

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TENTH LEGISLATURE
4

5 **Legislative Document**

No. 1919

7 H. P. 1935 House of Representatives, February 3, 1982
Approved for introduction by the Legislative Council pursuant to
Joint Rule 26.

8 Referred to the Committee on Business Legislation. Sent up for
concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Tarbell of Bangor.

Cosponsors: Representative Telow of Lewiston, Representative
Racine of Biddeford and Senator Collins of Knox.

9
10 STATE OF MAINE
11

12 IN THE YEAR OF OUR LORD
13 NINETEEN HUNDRED AND EIGHTY-TWO
14

15 AN ACT to Amend the Uniform Commercial Code
16 Regarding Investment Securities.
17

18 Be it enacted by the People of the State of Maine as follows:

19 **Sec. 1.** 11 MRSA §1-201, sub-§(5) is amended to read:

20 (5) Bearer. "Bearer" means the person in possession of
21 an instrument, document of title or certificated security
22 payable to bearer or indorsed in blank.

23 **Sec. 2.** 11 MRSA §1-201, sub-§(14) is amended to read:

24 (14) Delivery. "Delivery" with respect to instrument,
25 documents of title, chattel paper or certificated securities
26 means voluntary transfer of possession.

1 Sec. 3. 11 MRSA §1-201, sub-§(20) is amended to read:

2 (20) Holder. "Holder" means a person who is in posses-
3 sion of a document of title or an instrument or ~~an~~ a certifi-
4 icated investment security drawn, issued or indorsed to him
5 or to his order or to bearer or in blank.

6 Sec. 4. 11 MRSA §5-114, sub-§(2), first ¶ is amended
7 to read:

8 Unless otherwise agreed, when documents appear on their face
9 to comply with the terms of a credit but a required document
10 does not in fact conform to the warranties made on nego-
11 tiation or transfer of a document of title (section 7-507)
12 or of a certificated security (section 8-306) or is forged
13 or fraudulent or there is fraud in the transaction,

14 Sec. 5. 11 MRSA §5-114, sub-§(2), ¶(a) is amended to
15 read:

16 (a) The issuer must honor the draft or demand for pay-
17 ment, if honor is demanded by a negotiating bank or
18 other holder of the draft or demand which has taken the
19 draft or demand under the credit and under circum-
20 stances which would make it a holder in due course
21 (section 3-302) and in an appropriate case would make
22 it a person to whom a document of title has been duly
23 negotiated (section 7-502) or a bona fide purchaser of
24 a certificated security (section 8-302); and

25 Sec. 6. 11 MRSA Art. 8, as amended, is repealed and
26 the following enacted in its place:

27 ARTICLE 8

28 INVESTMENT SECURITIES

29 PART 1

30 SHORT TITLE AND GENERAL MATTERS

31 §8-101. Short title

32 This Article shall be known and may be cited as "Uni-
33 form Commercial Code-Investment Securities."

34' §8-102. Definitions and index of definitions

1 (1) In this Article, unless the context otherwise
2 indicates the following terms have the following meanings.

3 (a) A "certificated security" is a share, participa-
4 tion or other interest in property of or an enterprise
5 of the issuer or an obligation of the issuer which is:

6 (i) Represented by an instrument issued in bearer
7 or registered form;

8 (ii) Of a type commonly dealt in on securities
9 exchanges or exchanges or markets or commonly
10 recognized in any area in which it is issued or
11 dealt in as a medium for investment; and

12 (iii) Either one of a class or series or by its
13 terms divisible into a class or series of shares,
14 participations, interests or obligations.

15 (b) An "uncertificated security" is a share, parti-
16 cipation or other interest in property or an enterprise
17 of the issuer or an obligation of the issuer which is:

18 (i) Not represented by an instrument and the
19 transfer of which is registered upon books main-
20 tained for that purpose by or on behalf of the
21 issuer;

22 (ii) Of a type commonly dealt in on securities
23 exchanges or markets; and

24 (iii) Either one of a class or series or by its
25 terms divisible into a class or series of shares,
26 participations, interests or obligations.

27 (c) A "security" is either a certificated or an
28 uncertificated security. If a security is certifi-
29 cated, the terms "security" and "certificated security"
30 may mean either the intangible interest, the instrument
31 representing that interest, or both, as the context re-
32 quires. A writing that is a certificated security is
33 governed by this Article and not by Article 3, even
34 though it also meets the requirements of that Article.
35 This Article does not apply to money. If a certifi-
36 cated security has been retained by or surrendered to
37 the issuer or its transfer agent for reasons other than
38 registration of transfer, other temporary purpose, pay-
39 ment, exchange or acquisition by the issuer, that
40 security shall be treated as an uncertificated security
41 for purposes of this Article.

1 (d) A certificated security is in "registered form"
2 if:

3 (i) It specifies a person entitled to the secur-
4 ity or the rights it represents; and

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

8 (e) A certificated security is in "bearer form" if it
9 runs to bearer according to its terms and not by reason
10 of any endorsement.

11 (2) A "subsequent purchaser" is a person who takes
12 other than by original issue.

13 (3) A "clearing corporation" is a corporation regis-
14 tered as a "clearing agency" under the federal securities
15 laws or a corporation:

16 (a) At least 90% of whose capital stock is held by or
17 for one or more organizations, none of which, other
18 than a national securities exchange or association,
19 holds in excess of 20% of the capital stock of the cor-
20 poration, and each of which is:

21 (i) Subject to supervision or regulation pursuant
22 to the provisions of federal or state banking
23 laws or state insurance laws;

24 (ii) A broker or dealer or investment company
25 registered under the federal securities laws; or

26 (iii) A national securities exchange or associa-
27 tion registered under the federal securities laws;
28 and

29 (b) Any remaining capital stock of which is held by
30 individuals who have purchased it at or prior to the
31 time of their taking office as directors of the corpo-
32 ration and who have purchased only so much of the capi-
33 tal stock as is necessary to permit them to qualify as
34 directors.

35 (4) A "custodian bank" is a bank or trust company that
36 is supervised and examined by state or federal authority
37 having supervision over banks and is acting as custodian for
38 a clearing corporation.

1 (5) Other definitions applying to this Article or to
2 specified Parts thereof and the sections in which they
3 appear are:

4	"Adverse claim."	Section 8-302.
5	"Bona fide purchaser."	Section 8-302.
6	"Broker."	Section 8-303.
7	"Debtor."	Section 9-105.
8	"Financial intermediary."	Section 8-313.
9	"Guarantee of the signature."	Section 8-402.
10	"Initial transaction statement."	Section 8-408.
11	"Instruction."	Section 8-308.
12	"Intermediary bank."	Section 4-105.
13	"Issuer."	Section 8-201.
14	"Overissue."	Section 8-104.
15	"Secured party."	Section 9-105.
16	"Security agreement."	Section 9-105.

17 (6) In addition, Article 1 contains general defini-
18 tions and principles of construction and interpretation
19 applicable throughout this Article.

20 §8-103. Issuer's lien

21 A lien upon a security in favor of an issuer thereof is
22 valid against a purchaser only if:

23 (a) The security is certificated and the right of the
24 issuer to the lien is noted conspicuously thereon; or

25 (b) The security is uncertificated and a notation of
26 the right of the issuer to the lien is contained in the
27 initial transaction statement sent to the purchaser or,
28 if his interest is transferred to him other than by
29 registration of transfer, pledge or release, the ini-
30 tial transaction statement sent to the registered owner
31 or the registered pledgee.

32 §8-104. Effect of overissue; "overissue"

33 (1) The provisions of this Article which validate a
34 security or compel its issue or reissue do not apply to the
35 extent that validation, issue or reissue would result in
36 overissue; but if:

37 (a) An identical security which does not constitute an
38 overissue is reasonably available for purchase, the
39 person entitled to issue or validation may compel the
40 issuer to purchase the security for him and either to

1 deliver a certificated security or to register the
2 transfer of an uncertificated security to him, against
3 surrender of any certificated security he holds; or

4 (b) A security is not so available for purchase, the
5 person entitled to issue or validation may recover from
6 the issuer the price he or the last purchaser for value
7 paid for it with interest from the date of his demand.

8 (2) "Overissue" means the issue of securities in
9 excess of the amount the issuer has corporate power to
10 issue.

11 §8-105. Certificated securities negotiable; statements and
12 instructions not negotiable; presumptions

13 (1) Certificated securities governed by this Article
14 are negotiable instruments.

15 (2) Statements (section 8-408), notices or the like,
16 sent by the issuer of uncertificated securities and instruc-
17 tions (section 8-308) are neither negotiable instruments nor
18 certificated securities.

19 (3) In any action on a security:

20 (a) Unless specifically denied in the pleadings, each
21 signature on a certificated security, in a necessary
22 endorsement, on an initial transaction statement, or on
23 an instruction, is admitted;

24 (b) If the effectiveness of a signature is put in
25 issue, the burden of establishing it is on the party
26 claiming under the signature, but the signature is pre-
27 sumed to be genuine or authorized;

28 (c) If signatures on a certificated security are
29 admitted or established, production of the security
30 entitles a holder to recover on it unless the defendant
31 establishes a defense or a defect going to the validity
32 of the security;

33 (d) If signatures on an initial transaction statement
34 are admitted or established, the facts stated in the
35 statement are presumed to be true as of the time of its
36 issuance; and

37 (e) After it is shown that a defense or defect exists,
38 the plaintiff has the burden of establishing that he or

1 some person under whom he claims is a person against
2 whom the defense or defect is ineffective (section
3 8-202).

4 §8-106. Applicability

5 The law, including the conflict of law rules, of the
6 jurisdiction of organization of the issuer governs the
7 validity of a security, the effectiveness of registration by
8 the issuer and the rights and duties of the issuer with
9 respect to:

10 (1) Registration of transfer of a certificated secur-
11 ity;

12 (2) Registration of transfer, pledge or release of an
13 uncertificated security; and

14 (3) Sending of statements of uncertificated securi-
15 ties.

16 §8-107. Securities transferable; action for price

17 (1) Unless otherwise agreed and subject to any appli-
18 cable law or regulation respecting short sales, a person
19 obligated to transfer securities may transfer any certifi-
20 cated security of the specified issue in bearer form or
21 registered in the name of the transferee, or endorsed to him
22 or in blank, or he may transfer an equivalent uncertificated
23 security to the transferee or a person designated by the
24 transferee.

25 (2) If the buyer fails to pay the price as it comes
26 due under a contract of sale, the seller may recover the
27 price of:

28 (a) Certificated securities accepted by the buyer;

29 (b) Uncertificated securities that have been trans-
30 ferred to the buyer or a person designated by the
31 buyer; and

32 (c) Other securities if efforts at their resale would
33 be unduly burdensome or if there is no readily avail-
34 able market for their resale.

35 §8-108. Registration of pledge and release of uncertificated
36 securities

1 A security interest in an uncertificated security may
2 be evidenced by the registration of pledge to the secured
3 party or a person designated by him. There can be no more
4 than one registered pledge of an uncertificated security at
5 any time. The registered owner of an uncertificated secur-
6 ity is the person in whose name the security is registered,
7 even if the security is subject to a registered pledge. The
8 rights of a registered pledgee of an uncertificated security
9 under this Article are terminated by the registration of
10 release.

11 PART 2

12 ISSUE-ISSUER

13 §8-201. "Issuer"

14 (1) With respect to obligations on or defenses to a
15 security, "issuer" includes a person who:

16 (a) Places or authorizes the placing of his name on a
17 certificated security, otherwise than as authenticating
18 trustee, registrar, transfer agent, or the like, to
19 evidence that it represents a share, participation or
20 other interest in his property or in an enterprise, or
21 to evidence his duty to perform an obligation repre-
22 sented by the certificated security;

23 (b) Creates shares, participations or other interests
24 in his property or in an enterprise or undertakes obli-
25 gations, which shares, participations, interests or
26 obligations are uncertificated securities;

27 (c) Directly or indirectly creates fractional inter-
28 ests in his rights or property, which fractional inter-
29 ests are represented by certificated securities; or

30 (d) Becomes responsible for or in place of any other
31 person described as an issuer in this section.

32 (2) With respect to obligations on or defenses to a
33 security, a guarantor is an issuer to the extent of his
34 guaranty, whether or not his obligation is noted on a cer-
35 tificated security or on statements of uncertificated
36 securities sent pursuant to section 8-408.

37 (3) With respect to registration of transfer, pledge
38 or release (Part 4), "issuer" means a person on whose behalf
39 transfer books are maintained.

1 §8-202. Issuer's responsibility and defenses; notice of defect
2 or defense

3 (1) Even against a purchaser for value and without
4 notice the terms of a security include:

5 (a) If the security is certificated, those stated on
6 the security;

7 (b) If the security is uncertificated, those contained
8 in the initial transaction statement sent to such pur-
9 chaser or, if his interest is transferred to him other
10 than by registration of transfer, pledge or release,
11 the initial transaction statement sent to the regis-
12 tered owner or registered pledgee; and

13 (c) Those made part of the security by reference, on
14 the certificated security or in the initial transaction
15 statement, to another instrument, indenture or document
16 or to a constitution, statute, ordinance, rule, regula-
17 tion, order or the like, to the extent that the terms
18 referred to do not conflict with the terms stated on
19 the certificated security or contained in the state-
20 ment. A reference under this paragraph does not of
21 itself charge a purchaser for value with notice of a
22 defect going to the validity of the security, even
23 though the certificated security or statement expressly
24 states that a person accepting it admits notice.

25 (2) A certificated security in the hands of a pur-
26 chaser for value or an uncertificated security as to which
27 an initial transaction statement has been sent to a pur-
28 chaser for value, other than a security issued by a govern-
29 ment or governmental agency or unit, even though issued with
30 a defect going to its validity, is valid with respect to the
31 purchaser if he is without notice of the particular defect
32 unless the defect involves a violation of constitutional
33 provisions, in which case the security is valid with respect
34 to a subsequent purchaser for value and without notice of
35 the defect. This subsection applies to an issuer that is a
36 government or governmental agency or unit only if either
37 there has been substantial compliance with the legal re-
38 quirements governing the issue or the issuer has received a
39 substantial consideration for the issue as a whole or for
40 the particular security and a stated purpose of the issue is
41 one for which the issuer has power to borrow money or issue
42 the security.

1 (3) Except as provided in the case of certain
2 unauthorized signatures (section 8-205) lack of genuineness
3 of a certificated security or an initial transaction state-
4 ment is a complete defense, even against a purchaser for
5 value and without notice.

6 (4) All other defenses of the issuer of a certificated
7 or uncertificated security, including nondelivery and condi-
8 tional delivery of a certificated security, are ineffective
9 against a purchaser for value who has taken without notice
10 of the particular defense.

11 (5) Nothing in this section may be construed to affect
12 the right of a party to a "when, as and if issued" or a
13 "when distributed" contract to cancel the contract in the
14 event of a material change in the character of the security
15 that is the subject of the contract or in the plan or
16 arrangement pursuant to which the security is to be issued
17 or distributed.

18 §8-203. Staleness as notice of defects or defenses

19 (1) After an act or event creating a right to immedi-
20 ate performance of the principal obligation represented by a
21 certificated security or that sets a date on or after which
22 the security is to be presented or surrendered for redemp-
23 tion or exchange, a purchaser is charged with notice of any
24 defect in its issue or defense of the issuer if:

25 (a) The act or event is one requiring the payment of
26 money, the delivery of certificated securities, the regis-
27 tration of transfer of uncertificated securities, or any of
28 these on presentation or surrender of the certificated
29 security, the funds or securities are available on the date
30 set for payment or exchange, and he takes the security more
31 than one year after that date; and

32 (b) The act or event is not covered by paragraph (a)
33 and he takes the security more than 2 years after the date
34 set for surrender or presentation or the date on which per-
35 formance became due.

36 (2) A call that has been revoked is not within subsec-
37 tion (1).

38 §8-204. Effect of issuer's restrictions on transfer

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

1 (1) The security is certificated and the restriction
2 is noted conspicuously thereon; or

3 (2) The security is uncertificated and a notation of
4 the restriction is contained in the initial transaction
5 statement sent to the person or, if his interest is
6 transferred to him other than by registration of trans-
7 fer, pledge or release, the initial transaction state-
8 ment sent to the registered owner or the registered
9 pledgee.

10 §8-205. Effect of unauthorized signature on certificated
11 security or initial transaction statement

12 An authorized signature placed on a certificated secur-
13 ity prior to or in the course of issue or placed on an ini-
14 tial transaction statement is ineffective, but the signature
15 is effective in favor of a purchaser for value of the cer-
16 tificated security or a purchaser for value of an
17 uncertificated security to whom the initial transaction
18 statement has been sent, if the purchaser is without notice
19 of the lack of authority and the signing has been done by:

20 (1) An authenticating trustee, registrar, transfer
21 agent or other person entrusted by the issuer with the
22 signing of the security, of similar securities or of
23 initial transaction statements or the immediate pre-
24 paration for signing of any of them; or

25 (2) An employee of the issuer, or of any of the fore-
26 going, entrusted with responsible handling of the
27 security or initial transaction statement.

28 §8-206. Completion or alteration of certificated security
29 or initial transaction statement

30 (1) If a certificated security contains the signatures
31 necessary to its issue or transfer, but is incomplete in any
32 other respect:

33 (a) Any person may complete it by filling in the
34 blanks as authorized; and

35 (b) Even though the blanks are incorrectly filled in,
36 the security as completed is enforceable by a purchaser
37 who took it for value and without notice of the incor-
38 rectness.

1 (2) A complete certificated security that has been
2 improperly altered, even though fraudulently, remains
3 enforceable, but only according to its original terms.

4 (3) If an initial transaction statement contains the
5 signatures necessary to its validity, but is incomplete in
6 any other respect:

7 (a) Any person may complete it by filling in the
8 blanks as authorized; and

9 (b) Even though the blanks are incorrectly filled in,
10 the statement as completed is effective in favor of the
11 person to whom it is sent if he purchased the security
12 referred to therein for value and without notice of the
13 incorrectness.

14 (4) A complete initial transaction statement that has
15 been improperly altered, even though fraudulently, is effec-
16 tive in favor of a purchaser to whom it has been sent, but
17 only according to its original terms.

18 §8-207. Rights and duties of issuer with respect to registered
19 owners and registered pledges

20 (1) Prior to due presentment for registration of
21 transfer of a certificated security in registered form, the
22 issuer or indenture trustee may treat the registered owner
23 as the person exclusively entitled to vote, to receive
24 notifications and otherwise to exercise all the rights and
25 powers of an owner.

26 (2) Subject to the provisions of subsections (3), (4)
27 and (6), the issuer or indenture trustee may treat the
28 registered owner of an uncertificated security as the person
29 exclusively entitled to vote, to receive notifications and
30 otherwise to exercise all the rights and powers of an owner.

31 (3) The registered owner of an uncertificated security
32 that is subject to a registered pledge is not entitled to
33 registration of transfer prior to the due presentment to the
34 issuer of a release instruction. The exercise of conversion
35 rights with respect to a convertible uncertificated security
36 is a transfer within the meaning of this section.

37 (4) Upon due presentment of a transfer instruction
38 from the registered pledgee of an uncertificated security,
39 the issuer shall:

1 (a) Register the transfer of the security to the new
2 owner free of pledge, if the instruction specifies a
3 new owner, who may be the registered pledgee, and does
4 not specify a pledge;

5 (b) Register the transfer of the security to the new
6 owner subject to the interest of the existing pledgee,
7 if the instruction specifies a new owner and the exist-
8 ing pledgee; or

9 (c) Register the release of the security from the
10 existing pledge and register the pledge of the security
11 to the other pledgee, if the instruction specifies the
12 existing owner and another pledgee.

13 (5) Continuity of perfection of a security interest is
14 not broken by registration of transfer under subsection (4),
15 paragraph (b) or by registration of release and pledge under
16 subsection (4), paragraph (c), if the security interest is
17 assigned.

18 (6) If an uncertificated security is subject to a
19 registered pledge:

20 (a) Any uncertificated securities issued in exchange
21 for or distributed with respect to the pledged security
22 shall be registered subject to the pledge;

23 (b) Any certificated securities issued in exchange for
24 or distributed with respect to the pledged security
25 shall be delivered to the registered pledgee; and

26 (c) Any money paid in exchange for or in redemption of
27 part or all of the security shall be paid to the regis-
28 tered pledgee.

29 (7) Nothing in this Article shall be construed to
30 affect the liability of the registered owner of a security
31 for calls, assessments or the like.

32 §8-208. Effect of signature of authenticating trustee, registrar
33 or transfer agent

34 (1) A person placing a signature upon a certificated
35 security or an initial transaction statement as authenticat-
36 ing trustee, registrar, transfer agent or the like, warrants
37 to a purchaser for value of the certificated security or a
38 purchaser for value of an uncertificated security to whom
39 the initial transaction statement has been sent if the pur-
40 chaser is without notice of the particular defect, that:

1 (a) The certificated security or initial transaction
2 statement is genuine;

3 (b) His own participation in the issue or registration
4 of the transfer, pledge or release of the security is
5 within his capacity and within the scope of the author-
6 ity received by him from the issuer; and

7 (c) He has reasonable grounds to believe the security
8 is in the form and within the amount the issuer is
9 authorized to issue.

10 (2) Unless otherwise agreed, a person by so placing
11 his signature does not assume responsibility for the valid-
12 ity of the security in other respects.

13 PART 3

14 PURCHASE

15 §8-301. Rights acquired by purchaser

16 (1) Upon transfer of a security to a purchaser,
17 (section 8-313) the purchaser acquires the rights in the
18 security which his transferor had or had actual authority to
19 convey unless the purchaser's rights are limited by section
20 8-302, subsection (4).

21 (2) A transferee of a limited interest acquires rights
22 only to the extent of the interest transferred. The crea-
23 tion or release of a security interest in a security is the
24 transfer of a limited interest in that security.

25 §8-302. "Bona fide purchaser;" "Adverse claim;" title acquired
26 by bona fide purchaser

27 (1) A "bona fide purchaser" is a purchaser for value
28 in good faith and without notice of any adverse claim:

29 (a) Who takes delivery of a certificated security in
30 bearer form or in registered form, issued or endorsed
31 to him or in blank;

32 (b) To whom the transfer, pledge or release of an
33 uncertificated security is registered on the books of
34 the issuer; or

35 (c) To whom a security is transferred under section
36 8-313, subsection (1), paragraph (c), paragraph (d),

1 subparagraph (i) or paragraph (g).

2 (2) "Adverse claims" includes a claim that a transfer
3 was or would be wrongful or that a particular adverse person
4 is the owner of or has an interest in the security.

5 (3) A bona fide purchaser in addition to acquiring the
6 rights of a purchaser (section 8-301) also acquires his
7 interest in the security, free of any adverse claim.

8 (4) Notwithstanding section 8-301, subsection (1), the
9 transferee of a particular certificated security who has
10 been a party to any fraud or illegality affecting the secur-
11 ity, or who as a prior holder of that certificated security
12 had notice of an adverse claim, cannot improve his position
13 by taking from a bona fide purchaser.

14 §8-303. "Broker"

15 "Broker" means a person engaged for all or part of his
16 time in the business of buying and selling securities, who
17 in the transaction concerned acts for, buys a security from
18 or sells a security to, a customer. Nothing in this Article
19 determines the capacity in which a person acts for purposes
20 of any other statute or rule to which the person is subject.

21 §8-304. Notice to purchaser of adverse claims

22 (1) A purchaser, including a broker for the seller or
23 buyer, but excluding an intermediary bank, of a certificated
24 security is charged with notice of adverse claims if:

25 (a) The security, whether in bearer or registered
26 form, has been endorsed "for collection" or "for sur-
27 render" or for some other purpose not involving trans-
28 fer; or

29 (b) The security is in bearer form and has on it an
30 unambiguous statement that it is the property of a
31 person other than the transferor. The mere writing of
32 a name on a security is not such a statement.

33 (2) A purchaser, including a broker for the seller or
34 buyer, but excluding an intermediary bank, to whom the
35 transfer, pledge or release of an uncertificated security is
36 registered is charged with notice of adverse claims as to
37 which the issuer has a duty under section 8-403, subsection
38 (4), at the time of registration and which are noted in the
39 initial transaction statement sent to the purchaser or, if

1 his interest is transferred to him other than by registra-
2 tion of transfer, pledge or release the initial transaction
3 statement sent to the registered owner or the registered
4 pledgee.

5 (3) The fact that the purchaser, including a broker
6 for the seller or buyer, of a certificated or uncertificated
7 security has notice that the security is held for a 3rd
8 person or is registered in the name of or endorsed by a
9 fiduciary does not create a duty of inquiry into the right-
10 fulness of the transfer or constitute constructive notice of
11 adverse claims. If the purchaser, excluding an intermediary
12 bank, has knowledge that the proceeds are being used or that
13 the transaction is for the individual benefit of the fidu-
14 ciary or otherwise in breach of duty, the purchaser is
15 charged with notice of adverse claims.

16 §8-305. Staleness as notice of adverse claims

17 An act or event that creates a right to immediate per-
18 formance of the principal obligation represented by a cer-
19 tificated security or sets a date on or after which a cer-
20 tificated security is to be presented or surrendered for
21 redemption or exchange does not itself constitute any notice
22 of adverse claims except in the case of a transfer:

23 (a) After one year from any date set for presentment
24 or surrender for redemption or exchange; or

25 (b) After 6 months from any date set for payment of
26 money against presentation of surrender of the security
27 if funds are available for payment on that date.

28 §8-306. Warranties on presentment and transfer of certificated
29 securities; warranties of originators of instructions

30 (1) A person who presents a certificated security for
31 registration of transfer or for payment or exchange warrants
32 to the issuer that he is entitled to the registration, pay-
33 ment or exchange. A purchaser for value and without notice
34 of adverse claims who receives a new, reissued or reregis-
35 tered certificated security on registration of transfer or
36 receives an initial transaction statement confirming the
37 registration of transfer of an equivalent uncertificated
38 security to him warrants only that he has no knowledge of
39 any unauthorized signature (section 8-311) in a necessary
40 endorsement.

41 (2) A person by transferring a certificated security
42 to a purchaser for value warrants only that:

- 1 (a) His transfer is effective and rightful;
2 (b) The security is genuine and has not been materi-
3 ally altered; and
4 (c) He knows of no fact which might impair the valid-
5 ity of the security.

6 (3) If a certificated security is delivered by an
7 intermediary known to be entrusted with delivery of the
8 security on behalf of another or with collection of a draft
9 or other claim against delivery, the intermediary by deliv-
10 ery warrants only his own good faith and authority, even
11 though he has purchased or made advances against the claim
12 to be collected against the delivery.

13 (4) A pledgee or other holder for security who
14 redelivers a certificated security received, or after pay-
15 ment and on order of the debtor delivers that security to a
16 3rd person, makes only the warranties of an intermediary
17 under subsection (3).

18 (5) A person who originates an instruction warrants to
19 the issuer that:

20 (a) He is an appropriate person to originate the
21 instruction; and

22 (b) At the time the instruction is presented to the
23 issuer he will be entitled to the registration of
24 transfer, pledge or release.

25 (6) A person who originates an instruction warrants to
26 any person specially guaranteeing his signature (section
27 8-312, subsection (3)) that:

28 (a) He is an appropriate person to originate the
29 instructions; and

30 (b) At the time the instruction is presented to the
31 issuer:

32 (i) He will be entitled to the registration of
33 transfer, pledge or release; and

34 (ii) The transfer, pledge or release requested in
35 the instruction will be registered by the issuer
36 free from all liens, security interests, restric-
37 tions and claims other than those specified in the
38 instruction.

1 (7) A person who originates an instruction warrants to
2 a purchaser for value and to any person guaranteeing the
3 instruction (section 8-312, subsection (6)) that:

4 (a) He is an appropriate person to originate the
5 instruction;

6 (b) The uncertificated security referred to therein is
7 valid; and

8 (c) At the time the instruction is presented to the
9 issuer:

10 (i) The transferor will be entitled to the regis-
11 tration of transfer, pledge or release;

12 (ii) The transfer, pledge or release requested in
13 the instruction will be registered by the issuer
14 free from all liens, security interests, restric-
15 tions and claims other than those specified in the
16 instruction; and

17 (iii) The requested transfer, pledge or release
18 will be rightful.

19 (8) If a secured party is the registered pledgee or
20 the registered owner of an uncertificated security, a person
21 who originates an instruction of release or transfer to the
22 debtor or, after payment and on order of the debtor, a
23 transfer instruction to a 3rd person, warrants to the debtor
24 or the 3rd person only that he is an appropriate person to
25 originate the instruction and, at the time the instruction
26 is presented to the issuer, the transferor will be entitled
27 to registration of release or transfer. If a transfer
28 instruction to a 3rd person who is a purchaser for value is
29 originated on order of the debtor, the debtor makes to the
30 purchaser the warranties of subsection (7), paragraph (b)
31 and paragraph (c), subparagraphs (ii) and (iii).

32 (9) A person who transfers an uncertificated security
33 to a purchaser for value and does not originate an instruc-
34 tion in connection with the transfer warrants only that:

35 (a) His transfer is effective and rightful; and

36 (b) The uncertificated security is valid.

37 (10) A broker gives to his customer and to the issuer
38 and a purchaser the applicable warranties provided in this

1 section and has the rights and privileges of a purchaser
2 under this section. The warranties of and in favor of the
3 broker, acting as an agent, are in addition to applicable
4 warranties given by and in favor of his customer.

5 §8-307. Effect of delivery without endorsement; right to
6 compel endorsement

7 If a certificated security in registered form has been
8 delivered to a purchaser without a necessary endorsement, he
9 may become a bona fide purchaser only as of the time the
10 endorsement is supplied; but against the transferor, the
11 transfer is complete upon delivery and the purchaser has a
12 specifically enforceable right to have any necessary
13 endorsement supplied.

14 §8-308. Endorsements; instructions

15 (1) An endorsement of a certificated security in
16 registered form is made when an appropriate person signs on
17 it or on a separate document an assignment or transfer of
18 the security or a power to assign or transfer it or his sig-
19 nature is written without more upon the back of the secur-
20 ity.

21 (2) An endorsement may be in blank or special. An
22 endorsement in blank includes an endorsement to bearer. A
23 special endorsement specifies to whom the security is to be
24 transferred, or who has power to transfer it. A holder may
25 convert a blank endorsement into a special endorsement.

26 (3) An endorsement purporting to be only of part of a
27 certificated security representing units intended by the
28 issuer to be separately transferable is effective to the
29 extent of the endorsement.

30 (4) An "instruction" is an order to the issuer of an
31 uncertificated security requesting that the transfer, pledge
32 or release from pledge of the uncertificated security speci-
33 fied therein be registered.

34 (5) An instruction originated by an appropriate person
35 is:

36 (a) A writing signed by an appropriate person; or

37 (b) A communication to the issuer in any form agreed
38 upon in a writing signed by the issuer and an appropri-
39 ate person.

1 If an instruction has been originated by an appropriate
2 person but is incomplete in any other respect, any person
3 may complete it as authorized and the issuer may rely on it
4 as completed even though it has been completed incorrectly.

5 (6) "An appropriate person" in subsection (1) means
6 the person specified by the certificated security or by special
7 endorsement to be entitled to the security.

8 (7) "An appropriate person" in subsection (5) means:

9 (a) For an instruction to transfer or pledge an
10 uncertificated security which is then not subject to a
11 registered pledge, the registered owner; or

12 (b) For an instruction to transfer or release an
13 uncertificated security which is then subject to a
14 registered pledge, the registered pledgee.

15 (8) In addition to the persons designated in subsections
16 (6) and (7), "an appropriate person" in subsections
17 (1) and (5) includes:

18 (a) If the person designated is described as a fiduciary
19 but is no longer serving in the described capacity,
20 either that person or his successor;

21 (b) If the persons designated are described as more
22 than one person as fiduciaries and one or more are no
23 longer serving in the described capacity, the remaining
24 fiduciary or fiduciaries, whether or not a successor
25 has been appointed or qualified;

26 (c) If the person designated is an individual and is
27 without capacity to act by virtue of death, incompetence,
28 infancy or otherwise, his executor, administrator,
29 guardian or like fiduciary;

30 (d) If the persons designated are described as more
31 than one person as tenants by the entirety or with
32 right of survivorship and by reason of death all cannot
33 sign, the survivor or survivors;

34 (e) A person having power to sign under applicable law
35 or controlling instrument; and

36 (f) To the extent that the person designated or any of
37 the foregoing persons may act through an agent, his
38 authorized agent.

1 (9) Unless otherwise agreed, the endorser of a certifi-
2 icated security by his endorsement or the originator of an
3 instruction by his origination assumes no obligation that
4 the security will be honored by the issuer, but only the
5 obligations provided in section 8-306.

6 (10) Whether the person signing is appropriate is
7 determined as of the date of signing and an endorsement made
8 by or an instruction originated by him does not become
9 unauthorized for the purposes of this Article by virtue of
10 any subsequent change of circumstances.

11 (11) Failure of a fiduciary to comply with a control-
12 ling instrument or with the law of the state having juris-
13 isdiction of the fiduciary relationship, including any law re-
14 quiring the fiduciary to obtain court approval of the trans-
15 fer, pledge or release, does not render his endorsement or
16 an instruction originated by him unauthorized for the pur-
17 poses of this Article.

18 §8-309. Effect of endorsement without delivery

19 An endorsement of a certificated security, whether spe-
20 cial or in blank, does not constitute a transfer until
21 delivery of the certificated security on which it appears
22 or, if the endorsement is on a separate document, until
23 delivery of both the document and the certificated security.

24 §8-310. Endorsement of certificated security in bearer form

25 An endorsement of a certificated security in bearer
26 form may give notice of adverse claims (section 8-304) but
27 does not otherwise affect any right to registration the
28 holder possesses.

29 §8-311. Effect of unauthorized endorsement or instruction

30 Unless the owner or pledgee has ratified an unauthor-
31 ized endorsement or instruction or is otherwise precluded
32 from asserting its ineffectiveness:

33 (a) He may assert its ineffectiveness against the
34 issuer or any purchaser, other than a purchaser for
35 value and without notice of adverse claims, who has in
36 good faith received a new, reissued or reregistered
37 certificated security on registration of transfer or
38 received an initial transaction statement confirming
39 the registration of transfer, pledge or release of an
40 equivalent uncertificated security to him; and

1 (b) An issuer who registers the transfer of a certifi-
2 cated security upon the unauthorized endorsement or who
3 registers the transfer, pledge or release of an
4 uncertificated security upon the unauthorized instruc-
5 tion is subject to liability for improper registration
6 (section 8-404).

7 §8-312. Effect of guaranteeing signature, endorsement or
8 instruction

9 (1) Any person guaranteeing a signature of an endorser
10 of a certificated security warrants that at the time of
11 signing:

12 (a) The signature was genuine;

13 (b) The signer was an appropriate person to endorse
14 (section 8-308); and

15 (c) The signer had legal capacity to sign.

16 (2) Any person guaranteeing a signature of the
17 originator of an instruction warrants that at the time of
18 signing:

19 (a) The signature was genuine;

20 (b) The signer was an appropriate person to originate
21 the instruction (section 8-308) if the person specified
22 in the instruction as the registered owner or regis-
23 tered pledgee of the uncertificated security was, in
24 fact, the registered owner or registered pledgee of the
25 security, as to which fact the signature guarantor
26 makes no warranty;

27 (c) The signer had legal capacity to sign; and

28 (d) The taxpayer identification number, if any,
29 appearing on the instruction as that of the registered
30 owner or registered pledgee was the taxpayer identifi-
31 cation number of the signer or of the owner or pledgee
32 for whom the signer was acting.

33 (3) Any person specially guaranteeing the signature of
34 the originator of an instruction makes not only the warran-
35 ties of a signature guarantor (subsection (2)) but also war-
36 rants that at the time the instruction is presented to the
37 issuer:

1 (a) The person specified in the instruction as the
2 registered owner or registered pledgee of the
3 uncertificated security will be the registered owner or
4 registered pledgee; and

5 (b) The transfer, pledge or release of the
6 uncertificated security requested in the instruction
7 will be registered by the issuer free from all liens,
8 security interest, restrictions and claims other than
9 those specified in the instruction.

10 (4) The guarantor under subsections (1) and (2) or the
11 special guarantor under subsection (3) does not otherwise
12 warrant the rightfulness of the particular transfer, pledge
13 or release.

14 (5) Any person guaranteeing an endorsement of a cer-
15 tificated security makes not only the warranties of a signa-
16 ture guarantor under subsection (1), but also warrants the
17 rightfulness of the particular transfer in all respects.

18 (6) Any person guaranteeing an instruction requesting
19 the transfer, pledge or release of an uncertificated secur-
20 ity makes not only the warranties of a special signature
21 guarantor under subsection (3), but also warrants the right-
22 fulness of the particular transfer, pledge or release in all
23 respects.

24 (7) No issuer may require a special guarantee of sig-
25 nature (subsection (3)), a guarantee of endorsement (subsec-
26 tion (5)), or a guarantee of instruction (subsection (6)) as
27 a condition to registration of transfer, pledge or release.

28 (8) The foregoing warranties are made to any person
29 taking or dealing with the security in reliance on the guar-
30 antee, and the guarantor is liable to the person for any
31 loss resulting from breach of the warranties.

32 §8-313. When transfer to purchaser occurs; financial
33 intermediary as bona fide purchaser;
34 "financial intermediary"

35 (1) Transfer of a security or a limited interest,
36 including a security interest, therein to a purchaser occurs
37 only:

38 (a) At the time he or a person designated by him ac-
39 quires possession of a certificated security;

1 (b) At the time the transfer, pledge or release of an
2 uncertificated security is registered to him or a
3 person designated by him;

4 (c) At the time his financial intermediary acquires
5 possession of a certificated security specially
6 endorsed to or issued in the name of the purchaser;

7 (d) At the time a financial intermediary, not a clear-
8 ing corporation, sends him confirmation of purchase and
9 also by book entry or otherwise identifies as belonging
10 to the purchaser:

11 (i) A specific certificated security in the
12 financial intermediary's possession;

13 (ii) A quantity of securities that constitute or
14 are part of a fungible bulk of certificated
15 securities in the financial intermediary's posses-
16 sion or of uncertificated securities registered in
17 the name of the financial intermediary; or

18 (iii) A quantity of securities that constitute or
19 are part of a fungible bulk of securities shown on
20 the account of the financial intermediary on the
21 books of another financial intermediary;

22 (e) With respect to an identified certificated secur-
23 ity to be delivered while still in the possession of a
24 3rd person, not a financial intermediary, at the time
25 that person acknowledges that he holds for the pur-
26 chaser;

27 (f) With respect to a specific uncertificated security
28 the pledge or transfer of which has been registered to
29 a 3rd person, not a financial intermediary, at the time
30 that person acknowledges that he holds for the pur-
31 chaser;

32 (g) At the time appropriate entries to the account of
33 the purchaser or a person designated by him on the
34 books of a clearing corporation are made under section
35 8-320;

36 (h) With respect to the transfer of a security inter-
37 est where the debtor has signed a security agreement
38 containing a description of the security, at the time a
39 written notification, which, in the case of the crea-
40 tion of the security interest, is signed by the debtor,

1 which may be a copy of the security agreement, or
2 which, in the case of the release or assignment of the
3 security interest created pursuant to this paragraph,
4 is signed by the secured party, is received by:

5 (i) A financial intermediary on whose books the
6 interest of the transferor in the security
7 appears;

8 (ii) A 3rd person, not a financial intermediary,
9 in possession of the security, if it is certifi-
10 cated;

11 (iii) A 3rd person, not a financial intermediary,
12 who is the registered owner of the security, if it
13 is uncertificated and not subject to a registered
14 pledge; or

15 (iv) A 3rd person, not a financial intermediary,
16 who is the registered pledgee of the security, if
17 it is uncertificated and subject to a registered
18 pledge;

19 (i) With respect to the transfer of a security inter-
20 est where the transferor has signed a security agree-
21 ment containing a description of the security, at the
22 time new value is given by the secured party; or

23 (j) With respect to the transfer of a security inter-
24 est where the secured party is a financial intermediary
25 and the security has already been transferred to the
26 financial intermediary under paragraphs (a), (b), (c),
27 (d) or (g), at the time the transferor has signed a
28 security agreement containing a description of the
29 security and value is given by the secured party.

30 (2) The purchaser is the owner of a security held for
31 him by a financial intermediary, but cannot be a bona fide
32 purchaser of a security so held except in the circumstances
33 specified in subsection (1), paragraph (c), paragraph (d),
34 subparagraph (i) and paragraph (g). If a security so held
35 is part of a fungible bulk, as in the circumstances speci-
36 fied in subsection (1), paragraph (d), subparagraphs (ii)
37 and (iii), the purchaser is the owner of a proportionate
38 property interest in the fungible bulk.

39 (3) Notice of an adverse claim received by the finan-
40 cial intermediary or by the purchaser after the financial
41 intermediary takes delivery of a certificated security as a

1 holder for value or after the transfer, pledge or release of
2 an uncertificated security has been registered free of the
3 claim to a financial intermediary who has given value is not
4 effective either as to the financial intermediary or as to
5 the purchaser. As between the financial intermediary and
6 the purchaser, the purchaser may demand transfer of an
7 equivalent security as to which no notice of adverse claim
8 has been received.

9 (4) A "financial intermediary" is a bank, broker,
10 clearing corporation or other person, or the nominee of any
11 of them, which in the ordinary course of its business main-
12 tains security accounts for its customers and is acting in
13 that capacity. A financial intermediary may have a security
14 interest in securities held in account for its customer.

15 §8-314. Duty to transfer, when completed

16 (1) Unless otherwise agreed, if a sale of a security
17 is made on an exchange or otherwise through brokers:

18 (a) The selling customer fulfills his duty to transfer
19 at the time he:

20 (i) Places a certificated security in the posses-
21 sion of the selling broker or a person designated
22 by the broker;

23 (ii) Causes an uncertificated security to be
24 registered in the name of the selling broker or a
25 person designated by the broker;

26 (iii) If requested, causes an acknowledgement to
27 be made to the selling broker that a certificated
28 or uncertificated security is held for the broker;
29 or

30 (iv) Places in the possession of the selling bro-
31 ker or of a person designated by the broker of a
32 transfer instruction for an uncertificated secur-
33 ity, providing the issuer does not refuse to
34 register the requested transfer if the instruction
35 is presented to the issuer for registration within
36 30 days thereafter; and

37 (b) The selling broker, including a correspondent bro-
38 ker acting for a selling customer, fulfills his duty to
39 transfer at the time he:

1 (i) Places a certificated security in the posses-
2 sion of the buying broker or a person designated
3 by the buying broker;

4 (ii) Causes an uncertificated security to be
5 registered in the name of the buying broker or a
6 person designated by the buying broker;

7 (iii) Places in the possession of the buying bro-
8 ker or of a person designated by the buying broker
9 a transfer instruction for an uncertificated
10 security, providing the issuer does not refuse to
11 register the requested transfer if the instruction
12 is presented to the issuer for registration within
13 30 days thereafter; or

14 (iv) Effects clearance of the sale in accordance
15 with the rules of the exchange on which the trans-
16 action took place.

17 (2) Except as provided in this section or unless
18 otherwise agreed, a transferor's duty to transfer a security
19 under a contract of purchase is not fulfilled until he:

20 (a) Places a certificated security in form to be nego-
21 tiated by the purchaser in the possession of the pur-
22 chaser or of a person designated by the purchaser;

23 (b) Causes an uncertificated security to be registered
24 in the name of the purchaser or a person designated by
25 the purchaser; or

26 (c) If the purchaser requests, causes an acknowledg-
27 ment to be made to the purchaser that a certificated or
28 uncertificated security is held for the purchaser.

29 (3) Unless made on an exchange, a sale to a broker
30 purchasing for his own account is within subsection (2) and
31 not within subsection (1).

32 §8-315. Action against transferee based upon wrongful
33 transfer

34 (1) Any person against whom the transfer of a security
35 is wrongful for any reason, including his incapacity, as
36 against anyone except a bona fide purchaser, may:

37 (a) Reclaim possession of the certificated security
38 wrongfully transferred;

1 (b) Obtain possession of any new certificated security
2 representing all or part of the same rights;

3 (c) Compel the origination of an instruction to trans-
4 fer to him or a person designated by him an
5 uncertificated security constituting all or part of the
6 same rights; or

7 (d) Have damages.

8 (2) If the transfer is wrongful because of an
9 unauthorized endorsement of a certificated security, the
10 owner may also reclaim or obtain possession of the security
11 or a new certificated security, even from a bona fide pur-
12 chaser, if the ineffectiveness of the purported endorsement
13 can be asserted.

14 (3) The right to obtain or reclaim possession of a
15 certificated security or to compel the origination of a
16 transfer instruction may be specifically enforced and the
17 transfer of a certificated or uncertificated security
18 enjoined and a certificated security impounded pending the
19 litigation.

20 §8-316. Purchaser's right to requisites for registration of
21 transfer, pledge or release on books

22 Unless otherwise agreed, the transferor of a certifi-
23 cated security or the transferor, pledgor or pledgee of an
24 uncertificated security on due demand must supply his pur-
25 chaser with any proof of his authority to transfer, pledge
26 or release or with any other requisite necessary to obtain
27 registration of the transfer, pledge or release of the
28 security; but if the transfer, pledge or release is not for
29 value, a transferor, pledgor or pledgee need not do so
30 unless the purchaser furnishes the necessary expenses.
31 Failure within a reasonable time to comply with a demand
32 made gives the purchaser the right to reject or rescind the
33 transfer, pledge or release.

34 §8-317. Creditors' rights

35 (1) Subject to the exceptions in subsections (3) and
36 (4), no attachment or levy upon a certificated security or
37 any share or other interest represented thereby which is
38 outstanding is valid until the security is actually seized
39 by the offer making the attachment or levy, but a certifi-
40 cated security which has been surrendered to the issuer may
41 be reached by a creditor by legal process at the issuer's
42 chief executive office in the United States.

1 (2) An uncertificated security registered in the name
2 of the debtor may not be reached by a creditor except by
3 legal process at the issuer's chief executive office in the
4 United States.

5 (3) The interest of a debtor in a certificated secur-
6 ity that is in the possession of a secured party not a
7 financial intermediary or in an uncertificated security
8 registered in the name of a secured party not a financial
9 intermediary, or in the name of a nominee of the secured
10 party, may be reached by a creditor by legal process upon
11 the secured party.

12 (4) The interest of a debtor in a certificated secur-
13 ity that is in the possession of or registered in the name
14 of a financial intermediary or in an uncertificated security
15 registered in the name of a financial intermediary may be
16 reached by a creditor by legal process upon the financial
17 intermediary on whose books the interests of the debtor
18 appears.

19 (5) Unless otherwise provided by law, a creditor's
20 lien upon the interest of a debtor in a security obtained
21 pursuant to subsection (3) or (4) is not a restraint on the
22 transfer of the security, free of the lien, to a 3rd party
23 for new value; but in the event of a transfer, the lien
24 applies to the proceeds of the transfer in the hands of the
25 secured party or financial intermediary, subject to any
26 claims having priority.

27 (6) A creditor whose debtor is the owner of a security
28 is entitled to aid from courts of appropriate jurisdiction,
29 by injunction or otherwise, in reaching the security or in
30 satisfying the claim by means allowed at law or in equity in
31 regard to property that cannot readily be reached by ordi-
32 nary legal process.

33 §8-318. No conversion by good faith conduct

34 An agent or bailee who in good faith, including observ-
35 ance of reasonable commercial standards if he is in the
36 business of buying, selling or otherwise dealing with
37 securities, has received certificated securities and sold,
38 pledged or delivered them or has sold or caused the transfer
39 or pledge of uncertificated securities over which he had
40 control according to the instructions of his principal, is
41 not liable for conversion or for participation in breach of
42 fiduciary duty although the principal had no right so to
43 deal with the securities.

1 §8-319. Statute of frauds

2 A contract for the sale of securities is not enforce-
3 able by way of action or defense unless:

4 (1) There is some writing signed by the party against
5 whom enforcement is sought or by his authorized agent or
6 broker sufficient to indicate that a contract has been made
7 for sale of a stated quantity of described securities at a
8 defined or stated price;

9 (2) Delivery of a certificated security or transfer
10 instruction has been accepted, or transfer of an
11 uncertificated security has been registered and the trans-
12 feree has failed to send written objection to the issuer
13 within 10 days after receipt of the initial transaction
14 statement confirming the registration, or payment has been
15 made, but the contract is enforceable under this provision
16 only to the extent of the delivery, registration or payment;

17 (3) Within a reasonable time a writing in confirmation
18 of the sale or purchase and sufficient against the sender
19 under paragraph (1) has been received by the party against
20 whom enforcement is sought and he has failed to send written
21 objection to its contents within 10 days after its receipt;
22 or

23 (4) The party against whom enforcement is sought
24 admits in his pleading, testimony or otherwise in court that
25 a contract was made for the sale of a stated quantity of de-
26 scribed securities at a defined or stated price.

27 §8-320. Transfer of pledge within central depository system

28 (1) In addition to other methods, a transfer, pledge
29 or release of a security or any interest therein may be
30 elected by the making of appropriate entries on the books of
31 a claiming corporation reducing the account of the transfer-
32 or, pledgor or pledgee and increasing the account of the
33 transferee, pledgee or pledgor by the amount of the obli-
34 gation or the number of shares or rights transferred,
35 pledged, or released if the security is shown on the account
36 of a transferor or pledgee on the books of the clearing cor-
37 poration; is subject to the control of the clearing corpora-
38 tion; and

39 (a) If certificated,

1 (i) Is in the custody of the clearing corpora-
2 tion, a custodian bank or a nominee of any of
3 them; and

4 (ii) Is in bearer form or endorsed in blank by an
5 appropriate person or registered in the name of
6 the clearing corporation, a custodian bank or a
7 nominee of any of them; or

8 (b) If uncertificated, is registered in the name of
9 the clearing corporation, another clearing corporation,
10 a custodian bank or a nominee of any of them.

11 (2) Under this section entries may be made with
12 respect to like securities or interests therein as a part of
13 a fungible bulk and may refer merely to a quantity to a par-
14 ticular security without reference to the name of the regis-
15 tered owner, certificate or bond number or the like, and in
16 appropriate cases, may be on a net basis taking into account
17 other transfers, pledges or releases of the same security.

18 (3) A transfer under this section is effective
19 (section 8-313) and the purchaser acquires the rights of the
20 transferor (section 8-301). A pledge or release under this
21 section is the transfer of a limited interest. If a pledge
22 or the creation of a security interest is intended, the
23 security interest is perfected at the time when both value
24 is given by the pledgee and the appropriate entries are made
25 (section 8-321). A transferee or pledgee under this section
26 may be a bona fide purchaser (section 8-302).

27 (4) A transfer or pledge under this section is not a
28 registration of transfer under Part 4.

29 (5) That entries made on the books of the clearing
30 corporation as provided in subsection (1) are not appropri-
31 ate does not affect the validity or effect of the entries or
32 the liabilities or obligations of the clearing corporation
33 to any person adversely affected thereby.

34 §8-321. Enforceability, attachment, perfection and termina-
35 tion of security interests

36 (1) A security interest in a security is enforceable
37 and can attach only if it is transferred to the secured
38 party or a person designated by him pursuant to a provision
39 of section 8-313, subsection 1.

1 (2) A security interest so transferred pursuant to
2 agreement by a transferor who has rights in the security to
3 a transferee who has given value is a perfected security
4 interest, but a security interest that has been transferred
5 solely under section 8-313, subsection (1), paragraph (i),
6 becomes unperfected after 21 days unless, within that time,
7 the requirements for transfer under any other provision of
8 section 8-313, subsection (1), are satisfied.

9 (3) A security interest in a security is subject to
10 the provisions of Article 9, but:

11 (a) No filing is required to perfect the security
12 interest; and

13 (b) No written security agreement signed by the debtor
14 is necessary to make the security interest enforceable,
15 except as provided in section 8-313, subsection (1),
16 paragraphs (h), (i) or (j). The secured party has the
17 rights and duties provided under section 9-207, to the
18 extent they are applicable, whether or not the security
19 is certificated, and, if certificated, whether or not
20 it is in his possession.

21 (4) Unless otherwise agreed, a security interest in a
22 security is terminated by transfer to the debtor or a person
23 designated by him pursuant to a provision of section 8-313,
24 subsection (1). If a security is thus transferred, the
25 security interest, if not terminated, becomes unperfected
26 unless the security is certificated and is delivered to the
27 debtor for the purpose of ultimate sale or exchange or pre-
28 sentation, collection, renewal or registration of transfer.
29 In that case, the security interest becomes unperfected
30 after 21 days unless, within that time, the security, or
31 securities for which it has been exchanged, is transferred
32 to the secured party or a person designated by him pursuant
33 to a provision of section 8-313, subsection (1).

34 PART 4

35 REGISTRATION

36 §8-401. Duty of issuer to register transfer, pledge or
37 release

38 (1) If a certificated security in registered form is
39 presented to the issuer with a request to register transfer
40 or an instruction is presented to the issuer with a request
41 to register transfer, pledge or release, the issuer shall
42 register the transfer, pledge or release as requested if:

1 (a) The security is endorsed or the instruction was
2 originated by the appropriate person or persons
3 (section 8-308);

4 (b) Reasonable assurance is given that those endorse-
5 ments or instructions are genuine and effective
6 (section 8-402);

7 (c) The issuer has no duty as to adverse claims or has
8 discharged the duty (section 8-403);

9 (d) Any applicable law relating to the collection of
10 taxes has been complied with; and

11 (e) The transfer, pledge or release is rightful or is
12 to a bona fide purchaser.

13 (2) If an issuer is under a duty to register a trans-
14 fer, pledge or release of a security, the issuer is also
15 liable to the person presenting a certificated security or
16 an instruction for registration or his principal for loss
17 resulting from any unreasonable delay in registration or
18 from failure or refusal to register the transfer, pledge or
19 release.

20 §8-402. Assurance that endorsements and instructions are
21 effective

22 (1) The issuer may require the following assurance
23 that each necessary endorsement of a certificated security
24 or each instruction (section 8-308) is genuine and effec-
25 tive:

26 (a) In all cases, a guarantee of the signature
27 (section 8-312, subsection (1) or (2)) of the person
28 endorsing a certificated security or originating an
29 instruction including, in the case of an instruction, a
30 warranty of the taxpayer identification number or, in
31 the absence thereof, other reasonable assurance of
32 identity;

33 (b) If the endorsement is made or the instruction is
34 originated by an agent, appropriate assurance of
35 authority to sign;

36 (c) If the endorsement is made or the instruction is
37 originated by a fiduciary, appropriate evidence of
38 appointment or incumbency;

1 (d) If there is more than one fiduciary, reasonable
2 assurance that all who are required to sign have done
3 so; and

4 (e) If the endorsement is made or the instruction is
5 originated by a person not covered by any of the fore-
6 going, assurance appropriate to the case corresponding
7 as nearly as may be to the foregoing.

8 (2) A "guarantee of the signature" in subsection (1)
9 means a guarantee signed by or on behalf of a person reason-
10 ably believed by the issuer to be responsible. The issuer
11 may adopt standards with respect to responsibility if they
12 are not manifestly unreasonable.

13 (3) "Appropriate evidence of appointment or incum-
14 bency" in subsection (1) means:

15 (a) In the case of a fiduciary appointed or qualified
16 by a court, a certificate issued by or under the direc-
17 tion or supervision of that court or an officer thereof
18 and dated within 60 days before the date of presenta-
19 tion for transfer, pledge or release; or

20 (b) In any other case, a copy of a document showing
21 the appointment or a certificate issued by or on behalf
22 of a person reasonably believed by the issuer to be
23 responsible or, in the absence of that document or cer-
24 tificate, other evidence reasonably deemed by the
25 issuer to be appropriate. The issuer may adopt stan-
26 dards with respect to the evidence if they are not
27 manifestly unreasonable. The issuer is not charged
28 with notice of the contents of any document obtained
29 pursuant to this paragraph except to the extent that
30 the contents relate directly to the appointment or
31 incumbency.

32 (4) The issuer may elect to require reasonable assur-
33 ance beyond that specified in this section, but if it does
34 so and, for a purpose other than that specified in subsec-
35 tion (3), paragraph (b), both requires and obtains a copy of
36 a will, trust, indenture, articles of copartnership, bylaws
37 or other controlling instrument, it is charged with notice
38 of all matters contained therein affecting the transfer,
39 pledge or release.

40 §8-403. Issuer's duty as to adverse claims

1 (1) An issuer to whom a certificated security is pre-
2 sented for registration shall inquire into adverse claims
3 if:

4 (a) A written notification of an adverse claim is
5 received at a time and in a manner affording the issuer
6 a reasonable opportunity to act on it prior to the
7 issuance of a new, reissued or reregistered certi-
8 ficated security, and the notification identifies the
9 claimant, the registered owner and the issue of which
10 the security is a part, and provides an address for
11 communications directed to the claimant; or

12 (b) The issuer is charged with notice of an adverse
13 claim from a controlling instrument it has elected to
14 require under section 8-402, subsection (4).

15 (2) The issuer may discharge any duty of inquiry by
16 any reasonable means, including notifying an adverse claim-
17 ant by registered or certified mail at the address furnished
18 by him or, if there be no such address, at his residence or
19 regular place of business that the certificated security has
20 been presented for registration of transfer by a named
21 person, and that the transfer will be registered unless
22 within 30 days from the date of mailing the notification,
23 either:

24 (a) An appropriate restraining order, injunction or
25 other process issues from a court of competent juris-
26 isdiction; or

27 (b) There is filed with the issuer an indemnity bond,
28 sufficient in the issuer's judgment to protect the
29 issuer and any transfer agent, registrar, or other
30 agent of the issuer involved from any loss it or they
31 may suffer by complying with the adverse claim.

32 (3) Unless an issuer is charged with notice of an
33 adverse claim from a controlling instrument which it has
34 elected to require under section 8-402, subsection (4) or
35 receives notification of an adverse claim under subsection
36 (1), if a certificated security presented for registration
37 is endorsed by the appropriate person or persons the issuer
38 is under no duty to inquire into adverse claims. In partic-
39 ular:

40 (a) An issuer registering a certificated security in
41 the name of a person who is a fiduciary or who is de-
42 scribed as a fiduciary is not bound to inquire into the

1 existence, extent or correct description of the fidu-
2 ciary relationship; and thereafter the issuer may
3 assume without inquiry that the newly registered owner
4 continues to be the fiduciary until the issuer receives
5 written notice that the fiduciary is no longer acting
6 as such with respect to the particular security;

7 (b) An issuer registering transfer on an endorsement
8 by a fiduciary is not bound to inquire whether the
9 transfer is made in compliance with a controlling
10 instrument or with the law of the state having juris-
11 isdiction of the fiduciary relationship, including any
12 law requiring the fiduciary to obtain court approval of
13 the transfer; and

14 (c) The issuer is not charged with notice of the con-
15 tents of any court record or file or other recorded or
16 unrecorded document even though the document is in its
17 possession and even though the transfer is made on the
18 endorsement of a fiduciary to the fiduciary himself or
19 to his nominee.

20 (4) An issuer is under no duty as to adverse claims
21 with respect to an uncertificated security except:

22 (a) Claims embodied in a restraining order, injunction
23 or other legal process served upon the issuer if the
24 process was served at a time and in a manner affording
25 the issuer a reasonable opportunity to act on it in ac-
26 cordance with the requirements of subsection (5);

27 (b) Claims of which the issuer has received a written
28 notification from the registered owner or the regis-
29 tered pledgee if the notification was received at a
30 time and in a manner affording the issuer a reasonable
31 opportunity to act on it in accordance with the re-
32 quirements of subsection (5);

33 (c) Claims, including restrictions on transfer not
34 imposed by the issuer, to which the registration of
35 transfer to the present registered owner was subject
36 and were so noted in the initial transaction statement
37 sent to him; and

38 (d) Claims as to which an issuer is charged with
39 notice from a controlling instrument it has elected to
40 require under section 8-402, subsection (4).

1 (5) If the issuer of an uncertificated security is
2 under a duty as to an adverse claim, he discharges that duty
3 by:

4 (a) Including a notation of the claim in any state-
5 ments sent with respect to the security under section
6 8-408, subsections (3), (6) and (7); and

7 (b) Refusing to register the transfer or pledge of the
8 security unless the nature of the claim does not pre-
9 clude transfer or pledge subject thereto.

10 (6) If the transfer or pledge of the security is
11 registered subject to an adverse claim, a notation of the
12 claim must be included in the initial transaction statement
13 and all subsequent statements sent to the transferee and
14 pledgee under section 8-408.

15 (7) Notwithstanding subsections (4) and (5), if an
16 uncertificated security was subject to a registered pledge
17 at the time the issuer first came under a duty as to a par-
18 ticular adverse claim, the issuer has no duty as to that
19 claim if transfer of the security is requested by the regis-
20 tered pledgee or an appropriate person acting for the regis-
21 tered pledgee unless:

22 (a) The claim was embodied in legal process which
23 expressly provides otherwise;

24 (b) The claim was asserted in a written notification
25 from the registered pledgee;

26 (c) The claim was one as to which the issuer was
27 charged with notice from a controlling instrument it
28 required under section 8-402, subsection (4) in connec-
29 tion with the pledgee's request for transfer; or

30 (d) The transfer requested is to the registered owner.

31 §8-404. Liability and nonliability for registration

32 (1) Except as provided in any law relating to the col-
33 lection of taxes, the issuer is not liable to the owner,
34 pledgee or any other person suffering loss as a result of
35 the registration of transfer, pledge or release of a secur-
36 ity if:

37 (a) There were on or with a certificated security the
38 necessary endorsements or the issuer had received an
39 instruction originated by an appropriate person; and

1 (b) The issuer had no duty as to adverse claims or has
2 discharged the duty (Section 8-403).

3 (2) If an issuer has registered a transfer of a cer-
4 tificated security to a person not entitled to it, the
5 issuer on demand shall deliver a like security to the true
6 owner unless:

7 (a) The registration was pursuant to subsection (1);

8 (b) The owner is precluded from asserting any claim
9 for registering the transfer under section 8-405, sub-
10 section (1); or

11 (c) The delivery would result in overissue, in which
12 case the issuer's liability is governed by section
13 8-104.

14 (3) If an issuer has improperly registered a transfer,
15 pledge or release of an uncertificated security, the issuer
16 on demand from the injured party shall restore the records
17 as to the injured party to the condition that would have
18 obtained if the improper registration had not been made
19 unless:

20 (a) The registration was pursuant to subsection (1);
21 or

22 (b) The registration would result in overissue, in
23 which case the issuer's liability is governed by
24 section 8-104.

25 §8-405. Lost, destroyed and stolen certificated securities

26 (1) If a certificated security has been lost, appar-
27 ently destroyed or wrongfully taken, and the owner fails to
28 notify the issuer of that fact within a reasonable time
29 after he has notice of it and the issuer registers a trans-
30 fer of the security before receiving notification, the owner
31 is precluded from asserting against the issuer any claim for
32 registering the transfer under section 8-404 or any claim to
33 a new security under this section.

34 (2) If the owner of a certificated security claims
35 that the security has been lost, destroyed or wrongfully
36 taken, the issuer shall issue a new certificated security
37 or, at the option of the issuer, an equivalent
38 uncertificated security in place of the original security if
39 the owner:

1 (a) So requests before the issuer has notice that the
2 security has been acquired by a bona fide purchaser;

3 (b) Files with the issuer a sufficient indemnity bond;
4 and

5 (c) Satisfies any other reasonable requirements
6 imposed by the issuer.

7 (3) If, after the issue of a new certificated or
8 uncertificated security, a bona fide purchaser of the orig-
9 inal certificated security presents it for registration of
10 transfer, the issuer shall register the transfer unless
11 registration would result in overissue, in which event the
12 issuer's liability is governed by section 8-104. In addi-
13 tion to any rights on the indemnity bond, the issuer may
14 recover the new certificated security from the person to
15 whom it was issued or any person taking under him, except a
16 bona fide purchaser, or may cancel the uncertificated secur-
17 ity unless a bona fide purchaser or any person taking under
18 a bona fide purchaser is then the registered owner or regis-
19 tered pledgee thereof.

20 §8-406. Duty of authenticating trustee, transfer agent or
21 registrar

22 (1) If a person acts as authenticating trustee, trans-
23 fer agent, registrar or other agent for an issuer in the
24 registration of transfers of its certificated securities or
25 in the registration of transfers, pledges and releases of
26 its uncertificated securities, in the issue of new securi-
27 ties, or in the cancellation of surrendered securities:

28 (a) He is under a duty to the issuer to exercise good
29 faith and due diligence in performing his functions;
30 and

31 (b) With regard to the particular functions he per-
32 forms, he has the same obligation to the holder or
33 owner of a certificated security or to the owner or
34 pledgee of an uncertificated security and has the same
35 rights and privileges as the issuer has in regard to
36 those functions.

37 (2) Notice to an authenticating trustee, transfer
38 agent, registrar or other agent is notice to the issuer with
39 respect to the functions performed by the agent.

40 §8-407. Exchangeability of securities

1 (1) No issuer is subject to the requirements of this
2 section unless it regularly maintains a system for issuing
3 the class of securities involved under which both certifi-
4 cated and uncertificated securities are regularly issued to
5 the category of owners, which includes the person in whose
6 name the new security is to be registered.

7 (2) Upon surrender of a certificated security with all
8 necessary endorsements and presentation of a written request
9 by the person surrendering the security, the issuer, if he
10 has no duty as to adverse claims or has discharged the duty
11 (section 8-403) shall issue to the person or a person desig-
12 minated by him an equivalent uncertificated security subject
13 to all liens, restrictions and claims that were noted on the
14 certificated security.

15 (3) Upon receipt of a transfer instruction originated
16 by an appropriate person who so requests, the issuer of an
17 uncertificated security shall cancel the uncertificated
18 security and issue an equivalent certificated security on
19 which must be noted conspicuously any liens and restrictions
20 of the issuer and any adverse claims, as to which the issuer
21 has a duty under section 8-403, subsection (4) to which the
22 uncertificated security was subject. The certificated
23 security shall be registered in the name of and delivered
24 to:

25 (a) The registered owner, if the uncertificated secur-
26 ity was not subject to a registered pledge; or

27 (b) The registered pledgee, if the uncertificated
28 security was subject to a registered pledge.

29 §8-408. Statements of uncertificated securities

30 (1) Within 2 business days after the transfer of an
31 uncertificated security has been registered, the issuer
32 shall send to the new registered owner and if the security
33 has been transferred subject to a registered pledge, to the
34 registered pledgee a written statement containing:

35 (a) A description of the issue of which the
36 uncertificated security is a part;

37 (b) The number of shares or units transferred;

38 (c) The name and address and any taxpayer identifi-
39 cation number of the new registered owner and, if the
40 security has been transferred subject to a registered

1 pledge, the name and address and any taxpayer identifi-
2 cation number of the registered pledgee;

3 (d) A notation of any liens and restrictions of the
4 issuer and any adverse claims, as to which the issuer
5 has a duty under section 8-403, subsection (4) to which
6 the uncertificated security is or may be subject at the
7 time of registration or a statement that there are none
8 of those liens, restrictions or adverse claims; and

9 (e) The date the transfer was registered.

10 (2) Within 2 business days after the pledge of an
11 uncertificated security has been registered, the issuer
12 shall send to the registered owner and the registered
13 pledgee a written statement containing:

14 (a) A description of the issue of which the
15 uncertificated security is a part;

16 (b) The number of shares or units pledged;

17 (c) The name and address and any taxpayer identifi-
18 cation number of the registered owner and the regis-
19 tered pledgee;

20 (d) A notation of any liens and restrictions of the
21 issuer and any adverse claims, as to which the issuer
22 has a duty under section 8-403, subsection (4) to which
23 the uncertificated security is or may be subject at the
24 time of registration or a statement that there are none
25 of those liens, restrictions or adverse claims; and

26 (e) The date the pledge was registered.

27 (3) Within 2 business days after the release from
28 pledge of an uncertificated security has been registered,
29 the issuer shall send to the registered owner and the
30 pledgee whose interest was released a written statement con-
31 taining:

32 (a) A description of the issue of which the
33 uncertificated security is a part;

34 (b) The number of shares or units released from
35 pledge;

36 (c) The name and address and any taxpayer identifi-
37 cation number of the registered owner and the pledgee
38 whose interest was released;

1 (d) A notation of any liens and restrictions of the
2 issuer and any adverse claims, as to which the issuer
3 has a duty under section 8-403, subsection (4) to which
4 the uncertificated security is or may be subject at the
5 time of registration or a statement that there are none
6 of those liens, restrictions or adverse claims; and

7 (e) The date the release was registered.

8 (4) An "initial transaction statement" is the state-
9 ment sent to:

10 (a) The new registered owner and, if applicable, to
11 the registered pledgee pursuant to subsection (1);

12 (b) The registered pledgee pursuant to subsection (2);
13 or

14 (c) The registered owner pursuant to subsection (3).

15 Each initial transaction statement shall be signed by or on
16 behalf of the issuer and must be identified as "Initial
17 Transaction Statement."

18 (5) Within 2 business days after the transfer of an
19 uncertificated security has been registered, the issuer
20 shall send to the former registered owner and the former
21 registered pledgee, if any, a written statement containing:

22 (a) A description of the issue of which the
23 uncertificated security is a part;

24 (b) The number of shares or units transferred;

25 (c) The name and address and any taxpayer identifi-
26 cation number of the former registered owner and of any
27 former registered pledgee; and

28 (d) The date the transfer was registered.

29 (6) At periodic intervals no less frequent than annu-
30 ally and at any time upon the reasonable written request at
31 the registered owner, the issuer shall send to the regis-
32 tered owner of each uncertificated security a dated written
33 statement containing:

34 (a) A description of the issue of which the
35 uncertificated security is a part;

1 (b) The name and address and any taxpayer identi-
2 fication number of the registered owner;

3 (c) The number of shares or units of the
4 uncertificated security registered in the name of the
5 registered owner on the date of the statement;

6 (d) The name and address and any taxpayer identi-
7 fication number of any registered pledgee and the number
8 of shares or units subject to the pledge; and

9 (e) A notation of any liens and restrictions of the
10 issuer and any adverse claims, as to which the issuer
11 has a duty under section 8-403, subsection (4) to which
12 the uncertificated security is or may be subject or a
13 statement that there are none of those liens, restric-
14 tions or adverse claims.

15 (7) At periodic intervals no less frequent than annu-
16 ally and at any time upon the reasonable written request of
17 the registered pledgee, the issuer shall send to the regis-
18 tered pledgee of each uncertificated security a dated writ-
19 ten statement containing:

20 (a) A description of the issue of which the
21 uncertificated security is a part;

22 (b) The name and address and any taxpayer identi-
23 fication number of the registered owner;

24 (c) The name and address and any taxpayer identi-
25 fication number of the registered pledgee;

26 (d) The number of shares or units subject to the
27 pledge; and

28 (e) A notation of any liens and restrictions of the
29 issuer and any adverse claims, as to which the issuer
30 has a duty under section 8-403, subsection (4) to which
31 the uncertificated security is or may be subject or a
32 statement that there are none of those liens, restric-
33 tions or adverse claims.

34 (8) If the issuer sends the statements described in
35 subsections (6) and (7) at periodic intervals no less fre-
36 quent than quarterly, the issuer is not obliged to send ad-
37 ditional statements upon request unless the owner or pledgee
38 requesting them pays to the issuer the reasonable costs of
39 furnishing them.

1 (9) Each statement sent pursuant to this section must
2 bear a conspicuous legend reading substantially as follows:

3 "This statement is merely a record of the rights
4 of the addressee as of the time of its issuance.
5 Delivery of this statement, of itself, confers no
6 rights on the recipient. This statement is nei-
7 ther a negotiable instrument nor a security."

8 Sec. 7. 11 MRSA §9-103, sub-§(3), ¶(a), as reenacted
9 by PL 1977, c. 696, §119, is amended to read:

10 (a) This subsection applies to accounts, other than an
11 account described in subsection (5) on minerals, and
12 general intangibles, other than uncertificated securi-
13 ties, and to goods which are mobile and which are of a
14 type normally used in more than one jurisdiction, such
15 as motor vehicles, trailers, mobile homes, rolling
16 stock, airplanes, shipping containers, road building
17 and construction machinery and commercial harvesting
18 machinery and the like, if the goods are equipment or
19 are inventory leased or held for lease by the debtor to
20 others, and are not covered by a certificate of title
21 described in subsection (2).

22 Sec. 8. 11 MRSA §9-103, sub-§(6) is enacted to read:

23 (6) Uncertificated securities. The laws, including
24 the conflict of laws rules, of the jurisdiction of organiza-
25 tion of the issuer governs the perfection and the effect of
26 perfection or nonperfection of a security interest in
27 uncertificated securities.

28 Sec. 9. 11 MRSA §9-105, sub-§(1), ¶(i), as enacted by
29 PL 1977, c. 696, §124, is amended to read:

30 (i) Instrument. "Instrument" means a negotiable
31 instrument, defined in section 3-104, or a certificated
32 security, defined in section 8-102, or any other writ-
33 ing which evidences a right to the payment of money and
34 is not itself a security agreement or lease and is of a
35 type which is in ordinary course of business trans-
36 ferred by delivery with any necessary indorsement or
37 assignment;

38 Sec. 10. 11 MRSA §9-203, sub-§(1), as repealed and
39 replaced by PL 1977, c. 696, §127, is amended to read:

1 (1) Subject to the provisions of section 4-208 on the
2 security interest of a collecting bank, section 8-321 on
3 security interests in securities and section 9-113 on a
4 security interest arising under the Article on sales, a
5 security interest is not enforceable against the debtor or
6 third parties with respect to the collateral and does not
7 attach unless:

8 (a) The collateral is in the possession of the secured
9 party ~~pursuant~~ pursuant to agreement or the debtor has
10 signed a security agreement which contains a descrip-
11 tion of the collateral and in addition, when the securi-
12 ty interest covers crops growing or to be grown or
13 timber to be cut, a description of the land concerned;
14 and

15 (b) Value has been given; and

16 (c) The debtor has rights in the collateral.

17 **Sec. 11.** 11 MRSA §9-302, sub-§(1), ¶(f), as repealed
18 and replaced by PL 1977, c. 696, §130, is amended to read:

19 (f) A security interest of a collecting bank, section
20 4-208, or in securities, section 8-321, or arising
21 under the Article on sales, see section 9-113, or cov-
22 ered in subsection (3).

23 **Sec. 12.** 11 MRSA §9-304, sub-§(1), as amended by PL
24 1977, c. 526, §42, is further amended to read:

25 (1) A security interest in chattel paper or negotiable
26 documents may be perfected by filing. A security interest
27 in money or instruments (other than certificated securities
28 or instruments which constitute part of chattel paper) can
29 be perfected only by the secured party's taking possession,
30 except as provided in subsections (4) and (5) and section
31 9-306, subsections (2) and (3) on proceeds.

32 **Sec. 13.** 11 MRSA §9-304, sub-§(4) is amended to read:

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

1 **Sec. 14.** 11 MRSA §9-304, sub-§(5), first sentence, as
2 amended by PL 1977, c. 526, §43, is further amended to read:

3 A security interest remains perfected for a period of 21
4 days without filing where a secured party having a perfected
5 security interest in an instrument, other than a certifi-
6 cated security, a negotiable document or goods in possession
7 of a bailee other than one who has issued a negotiable docu-
8 ment therefor:

9 **Sec. 15.** 11 MRSA §9-305, first sentence, as amended by
10 PL 1977, c. 526, §44, is further amended to read:

11 A security interest in letters of credit and advices of
12 credit (section 5-116, subsection (2), paragraph (a)),
13 goods, instruments, other than certificated securities,
14 money, negotiable documents or chattel paper may be per-
15 fected by the secured party's taking possession of the col-
16 lateral.

17 **Sec. 16.** 11 MRSA §9-309, first sentence, as amended by
18 PL 1965, c. 306, §28, is further amended to read:

19 Nothing in this Article limits the rights of a holder
20 in due course of a negotiable instrument (section 3-302) or
21 a holder to whom a negotiable document of title has been
22 duly negotiated (section 7-501) or a bona fide purchaser of
23 a security (section ~~8-304~~ 8-302) and such holders or pur-
24 chasers take priority over an earlier security interest even
25 though perfected.

26 **Sec. 17.** 11 MRSA §9-312, sub-§(7), first sentence, as
27 repealed and replaced by PL 1977, c. 696, §140, is amended
28 to read:

29 If future advances are made while a security interest is
30 perfected by filing ~~or~~, the taking of possession or under
31 section 8-321 on securities, the security interest has the
32 same priority for the purposes of subsection (5) with
33 respect to the future advances as it does with respect to
34 the first advance.

35 STATEMENT OF FACT

36 The primary purpose of this bill is to revise Article 8
37 of the Uniform Commercial Code. The new version proposed by
38 this bill was approved by the National Conference of Commis-
39 sioners on Uniform State Laws in 1977. Presently, Article

1 8 deals only with certificated securities. This bill adds
2 coverage to "uncertificated securities," presenting a
3 coherent group of rules for issuers, buyers, sellers and
4 other persons who deal with both of these types of securi-
5 ties. The additional coverage of uncertificated securities
6 is particularly timely in light of their growing use, espe-
7 cially by the United States Government. The most signifi-
8 cant uncertificated system now in operation is that con-
9 ducted by the Federal Reserve Banks for United States Gov-
10 ernment Bonds.

11 In issuing retail repurchase agreements to consumers,
12 Maine banks transfer limited interests in uncertificated
13 securities of the Federal Government. Federal and state
14 regulatory agencies have suggested that banks perfect secur-
15 ity interests of consumer-purchasers in those uncertificated
16 securities where possible under state law. While such
17 security interests likely can be perfected under present
18 Maine law, the means of perfection is cumbersome, complex
19 and uncertain. The modernization of Article 8 would lend
20 clarity to the method of perfecting consumer security inter-
21 ests in uncertificated government securities, clarity which
22 is mandated by the certain increase in the marketing of
23 retail repurchase agreements. The revision effort, however,
24 would modernize Article 8 for all purposes in light of the
25 growing use of uncertificated securities.

26 There has been a conscious attempt to disturb the
27 present Article 8 as little as possible. First, the
28 subject-matter content and order of the 41 numbered sections
29 of the present statute have been preserved. Only 4 sections
30 have been added. Secondly, with the exception of sections
31 8-313 and 8-317 and, the other new section, section 8-321,
32 there has been no attempt to change the law with respect to
33 certificated securities. In some instances, where there
34 seemed to be compelling reasons to do so, certain wording
35 and structure have been changed, but without any intention
36 to change the substance. In most instances, the language of
37 the present Article, as it applies to certificated securi-
38 ties, has been preserved with minor stylistic changes. The
39 rules governing uncertificated securities have been formu-
40 lated to conform as closely as possible to the rules for
41 certificated securities, consistent, of course, with such
42 changes as are demanded by the absence of a certificate.

43 Other sections of the bill amend other existing sec-
44 tions of the Uniform Commercial Code to accommodate the new

1 terminology and rules in the revised Article 8.

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