART 5

16 SECURITY ENTITLEMENTS

17
18 12A:8-501. Securities Account; Acquisition of Security
19 Entitlement from Securities Intermediary.

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

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

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

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

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

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

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

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

46 12A:8-502. Assertion of Adverse Claim Against Entitlement

1 Holder.

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

7 12A:8-503. Property Interest of Entitlement Holder in Financial
8 Asset held by Securities Intermediary.

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

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

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

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

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

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

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

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

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

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

9 12A:8-504. Duty of Securities Intermediary to Maintain Financial
10 Asset.

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

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

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

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

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

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

32 12A:8-505. Duty of Securities Intermediary with Respect to
33 Payments and Distributions.

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

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

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

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

46 12A:8-506. Duty of Securities Intermediary to Exercise Rights as

1 Directed by Entitlement Holder.

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

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

7 or

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

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

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

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

22 or

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

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

33 12A:8-508. Duty of Securities Intermediary to Change Entitlement
34 Holder's Position to Other Form of Security Holding.

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

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

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

46 12A:8-509. Specification of Duties of Securities Intermediary by

1 Other Statute or Regulation; Manner of Performance of Duties of
2 Securities Intermediary and Exercise of Rights of Entitlement Holder.

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

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

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

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

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

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

26 12A:8-510. Rights of Purchaser of Security Entitlement from
27 Entitlement Holder.

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

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

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

46 12A:8-511. Priority among Security Interests and Entitlement

1 Holders.

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

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

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

21

22

PART 6

23

TRANSITION PROVISION

24

25 12A:8-603. Savings Clause.

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

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

42

43 2. 12A:9-103 is amended to read as follows:

44 12A:9-103. Perfection of Security Interests in Multiple State
45 Transactions.

46 (1) Documents, instruments and ordinary goods.

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

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

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

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

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

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

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

37 (2) Certificate of title.

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

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

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

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

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

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

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

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

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

46 (d) A debtor shall be deemed located at his place of business if he

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

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

15 (4) Chattel paper.

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

21 (5) Minerals.

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

29 (6) [Uncertificated securities.

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

34 (a) This subsection applies to investment property.

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

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

45 (d) Except as otherwise provided in paragraph (f), perfection of a
46 security interest, the effect of perfection or non-perfection, and the

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

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

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

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

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

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

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

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

40

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

42 12A:9-105. Definitions and index of definitions.

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

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

46 (b) "Chattel paper" means a writing or writings which evidence

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38

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

40 12A:9-106. Definitions: "Account"; "General Intangibles."

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

1 personal property (including things in action) other than goods,
2 accounts, chattel paper, documents, instruments, investment property
3 and money.

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

5

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

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

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

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

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

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

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

22 (d) "Commodity intermediary" means:

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

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

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

43 (f) "Investment property" means:

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

45 (ii) a security entitlement;

46 (iii) a securities account;

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

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

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

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

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

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

22
23 6. (New section) N.J.S.12A:9-116. Security Interest Arising in
24 Purchase or Delivery of Financial Asset.

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

35 (2) If a certificated security, or other financial asset represented by
36 a writing which in the ordinary course of business is transferred by
37 delivery with any necessary indorsement or assignment, is delivered
38 pursuant to an agreement between persons in the business of dealing
39 with such securities or financial assets and the agreement calls for
40 delivery versus payment, the person delivering the certificate or other
41 financial asset has a security interest in the certificated security or
42 other financial asset securing the seller's right to receive payment. A
43 security agreement is not required for attachment or enforceability of
44 the security interest, and the security interest is automatically
45 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 pursuant
11 to agreement, the collateral is investment property and the secured
12 party has control pursuant to agreement, or the debtor has signed a
13 security agreement which contains a description of the collateral and
14 in addition, when the security interest covers crops growing or to be
15 grown or timber to be cut, a description of the land concerned;

16 (b) value has been given; and

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

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

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

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

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

36

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

38 12A:9-301. Persons who take priority over unperfected security
39 interests; right of "lien creditor."

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

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

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

45 (c) In the case of goods, instruments, documents, and chattel
46 paper, a person who is not a secured party and who is a transferee in

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

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

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

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

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

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

25
26 9. N.J.S.12A:9-302 is amended to read as follows:

27 12A:9-302. When Filing Is Required to Perfect Security Interests;
28 Security Interests to Which Filing Provisions of This Chapter Do Not
29 Apply.

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

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

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

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

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

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

46 (f) a security interest of a collecting bank (12A:4-210) [or in

1 securities (12A: 8-321)] or arising under the chapter on sales (see
2 12A:9-113) or covered in subsection (3) of this section;

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

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

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

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

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

18 (b) The following statutes of this State:

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

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

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

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

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

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

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

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

40

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

42 12A:9-303. When security interest is perfected; Continuity of
43 perfection..

44 (1) A security interest is perfected when it has attached and when
45 all of the applicable steps required for perfection have been taken.
46 Such steps are specified in 12A:9-115, 12A:9-302, 9-304, 9-305, and

1 9-306. If such steps are taken before the security interest attaches, it
2 is perfected at the time when it attaches.

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

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

9

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

11 12A:9-304. Perfection of Security Interest In Instruments,
12 Documents, and Goods Covered by Documents; Perfection by
13 Permissive Filing; Temporary Perfection Without Filing or Transfer of
14 Possession.

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

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

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

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

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

41 (a) Makes available to the debtor the goods or documents
42 representing the goods for the purpose of ultimate sale or exchange or
43 for the purpose of loading, unloading, storing, shipping, transshipping,
44 manufacturing, processing or otherwise dealing with them in a manner
45 preliminary to their sale or exchange, but priority between conflicting
46 security interests in the goods is subject to subsection (3) of

1 12A:9-312; or

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

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

8

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

10 12A:9-305. When Possession by Secured Party Perfects Security
11 Interest Without Filing.

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

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

26

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

28 12A:9-306. "Proceeds"; Secured party's rights on disposition of
29 collateral.

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

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

44 (3) The security interest in proceeds is a continuously perfected
45 security interest if the interest in the original collateral was perfected
46 but it ceases to be a perfected security interest and becomes

1 unperfected 10 days after receipt of the proceeds by the debtor unless

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18

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

20 12A:9-309. Protection of Purchasers of Instruments, Documents,
21 and Securities.

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

30

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

32 12A:9-312. Priorities Among Conflicting Security Interests in the
33 Same Collateral.

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

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

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

45 (a) The purchase money security interest is perfected at the time
46 the debtor receives possession of the inventory; and

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

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

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

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

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

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

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

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

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

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

44
45 16. N.J.S.12A:1-105 is amended to read as follows:

46 12A:1-105. Territorial application of the act; Parties' power to

1 choose applicable law.

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

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

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

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

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

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

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

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

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

23

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

25 12A:1-206. Statute of frauds for kinds of personal property not
26 otherwise covered.

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

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

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

38

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

40 12A:4-104. Definitions and Index of Definitions.

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

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

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

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

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

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

18

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

20 12A:5-114. Issuer's Duty and Privilege to Honor; Right to
 21 Reimbursement.

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

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

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

44 (b) In all other cases as against its customer, an issuer acting in
 45 good faith may honor the draft or demand for payment despite
 46 notification from the customer of fraud, forgery or other defect not

1 apparent on the face of the documents but a court of appropriate
2 jurisdiction may enjoin such honor.

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

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

9

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

11 14A:7-3. Subscription for shares.

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

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

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

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

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

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

44 (4) Unless otherwise provided by the subscription agreement

45 (a) Subscriptions for shares, whether made before or after the
46 organization of a corporation, shall be paid in full at such time, or in

1 such installments and at such times, as shall be determined by the
2 board;

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

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

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

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

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

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

44 The rights and duties set forth in subsection 14A:7-3(5) shall be
45 interpreted as cumulative so far as is consistent with the purpose of
46 entitling the corporation to a full and single recovery of the amount

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

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

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

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

13

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

16

17 22. This act shall take effect immediately.

18

19

20

STATEMENT

21

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

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

46 The bill establishes legal rules for the settlement of securities trades.

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

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

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

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

1 necessary to maintain liquidity in times of stress."

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

4

5

6

7

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