

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2042 Session of
1995

INTRODUCED BY HASAY, LLOYD, GEIST, STISH, FARGO, MARKOSEK,
GODSHALL, SERAFINI, SEMMEL AND FAJT, OCTOBER 3, 1995

REFERRED TO COMMITTEE ON COMMERCE AND ECONOMIC DEVELOPMENT,
OCTOBER 3, 1995

AN ACT

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

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

9 Section 1. This act shall be known and may be cited as the
10 Uniform Commercial Code Modernization Act of (in printing this
11 act in the Laws of Pennsylvania and the Pennsylvania
12 Consolidated Statutes, the Legislative Reference Bureau shall
13 insert here, in lieu of this statement, the year of enactment of
14 this act).

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

17 § 1105. Territorial application of title; power of parties to
18 choose applicable law.

19 * * *

(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

1 for the sale of goods (section 2201) nor of securities (section
2 [8319] 8113) nor to security agreements (section 9203).

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

5 (c) Qualified financial contracts.--

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

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

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

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

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

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

30 (vi) for a rate swap, basis swap, forward rate

1 transaction or an interest rate option;

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

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

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

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

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

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

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

27 (i) There is evidence of electronic communication
28 (including, without limitation, the recording of a
29 telephone call or the tangible written text produced by
30 computer retrieval) sufficient to indicate that in the

1 communication a contract was made between the parties.

2 (ii) A confirmation in writing sufficient to
3 indicate that a contract has been made between the
4 parties and sufficient against the sender is received by
5 the party against whom enforcement is sought no later
6 than the fifth business day after the contract is made
7 (or such other period of time as the parties may agree in
8 writing) and the sender does not receive, on or before
9 the third business day after receipt (or such other
10 period of time as the parties may agree in writing),
11 written objection to a material term of the confirmation.
12 For purposes of this subparagraph, a confirmation or an
13 objection thereto is received at the time there has been
14 actual receipt by an individual responsible for the
15 transaction or, if earlier, at the time there has been
16 constructive receipt, which is the time actual receipt by
17 such an individual would have occurred if the receiving
18 party, as an organization, had exercised reasonable
19 diligence. For purposes of this subparagraph, a "business
20 day" is a day on which both parties are open and
21 transacting business of the kind involved in that
22 qualified financial contract which is the subject of the
23 confirmation. The confirmation and notice of objection
24 referred to in this subparagraph may be communicated by
25 means of telex, telefacsimile, computer or other similar
26 process by which electronic signals are transmitted by
27 telephone or otherwise, but a party claiming to have
28 communicated in such manner shall, unless the parties
29 have otherwise agreed in writing, have the burden of
30 establishing actual or constructive receipt by the other

1 party as set forth in this subparagraph.

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

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

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

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

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

21 (5) Nothing in this subsection shall be construed to
22 affect in any respect the construction or interpretation of
23 any provision of this title, other than this subsection and
24 section 2201(d). Without limiting the generality of the
25 foregoing, nothing in this subsection shall be construed to
26 limit the generality of the term "writing" as defined in
27 section 1201 (relating to general definitions), to affect the
28 interpretation of subsection (a) or section 2201(a) insofar
29 as they relate to the sufficiency of a writing or to affect
30 the construction of any other provision of this title

1 relating to the time when a communication is deemed received,
2 given or effective. Nothing in this subsection or in section
3 2201(d) shall be construed to imply that a qualified
4 financial contract would be subject to subsection (a) or
5 section 2201(a) but for this subsection or section 2201(d).

6 Section 3. Title 13 is amended by adding a section to read:

7 § 1209. Subordinated obligations.

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

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

19 § 2201. Formal requirements; statute of frauds.

20 * * *

21 (d) Qualified financial contracts.--Subsection (a) does not
22 apply to a qualified financial contract, as defined in section
23 1206(c)(1) (relating to statute of frauds for kinds of personal
24 property not otherwise covered), if either:

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

28 (2) the parties, by means of a prior or subsequent
29 written contract, have agreed to be bound by the terms of the
30 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 (1) A claimant may assert a claim to the amount of a
2 check by a communication to the obligated bank describing the
3 check with reasonable certainty and requesting payment of the
4 amount of the check if:

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

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

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

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

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

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

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

21 (A) the time the claim is asserted; or

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

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

1 with respect to the check.

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

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

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

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

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

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

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

30 § 4104. Definitions and index of definitions.

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

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

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

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

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

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

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

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

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

28 "Item." An instrument or a promise or order to pay money
29 handled by a bank for collection or payment. The term does not
30 include a payment order governed by Division 4A (relating to

1 funds transfers) or a credit or debit card slip.

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

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

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

14 * * *

15 § 5114. Duty and privilege of issuer to honor; right to
16 reimbursement.

17 * * *

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

25 (1) the issuer must honor the draft or demand for
26 payment if honor is demanded by a negotiating bank or other
27 holder of the draft or demand which has taken the draft or
28 demand under the credit and under circumstances which would
29 make it a holder in due course (section 3302) and in an
30 appropriate case would make it a person to whom a document of

1 title has been duly negotiated (section 7502) or a bona fide
2 purchaser of a certificated security (section 8302); and

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

9 * * *

10 Section 7. Division 8 of Title 13 is repealed.

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

12 DIVISION 8

13 INVESTMENT SECURITIES

14 Chapter

15 81. Short Title and General Matters

16 82. Issue and Issuer

17 83. Transfer of Certificated and Uncertificated Securities

18 84. Registration

19 85. Security Entitlements

20 CHAPTER 81

21 SHORT TITLE AND GENERAL MATTERS

22 Sec.

23 8101. Short title of division.

24 8102. Definitions.

25 8103. Rules for determining whether certain obligations and
26 interests are securities or financial assets.

27 8104. Acquisition of security or financial asset or interest
28 therein.

29 8105. Notice of adverse claim.

30 8106. Control.

1 8107. Whether indorsement, instruction or entitlement order is
2 effective.

3 8108. Warranties in direct holding.

4 8109. Warranties in indirect holding.

5 8110. Applicability; choice of law.

6 8111. Clearing corporation rules.

7 8112. Creditor's legal process.

8 8113. Statute of frauds inapplicable.

9 8114. Evidentiary rules concerning certificated securities.

10 8115. Securities intermediary and others not liable to adverse
11 claimant.

12 8116. Securities intermediary as purchaser for value.

13 § 8101. Short title of division.

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

16 § 8102. Definitions.

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

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

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

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

1 that capacity.

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

4 "Clearing corporation." "Clearing corporation" means:

5 (1) a person that is registered as a "clearing agency"
6 under the Federal securities laws;

7 (2) a Federal reserve bank; or

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

16 "Communicate." "Communicate" means to:

17 (1) send a signed writing; or

18 (2) transmit information by any mechanism agreed upon by
19 the persons transmitting and receiving the information.

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

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

1 "Financial asset." Except as otherwise provided in section
2 8103 (relating to rules for determining whether certain
3 obligations and interests are securities or financial assets):

4 (1) a security;

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

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

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

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

28 "Instruction." A notification communicated to the issuer of
29 an uncertificated security which directs that the transfer of
30 the security be registered or that the security be redeemed.

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

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

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

8 "Securities intermediary." "Securities intermediary" means:

9 (1) a clearing corporation; or

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

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

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

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

25 (3) which:

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

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

1 "Security certificate." A certificate representing a
2 security.

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

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

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

10 "Appropriate person." Section 8107.

11 "Control." Section 8106.

12 "Delivery." Section 8301.

13 "Investment company security." Section 8103.

14 "Issuer." Section 8201.

15 "Overissue." Section 8210.

16 "Protected purchaser." Section 8303.

17 "Securities account." Section 8501.

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

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

27 § 8103. Rules for determining whether certain obligations and
28 interests are securities or financial assets.

29 (a) Share or similar equity interest.--A share or similar
30 equity interest issued by a corporation, business trust, joint

1 stock company or similar entity is a security.

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

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

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

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

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

1 § 8104. Acquisition of security or financial asset or interest
2 therein.

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

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

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

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

16 (c) Acquisition of security entitlement.--A person who
17 acquires a security entitlement to a security or other financial
18 asset has the rights specified in Chapter 85 (relating to
19 security entitlements), but is a purchaser of any security,
20 security entitlement or other financial asset held by the
21 securities intermediary only to the extent provided in section
22 8503 (relating to property interest of entitlement holder in
23 financial asset held by securities intermediary).

24 (d) Satisfaction of possession requirement.--Unless the
25 context shows that a different meaning is intended, a person who
26 is required by other law, regulation, rule or agreement to
27 transfer, deliver, present, surrender, exchange or otherwise put
28 in the possession of another person a security or financial
29 asset satisfies that requirement by causing the other person to
30 acquire an interest in the security or financial asset pursuant

1 to subsection (a) or (b).

2 § 8105. Notice of adverse claim.

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

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

6 (2) the person is aware of facts sufficient to indicate
7 that there is a significant probability that the adverse
8 claim exists and deliberately avoids information that would
9 establish the existence of the adverse claim; or

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

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

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

30 (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

1 purchaser, upon original issue or registration of transfer by
2 the issuer.

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

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

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

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

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

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

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

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

29 (g) Agreement of issuer or securities intermediary under
30 subsection (c)(2) or (d)(2).--An issuer or a securities

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

10 § 8107. Whether indorsement, instruction or entitlement order
11 is effective.

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

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

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

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

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

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

29 (b) Effectiveness of indorsement, instruction or entitlement
30 order.--An indorsement, instruction or entitlement order is

1 effective if:

2 (1) it is made by the appropriate person;

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

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

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

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

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

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

28 (e) Effectiveness determined as of date of indorsement,
29 instruction or entitlement order.--Effectiveness of an
30 indorsement, instruction or entitlement order is determined as

1 of the date the indorsement, instruction or entitlement order is
2 made, and an indorsement, instruction or entitlement order does
3 not become ineffective by reason of any later change of
4 circumstances.

5 § 8108. Warranties in direct holding.

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

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

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

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

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

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

22 (6) the transfer is otherwise effective and rightful.

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

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

1 (2) the security is valid;
2 (3) there is no adverse claim to the security; and
3 (4) at the time the instruction is presented to the
4 issuer:

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

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

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

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

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

19 (1) the uncertificated security is valid;

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

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

23 (4) the transfer is otherwise effective and rightful.

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

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

28 (2) the indorsement is effective.

29 (e) Warranties of person originating instruction for
30 registration of transfer of uncertificated security.--A person

1 who originates an instruction for registration of transfer of an
2 uncertificated security warrants to the issuer that:

3 (1) the instruction is effective; and

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

7 (f) Warranties of person presenting certificated security.--

8 A person who presents a certificated security for registration
9 of transfer or for payment or exchange warrants to the issuer
10 that the person is entitled to the registration, payment or
11 exchange, but a purchaser for value and without notice of
12 adverse claims to whom transfer is registered warrants only that
13 the person has no knowledge of any unauthorized signature in a
14 necessary indorsement.

15 (g) Warranties of agent delivering certificated security.--

16 If a person acts as agent of another in delivering a
17 certificated security to a purchaser, the identity of the
18 principal was known to the person to whom the certificate was
19 delivered and the certificate delivered by the agent was
20 received by the agent from the principal or received by the
21 agent from another person at the direction of the principal, the
22 person delivering the security certificate warrants only that
23 the delivering person has authority to act for the principal and
24 does not know of any adverse claim to the certificated security.

25 (h) Warranties of secured party.--A secured party who
26 redelivers a security certificate received, or after payment and
27 on order of the debtor delivers the security certificate to
28 another person, makes only the warranties of an agent under
29 subsection (g).

30 (i) Warranties, rights and privileges of broker.--Except as

1 otherwise provided in subsection (g), a broker acting for a
2 customer makes to the issuer and a purchaser the warranties
3 provided in subsections (a) through (f). A broker that delivers
4 a security certificate to its customer or causes its customer to
5 be registered as the owner of an uncertificated security makes
6 to the customer the warranties provided in subsection (a) or (b)
7 and has the rights and privileges of a purchaser under this
8 section. The warranties of and in favor of the broker acting as
9 an agent are in addition to applicable warranties given by and
10 in favor of the customer.

11 § 8109. Warranties in indirect holding.

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

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

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

22 (b) Warranties of person delivering security certificate or
23 originating instruction.--A person who delivers a security
24 certificate to a securities intermediary for credit to a
25 securities account or originates an instruction with respect to
26 an uncertificated security directing that the uncertificated
27 security be credited to a securities account makes to the
28 securities intermediary the warranties specified in section
29 8108(a) or (b) (relating to warranties in direct holding).

30 (c) Warranties of securities intermediary.--If a securities

1 intermediary delivers a security certificate to its entitlement
2 holder or causes its entitlement holder to be registered as the
3 owner of an uncertificated security, the securities intermediary
4 makes to the entitlement holder the warranties specified in
5 section 8108(a) or (b).

6 § 8110. Applicability; choice of law.

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

10 (1) the validity of a security;

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

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

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

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

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

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

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

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

30 (4) whether an adverse claim can be asserted against a

1 person who acquires a security entitlement from the
2 securities intermediary or a person who purchases a security
3 entitlement or interest therein from an entitlement holder.

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

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

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

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

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

29 (3) If an agreement between the securities intermediary
30 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

1 by the officer making the attachment or levy, except as
2 otherwise provided in subsection (d). However, a certificated
3 security for which the certificate has been surrendered to the
4 issuer may be reached by a creditor by legal process upon the
5 issuer.

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

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

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

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

1 § 8113. Statute of frauds inapplicable.

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

7 § 8114. Evidentiary rules concerning certificated securities.

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

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

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

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

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

25 § 8115. Securities intermediary and others not liable to
26 adverse claimant.

27 A securities intermediary that has transferred a financial
28 asset pursuant to an effective entitlement order, or a broker or
29 other agent or bailee that has dealt with a financial asset at
30 the direction of its customer or principal, is not liable to a

1 person having an adverse claim to the financial asset unless the
2 securities intermediary, or broker or other agent or bailee:

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

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

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

12 § 8116. Securities intermediary as purchaser for value.

13 A securities intermediary that receives a financial asset and
14 establishes a security entitlement to the financial asset in
15 favor of an entitlement holder is a purchaser for value of the
16 financial asset. A securities intermediary that acquires a
17 security entitlement to a financial asset from another
18 securities intermediary acquires the security entitlement for
19 value if the securities intermediary acquiring the security
20 entitlement establishes a security entitlement to the financial
21 asset in favor of an entitlement holder.

22 CHAPTER 82

23 ISSUE AND ISSUER

24 Sec.

25 8201. Issuer.

26 8202. Issuer's responsibility and defenses; notice of defect or
27 defense.

28 8203. Staleness as notice of defect or defense.

29 8204. Effect of issuer's restriction on transfer.

30 8205. Effect of unauthorized signature on security certificate.

1 8206. Completion or alteration of security certificate.
2 8207. Rights and duties of issuer with respect to registered
3 owners.
4 8208. Effect of signature of authenticating trustee, registrar
5 or transfer agent.
6 8209. Issuer's lien.
7 8210. Overissue.
8 § 8201. Issuer.

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

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

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

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

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

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

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

1 behalf transfer books are maintained.

2 § 8202. Issuer's responsibility and defenses; notice of defect
3 or defense.

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

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

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

30 (2) Paragraph (1) applies to an issuer that is a

1 government or governmental subdivision, agency or
2 instrumentality only if there has been substantial compliance
3 with the legal requirements governing the issue or the issuer
4 has received a substantial consideration for the issue as a
5 whole or for the particular security and a stated purpose of
6 the issue is one for which the issuer has power to borrow
7 money or issue the security.

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

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

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

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

1 security directly.

2 § 8203. Staleness as notice of defect or defense.

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

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

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

21 § 8204. Effect of issuer's restriction on transfer.

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

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

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

29 § 8205. Effect of unauthorized signature on security
30 certificate.

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

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

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

13 § 8206. Completion or alteration of security certificate.

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

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

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

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

27 § 8207. Rights and duties of issuer with respect to registered
28 owners.

29 (a) General rule.--Before due presentment for registration
30 of transfer of a certificated security in registered form or of

1 an instruction requesting registration of transfer of an
2 uncertificated security, the issuer or indenture trustee may
3 treat the registered owner as the person exclusively entitled to
4 vote, receive notifications and otherwise exercise all the
5 rights and powers of an owner.

6 (b) Liability of registered owner for calls, etc.,
7 unaffected.--This division does not affect the liability of the
8 registered owner of a security for a call, assessment or the
9 like.

10 § 8208. Effect of signature of authenticating trustee,
11 registrar or transfer agent.

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

16 (1) the certificate is genuine;

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

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

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

26 § 8209. Issuer's lien.

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

30 § 8210. Overissue.

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

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

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

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

21 CHAPTER 83

22 TRANSFER OF CERTIFICATED AND

23 UNCERTIFICATED SECURITIES

24 Sec.

25 8301. Delivery.

26 8302. Rights of purchaser.

27 8303. Protected purchaser.

28 8304. Indorsement.

29 8305. Instruction.

30 8306. Effect of guaranteeing signature, indorsement or

1 instruction.

2 8307. Purchaser's right to requisites for registration of
3 transfer.

4 § 8301. Delivery.

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

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

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

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

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

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

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

28 § 8302. Rights of purchaser.

29 (a) Rights acquired by purchaser.--Except as otherwise
30 provided in subsections (b) and (c), upon delivery of a

1 certificated or uncertificated security to a purchaser, the
2 purchaser acquires all rights in the security that the
3 transferor had or had power to transfer.

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

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

11 § 8303. Protected purchaser.

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

15 (1) gives value;

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

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

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

23 § 8304. Indorsement.

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

29 (b) Effect of partial indorsement.--An indorsement
30 purporting to be only of part of a security certificate

1 representing units intended by the issuer to be separately
2 transferable is effective to the extent of the indorsement.

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

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

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

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

26 § 8305. Instruction.

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

1 though it has been completed incorrectly.

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

7 § 8306. Effect of guaranteeing signature, indorsement or
8 instruction.

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

12 (1) the signature was genuine;

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

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

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

21 (1) the signature was genuine;

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

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

30 (c) Warranties of person specially guaranteeing signature of

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

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

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

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

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

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

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

30 (h) Persons protected by warranties.--The warranties under

1 this section are made to a person taking or dealing with the
2 security in reliance on the guaranty, and the guarantor is
3 liable to the person for loss resulting from their breach. An
4 indorser or originator of an instruction whose signature,
5 indorsement or instruction has been guaranteed is liable to a
6 guarantor for any loss suffered by the guarantor as a result of
7 breach of the warranties of the guarantor.

8 § 8307. Purchaser's right to requisites for registration of
9 transfer.

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

18 CHAPTER 84

19 REGISTRATION

20 Sec.

21 8401. Duty of issuer to register transfer.

22 8402. Assurance that indorsement or instruction is effective.

23 8403. Demand that issuer not register transfer.

24 8404. Wrongful registration.

25 8405. Replacement of lost, destroyed or wrongfully taken
26 security certificate.

27 8406. Obligation to notify issuer of lost, destroyed or
28 wrongfully taken security certificate.

29 8407. Authenticating trustee, transfer agent and registrar.

30 § 8401. Duty of issuer to register transfer.

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

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

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

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

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

16 (5) the transfer does not violate any restriction on
17 transfer imposed by the issuer in accordance with section
18 8204 (relating to effect of issuer's restriction on
19 transfer);

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

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

28 (b) Liability for failure or delay in registration.--If an
29 issuer is under a duty to register a transfer of a security, the
30 issuer is liable to a person presenting a certificated security

1 or an instruction for registration or to the person's principal
2 for loss resulting from unreasonable delay in registration or
3 failure or refusal to register the transfer.

4 § 8402. Assurance that indorsement or instruction is effective.

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

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

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

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

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

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

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

30 (c) Definitions.--As used in this section, the following

1 words and phrases shall have the meanings given to them in this
2 subsection:

3 "Appropriate evidence of appointment or incumbency."

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

8 (2) In any other case, a copy of a document showing the
9 appointment or a certificate issued by or on behalf of a
10 person reasonably believed by an issuer to be responsible or,
11 in the absence of that document or certificate, other
12 evidence the issuer reasonably considers appropriate.

13 "Guaranty of the signature." A guaranty signed by or on
14 behalf of a person reasonably believed by the issuer to be
15 responsible. An issuer may adopt standards with respect to
16 responsibility if they are not manifestly unreasonable.

17 § 8403. Demand that issuer not register transfer.

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

27 (b) Subsequent request to register transfer.--If a
28 certificated security in registered form is presented to an
29 issuer with a request to register transfer or an instruction is
30 presented to an issuer with a request to register transfer of an

1 uncertificated security after a demand that the issuer not
2 register transfer has become effective, the issuer shall
3 promptly communicate to the person who initiated the demand at
4 the address provided in the demand and the person who presented
5 the security for registration of transfer or initiated the
6 instruction requesting registration of transfer a notification
7 stating that:

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

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

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

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

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

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

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

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

11 § 8404. Wrongful registration.

12 (a) General rule.--Except as otherwise provided in section
13 8406 (relating to obligation to notify issuer of lost, destroyed
14 or wrongfully taken security certificate), an issuer is liable
15 for wrongful registration of transfer if the issuer has
16 registered a transfer of a security to a person not entitled to
17 it and the transfer was registered:

18 (1) pursuant to an ineffective indorsement or
19 instruction;

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

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

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

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

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

15 § 8405. Replacement of lost, destroyed or wrongfully taken
16 security certificate.

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

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

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

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

28 (b) Rights and duties of issuer when original certificate
29 presented for registration.--If, after the issue of a new
30 security certificate, a protected purchaser of the original

1 certificate presents it for registration of transfer, the issuer
2 shall register the transfer unless an overissue would result. In
3 that case, the issuer's liability is governed by section 8210
4 (relating to overissue). In addition to any rights on the
5 indemnity bond, an issuer may recover the new certificate from a
6 person to whom it was issued or any person taking under that
7 person, except a protected purchaser.

8 § 8406. Obligation to notify issuer of lost, destroyed or
9 wrongfully taken security certificate.

10 If a security certificate has been lost, apparently destroyed
11 or wrongfully taken and the owner fails to notify the issuer of
12 that fact within a reasonable time after the owner has notice of
13 it and the issuer registers a transfer of the security before
14 receiving notification, the owner may not assert against the
15 issuer a claim for registering the transfer under section 8404
16 (relating to wrongful registration) or a claim to a new security
17 certificate under section 8405 (relating to replacement of lost,
18 destroyed or wrongfully taken security certificate).

19 § 8407. Authenticating trustee, transfer agent and registrar.

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

28 CHAPTER 85

29 SECURITY ENTITLEMENTS

30 Sec.

1 8501. Securities account; acquisition of security entitlement
2 from securities intermediary.

3 8502. Assertion of adverse claim against entitlement holder.

4 8503. Property interest of entitlement holder in financial
5 asset held by securities intermediary.

6 8504. Duty of securities intermediary to maintain financial
7 asset.

8 8505. Duty of securities intermediary with respect to payments
9 and distributions.

10 8506. Duty of securities intermediary to exercise rights as
11 directed by entitlement holder.

12 8507. Duty of securities intermediary to comply with
13 entitlement order.

14 8508. Duty of securities intermediary to change entitlement
15 holder's position to other form of security holding.

16 8509. Specification of duties of securities intermediary by
17 other statute or regulation; manner of performance of
18 duties of securities intermediary and exercise of rights
19 of entitlement holder.

20 8510. Rights of purchaser of security entitlement from
21 entitlement holder.

22 8511. Priority among security interests and entitlement
23 holders.

24 § 8501. Securities account; acquisition of security entitlement
25 from securities intermediary.

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

1 rights that comprise the financial asset.

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

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

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

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

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

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

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

28 § 8502. Assertion of adverse claim against entitlement holder.

29 An action based on an adverse claim to a financial asset,
30 whether framed in conversion, replevin, constructive trust,

1 equitable lien or other theory, may not be asserted against a
2 person who acquires a security entitlement under section 8501
3 (relating to securities account; acquisition of security
4 entitlement from securities intermediary) for value and without
5 notice of the adverse claim.

6 § 8503. Property interest of entitlement holder in financial
7 asset held by securities intermediary.

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

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

25 (c) Enforceability of property interest against securities
26 intermediary.--An entitlement holder's property interest with
27 respect to a particular financial asset under subsection (a) may
28 be enforced against the securities intermediary only by exercise
29 of the entitlement holder's rights under sections 8505 (relating
30 to duty of securities intermediary with respect to payments and

1 distributions) through 8508 (relating to duty of securities
2 intermediary to change entitlement holder's position to other
3 form of security holding).

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

9 (1) insolvency proceedings have been initiated by or
10 against the securities intermediary;

11 (2) the securities intermediary does not have sufficient
12 interests in the financial asset to satisfy the security
13 entitlements of all of its entitlement holders to that
14 financial asset;

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

19 (4) the purchaser is not protected under subsection (e).
20 The trustee or other liquidator, acting on behalf of all
21 entitlement holders having security entitlements with respect to
22 a particular financial asset, may recover the financial asset or
23 interest therein from the purchaser. If the trustee or other
24 liquidator elects not to pursue that right, an entitlement
25 holder whose security entitlement remains unsatisfied has the
26 right to recover its interest in the financial asset from the
27 purchaser.

28 (e) Limitation on actions based on entitlement holder's
29 property interest.--An action based on the entitlement holder's
30 property interest with respect to a particular financial asset

1 under subsection (a), whether framed in conversion, replevin,
2 constructive trust, equitable lien or other theory, may not be
3 asserted against any purchaser of a financial asset or interest
4 therein who gives value, obtains control and does not act in
5 collusion with the securities intermediary in violating the
6 securities intermediary's obligations under section 8504.

7 § 8504. Duty of securities intermediary to maintain financial
8 asset.

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

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

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

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

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

30 (d) Application to clearing corporations.--This section does

1 not apply to a clearing corporation that is itself the obligor
2 of an option or similar obligation to which its entitlement
3 holders have security entitlements.

4 § 8505. Duty of securities intermediary with respect to
5 payments and distributions.

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

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

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

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

23 § 8506. Duty of securities intermediary to exercise rights as
24 directed by entitlement holder.

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

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

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

6 § 8507. Duty of securities intermediary to comply with
7 entitlement order.

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

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

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

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

30 § 8508. Duty of securities intermediary to change entitlement

1 holder's position to other form of security holding.

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

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

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

15 § 8509. Specification of duties of securities intermediary by
16 other statute or regulation; manner of performance of
17 duties of securities intermediary and exercise of
18 rights of entitlement holder.

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

27 (b) When standards not specified in statute, etc.--To the
28 extent that specific standards for the performance of the duties
29 of a securities intermediary or the exercise of the rights of an
30 entitlement holder are not specified by other statute,

1 regulation or rule or by agreement between the securities
2 intermediary and entitlement holder, the securities intermediary
3 shall perform its duties and the entitlement holder shall
4 exercise its rights in a commercially reasonable manner.

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

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

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

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

19 § 8510. Rights of purchaser of security entitlement from
20 entitlement holder.

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

29 (b) When adverse claim cannot be asserted.--If an adverse
30 claim could not have been asserted against an entitlement holder

1 under section 8502 (relating to assertion of adverse claim
2 against entitlement holder), the adverse claim cannot be
3 asserted against a person who purchases a security entitlement,
4 or an interest therein, from the entitlement holder.

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

15 § 8511. Priority among security interests and entitlement
16 holders.

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

26 (b) When creditor of securities intermediary has control
27 over financial asset.--A claim of a creditor of a securities
28 intermediary who has a security interest in a financial asset
29 held by a securities intermediary has priority over claims of
30 the securities intermediary's entitlement holders who have

1 security entitlements with respect to that financial asset if
2 the creditor has control over the financial asset.

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

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

12 § 9103. Perfection of security interests in multiple state
13 transactions.

14 * * *

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

20 (f) Investment property.--

21 (1) This subsection applies to investment property.

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

28 (3) Except as otherwise provided in paragraph (6),
29 perfection of a security interest, the effect of perfection
30 or nonperfection and the priority of a security interest in

1 an uncertificated security are governed by the local law of
2 the issuer's jurisdiction as specified in section 8110(d)
3 (relating to applicability; choice of law).

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

10 (5) Except as otherwise provided in paragraph (6),
11 perfection of a security interest, the effect of perfection
12 or nonperfection and the priority of a security interest in a
13 commodity contract or commodity account are governed by the
14 local law of the commodity intermediary's jurisdiction. The
15 following rules determine a "commodity intermediary's
16 jurisdiction" for purposes of this paragraph:

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

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

29 (iii) If an agreement between the commodity
30 intermediary and commodity customer does not specify a

1 jurisdiction as provided in subparagraph (i) or (ii), the
2 commodity intermediary's jurisdiction is the jurisdiction
3 in which is located the office identified in an account
4 statement as the office serving the commodity customer's
5 account.

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

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

21 § 9105. Definitions and index of definitions.

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

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

28 "Chattel paper." A writing or writings which evidence both a
29 monetary obligation and a security interest in or a lease of
30 specific goods but a charter or other contract involving the use

1 or hire of a vessel is not chattel paper. When a transaction is
2 evidenced both by such a security agreement or a lease and by an
3 instrument or a series of instruments, the group of writings
4 taken together constitutes chattel paper.

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

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

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

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

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

26 "Goods." All things which are movable at the time the
27 security interest attaches or which are fixtures (section 9313),
28 but does not include money, documents, instruments, investment
29 property, accounts, chattel paper, general intangibles or
30 minerals or the like (including oil and gas) before extraction.

1 "Goods" also includes standing timber which is to be cut and
2 removed under a conveyance or contract for sale, the unborn
3 young of animals and growing crops.

4 "Instrument." A negotiable instrument (defined in section
5 3104), [or a certificated security (defined in section 8102)] or
6 any other writing which evidences a right to the payment of
7 money and is not itself a security agreement or lease and is of
8 a type which is in ordinary course of business transferred by
9 delivery with any necessary indorsement or assignment. The term
10 does not include investment property.

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

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

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

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

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

1 or the provision of sewer service.

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

5 "Account." Section 9106.

6 "Attach." Section 9203.

7 "Commodity contract." Section 9115.

8 "Commodity customer." Section 9115.

9 "Commodity intermediary." Section 9115.

10 "Construction mortgage." Section 9313(a).

11 "Consumer goods." Section 9109(1).

12 "Control." Section 9115.

13 "Equipment." Section 9109(2).

14 "Farm products." Section 9109(3).

15 "Fixture." Section 9313.

16 "Fixture filing." Section 9313.

17 "General intangibles." Section 9106.

18 "Inventory." Section 9109(4).

19 "Investment property." Section 9115.

20 "Lien creditor." Section 9301(c).

21 "Proceeds." Section 9306(a).

22 "Purchase money security interests." Section 9107.

23 "United States." Section 9103.

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

27 "Broker." Section 8102.

28 "Certificated security." Section 8102.

29 "Check." Section 3104.

30 "Clearing corporation." Section 8102.

1 "Contract for sale." Section 2106.

2 "Control." Section 8106.

3 "Delivery." Section 8301.

4 "Entitlement holder." Section 8102.

5 "Financial asset." Section 8102.

6 "Holder in due course." Section 3302.

7 "Note." Section 3104.

8 "Sale." Section 2106.

9 "Securities intermediary." Section 8102.

10 "Security." Section 8102.

11 "Security certificate." Section 8102.

12 "Security entitlement." Section 8102.

13 "Uncertificated security." Section 8102.

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

18 § 9106. Definitions: "account"; "general intangibles."

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

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

25 "General intangibles." Any personal property (including
26 things in action) other than goods, accounts, chattel paper,
27 documents, instruments, investment property and money. All
28 rights to payment earned or unearned under a charter or other
29 contract involving the use or hire of a vessel and all rights
30 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

1 has control over a commodity contract if by agreement among the
2 commodity customer, the commodity intermediary and the secured
3 party the commodity intermediary has agreed that it will apply
4 any value distributed on account of the commodity contract as
5 directed by the secured party without further consent by the
6 commodity customer. If a commodity customer grants a security
7 interest in a commodity contract to its own commodity
8 intermediary, the commodity intermediary as secured party has
9 control. A secured party has control over a securities account
10 or commodity account if the secured party has control over all
11 security entitlements or commodity contracts carried in the
12 securities account or commodity account.

13 "Investment property".--"Investment property" means:

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

19 (b) Attachment or perfection of security interest in
20 securities account or commodity account.--Attachment or
21 perfection of a security interest in a securities account is
22 also attachment or perfection of a security interest in all
23 security entitlements carried in the securities account.
24 Attachment or perfection of a security interest in a commodity
25 account is also attachment or perfection of a security interest
26 in all commodity contracts carried in the commodity account.

27 (c) Description of collateral in security agreement or
28 financing statement.--A description of collateral in a security
29 agreement or financing statement is sufficient to create or
30 perfect a security interest in a certificated security,

1 uncertificated security, security entitlement, securities
2 account, commodity contract or commodity account whether it
3 describes the collateral by those terms or as investment
4 property or by description of the underlying security, financial
5 asset or commodity contract. A description of investment
6 property collateral in a security agreement or financing
7 statement is sufficient if it identifies the collateral by
8 specific listing, by category, by quantity, by a computational
9 or allocational formula or procedure or by any other method if
10 the identity of the collateral is objectively determinable.

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

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

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

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

26 (4) If a debtor is a commodity intermediary, a security
27 interest in a commodity contract or a commodity account is
28 perfected when it attaches. The filing of a financing
29 statement with respect to a security interest in a commodity
30 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.

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

10 § 9116. Security interest arising in purchase or delivery of
11 financial asset.

12 (a) Security interest of securities intermediary.--If a
13 person buys a financial asset through a securities intermediary
14 in a transaction in which the buyer is obligated to pay the
15 purchase price to the securities intermediary at the time of the
16 purchase and the securities intermediary credits the financial
17 asset to the buyer's securities account before the buyer pays
18 the securities intermediary, the securities intermediary has a
19 security interest in the buyer's security entitlement securing
20 the buyer's obligation to pay. A security agreement is not
21 required for attachment or enforceability of the security
22 interest, and the security interest is automatically perfected.

23 (b) Security interest of person delivering certificated
24 security or other financial asset represented by a writing.--If
25 a certificated security or other financial asset represented by
26 a writing which in the ordinary course of business is
27 transferred by delivery with any necessary indorsement or
28 assignment is delivered pursuant to an agreement between persons
29 in the business of dealing with such securities or financial
30 assets and the agreement calls for delivery versus payment, the

1 person delivering the certificate or other financial asset has a
2 security interest in the certificated security or other
3 financial asset securing the seller's right to receive payment.
4 A security agreement is not required for attachment or
5 enforceability of the security interest, and the security
6 interest is automatically perfected.

7 Section 11. Sections 9203(a), 9301(a), 9302(a), 9303(a),
8 9304(a), (d) and (e), 9305, 9306(a) and (c), 9309 and 9312(a)
9 and (g) of Title 13 are amended to read:

10 § 9203. Attachment and enforceability of security interest;
11 proceeds, formal requisites.

12 (a) Enforceability.--Subject to the provisions of section
13 4210 on the security interest of a collecting bank, [section
14 8321 on security interests in securities] sections 9115 and 9116
15 on security interests in investment property and section 9113 on
16 a security interest arising under the division on sales, a
17 security interest is not enforceable against the debtor or third
18 parties with respect to the collateral and does not attach
19 unless:

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

28 (2) value has been given; and

29 (3) the debtor has rights in the collateral.

30 * * *

1 § 9301. Persons who take priority over unperfected security
2 interests; right of "lien creditor."

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

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

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

11 (3) in the case of goods, instruments, documents, and
12 chattel paper, a person who is not a secured party and who is
13 a transferee in bulk or other buyer not in ordinary course of
14 business, or is a buyer of farm products in ordinary course
15 of business, to the extent that he gives value and receives
16 delivery of the collateral without knowledge of the security
17 interest and before it is perfected; and

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

23 * * *

24 § 9302. When filing is required to perfect security interest;
25 security interests to which filing provisions of
26 division do not apply.

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

29 (1) a security interest in collateral in possession of
30 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

1 arising in purchase or delivery of financial asset).

2 * * *

3 § 9303. When security interest is perfected; continuity of
4 perfection.

5 (a) When security interest is perfected.--A security
6 interest is perfected when it has attached and when all of the
7 applicable steps required for perfection have been taken. Such
8 steps are specified in section 9115 (relating to investment
9 property), section 9302 (relating to when filing is required to
10 perfect security interest), section 9304 (relating to perfection
11 of security interest in instruments, documents and goods covered
12 by documents), section 9305 (relating to when possession by
13 secured party perfects security interest without filing) and
14 section 9306 (relating to "proceeds"; rights of secured party on
15 disposition of collateral). If such steps are taken before the
16 security interest attaches, it is perfected at the time when it
17 attaches.

18 * * *

19 § 9304. Perfection of security interest in instruments,
20 documents and goods covered by documents; perfection
21 by permissive filing; temporary perfection without
22 filing or transfer of possession.

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

1 disposition of collateral).

2 * * *

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

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

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

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

29 * * *

30 § 9305. When possession by secured party perfects security

1 interest without filing.

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

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

17 § 9306. "Proceeds"; rights of secured party on disposition of
18 collateral.

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

28 * * *

29 (c) Status of security interest in proceeds.--The security
30 interest in proceeds is a continuously perfected security

1 interest if the interest in the original collateral was
2 perfected but it ceases to be a perfected security interest and
3 becomes unperfected ten days after receipt of the proceeds by
4 the debtor unless:

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

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

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

17 [(3)] (4) the security interest in the proceeds is
18 perfected before the expiration of the ten-day period.

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

23 * * *

24 § 9309. Protection of purchasers of instruments and documents.

25 Nothing in this division limits the rights of a holder in due
26 course of a negotiable instrument (section 3302) or a holder to
27 whom a negotiable document of title has been duly negotiated
28 (section 7501) or a [bona fide] protected purchaser of a
29 security (section [8302] 8303) and such holders or purchasers
30 take priority over an earlier security interest even though

1 perfected. Filing under this division does not constitute notice
2 of the security interest to such holders or purchasers.

3 § 9312. Priorities among conflicting security interests in same
4 collateral.

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

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

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

12 Section 9114 (relating to consignment).

13 Section 9115 (relating to investment property).

14 * * *

15 (g) Future advances.--If future advances are made while a
16 security interest is perfected by filing or the taking of
17 possession or under [section 8321 (relating to enforceability,
18 attachment, perfection and termination of security interests)]
19 section 9115 or 9116 (relating to security interest arising in
20 purchase or delivery of financial asset), the security interest
21 has the same priority for the purposes of subsection (e) or
22 section 9115(e) with respect to the future advances as it does
23 with respect to the first advance. If a commitment is made
24 before or while the security interest is so perfected, the
25 security interest has the same priority with respect to advances
26 made pursuant thereto. In other cases a perfected security
27 interest has priority from the date the advance is made.

28 Section 12. The references to Articles 3 and 8 of the act of
29 April 6, 1953 (P.L.3, No.1), known as the Uniform Commercial
30 Code, in section 102(c)(2) of the act of July 12, 1972 (P.L.781,

1 No.185), known as the Local Government Unit Debt Act, shall be
2 deemed to be references to Divisions 3 and 8 of Title 13,
3 respectively.

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

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

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

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

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

28 (c) The addition of 13 Pa.C.S. §§ 1206(c) and 2201(d) and
29 the last sentence of 13 Pa.C.S. § 1206(b) shall apply to
30 qualified financial contracts entered into before, on or after

1 the effective date of this act, and to written contracts
2 described in §§ 1206(c)(2)(ii) and 2201(d)(2) entered into
3 before, on or after the effective date of this act.

4 Section 15. This act shall take effect as follows:

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

8 (2) This section shall take effect immediately.

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