

UNIFORM COMMERCIAL CODE (13 PA.C.S.) MODERNIZATION ACT OF 1996  
- OMNIBUS AMENDMENTS

Act of May. 22, 1996, P.L. 248, No. 44

Cl. 13

Session of 1996

No. 1996-44

HB 2042

AN ACT

Amending Title 13 (Commercial Code) of the Pennsylvania Consolidated Statutes, revising the division on investment securities and making conforming amendments to Divisions 1, 4, 5 and 9 of Title 13; providing for subordinated obligations and for qualified financial contracts; and further providing for negotiable instruments.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. This act shall be known and may be cited as the Uniform Commercial Code Modernization Act of 1996.

Section 2. Sections 1105(b) and 1206 of Title 13 of the Pennsylvania Consolidated Statutes are amended to read:

§ 1105. Territorial application of title; power of parties to choose applicable law.

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(b) Limitations on power of parties to choose applicable law.--Where one of the following provisions of this title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Section 2402 (relating to rights of creditors of seller against sold goods).

Sections 2A105 (relating to territorial application of division to goods covered by certificate of title) and 2A106 (relating to limitation on power of parties to consumer lease to choose applicable law and judicial forum).

Section 4102 (relating to applicability of division on bank deposits and collections).

Section 4A507 (relating to choice of law).

[Section 8106 (relating to applicability of division on investment securities).]

**Section 8110 (relating to applicability; choice of law).**

Section 9103 (relating to perfection provisions of division on secured transactions).

§ 1206. Statute of frauds for kinds of personal property not otherwise covered.

(a) General rule.--Except in the cases described in subsection (b), a contract for the sale of personal property is not enforceable by way of action or defense beyond \$5,000 in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(b) Exceptions.--Subsection (a) does not apply to contracts for the sale of goods (section 2201) nor of securities (section [8319] **8113**) nor to security agreements (section 9203).

Furthermore, subsection (a) does not apply to qualified financial contracts to the extent provided in subsection (c).

(c) Qualified financial contracts.--

(1) As used in this section and in section 2201(d) (relating to formal requirements; statute of frauds), "qualified financial contract" means an agreement to which each party is other than a natural person and which is:

(i) for the purchase and sale of foreign exchange, foreign currency, bullion, coin or precious metals on a forward, spot, next-day value or other basis;

(ii) a contract (other than a contract for the purchase and sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade) for the purchase, sale or transfer of any commodity or any similar good, article, service, right or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or any product or by-product thereof, with a maturity date more than two days after the date the contract is entered into;

(iii) for the purchase and sale of currency, or interbank deposits denominated in United States dollars;

(iv) for a currency option, currency swap or cross-currency rate swap;

(v) for a commodity swap or a commodity option (other than an option contract traded on or subject to the rules of a contract market or board of trade);

(vi) for a rate swap, basis swap, forward rate transaction or an interest rate option;

(vii) for a security-index swap or option or a security or securities price swap or option;

(viii) an agreement which involves any other similar transaction relating to a price or index (including, without limitation, any transaction or agreement involving any combination of agreements described in subparagraphs (i) through (vii), and any cap, floor, collar or similar transaction with respect to a rate, commodity price, commodity index, security or securities price, security-index or other price index); or

(ix) an option with respect to any agreement described in subparagraphs (i) through (viii).

(2) Subsection (a) does not apply to a qualified financial contract if either:

(i) there is, as provided in paragraph (3), sufficient evidence to indicate that a contract has been made; or

(ii) the parties thereto, by means of a prior or subsequent written contract, have agreed to be bound by the terms of the qualified financial contract from the time they reach agreement (by telephone, by exchange of electronic messages or otherwise) on those terms.

(3) For purposes of this subsection and section 2201(d), there is sufficient evidence that a contract has been made if any of the following applies:

(i) There is evidence of electronic communication (including, without limitation, the recording of a telephone call or the tangible written text produced by computer retrieval) sufficient to indicate that in the communication a contract was made between the parties.

(ii) A confirmation in writing sufficient to indicate that a contract has been made between the parties and sufficient against the sender is received by the party against whom enforcement is sought no later than the fifth business day after the contract is made (or such other period of time as the parties may agree in writing) and the sender does not receive, on or before the third business day after receipt (or such other period of time as the parties may agree in writing), written objection to a material term of the confirmation. For purposes of this subparagraph, a confirmation or an objection thereto is received at the time there has been actual receipt by an individual responsible for the transaction or, if earlier, at the time there has been constructive receipt, which is the time actual receipt by such an individual would have occurred if the receiving party, as an organization, had exercised reasonable diligence. For purposes of this subparagraph, a "business day" is a day on which both parties are open and transacting business of the kind involved in that qualified financial contract which is the subject of the confirmation. The confirmation and notice of objection referred to in this subparagraph may be communicated by means of telex, telefacsimile, computer or other similar process by which electronic signals are transmitted by telephone or otherwise, but a party claiming to have communicated in such manner shall, unless the parties have otherwise agreed in writing, have the burden of establishing actual or constructive receipt by the other party as set forth in this subparagraph.

(iii) The party against whom enforcement is sought admits in its pleading, testimony or otherwise in court that a contract was made.

(iv) There is a note, memorandum or other writing sufficient to indicate that a contract has been made, signed by the party against whom enforcement is sought or by its authorized agent or broker.

(4) For purposes of this subsection and section 2201(d):

(i) Evidence of an electronic communication indicating the making therein of a contract or a confirmation, admission, note, memorandum or writing is not insufficient merely because it omits or incorrectly states one or more material terms agreed upon, so long as such evidence provides a reasonable basis for concluding that a contract was made.

(ii) The tangible written text produced by telex, telefacsimile, computer retrieval or other process by which electronic signals are transmitted by telephone or otherwise shall constitute a writing.

(5) Nothing in this subsection shall be construed to affect in any respect the construction or interpretation of any provision of this title, other than this subsection and section 2201(d). Without limiting the generality of the foregoing, nothing in this subsection shall be construed to limit the generality of the term "writing" as defined in section 1201 (relating to general definitions), to affect the interpretation of subsection (a) or section 2201(a) insofar as they relate to the sufficiency of a writing or to affect the construction of any other provision of this title relating to the time when a communication is deemed

received, given or effective. Nothing in this subsection or in section 2201(d) shall be construed to imply that a qualified financial contract would be subject to subsection (a) or section 2201(a) but for this subsection or section 2201(d).

Section 3. Title 13 is amended by adding a section to read:  
§ 1209. Subordinated obligations.

An obligation may be issued as subordinated to payment of another obligation of the person obligated, or a creditor may subordinate his right to payment of an obligation by agreement with either the person obligated or another creditor of the person obligated. Such a subordination does not create a security interest as against either the common debtor or a subordinated creditor. This section shall be construed as declaring the law as it existed prior to the effective date of this section and not as modifying it.

Section 4. Section 2201 of Title 13 is amended by adding a subsection to read:

§ 2201. Formal requirements; statute of frauds.

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(d) Qualified financial contracts.--Subsection (a) does not apply to a qualified financial contract, as defined in section 1206(c)(1) (relating to statute of frauds for kinds of personal property not otherwise covered), if either:

(1) there is, as provided in section 1206(c)(3), sufficient evidence to indicate that a contract has been made; or

(2) the parties, by means of a prior or subsequent written contract, have agreed to be bound by the terms of the qualified financial contract from the time they reach agreement (by telephone, by exchange of electronic messages or otherwise) on those terms.

Section 5. Title 13 is amended by adding a section to read:  
§ 3312. Lost, destroyed or stolen cashier's check, teller's check or certified check.

(a) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Check." A cashier's check, teller's check or certified check.

"Claimant." A person who claims the right to receive the amount of a cashier's check, teller's check or certified check that was lost, destroyed or stolen.

"Declaration of loss." A written statement made under penalty of perjury to the effect that:

(1) the declarer lost possession of a check;

(2) the declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's check or teller's check;

(3) the loss of possession was not the result of a transfer by the declarer or a lawful seizure; and

(4) the declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

"Obligated bank." The issuer of a cashier's check or teller's check or the acceptor of a certified check.

(b) Claims.--

(1) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check if:

(i) the claimant is the drawer or payee of a certified check or remitter or payee of a cashier's check or teller's check;

(ii) the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check;

(iii) the communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid; and

(iv) the claimant provides reasonable identification if requested by the obligated bank.

Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration.

(2) If a claim is asserted in compliance with this subsection, the following rules apply:

(i) The claim becomes enforceable at the later of:

(A) the time the claim is asserted; or

(B) the 90th day following the date of the check, in the case of a cashier's check or teller's check, or the 90th day following the date of the acceptance, in the case of a certified check.

(ii) Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check.

(iii) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check.

(iv) When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to section 4302(a)(1) (relating to responsibility of payor bank for late return of item), payment to the claimant discharges all liability of the obligated bank with respect to the check.

(c) Claimant obligation.--If the obligated bank pays the amount of a check to a claimant under subsection (b)(2)(iv) and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to:

(1) refund the payment to the obligated bank if the check is paid; or

(2) pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

(d) Claimant remedies.--If a claimant has the right to assert a claim under subsection (b) and is also a person entitled to enforce a cashier's check, teller's check or certified check which is lost, destroyed or stolen, the claimant may assert rights with respect to the check either under this section or section 3309 (relating to enforcement of lost, destroyed or stolen instrument).

Section 6. Sections 4104(a) and 5114(b) of Title 13 are amended to read:

§ 4104. Definitions and index of definitions.

(a) Definitions.--The following words and phrases when used in this division shall have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:

"Account." Any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft or like account, other than an account evidenced by a certificate of deposit.

"Afternoon." The period of a day between noon and midnight.

"Banking day." The part of a day on which a bank is open to the public for carrying on substantially all of its banking functions.

"Clearinghouse." An association of banks or other payors regularly clearing items.

"Customer." A person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank.

"Documentary draft." A draft to be presented for acceptance or payment if specified documents, certificated securities (section 8102) or instructions for uncertificated securities (section [8308] **8102**) or other certificates, statements or the like are to be received by the drawee or other payor before acceptance or payment of the draft.

"Draft." A draft as defined in section 3104 (relating to negotiable instrument) or an item, other than an instrument, that is an order.

"Drawee." A person ordered in a draft to make payment.

"Item." An instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Division 4A (relating to funds transfers) or a credit or debit card slip.

"Midnight deadline." With respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later.

"Settle." To pay in cash, by clearinghouse settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final.

"Suspends payments." With respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

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§ 5114. Duty and privilege of issuer to honor; right to reimbursement.

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(b) Nonconforming document or fraud.--Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (section 7507) or of a certificated security (section [8306] **8108**) or is forged or fraudulent or there is fraud in the transaction:

(1) the issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (section 3302) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (section 7502) or a bona

fide purchaser of a certificated security (section 8302);  
and

(2) in all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other defect not apparent on the face of the documents but a court of appropriate jurisdiction may enjoin such honor.

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Section 7. Division 8 of Title 13 is repealed.

Section 8. Title 13 is amended by adding a division to read:

DIVISION 8

INVESTMENT SECURITIES

Chapter

- 81. Short Title and General Matters
- 82. Issue and Issuer
- 83. Transfer of Certificated and Uncertificated Securities
- 84. Registration
- 85. Security Entitlements

CHAPTER 81

SHORT TITLE AND GENERAL MATTERS

Sec.

- 8101. Short title of division.
- 8102. Definitions.
- 8103. Rules for determining whether certain obligations and interests are securities or financial assets.
- 8104. Acquisition of security or financial asset or interest therein.
- 8105. Notice of adverse claim.
- 8106. Control.
- 8107. Whether indorsement, instruction or entitlement order is effective.
- 8108. Warranties in direct holding.
- 8109. Warranties in indirect holding.
- 8110. Applicability; choice of law.
- 8111. Clearing corporation rules.
- 8112. Creditor's legal process.
- 8113. Statute of frauds inapplicable.
- 8114. Evidentiary rules concerning certificated securities.
- 8115. Securities intermediary and others not liable to adverse claimant.
- 8116. Securities intermediary as purchaser for value.

§ 8101. Short title of division.

This division shall be known and may be cited as the Uniform Commercial Code, Article 8, Investment Securities.

§ 8102. Definitions.

(a) Definitions.--The following words and phrases when used in this division shall have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:

"Adverse claim." A claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer or deal with the financial asset.

"Bearer form." As applied to a certificated security, a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

"Broker." A person defined as a broker or dealer under the Federal securities laws, but without excluding a bank acting in that capacity.

"Certificated security." A security that is represented by a certificate.

"Clearing corporation." "Clearing corporation" means:

- (1) a person that is registered as a "clearing agency" under the Federal securities laws;
- (2) a Federal reserve bank; or
- (3) any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the Federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a Federal or State governmental authority.

"Communicate." "Communicate" means to:

- (1) send a signed writing; or
- (2) transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

"Entitlement holder." A person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of section 8501(b)(2) or (3) (relating to securities account; acquisition of security entitlement from securities intermediary), that person is the entitlement holder.

"Entitlement order." A notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

"Financial asset." Except as otherwise provided in section 8103 (relating to rules for determining whether certain obligations and interests are securities or financial assets):

- (1) a security;
- (2) an obligation of a person or a share, participation or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

- (3) any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this division. As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate or a security entitlement.

"Good faith." For purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this division, honesty in fact and the observance of reasonable commercial standards of fair dealing.

"Indorsement." A signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring or redeeming the security or granting a power to assign, transfer or redeem it.

"Instruction." A notification communicated to the issuer of an uncertificated security which directs that the transfer

of the security be registered or that the security be redeemed.

"Registered form." As applied to a certificated security, a form in which:

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

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

"Securities intermediary." "Securities intermediary" means:

(1) a clearing corporation; or

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

"Security." Except as otherwise provided in section 8103 (relating to rules for determining whether certain obligations and interests are securities or financial assets), an obligation of an issuer or a share, participation or other interest in an issuer or in property or an enterprise of an issuer:

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

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

(3) which:

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

(ii) is a medium for investment and by its terms expressly provides that it is a security governed by this division.

"Security certificate." A certificate representing a security.

"Security entitlement." The rights and property interest of an entitlement holder with respect to a financial asset specified in Chapter 85 (relating to security entitlements).

"Uncertificated security." A security that is not represented by a certificate.

(b) Index of other definitions.--Other definitions applying to this division and the sections in which they appear are:

"Appropriate person." Section 8107.

"Control." Section 8106.

"Delivery." Section 8301.

"Investment company security." Section 8103.

"Issuer." Section 8201.

"Overissue." Section 8210.

"Protected purchaser." Section 8303.

"Securities account." Section 8501.

(c) Applicability of general definitions and principles.--In addition, Division 1 (relating to general provisions) contains general definitions and principles of construction and interpretation applicable throughout this division.

(d) Characterizations of person, business or transaction limited.--The characterization of a person, business or transaction for purposes of this division does not determine the characterization of the person, business or transaction for purposes of any other law, regulation or rule.

§ 8103. Rules for determining whether certain obligations and interests are securities or financial assets.

(a) Share or similar equity interest.--A share or similar equity interest issued by a corporation, business trust, joint stock company or similar entity is a security.

(b) Investment company security.--An "investment company security" is a security. An "investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the Federal investment company laws, an interest in a unit investment trust that is so registered or a face-amount certificate issued by a face-amount certificate company that is so registered. "Investment company security" does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(c) Interest in partnership or limited liability company.--An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this division, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(d) Writing that is security certificate.--A writing that is a security certificate is governed by this division and not by Division 3 (relating to negotiable instruments), even though it also meets the requirements of that division. However, a negotiable instrument governed by Division 3 is a financial asset if it is held in a securities account.

(e) Option or similar obligation.--An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(f) Commodity contract.--A commodity contract, as defined in section 9115 (relating to investment property), is not a security or a financial asset.

§ 8104. Acquisition of security or financial asset or interest therein.

(a) Acquisition of security or interest therein.--A person acquires a security or an interest therein under this division if:

(1) the person is a purchaser to whom a security is delivered pursuant to section 8301 (relating to delivery); or

(2) the person acquires a security entitlement to the security pursuant to section 8501 (relating to securities account; acquisition of security entitlement from securities intermediary).

(b) Acquisition of financial asset or interest therein.--A person acquires a financial asset, other than a security, or an interest therein under this division if the person acquires a security entitlement to the financial asset.

(c) Acquisition of security entitlement.--A person who acquires a security entitlement to a security or other financial asset has the rights specified in Chapter 85 (relating to security entitlements) but is a purchaser of any security, security entitlement or other financial asset held by the securities intermediary only to the extent provided in section 8503 (relating to property interest of entitlement holder in financial asset held by securities intermediary).

(d) Satisfaction of possession requirement.--Unless the context shows that a different meaning is intended, a person who is required by other law, regulation, rule or agreement to

transfer, deliver, present, surrender, exchange or otherwise put in the possession of another person a security or financial asset satisfies that requirement by causing the other person to acquire an interest in the security or financial asset pursuant to subsection (a) or (b).

§ 8105. Notice of adverse claim.

(a) General rule.--A person has notice of an adverse claim if:

- (1) the person knows of the adverse claim;
- (2) the person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or
- (3) the person has a duty imposed by statute or regulation to investigate whether an adverse claim exists and the investigation so required would establish the existence of the adverse claim.

(b) Knowledge of transfer of financial asset or interest therein.--Having knowledge that a financial asset or interest therein is or has been transferred by a representative imposes no duty of inquiry into the rightfulness of a transaction and is not notice of an adverse claim. However, a person who knows that a representative has transferred a financial asset or interest therein in a transaction that is, or whose proceeds are being used, for the individual benefit of the representative or otherwise in breach of duty has notice of an adverse claim.

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

- (1) one year after a date set for presentment or surrender for redemption or exchange; or
- (2) six months after a date set for payment of money against presentation or surrender of the certificate, if money was available for payment on that date.

(d) Notice to purchaser of certificated security.--A purchaser of a certificated security has notice of an adverse claim if the security certificate:

- (1) whether in bearer or registered form, has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or
- (2) is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on the certificate is not such a statement.

(e) Filing of financing statement not notice of adverse claim.--Filing of a financing statement under Division 9 (relating to secured transactions; sales of accounts, contract rights and chattel paper) is not notice of an adverse claim to a financial asset.

§ 8106. Control.

(a) "Control" of certificated security in bearer form.--A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(b) "Control" of certificated security in registered form.--A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser and:

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

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

(c) "Control" of uncertificated security.--A purchaser has "control" of an uncertificated security if:

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

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

(d) "Control" of security entitlement.--A purchaser has "control" of a security entitlement if:

(1) the purchaser becomes the entitlement holder; or

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

(e) Entitlement holder's securities intermediary.--If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(f) Purchaser under subsection (c)(2) or (d)(2).--A purchaser who has satisfied the requirements of subsection (c)(2) or (d)(2) has control even if the registered owner in the case of subsection (c)(2) or the entitlement holder in the case of subsection (d)(2) retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary or otherwise to deal with the uncertificated security or security entitlement.

(g) Agreement of issuer or securities intermediary under subsection (c)(2) or (d)(2).--An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection (c)(2) or (d)(2) without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

§ 8107. Whether indorsement, instruction or entitlement order is effective.

(a) Definition of "appropriate person".--"Appropriate person" means:

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

(2) with respect to an instruction, the registered owner of an uncertificated security;

(3) with respect to an entitlement order, the entitlement holder;

(4) if the person designated in paragraph (1), (2) or (3) is deceased, the designated person's successor taking under other law or the designated person's personal representative acting for the estate of the decedent; or

(5) if the person designated in paragraph (1), (2) or (3) lacks capacity, the designated person's guardian, conservator or other similar representative who has power under other law to transfer the security or financial asset.

(b) Effectiveness of indorsement, instruction or entitlement order.--An indorsement, instruction or entitlement order is effective if:

(1) it is made by the appropriate person;

(2) it is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under section 8106(c)(2) or (d)(2) (relating to control); or

(3) the appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

(c) Effectiveness of indorsement, instruction or entitlement order made by representative.--An indorsement, instruction or entitlement order made by a representative is effective even if:

(1) the representative has failed to comply with a controlling instrument or with the law of the state having jurisdiction of the representative relationship, including any law requiring the representative to obtain court approval of the transaction; or

(2) the representative's action in making the indorsement, instruction or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.

(d) Representative no longer serving as such.--If a security is registered in the name of or specially indorsed to a person described as a representative or if a securities account is maintained in the name of a person described as a representative, an indorsement, instruction or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.

(e) Effectiveness determined as of date of indorsement, instruction or entitlement order.--Effectiveness of an indorsement, instruction or entitlement order is determined as of the date the indorsement, instruction or entitlement order is made, and an indorsement, instruction or entitlement order does not become ineffective by reason of any later change of circumstances.

§ 8108. Warranties in direct holding.

(a) Warranties of person transferring certificated security.--A person who transfers a certificated security to a purchaser for value warrants to the purchaser, and an indorser, if the transfer is by indorsement, warrants to any subsequent purchaser, that:

(1) the certificate is genuine and has not been materially altered;

(2) the transferor or indorser does not know of any fact that might impair the validity of the security;

(3) there is no adverse claim to the security;

(4) the transfer does not violate any restriction on transfer;

(5) if the transfer is by indorsement, the indorsement is made by an appropriate person, or if the indorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(6) the transfer is otherwise effective and rightful.

(b) Warranties of person originating instruction for registration of transfer of uncertificated security.--A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser that:

(1) the instruction is made by an appropriate person, or if the instruction is by an agent, the agent has actual authority to act on behalf of the appropriate person;

(2) the security is valid;

(3) there is no adverse claim to the security; and

(4) at the time the instruction is presented to the issuer:

(i) the purchaser will be entitled to the registration of transfer;

(ii) the transfer will be registered by the issuer free from all liens, security interests, restrictions and claims other than those specified in the instruction;

(iii) the transfer will not violate any restriction on transfer; and

(iv) the requested transfer will otherwise be effective and rightful.

(c) Warranties of person transferring uncertificated security not originating instruction.--A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants that:

(1) the uncertificated security is valid;

(2) there is no adverse claim to the security;

(3) the transfer does not violate any restriction on transfer; and

(4) the transfer is otherwise effective and rightful.

(d) Warranties of person indorsing security certificate.--A person who indorses a security certificate warrants to the issuer that:

(1) there is no adverse claim to the security; and

(2) the indorsement is effective.

(e) Warranties of person originating instruction for registration of transfer of uncertificated security.--A person who originates an instruction for registration of transfer of an uncertificated security warrants to the issuer that:

(1) the instruction is effective; and

(2) at the time the instruction is presented to the issuer the purchaser will be entitled to the registration of transfer.

(f) Warranties of person presenting certificated security.--A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only that the person has no knowledge of any unauthorized signature in a necessary indorsement.

(g) Warranties of agent delivering certificated security.--If a person acts as agent of another in delivering a certificated security to a purchaser, the identity of the principal was known to the person to whom the certificate was delivered and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the principal, the person delivering the security certificate warrants only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

(h) Warranties of secured party.--A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate

to another person, makes only the warranties of an agent under subsection (g).

(i) Warranties, rights and privileges of broker.--Except as otherwise provided in subsection (g), a broker acting for a customer makes to the issuer and a purchaser the warranties provided in subsections (a) through (f). A broker that delivers a security certificate to its customer or causes its customer to be registered as the owner of an uncertificated security makes to the customer the warranties provided in subsection (a) or (b) and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of the customer.

§ 8109. Warranties in indirect holding.

(a) Warranties of person originating entitlement order to securities intermediary.--A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary that:

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

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

(b) Warranties of person delivering security certificate or originating instruction.--A person who delivers a security certificate to a securities intermediary for credit to a securities account or originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a securities account makes to the securities intermediary the warranties specified in section 8108(a) or (b) (relating to warranties in direct holding).

(c) Warranties of securities intermediary.--If a securities intermediary delivers a security certificate to its entitlement holder or causes its entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary makes to the entitlement holder the warranties specified in section 8108(a) or (b).

§ 8110. Applicability; choice of law.

(a) When local law of issuer's jurisdiction governs.--The local law of the issuer's jurisdiction, as specified in subsection (d), governs:

(1) the validity of a security;

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

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

(4) whether the issuer owes any duties to an adverse claimant to a security; and

(5) whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(b) When local law of securities intermediary's jurisdiction governs.--The local law of the securities intermediary's jurisdiction, as specified in subsection (e), governs:

(1) acquisition of a security entitlement from the securities intermediary;

(2) the rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(3) whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and

(4) whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(c) Assertion of adverse claims.--The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(d) Definition of "issuer's jurisdiction".--"Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the laws of this Commonwealth may specify the law of another jurisdiction as the law governing the matters specified in subsection (a)(2) through (5).

(e) Determination of "securities intermediary's jurisdiction".--The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

(1) If an agreement between the securities intermediary and its entitlement holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(2) If an agreement between the securities intermediary and its entitlement holder does not specify the governing law as provided in paragraph (1), but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(3) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in paragraph (1) or (2), the securities intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the entitlement holder's account.

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

(f) Factors not used to determine securities intermediary's jurisdiction.--A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other record keeping concerning the account.

§ 8111. Clearing corporation rules.

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

§ 8112. Creditor's legal process.

(a) Interest of debtor in certificated security.--The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as

otherwise provided in subsection (d). However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.

(b) Interest of debtor in uncertificated security.--The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at its chief executive office in the United States, except as otherwise provided in subsection (d).

(c) Interest of debtor in security entitlement.--The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained, except as otherwise provided in subsection (d).

(d) Interest of debtor; secured party.--The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.

(e) Creditor; aid from court.--A creditor whose debtor is the owner of a certificated security, uncertificated security or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security or security entitlement or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process.

§ 8113. Statute of frauds inapplicable.

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

§ 8114. Evidentiary rules concerning certificated securities.

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

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

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

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

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

§ 8115. Securities intermediary and others not liable to adverse claimant.

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

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

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

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

§ 8116. Securities intermediary as purchaser for value.

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

## CHAPTER 82 ISSUE AND ISSUER

Sec.

8201. Issuer.

8202. Issuer's responsibility and defenses; notice of defect or defense.

8203. Staleness as notice of defect or defense.

8204. Effect of issuer's restriction on transfer.

8205. Effect of unauthorized signature on security certificate.

8206. Completion or alteration of security certificate.

8207. Rights and duties of issuer with respect to registered owners.

8208. Effect of signature of authenticating trustee, registrar or transfer agent.

8209. Issuer's lien.

8210. Overissue.

§ 8201. Issuer.

(a) General rule.--With respect to an obligation on or a defense to a security, an "issuer" includes a person that:

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

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

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

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

(b) Guarantor.--With respect to an obligation on or defense to a security, a guarantor is an issuer to the extent of its guaranty, whether or not its obligation is noted on a security certificate.

(c) Person for whom transfer books maintained.--With respect to a registration of a transfer, issuer means a person on whose behalf transfer books are maintained.

§ 8202. Issuer's responsibility and defenses; notice of defect or defense.

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

(b) Defect affecting validity of security.--The following rules apply if an issuer asserts that a security is not valid:

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

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

(c) Lack of genuineness as complete defense.--Except as otherwise provided in section 8205 (relating to effect of unauthorized signature on security certificate), lack of genuineness of a certificated security is a complete defense, even against a purchaser for value and without notice.

(d) Defenses ineffective against purchaser for value without notice.--All other defenses of the issuer of a security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken the certificated security without notice of the particular defense.

(e) Right to cancel certain contracts unaffected.--This section does not affect the right of a party to cancel a contract for a security "when, as and if issued" or "when distributed" in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

(f) When security held by securities intermediary.--If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defense that the issuer could not assert if the entitlement holder held the security directly.

§ 8203. Staleness as notice of defect or defense.

After an act or event, other than a call that has been revoked, creating a right to immediate performance of the principal obligation represented by a certificated security or

setting a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer, if the act or event:

(1) requires the payment of money, the delivery of a certificated security, the registration of transfer of an uncertificated security or any of them on presentation or surrender of the security certificate, the money or security is available on the date set for payment or exchange, and the purchaser takes the security more than one year after that date; or

(2) is not covered by paragraph (1) and the purchaser takes the security more than two years after the date set for surrender or presentation or the date on which performance became due.

§ 8204. Effect of issuer's restriction on transfer.

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

(1) the security is certificated and the restriction is noted conspicuously on the security certificate; or

(2) the security is uncertificated and the registered owner has been notified of the restriction.

§ 8205. Effect of unauthorized signature on security certificate.

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

(1) an authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security certificate or of similar security certificates or the immediate preparation for signing of any of them; or

(2) an employee of the issuer, or of any of the persons listed in paragraph (1), entrusted with responsible handling of the security certificate.

§ 8206. Completion or alteration of security certificate.

(a) Completion of security certificate.--If a security certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

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

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

(b) Enforceability of improperly altered security certificate.--A complete security certificate that has been improperly altered, even if fraudulently, remains enforceable, but only according to its original terms.

§ 8207. Rights and duties of issuer with respect to registered owners.

(a) General rule.--Before due presentment for registration of transfer of a certificated security in registered form or of an instruction requesting registration of transfer of an uncertificated security, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, receive notifications and otherwise exercise all the rights and powers of an owner.

(b) Liability of registered owner for calls, etc., unaffected.--This division does not affect the liability of the

registered owner of a security for a call, assessment or the like.

§ 8208. Effect of signature of authenticating trustee, registrar or transfer agent.

(a) General rule.--A person signing a security certificate as authenticating trustee, registrar, transfer agent or the like warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a particular defect, that:

(1) the certificate is genuine;

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

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

(b) Limitation.--Unless otherwise agreed, a person signing under subsection (a) does not assume responsibility for the validity of the security in other respects.

§ 8209. Issuer's lien.

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

§ 8210. Overissue.

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

(b) Application of certain provisions limited in cases of overissue.--Except as otherwise provided in subsections (c) and (d), the provisions of this division which validate a security or compel its issue or reissue do not apply to the extent that validation, issue or reissue would result in overissue.

(c) Purchase may be compelled.--If an identical security not constituting an overissue is reasonably available for purchase, a person entitled to issue or validation may compel the issuer to purchase the security and deliver it if certificated or register its transfer if uncertificated, against surrender of any security certificate the person holds.

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

#### CHAPTER 83

#### TRANSFER OF CERTIFICATED AND UNCERTIFICATED SECURITIES

Sec.

8301. Delivery.

8302. Rights of purchaser.

8303. Protected purchaser.

8304. Indorsement.

8305. Instruction.

8306. Effect of guaranteeing signature, indorsement or instruction.

8307. Purchaser's right to requisites for registration of transfer.

§ 8301. Delivery.

(a) Delivery of certificated security.--Delivery of a certificated security to a purchaser occurs when:

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

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

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

(b) Delivery of uncertificated security.--Delivery of an uncertificated security to a purchaser occurs when:

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

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

§ 8302. Rights of purchaser.

(a) Rights acquired by purchaser.--Except as otherwise provided in subsections (b) and (c), upon delivery of a certificated or uncertificated security to a purchaser, the purchaser acquires all rights in the security that the transferor had or had power to transfer.

(b) Rights acquired by purchaser of limited interest.--A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

(c) Limitation on rights acquired from protected purchaser.--A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser.

§ 8303. Protected purchaser.

(a) Definition of "protected purchaser".--"Protected purchaser" means a purchaser of a certificated or uncertificated security or of an interest therein who:

(1) gives value;

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

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

(b) Rights acquired by protected purchaser.--In addition to acquiring the rights of a purchaser, a protected purchaser also acquires its interest in the security free of any adverse claim.

§ 8304. Indorsement.

(a) Blank and special indorsement.--An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom a security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement to a special indorsement.

(b) Effect of partial indorsement.--An indorsement purporting to be only of part of a security certificate representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(c) Effect of indorsement without delivery.--An indorsement, whether special or in blank, does not constitute a transfer until delivery of the certificate on which it appears or, if the indorsement is on a separate document, until delivery of both the document and the certificate.

(d) Effect of delivery without indorsement; right to compel indorsement.--If a security certificate in registered form has been delivered to a purchaser without a necessary indorsement, the purchaser may become a protected purchaser only when the indorsement is supplied. However, against a transferor, a transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

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

(f) Indorser not a guarantor.--Unless otherwise agreed, a person making an indorsement assumes only the obligations provided in section 8108 (relating to warranties in direct holding) and not an obligation that the security will be honored by the issuer.

§ 8305. Instruction.

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

(b) Person initiating instruction not a guarantor.--Unless otherwise agreed, a person initiating an instruction assumes only the obligations imposed by section 8108 (relating to warranties in direct holding) and not an obligation that the security will be honored by the issuer.

§ 8306. Effect of guaranteeing signature, indorsement or instruction.

(a) Warranties of signature guarantor.--A person who guarantees a signature of an indorser of a security certificate warrants that at the time of signing:

(1) the signature was genuine;

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

(3) the signer had legal capacity to sign.

(b) Warranties of person guaranteeing signature of originator of instruction.--A person who guarantees a signature of the originator of an instruction warrants that at the time of signing:

(1) the signature was genuine;

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

(3) the signer had legal capacity to sign.

(c) Warranties of person specially guaranteeing signature of originator of instruction.--A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under subsection (b) and also warrants that at the time the instruction is presented to the issuer:

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

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

(d) Limitations on warranties.--A guarantor under subsections (a) and (b) or a special guarantor under subsection (c) does not otherwise warrant the rightfulness of the transfer.

(e) Warranties of indorsement guarantor.--A person who guarantees an indorsement of a security certificate makes the warranties of a signature guarantor under subsection (a) and also warrants the rightfulness of the transfer in all respects.

(f) Warranties of person guaranteeing instruction requesting transfer of uncertificated security.--A person who guarantees an instruction requesting the transfer of an uncertificated security makes the warranties of a special signature guarantor under subsection (c) and also warrants the rightfulness of the transfer in all respects.

(g) Matters an issuer may not require.--An issuer may not require a special guaranty of signature, a guaranty of indorsement or a guaranty of instruction as a condition to registration of transfer.

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

§ 8307. Purchaser's right to requisites for registration of transfer.

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

#### CHAPTER 84 REGISTRATION

Sec.

8401. Duty of issuer to register transfer.

8402. Assurance that indorsement or instruction is effective.

8403. Demand that issuer not register transfer.

8404. Wrongful registration.

8405. Replacement of lost, destroyed or wrongfully taken security certificate.

8406. Obligation to notify issuer of lost, destroyed or wrongfully taken security certificate.

8407. Authenticating trustee, transfer agent and registrar.

§ 8401. Duty of issuer to register transfer.

(a) General rule.--If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security, the issuer shall register the transfer as requested if:

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

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

(3) reasonable assurance is given that the indorsement or instruction is genuine and authorized (section 8402);

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

(5) the transfer does not violate any restriction on transfer imposed by the issuer in accordance with section 8204 (relating to effect of issuer's restriction on transfer);

(6) a demand that the issuer not register transfer has not become effective under section 8403 (relating to demand that issuer not register transfer) or the issuer has complied with section 8403(b) but no legal process or indemnity bond is obtained as provided in section 8403(d); and

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

(b) Liability for failure or delay in registration.--If an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration or to the person's principal for loss resulting from unreasonable delay in registration or failure or refusal to register the transfer. § 8402. Assurance that indorsement or instruction is effective.

(a) Assurances that issuer may require.--An issuer may require the following assurance that each necessary indorsement or each instruction is genuine and authorized:

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

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

(3) if the indorsement is made or the instruction is originated by a fiduciary pursuant to section 8107(a)(4) or (5) (relating to whether indorsement, instruction or entitlement order is effective), appropriate evidence of appointment or incumbency;

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

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

(b) Additional assurances that issuer may require.--An issuer may elect to require reasonable assurance beyond that specified in this section.

(c) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Appropriate evidence of appointment or incumbency."

(1) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of the court or an officer thereof and dated within 60 days before the date of presentation for transfer.

(2) In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by an issuer to be responsible

or, in the absence of that document or certificate, other evidence the issuer reasonably considers appropriate.

"Guaranty of the signature." A guaranty signed by or on behalf of a person reasonably believed by the issuer to be responsible. An issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable. § 8403. Demand that issuer not register transfer.

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

(b) Subsequent request to register transfer.--If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security after a demand that the issuer not register transfer has become effective, the issuer shall promptly communicate to the person who initiated the demand at the address provided in the demand and the person who presented the security for registration of transfer or initiated the instruction requesting registration of transfer a notification stating that:

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

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

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

(c) Period of time registration can be withheld under subsection (b) (3).--The period described in subsection (b) (3) may not exceed 30 days after the date of communication of the notification. A shorter period may be specified by the issuer if it is not manifestly unreasonable.

(d) Limitation on liability of issuer.--An issuer is not liable to a person who initiated a demand that the issuer not register transfer for any loss the person suffers as a result of registration of a transfer pursuant to an effective indorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer's communication, either:

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

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

(e) Liability for registering transfer pursuant to ineffective indorsement or instruction.--This section does not relieve an issuer from liability for registering transfer pursuant to an indorsement or instruction that was not effective.

§ 8404. Wrongful registration.

(a) General rule.--Except as otherwise provided in section 8406 (relating to obligation to notify issuer of lost, destroyed or wrongfully taken security certificate), an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a security to a person not entitled to it and the transfer was registered:

(1) pursuant to an ineffective indorsement or instruction;

(2) after a demand that the issuer not register transfer became effective under section 8403(a) (relating to demand that issuer not register transfer) and the issuer did not comply with section 8403(b);

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

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

(b) Obligations of issuer.--An issuer that is liable for wrongful registration of transfer under subsection (a) on demand shall provide the person entitled to the security with a like certificated or uncertificated security and any payments or distributions that the person did not receive as a result of the wrongful registration. If an overissue would result, the issuer's liability to provide the person with a like security is governed by section 8210 (relating to overissue).

(c) Registration pursuant to effective indorsement or instruction.--Except as otherwise provided in subsection (a) or in a law relating to the collection of taxes, an issuer is not liable to an owner or other person suffering loss as a result of the registration of a transfer of a security if registration was made pursuant to an effective indorsement or instruction.

§ 8405. Replacement of lost, destroyed or wrongfully taken security certificate.

(a) When owner entitled to new security.--If an owner of a certificated security, whether in registered or bearer form, claims that the certificate has been lost, destroyed or wrongfully taken, the issuer shall issue a new certificate if the owner:

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

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

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

(b) Rights and duties of issuer when original certificate presented for registration.--If, after the issue of a new security certificate, a protected purchaser of the original certificate presents it for registration of transfer, the issuer shall register the transfer unless an overissue would result. In that case, the issuer's liability is governed by section 8210 (relating to overissue). In addition to any rights on the indemnity bond, an issuer may recover the new certificate from a person to whom it was issued or any person taking under that person, except a protected purchaser.

§ 8406. Obligation to notify issuer of lost, destroyed or wrongfully taken security certificate.

If a security certificate has been lost, apparently destroyed or wrongfully taken and the owner fails to notify the issuer of that fact within a reasonable time after the owner has notice

of it and the issuer registers a transfer of the security before receiving notification, the owner may not assert against the issuer a claim for registering the transfer under section 8404 (relating to wrongful registration) or a claim to a new security certificate under section 8405 (relating to replacement of lost, destroyed or wrongfully taken security certificate).

§ 8407. Authenticating trustee, transfer agent and registrar.

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

## CHAPTER 85

### SECURITY ENTITLEMENTS

Sec.

8501. Securities account; acquisition of security entitlement from securities intermediary.

8502. Assertion of adverse claim against entitlement holder.

8503. Property interest of entitlement holder in financial asset held by securities intermediary.

8504. Duty of securities intermediary to maintain financial asset.

8505. Duty of securities intermediary with respect to payments and distributions.

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8507. Duty of securities intermediary to comply with entitlement order.

8508. Duty of securities intermediary to change entitlement holder's position to other form of security holding.

8509. Specification of duties of securities intermediary by other statute or regulation; manner of performance of duties of securities intermediary and exercise of rights of entitlement holder.

8510. Rights of purchaser of security entitlement from entitlement holder.

8511. Priority among security interests and entitlement holders.

§ 8501. Securities account; acquisition of security entitlement from securities intermediary.

(a) Definition of "securities account".--"Securities account" means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.

(b) Acquisition of securities entitlement.--Except as otherwise provided in subsections (d) and (e), a person acquires a security entitlement if a securities intermediary:

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

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

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

(c) Financial asset not held by securities intermediary.--If a condition of subsection (b) has been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset.

(d) Financial asset held by securities intermediary for another person.--If a securities intermediary holds a financial asset for another person and the financial asset is registered in the name of, payable to the order of or specially indorsed to the other person and has not been indorsed to the securities intermediary or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.

(e) Issuance of security.--Issuance of a security is not establishment of a security entitlement.

§ 8502. Assertion of adverse claim against entitlement holder.

An action based on an adverse claim to a financial asset, whether framed in conversion, replevin, constructive trust, equitable lien or other theory, may not be asserted against a person who acquires a security entitlement under section 8501 (relating to securities account; acquisition of security entitlement from securities intermediary) for value and without notice of the adverse claim.

§ 8503. Property interest of entitlement holder in financial asset held by securities intermediary.

(a) General rule.--To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in section 8511 (relating to priority among security interests and entitlement holders).

(b) Entitlement holder has pro rata property interest.--An entitlement holder's property interest with respect to a particular financial asset under subsection (a) is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.

(c) Enforceability of property interest against securities intermediary.--An entitlement holder's property interest with respect to a particular financial asset under subsection (a) may be enforced against the securities intermediary only by exercise of the entitlement holder's rights under sections 8505 (relating to duty of securities intermediary with respect to payments and distributions) through 8508 (relating to duty of securities intermediary to change entitlement holder's position to other form of security holding).

(d) Enforcement of property interest against purchaser.--An entitlement holder's property interest with respect to a particular financial asset under subsection (a) may be enforced against a purchaser of the financial asset or interest therein only if:

- (1) insolvency proceedings have been initiated by or against the securities intermediary;
- (2) the securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset;

(3) the securities intermediary violated its obligations under section 8504 (relating to duty of securities intermediary to maintain financial asset) by transferring the financial asset or interest therein to the purchaser; and

(4) the purchaser is not protected under subsection (e).

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

(e) Limitation on actions based on entitlement holder's property interest.--An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection (a), whether framed in conversion, replevin, constructive trust, equitable lien or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under section 8504. § 8504. Duty of securities intermediary to maintain financial asset.

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

(b) Grant of security interest in financial asset.--Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection (a).

(c) Satisfaction of duty under subsection (a).--A securities intermediary satisfies the duty in subsection (a) if:

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

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

(d) Application to clearing corporations.--This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements.

§ 8505. Duty of securities intermediary with respect to payments and distributions.

(a) Duty of securities intermediary to obtain payment or distribution.--A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset. A securities intermediary satisfies the duty if:

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

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

(b) Obligation of securities intermediary to entitlement holder.--A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary.

§ 8506. Duty of securities intermediary to exercise rights as directed by entitlement holder.

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

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

(2) in the absence of agreement, the securities intermediary either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

§ 8507. Duty of securities intermediary to comply with entitlement order.

(a) General rule.--A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized and the securities intermediary has had reasonable opportunity to comply with the entitlement order. A securities intermediary satisfies the duty if:

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

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

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

§ 8508. Duty of securities intermediary to change entitlement holder's position to other form of security holding.

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

(1) the securities intermediary acts as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

§ 8509. Specification of duties of securities intermediary by other statute or regulation; manner of performance of duties of securities intermediary and exercise of rights of entitlement holder.

(a) Compliance with statute, etc., satisfies duty.--If the substance of a duty imposed upon a securities intermediary by sections 8504 (relating to duty of securities intermediary to maintain financial asset) through 8508 (relating to duty of securities intermediary to change entitlement holder's position to other form of security holding) is the subject of another statute, regulation or rule, compliance with that statute, regulation or rule satisfies the duty.

(b) When standards not specified in statute, etc.--To the extent that specific standards for the performance of the duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by other statute, regulation or rule or by agreement between the securities intermediary and entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a commercially reasonable manner.

(c) Limitations on obligations of securities intermediary.--The obligation of a securities intermediary to perform the duties imposed by sections 8504 through 8508 is subject to:

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

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

(d) When action prohibited by statute, etc.--Sections 8504 through 8508 do not require a securities intermediary to take any action that is prohibited by other statute, regulation or rule.

§ 8510. Rights of purchaser of security entitlement from entitlement holder.

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

(b) When adverse claim cannot be asserted.--If an adverse claim could not have been asserted against an entitlement holder under section 8502 (relating to assertion of adverse claim against entitlement holder), the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(c) Rules of priority.--In a case not covered by the priority rules in Division 9 (relating to secured transactions; sales of accounts, contract rights and chattel paper), a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Purchasers who have control rank equally, except that a securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

§ 8511. Priority among security interests and entitlement holders.

(a) General rule.--Except as otherwise provided in subsections (b) and (c), if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders other than the creditor have priority over the claim of the creditor.

(b) When creditor of securities intermediary has control over financial asset.--A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.

(c) Clearing corporations.--If a clearing corporation does not have sufficient financial assets to satisfy both its obligations to entitlement holders who have security entitlements with respect to a financial asset and its obligation to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders.

Section 9. Sections 9103(f), 9105 and 9106 of Title 13 are amended to read:

§ 9103. Perfection of security interests in multiple state transactions.

\* \* \*

[ (f) Uncertificated securities.--The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or nonperfection of a security interest in uncertificated securities.]

**(f) Investment property.--**

**(1) This subsection applies to investment property.**

**(2) Except as otherwise provided in paragraph (6), during the time that a security certificate is located in a jurisdiction, perfection of a security interest, the effect of perfection or nonperfection and the priority of a security interest in the certificated security represented thereby are governed by the local law of that jurisdiction.**

**(3) Except as otherwise provided in paragraph (6), perfection of a security interest, the effect of perfection or nonperfection and the priority of a security interest in an uncertificated security are governed by the local law of the issuer's jurisdiction as specified in section 8110(d) (relating to applicability; choice of law).**

**(4) Except as otherwise provided in paragraph (6), perfection of a security interest, the effect of perfection or nonperfection and the priority of a security interest in a security entitlement or securities account are governed by the local law of the securities intermediary's jurisdiction as specified in section 8110(e).**

**(5) Except as otherwise provided in paragraph (6), perfection of a security interest, the effect of perfection or nonperfection and the priority of a security interest in a commodity contract or commodity account are governed by the local law of the commodity intermediary's jurisdiction.**

The following rules determine a "commodity intermediary's jurisdiction" for purposes of this paragraph:

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

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

(iii) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraph (i) or (ii), the commodity intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the commodity customer's account.

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

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

§ 9105. Definitions and index of definitions.

(a) Definitions.--The following words and phrases when used in this division shall have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:

"Account debtor." The person who is obligated on an account, chattel paper or general intangible.

"Chattel paper." A writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper.

"Collateral." The property subject to a security interest, including accounts and chattel paper which have been sold.

"Debtor." The person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, including the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the division dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires.

"Deposit account." A demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit.

"Document." Document of title as defined in the general definitions of Division 1 (section 1201) and a receipt of the kind described in section 7201(b) (relating to who may issue warehouse receipt; storage under government bond).

"Encumbrance." Real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

"Goods." All things which are movable at the time the security interest attaches or which are fixtures (section 9313), but does not include money, documents, instruments, **investment property**, accounts, chattel paper, general intangibles or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals and growing crops.

"Instrument." A negotiable instrument (defined in section 3104), [or a certificated security (defined in section 8102)] or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment. **The term does not include investment property.**

"Mortgage." A consensual interest created by a real estate mortgage, a trust deed on real estate, or the like.

"Pursuant to commitment." An advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation.

"Security agreement." An agreement which creates or provides for a security interest.

"Secured party." A lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party.

"Transmitting utility." Any person primarily engaged in the railroad, street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service.

(b) Index of other definitions in division.--Other definitions applying to this division and the sections in which they appear are:

"Account." Section 9106.

"Attach." Section 9203.

"**Commodity contract.**" **Section 9115.**

"**Commodity customer.**" **Section 9115.**

"**Commodity intermediary.**" **Section 9115.**

"Construction mortgage." Section 9313(a).

"Consumer goods." Section 9109(1).

"**Control.**" **Section 9115.**

"Equipment." Section 9109(2).

"Farm products." Section 9109(3).

"Fixture." Section 9313.

"Fixture filing." Section 9313.

"General intangibles." Section 9106.  
"Inventory." Section 9109(4).  
**"Investment property." Section 9115.**  
"Lien creditor." Section 9301(c).  
"Proceeds." Section 9306(a).  
"Purchase money security interests." Section 9107.  
"United States." Section 9103.

(c) Index of definitions in other divisions.--The following definitions in other divisions of this title apply to this division:

**"Broker." Section 8102.**  
**"Certificated security." Section 8102.**  
"Check." Section 3104.  
**"Clearing corporation." Section 8102.**  
"Contract for sale." Section 2106.  
**"Control." Section 8106.**  
**"Delivery." Section 8301.**  
**"Entitlement holder." Section 8102.**  
**"Financial asset." Section 8102.**  
"Holder in due course." Section 3302.  
"Note." Section 3104.  
"Sale." Section 2106.  
**"Securities intermediary." Section 8102.**  
**"Security." Section 8102.**  
**"Security certificate." Section 8102.**  
**"Security entitlement." Section 8102.**  
**"Uncertificated security." Section 8102.**

(d) Applicability of general definitions and principles.--In addition, Division 1 (relating to general provisions) contains general definitions and principles of construction and interpretation applicable throughout this division.  
§ 9106. Definitions: "account"; "general intangibles."

The following words and phrases when used in this division shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Account." Any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance.

"General intangibles." Any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, **investment property** and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts.

Section 10. Title 13 is amended by adding sections to read:  
§ 9115. **Investment property.**

(a) **Definitions.--The following words and phrases when used in this division shall have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:**

**"Commodity account." An account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.**

**"Commodity contract." A commodity futures contract, an option on a commodity futures contract, a commodity option or other contract that in each case is:**

(1) **traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to the Federal commodities laws; or**

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

"Commodity customer." A person for whom a commodity intermediary carries a commodity contract on its books.

"Commodity intermediary." "Commodity intermediary" means:

(1) a person who is registered as a futures commission merchant under the Federal commodities laws; or

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

"Control." With respect to a certificated security, uncertificated security or security entitlement, the meaning specified in section 8106 (relating to control). A secured party has control over a commodity contract if by agreement among the commodity customer, the commodity intermediary and the secured party the commodity intermediary has agreed that it will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer. If a commodity customer grants a security interest in a commodity contract to its own commodity intermediary, the commodity intermediary as secured party has control. A secured party has control over a securities account or commodity account if the secured party has control over all security entitlements or commodity contracts carried in the securities account or commodity account.

"Investment property." "Investment property" means:

- (1) a security, whether certificated or uncertificated;
- (2) a security entitlement;
- (3) a securities account;
- (4) a commodity contract; or
- (5) a commodity account.

(b) Attachment or perfection of security interest in securities account or commodity account.--Attachment or perfection of a security interest in a securities account is also attachment or perfection of a security interest in all security entitlements carried in the securities account. Attachment or perfection of a security interest in a commodity account is also attachment or perfection of a security interest in all commodity contracts carried in the commodity account.

(c) Description of collateral in security agreement or financing statement.--A description of collateral in a security agreement or financing statement is sufficient to create or perfect a security interest in a certificated security, uncertificated security, security entitlement, securities account, commodity contract or commodity account whether it describes the collateral by those terms or as investment property or by description of the underlying security, financial asset or commodity contract. A description of investment property collateral in a security agreement or financing statement is sufficient if it identifies the collateral by specific listing, by category, by quantity, by a computational or allocational formula or procedure or by any other method if the identity of the collateral is objectively determinable.

(d) Rules governing perfection of security interest in investment property.--Perfection of a security interest in investment property is governed by the following rules:

(1) A security interest in investment property may be perfected by control.

(2) Except as otherwise provided in paragraphs (3) and (4), a security interest in investment property may be perfected by filing.

(3) If the debtor is a broker or securities intermediary, a security interest in investment property is perfected when it attaches. The filing of a financing statement with respect to a security interest in investment property granted by a broker or securities intermediary has no effect for purposes of perfection or priority with respect to that security interest.

(4) If a debtor is a commodity intermediary, a security interest in a commodity contract or a commodity account is perfected when it attaches. The filing of a financing statement with respect to a security interest in a commodity contract or a commodity account granted by a commodity intermediary has no effect for purposes of perfection or priority with respect to that security interest.

(e) Rules governing priority between conflicting security interests.--Priority between conflicting security interests in the same investment property is governed by the following rules:

(1) A security interest of a secured party who has control over investment property has priority over a security interest of a secured party who does not have control over the investment property.

(2) Except as otherwise provided in paragraphs (3) and (4), conflicting security interests of secured parties each of whom has control rank equally.

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

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

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

(6) In all other cases, priority between conflicting security interests in investment property is governed by section 9312(e), (f) and (g) (relating to priorities among conflicting security interests in same collateral). Section 9312(d) does not apply to investment property.

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

§ 9116. Security interest arising in purchase or delivery of financial asset.

(a) Security interest of securities intermediary.--If a person buys a financial asset through a securities intermediary

in a transaction in which the buyer is obligated to pay the purchase price to the securities intermediary at the time of the purchase and the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary, the securities intermediary has a security interest in the buyer's security entitlement securing the buyer's obligation to pay. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected.

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

Section 11. Sections 9203(a), 9301(a), 9302(a), 9303(a), 9304(a), (d) and (e), 9305, 9306(a) and (c), 9309 and 9312(a) and (g) of Title 13 are amended to read:

§ 9203. Attachment and enforceability of security interest; proceeds, formal requisites.

(a) Enforceability.--Subject to the provisions of section 4210 on the security interest of a collecting bank, [section 8321 on security interests in securities] **sections 9115 and 9116 on security interests in investment property** and section 9113 on a security interest arising under the division on sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

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

(2) value has been given; and

(3) the debtor has rights in the collateral.

\* \* \*

§ 9301. Persons who take priority over unperfected security interests; right of "lien creditor."

(a) General rule.--Except as otherwise provided in subsection (b), an unperfected security interest is subordinate to the rights of:

(1) persons entitled to priority under section 9312 (relating to priorities among conflicting security interests in same collateral);

(2) a person who becomes a lien creditor before the security interest is perfected;

(3) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course

of business, or is a buyer of farm products in ordinary course of business, to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected; and

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

\* \* \*

§ 9302. When filing is required to perfect security interest; security interests to which filing provisions of division do not apply.

(a) General rule.--A financing statement must be filed to perfect all security interests except the following:

(1) a security interest in collateral in possession of the secured party under section 9305 (relating to when possession by secured party perfects security interest without filing);

(2) a security interest temporarily perfected in instruments, **certificated securities** or documents without delivery under section 9304 (relating to perfection of security interest in instruments, documents, and goods covered by documents) or in proceeds for a ten-day period under section 9306 (relating to "proceeds"; rights of secured party on disposition of collateral);

(3) a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

(4) a purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in section 9313;

(5) an assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;

(6) a security interest of a collecting bank (section 4210) or [in securities (section 8321)] arising under Division 2 (relating to sales) (see section 9113) or covered in subsection (c); [and]

(7) an assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder[.]; **and**

**(8) a security interest in investment property which is perfected without filing under section 9115 (relating to investment property) or 9116 (relating to security interest arising in purchase or delivery of financial asset).**

\* \* \*

§ 9303. When security interest is perfected; continuity of perfection.

(a) When security interest is perfected.--A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in **section 9115 (relating to investment property)**, section 9302 (relating to when filing is required to perfect security interest), section 9304 (relating to perfection of security interest in instruments, documents and goods covered by documents), section 9305 (relating to when possession by secured party perfects security interest without filing) and section 9306 (relating to "proceeds"; rights of secured party on disposition of collateral). If such steps are

taken before the security interest attaches, it is perfected at the time when it attaches.

\* \* \*

§ 9304. Perfection of security interest in instruments, documents and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession.

(a) Chattel paper, negotiable documents, money and instruments.--A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments (other than [certificated securities or] instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (d) and (e) and section 9306(b) and (c) (relating to "proceeds"; rights of secured party on disposition of collateral).

\* \* \*

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

(e) Temporary perfection on transfer of possession.--A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument [(other than a certificated security)], **a certificated security**, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor:

(1) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to section 9312(c) (relating to priorities among conflicting security interests in same collateral); or

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

\* \* \*

§ 9305. When possession by secured party perfects security interest without filing.

A security interest in letters of credit and advices of credit (section 5116(b)(1)), goods, instruments [(other than certificated securities)], money, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the interest of the secured party. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this division.

The security interest may be otherwise perfected as provided in this division before or after the period of possession by the secured party.

§ 9306. "Proceeds"; rights of secured party on disposition of collateral.

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

\* \* \*

(c) Status of security interest in proceeds.--The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless:

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

(2) a filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; [or]

**(3) the original collateral was investment property and the proceeds are identifiable cash proceeds; or**

[(3)] **(4)** the security interest in the proceeds is perfected before the expiration of the ten-day period. Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this division for original collateral of the same type.

\* \* \*

§ 9309. Protection of purchasers of instruments and documents.

Nothing in this division limits the rights of a holder in due course of a negotiable instrument (section 3302) or a holder to whom a negotiable document of title has been duly negotiated (section 7501) or a [bona fide] **protected** purchaser of a security (section [8302] **8303**) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this division does not constitute notice of the security interest to such holders or purchasers.

§ 9312. Priorities among conflicting security interests in same collateral.

(a) Precedence of certain rules of priority.--The rules of priority stated in other sections of this chapter and in the following sections shall govern where applicable:

Section 4210 (relating to security interest of collecting bank in items, accompanying documents and proceeds).

Section 9103 (relating to perfection of security interests in multiple state transactions).

Section 9114 (relating to consignment).

**Section 9115 (relating to investment property).**

\* \* \*

(g) Future advances.--If future advances are made while a security interest is perfected by filing or the taking of possession or under [section 8321 (relating to enforceability, attachment, perfection and termination of security interests)]

**section 9115 or 9116 (relating to security interest arising in purchase or delivery of financial asset)**, the security interest has the same priority for the purposes of subsection (e) **or section 9115(e)** with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.

Section 12. The references to Articles 3 and 8 of the act of April 6, 1953 (P.L.3, No.1), known as the Uniform Commercial Code, in section 102(c)(2) of the act of July 12, 1972 (P.L.781, No.185), known as the Local Government Unit Debt Act, shall be deemed to be references to Divisions 3 and 8 of Title 13, respectively.

Section 13. The following acts and parts of acts are repealed:

Section 3 of the act of May 31, 1923 (P.L.468, No.256), known as the Uniform Fiduciaries Act.

As much as reads "See 13 Pa.C.S. § 8102 (relating to definitions and index of definitions)" of 15 Pa.C.S. § 8562(b).

Section 14. (a) This act does not affect an action or proceeding commenced before this act takes effect.

(b) If a security interest in a security is perfected at the date this act takes effect and the action by which the security interest was perfected would suffice to perfect a security interest under this act, no further action is required to continue perfection. If a security interest in a security is perfected at the date this act takes effect but the action by which the security interest was perfected would not suffice to perfect a security interest under this act, the security interest remains perfected for a period of four months after the effective date of this act and continues perfected thereafter if appropriate action to perfect under this act is taken within that period. If a security interest is perfected at the date this act takes effect and the security interest can be perfected by filing under this act, a financing statement signed by the secured party instead of the debtor may be filed within that period to continue perfection or thereafter to perfect.

(c) The addition of 13 Pa.C.S. §§ 1206(c) and 2201(d) and the last sentence of 13 Pa.C.S. § 1206(b) shall apply to qualified financial contracts entered into before, on or after the effective date of this act, and to written contracts described in §§ 1206(c)(2)(ii) and 2201(d)(2) entered into before, on or after the effective date of this act.

Section 15. This act shall take effect as follows:

(1) The addition of 13 Pa.C.S. §§ 1206(c) and 2201(d) and the last sentence of 13 Pa.C.S. § 1206(b) shall take effect immediately.

(2) This section shall take effect immediately.

(3) The remainder of this act shall take effect in 180 days.

APPROVED--The 22nd day of May, A. D. 1996.

THOMAS J. RIDGE