

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 134*

Short Title: Investment Securities UCC Rewrite.

(Public)

Sponsors: Representatives Culpepper; and Starnes.

Referred to: Judiciary II.

February 13, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE REVISED ARTICLE 8 OF THE UNIFORM
3 COMMERCIAL CODE AND CONFORMING AND MISCELLANEOUS
4 AMENDMENTS TO THE UNIFORM COMMERCIAL CODE AND OTHER
5 GENERAL STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES
6 COMMISSION.

7 The General Assembly of North Carolina enacts:

8 Section 1. Article 8 of Chapter 25 of the General Statutes is rewritten to read:

9 **"ARTICLE 8.**

10
11 **"INVESTMENT SECURITIES.**

12
13 **"PART 1.**

14
15 **"SHORT TITLE AND GENERAL MATTERS.**

16
17 **"§ 25-8-101. Short title.**

18 This Article may be cited as Uniform Commercial Code– Investment Securities.

19 **"§ 25-8-102. Definitions.**

20 (a) In this Article:

- 1 (1) 'Adverse claim' means a claim that a claimant has a property interest in
2 a financial asset and that it is a violation of the rights of the claimant for
3 another person to hold, transfer, or deal with the financial asset.
- 4 (2) 'Bearer form', as applied to a certificated security, means a form in
5 which the security is payable to the bearer of the security certificate
6 according to its terms but not by reason of an indorsement.
- 7 (3) 'Broker' means a person defined as a broker or dealer under the federal
8 securities laws, but without excluding a bank acting in that capacity.
- 9 (4) 'Certificated security' means a security that is represented by a
10 certificate.
- 11 (5) 'Clearing corporation' means:
12 (i) A person that is registered as a 'clearing agency' under the
13 federal securities laws;
14 (ii) A federal reserve bank; or
15 (iii) Any other person that provides clearance or settlement
16 services with respect to financial assets that would
17 require it to register as a clearing agency under the
18 federal securities laws but for an exclusion or exemption
19 from the registration requirement, if its activities as a
20 clearing corporation, including promulgation of rules,
21 are subject to regulation by a federal or state
22 governmental authority.
- 23 (6) 'Communicate' means to:
24 (i) Send a signed writing; or
25 (ii) Transmit information by any mechanism agreed upon by the
26 persons transmitting and receiving the information.
- 27 (7) 'Entitlement holder' means a person identified in the records of a
28 securities intermediary as the person having a security entitlement
29 against the securities intermediary. If a person acquires a security
30 entitlement by virtue of G.S. 25-8-501(b)(2) or (3), that person is the
31 entitlement holder.
- 32 (8) 'Entitlement order' means a notification communicated to a securities
33 intermediary directing transfer or redemption of a financial asset to
34 which the entitlement holder has a security entitlement.
- 35 (9) 'Financial asset', except as otherwise provided in G.S. 25-8-103, means:
36 (i) A security;
37 (ii) An obligation of a person or a share, participation, or other
38 interest in a person or in property or an enterprise of a person,
39 which is, or is of a type, dealt in or traded on financial markets,
40 or which is recognized in any area in which it is issued or dealt in
41 as a medium for investment; or
42 (iii) Any property that is held by a securities intermediary
43 for another person in a securities account if the

1 securities intermediary has expressly agreed with the
2 other person that the property is to be treated as a
3 financial asset under this Article.

4 As context requires, the term means either the interest itself or the
5 means by which a person's claim to it is evidenced, including a
6 certificated or uncertificated security, a security certificate, or a security
7 entitlement.

8 (10) 'Good faith', for purposes of the obligation of good faith in the
9 performance or enforcement of contracts or duties within this Article,
10 means honesty in fact and the observance of reasonable commercial
11 standards of fair dealing.

12 (11) 'Indorsement' means a signature that alone or accompanied by other
13 words is made on a security certificate in registered form or on a
14 separate document for the purpose of assigning, transferring, or
15 redeeming the security or granting a power to assign, transfer, or redeem
16 it.

17 (12) 'Instruction' means a notification communicated to the issuer of an
18 uncertificated security which directs that the transfer of the security be
19 registered or that the security be redeemed.

20 (13) 'Registered form', as applied to a certificated security, means a form in
21 which:

22 (i) The security certificate specifies a person entitled to the security;
23 and

24 (ii) A transfer of the security may be registered upon books
25 maintained for that purpose by or on behalf of the issuer, or the
26 security certificate so states.

27 (14) 'Securities intermediary' means:

28 (i) A clearing corporation; or

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

32 (15) 'Security', except as otherwise provided in G.S. 25-8-103, means an
33 obligation of an issuer or a share, participation, or other interest in an
34 issuer or in property or an enterprise of an issuer:

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

38 (ii) Which is one of a class or series or by its terms is divisible into a
39 class or series of shares, participations, interests, or obligations;
40 and

41 (iii) Which:

42 (A) Is, or is of a type, dealt in or traded on securities
43 exchanges or securities markets; or

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

(16) 'Security certificate' means a certificate representing a security.

(17) 'Security entitlement' means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5 of this Article.

(18) 'Uncertificated security' means a security that is not represented by a certificate.

(b) Other definitions applying to this Article and the sections in which they appear are:

'Appropriate person' G.S. 25-8-107.

'Control' G.S. 25-8-106.

'Delivery' G.S. 25-8-301.

'Investment company security' G.S. 25-8-103.

'Issuer' G.S. 25-8-201.

'Overissue' G.S. 25-8-210.

'Protected purchaser' G.S. 25-8-303.

'Securities account' G.S. 25-8-501.

(c) In addition, Article 1 of this Chapter contains general definitions and principles of construction and interpretation applicable throughout this Article.

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

"§ 25-8-103. Rules for determining whether certain obligations and interests are securities or financial assets.

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

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

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

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

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

3 (f) A commodity contract, as defined in G.S. 25-9-115, is not a security or
4 financial asset.

5 **"§ 25-8-104. Acquisition of security or financial asset or interest therein.**

6 (a) A person acquires a security or an interest therein, under this Article, if:

7 (1) The person is a purchaser to whom a security is delivered pursuant to
8 G.S. 25-8-301; or

9 (2) The person acquires a security entitlement to the security pursuant to
10 G.S. 25-8-501.

11 (b) A person acquires a financial asset, other than a security, or an interest therein,
12 under this Article, if the person acquires a security entitlement to the financial asset.

13 (c) A person who acquires a security entitlement to a security or other financial
14 asset has the rights specified in Part 5 of this Article, but is a purchaser of any security,
15 security entitlement, or other financial asset held by the securities intermediary only to
16 the extent provided in G.S. 25-8-503.

17 (d) Unless the context shows that a different meaning is intended, a person who is
18 required by other law, regulation, rule, or agreement to transfer, deliver, present,
19 surrender, exchange, or otherwise put in the possession of another person a security or
20 financial asset satisfies that requirement by causing the other person to acquire an interest
21 in the security or financial asset pursuant to subsection (a) or (b) of this section.

22 **"§ 25-8-105. Notice of adverse claim.**

23 (a) A person has notice of an adverse claim if:

24 (1) The person knows of the adverse claim;

25 (2) The person is aware of facts sufficient to indicate that there is a
26 significant probability that the adverse claim exists and deliberately
27 avoids information that would establish the existence of the adverse
28 claim; or

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

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

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

42 (1) One year after a date set for presentment or surrender for redemption or
43 exchange; or

1 (2) Six months after a date set for payment of money against presentation or
2 surrender of the certificate if money was available for payment on that
3 date.

4 (d) A purchaser of a certificated security has notice of an adverse claim if the
5 security certificate:

6 (1) Whether in bearer or registered form, has been indorsed 'for collection'
7 or 'for surrender' or for some other purpose not involving transfer; or

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

11 (e) Filing of a financing statement under Article 9 of this Chapter is not notice of
12 an adverse claim to a financial asset.

13 **"§ 25-8-106. Control.**

14 (a) A purchaser has 'control' of a certificated security in bearer form if the
15 certificated security is delivered to the purchaser.

16 (b) A purchaser has 'control' of a certificated security in registered form if the
17 certificated security is delivered to the purchaser, and:

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

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

22 (c) A purchaser has 'control' of an uncertificated security if:

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

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

26 (d) A purchaser has 'control' of a security entitlement if:

27 (1) The purchaser becomes the entitlement holder; or

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

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

34 (f) A purchaser who has satisfied the requirements of subdivision (c)(2) or (d)(2)
35 of this section has control even if the registered owner in the case of subdivision (c)(2) of
36 this section or the entitlement holder in the case of subdivision (d)(2) of this section
37 retains the right to make substitutions for the uncertificated security or security
38 entitlement, to originate instructions or entitlement orders to the issuer or securities
39 intermediary, or otherwise to deal with the uncertificated security or security entitlement.

40 (g) An issuer or a securities intermediary may not enter into an agreement of the
41 kind described in subdivision (c)(2) or (d)(2) of this section without the consent of the
42 registered owner or entitlement holder, but an issuer or a securities intermediary is not
43 required to enter into such an agreement even though the registered owner or entitlement

1 holder so directs. An issuer or securities intermediary that has entered into such an
2 agreement is not required to confirm the existence of the agreement to another party
3 unless requested to do so by the registered owner or entitlement holder.

4 **"§ 25-8-107. Whether indorsement, instruction, or entitlement order is effective.**

5 (a) 'Appropriate person' means:

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

9 (2) With respect to an instruction, the registered owner of an uncertificated
10 security;

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

12 (4) If the person designated in subdivision (1), (2), or (3) of this subsection
13 is deceased, the designated person's successor taking under other law or
14 the designated person's personal representative acting for the estate of
15 the decedent; or

16 (5) If the person designated in subdivision (1), (2), or (3) of this subsection
17 lacks capacity, the designated person's guardian, conservator, or other
18 similar representative who has power under other law to transfer the
19 security or financial asset.

20 (b) An indorsement, instruction, or entitlement order is effective if:

21 (1) It is made by the appropriate person;

22 (2) It is made by a person who has power under the law of agency to
23 transfer the security or financial asset on behalf of the appropriate
24 person, including, in the case of an instruction or entitlement order, a
25 person who has control under G.S. 25-8-106(c)(2) or (d)(2); or

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

28 (c) An indorsement, instruction, or entitlement order made by a representative is
29 effective even if:

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

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

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

42 (e) Effectiveness of an indorsement, instruction, or entitlement order is determined
43 as of the date the indorsement, instruction, or entitlement order is made, and an

1 indorsement, instruction, or entitlement order does not become ineffective by reason of
2 any later change of circumstances.

3 **"§ 25-8-108. Warranties in direct holding.**

4 (a) A person who transfers a certificated security to a purchaser for value warrants
5 to the purchaser, and an indorser, if the transfer is by indorsement, warrants to any
6 subsequent purchaser, that:

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

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

10 (3) There is no adverse claim to the security;

11 (4) The transfer does not violate any restriction on transfer;

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

15 (6) The transfer is otherwise effective and rightful.

16 (b) A person who originates an instruction for registration of transfer of an
17 uncertificated security to a purchaser for value warrants to the purchaser that:

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

21 (2) The security is valid;

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

23 (4) At the time the instruction is presented to the issuer:

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

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

28 (iii) The transfer will not violate any restriction on transfer;
29 and

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

31 (c) A person who transfers an uncertificated security to a purchaser for value and
32 does not originate an instruction in connection with the transfer warrants that:

33 (1) The uncertificated security is valid;

34 (2) There is no adverse claim to the security;

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

36 (4) The transfer is otherwise effective and rightful.

37 (d) A person who indorses a security certificate warrants to the issuer that:

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

39 (2) The indorsement is effective.

40 (e) A person who originates an instruction for registration of transfer of an
41 uncertificated security warrants to the issuer that:

42 (1) The instruction is effective; and

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

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

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

15 (h) A secured party who redelivers a security certificate received, or after payment
16 and on order of the debtor delivers the security certificate to another person, makes only
17 the warranties of an agent under subsection (g) of this section.

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

26 **"§ 25-8-109. Warranties in indirect holding.**

27 (a) A person who originates an entitlement order to a securities intermediary
28 warrants to the securities intermediary that:

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

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

33 (b) A person who delivers a security certificate to a securities intermediary for
34 credit to a securities account or originates an instruction with respect to an uncertificated
35 security directing that the uncertificated security be credited to a securities account makes
36 to the securities intermediary the warranties specified in G.S. 25-8-108(a) or (b).

37 (c) If a securities intermediary delivers a security certificate to its entitlement
38 holder or causes its entitlement holder to be registered as the owner of an uncertificated
39 security, the securities intermediary makes to the entitlement holder the warranties
40 specified in G.S. 25-8-108(a) or (b).

41 **"§ 25-8-110. Applicability; choice of law.**

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

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

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

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

13 **"§ 25-8-111. Clearing corporation rules.**

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

17 **"§ 25-8-112. Creditor's legal process.**

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

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

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

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

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

38 **"§ 25-8-113. Statute of frauds inapplicable.**

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

43 **"§ 25-8-114. Evidentiary rules concerning certificated securities.**

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

- 2 (1) Unless specifically denied in the pleadings, each signature on a security
3 certificate or in a necessary indorsement is admitted.
- 4 (2) If the effectiveness of a signature is put in issue, the burden of
5 establishing effectiveness is on the party claiming under the signature,
6 but the signature is presumed to be genuine or authorized.
- 7 (3) If signatures on a security certificate are admitted or established,
8 production of the certificate entitles a holder to recover on it unless the
9 defendant establishes a defense or a defect going to the validity of the
10 security.
- 11 (4) If it is shown that a defense or defect exists, the plaintiff has the burden
12 of establishing that the plaintiff or some person under whom the
13 plaintiff claims is a person against whom the defense or defect cannot
14 be asserted.

15 **"§ 25-8-115. Securities intermediary and others not liable to adverse claimant.**

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

- 21 (1) Took the action after it had been served with an injunction, restraining
22 order, or other legal process enjoining it from doing so, issued by a
23 court of competent jurisdiction, and had a reasonable opportunity to act
24 on the injunction, restraining order, or other legal process; or
- 25 (2) Acted in collusion with the wrongdoer in violating the rights of the
26 adverse claimant; or
- 27 (3) In the case of a security certificate that has been stolen, acted with
28 notice of the adverse claim.

29 **"§ 25-8-116. Securities intermediary as purchaser for value.**

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

36
37 **"PART 2.**

38
39 **"ISSUE AND ISSUER.**

40
41 **"§ 25-8-201. Issuer.**

42 (a) With respect to an obligation on or a defense to a security, an 'issuer' includes
43 a person that:

- 1 (1) Places or authorizes the placing of its name on a security certificate,
2 other than as authenticating trustee, registrar, transfer agent, or the like,
3 to evidence a share, participation, or other interest in its property or in
4 an enterprise, or to evidence its duty to perform an obligation
5 represented by the certificate;
- 6 (2) Creates a share, participation, or other interest in its property or in an
7 enterprise, or undertakes an obligation, that is an uncertificated security;
- 8 (3) Directly or indirectly creates a fractional interest in its rights or
9 property, if the fractional interest is represented by a security certificate;
10 or
- 11 (4) Becomes responsible for, or in place of, another person described as an
12 issuer in this section.

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

16 (c) With respect to a registration of a transfer, issuer means a person on whose
17 behalf transfer books are maintained.

18 **"§ 25-8-202. Issuer's responsibility and defenses; notice of defect or defense.**

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

29 (b) The following rules apply if an issuer asserts that a security is not valid:

- 30 (1) A security other than one issued by a government or governmental
31 subdivision, agency, or instrumentality, even though issued with a
32 defect going to its validity, is valid in the hands of a purchaser for value
33 and without notice of the particular defect unless the defect involves a
34 violation of a constitutional provision. In that case, the security is valid
35 in the hands of a purchaser for value and without notice of the defect,
36 other than one who takes by original issue.
- 37 (2) Subdivision (1) of this subsection applies to an issuer that is a
38 government or governmental subdivision, agency, or instrumentality
39 only if there has been substantial compliance with the legal
40 requirements governing the issue or the issuer has received a substantial
41 consideration for the issue as a whole or for the particular security and a
42 stated purpose of the issue is one for which the issuer has power to
43 borrow money or issue the security.

1 (c) Except as otherwise provided in G.S. 25-8-205, lack of genuineness of a
2 certificated security is a complete defense, even against a purchaser for value and without
3 notice.

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

7 (e) This section does not affect the right of a party to cancel a contract for a
8 security 'when, as and if issued' or 'when distributed' in the event of a material change in
9 the character of the security that is the subject of the contract or in the plan or
10 arrangement pursuant to which the security is to be issued or distributed.

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

15 **"§ 25-8-203. Staleness as notice of defect or defense.**

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

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

26 (2) Is not covered by subdivision (1) of this section and the purchaser takes
27 the security more than two years after the date set for surrender or
28 presentation or the date on which performance became due.

29 **"§ 25-8-204. Effect of issuer's restriction on transfer.**

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

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

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

36 **"§ 25-8-205. Effect of unauthorized signature on security certificate.**

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

41 (1) An authenticating trustee, registrar, transfer agent, or other person
42 entrusted by the issuer with the signing of the security certificate or of

1 similar security certificates, or the immediate preparation for signing of
2 any of them; or

- 3 (2) An employee of the issuer, or of any of the persons listed in subdivision
4 (1) of this section, entrusted with responsible handling of the security
5 certificate.

6 **"§ 25-8-206. Completion of alteration of security certificate.**

7 (a) If a security certificate contains the signatures necessary to its issue or transfer
8 but is incomplete in any other respect:

- 9 (1) Any person may complete it by filling in the blanks as authorized; and
10 (2) Even if the blanks are incorrectly filled in, the security certificate as
11 completed is enforceable by a purchaser who took it for value and
12 without notice of the incorrectness.

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

15 **"§ 25-8-207. Rights and duties of issuer with respect to registered owners.**

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

21 (b) This Article does not affect the liability of the registered owner of a security
22 for a call, assessment, or the like.

23 **"§ 25-8-208. Effect of signature of authenticating trustee, registrar, or transfer**
24 **agent.**

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

- 28 (1) The certificate is genuine;
29 (2) The person's own participation in the issue of the security is within the
30 person's capacity and within the scope of the authority received by the
31 person from the issuer; and
32 (3) The person has reasonable grounds to believe that the certificated
33 security is in the form and within the amount the issuer is authorized to
34 issue.

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

37 **"§ 25-8-209. Issuer's lien.**

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

40 **"§ 25-8-210. Overissue.**

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

1 (b) Except as otherwise provided in subsections (c) and (d) of this section, the
2 provisions of this Article which validate a security or compel its issue or reissue do not
3 apply to the extent that validation, issue, or reissue would result in overissue.

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

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

11 "PART 3.

12 "TRANSFER OF CERTIFICATED AND UNCERTIFICATED SECURITIES.

13 "§ 25-8-301. Delivery.

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

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

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

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

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

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

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

31 "§ 25-8-302. Rights of purchaser.

32 (a) Except as otherwise provided in subsections (b) and (c) of this section, upon
33 delivery of a certificated or uncertificated security to a purchaser, the purchaser acquires
34 all rights in the security that the transferor had or had power to transfer.

35 (b) A purchaser of a limited interest acquires rights only to the extent of the
36 interest purchased.

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

39 "§ 25-8-303. Protected purchaser.

1 (a) 'Protected purchaser' means a purchaser of a certificated or uncertificated
2 security, or of an interest therein, who:

3 (1) Gives value;

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

5 (3) Obtains control of the certificated or uncertificated security.

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

8 **"§ 25-8-304. Indorsement.**

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

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

16 (c) An indorsement, whether special or in blank, does not constitute a transfer until
17 delivery of the certificate on which it appears or, if the indorsement is on a separate
18 document, until delivery of both the document and the certificate.

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

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

27 (f) Unless otherwise agreed, a person making an indorsement assumes only the
28 obligations provided in G.S. 25-8-108 and not an obligation that the security will be
29 honored by the issuer.

30 **"§ 25-8-305. Instruction.**

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

34 (b) Unless otherwise agreed, a person initiating an instruction assumes only the
35 obligations imposed by G.S. 25-8-108 and not an obligation that the security will be
36 honored by the issuer.

37 **"§ 25-8-306. Effect of guaranteeing signature, indorsement, or instruction.**

38 (a) A person who guarantees a signature of an indorser of a security certificate
39 warrants that at the time of signing:

40 (1) The signature was genuine;

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

1 (3) The signer had legal capacity to sign.
2 (b) A person who guarantees a signature of the originator of an instruction
3 warrants that at the time of signing:

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

10 (3) The signer had legal capacity to sign.
11 (c) A person who specially guarantees the signature of an originator of an
12 instruction makes the warranties of a signature guarantor under subsection (b) of this
13 section and also warrants that at the time the instruction is presented to the issuer:

14 (1) The person specified in the instruction as the registered owner of the
15 uncertificated security will be the registered owner; and
16 (2) The transfer of the uncertificated security requested in the instruction
17 will be registered by the issuer free from all liens, security interests,
18 restrictions, and claims other than those specified in the instruction.

19 (d) A guarantor under subsections (a) and (b) of this section or a special guarantor
20 under subsection (c) of this section does not otherwise warrant the rightfulness of the
21 transfer.

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

25 (f) A person who guarantees an instruction requesting the transfer of an
26 uncertificated security makes the warranties of a special signature guarantor under
27 subsection (c) of this section and also warrants the rightfulness of the transfer in all
28 respects.

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

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

36 **"§ 25-8-307. Purchaser's right to requisites for registration of transfer.**

37 Unless otherwise agreed, the transferor of a security on due demand shall supply the
38 purchaser with proof of authority to transfer or with any other requisite necessary to
39 obtain registration of the transfer of the security, but if the transfer is not for value, a
40 transferor need not comply unless the purchaser pays the necessary expenses. If the
41 transferor fails within a reasonable time to comply with the demand, the purchaser may
42 reject or rescind the transfer.
43

"PART 4."REGISTRATION."§ 25-8-401. Duty of issuer to register transfer.

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

- (1) Under the terms of the security the person seeking registration of transfer is eligible to have the security registered in its name;
- (2) The indorsement or instruction is made by the appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;
- (3) Reasonable assurance is given that the indorsement or instruction is genuine and authorized (G.S. 25-8-402);
- (4) Any applicable law relating to the collection of taxes has been complied with;
- (5) The transfer does not violate any restriction on transfer imposed by the issuer in accordance with G.S. 25-8-204;
- (6) A demand that the issuer not register transfer has not become effective under G.S. 25-8-403, or the issuer has complied with G.S. 25-8-403(b) but no legal process or indemnity bond is obtained as provided in G.S. 25-8-403(d); and
- (7) The transfer is in fact rightful or is to a protected purchaser.

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

"§ 25-8-402. Assurance that indorsement or instruction is effective.

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

- (1) In all cases, a guaranty of the signature of the person making an indorsement or originating an instruction including, in the case of an instruction, reasonable assurance of identity;
- (2) If the indorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to sign;
- (3) If the indorsement is made or the instruction is originated by a fiduciary pursuant to G.S. 25-8-107(a)(4) or G.S. 25-8-107(a)(5), appropriate evidence of appointment or incumbency;
- (4) If there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and

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

5 (b) An issuer may elect to require reasonable assurance beyond that specified in
6 this section.

7 (c) In this section:

8 (1) 'Guaranty of the signature' means a guaranty signed by or on behalf of a
9 person reasonably believed by the issuer to be responsible. An issuer
10 may adopt standards with respect to responsibility if they are not
11 manifestly unreasonable.

12 (2) 'Appropriate evidence of appointment or incumbency' means:

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

17 (ii) In any other case, a copy of a document showing the appointment
18 or a certificate issued by or on behalf of a person reasonably
19 believed by an issuer to be responsible or, in the absence of that
20 document or certificate, other evidence the issuer reasonably
21 considers appropriate.

22 **"§ 25-8-403. Demand that issuer not register transfer.**

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

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

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

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

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

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

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

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

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

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

17 **"§ 25-8-404. Wrongful registration.**

18 (a) Except as otherwise provided in G.S. 25-8-406, an issuer is liable for wrongful
19 registration of transfer if the issuer has registered a transfer of a security to a person not
20 entitled to it, and the transfer was registered:

21 (1) Pursuant to an ineffective indorsement or instruction;

22 (2) After a demand that the issuer not register transfer became effective
23 under G.S. 25-8-403(a) and the issuer did not comply with G.S. 25-8-
24 403(b);

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

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

31 (b) An issuer that is liable for wrongful registration of transfer under subsection (a)
32 of this section on demand shall provide the person entitled to the security with a like
33 certificated or uncertificated security, and any payments or distributions that the person
34 did not receive as a result of the wrongful registration. If an overissue would result, the
35 issuer's liability to provide the person with a like security is governed by G.S. 25-8-210.

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

40 **"§ 25-8-405. Replacement of lost, destroyed, or wrongfully taken security**
41 **certificate.**

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

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

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

7 (3) Satisfies other reasonable requirements imposed by the issuer.

8 (b) If, after the issue of a new security certificate, a protected purchaser of the
9 original certificate presents it for registration of transfer, the issuer shall register the
10 transfer unless an overissue would result. In that case, the issuer's liability is governed by
11 G.S. 25-8-210. In addition to any rights on the indemnity bond, an issuer may recover
12 the new certificate from a person to whom it was issued or any person taking under that
13 person, except a protected purchaser.

14 **"§ 25-8-406. Obligation to notify issuer of lost, destroyed, or wrongfully taken**
15 **security certificate.**

16 If a security certificate has been lost, apparently destroyed, or wrongfully taken, and
17 the owner fails to notify the issuer of that fact within a reasonable time after the owner
18 has notice of it and the issuer registers a transfer of the security before receiving
19 notification, the owner may not assert against the issuer a claim for registering the
20 transfer under G.S. 25-8-404 or a claim to a new security certificate under G.S. 25-8-405.

21 **"§ 25-8-407. Authenticating trustee, transfer agent, and registrar.**

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

28 **"PART 5.**

29 **"SECURITY ENTITLEMENTS.**

30
31
32
33 **"§ 25-8-501. Securities account; acquisition of security entitlement from securities**
34 **intermediary.**

35 (a) 'Securities account' means an account to which a financial asset is or may be
36 credited in accordance with an agreement under which the person maintaining the
37 account undertakes to treat the person for whom the account is maintained as entitled to
38 exercise the rights that comprise the financial asset.

39 (b) Except as otherwise provided in subsections (d) and (e) of this section, a
40 person acquires a security entitlement if a securities intermediary:

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

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

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

6 (c) If a condition of subsection (b) of this section has been met, a person has a
7 security entitlement even though the securities intermediary does not itself hold the
8 financial asset.

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

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

15 **"§ 25-8-502. Assertion of adverse claim against entitlement holder.**

16 An action based on an adverse claim to a financial asset, whether framed in
17 conversion, replevin, constructive trust, equitable lien, or other theory, may not be
18 asserted against a person who acquires a security entitlement under G.S. 25-8-501 for
19 value and without notice of the adverse claim.

20 **"§ 25-8-503. Property interest of entitlement holder in financial asset held by**
21 **securities intermediary.**

22 (a) To the extent necessary for a securities intermediary to satisfy all security
23 entitlements with respect to a particular financial asset, all interests in that financial asset
24 held by the securities intermediary are held by the securities intermediary for the
25 entitlement holders, are not property of the securities intermediary, and are not subject to
26 claims of creditors of the securities intermediary, except as otherwise provided in G.S.
27 25-8-511.

28 (b) An entitlement holder's property interest with respect to a particular financial
29 asset under subsection (a) of this section is a pro rata property interest in all interests in
30 that financial asset held by the securities intermediary, without regard to the time the
31 entitlement holder acquired the security entitlement or the time the securities
32 intermediary acquired the interest in that financial asset.

33 (c) An entitlement holder's property interest with respect to a particular financial
34 asset under subsection (a) of this section may be enforced against the securities
35 intermediary only by exercise of the entitlement holder's rights under G.S. 25-8-505
36 through G.S. 25-8-508.

37 (d) An entitlement holder's property interest with respect to a particular financial
38 asset under subsection (a) of this section may be enforced against a purchaser of the
39 financial asset or interest therein only if:

40 (1) Insolvency proceedings have been initiated by or against the securities
41 intermediary;

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

4 (3) The securities intermediary violated its obligations under G.S. 25-8-504
5 by transferring the financial asset or interest therein to the purchaser;
6 and

7 (4) The purchaser is not protected under subsection (e) of this section.

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

13 (e) An action based on the entitlement holder's property interest with respect to a
14 particular financial asset under subsection (a) of this section, whether framed in
15 conversion, replevin, constructive trust, equitable lien, or other theory, may not be
16 asserted against any purchaser of a financial asset or interest therein who gives value,
17 obtains control, and does not act in collusion with the securities intermediary in violating
18 the securities intermediary's obligations under G.S. 25-8-504.

19 **"§ 25-8-504. Duty of securities intermediary to maintain financial asset.**

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

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

28 (c) A securities intermediary satisfies the duty in subsection (a) of this section if:

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

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

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

36 **"§ 25-8-505. Duty of securities intermediary with respect to payments and**
37 **distributions.**

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

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

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

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

7 "**§ 25-8-506. Duty of securities intermediary to exercise rights as directed by**
8 **entitlement holder.**

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

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

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

17 "**§ 25-8-507. Duty of securities intermediary to comply with entitlement order.**

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

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

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

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

34 "**§ 25-8-508. Duty of securities intermediary to change entitlement holder's position**
35 **to other form of security holding.**

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

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

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

4 **"§ 25-8-509. Specification of duties of securities intermediary by other statute or**
5 **regulation; manner of performance of duties of securities intermediary**
6 **and exercise of rights of entitlement holder.**

7 (a) If the substance of a duty imposed upon a securities intermediary by G.S. 25-8-
8 504 through G.S. 25-8-508 is the subject of other statute, regulation, or rule, compliance
9 with that statute, regulation, or rule satisfies the duty.

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

15 (c) The obligation of a securities intermediary to perform the duties imposed by
16 G.S. 25-8-504 through G.S. 25-8-508 is subject to:

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

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

22 (d) G.S. 25-8-504 through G.S. 25-8-508 do not require a securities intermediary
23 to take any action that is prohibited by other statute, regulation, or rule.

24 **"§ 25-8-510. Rights of purchaser of security entitlement from entitlement holder.**

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

30 (b) If an adverse claim could not have been asserted against an entitlement holder
31 under G.S. 25-8-502, the adverse claim cannot be asserted against a person who
32 purchases a security entitlement, or an interest therein, from the entitlement holder.

33 (c) In a case not covered by the priority rules in Article 9, a purchaser for value of
34 a security entitlement, or an interest therein, who obtains control has priority over a
35 purchaser of a security entitlement, or an interest therein, who does not obtain control.
36 Purchasers who have control rank equally, except that a securities intermediary as
37 purchaser has priority over a conflicting purchaser who has control unless otherwise
38 agreed by the securities intermediary.

39 **"§ 25-8-511. Priority among security interests and entitlement holders.**

40 (a) Except as otherwise provided in subsections (b) and (c) of this section, if a
41 securities intermediary does not have sufficient interests in a particular financial asset to
42 satisfy both its obligations to entitlement holders who have security entitlements to that
43 financial asset and its obligation to a creditor of the securities intermediary who has a

1 security interest in that financial asset, the claims of entitlement holders, other than the
2 creditor, have priority over the claim of the creditor.

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

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

12 Section 2. G.S. 25-9-103(6) reads as rewritten:

13 ~~"(6) Uncertificated Securities.—The law (including the conflict of laws rules) of the~~
14 ~~jurisdiction of organization of the issuer governs the perfection and the effect of~~
15 ~~perfection or nonperfection of a security interest in uncertificated securities.~~

16 Investment property. —

17 (a) This subsection applies to investment property.

18 (b) Except as otherwise provided in paragraph (f) of this subsection, during
19 the time that a security certificate is located in a jurisdiction, perfection
20 of a security interest, the effect of perfection or nonperfection, and the
21 priority of a security interest in the certificated security represented
22 thereby are governed by the local law of that jurisdiction.

23 (c) Except as otherwise provided in paragraph (f) of this subsection,
24 perfection of a security interest, the effect of perfection or
25 nonperfection, and the priority of a security interest in an uncertificated
26 security are governed by the local law of the issuer's jurisdiction as
27 specified in G.S. 25-8-110(d).

28 (d) Except as otherwise provided in paragraph (f) of this subsection,
29 perfection of a security interest, the effect of perfection or
30 nonperfection, and the priority of a security interest in a security
31 entitlement or securities account are governed by the local law of the
32 securities intermediary's jurisdiction as specified in G.S. 25-8-110(e).

33 (e) Except as otherwise provided in paragraph (f) of this subsection,
34 perfection of a security interest, the effect of perfection or
35 nonperfection, and the priority of a security interest in a commodity
36 contract or commodity account are governed by the local law of the
37 commodity intermediary's jurisdiction. The following rules determine a
38 'commodity intermediary's jurisdiction' for purposes of this paragraph:

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

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

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

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

20 (f) Perfection of a security interest by filing, automatic perfection of a
21 security interest in investment property granted by a broker or securities
22 intermediary, and automatic perfection of a security interest in a
23 commodity contract or commodity account granted by a commodity
24 intermediary are governed by the local law of the jurisdiction in which
25 the debtor is located."

26 Section 3. G.S. 25-9-105 reads as rewritten:

27 **"§ 25-9-105. Definitions and index of definitions.**

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

29 (a) 'Account debtor' means the person who is obligated on an account,
30 chattel paper or general intangible;

31 (b) 'Chattel paper' means a writing or writings which evidence both a
32 monetary obligation and a security interest in or a lease of specific
33 goods, but a charter or other contract involving the use or hire of a
34 vessel is not chattel paper. When a transaction is evidenced both by such
35 a security agreement or a lease and by an instrument or a series of
36 instruments, the group of writings taken together constitutes chattel
37 paper;

38 (c) 'Collateral' means the property subject to a security interest, and
39 includes accounts and chattel paper which have been sold;

40 (d) 'Debtor' means the person who owes payment or other performance of
41 the obligation secured, whether or not he owns or has rights in the
42 collateral, and includes the seller of accounts or chattel paper. Where the
43 debtor and the owner of the collateral are not the same person, the term

- 1 'debtor' means the owner of a collateral in any provision of the article
2 dealing with the collateral, the obligor in any provision dealing with the
3 obligation, and may include both where the context so requires;
- 4 (e) 'Deposit account' means a demand, time, savings, passbook or like
5 account maintained with a bank, savings and loan association, credit
6 union or like organization, other than an account evidenced by a
7 certificate of deposit;
- 8 (f) 'Document' means document of title as defined in the general
9 definitions of article 1 (G.S. 25-1-201), and a receipt of the kind
10 described in subsection (2) of G.S. 25-7-201;
- 11 (g) 'Encumbrance' includes real estate mortgages and other liens on real
12 estate and all other rights in real estate that are not ownership interests;
- 13 (h) 'Goods' includes all things which are movable at the time the security
14 interest attaches or which are fixtures (G.S. 25-9-313), but does not
15 include money, documents, instruments, investment property,
16 commodity contracts, accounts, chattel paper, general intangibles, or
17 minerals or the like (including oil and gas) before extraction.
18 "Goods" also includes standing timber which is to be cut and removed
19 under a conveyance or contract for sale, the unborn young of animals,
20 and growing crops;
- 21 (i) 'Instrument' means a negotiable instrument (~~defined in G.S. 25-3-104),~~
22 (defined in G.S. 25-3-104) ~~or a certificated security (defined in G.S. 25-8-~~
23 ~~102)~~ or any other writing which evidences a right to the payment of
24 money and is not itself a security agreement or lease and is of a type
25 which is in ordinary course of business transferred by delivery with any
26 necessary indorsement or ~~assignment;~~ assignment. The term does not
27 include investment property;
- 28 (j) 'Mortgage' means a consensual interest created by a real estate
29 mortgage, a trust deed on real estate, or the like;
- 30 (k) An advance is made 'pursuant to commitment' if the secured party has
31 bound himself to make it, whether or not a subsequent event of default
32 or other event not within his control has relieved or may relieve him
33 from his obligation;
- 34 (l) 'Security agreement' means an agreement which creates or provides for
35 a security interest;
- 36 (m) 'Secured party' means a lender, seller or other person in whose favor
37 there is a security interest, including a person to whom accounts or
38 chattel paper have been sold. When the holders of obligations issued
39 under an indenture of trust, equipment trust agreement or the like are
40 represented by a trustee or other person, the representative is the secured
41 party.
- 42 (2) Other definitions applying to this ~~article~~ Article and the sections in which they
43 appear are:

1 'Account.' (G.S. 25-9-106).
2 'Attach.' (G.S. 25-9-203).
3 'Commodity account.' (G.S. 25-9-115).
4 'Commodity contract.' (G.S. 25-9-115).
5 'Commodity customer.' (G.S. 25-9-115).
6 'Commodity intermediary.' (G.S. 25-9-115).
7 'Construction mortgage.' (G.S. 25-9-313(1)).
8 'Consumer goods.' (G.S. 25-9-109(1)).
9 'Control.' (G.S. 25-9-115).
10 'Equipment.' (G.S. 25-9-109(2)).
11 'Farm products.' (G.S. 25-9-109(3)).
12 'Fixture.' (G.S. 25-9-313(1)).
13 'Fixture filing.' (G.S. 25-9-313(1)).
14 'General intangibles.' (G.S. 25-9-106).
15 'Inventory.' (G.S. 25-9-109(4)).
16 'Investment property.' (G.S. 25-9-115).
17 'Lien creditor.' (G.S. 25-9-301(3)).
18 'Proceeds.' (G.S. 25-9-306(1)).
19 'Purchase money security interest.' (G.S. 25-9-107).
20 'United States.' (G.S. 25-9-103).

21 (3) The following definitions in other ~~articles~~ Articles apply to this ~~article~~: Article:

22 'Broker.' (G.S. 25-8-102).
23 'Certificated security.' (G.S. 25-8-102).
24 'Check.' (G.S. 25-3-104).
25 'Clearing corporation.' (G.S. 25-8-102).
26 'Contract for sale.' (G.S. 25-2-106).
27 'Control.' (G.S. 25-8-106).
28 'Delivery.' (G.S. 25-8-301).
29 'Entitlement holder.' (G.S. 25-8-102).
30 'Financial asset.' (G.S. 25-8-102).
31 'Holder in due course.' (G.S. 25-3-302).
32 'Note.' (G.S. 25-3-104).
33 'Sale.' (G.S. 25-2-106).
34 'Securities intermediary.' (G.S. 25-8-102).
35 'Security.' (G.S. 25-8-102).
36 'Security certificate.' (G.S. 25-8-102).
37 'Security entitlement.' (G.S. 25-8-102).
38 'Uncertificated security.' (G.S. 25-8-102).

39 (4) In ~~addition~~ article addition, Article 1 contains general definitions and principles
40 of construction and interpretation applicable throughout this ~~article~~: Article."

41 Section 4. G.S. 25-9-106 reads as rewritten:

42 "§ 25-9-106. **Definitions: 'Account'; 'general intangibles.'**

1 'Account' means any right to payment for goods sold or leased or for services
2 rendered which is not evidenced by an instrument or chattel paper, whether or not it has
3 been earned by performance. 'General intangibles' means any personal property
4 (including things in action) other than goods, accounts, chattel paper, documents,
5 instruments, investment property, and money. All rights to payment earned or unearned
6 under a charter or other contract involving the use or hire of a vessel and all rights
7 incident to the charter or contract are accounts."

8 Section 5. Article 9 of Chapter 25 of the General Statutes is amended by
9 adding a new section to read:

10 "**§ 25-9-115. Investment property.**

11 (1) In this Article:

12 (a) 'Commodity account' means an account maintained by a commodity
13 intermediary in which a commodity contract is carried for a commodity
14 customer.

15 (b) 'Commodity contract' means a commodity futures contract, an option on
16 a commodity futures contract, a commodity option, or other contract
17 that, in each case, is:

18 (i) Traded on or subject to the rules of a board of trade that has been
19 designated as a contract market for such a contract pursuant to
20 the federal commodities laws: or

21 (ii) Traded on a foreign commodity board of trade, exchange, or
22 market, and is carried on the books of a commodity intermediary
23 for a commodity customer.

24 (c) 'Commodity customer' means a person for whom a commodity
25 intermediary carries a commodity contract on its books.

26 (d) 'Commodity intermediary' means:

27 (i) A person who is registered as a futures commission merchant
28 under the federal commodities laws: or

29 (ii) A person who in the ordinary course of its business provides
30 clearance or settlement services for a board of trade that has been
31 designated as a contract market pursuant to the federal
32 commodities laws.

33 (e) 'Control' with respect to a certificated security, uncertificated security,
34 or security entitlement has the meaning specified in G.S. 25-8-106. A
35 secured party has control over a commodity contract if by agreement
36 among the commodity customer, the commodity intermediary, and the
37 secured party, the commodity intermediary has agreed that it will apply
38 any value distributed on account of the commodity contract as directed
39 by the secured party without further consent by the commodity
40 customer. If a commodity customer grants a security interest in a
41 commodity contract to its own commodity intermediary, the commodity
42 intermediary as secured party has control. A secured party has control
43 over a securities account or commodity account if the secured party has

1 control over all security entitlements or commodity contracts carried in
2 the securities account or commodity account.

3 (f) 'Investment property' means:

4 (i) A security, whether certificated or uncertificated;

5 (ii) A security entitlement;

6 (iii) A securities account;

7 (iv) A commodity contract; or

8 (v) A commodity account.

9 (2) Attachment or perfection of a security interest in a securities account is also
10 attachment or perfection of a security interest in all security entitlements carried in the
11 securities account. Attachment or perfection of a security interest in a commodity
12 account is also attachment or perfection of a security interest in all commodity contracts
13 carried in the commodity account.

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

23 (4) Perfection of a security interest in investment property is governed by the
24 following rules:

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

26 (b) Except as otherwise provided in paragraphs (c) and (d), a security
27 interest in investment property may be perfected by filing.

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

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

39 (5) Priority between conflicting security interests in the same investment property
40 is governed by the following rules:

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

- 1 (b) Except as otherwise provided in paragraphs (c) and (d), conflicting
2 security interests of secured parties each of whom has control rank
3 equally.
- 4 (c) Except as otherwise agreed by the securities intermediary, a security
5 interest in a security entitlement or a securities account granted to the
6 debtor's own securities intermediary has priority over any security
7 interest granted by the debtor to another secured party.
- 8 (d) Except as otherwise agreed by the commodity intermediary, a security
9 interest in a commodity contract or a commodity account granted to the
10 debtor's own commodity intermediary has priority over any security
11 interest granted by the debtor to another secured party.
- 12 (e) Conflicting security interests granted by a broker, a securities
13 intermediary, or a commodity intermediary which are perfected without
14 control rank equally.
- 15 (f) In all other cases, priority between conflicting security interests in
16 investment property is governed by G.S. 25-9-312(5), (6), and (7). G.S.
17 25-9-312(4) does not apply to investment property.

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

23 Section 6. Article 9 of Chapter 25 of the General Statutes is amended by
24 adding a new section to read:

25 **"§ 25-9-116. Security interest arising in purchase or delivery of financial asset.**

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

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

42 Section 7. G.S. 25-9-203(1) reads as rewritten:

1 "(1) Subject to the provisions of G.S. 25-4-208 on the security interest of a
2 collecting bank, ~~G.S. 25-8-321 on security interests in securities~~ G.S. 25-9-115 and G.S. 25-
3 9-116 on security interests in investment property, and G.S. 25-9-113 on a security
4 interest arising under the article on sales, a security interest is not enforceable against the
5 debtor or third parties with respect to the collateral and does not attach unless

- 6 (a) the collateral is in the possession of the secured party pursuant to
7 agreement, the collateral is investment property and the secured party
8 has control pursuant to agreement, or the debtor has signed a security
9 agreement which contains a description of the collateral and in addition,
10 when the security interest covers crops growing or to be grown or
11 timber to be cut, a description of the land concerned; and
12 (b) value has been given; and
13 (c) the debtor has rights in the collateral."

14 Section 8. G.S. 25-9-301(1) reads as rewritten:

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

- 17 (a) persons entitled to priority under G.S. 25-9-312;
18 (b) a person who becomes a lien creditor before the security interest is
19 perfected;
20 (c) in the case of goods, instruments, documents, and chattel paper, a
21 person who is not a secured party and who is a transferee in bulk or
22 other buyer not in ordinary course of business or is a buyer of farm
23 products in ordinary course of business, to the extent that he gives value
24 and receives delivery of the collateral without knowledge of the security
25 interest and before it is perfected;
26 (d) in the case of ~~accounts and~~ accounts, general intangibles, and investment
27 property, a person who is not a secured party and who is a transferee to
28 the extent that he gives value without knowledge of the security interest
29 and before it is perfected."

30 Section 9. G.S. 25-9-302(1) reads as rewritten:

31 "(1) A financing statement must be filed to perfect all security interests except the
32 following:

- 33 (a) a security interest in collateral in possession of the secured party under
34 G.S. 25-9-305;
35 (b) a security interest temporarily perfected in ~~instruments~~ instruments,
36 certificated securities, or documents without delivery under G.S. 25-9-
37 304 or in proceeds for a 10-day period under G.S. 25-9-306;
38 (c) a security interest created by an assignment of a beneficial interest in a
39 trust or a decedent's estate;
40 (d) a purchase money security interest in consumer goods; but compliance
41 with G.S. 20-58 et seq. is required for a motor vehicle required to be
42 registered; and fixture filing is required for priority over conflicting
43 interests in fixtures to the extent provided in G.S. 25-9-313;

- 1 (e) an assignment of accounts which does not alone or in conjunction with
2 other assignments to the same assignee transfer a significant part of the
3 outstanding accounts of the assignor;
- 4 (f) a security interest of a collecting bank (G.S. 25-4-208) ~~or in securities~~
5 ~~(G.S. 25-8-321)~~ or arising under the article on sales (see G.S. 25-9-113)
6 or covered in subsection (3) of this section;
- 7 (g) an assignment for the benefit of all the creditors of the transferor, and
8 subsequent transfers by the assignee ~~thereunder.~~ thereunder;
- 9 (h) a security interest in investment property which is perfected without
10 filing under G.S. 25-9-115 or G.S. 25-9-116."

11 Section 10. G.S. 25-9-304 reads as rewritten:

12 **"§ 25-9-304. Perfection of security interest in instruments, documents, and goods**
13 **covered by documents; perfection by permissive filing; temporary**
14 **perfection without filing or transfer of possession.**

15 (1) A security interest in chattel paper or negotiable documents may be perfected
16 by filing. A security interest in money or instruments (other than ~~certificated securities or~~
17 ~~instruments which constitute part of chattel paper~~) can be perfected only by the secured
18 party's taking possession, except as provided in subsections (4) and (5) of this section and
19 subsections (2) and (3) of G.S. 25-9-306 on proceeds.

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

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

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

32 (5) A security interest remains perfected for a period of 21 days without filing
33 where a secured party having a perfected security interest in an ~~instrument (other than a~~
34 ~~certificated security)~~ instrument, a certificated security, a negotiable document or goods in
35 possession of a bailee other than one who has issued a negotiable document therefor

- 36 (a) makes available to the debtor the goods or documents representing the
37 goods for the purpose of ultimate sale or exchange or for the purpose of
38 loading, unloading, storing, shipping, transshipping, manufacturing,
39 processing or otherwise dealing with them in a manner preliminary to
40 their sale or exchange, but priority between conflicting security interests
41 in the goods is subject to subsection (3) of G.S. 25-9-312; or

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

4 (6) After the 21-day period in subsections (4) and (5) perfection depends upon
5 compliance with applicable provisions of this article."

6 Section 11. G.S. 25-9-305 reads as rewritten:

7 "**§ 25-9-305. When possession by secured party perfects security interest without**
8 **filing.**

9 A security interest in letters of credit and advices of credit (subsection (2)(a) of G.S.
10 25-5-116), goods, ~~instruments (other than certificated securities), instruments,~~ money,
11 negotiable documents or chattel paper may be perfected by the secured party's taking
12 possession of the collateral. If such collateral other than goods covered by a negotiable
13 document is held by a bailee, the secured party is deemed to have possession from the
14 time the bailee receives notification of the secured party's interest. A security interest is
15 perfected by possession from the time possession is taken without relation back and
16 continues only so long as possession is retained, unless otherwise specified in this article.
17 The security interest may be otherwise perfected as provided in this article before or after
18 the period of possession by the secured party."

19 Section 12. G.S. 25-9-306(1) reads as rewritten:

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

26 Section 13. G.S. 25-9-306(3) reads as rewritten:

27 "(3) The security interest in proceeds is a continuously perfected security interest if
28 the interest in the original collateral was perfected but it ceases to be a perfected security
29 interest and becomes unperfected 10 days after receipt of the proceeds by the debtor
30 unless

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

37 (b) a filed financing statement covers the original collateral and the
38 proceeds are identifiable cash proceeds; ~~or~~

39 (c) the original collateral was investment property and the proceeds are
40 identifiable cash proceeds; or

41 ~~(e)(d)~~ the security interest in the proceeds is perfected before the expiration of
42 the 10-day period.

1 Except as provided in this section, a security interest in proceeds can be perfected only by
2 the methods or under the circumstances permitted in this article for original collateral of
3 the same type."

4 Section 14. G.S. 25-9-309 reads as rewritten:

5 "**§ 25-9-309. Protection of purchasers of instruments, ~~documents~~ documents, and**
6 **securities.**

7 Nothing in this article limits the rights of a holder in due course of a negotiable
8 instrument (G.S. 25-3-302) or a holder to whom a negotiable document of title has been
9 duly negotiated (G.S. 25-7-501) or a ~~bona fide protected~~ purchaser of a security (~~G.S. 25-~~
10 ~~8-302~~) (G.S. 25-8-303) and such holders or purchasers take priority over an earlier
11 security interest even though perfected. Filing under this article does not constitute notice
12 of the security interest to such holders or purchasers."

13 Section 15. G.S. 25-9-312(1) reads as rewritten:

14 "(1) The rules of priority stated in other sections of this part and in the following
15 sections shall govern when applicable: G.S. 25-4-208 with respect to the security interests
16 of collecting banks in items being collected, accompanying documents and proceeds;
17 G.S. 25-9-103 on security interests related to other jurisdictions; G.S. 25-9-114 on
18 ~~consignments~~ consignments; G.S. 25-9-115 on security interests in investment property."

19 Section 16. G.S. 25-9-312(7) reads as rewritten:

20 "(7) If future advances are made while a security interest is perfected by filing, the
21 taking of possession, or under ~~G.S. 25-8-321 on securities~~, G.S. 25-9-115 or G.S. 25-9-116
22 on investment property, the security interest has the same priority for the purposes of
23 subsection (5) with respect to the future advances as it does with respect to the first
24 advance. If a commitment is made before or while the security interest is so perfected, the
25 security interest has the same priority with respect to advances made pursuant thereto. In
26 other cases a perfected security interest has priority from the date the advance is made."

27 Section 17. G.S. 25-1-105(2) reads as rewritten:

28 "(2) Where one of the following provisions of this Chapter specifies the applicable
29 law, that provision governs and a contrary agreement is effective only to the extent
30 permitted by the law (including the conflict of laws rules) so specified:

31 Rights of creditors against sold goods. (G.S. 25-2-402).

32 Applicability of the article on bank deposits and collections. (G.S. 25-4-102).

33 Bulk transfers subject to the article on bulk transfers. (G.S. 25-6-102).

34 Applicability of the article on investment securities. (~~G.S. 25-8-106~~) (G.S. 25-8-110).

35 Perfection provisions of the article on secured transactions. (G.S. 25-9-103).

36 Governing law in the article on Funds Transfers. (G.S. 25-4A-507)."

37 Section 18. G.S. 25-1-206(2) reads as rewritten:

38 "(2) Subsection (1) of this section does not apply to contracts for the sale of goods
39 (G.S. 25-2-201) nor of securities (~~G.S. 25-8-319~~) (G.S. 25-8-113) nor to security
40 agreements (G.S. 25-9-203)."

41 Section 19. G.S. 25-4-104(a)(6) reads as rewritten:

42 "(6) 'Documentary draft' means a draft to be presented for acceptance or
43 payment if specified documents, certificated securities (G.S. 25-8-102)

1 or instructions for uncertificated securities (~~G.S. 25-8-308~~), (G.S. 25-8-
2 102), or other certificates, statements, or the like are to be received by
3 the drawee or other payor before acceptance or payment of the draft."

4 Section 20. G.S. 25-5-114(2) reads as rewritten:

5 "(2) Unless otherwise agreed when documents appear on their face to comply with
6 the terms of a credit but a required document does not in fact conform to the warranties
7 made on negotiation or transfer of a document of title (G.S. 25-7-507) or of a certificated
8 security (~~G.S. 25-8-306~~) (G.S. 25-8-108) or is forged or fraudulent or there is fraud in the
9 transaction

10 (a) the issuer must honor the draft or demand for payment if honor is
11 demanded by a negotiating bank or other holder of the draft or demand
12 which has taken the draft or demand under the credit and under
13 circumstances which would make it a holder in due course (G.S. 25-3-
14 302) and in an appropriate case would make it a person to whom a
15 document of title has been duly negotiated (G.S. 25-7-502) or a ~~bona~~
16 ~~fi~~ de-protected purchaser of a certificated security (~~G.S. 25-8-302~~); (G.S.
17 25-8-303); and

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

23 Section 21. G.S. 25-10-104(2) is repealed.

24 Section 22. G.S. 28A-13-3(a)(10) reads as rewritten:

25 "(10) To hold shares of stock or other securities in the name of a nominee,
26 without mention of the estate in the instrument representing stock or
27 other securities or in registration records of the issuer thereof; provided,
28 that

29 a. The estate records and all reports or accounts rendered by the
30 personal representative clearly show the ownership of the stock
31 or other securities by the personal representative and the facts
32 regarding its holdings, and

33 b. The nominee shall not have possession of the stock or other
34 securities or access thereto except under the immediate
35 supervision of the personal representative or when such securities
36 are deposited by the personal representative in a clearing
37 corporation as defined in ~~G.S. 25-8-102(3)~~. G.S. 25-8-102.

38 Such personal representative shall be personally liable for any
39 acts or omissions of such nominee in connection with such stock
40 or other securities so held, as if such personal representative had
41 done such acts or been guilty of such omissions."

42 Section 23. Article 2 of Chapter 32 of the General Statutes is repealed.

43 Section 24. G.S. 36A-70(2) reads as rewritten:

1 (2) The nominee shall not have possession of the stock or other securities or
2 access thereto except under the immediate supervision of the trustee or
3 when such securities are deposited by the fiduciary in a clearing
4 corporation as defined in ~~G.S. 25-8-102(3)~~. G.S. 25-8-102."

5 Section 25. G.S. 53-47(a) reads as rewritten:

6 "(a) In addition to any powers or investments authorized by any other section of
7 this Chapter, a bank may invest in the capital stock or other securities of any other state,
8 national or foreign bank or trust company, and in any other industrial bank, savings bank,
9 Morris Plan bank, savings and loan association, bankers' bank or other deposit taking
10 entity chartered or existing under any federal, state, or foreign law including, but not
11 limited to, the capital stock of clearing corporations defined in ~~G.S. 25-8-102(3)~~, G.S. 25-
12 8-102, the capital stock or other securities of central reserve banks whose capital stock
13 exceeds one million dollars (\$1,000,000) and the capital stock of an Edge or Agreement
14 corporation. As used in this Chapter, the term "bankers' bank" means an insured
15 depository financial institution, organized and chartered to do business exclusively with
16 other banks and savings institutions, and the stock of which, or the stock of the holding
17 company which controls such bank, is owned exclusively (except to the extent directors'
18 qualifying shares are required by law) by banks or savings institutions. To constitute a
19 central reserve bank as contemplated by this Chapter, at least fifty percent (50%) of the
20 capital stock of such bank shall be owned by other banks. The investment of any bank in
21 the capital stock of such central reserve bank or bank organized under the 'Edge Act', (12
22 U.S.C. § 611 et seq.) shall at no time exceed ten percent (10%) of the paid-in capital and
23 permanent surplus of the bank making the investment."

24 Section 26. G.S. 53-159.1 reads as rewritten:

25 "**§ 53-159.1. Power of fiduciary or custodian to deposit securities in a clearing**
26 **corporation.**

27 Notwithstanding any other provision of law, any fiduciary holding securities in its
28 fiduciary capacity, any bank or trust company holding securities in a fiduciary capacity or
29 as a custodian or agent is authorized to deposit or arrange for the deposit of such
30 securities in a clearing corporation as defined in ~~G.S. 25-8-102(3)~~. G.S. 25-8-102. When
31 such securities are so deposited, certificates representing securities of the same class of
32 the same issuer may be merged and held in bulk in the name of the nominee of such
33 clearing corporation with any other such securities deposited in such clearing corporation
34 by any person regardless of the ownership of such securities, and certificates of small
35 denomination may be merged into one or more certificates of larger denomination. The
36 records of such fiduciary and the records of such bank or trust company acting as a
37 fiduciary or as a custodian or managing agent shall at all times show the name of the
38 party for whose account the securities are so deposited. Title to such securities may be
39 transferred by bookkeeping entry on the books of such clearing corporation without
40 physical delivery of certificates representing such securities. A bank or trust company so
41 depositing securities pursuant to this section shall be subject to such rules and regulations
42 as, in the case of State-chartered institutions, the State Banking Commission and, in the
43 case of national banking associations, the Comptroller of the Currency may from time to

1 time issue. A bank or trust company acting as custodian or agent for a fiduciary shall, on
2 demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by
3 such bank or trust company in such clearing corporation for the account of such
4 fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the
5 settlement of such fiduciary's account or on demand by the attorney for such party, certify
6 in writing to such party the securities deposited by such fiduciary in such clearing
7 corporation for its account as such fiduciary. This section shall apply to any fiduciary
8 holding securities in its fiduciary capacity, and to any bank or trust company holding
9 securities as a fiduciary or as a custodian or managing agent acting on May 15, 1973, or
10 who thereafter may act regardless of the date of the agreement, instrument or court order
11 by which it is appointed and regardless of whether or not such fiduciary, custodian or
12 agent owns capital stock of such clearing corporation. The fiduciary shall personally be
13 liable for any loss to the trust resulting from an act of such nominee in connection with
14 such securities so deposited."

15 Section 27. G.S. 78A-63(i) reads as rewritten:

16 "(i) Interest charged by a broker or dealer registered under the Securities Exchange
17 Act of 1934, as amended, or registered under this Chapter, as now or hereafter amended,
18 on a debit balance in an account for a customer, shall be exempt from the provisions of
19 Chapter 24 of the North Carolina General Statutes if such debit balance is payable at will
20 without penalty and is secured by securities as defined in ~~the Uniform Commercial Code,~~
21 ~~Article 8, Investment Securities, G.S. 25-8-101 through 25-8-406.~~ G.S. 25-8-102."

22 Section 28. The Revisor of Statutes shall cause to be printed along with this
23 act all relevant portions of the official comments to the Uniform Commercial Code,
24 Revised Article 8 and conforming and miscellaneous amendments to Articles 1, 4, 5, 9,
25 and 10 and all explanatory comments of the drafters of this act as the Revisor deems
26 appropriate.

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

38 (b) This act becomes effective October 1, 1997, and does not affect actions or
39 proceedings commenced before that date.