

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2054

H.P. 1504 House of Representatives, January 13, 1988
Approved for introduction by a majority of the
Legislative Council pursuant to Joint Rule 26.
Reference to the Committee on Banking and Insurance
suggested and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative MARSANO of Belfast.

Cosponsored by Representative ALLEN of Washington.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-EIGHT

1 AN ACT to Amend the Uniform Commercial Code.
2

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

5 11 MRSA art. 8, as amended, is repealed and the
6 following enacted in its place:

7 ARTICLE 8

8 INVESTMENT SECURITIES

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PART 1

SHORT TITLE AND GENERAL MATTERS

§8-101. Short title; inconsistency with Uniform Act for Simplification of Fiduciary Security Transfers

(1) This Article shall be known and may be cited as the "Uniform Commercial Code -- Investment Securities."

(2) If in any respect there is any inconsistency between this Article and the Uniform Act for Simplification of Fiduciary Security Transfers, Title 13, chapter 21, the provisions of Title 13, chapter 21 shall control.

§8-102. Definitions and index of definitions

(1) In this Article, unless the context otherwise requires:

(a) A "certificated security" is a share, participation, or other interest in property of or an enterprise of the issuer or an obligation of the issuer which is:

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

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

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

(b) An "uncertificated security" is a share, participation, or other interest in property or an enterprise of the issuer or an obligation of the

1 issuer which is:

2 (i) Not represented by an instrument and the
3 transfer of which is registered upon books
4 maintained for that purpose by or on behalf
5 of the issuer;

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

8 (iii) Either one of a class or series or by
9 its terms divisible into a class or series of
10 shares, participation, interests, or
11 obligations.

12 (c) A "security" is either a certificated or an
13 uncertificated security. If a security is
14 certificated, the terms "security" and
15 "certificated security" may mean either the
16 intangible interest, the instrument representing
17 that interest, or both, as the context requires.
18 A writing that is a certificated security is
19 governed by this Article and not by Article 3,
20 even though it also meets the requirements of that
21 Article. This Article does not apply to money.
22 If a certificated security has been retained by or
23 surrendered to the issuer or its transfer agent
24 for reasons other than registration of transfer,
25 other temporary purpose, payment, exchange, or
26 acquisition by the issuer, that security shall be
27 treated as an uncertificated security for purposes
28 of this Article.

29 (d) A certificated security is in "registered
30 form" if:

31 (i) It specifies a person entitled to the
32 security or to the rights it represents; and

33 (ii) Its transfer may be registered upon
34 books maintained for that purpose by or on
35 behalf of the issuer, or the security so
36 states.

37 (e) A certificated security is in "bearer form"

1 if it runs to bearer according to its terms and
2 not by reason of any indorsement.

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

5 (3) A "clearing corporation" is a corporation
6 registered as a "clearing agency" under the federal
7 securities laws or a corporation:

8 (a) At least 90% of whose capital stock is held
9 by or for one or more organizations, none of
10 which, other than a national securities exchange
11 or association, holds in excess of 20% of the
12 capital stock of the corporation, and each of
13 which is:

14 (i) Subject to supervision or regulation
15 pursuant to the provisions of federal or
16 state banking laws or state insurance laws;

17 (ii) A broker or dealer or investment
18 company registered under the federal
19 securities laws; or

20 (iii) A national securities exchange or
21 association registered under the federal
22 securities laws; and

23 (b) Any remaining capital stock of which is held
24 by individuals who have purchased it at or prior
25 to the time of their taking office as directors of
26 the corporation and who have purchased only so
27 much of the capital stock as is necessary to
28 permit them to qualify as directors.

29 (4) A "custodian bank" is a bank or trust company
30 that is supervised and examined by state or federal
31 authority having supervision over banks and is acting
32 as custodian for a clearing corporation.

33 (5) Other definitions applying to this Article or
34 to specified parts thereof and the sections in which
35 they appear are:

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

14 (6) In addition, Article 1 contains general
15 definitions and principles of construction and
16 interpretation applicable throughout this Article.

17 §8-103. Issuer's lien

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

20 (a) The security is certificated and the right of
21 the issuer to the lien is noted conspicuously
22 thereon; or

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

31 §8-104. Effect of overissue; "overissue"

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

36 (a) An identical security which does not
37 constitute an overissue is reasonably available

1 for purchase, the person entitled to issue or
2 validation may compel the issuer to purchase the
3 security for him and either to deliver a
4 certificated security or to register the transfer
5 of an uncertificated security to him, against
6 surrender of any certificated security he holds;
7 or

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

13 (2) "Overissue" means the issue of securities in
14 excess of the amount the issuer has corporate power to
15 issue.

16 §8-105. Certificated securities negotiable;
17 statements and instructions not negotiable;
18 presumptions

19 (1) Certificated securities governed by this
20 Article are negotiable instruments.

21 (2) Statements (section 8-408), notices, or the
22 like, sent by the issuer of uncertificated securities
23 and instructions (section 8-308) are neither
24 negotiable instruments nor certificated securities.

25 (3) In any action on a security:

26 (a) Unless specifically denied in the pleadings,
27 each signature on a certificated security, in a
28 necessary indorsement, on an initial transaction
29 statement, or on an instruction, is admitted;

30 (b) If the effectiveness of a signature is put in
31 issue, the burden of establishing it is on the
32 party claiming under the signature, but the
33 signature is presumed to be genuine or authorized;

34 (c) If signatures on a certificated security are
35 admitted or established, production of the
36 security entitles a holder to recover on it,

1 unless the defendant establishes a defense or a
2 defect going to the validity of the security;

3 (d) If signatures on an initial transaction
4 statement are admitted or established, the facts
5 stated in the statement are presumed to be true as
6 of the time of its issuance; and

7 (e) After it is shown that a defense or defect
8 exists, the plaintiff has the burden of
9 establishing that he or some person under whom he
10 claims is a person against whom the defense or
11 defect is ineffective (section 8-202).

12 §8-106. Applicability

13 The law (including the conflict of laws rules) of
14 the jurisdiction of organization of the issuer governs
15 the validity of a security, the effectiveness of
16 registration by the issuer, and the rights and duties
17 of the issuer with respect to:

18 (a) Registration of transfer of a certificated
19 security;

20 (b) Registration of transfer, pledge, or release
21 of an uncertificated security; and

22 (c) Sending of statements of uncertificated
23 securities.

24 §8-107. Securities transferable; action for price

25 (1) Unless otherwise agreed and subject to any
26 applicable law or regulation respecting short sales, a
27 person obligated to transfer securities may transfer
28 any certificated security of the specified issue in
29 bearer form or registered in the name of the
30 transferee, or indorsed to him or in blank, or he may
31 transfer an equivalent uncertificated security to the
32 transferee or a person designated by the transferee.

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

1 (a) Certificated securities accepted by the
2 buyer;

3 (b) Uncertificated securities that have been
4 transferred to the buyer or a person designated by
5 the buyer; and

6 (c) Other securities if efforts at their resale
7 would be unduly burdensome or if there is no
8 readily available market for their resale.

9 §8-108. Registration of pledge and release of
10 uncertificated securities

11 A security interest in an uncertificated security
12 may be evidenced by the registration of pledge to the
13 secured party or a person designated by him. There
14 can be no more than one registered pledge of an
15 uncertificated security at any time. The registered
16 owner of an uncertificated security is the person in
17 whose name the security is registered, even if the
18 security is subject to a registered pledge. The
19 rights of a registered pledgee of an uncertificated
20 security under this Article are terminated by the
21 registration of release.

22 PART 2

23 ISSUE -- ISSUER

24 §8-201. "Issuer"

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

27 (a) Places or authorizes the placing of his name
28 on a certificated security (otherwise than as
29 authenticating trustee, registrar, transfer agent,
30 or the like) to evidence that it represents a
31 share, participation, or other interest in his
32 property or in an enterprise, or to evidence his
33 duty to perform an obligation represented by the

1 certificated security;

2 (b) Creates shares, participations or other
3 interests in his property or in an enterprise, or
4 undertakes obligations, which shares,
5 participations, interests, or obligations are
6 uncertificated securities;

7 (c) Directly or indirectly creates fractional
8 interests in his rights or property, which
9 fractional interests are represented by
10 certificated securities; or

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

14 (2) With respect to obligations on or defenses to
15 a security, a guarantor is an issuer to the extent of
16 his guaranty, whether or not his obligation is noted
17 on a certificated security or on statements of
18 uncertificated securities sent pursuant to section
19 8-408.

20 (3) With respect to registration of transfer,
21 pledge, or release (Part 4 of this Article), "issuer"
22 means a person on whose behalf transfer books are
23 maintained.

24 §8-202. Issuer's responsibility and defenses; notice
25 of defect or defense

26 (1) Even against a purchaser for value and
27 without notice, the terms of a security include:

28 (a) If the security is certificated, those stated
29 on the security;

30 (b) If the security is uncertificated, those
31 contained in the initial transaction statement
32 sent to such purchaser, or if his interest is
33 transferred to him other than by registration of
34 transfer, pledge, or release, the initial
35 transaction statement sent to the registered owner

1 or registered pledgee; and

2 (c) Those made part of the security by reference,
3 on the certificated security or in the initial
4 transaction statement, to another instrument,
5 indenture, or document or to a constitution,
6 statute, ordinance, rule, regulation, order or the
7 like, to the extent that the terms referred to do
8 not conflict with the terms stated on the
9 certificated security or contained in the
10 statement. A reference under this paragraph does
11 not of itself charge a purchaser for value with
12 notice of a defect going to the validity of the
13 security, even though the certificated security or
14 statement expressly states that a person accepting
15 it admits notice.

16 (2) A certificated security in the hands of a
17 purchaser for value or an uncertificated security as
18 to which an initial transaction statement has been
19 sent to a purchaser for value, other than a security
20 issued by a government or governmental agency or unit,
21 even though issued with a defect going to its
22 validity, is valid with respect to the purchaser if he
23 is without notice of the particular defect unless the
24 defect involves a violation of constitutional
25 provisions, in which case the security is valid with
26 respect to a subsequent purchaser for value and
27 without notice of the defect. This subsection applies
28 to an issuer that is a government or governmental
29 agency or unit only if either there has been
30 substantial compliance with the legal requirements
31 governing the issue or the issuer has received a
32 substantial consideration for the issue as a whole or
33 for the particular security and a stated purpose of
34 the issue is one for which the issuer has power to
35 borrow money or issue the security.

36 (3) Except as provided in the case of certain
37 unauthorized signatures (section 8-205), lack of
38 genuineness of a certificated security or an initial
39 transaction statement is a complete defense, even
40 against a purchaser for value and without notice.

41 (4) All other defenses of the issuer of a

1 certificated or uncertificated security, including
2 nondelivery and conditional delivery of a certificated
3 security, are ineffective against a purchaser for
4 value who has taken without notice of the particular
5 defense.

6 (5) Nothing in this section shall be construed to
7 affect the right of a party to a "when, as and if
8 issued" or a "when distributed" contract to cancel the
9 contract in the event of a material change in the
10 character of the security that is the subject of the
11 contract or in the plan or arrangement pursuant to
12 which the security is to be issued or distributed.

13 §8-203. Staleness as notice of defects or defenses

14 (1) After an act or event creating a right to
15 immediate performance of the principal obligation
16 represented by a certificated security or that sets a
17 date on or after which the security is to be presented
18 or surrendered for redemption or exchange, a purchaser
19 is charged with notice of any defect in its issue or
20 defense of the issuer if:

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

29 (b) The act or event is not covered by paragraph
30 (a) and he takes the security more than 2 years
31 after the date set for surrender or presentation
32 or the date on which such performance became due.

33 (2) A call that has been revoked is not within
34 subsection (1).

35 §8-204. Effect of issuer's restrictions on transfer

36 A restriction on transfer of a security imposed by
37 the issuer, even though otherwise lawful, is

1 ineffective against any person without actual
2 knowledge of it unless:

3 (a) The security is certificated and the
4 restriction is noted conspicuously thereon; or

5 (b) The security is uncertificated and a notation
6 of the restriction is contained in the initial
7 transaction statement sent to the person or, if
8 his interest is transferred to him other than by
9 registration of transfer, pledge, or release, the
10 initial transaction statement sent to the
11 registered owner or the registered pledgee.

12 §8-205. Effect of unauthorized signature on
13 certificated security or initial transaction
14 statement

15 An unauthorized signature placed on a certificated
16 security prior to or in the course of issue or placed
17 on an initial transaction statement is ineffective,
18 but the signature is effective in favor of a purchaser
19 for value of the certificated security or a purchaser
20 for value of an uncertificated security to whom such
21 initial transaction statement has been sent, if the
22 purchaser is without notice of the lack of authority
23 and the signing has been done by:

24 (a) An authenticating trustee, registrar,
25 transfer agent, or other person entrusted by the
26 issuer with the signing of the security, of
27 similar securities, or of initial transaction
28 statements or the immediate preparation for
29 signing of any of them; or

30 (b) An employee of the issuer, or any of the
31 foregoing, entrusted with responsible handling of
32 the security or initial transaction statement.

33 §8-206. Completion or alteration of certificated
34 security or initial transaction statement

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

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

3 (b) Even though the blanks are incorrectly filled
4 in, the security as completed is enforceable by a
5 purchaser who took it for value and without notice
6 of the incorrectness.

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

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

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

16 (b) Even though the blanks are incorrectly filled
17 in, the statement as completed is effective in
18 favor of the person to whom it is sent if he
19 purchased the security referred to therein for
20 value and without notice of the incorrectness.

21 (4) A complete initial transaction statement that
22 has been improperly altered, even though fraudulently,
23 is effective in favor of a purchaser to whom it has
24 been sent, but only according to its original terms.

25 §8-207. Rights and duties of issuer with respect to
26 registered owners and registered pledgees

27 (1) Prior to due presentment for registration of
28 transfer of a certificated security in registered
29 form, the issuer or indenture trustee may treat the
30 registered owner as the person exclusively entitled to
31 vote, to receive notifications, and otherwise to
32 exercise all the rights and powers of an owner.

33 (2) Subject to the provisions of subsections (3),
34 (4), and (6), the issuer or indenture trustee may
35 treat the registered owner of an uncertificated

1 security as the person exclusively entitled to vote,
2 to receive notifications, and otherwise to exercise
3 all the rights and powers of an owner.

4 (3) The registered owner of an uncertificated
5 security that is subject to a registered pledge is not
6 entitled to registration of transfer prior to the due
7 presentment to the issuer of a release instruction.
8 The exercise of conversion rights with respect to a
9 convertible uncertificated security is a transfer
10 within the meaning of this section.

11 (4) Upon due presentment of a transfer
12 instruction from the registered pledgee of an
13 uncertificated security, the issuer shall:

14 (a) Register the transfer of the security to the
15 new owner free of pledge, if the instruction
16 specifies a new owner (who may be the registered
17 pledgee) and does not specify a pledgee;

18 (b) Register the transfer of the security to the
19 new owner subject to the interest of the existing
20 pledgee, if the instruction specifies a new owner
21 and the existing pledgee; or

22 (c) Register the release of the security from the
23 existing pledge and register the pledge of the
24 security to the other pledgee, if the instruction
25 specifies the existing owner and another pledgee.

26 (5) Continuity of perfection of a security
27 interest is not broken by registration of transfer
28 under subsection (4)(b) or by registration of release
29 and pledge under subsection (4)(c), if the security
30 interest is assigned.

31 (6) If an uncertificated security is subject to a
32 registered pledge:

33 (a) Any uncertificated securities issued in
34 exchange for or distributed with respect to the
35 pledged security shall be registered subject to
36 the pledge;

1 (b) Any certificated securities issued in
2 exchange for or distributed with respect to the
3 pledged security shall be delivered to the
4 registered pledgee; and

5 (c) Any money paid in exchange for or in
6 redemption of part or all of the security shall be
7 paid to the registered pledgee.

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

11 §8-208. Effect of signature of authenticating
12 trustee, registrar or transfer agent

13 (1) A person placing his signature upon a
14 certificated security or an initial transaction
15 statement as authenticating trustee, registrar,
16 transfer agent, or the like, warrants to a purchaser
17 for value of the certificated security or a purchaser
18 for value of an uncertificated security to whom the
19 initial transaction statement has been sent, if the
20 purchaser is without notice of the particular defect,
21 that:

22 (a) The certificated security or initial
23 transaction statement is genuine;

24 (b) His own participation in the issue or
25 registration of the transfer, pledge, or release
26 of the security is within his capacity and within
27 the scope of the authority received by him from
28 the issuer; and

29 (c) He has reasonable grounds to believe that the
30 security is in the form and within the amount the
31 issuer is authorized to issue.

32 (2) Unless otherwise agreed, a person by so
33 placing his signature does not assume responsibility
34 for the validity of the security in other respects.

35

PART 3

1 adverse claim.

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

9 §8-303. "Broker"

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

17 §8-304. Notice to purchaser of adverse claims

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

22 (a) The security, whether in bearer or registered
23 form, has been indorsed "for collection" or "for
24 surrender" or for some other purpose not involving
25 transfer; or

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

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

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

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

18 §8-305. Staleness as notice of adverse claims

19 An act or event that creates a right to immediate
20 performance of the principal obligation represented by
21 a certificated security or sets a date on or after
22 which a certificated security is to be presented or
23 surrendered for redemption or exchange does not itself
24 constitute any notice of adverse claims, except in the
25 case of a transfer:

26 (a) After one year from any date set for
27 presentment or surrender for redemption or
28 exchange; or

29 (b) After 6 months from any date set for payment
30 of money against presentation or surrender of the
31 security if funds are available for payment on
32 that date.

33 §8-306. Warranties on presentment and transfer of
34 certificated securities; warranties of
35 originators of instructions

36 (1) A person who presents a certificated security
37 for registration of transfer or for payment or
38 exchange warrants to the issuer that he is entitled to

1 the registration, payment, or exchange. But, a
2 purchaser for value and without notice of adverse
3 claims who receives a new, reissued, or reregistered
4 certificated security on registration of transfer or
5 receives an initial transaction statement confirming
6 the registration of transfer of an equivalent
7 uncertificated security to him warrants only that he
8 has no knowledge of any unauthorized signature
9 (section 8-311) in a necessary indorsement.

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

12 (a) His transfer is effective and rightful;

13 (b) The security is genuine and has not been
14 materially altered; and

15 (c) He knows of no fact which might impair the
16 validity of the security.

17 (3) If a certificated security is delivered by an
18 intermediary known to be entrusted with delivery of
19 the security on behalf of another or with collection
20 of a draft or other claim against delivery, the
21 intermediary by delivery warrants only his own good
22 faith and authority, even though he has purchased or
23 made advances against the claim to be collected
24 against the delivery.

25 (4) A pledgee or other holder for security who
26 redelivers a certificated security received, or after
27 payment and on order of the debtor delivers that
28 security to a third person, makes only the warranties
29 of an intermediary under subsection (3).

30 (5) A person who originates an instruction
31 warrants to the issuer that:

32 (a) He is an appropriate person to originate the
33 instruction; and

34 (b) At the time the instruction is presented to
35 the issuer, he will be entitled to the
36 registration of transfer, pledge, or release.

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

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

6 (b) At the time the instruction is presented to
7 the issuer:

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

10 (ii) The transfer, pledge, or release
11 requested in the instruction will be
12 registered by the issuer free from all liens,
13 security interests, restrictions, and claims
14 other than those specified in the
15 instruction.

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

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

22 (b) The uncertificated security referred to
23 therein is valid; and

24 (c) At the time the instruction is presented to
25 the issuer:

26 (i) The transferor will be entitled to the
27 registration of transfer, pledge, or release;

28 (ii) The transfer, pledge, or release
29 requested in the instruction will be
30 registered by the issuer free from all liens,
31 security interests, restrictions, and claims
32 other than those specified in the
33 instruction; and

1 (iii) The requested transfer, pledge, or
2 release will be rightful.

3 (8) If a secured party is the registered pledgee
4 or the registered owner of an uncertificated security,
5 a person who originates an instruction of release or
6 transfer to the debtor or, after payment and on order
7 of the debtor, a transfer instruction to a third
8 person, warrants to the debtor or the third person
9 only that he is an appropriate person to originate the
10 instruction and at the time the instruction is
11 presented to the issuer, the transferor will be
12 entitled to the registration of release or transfer.
13 If a transfer instruction to a third person who is a
14 purchaser for value is originated on order of the
15 debtor, the debtor makes to the purchaser the
16 warranties of paragraphs (b), (c)(ii) and (c)(iii) of
17 subsection (7).

18 (9) A person who transfers an uncertificated
19 security to a purchaser for value and does not
20 originate an instruction in connection with the
21 transfer warrants only that:

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

23 (b) The uncertificated security is valid.

24 (10) A broker gives to his customer and to the
25 issuer and a purchaser the applicable warranties
26 provided in this section and has the rights and
27 privileges of a purchaser under this section. The
28 warranties of and in favor of the broker acting as an
29 agent are in addition to applicable warranties given
30 by and in favor of his customer.

31 §8-307. Effect of delivery without indorsement; right
32 to compel indorsement

33 If a certificated security in registered form has
34 been delivered to a purchaser without a necessary
35 indorsement, he may become a bona fide purchaser only
36 as of the time the indorsement is supplied, but
37 against the transferor, the transfer is complete upon
38 delivery and the purchaser has a specifically

1 enforceable right to have any necessary indorsement
2 supplied.

3 §8-308. Indorsement; instructions

4 (1) An indorsement of a certificated security in
5 registered form is made when an appropriate person
6 signs on it or on a separate document an assignment or
7 transfer of the security or a power to assign or
8 transfer it or his signature is written without more
9 upon the back of the security.

10 (2) An indorsement may be in blank or special. An
11 indorsement in blank includes an indorsement to
12 bearer. A special indorsement specifies the person to
13 whom the security is to be transferred or who has
14 power to transfer it. A holder may convert a blank
15 indorsement into a special indorsement.

16 (3) An indorsement purporting to be only of part
17 of a certificated security representing units intended
18 by the issuer to be separately transferable is
19 effective to the extent of the indorsement.

20 (4) An "instruction" is an order to the issuer of
21 an uncertificated security requesting that the
22 transfer, pledge, or release from pledge of the
23 uncertificated security specified therein be
24 registered.

25 (5) An instruction originated by an appropriate
26 person is:

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

28 (b) A communication to the issuer in any form
29 agreed upon in a writing signed by the issuer and
30 an appropriate person.

31 If an instruction has been originated by an
32 appropriate person but is incomplete in any other
33 respect, any person may complete it as authorized and
34 the issuer may rely on it as completed even though it
35 has been completed incorrectly.

1 (6) "An appropriate person" in subsection (1)
2 means the person specified by the certificated
3 security or by special indorsement to be entitled to
4 the security.

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

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

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

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

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

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

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

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

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

1 (f) To the extent that the person designated or
2 any of the foregoing persons may act through an
3 agent, his authorized agent.

4 (9) Unless otherwise agreed, the indorser of a
5 certificated security by his indorsement or the
6 originator of an instruction by his origination
7 assumes no obligation that the security will be
8 honored by the issuer but only the obligations
9 provided in section 8-306.

10 (10) Whether the person signing is appropriate is
11 determined as of the date of signing and an
12 indorsement made by or an instruction originated by
13 him does not become unauthorized for the purposes of
14 this Article by virtue of any subsequent change of
15 circumstances.

16 (11) Failure of a fiduciary to comply with a
17 controlling instrument or with the law of the state
18 having jurisdiction of the fiduciary relationship,
19 including any law requiring the fiduciary to obtain
20 court approval of the transfer, pledge, or release,
21 does not render his indorsement or an instruction
22 originated by him unauthorized for the purposes of
23 this Article.

24 §8-309. Effect of indorsement without delivery

25 An indorsement of a certificated security, whether
26 special or in blank, does not constitute a transfer
27 until delivery of the certificated security on which
28 it appears or, if the indorsement is on a separate
29 document, until delivery of both the document and the
30 certificated security.

31 §8-310. Indorsement of certificated security in
32 bearer form

33 An indorsement of a certificated security in
34 bearer form may give notice of adverse claims (section
35 8-304), but does not otherwise affect any right to
36 registration the holder possesses.

37 §8-311. Effect of unauthorized indorsement or

1 instruction

2 Unless the owner or pledgee has ratified an
3 unauthorized indorsement or instruction or is
4 otherwise precluded from asserting its
5 ineffectiveness:

6 (a) He may assert its ineffectiveness against the
7 issuer or any purchaser, other than a purchaser
8 for value and without notice of adverse claims,
9 who has in good faith received a new, reissued, or
10 reregistered certificated security on registration
11 of transfer or received an initial transaction
12 statement confirming the registration of transfer,
13 pledge, or release of an equivalent uncertificated
14 security to him; and

15 (b) An issuer who registers the transfer of a
16 certificated security upon the unauthorized
17 indorsement or who registers the transfer, pledge,
18 or release of an uncertificated security upon the
19 unauthorized instruction is subject to liability
20 for improper registration (section 8-404).

21 §8-312. Effect of guaranteeing signature, indorsement
22 or instruction

23 (1) Any person guaranteeing a signature of an
24 indorser of a certificated security warrants that at
25 the time of signing:

26 (a) The signature was genuine;

27 (b) The signer was an appropriate person to
28 indorse (section 8-308); and

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

30 (2) Any person guaranteeing signature of the
31 originator of an instruction warrants that at the time
32 of signing:

33 (a) The signature was genuine;

34 (b) The signer was an appropriate person to

1 originate the instruction (section 8-308) if the
2 person specified in the instruction as the
3 registered owner or registered pledgee of the
4 uncertificated security was, in fact, the
5 registered owner or registered pledgee of such
6 security, as to which fact the signature guarantor
7 makes no warranty;

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

9 (d) The taxpayer identification number, if any,
10 appearing on the instruction as that of the
11 registered owner or registered pledgee was the
12 taxpayer identification number of the signer or of
13 the owner or pledgee for whom the signer was
14 acting.

15 (3) Any person specially guaranteeing the
16 signature of the originator of an instruction makes
17 not only the warranties of a signature guarantor
18 (subsection (2)) but also warrants that at the time
19 the instruction is presented to the issuer:

20 (a) The person specified in the instruction as
21 the registered owner or registered pledgee of the
22 uncertificated security will be the registered
23 owner or registered pledgee; and

24 (b) The transfer, pledge, or release of the
25 uncertificated security requested in the
26 instruction will be registered by the issuer free
27 from all liens, security interests, restrictions,
28 and claims other than those specified in the
29 instruction.

30 (4) The guarantor under subsections (1) and (2)
31 or the special guarantor under subsection (3) does not
32 otherwise warrant the rightfulness of the particular
33 transfer, pledge, or release.

34 (5) Any person guaranteeing an indorsement of a
35 certificated security makes not only the warranties of a
36 signature guarantor under subsection (1) but also
37 warrants the rightfulness of the particular transfer
38 in all respects.

1 (6) Any person guaranteeing an instruction
2 requesting the transfer, pledge, or release of an
3 uncertificated security makes not only the warranties
4 of a special signature guarantor under subsection (3)
5 but also warrants the rightfulness of the particular
6 transfer, pledge, or release in all respects.

7 (7) No issuer may require a special guarantee of
8 signature (subsection (3)), a guarantee of indorsement
9 (subsection (5)), or a guarantee of instruction
10 (subsection (6)) as a condition to registration of
11 transfer, pledge, or release.

12 (8) The foregoing warranties are made to any
13 person taking or dealing with the security in reliance
14 on the guarantee, and the guarantor is liable to the
15 person for any loss resulting from breach of the
16 warranties.

17 §8-313. When transfer to purchaser occurs: Financial
18 intermediary as bona fide purchaser;
19 "financial intermediary"

20 (1) Transfer of a security or a limited interest
21 (including a security interest) therein to a purchaser
22 occurs only:

23 (a) At the time he or a person designated by him
24 acquires possession of a certificated security;

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

28 (c) At the time his financial intermediary
29 acquires possession of a certificated security
30 specially indorsed to or issued in the name of the
31 purchaser;

32 (d) At the time a financial intermediary, not a
33 clearing corporation, sends him confirmation of
34 the purchase and also by book entry or otherwise
35 identifies as belonging to the purchaser:

1 (i) A specific certificated security in the
2 financial intermediary's possession;

3 (ii) A quantity of securities that
4 constitute or are part of a fungible bulk of
5 certificated securities in the financial
6 intermediary's possession or of
7 uncertificated securities registered in the
8 name of the financial intermediary; or

9 (iii) A quantity of securities that
10 constitute or are part of a fungible bulk of
11 securities shown on the account of the
12 financial intermediary on the books of
13 another financial intermediary;

14 (e) With respect to an identified certificated
15 security to be delivered while still in the
16 possession of a third person, not a financial
17 intermediary, at the time that person acknowledges
18 that he holds for the purchaser;

19 (f) With respect to a specific uncertificated
20 security the pledge or transfer of which has been
21 registered to a third person, not a financial
22 intermediary, at the time that person acknowledges
23 that he holds for the purchaser;

24 (g) At the time appropriate entries to the
25 account of the purchaser or a person designated by
26 him on the books of a clearing corporation are
27 made under section 8-320;

28 (h) With respect to the transfer of a security
29 interest where the debtor has signed a security
30 agreement containing a description of the
31 security, at the time a written notification,
32 which, in the case of the creation of the security
33 interest, is signed by the debtor (which may be a
34 copy of the security agreement) or which, in the
35 case of the release or assignment of the security
36 interest created pursuant to this paragraph, is
37 signed by the secured party, is received by:

38 (i) A financial intermediary on whose books

- 1 the interest of the transferor in the
2 security appears;
- 3 (ii) A third person, not a financial
4 intermediary, in possession of the security,
5 if it is certificated;
- 6 (iii) A third person, not a financial
7 intermediary, who is the registered owner of
8 the security, if it is uncertificated and not
9 subject to a registered pledge; or
- 10 (iv) A third person, not a financial
11 intermediary, who is the registered pledgee
12 of the security, if it is uncertificated and
13 subject to a registered pledge;
- 14 (i) With respect to the transfer of a security
15 interest where the transferor has signed a
16 security agreement containing a description of the
17 security, at the time new value is given by the
18 secured party; or
- 19 (j) With respect to the transfer of a security
20 interest where the secured party is a financial
21 intermediary and the security has already been
22 transferred to the financial intermediary under
23 paragraphs (a), (b), (c), (d), or (g), at the time
24 the transferor has signed a security agreement
25 containing a description of the security and value
26 is given by the secured party.
- 27 (2) The purchaser is the owner of a security held
28 for him by a financial intermediary, but cannot be a
29 bona fide purchaser of a security so held except in
30 the circumstances specified in paragraphs (c), (d)(i),
31 and (g) of subsection (1). If a security so held is
32 part of a fungible bulk, as in the circumstances
33 specified in paragraphs (d)(ii) and (d)(iii) of
34 subsection (1), the purchaser is the owner of a
35 proportionate property interest in the fungible bulk.
- 36 (3) Notice of an adverse claim received by the
37 financial intermediary or by the purchaser after the
38 financial intermediary takes delivery of a

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

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

17 §8-314. Duty to transfer, when completed

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

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

23 (i) Places a certificated security in the
24 possession of the selling broker or of a
25 person designated by the broker;

26 (ii) Causes an uncertificated security to be
27 registered in the name of the selling broker
28 or a person designated by the broker;

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

33 (iv) Places in the possession of the selling
34 broker or of a person designated by the
35 broker a transfer instruction for an
36 uncertificated security, providing the issuer
37 does not refuse to register the requested

1 transfer if the instruction is presented to
2 the issuer for registration within 30 days
3 thereafter; and

4 (b) The selling broker, including a correspondent
5 broker acting for a selling customer, fulfills his
6 duty to transfer at the time he:

7 (i) Places a certificated security in the
8 possession of the buying broker or a person
9 designated by the buying broker;

10 (ii) Causes an uncertificated security to be
11 registered in the name of the buying broker
12 or a person designated by the buying broker;

13 (iii) Places in the possession of the buying
14 broker or of a person designated by the
15 buying broker a transfer instruction for an
16 uncertificated security, providing the issuer
17 does not refuse to register the requested
18 transfer if the instruction is presented to
19 the issuer for registration within 30 days
20 thereafter; or

21 (iv) Effects clearance of the sale in
22 accordance with the rules of the exchange on
23 which the transaction took place.

24 (2) Except as provided in this section and unless
25 otherwise agreed, a transferor's duty to transfer a
26 security under a contract of purchase is not fulfilled
27 until he:

28 (a) Places a certificated security in form to be
29 negotiated by the purchaser in the possession of
30 the purchaser or of a person designated by the
31 purchaser;

32 (b) Causes an uncertificated security to be
33 registered in the name of the purchaser or a
34 person designated by the purchaser; or

35 (c) If the purchaser requests, causes an
36 acknowledgment to be made to the purchaser that a

1 certificated or uncertificated security is held
2 for the purchaser.

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

6 §8-315. Action against transferee based upon wrongful
7 transfer

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

12 (a) Reclaim possession of the certificated
13 security wrongfully transferred;

14 (b) Obtain possession of any new certificated
15 security representing all or part of the same
16 rights;

17 (c) Compel the origination of an instruction to
18 transfer to him or a person designated by him an
19 uncertificated security constituting all or part
20 of the same rights; or

21 (d) Have damages.

22 (2) If the transfer is wrongful because of an
23 unauthorized indorsement of a certificated security,
24 the owner may also reclaim or obtain possession of the
25 security or a new certificated security, even from a
26 bona fide purchaser, if the ineffectiveness of the
27 purported indorsement can be asserted against him
28 under the provisions of this Article on unauthorized
29 indorsements (section 8-311).

30 (3) The right to obtain or reclaim possession of
31 a certificated security or to compel the origination
32 of a transfer instruction may be specifically enforced
33 and the transfer of a certificated or uncertificated
34 security enjoined and a certificated security
35 impounded pending the litigation.

1 §8-316. Purchaser's right to requisites for
2 registration of transfer, pledge, or release
3 on books

4 Unless otherwise agreed, the transferor of a
5 certificated security or the transferor, pledgor, or
6 pledgee of an uncertificated security on due demand
7 must supply his purchaser with any proof of his
8 authority to transfer, pledge, or release or with any
9 other requisite necessary to obtain registration of
10 the transfer, pledge, or release of the security; but
11 if the transfer, pledge, or release is not for value,
12 a transferor, pledgor, or pledgee need not do so
13 unless the purchaser furnishes the necessary expenses.
14 Failure within a reasonable time to comply with a
15 demand made gives the purchaser the right to reject or
16 rescind the transfer, pledge, or release.

17 §8-317. Creditors' rights

18 (1) Subject to the exceptions in subsections (3)
19 and (4), no attachment or levy upon a certificated
20 security or any share or other interest represented
21 thereby which is outstanding is valid until the
22 security is actually seized by the officer making the
23 attachment or levy, but a certificated security which
24 has been surrendered to the issuer may be reached by a
25 creditor by legal process at the issuer's chief
26 executive office in the United States.

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

31 (3) The interest of a debtor in a certificated
32 security that is in the possession of a secured party
33 not a financial intermediary or in an uncertificated
34 security registered in the name of a secured party not
35 a financial intermediary (or in the name of a nominee
36 of the secured party) may be reached by a creditor by
37 legal process upon the secured party.

38 (4) The interest of a debtor in a certificated
39 security that is in the possession of or registered in

1 the name of a financial intermediary or in an
2 uncertificated security registered in the name of a
3 financial intermediary may be reached by a creditor by
4 legal process upon the financial intermediary on whose
5 books the interest of the debtor appears.

6 (5) Unless otherwise provided by law, a
7 creditor's lien upon the interest of a debtor in a
8 security obtained pursuant to subsection (3) or (4) is
9 not a restraint on the transfer of the security, free
10 of the lien, to a third party for new value; but in
11 the event of a transfer, the lien applies to the
12 proceeds of the transfer in the hands of the secured
13 party or financial intermediary, subject to any claims
14 having priority.

15 (6) A creditor whose debtor is the owner of a
16 security is entitled to aid from courts of appropriate
17 jurisdiction, by injunction or otherwise, in reaching
18 the security or in satisfying the claim by means
19 allowed at law or in equity in regard to property that
20 cannot readily be reached by ordinary legal process.

21 §8-318. No conversion by good faith conduct

22 An agent or bailee who in good faith (including
23 observance of reasonable commercial standards if he is
24 in the business of buying, selling, or otherwise
25 dealing with securities) has received certificated
26 securities and sold, pledged, or delivered them or has
27 sold or caused the transfer or pledge of
28 uncertificated securities over which he had control
29 according to the instructions of his principal, is not
30 liable for conversion or for participation in breach
31 of fiduciary duty although the principal had no right
32 so to deal with the securities.

33 §8-319. Statute of frauds

34 A contract for the sale of securities is not
35 enforceable by way of action or defense, unless:

36 (a) There is some writing signed by the party
37 against whom enforcement is sought or by his
38 authorized agent or broker, sufficient to indicate

1 that a contract has been made for sale of a stated
2 quantity of described securities at a defined or
3 stated price;

4 (b) Delivery of a certificated security or
5 transfer instruction has been accepted, or
6 transfer of an uncertificated security has been
7 registered and the transferee has failed to send
8 written objection to the issuer within 10 days
9 after receipt of the initial transaction statement
10 confirming the registration, or payment has been
11 made, but the contract is enforceable under this
12 provision only to the extent of the delivery,
13 registration, or payment;

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

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

26 §8-320. Transfer or pledge within central depository
27 system

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

1 (a) If certificated,

2 (i) Is in the custody of the clearing
3 corporation, another clearing corporation, a
4 custodian bank or a nominee of any of them;
5 and

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

10 (b) If uncertificated, is registered in the name
11 of the clearing corporation, another clearing
12 corporation, a custodian bank, or a nominee of any
13 of them; or

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

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

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

34 (5) That entries made on the books of the
35 clearing corporation as provided in subsection (1) are
36 not appropriate does not affect the validity or effect
37 of the entries or the liabilities or obligations of
38 the clearing corporation to any person adversely

1 affected thereby.

2 §8-321. Enforceability, attachment, perfection and
3 termination of security interests

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

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

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

20 (a) No filing is required to perfect the security
21 interest; and

22 (b) No written security agreement signed by the
23 debtor is necessary to make the security interest
24 enforceable, except as otherwise provided in
25 paragraph (h), (i), or (j) of section 8-313,
26 subsection (1).

27 The secured party has the rights and duties provided
28 under section 9-207, to the extent they are
29 applicable, whether or not the security is
30 certificated, and, if certificated, whether or not it
31 is in his possession.

32 (4) Unless otherwise agreed, a security interest
33 in a security is terminated by transfer to the debtor
34 or a person designated by him pursuant to a provision
35 of section 8-313, subsection (1). If a security is
36 thus transferred, the security interest, if not
37 terminated, becomes unperfected unless the security is

1 certificated and is delivered to the debtor for the
2 purpose of ultimate sale or exchange or presentation,
3 collection, renewal, or registration of transfer. In
4 that case, the security interest becomes unperfected
5 after 21 days unless, within that time, the security
6 (or securities for which it has been exchanged) is
7 transferred to the secured party or a person
8 designated by him pursuant to a provision of section
9 8-313, subsection (1).

10 PART 4

11 REGISTRATION

12 §8-401. Duty of issuer to register transfer, pledge,
13 or release

14 (1) If a certificated security in registered form
15 is presented to the issuer with a request to register
16 transfer or an instruction is presented to the issuer
17 with a request to register transfer, pledge, or
18 release, the issuer shall register the transfer,
19 pledge, or release as requested if:

20 (a) The security is indorsed or the instruction
21 was originated by the appropriate person or
22 persons (section 8-308);

23 (b) Reasonable assurance is given that those
24 indorsements or instructions are genuine and
25 effective (section 8-402);

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

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

30 (e) The transfer, pledge, or release is in fact
31 rightful or is to a bona fide purchaser.

32 (2) If an issuer is under a duty to register a
33 transfer, pledge, or release of a security, the issuer

1 is also liable to the person presenting a certificated
2 security or an instruction for registration or his
3 principal for loss resulting from any unreasonable
4 delay in registration or from failure or refusal to
5 register the transfer, pledge, or release.

6 §8-402. Assurance that indorsements and instructions
7 are effective

8 (1) The issuer may require the following
9 assurance that each necessary indorsement of a
10 certificated security or each instruction (section
11 8-308) is genuine and effective:

12 (a) In all cases, a guarantee of the signature
13 (section 8-312, subsections (1) or (2)) of the
14 person indorsing a certificated security or
15 originating an instruction including, in the case
16 of an instruction, a warranty of the taxpayer
17 identification number or, in the absence thereof,
18 other reasonable assurance of identity;

19 (b) If the indorsement is made or the instruction
20 is originated by an agent, appropriate assurance
21 of authority to sign;

22 (c) If the indorsement is made or the instruction
23 is originated by a fiduciary, appropriate evidence
24 of appointment or incumbency;

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

28 (e) If the indorsement is made or the instruction
29 is originated by a person not covered by any of
30 the foregoing, assurance appropriate to the case
31 corresponding as nearly as may be to the
32 foregoing.

33 (2) A "guarantee of the signature" in subsection
34 (1) means a guarantee signed by or on behalf of a
35 person reasonably believed by the issuer to be
36 responsible. The issuer may adopt standards with

1 respect to responsibility if they are not manifestly
2 unreasonable.

3 (3) "Appropriate evidence of appointment or
4 incumbency" in subsection (1) means:

5 (a) In the case of a fiduciary appointed or
6 qualified by a court, a certificate issued by or
7 under the direction or supervision of that court
8 or an officer thereof and dated within 60 days
9 before the date of presentation for transfer,
10 pledge, or release; or

11 (b) In any other case, a copy of a document
12 showing the appointment or a certificate issued by
13 or on behalf of a person reasonably believed by
14 the issuer to be responsible or, in the absence of
15 that document or certificate, other evidence
16 reasonably deemed by the issuer to be appropriate.
17 The issuer may adopt standards with respect to the
18 evidence if they are not manifestly unreasonable.
19 The issuer is not charged with notice of the
20 contents of any document obtained pursuant to this
21 paragraph except to the extent that the contents
22 relate directly to the appointment or incumbency.

23 (4) The issuer may elect to require reasonable
24 assurance beyond that specified in this section, but
25 if it does so and, for a purpose other than that
26 specified in subsection (3)(b), both requires and
27 obtains a copy of a will, trust, indenture, articles
28 of copartnership, bylaws, or other controlling
29 instrument, it is charged with notice of all matters
30 contained therein affecting the transfer, pledge, or
31 release.

32 §8-403. Issuer's duty as to adverse claims

33 (1) An issuer to whom a certificated security is
34 presented for registration shall inquire into adverse
35 claims if:

36 (a) A written notification of an adverse claim is
37 received at a time and in a manner affording the
38 issuer a reasonable opportunity to act on it prior

1 to the issuance of a new, reissued, or
2 reregistered certificated security, and the
3 notification identifies the claimant, the
4 registered owner, and the issue of which the
5 security is a part, and provides an address for
6 communications directed to the claimant; or

7 (b) The issuer is charged with notice of an
8 adverse claim from a controlling instrument it has
9 elected to require under section 8-402, subsection
10 (4).

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

20 (a) An appropriate restraining order, injunction
21 or other process issues from a court of competent
22 jurisdiction; or

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

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

37 (a) An issuer registering a certificated security
38 in the name of a person who is a fiduciary or who
39 is described as a fiduciary is not bound to

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

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

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

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

25 (a) Claims embodied in a restraining order,
26 injunction, or other legal process served upon the
27 issuer if the process was served at a time and in
28 a manner affording the issuer a reasonable
29 opportunity to act on it in accordance with the
30 requirements of subsection (5);

31 (b) Claims of which the issuer has received a
32 written notification from the registered owner or
33 the registered pledgee if the notification was
34 received at a time and in a manner affording the
35 issuer a reasonable opportunity to act on it in
36 accordance with the requirements of subsection
37 (5);

38 (c) Claims (including restrictions on transfer
39 not imposed by the issuer) to which the

1 registration of transfer to the present registered
2 owner was subject and were so noted in the initial
3 transaction statement sent to him; and

4 (d) Claims as to which an issuer is charged with
5 notice from a controlling instrument it has
6 elected to require under section 8-402, subsection
7 (4).

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

11 (a) Including a notation of the claim in any
12 statements sent with respect to the security under
13 section 8-408, subsections (3), (6) and (7); and

14 (b) Refusing to register the transfer or pledge of
15 the security unless the nature of the claim does
16 not preclude transfer or pledge subject thereto.

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

22 (7) Notwithstanding subsections (4) and (5), if
23 an uncertificated security was subject to a registered
24 pledge at the time the issuer first came under a duty
25 as to a particular adverse claim, the issuer has no
26 duty as to that claim if transfer of the security is
27 requested by the registered pledgee or an appropriate
28 person acting for the registered pledgee unless:

29 (a) The claim was embodied in legal process which
30 expressly provides otherwise;

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

33 (c) The claim was one as to which the issuer was
34 charged with notice from a controlling instrument
35 it required under section 8-402, subsection (4) in
36 connection with the pledgee's request for

1 transfer; or

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

4 §8-404. Liability and nonliability for registration

5 (1) Except as provided in any law relating to the
6 collection of taxes, the issuer is not liable to the
7 owner, pledgee, or any other person suffering loss as
8 a result of the registration of a transfer, pledge, or
9 release of a security if:

10 (a) There were on or with a certificated security
11 the necessary indorsements or the issuer had
12 received an instruction originated by an
13 appropriate person (section 8-308); and

14 (b) The issuer had no duty as to adverse claims
15 or has discharged the duty (section 8-403).

16 (2) If an issuer has registered a transfer of a
17 certificated security to a person not entitled to it,
18 the issuer on demand shall deliver a like security to
19 the true owner unless:

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

22 (b) The owner is precluded from asserting any
23 claim for registering the transfer under section
24 8-405, subsection (1); or

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

28 (3) If an issuer has improperly registered a
29 transfer, pledge, or release of an uncertificated
30 security, the issuer on demand from the injured party
31 shall restore the records as to the injured party to
32 the condition that would have obtained if the improper
33 registration had not been made unless:

34 (a) The registration was pursuant to subsection

1 (1); or

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

5 §8-405. Lost, destroyed, and stolen certificated
6 securities

7 (1) If a certificated security has been lost,
8 apparently destroyed, or wrongfully taken, and the
9 owner fails to notify the issuer of that fact within a
10 reasonable time after he has notice of it and the
11 issuer registers a transfer of the security before
12 receiving notification, the owner is precluded from
13 asserting against the issuer any claim for registering
14 the transfer under section 8-404 or any claim to a new
15 security under this section.

16 (2) If the owner of a certificated security
17 claims that the security has been lost, destroyed, or
18 wrongfully taken, the issuer shall issue a new
19 certificated security or, at the option of the issuer,
20 an equivalent uncertificated security in place of the
21 original security if the owner:

22 (a) So requests before the issuer has notice that
23 the security has been acquired by a bona fide
24 purchaser;

25 (b) Files with the issuer a sufficient indemnity
26 bond; and

27 (c) Satisfies any other reasonable requirements
28 imposed by the issuer.

29 (3) If, after the issue of a new certificated or
30 uncertificated security, a bona fide purchaser of the
31 original certificated security presents it for
32 registration of transfer, the issuer shall register
33 the transfer unless registration would result in
34 overissue, in which event the issuer's liability is
35 governed by section 8-104. In addition to any rights
36 on the indemnity bond, the issuer may recover the new
37 certificated security from the person to whom it was

1 issued or any person taking under him except a bona
2 fide purchaser or may cancel the uncertificated
3 security unless a bona fide purchaser or any person
4 taking under a bona fide purchaser is then the
5 registered owner or registered pledgee thereof.

6 §8-406. Duty of authenticating trustee, transfer
7 agent, or registrar

8 (1) If a person acts as authenticating trustee,
9 transfer agent, registrar, or other agent for an
10 issuer in the registration of transfers of its
11 certificated securities or in the registration of
12 transfers, pledges, and releases of its uncertificated
13 securities, in the issue of new securities, or in the
14 cancellation of surrendered securities:

15 (a) He is under a duty to the issuer to exercise
16 good faith and due diligence in performing his
17 functions; and

18 (b) With regard to the particular functions he
19 performs, he has the same obligation to the holder
20 or owner of a certificated security or to the
21 owner or pledgee of an uncertificated security and
22 has the same rights and privileges as the issuer
23 has in regard to those functions.

24 (2) Notice to an authenticating trustee, transfer
25 agent, registrar or other agent is notice to the
26 issuer with respect to the functions performed by the
27 agent.

28 §8-407. Exchangeability of securities

29 (1) No issuer is subject to the requirements of
30 this section unless it regularly maintains a system
31 for issuing the class of securities involved under
32 which both certificated and uncertificated securities
33 are regularly issued to the category of owners, which
34 includes the person in whose name the new security is
35 to be registered.

36 (2) Upon surrender of a certificated security
37 with all necessary indorsements and presentation of a

1 written request by the person surrendering the
2 security, the issuer, if he has no duty as to adverse
3 claims or has discharged the duty (section 8-403),
4 shall issue to the person or a person designated by
5 him an equivalent uncertificated security subject to
6 all liens, restrictions, and claims that were noted on
7 the certificated security.

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

19 (a) The registered owner, if the uncertificated
20 security was not subject to a registered pledge;
21 or

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

24 §8-408. Statements of uncertificated securities

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

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

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

34 (c) The name and address and any taxpayer
35 identification number of the new registered owner
36 and, if the security has been transferred subject
37 to a registered pledge, the name and address and

1 any taxpayer identification number of the
2 registered pledgee;

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

10 (e) The date the transfer was registered.

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

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

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

18 (c) The name and address and any taxpayer
19 identification number of the registered owner and
20 the registered pledgee;

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

28 (e) The date the pledge was registered.

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

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

1 (b) The number of shares or units released from
2 pledge;

3 (c) The name and address and any taxpayer
4 identification number of the registered owner and
5 the pledgee whose interest was released;

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

13 (e) The date the release was registered.

14 (4) An "initial transaction statement" is the
15 statement sent to:

16 (a) The new registered owner and, if applicable,
17 to the registered pledgee pursuant to subsection
18 (1);

19 (b) The registered pledgee pursuant to subsection
20 (2); or

21 (c) The registered owner pursuant to subsection
22 (3).

23 Each initial transaction statement shall be signed by
24 or on behalf of the issuer and must be identified as
25 "Initial Transaction Statement".

26 (5) Within 2 business days after the transfer of
27 an uncertificated security has been registered, the
28 issuer shall send to the former registered owner and
29 the former registered pledgee, if any, a written
30 statement containing:

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

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

1 (c) The name and address and any taxpayer
2 identification number of the former registered
3 owner and of any former registered pledgee; and

4 (d) The date the transfer was registered.

5 (6) At periodic intervals no less frequent than
6 annually and at any time upon the reasonable written
7 request of the registered owner, the issuer shall send
8 to the registered owner of each uncertificated
9 security a dated written statement containing:

10 (a) A description of the issue of which the
11 uncertificated security is a part;

12 (b) The name and address and any taxpayer
13 identification number of the registered owner;

14 (c) The number of shares or units of the
15 uncertificated security registered in the name of
16 the registered owner on the date of the statement;

17 (d) The name and address and any taxpayer
18 identification number of any registered pledgee
19 and the number of shares or units subject to the
20 pledge; and

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

27 (7) At periodic intervals no less frequent than
28 annually and at any time upon the reasonable written
29 request of the registered pledgee, the issuer shall
30 send to the registered pledgee of each uncertificated
31 security a dated written statement containing:

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

34 (b) The name and address and any taxpayer

1 identification number of the registered owner;
2 (c) The name and address and any taxpayer
3 identification number of the registered pledgee;
4 (d) The number of shares or units subject to the
5 pledge; and
6 (e) A notation of any liens and restrictions of
7 the issuer and any adverse claims (as to which the
8 issuer has a duty under section 8-403, subsection
9 (4)) to which the uncertificated security is or
10 may be subject or a statement that there are none
11 of those liens, restrictions, or adverse claims.

12 (8) If the issuer sends the statements described
13 in subsections (6) and (7) at periodic intervals no
14 less frequent than quarterly, the issuer is not
15 obliged to send additional statements upon request
16 unless the owner or pledgee requesting them pays to
17 the issuer the reasonable cost of furnishing them.

18 (9) Each statement sent pursuant to this section
19 must bear a conspicuous legend reading substantially
20 as follows: "This statement is merely a record of the
21 rights of the addressee as of the time of its
22 issuance. Delivery of this statement, of itself,
23 confers no rights on the recipient. This statement is
24 neither a negotiable instrument nor a security."

25 STATEMENT OF FACT

26 The purpose of this bill is reflected in the
27 following official Uniform Commercial Code comments.

28 **Uniform Commercial Code Comment;**
29 **Reasons for 1977 Change**

30 Section 8-101: Although the title of the Article
31 has not been changed, its coverage has been broadened,
32 by amendment to Section 8-102, to include both
33 securities which are reified, i.e., represented by
34 certificates or other instruments, and those which are
35 not. The former are defined as "certificated

1 securities" and constitute the entire subject matter
2 of present Article 8. The latter are defined as
3 "uncertificated securities" and are not now expressly
4 covered by the Uniform Commercial Code. The revised
5 Article is intended to govern the relationships,
6 rights and duties of the issuers of and the parties
7 that deal with both certificated and uncertificated
8 securities to the same extent that present Article 8
9 governs such relationships, rights and duties with
10 respect to certificated securities alone.

11 This Article does not purport to determine whether
12 a particular issue of securities should be represented
13 by certificates, in whole or in part. It is
14 contemplated that such determination will be made by
15 the issuer under appropriate state or federal law. It
16 is further contemplated that a particular issue of
17 securities may be partly certificated and partly
18 uncertificated, in which event the determination will
19 be at the option of the owner to the extent that the
20 issuer permits.

21 The form of the Article has been disturbed as
22 little as possible and each numbered section deals
23 with the subject matter of the similarly numbered
24 section of the present Article. Only four new
25 sections, 8-108, 8-321, 8-407 and 8-408, have been
26 added.

27 Section 8-102: New paragraph (1)(a) defines
28 "certificated security" in essentially the same terms
29 as present paragraph (1)(a) defines "security". The
30 definition is rearranged in order to permit a parallel
31 definition of "uncertificated security" in new
32 paragraph (1)(b). Two minor changes have been made.
33 The phrase "of the issuer" has been repeated in order
34 to make clear that it modifies "property" and
35 "enterprise" as well as "obligation". It is
36 understood that this was intended in the present
37 statute. The word "represented" has been substituted
38 for "evidenced" as more accurately conveying the
39 notion that a certificated security is, in many ways,
40 treated as if it were the property itself, e.g.,
41 ownership is transferred by delivery. Compare the
42 definition of "instrument" in Section 9-105(1)(i).

1 This terminology, which is used throughout the
2 revised Article, conforms to that of Section 23 of the
3 Model Business Corporation Act and avoids confusion
4 since there will be pieces of paper, statements and
5 the like that will "evidence" uncertificated
6 securities.

7 The definition of "uncertificated security" in
8 paragraph (1)(b) differs from the definition of
9 "certificated security" in two respects. The first
10 change is in subparagraph (i) which provides that it
11 is not represented by an instrument and is always
12 registered. The second change is the omission from
13 subparagraph (ii) of the phrase "or commonly
14 recognized in any area in which it is issued or dealt
15 in as a medium for investment". It was thought that
16 where there was no requirement of representation by an
17 instrument a great many interests which might be
18 regarded as media for investment would be classified
19 as securities under the umbrella of the omitted
20 phrase. Although the official comment to the present
21 section calls attention to the possible difference in
22 coverage of Article 8 and other securities laws, the
23 definition has been narrowed in order to minimize, if
24 not eliminate, the need for strained distinctions.
25 The remaining language of subparagraph (ii) is
26 intended to cover such interests as the stock of
27 closely-held corporations which, although not in fact
28 dealt in on exchanges or markets, is "of a type" that
29 is. Interests like bank accounts are intended to be
30 excluded by the omission of the medium for investment
31 language.

32 Paragraph (1)(c) defines "security" as either a
33 certificated security or an uncertificated security,
34 defined in the two preceding paragraphs. The second
35 sentence of (1)(c) is intended to eliminate confusion
36 arising from the fact that certificated securities
37 (all securities under the present statute) are
38 alternatively viewed as the actual pieces of paper and
39 the interests they represent. See, e.g., present
40 Section 8-103, which provides "A lien upon a security
41 is valid, only if noted conspicuously on the
42 security." The final sentence of (1)(c) is to

1 recognize that an issuer which nominally issues
2 certificated securities but does not normally send the
3 certificates to the owners is functionally identical
4 to the issuer of uncertificated securities and should
5 be guided by the same rules.

6 Subsection (3), which represents a change from the
7 1972 Official Text of the present statute, is, with
8 limited exceptions, not part of this proposed
9 revision. Rather, it is a revision proposed by the
10 Banking and Securities Industry Committee to
11 facilitate the development of the securities
12 depository system. It has been previously approved by
13 the Permanent Editorial Board for the Uniform
14 Commercial Code and has been adopted by more than
15 forty states. The changes made by this revision
16 include the addition of "a corporation registered as a
17 'clearing agency' under the federal securities laws"
18 in the opening sentence, the substitution of
19 "organizations" for "persons (other than individuals)"
20 and the substitution of "federal securities laws" for
21 the specific statutory references in subparagraphs
22 (a)(ii) and (iii).

23 In subsection (5) the section reference to the
24 definition of "Adverse claim" has been changed and
25 three new terms have been added to the list of
26 definitions. Three terms, defined in Section 9-105,
27 have also been included.

28 Section 8-103: The substance of the present
29 section has been preserved in paragraph (a) which
30 deals with certificated securities. An analogous rule
31 for uncertificated securities is set forth in
32 paragraph (b) which conditions the validity of an
33 issuer's lien on a notation in the statement which
34 must be sent to a purchaser upon registration of
35 transfer, pledge or release under Section 8-408. When
36 transfer is not effected by registration, see Section
37 8-313(1)(d), (f), (g), (h), (i) or (j), the notation
38 must appear in the statement sent to the registered
39 owner or pledgee who "holds" for the purchaser.
40 Compare Sections 8-202 and 8-204 which deal,
41 respectively, with issuers' defenses and restrictions
42 imposed by issuers.

1 Section 8-104: The language added to subparagraph
2 (1)(a) gives the issuer obligated to transfer a
3 security the alternatives of delivering a certificated
4 security or registering the transfer of an
5 uncertificated security to the person entitled. As a
6 practical matter, the alternatives will be available
7 only when the securities of the particular issue
8 involved are partly certificated and partly
9 uncertificated. In that event, either the registered
10 owner or the registered pledgee will have the right,
11 under Section 8-407, to exchange one form of security
12 for the other, thus giving that person the ultimate
13 choice.

14 Section 8-105: This section is substantially
15 unchanged with respect to certificated securities.
16 Subsection (2) has been added, through an abundance of
17 caution, to make it clear that neither the various
18 writings which must or may be sent by the issuers of
19 uncertificated securities nor instructions, which are
20 orders to the issuer requesting registration, are to
21 be regarded as negotiable instruments or certificated
22 securities. Section 8-408(9) requires an appropriate
23 warning legend on the statements that issuers must
24 send.

25 Language has been added to paragraph (3)(a) to
26 extend the presumption of validity to signatures on
27 initial transaction statements sent by the issuers of
28 uncertificated securities, and on instructions
29 originated by owners and pledgees of uncertificated
30 securities. Paragraph (3)(d) has been added to give
31 the same evidentiary value to a genuine initial
32 transaction statement that paragraph (3)(c) accords to
33 a genuine certificated security. It should be noted
34 that the representations typically contained in a
35 certificated security are of a continuing nature while
36 the initial transaction statement speaks only as of
37 the time of its issuance.

38 Section 8-106: No change is intended in the
39 coverage of this section with respect to certificated
40 securities. The transfer of certificated securities,
41 effected by delivery, will continue to be governed by

1 present conflict of laws rules, not included in this
2 Article. The transfer of uncertificated securities
3 is, under Section 8-313, generally effected by
4 registration on the books of the issuer. Hence, the
5 effectiveness of such registration is included in the
6 section's coverage.

7 Section 8-321 provides that certain security
8 interests in uncertificated securities can be created
9 and released by registration. Section 8-408 obligates
10 the issuer of uncertificated securities to send
11 certain statements. Both these matters are brought
12 within the coverage of this section by the addition of
13 subparagraphs (b) and (c). The pledge and release of
14 certificated securities is not intended to be covered
15 by this section and continues to be governed by other
16 conflict of laws rules, e.g., section 9-103.

17 Section 8-107: In order to make this section
18 equally applicable to all securities, the words
19 "Deliverable" in the title and "deliver" in subsection
20 (1) have been changed to "Transferable" and
21 "transfer", respectively. Since certificated
22 securities continue to be transferred by delivery,
23 there is no change of substance with respect to
24 certificated securities.

25 Present subsection (1) states the rule that all
26 certificated securities of the same issue are to be
27 regarded as fungible. New subsection (1) extends that
28 concept to uncertificated securities of the same
29 issue. Thus, a seller's obligation may normally be
30 satisfied not only by the transfer of any certificated
31 security of the same issue but also by the transfer of
32 an uncertificated security of that issue.

33 Paragraph (2)(b) has been added so that the
34 transfer of an uncertificated security to the buyer or
35 his designee, which is the functional equivalent of
36 the delivery of a certificated security, results in
37 the same obligation to pay.

38 Section 8-108: This is an entirely new section
39 which introduces the concept of the registered pledge
40 of uncertificated securities. The term "pledge" is

1 used, notwithstanding the absence of physical
2 delivery, because it reflects common terminology
3 employed in connection with security interests in
4 investment securities. Note that the same term has
5 been used in present Section 8-320 to describe the
6 security interest created by book entry by a
7 securities depository. The rights of a registered
8 pledgee, set forth in other sections (particularly
9 Section 8-207), are intended to resemble, as closely
10 as possible, the rights of the pledgee of a
11 certificated security who retains possession of the
12 pledged security without reregistration. Although the
13 registration of pledge requires communication to the
14 issuer, no details of the security agreement between
15 the debtor and the secured party need be disclosed.

16 There is no provision for the registration of more
17 than one pledge at a time. This limits the burden on
18 issuers and insulates them from problems of
19 conflicting priorities and the like. The registration
20 of pledge is only one among several methods of
21 creating security interests under Section 8-313(1) and
22 other methods can be effectively employed to create
23 security interests junior to that of the registered
24 pledgee or even first security interests if, for some
25 reason, the use of the registered pledge mechanism is
26 inadvisable. See new Section 8-321 which deals
27 comprehensively with security interests and
28 incorporates the transfer rules of Section 8-313(1) by
29 reference.

30 The third sentence makes it clear that the
31 registered owner, and not the registered pledgee, is
32 the person in whose name an uncertificated security is
33 registered as, for example, to determine how an
34 unsecured creditor may reach his debtor's interest
35 under Section 8-317(2). The registration of release,
36 in effect, nullifies the registration of pledge, and
37 is functionally equivalent to the redelivery of a
38 pledged certificated security to the pledgor.

39 Section 8-201: The definition of "issuer" has
40 been broadened to include persons who create either
41 certificated securities or uncertificated securities,
42 or both. Because the first two paragraphs of present

1 subsection (1) apply, by their terms, only to
2 securities represented by instruments, a new paragraph
3 (b) has been inserted which deals with uncertificated
4 securities.

5 The definition of "uncertificated security" in
6 Section 8-102 and the definition of "issuer" in this
7 section contemplate that uncertificated securities may
8 be either equity or debt securities. Current thinking
9 about uncertificated securities has focused primarily
10 on equities and the difference in the relationship
11 between a shareholder and a corporation in contrast to
12 that between a creditor and his debtor may militate in
13 favor of retaining instruments to represent debt
14 securities. It should be noted, however, that the
15 Federal Reserve Banks, as transfer agents for the
16 United States, have a well-developed uncertificated
17 transfer system for United States government bonds.

18 Language has been added to subsection (2) to refer
19 to the statements which issuers of uncertificated
20 securities are obligated to send. Language has been
21 added to subsection (3) to include the registration of
22 pledge and release, in addition to transfer.

23 Section 8-202: Subsection (1) has been broadened
24 to provide that not only the terms noted or referred
25 to on a certificated security but also the terms noted
26 or referred to in the initial transaction statement
27 sent to the purchaser of an uncertificated security
28 (or one who "holds" for the purchaser) will constitute
29 constructive notice to persons who deal with the
30 security.

31 The rule of subsection (2), which estops the
32 issuer of a certificated security from asserting its
33 invalidity against a purchaser for value without
34 notice, has been extended to afford the same
35 protection to the purchaser of an uncertificated
36 security for value and without notice to whom an
37 initial transaction statement has been sent.

38 The defense of lack of genuineness which is
39 accorded to the alleged issuer of a certificated
40 security by present subsection (3) is similarly

1 accorded to the alleged sender of an initial
2 transaction statement by the added language. The
3 exception of Section 8-205 similarly applies.

4 Subsection (4) applies to both certificated and
5 uncertificated securities and language has been added
6 to make that clear. Note that a purchaser may be
7 chargeable with notice of an issuer's defense from
8 another source, even in the absence of a notation on a
9 certificated security or an initial transaction
10 statement. Compare Section 8-103 with respect to
11 issuer's liens.

12 Section 8-203: The substance of this section
13 applies only to certificated securities because such
14 securities may be transferred to a purchaser by
15 delivery after they have matured, been called or
16 become redeemable or exchangeable. It is contemplated
17 that uncertificated securities which have matured or
18 been called will merely be cancelled on the books of
19 the issuer and the proceeds sent to the registered
20 owner or registered pledgee, as the case may be.
21 Uncertificated securities which have become redeemable
22 or exchangeable, at the option of the owner, may be
23 transferred to a purchaser, but the transfer is
24 effectuated only by registration of transfer, thus
25 necessitating communication with the issuer. If
26 defects or defenses in such securities exist, the
27 issuer will necessarily have the opportunity to bring
28 them to the attention of the purchaser in the initial
29 transaction statement sent to him.

30 Section 8-204: The present section provides that
31 an issuer's restriction on transfer is valid against
32 persons with actual knowledge and that a notation on
33 the certificate constitutes constructive knowledge.
34 The revised section preserves these rules with respect
35 to certificated securities and sets forth a coordinate
36 rule that a notation on an initial transaction
37 statement sent with respect to an uncertificated
38 security similarly constitutes constructive
39 knowledge. A prospective transferee of an
40 uncertificated security must communicate with the
41 issuer in order to effectuate transfer by
42 registration.

1 Registration of transfer by the issuer will negate
2 the existence of restrictions on that particular
3 transfer. Restrictions on further transfer, to be
4 effective against a purchaser without actual
5 knowledge, must be noted in the initial transaction
6 statement sent to the purchaser or one who "holds" for
7 the purchaser. Such restrictions may constitute a
8 breach of the transferor's warranty under Section
9 8-306. Compare Section 8-103 which precludes the
10 issuer from asserting a lien against a purchaser
11 unless appropriate notations were contained in the
12 initial transaction statement.

13 Section 8-205: It is contemplated that
14 purchasers, including pledgees, of uncertificated
15 securities should be able to and will rely on the
16 initial transaction statements sent to them when a
17 transfer, pledge or release is registered. In order
18 to insure the genuineness of such statements, Section
19 8-408(4) requires that they be signed. Note that
20 "signed" is a term defined by Section 1-201(39) and
21 does not necessarily involve a manual signature.

22 The rule of this section with respect to the
23 ineffectiveness of unauthorized signatures, and, more
24 importantly, the exception to that rule in favor of
25 purchasers for value, has been broadened to include
26 signatures on initial transaction statements. Note
27 that the exception, with respect to initial
28 transaction statements, runs in favor of only the
29 purchaser to whom the statement has been sent. Thus,
30 a subsequent purchaser from the addressee of an
31 initial transaction statement on which the signature
32 was unauthorized but was done by a person described in
33 paragraph (a) or (b) cannot rely on the exception of
34 the section if the addressee had notice of the lack of
35 authority.

36 Section 8-206: The rules of the present section
37 with respect to certificated securities are restated
38 in subsections (1) and (2). These rules are extended
39 to the completion or alteration of initial transaction
40 statements by new subsections (3) and (4).

41 Note that the protection of paragraph (3)(b)

1 extends only to the addressee of the initial
2 transaction statement. If, for example, a properly
3 signed initial transaction statement indicated, in the
4 space for notations of liens, the word "None", which
5 had been incorrectly inserted, and the addressee of
6 that statement had actual knowledge that a lien
7 existed, a subsequent purchaser from the addressee
8 would not take free of the lien, despite the incorrect
9 insertion. If, however, the subsequent purchaser then
10 received an initial transaction statement showing no
11 liens, he would then have the protection of Section
12 8-103 and this section.

13 Section 8-207: Under present subsection (1), the
14 issuer of a certificated security may and, in the
15 absence of conclusive evidence that the security has
16 been transferred, presumably will rely on the registry
17 to establish the identity of those entitled to
18 ownership rights. New subsection (2) establishes the
19 same rule for the issuer of uncertificated securities,
20 subject, however, to the rights of registered pledgees
21 which are set forth in subsections (3), (4) and (6).
22 It should be noted that an uncertificated security can
23 normally be transferred only by registration of
24 transfer.

25 Under subsection (3), the owner of an
26 uncertificated security subject to a registered pledge
27 cannot transfer his interest until the pledge has been
28 released by the registered pledgee. Although this
29 requirement appears to conflict with the free
30 alienability of the debtor's interest under Section
31 9-311, it does so no more than the current practice of
32 delivery of a certificated security to the pledgee,
33 which, in effect, deprives the owner of the power to
34 transfer an interest without the pledgee's
35 cooperation.

36 The final sentence of subsection (3) makes clear
37 that when a convertible uncertificated security is
38 subject to a registered pledge, it is the pledgee, and
39 not the owner, who has the exclusive power to exercise
40 the conversion rights. Since the exercise of
41 conversion rights for a certificated security
42 generally requires delivery of the security to the

1 issuer, the cooperation of the secured party is
2 similarly required. Note that the proceeds of the
3 conversion are subject to the pledgee's interest or
4 delivered to the pledgee under subsection (6).

5 Subsection (4) obliges the issuer to comply with
6 the transfer instruction of the registered pledgee of
7 an uncertificated security, thus placing such pledgee
8 in the same position as the pledgee of a certificated
9 security to whom the security has been delivered with
10 all necessary indorsements. The three subparagraphs
11 of subsection (4) provide respectively for: (a) the
12 outright transfer of the security, free of the
13 pledgee's interest, to a buyer or any other person,
14 including the pledgee; (b) the transfer of the owner's
15 equity to a third person with the pledgee's interest
16 continuing; and (c) the substitution of a new pledgee
17 for the existing pledgee with ownership continuing
18 undisturbed. Subsection (5) provides for continuity
19 of perfection for purposes of priority under Article
20 9, the bankruptcy laws and other statutes.

21 Subsection (6) protects the pledgee's interest in
22 the proceeds of conversion, exchange or redemption of
23 uncertificated securities, since no instrument need be
24 surrendered to effectuate such transactions.
25 Subsection (6) also provides that additional
26 securities, certificated or uncertificated, issued in
27 connection with stock splits or stock dividends will
28 continue under the control of the registered pledgee.
29 This contrasts with the situation when certificated
30 securities are pledged and dividend certificates are
31 customarily sent to the registered owner, the only
32 party shown on the issuer's records. In that event,
33 the pledgee must obtain the dividend certificates from
34 the pledgor, exposing them, in the interim, to
35 wrongful transfer.

36 Section 8-208: Language has been added to this
37 section to extend the warranties of a signing
38 authenticating trustee, registrar, transfer agent, or
39 the like, to the addressees of initial transaction
40 statements. It should be noted that this warranty
41 extends only to the addressee. Compare Sections 8-205
42 and 8-206 and the explanation of changes thereunder.

1 Section 8-301: Although the definition of
2 "Purchase" in Section 1-201(32) includes any
3 "voluntary transaction", with or without
4 consideration, the title of Part 3 has been changed to
5 "Transfer" as a more natural description of the
6 material covered therein. Similar changes have been
7 made in the statutory text, where appropriate.

8 Transfers by operation of law, i.e., not to
9 purchasers, are not intended to be covered by Part 3
10 of either the present or revised Article. Such
11 transfers are effective upon the occurrence of the
12 motivating event (death, bankruptcy or the like) and
13 subsequent delivery and registration are merely
14 confirmatory of what has already happened.

15 Subsection (1) states the basic rule of the
16 present statute including the so-called shelter
17 principle. The word "transfer" has been substituted
18 for "delivery" in order that appropriate methods for
19 the transfer of uncertificated securities can be
20 included.

21 The balance of subsection (1) and all of present
22 subsection (2) have been deleted from this Section but
23 are now included in Section 8-302 which is intended to
24 deal completely with the concept of bona fide
25 purchase.

26 A sentence has been added to former subsection (3)
27 to make clear that the creation and release of
28 security interests are included in the statute's
29 coverage.

30 Section 8-302: The definition of bona fide
31 purchaser of a certificated security is preserved in
32 subparagraph (1)(a). A coordinate rule for the
33 purchaser of an uncertificated security is stated in
34 subparagraph (1)(b). The relevant time for testing
35 the knowledge or constructive knowledge of a purchaser
36 is the time of delivery in the case of a certificated
37 security and the time of registration in the case of
38 an uncertificated security. Note that the purchaser
39 of an uncertificated security is charged with

1 knowledge of adverse claims noted in the initial
2 transaction statement sent to him as provided in
3 Section 8-304.

4 In the present statute, Section 8-313 equates
5 certain events with delivery and subsection (2)
6 thereof provides that a purchaser who is deemed to
7 have taken delivery through his broker under certain
8 of the procedures in subsection (1) can be a
9 "holder". It was thought advisable to add
10 subparagraph (1)(c) to this section in order to
11 identify expressly those provisions of revised Section
12 8-313(1) that will confer "holder" status on a
13 purchaser and thus enable him to be a bona fide
14 purchaser under this section.

15 The definition of adverse claim, the description
16 of the title of a bona fide purchaser and the
17 exception to the shelter principle, all of which are
18 included in Section 8-301 of the present statute, are
19 set forth as subsections (2), (3) and (4)
20 respectively. Language has been added to subsection
21 (4) to make clear that it is limited to the holder of
22 a particular certificated security.

23 Section 8-304: Subsection (1), which deals with
24 notice arising from what appears on a certificated
25 security, is applicable only to the purchaser of a
26 certificated security. New subsection (2) provides
27 that the purchaser of an uncertificated security is
28 subject to those adverse claims that are noted on the
29 initial transaction statement sent to him (or one who
30 "holds" for him) confirming the transfer, pledge or
31 release which has been registered. Subsection (3) is
32 equally applicable to the purchasers of certificated
33 and uncertificated securities and language has been
34 added to make that clear.

35 Section 8-305: The substance of this section
36 applies only to certificated securities for the same
37 reasons as Section 8-203. It is not contemplated that
38 uncertificated securities which have been called or
39 have matured will be traded. With uncertificated
40 securities which have become redeemable or
41 exchangeable, effective transfer requires
42 communication with the issuer and, therefore, presents

1 the opportunity for the issuer to give the prospective
2 transferee effective notice of such claims as have
3 been lodged with it.

4 Section 8-306: The substance of the present
5 section, with respect to certificated securities, has
6 been preserved in the first four subsections. The
7 section title and these subsections have been changed
8 only to make clear that application only to
9 certificated securities is intended. Because the
10 registration of transfer of an uncertificated security
11 to the transferee is functionally equivalent to the
12 delivery of a certificated security to the transferee
13 by the issuer, language has been added to subsection
14 (1) to equate the position of purchasers for value
15 without notice of adverse claims whether the security
16 they "receive" from the issuer is certificated or
17 uncertificated.

18 Subsection (5) establishes the warranty made to
19 the issuer by the originator of an instruction, which
20 is an order to the issuer and is defined in section
21 8-308(4). These warranties are designed to protect
22 issuers who rely on instructions which may be forged,
23 fraudulent or otherwise improper against the persons
24 who are responsible for the creation of such
25 instructions. If, for example, an issuer should
26 improperly transfer shares out of the name of a
27 shareholder on the basis of a forged instruction, and
28 transfer those shares to a bona fide purchaser to whom
29 a valid initial transaction statement is sent, the
30 issuer would be subject to liability to the purported
31 transferor under section 8-404(3).

32 Subsection (6) sets forth the warranty made by the
33 originator of an instruction to a special signature
34 guarantor. It adds to the two warranties of
35 subsection (5) a warranty that the instruction will
36 result in the registration of a "clean" transfer,
37 pledge, or release and is consistent with the warranty
38 made by a special signature guarantor under section
39 8-312(3)(b).

40 Subsection (7) sets forth the warranty made by the
41 originator of an instruction to both a purchaser for

1 value and an instruction guarantor. It adds to the
2 warranties in subsections (5) and (6) additional
3 warranties of rightfulness and validity and is
4 essentially identical to the warranty of the
5 transferor of a certificated security under subsection
6 (2). The absolute warranty of validity, rather than
7 the mere denial of knowledge of invalidity, is
8 appropriate because the instruction must be
9 communicated to the issuer in order to complete the
10 transfer. If, upon receipt of the instruction, the
11 issuer should dispute the validity of the security, it
12 seems proper to place the burden of proving validity
13 on the transferor. It is contemplated that purchasers
14 of uncertificated securities will not normally part
15 with their consideration unless and until they are
16 satisfied that the transaction has been duly
17 registered and acknowledged to be free from defects by
18 the issuer, except when they are relying on their
19 brokers or other third parties.

20 Because the guarantor of an instruction makes an
21 absolute warranty of rightfulness under Section
22 8-312(6), he is given the benefit of the originator's
23 warranty under subsection (7).

24 Subsection (8) limits the warranties of the
25 originator of an instruction when the uncertificated
26 security is subject to a security interest and the
27 originator is or acts for either the registered
28 pledgee or registered owner who is the secured party.
29 In such cases, when the instruction is for release,
30 transfer to the debtor or transfer, after payment, to
31 a third person on the debtor's order, the originator's
32 warranties are limited in substantially the same way
33 that subsection (4) limits the warranties of the
34 pledgee of a certificated security acting under
35 similar circumstances.

36 When the transferor of an uncertificated security
37 is neither the registered owner nor the registered
38 pledgee, the transferor will have no occasion to
39 originate an instruction in connection with the
40 transfer. In such cases, the transferor warrants the
41 rightfulness of the transfer and the validity of the
42 security to a purchaser for value, as provided in

1 subsection (9).

2 Section 8-308: The substance of the present
3 section has been preserved, insofar as it applies to
4 certificated securities, in subsections (1), (2), (3),
5 (6), (8), (9), (10) and (11). Subsections (4), (5)
6 and (7) deal solely with uncertificated securities.
7 Present paragraph (3)(a) has been incorporated in new
8 subsection (6). The remainder of present subsection
9 (3) is incorporated in new subsection (8). Present
10 subsections (4), (6) and (7) have been broadened to
11 cover both forms of securities and are set forth in
12 new subsections (9), (10) and (11). An attempt has
13 been made to integrate the rules in order that issuers
14 can rely on precisely the same documentation and
15 evidence in connection with registration with respect
16 to both certificated and uncertificated securities.

17 An order for the registration of transfer of a
18 certificated security is the security itself, duly
19 indorsed and presented to the issuer. Because
20 uncertificated securities are not represented by
21 instruments, a separate order, in some form, written
22 or otherwise, is demanded. Subsection (4) defines an
23 "instruction" as that order and further provides that
24 not only registration of transfer, but also
25 registration of pledge and release, can be requested
26 thereby.

27 Subsection (5) provides that an instruction may be
28 an appropriately signed writing, and it is
29 contemplated that, in most cases, it will be. It
30 further provides, however, that instruction may be
31 other than signed writings when both parties, the
32 issuer on the one hand and the registered owner or
33 registered pledgee on the other, have agreed, in a
34 signed writing, that some other procedure is mutually
35 acceptable. Thus, paragraph (5)(b) is intended to
36 facilitate the registration of transfers, pledges and
37 releases on the authority of electronic, telegraphic
38 or even oral instructions when the relevant parties
39 are assured that the means selected will provide
40 adequate safeguards against the execution of
41 unauthorized transactions.

1 Subsection (7) designates the primary party
2 appropriate to originate an instruction. When the
3 uncertificated security is not subject to a registered
4 pledge, the registered owner is that party and may
5 properly originate an instruction to register either a
6 transfer or pledge. When the uncertificated security
7 is subject to a registered pledge, however, only the
8 registered pledgee may properly originate an
9 instruction to register either transfer or release.
10 There is no provision to register a pledge other than
11 that of a single registered pledgee. See Section
12 8-108.

13 The final phrase of subsection (9) has been
14 inserted because of a possible ambiguity concerning
15 the word "honored". Under the terms of Section 8-306,
16 the transferor of a certificated security and the
17 originator of an instruction do warrant, in effect,
18 that the issuer will honor their respective orders to
19 register the appropriate transaction. They do not,
20 unless otherwise agreed, become sureties of the
21 obligations of the issuer beyond the duty to register,
22 as, for example, the issuer's obligations to pay
23 interest and principal on a security which is an
24 indebtedness of the issuer.

25 Section 8-311: This section is broadened to give
26 the same effect to an unauthorized instruction as the
27 present statute gives to an unauthorized indorsement
28 of a certificated security. Thus, the protection
29 which paragraph (a) accords to a bona fide purchaser
30 who receives a certificated security from the issuer
31 is also accorded to a bona fide purchaser who receives
32 an initial transaction statement with respect to an
33 uncertificated security. Similarly, the liability of
34 the issuer for improper registration set forth in
35 paragraph (b) extends to improper registration
36 pursuant to an unauthorized instruction.

37 Section 8-312: The substance of the present
38 section has been preserved, insofar as it applies to
39 certificated securities, in subsections (1), (4), (5),
40 (7) and (8). Some of the language has been changed
41 and restructured in order to integrate the material
42 concerning uncertificated securities, but no change of

1 substance is intended.

2 Subsection (2) sets forth the warranties that can
3 reasonably be expected from the guarantor of the
4 signature on an instruction, who, though familiar with
5 the signer, does not have before him any evidence that
6 the purported owner or pledgee is, in fact, the owner
7 or pledgee of the subject uncertificated security.
8 This is in distinct contrast to the position of the
9 person guaranteeing a signature on a certificate who
10 can see a certificate in the signer's possession in
11 the name of or indorsed to the signer or in blank.

12 Thus, the warranty of appropriateness in clause
13 (b) is expressly conditioned on the actual
14 registration conforming to that represented by the
15 originator. If the signer purports to be the owner or
16 pledgee, the guarantor, under clause (b), warrants
17 only his identity. If, however, the signer is acting
18 in a representative capacity, the guarantor, warrants
19 both his identity and his authority to act for the
20 purported owner or pledgee. The additional warranty
21 of clause (d) as to the taxpayer identification number
22 is intended to prevent error or fraud resulting from
23 identical or similar names. The warranties of
24 subsection (2) are intended to provide satisfactory
25 assurance to the issuer who needs no warranty as to
26 the facts of registration because he can ascertain
27 those facts from his own records.

28 Subsection (3) sets forth a "special guarantee of
29 signature" under which the guarantor additionally
30 warrants both registered ownership or pledge and
31 freedom from undisclosed defects of record. The
32 guarantor of the signature of an indorser of a
33 certificated security effectively makes these
34 warranties to a purchaser for value on the evidence of
35 a clean certificate issued in the name of the
36 indorser, indorsed to the indorser or indorsed in
37 blank. By specially guaranteeing under subsection
38 (3), the guarantor warrants that the instruction will,
39 when presented to the issuer, result in the requested
40 registration free from defects not specified. It is
41 contemplated that the special guarantee of signature
42 will be used principally in brokerage transactions

1 where the broker will be specially guaranteeing the
2 signature on an instruction originated by his own
3 customer. The broker's risk will be no greater than
4 that of a broker who now commonly executes the sale of
5 a security for his customer without the absolute
6 assurance that his customer will deliver a clean
7 certificate at settlement.

8 Section 8-313: The title of this section has been
9 changed and its content broadened in order to identify
10 the time when both certificated and uncertificated
11 securities are transferred to purchasers. The content
12 has been further extended to recognize that many
13 transactions are conducted through financial
14 intermediaries, a term defined in subsection (4) to
15 include all entities, and not merely brokers, that
16 maintain security accounts for their customers. It is
17 one of the three sections in this revision in which it
18 is intended to extend the coverage of Article 8 as to
19 certificated securities. Sections 8-317 and 8-321 are
20 the others.

21 Subsection (1) is expressly made applicable to
22 limited interests, including security interests, as
23 well as entire interests. Compare Section 8-301(2).
24 The addition of the word "only" in the first sentence
25 is intended to provide that the methods of transfer
26 listed are exclusive and that compliance with one of
27 them is essential to a valid transfer. Transfers by
28 operation of law are excepted because they are not
29 transfers to a "purchaser".

30 The rules of the present statute as they apply to
31 certificated securities are preserved in subparagraphs
32 (a), (c), (d)(i), (e) and (g). The coverage of (c)
33 and (d)(i), however, is extended to situations where
34 any financial intermediary, except a clearing
35 corporation, is involved and the coverage of (e) is
36 limited to third persons who are not financial
37 intermediaries.

38 Subparagraph (b) is the basic rule for
39 uncertificated securities and provides that a transfer
40 (including a pledge or release, which are transfers of
41 security interests) occurs when it is registered.

1 Subparagraph (f) is the analogue of (e) and applies
2 when an uncertificated security is controlled by a
3 third person. In both (e) and (f), acknowledgement by
4 the third person is the critical event.

5 Subparagraphs (d)(ii) and (d)(iii) have no
6 counterpart in the present statute but are considered
7 desirable express statements in the light of modern
8 security holding practices of both brokers and banks.
9 The final sentence of present subsection (2) implies
10 this result without stating it expressly. Once the
11 "fungible bulk" principle is established, it is
12 immaterial whether the underlying securities are
13 certificated, uncertificated or held in a clearing
14 corporation account.

15 Entire subparagraph (d) is applicable to all
16 financial intermediaries except clearing corporations
17 and requires, as conditions of transfer, both a
18 confirmation to the purchaser and a book entry. In
19 contrast, subparagraph (g) applies only to clearing
20 corporations and requires only the appropriate book
21 entry. The difference results from the fact that
22 clearing corporations will normally control only
23 securities belonging to their customers while other
24 financial intermediaries may themselves be the
25 beneficial owners or pledgees of securities not held
26 in account for their customers. In the event of the
27 insolvency of either the financial intermediary or the
28 customer, it appears desirable to have some objective
29 evidence of a transfer in addition to an internal book
30 entry. This distinction preserves the similar
31 distinction between subparagraphs (c) and (e) of the
32 present statute.

33 Under the present statute, the rules of Section
34 8-313(1) are neither expressly applicable to security
35 interests nor are they expressly made exclusive. On
36 the other hand, when value has been given and the
37 debtor has rights in the collateral, present Section
38 9-203(1) permits the creation of an enforceable
39 security interest when either the secured party has
40 possession of the collateral or the debtor has signed
41 a written security agreement. Under present Article
42 9, a security interest created by signed agreement,

1 although enforceable, would, with limited exceptions,
2 be unperfected.

3 Under this revision, new Section 8-321 requires a
4 transfer under Section 8-313(1) to create an
5 enforceable security interest and Section 9-203(1) is
6 expressly made subject to Section 8-321. As a result,
7 it will not be possible to create a security interest
8 in securities by mere written agreement. It is not
9 considered necessary to continue to provide for the
10 creation of unperfected security interests. It is
11 considered desirable, however, to provide for the
12 creation of security interests, unaccompanied by
13 possession, which can be perfected under present
14 Article 9.

15 Subparagraph (h), limited to the transfer of a
16 security interest, deals with the situation where a
17 security interest, pursuant to written agreement, is
18 perfected by notice to a bailee under Section 9-305.
19 Unlike a transfer under subparagraph (d), (e) or (f)
20 of subsection (1), Section 9-305 does not require
21 confirmation or acknowledgment by the controlling
22 party, but only the receipt of notice. Subparagraph
23 (h) provides that a transfer is effective when notice
24 is received and further identifies the party to be
25 notified. Subparagraph (h) is applicable to both
26 certificated and uncertificated securities and, even
27 when certificated securities are involved, eliminates
28 speculation as to who is the bailee and, indeed,
29 whether there is an instrument. Unlike Section 9-305,
30 which merely requires notification, subsection (h)
31 requires that the notification be signed by the
32 transferor, thereby reducing the possibility of
33 interference by fraudulent claimants. By this
34 revision, securities are expressly excluded from the
35 coverage of Section 9-305.

36 Subparagraph (i), also limited to the transfer of
37 a security interest, deals with the situation where a
38 security interest, pursuant to written agreement, for
39 new value is automatically perfected for a period of
40 21 days under Section 9-304(4). Under subparagraph
41 (i), such a security interest is effectively
42 transferred when the new value is given. Section

1 8-321(2) provides for the expiration of perfection
2 after 21 days. By this revision, securities are
3 expressly excluded from the coverage of Section
4 9-304(4).

5 Subparagraph (j) is addressed to the situation
6 where a financial intermediary holds securities in
7 account for a customer and also acquires a security
8 interest in those securities for its own account,
9 e.g., a margin account with a broker or a bank lending
10 on the collateral of its borrower's custody account.
11 In such cases, the financial intermediary's control of
12 the securities is in a dual capacity, and a written
13 agreement signed by the debtor was thought to be a
14 desirable protection.

15 Present subsection (2) denies holder status to a
16 broker's customer except in cases where the broker is
17 holding a specific certificated security for the
18 customer's account. The effect of this is to prevent
19 the customer from becoming a bona fide purchaser when
20 all he has is an interest in a fungible bulk of
21 securities. Revised subsection (2) deals with the
22 problem expressly in terms of who can or cannot become
23 a bona fide purchaser. Note that in neither the
24 present nor the revised statute can the purchaser who
25 becomes such by acknowledgment by a third party bailee
26 or agent attain bona fide purchaser status.
27 Subsection (2) should be compared with Section
28 8-302(1)(c).

29 Subsection (3) states the principle that once a
30 financial intermediary has become a bona fide
31 purchaser subsequent notice of claims to either him or
32 his customer are ineffective, and extends the coverage
33 to uncertificated securities. The final sentence, now
34 applicable to all financial intermediaries, gives the
35 customer the right to obtain a "clean" security from
36 his broker or bank.

37 New subsection (4) defines the term "financial
38 intermediary" as an entity which maintains security
39 accounts for its customers. Note that the definition
40 applies only when the entity is active in that
41 capacity. Thus, a bank is a financial intermediary in

1 transactions involving its custody accounts but is not
2 a financial intermediary with respect to securities it
3 holds as a pledgee or for its own account.

4 Section 8-314: This section presently provides
5 that a transferor's duty is fulfilled by physical
6 delivery of a certificated security. This rule is
7 preserved in subparagraphs (1)(a)(i), (1)(b)(i) and
8 (2)(a). New subparagraphs (1)(a)(ii), (1)(b)(ii) and
9 (2)(b) permit the transferor also to perform by
10 causing the registration of transfer of an
11 uncertificated security to the transferee or his
12 designee. Another alternative, causing a third party
13 holder to acknowledge that he holds for the transferee
14 if the transferee so requests, is provided in the
15 present section and is explicitly stated in new
16 subparagraphs (1)(a)(iii) and (2)(c). A selling
17 broker may also fulfill his duty by effecting
18 clearance pursuant to exchange rules. This is stated
19 in new subparagraph (1)(b)(iv).

20 In brokerage transactions only, subparagraphs
21 (1)(a)(iv) and (1)(b)(iii) permit yet another
22 alternative. Under these, the transferor may
23 conditionally satisfy his duty by the delivery of an
24 instruction. Such delivery does not constitute
25 complete performance if the instruction is timely
26 presented for registration and the issuer refuses to
27 comply with its request. The burden of timely
28 presentment is placed on the recipient of the
29 instruction and it is not intended that instructions
30 so given will circulate in the manner in which
31 certificated securities now commonly circulate by
32 indorsement. It is contemplated that this method of
33 performance will be commonly employed in transactions
34 settled through brokers, with, in many cases, the
35 selling broker specially guaranteeing the signature of
36 the originator of the instruction pursuant to Section
37 8-312(3).

38 Section 8-315: The coverage of this section is
39 broadened to include remedies for the wrongful
40 transfer of both certificated and uncertificated
41 securities. Subparagraph (c) is added to subsection
42 (1) to establish the alternative remedy of compelling

1 the origination of an instruction to transfer an
2 equivalent uncertificated security which is the
3 functional equivalent of subparagraph (b).

4 Subsection (2) is applicable only to certificated
5 securities and language is added to make that clear.
6 The right to specific enforcement provided in
7 subsection (3) is extended to the origination of a
8 transfer instruction and the right to enjoin transfer
9 is made applicable to both certificated and
10 uncertificated securities.

11 Section 8-316: Language has been added to this
12 section in order to broaden its coverage to both
13 certificated and uncertificated securities. Because
14 uncertificated securities are not only transferred,
15 but also can be pledged and released by registration,
16 language has been added to include such transactions.

17 Section 8-317: This section has been
18 substantially rewritten and expanded, not only to
19 provide for the rights of creditors of the owners of
20 uncertificated securities, but also to provide
21 expressly for remedies against the interest of debtors
22 in certificated securities which are not within the
23 debtor's control. It is one of the three sections in
24 this revision in which it is intended to extend the
25 coverage of Article 8 as to certificated securities.
26 Sections 8-313 and 8-321 are the others.

27 Subsection (1) states the rule of the present
28 statute for certificated securities which provides
29 that a creditor's lien upon a certificated security is
30 not valid until actual seizure. The chief
31 justification for this rule is the protection of
32 purchasers from the debtor. The rule is entirely
33 appropriate when the security is within the debtor's
34 control. When the debtor does not have such control,
35 the rule has no function.

36 The present statute recognizes a single exception
37 to the rule where the security has been surrendered to
38 the issuer. New subsection (1) includes this
39 exception and expressly provides that such a security
40 can be reached by serving the issuer at its chief

1 executive office, replacing the cryptic phrase "at the
2 source". The most logical place to serve the issuer
3 would be the place where the transfer records are
4 maintained, but that location might be difficult to
5 identify, especially when the separate elements of a
6 computer network might be situated in different
7 places. The chief executive office is selected as the
8 appropriate place by analogy to Section 9-103(3)(d).

9 Subsection (2) provides that process upon the
10 issuer is the only method for a creditor to reach an
11 uncertificated security registered in the name of the
12 debtor. This conclusion was reached with some
13 reluctance since it requires a creditor to institute
14 legal action and/or a debtor to defend that action in
15 a jurisdiction which may have no relationship to
16 either of the parties or the dispute other than the
17 happenstance that the debtor owns a security of the
18 particular issuer. Nevertheless, attempts to
19 formulate a procedure by which even a judgment
20 creditor could effectively reach his debtor's
21 uncertificated securities without such legal action
22 resulted in what seemed to be an intolerable burden
23 for issuers.

24 Subsection (3) provides a second exception to the
25 seizure rule when a certificated security is in the
26 possession of a secured party. In such a case, an
27 effective lien can be established by service on the
28 secured party without depriving him of his
29 possession. This section does not attempt to provide
30 for rights as between the creditor and the secured
31 party, as, for example, whether or when the secured
32 party must liquidate the security. For essentially
33 the same reasons, subsection (3) also covers the case
34 where an uncertificated security has been transferred
35 into the name of a secured party either at the
36 inception of the loan or thereafter.

37 Subsection (4) recognizes that certificated
38 securities are frequently held in account for
39 customers by banks or brokers and that such securities
40 may be registered not only in the name of the debtor
41 but, more commonly, in street or other nominee name.
42 Additionally, in such cases, the securities may have

1 been commingled, repledged or deposited so that no
2 particular security could be identified as that of the
3 debtor. The subsection provides that the debtor's
4 account can be reached by process upon the entity upon
5 whose books the interest of the debtor appears. This
6 appears to be the most effective way of preventing the
7 transfer of the debtor's interest and thus protecting
8 the creditor. It is only that entity that is aware of
9 the debtor's interest, irrespective of where the
10 securities are located or in what name they happen to
11 be registered. For the same reason, subsection (4)
12 also covers the case where uncertificated securities
13 are registered in street name.

14 Subsection (5) expressly provides that securities
15 in which the debtor's interest is reached pursuant to
16 subsection (3) or (4) may be transferred for new
17 value, free of the creditor's lien, but, when and if
18 they are, that the lien will be transferred to the
19 proceeds. Nothing in subsection (5) is intended to
20 validate any transfer that would otherwise constitute
21 a fraudulent conveyance. Furthermore, subsection (5)
22 is expressly subject to the procedural laws of the
23 states and no attempt has been made to prescribe the
24 consequences of obtaining such a lien or the
25 procedures for its enforcement.

26 Particular terms to describe creditor's process
27 have been avoided in this section. This section is
28 not intended to have any effect on the availability of
29 garnishment or similar third-party process as a
30 prejudgment or post-judgment remedy. Such matters are
31 a proper concern of the procedural rules of the
32 states, subject, of course, to constitutional
33 limitations.

34 Section 8-318: The section which exonerates the
35 agent or bailee who has made a good faith sale, pledge
36 or delivery of certificated securities has been
37 broadened to provide similar protection for similar
38 parties engaging in similar activities with respect to
39 uncertificated securities.

40 Section 8-319: This section extends the coverage
41 of the statute of frauds to contracts for the sale of

1 both certificated and uncertificated securities. The
2 performance exceptions of paragraph (b) now include
3 the acceptance of a transfer instruction by the
4 alleged transferee and the registration of transfer of
5 an uncertificated security to which registration the
6 alleged transferee has not objected in writing within
7 10 days after receiving the initial transaction
8 statement confirming such registration. These
9 additions, while necessary to enforcement against the
10 alleged transferee, are unnecessary with respect to
11 the transferor since each will almost certainly
12 involve a writing signed by the transferor and thus
13 will be within paragraph (a).

14 Section 8-320: Changes have been made in this
15 section to make it applicable to certificated and
16 uncertificated securities. This will affect the
17 operation of securities depositories in three ways.
18 First, it will enable participants to add to their
19 accounts with the depository by the registration of
20 transfer of uncertificated securities to the
21 depository or its nominee in addition to the current
22 method of delivering certificated securities in
23 negotiable form. Secondly, it will permit the
24 depository to maintain its holdings of securities in
25 uncertificated form, thus reducing custodial problems.
26 Finally, it will permit the depository to transfer
27 uncertificated securities out to its participants by
28 causing the registration of transfer, as an
29 alternative to the current method of maintaining an
30 inventory of certificated securities for that purpose.

31 Subsection (1) has been restructured to make it
32 clear that it covers securities that clearing
33 corporation A may control through its account in
34 clearing corporation B. The growing system of
35 interfacing depositories makes such clarification
36 desirable.

37 Subsection (3) has been rewritten to address
38 certain consequences directly, rather than merely by
39 analogy to the physical delivery of certificated
40 securities.

41 Section 8-321: This is an entirely new section

1 and is intended to govern the creation, perfection and
2 termination of security interests in all securities,
3 certificated and uncertificated. It is one of three
4 sections in this revision in which it is intended to
5 extend to coverage of Article 8 as to certificated
6 securities. Sections 8-313 and 8-317 are the others.
7 Several sections of Article 9 are made subject to or
8 are affected by this section.

9 Subsection (1) provides that an effective transfer
10 under Section 8-313(1) is an essential element to the
11 creation of an enforceable security interest. Under
12 present Section 9-203(1), an enforceable security
13 interest can be created without possession if there is
14 a written security agreement signed by the debtor.
15 Under this revision, Section 9-203(1) is expressly
16 made subject to this section.

17 Subsection (2) provides that when value has been
18 given and the debtor has rights in the collateral, an
19 appropriate transfer will result not only in an
20 enforceable security interest but also in one that is
21 perfected. Under this revision, an unperfected
22 security interest in a security cannot be created. A
23 security interest created by transfer under Section
24 8-313(1)(i), however, may become unperfected if,
25 within 21 days, the requirements of another method of
26 effective transfer are not satisfied. This produces
27 the same result as present Section 9-304(4).
28 Securities are expressly excluded from the coverage of
29 Section 9-304(4).

30 Subsection (3) expressly makes a security interest
31 in securities subject to the provisions of Article 9
32 except those provisions dealing with the creation and
33 perfection of security interests. Those matters are
34 governed by this section. In addition, the provisions
35 of Section 9-207, which governs the rights and duties
36 of the pledgee of a certificated security, are
37 extended, to the extent they are applicable, to all
38 secured parties, whether or not the possession of a
39 certificated security is involved. Thus, in the
40 absence of agreement to the contrary, the secured
41 party, who might be the registered owner of an
42 uncertificated security, would have the duty to remit

1 dividends he received to the debtor or to apply them
2 in reduction of the obligation under Section
3 9-207(2)(c).

4 Subsection (4) provides that a security interest
5 is terminated by retransfer to the debtor unless the
6 parties otherwise agree. Even when the parties agree
7 that the security interest is to continue, it will
8 become unperfected unless there is delivery of a
9 certificated security for the limited purposes
10 described in the second sentence. This provision is
11 intended to produce the same result as present Section
12 9-304(5) from the coverage of which securities are
13 expressly excluded. The final sentence limits the
14 continued perfection to a 21-day period, as does
15 Section 9-304(5), and requires retransfer to the
16 secured party, in a manner analogous to Section
17 9-304(6), as a condition of continued or renewed
18 perfection.

19 Section 8-401: Subsection (1) states the duty of
20 the issuer to honor instructions to register the
21 transfer, pledge or release of uncertificated
22 securities in the same terms and with the same
23 conditions that the present statute imposes with
24 respect to the registration of transfer of
25 certificated securities.

26 The issuer's liability under subsection (2) is
27 extended to cover losses resulting from failure to
28 take timely action with respect to instructions to
29 transfer, pledge or release uncertificated securities.

30 Section 8-402: This section has been modified so
31 as to permit the issuer to require, as a condition of
32 honoring an instruction, precisely the same assurances
33 and supplementary documentation as the present section
34 permits the issuer to require as a condition of
35 registering the transfer of a certificated security.
36 In addition, under the last phrase of subsection
37 (1)(a) the issuer may require either a warranty of the
38 taxpayer identification number on an instruction as
39 provided in section 8-312(2)(d) or other evidence of
40 identity.

1 Section 8-403: The present law permits an adverse
2 claimant to delay the registration of transfer of a
3 certificated security by thirty days merely by sending
4 a timely written notification to the issuer
5 identifying the claimant, registered owner and issue
6 and giving an address for communications. This rather
7 loose procedure has not constituted a serious problem
8 for two reasons. First, the transfer of a
9 certificated security is effected by delivery and the
10 rights of the parties are established before the
11 security is presented to the issuer for registration.
12 More significantly, the bona fide purchaser of a
13 security takes free of adverse claims and claims known
14 to the issuer need not be known to him.

15 The present system enables the claimant to assert
16 his rights in court before the issuer lets a new
17 certificated security loose which might find its way
18 into the hands of a bona fide purchaser. He can
19 effectively do so, of course, only when the rights of
20 a bona fide purchaser have not already intervened,
21 but, in that minority of instances, he does receive
22 protection. Conversely, the ease with which a
23 claimant can register his claim with the issuer is not
24 a great burden on the owner since the clean
25 certificate in his hands gives him the power to
26 transfer to a bona fide purchaser free of the adverse
27 claim. Thus, the present statute requires no notice
28 to the owner when a claim is filed with the issuer and
29 the claim has no effect on transactions until the
30 certificate is presented for registration of
31 transfer. By then, the effect is usually limited to
32 mere delay.

33 With uncertificated securities, however, transfer
34 does not take place until registration so that any
35 mandated delay seriously impairs an owner's ability to
36 sell or pledge his security. Since a prudent
37 purchaser may not pay until he receives a clean
38 initial transaction statement, the effect of a mere
39 letter notifying the issuer of an adverse claim,
40 however frivolous, would be disastrous. Because of
41 this important difference, the rules of the present
42 section, in subsections (1), (2) and (3) have been
43 restated, unchanged, but limited to situations
44 involving only certificated securities. New rules,

1 applying only to uncertificated securities, are set
2 forth in subsections (4), (5) and (6) and are intended
3 to accommodate the interests of owners, purchasers,
4 issuers and adverse claimants.

5 Subsection (4) states that an issuer has no duty
6 as to adverse claims except in four described
7 situations. Mere written notifications result in a
8 duty only when they come from existing owners and
9 pledgees and are analogous to stop payment orders on
10 checks. There is a duty as to claims to which the
11 security was subject when it was purchased by the
12 present owner, a situation with which the owner is
13 already familiar. There is a duty as to claims
14 arising from the issuer's request for documentation
15 under Section 8-402.

16 The significant difference is that claims asserted
17 by third parties, in order to impose a duty on the
18 issuer, must be supported by legal process. This will
19 constitute assurance that the claim is not merely
20 frivolous and that its assertion is more than
21 harassment. In most cases the owner will have been
22 notified and have had the opportunity to be heard.
23 While claims thus asserted may ultimately be adjudged
24 invalid, the owner will not be tied up by a bare
25 written communication from the claimant. On the other
26 hand, while a more substantial burden is imposed on
27 the claimant, there is a channel through which he can
28 assert his claim before the rights of a bona fide
29 purchaser intervene.

30 Once it is established that the claim imposes a
31 duty on the issuer, notations of the claim must be
32 contained in all statements sent with respect to the
33 security and registration of transfer or pledge must
34 be refused unless the nature of the claim is
35 consistent with transfer or pledge subject to the
36 claim. When transfer or pledge is registered subject
37 to the claim, the final sentence of subsection (5)
38 requires that the claim be noted in all statements
39 sent to the transferee or pledgee.

40 Subsection (7) deals with the situation where an
41 uncertificated security is already subject to a

1 registered pledge when the issuer first learns of an
2 adverse claim as to which he has a duty. In that
3 event, the registered pledgee who became such without
4 notice of the claim may be a bona fide purchaser with
5 the right to transfer the security free of the claim.
6 That right cannot be curtailed by the claim of a third
7 party (including the registered owner) unless legal
8 process embodying the claim expressly deals with the
9 pledgee's interest. There is obviously no curtailment
10 of the pledgee's right when the claim is asserted by
11 the pledgee himself. It should be curtailed if the
12 pledgee's right to obtain registration of transfer is
13 called into question by a controlling instrument which
14 the issuer elects to require before acting on the
15 pledgee's request. Since the transfer to the
16 registered owner is the equivalent of a release of the
17 pledge, such a transfer should not terminate the
18 issuer's duty as to the claim.

19 Section 8-404: Subsection (1) exonerates the
20 issuer from liability to any person arising from
21 registration of transfer, pledge or release of an
22 uncertificated security under the same conditions that
23 the present statute provides with respect to the
24 registration of transfer of a certificated security.

25 The remedy for improper registration under
26 subsection (2), i.e., the delivery of a like security
27 to the true owner, is inapplicable to uncertificated
28 securities. Thus, subsection (3) provides an
29 analogous remedy for uncertificated securities, the
30 restoration of the records to their proper condition.
31 The same exception is made in the event of overissue.
32 The exception of paragraph (2)(b) is inapplicable to
33 uncertificated securities which, by definition, cannot
34 be lost, destroyed or stolen, and is omitted from
35 subsection (3).

36 Section 8-405: Subsection (1) is applicable only
37 to certificated securities, since only they can be
38 lost, destroyed or stolen.

39 Subsection (2) permits the issuer to satisfy his
40 obligation to replace a lost, destroyed or stolen
41 certificated security by issuing a replacement in

1 either certificated or uncertificated form. Such
2 alternatives exist only when the particular issue is
3 partly certificated and partly uncertificated. In
4 that event, the owner may have the privilege of
5 exchanging one for the other under Section 8-407, thus
6 placing the ultimate option with him. Compare
7 explanation of changes under Section 8-104.

8 Section 8-406: The coverage of this section is
9 broadened to include the agents of the issuers of both
10 certificated and uncertificated securities.

11 Section 8-407: This is an entirely new section
12 which deals with the right of the holder of a
13 certificated security to exchange it for an equivalent
14 uncertificated security and the right of the
15 registered owner or registered pledgee of an
16 uncertificated security to obtain a certificated
17 security in exchange for it. This section is
18 applicable only in those situations where both
19 certificated and uncertificated securities exist
20 within the same issue and either form is available to
21 the particular owner. Subsection (1) so limits its
22 applicability.

23 Neither this nor any other section of this Article
24 is intended to mandate the establishment or
25 continuance of a dual system of registration. It is
26 contemplated that some issuers may provide for both
27 forms of securities on a more or less indefinite
28 basis. Issuers of existing issues which are
29 necessarily wholly certificated may make
30 uncertificated securities available with the intention
31 to phase out the certificated securities over a period
32 of time. Some issuers, if permitted by relevant law,
33 may restrict the availability of uncertificated
34 securities to particular categories of owners, e.g.,
35 brokers, banks and institutions.

36 Subsections (2) and (3) establish the mechanism
37 for exchange. When a certificated security is
38 surrendered for exchange and the issuer has a duty as
39 to adverse claims, that duty must be discharged before
40 an equivalent uncertificated security can be issued.
41 When an instruction requests the issuance of a

1 certificated security in exchange for an
2 uncertificated security, adverse claims as to which
3 the issuer has a duty are to be noted conspicuously
4 thereon. In either case, the existence of the
5 issuer's duty is determined by the provisions of
6 Section 8-403.

7 Section 8-408: This is an entirely new section
8 which obliges the issuer of uncertificated securities
9 to send certain statements. The required statements
10 are of two types. Transaction statements, required by
11 subsections (1), (2), (3) and (5), are analogous to
12 debit and credit advices and the periodic statements,
13 can be reconciled from them. Periodic statements,
14 required by subsections (6) and (7) are analogous to
15 bank statements and will advise owners and pledgees of
16 their positions at given points in time.

17 The transaction statements, which are mandated
18 upon the registration of transfer, pledge or release,
19 must be sent within two days after the relevant
20 registration, but it is contemplated that such
21 statements will be prepared virtually simultaneously
22 with the actual registration and sent immediately
23 thereafter.

24 The transaction statements are intended to serve
25 two functions. They are notice to the transferor (the
26 owner in the case of a transfer or pledge or the
27 pledgee in the case of a release or the transfer of a
28 security subject to a pledge) that his interest has
29 been reduced. In the event of fraudulent,
30 unauthorized or otherwise improper registration, the
31 transaction statement will serve as notice that timely
32 action should be taken.

33 More importantly, these statements are notice to
34 the transferee (new owner in the case of a transfer,
35 pledgee in the case of a pledge, present owner in the
36 case of a release) that the increase of his interest
37 has, in fact, been registered. Furthermore, since all
38 statements except those required by subsection (5)
39 must include a notation of defects or an express
40 statement that there are none, these statements will
41 give the transferee the assurance equivalent to that

1 afforded by a "clean" certificated security and create
2 an estoppel against the issuer.

3 It is contemplated that transferees will and
4 should be able to rely on these statements and, in
5 many cases, will not part with their consideration
6 until they receive them. In order that they will have
7 the desired effect of establishing rights for the
8 transferee against the issuer, subsection (4) requires
9 that the copy of each transaction statement sent to
10 the transferee, called an "initial transaction
11 statement", be signed. Note that Section 1-201(39)
12 does not require a manual signature for compliance
13 with this requirement. Compare also Sections
14 8-103(b), 8-105(3)(d), 8-202, 8-204(b), 8-205, 8-206,
15 8-208, 8-304 and 8-313(3) for the effects of initial
16 transaction statements.

17 The frequency of one year, with which periodic
18 statements must be sent to owners and pledgees, is
19 intended to be a minimum requirement for all issuers,
20 including closely held corporations. Owners and
21 pledgees are entitled to request additional statements
22 of position at any time. It is contemplated, however,
23 that publicly held issuers will adopt the practice of
24 sending quarterly statements conforming to the common
25 practice of sending quarterly reports and dividend
26 checks. For those that do, subsection (8) eliminates
27 the obligation to furnish additional statements of
28 position on request unless the issuer is reimbursed
29 for the additional cost.

30 Subsection (9) requires a conspicuous legend to be
31 borne by each statement as a protection against
32 unjustified reliance on statements of uncertificated
33 securities by persons who might deal with them. Other
34 than the aforesaid legend, the form of the statements
35 required by this section is not prescribed. Perhaps
36 the forms now used by the transfer agents of mutual
37 funds to confirm acquisitions, dispositions,
38 reinvestment of dividends, periodic liquidations and
39 statements of position might serve as a model.

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