

**13 GCA UNIFORM COMMERCIAL CODE
DIV. 8 INVESTMENT SECURITIES**

**DIVISION 8
INVESTMENT SECURITIES**

- Chapter 1. Short Title and General Matters.
- Chapter 2. Issue--Issuer.
- Chapter 3. Purchase.
- Chapter 4. Registration.

**CHAPTER 1
SHORT TITLE AND GENERAL MATTERS**

- § 8101. Short Title.
- § 8102. Definitions and Index of Definitions.
- § 8103. Issuer's Lien.
- § 8104. Effect of Overissue; "Overissue."
- § 8105. Securities Negotiable; Burden of Proof.
- § 8106. Applicability.
- § 8107. Delivery of Equivalent of Securities; Recovery by Seller.

§ 8101. Short Title.

This division shall be known and may be cited as *Uniform Commercial Code -- Investment Securities*.

§ 8102. Definitions and Index of Definitions.

(1) In this division unless the context otherwise requires

(a) A *security* is an instrument which

(i) Is issued in bearer or registered form; and

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

(iii) Is either one of a class or series or by its terms is divisible into a class or series of instruments; and

(iv) Evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

(b) A writing which is a security is governed by this division and not by *Uniform Commercial Code -- Commercial Paper* even

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though it also meets the requirements of that division. This division does not apply to money.

(c) A security is in *registered form* when it specifies a person entitled to the security or to the rights it evidences and when its transfer may be registered upon books maintained for that purpose by or on behalf of an issuer or the security so states.

(d) A security is in *bearer form* when it runs to bearer according to its terms and not by reason of any indorsement.

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

(3) A *clearing corporation* is a corporation all of the capital stock of which is held by or for a national securities exchange or association registered under a statute of the United States such as the Securities Exchange Act of 1934.

(4) A *custodian bank* is any bank or trust company which is supervised and examined by state or federal authority having supervision over banks and which is acting as custodian for a clearing corporation.

(5) Other definitions applying to this division or to specified chapters thereof and the sections in which they appear are:

Adverse claim. Section 8301.

Bona fide purchaser. Section 8302.

Broker. Section 8303.

Guarantee of the signature. Section 8402.

Intermediary bank. Section 4105.

Issuer. Section 8201.

Overissue. Section 8104.

(6) In addition Division 1 (commencing with Section 1101) contains general definitions and principles of construction and interpretation applicable throughout this division.

COMMENT: Section 8102 conforms substantively to Section 8-102 of the Uniform Commercial Code. See 1972 Official Text of the Uniform Commercial Code and Official Comment thereto. The California statute differs only in its definition of a "clearing corporation" which was changed in 1972 to broaden somewhat its coverage.

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CROSS-REFERENCES: Additional law governing the regulation of securities is also found in Title 22 - Business Regulations - of the Guam Code Annotated.

§ 8103. Issuer's Lien.

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

§ 8104. Effect of Over Issue; *Over Issue*.

(1) The provisions of this division which validate a security or compel its issue or reissue do not apply to the extent that validation, issue or reissue would result in over issue; but

(a) If an identical security which does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase and deliver such a security to him against surrender of the security, if any, which he holds; or

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

(2) *Overissue* means the issue of securities in excess of the amount which the issuer has corporate power to issue.

§ 8105. Securities Negotiable; Burden of Proof.

(1) Securities governed by this division are negotiable instruments.

(2) In any action on a security

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

(b) When the effectiveness of a signature is put in issue the burden of establishing it is on the party claiming under the signature but the signature is presumed to be genuine or authorized;

(c) When signatures are admitted or established production of the instrument entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security; and

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(d) After it is shown that a defense or defect exists the plaintiff has the burden of establishing that he or some person under whom he claims is a person against whom the defense or defect is ineffective (Section 8202).

§ 8106. Applicability.

The validity of a security and the rights and duties of the issuer with respect to registration of transfer are governed by the law (including the conflict of laws rules) of the jurisdiction of organization of the issuer.

COMMENT: Section 8106 is identical to Section 8-106 of the Uniform Commercial Code. See 1972 Official Text of the Uniform Commercial Code and Official Comment thereto. Under the California variation the liability of an issuer for refusal to register a transfer might be governed by the Law of the state of organization while its liability for an improper registration would be governed by the law of California. No reason to preserve this anomaly appears here.

§ 8107. Delivery of Equivalent of Securities; Recovery by Seller.

(1) Unless otherwise agreed, a person obligated to deliver securities may deliver a like number of units of any securities which by nature or usage of trade are the equivalent of the securities he is obligated to deliver.

(2) Where, pursuant to the contract to sell or a sale, a security has been delivered or tendered to the purchaser, and the purchaser wrongfully fails to pay for the security according to the terms of the contract or the sale, the seller may as an alternative to any other remedy recover the agreed price of the security. This subdivision does not affect the remedy of a seller if the security has not been delivered or tendered.

NOTE: (2003) The "Official" Appendix I amends a § 8110 dealing with special applicability. No such section exists in the Guam UCC so the amendments will not be included by the Compiler.

CHAPTER 2
ISSUE--ISSUER

- § 8201. Issuer.
- § 8202. Issuer's Responsibility and Defenses; Notice of Defect or Defense.
- § 8203. Staleness as Notice of Defects or Defenses.

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- § 8204. Effect of Issuer's Restrictions on Transfer.
- § 8205. Effect of Unauthorized Signature on Issue.
- § 8206. Completion or Alteration of Instrument.
- § 8207. Rights of Issuer with Respect to Registered Owners.
- § 8208. Effect of Signature of Authenticating Trustee, Registrar or Transfer Agent.

§ 8201. Issuer.

(1) With respect to obligations on or defenses to a security issuer includes a person who

(a) Places or authorizes the placing of his name on a security (otherwise than as authenticating trustee, registrar, transfer agent or the like) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty to perform an obligation evidenced by the security; or

(b) Directly or indirectly creates fractional interests in his rights or property which fractional interests are evidenced by securities; or

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

(2) With respect to obligations on or defenses to a security a guarantor is an issuer to the extent of his guaranty whether or not his obligation is noted on the security.

(3) With respect to registration of transfer (Chapter 4 of this division) issuer means a person on whose behalf transfer books are maintained.

§ 8202. Issuer's Responsibility and Defenses; Notice of Defect or Defense.

(1) Even against a purchaser for value and without notice, the terms of a security include those stated on the security and those made part of the security by reference to another instrument, indenture or document or to a constitution, statute, ordinance, rule, regulation, order or the like to the extent that the terms so referred to do not conflict with the stated terms.

Such a reference does not of itself charge a purchaser for value with notice of a defect going to the validity of the security even though the security expressly states that a person accepting it admits such notice.

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(2) (a) A security other than one issued by a government or governmental agency or unit even though issued with a defect going to its validity is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of constitutional provisions in which case the security is valid in the hands of a subsequent purchaser for value and without notice of the defect;

(b) The rule of paragraph (a) applies to an issuer which is a government or governmental agency or unit only if either there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as otherwise provided in the case of certain unauthorized signatures on issue (Section 8205), a lack of genuineness of a security is a complete defense even against a purchaser for value and without notice.

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

§ 8203. Staleness as Notice of Defects or Defenses.

(1) After an act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer

(a) If the act or event is one requiring the payment of money or the delivery of securities or both on presentation or surrender of the security and such funds or securities are available on the date set for payment or exchange and he takes the security more than one year after that date; and

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

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(2) A call which has been revoked is not within subdivision (1).

§ 8204. Effect of Issuer's Restrictions on Transfer.

Unless noted conspicuously on the security a restriction on transfer imposed by the issuer even though otherwise lawful is ineffective except against a person with actual knowledge of it.

§ 8205. Effect of Unauthorized Signature on Issue.

An unauthorized signature placed on a security prior to or in the course of issue is ineffective except that the signature is effective in favor of a purchaser for value and without notice of the lack of authority if the signing has been done by

(a) An authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security or of similar securities or their immediate preparation for signing; or

(b) An employee of the issuer or of any of the foregoing entrusted with responsible handling of the security.

§ 8206. Completion or Alteration of Instrument.

(1) Where a security contains the signatures necessary to its issue or transfer but is incomplete in any other respect

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

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

(2) A complete security which has been improperly altered even though fraudulently remains enforceable but only according to its original terms.

§ 8207. Rights of Issuer with Respect to Registered Owner.

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

(2) Nothing in this division shall be construed to affect the liability of the registered owner of a security for calls, assessments or the like.

§ 8208. Effect of Signature of Authenticating Trustee, Registrar or Transfer Agent.

(1) A person placing his signature upon a security as authenticating trustee, registrar, transfer agent or the like warrants to a purchaser for value without notice of the particular defect that

(a) The security is genuine; and

(b) His own participation in the issue of the security is within his capacity and within the scope of the authorization received by him from the issuer; and

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

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

**CHAPTER 3
PURCHASE**

- § 8301. Rights Acquired By Purchases; *Adverse Claim*; Title Acquired By Bona Fide Purchaser.
- § 8302. Bona Fide Purchaser.
- § 8303. *Broker*.
- § 8304. Notice to Purchaser of Adverse Claims.
- § 8305. Staleness as Notice of Adverse Claims.
- § 8306. Warranties on Presentment and Transfer.
- § 8307. Effect of Delivery Without Indorsement; Right to Compel Indorsement.
- § 8308. Indorsement, How Made; Special Indorsement; Indorser Not a Guarantor; Partial Assignment.
- § 8309. Effect of Indorsement Without Delivery.
- § 8310. Indorsement of Security in Bearer Form.
- § 8311. Effect of Unauthorized Endorsement.
- § 8312. Effect of Guaranteeing Signature or Indorsement.
- § 8313. When Delivery to the Purchaser Occurs; Purchaser's Broker as Holder; Notice of Adverse Claim.
- § 8314. Duty to Deliver, When Completed.

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- § 8315. Action Against Purchaser Based upon Wrongful Transfer.
- § 8316. Purchaser's Right to Requisites for Registration of Transfer on Books.
- § 8317. Attachment or Levy upon Security.
- § 8318. No Conversion by Good Faith Delivery.
- § 8319. Statute of Frauds.
- § 8320. Transfer or Pledge by Book Entry.

§ 8301. Rights Acquired by Purchaser; *Adverse Claim*; Title Acquired by Bona Fide Purchaser.

(1) Upon delivery of a security the purchaser acquires the rights in the security which his transferor had or had actual authority to convey except that a purchaser who has himself been a party to any fraud or illegality affecting the security or who as a prior holder had notice of an adverse claim cannot improve his position by taking from a later bona fide purchaser. *Adverse claim* includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.

(2) A *bona fide purchaser* in addition to acquiring the rights of a purchaser also acquires the security free of any adverse claim.

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

§ 8302. Bona Fide Purchaser.

A *bona fide purchaser* is a purchaser for value in good faith and without notice of any adverse claim who takes delivery of a security in bearer form or of one in registered form issued to him or indorsed to him or in blank.

§ 8303. Broker.

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

§ 8304. Notice to Purchaser of Adverse Claims.

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

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

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

(2) The fact that the purchaser (including a broker for the seller or buyer) has notice that the security is held for a third person or is registered in the name of or indorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute notice of adverse claims. If, however, the purchaser (excluding an intermediary bank) has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims.

§ 8305. Staleness as Notice of Adverse Claims.

An act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange does not of itself constitute any notice of adverse claims except in the case of a purchase

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

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

§ 8306. Warranties on Presentment and Transfer.

(1) A person who presents a security for registration of transfer or for payment or exchange warrants to the issuer that he is entitled to the registration, payment or exchange. But a purchaser for value without notice of adverse claims who receives a new, reissued or reregistered security on registration of transfer warrants only that he has no knowledge of any unauthorized signature (Section 8311) in a necessary indorsement.

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

(a) His transfer is effective and rightful; and

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

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

(3) Where a security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against such delivery, the intermediary by such delivery warrants only his own good faith and authority even though he has purchased or made advances against the claim to be collected against the delivery.

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

(5) A broker gives to his customer and to the issuer and a purchaser the warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of his customer.

§ 8307. Effect of Delivery Without Indorsement; Right to Compel Indorsement.

Where a security in registered form has been delivered to a purchaser without a necessary indorsement he may become a bona fide purchaser only as of the time the indorsement is supplied, but against the transferor the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

§ 8308. Indorsement, How Made; Special Indorsement; Indorser Not a Guarantor; Partial Assignment.

(1) An indorsement of a security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or when the

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signature of such person is written without more upon the back of the security.

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

(3) An appropriate person in subdivision (1) means:

(a) The person specified by the security or by special indorsement to be entitled to the security; or

(b) Where the person so specified is described as a fiduciary but is no longer serving in the described capacity -- either that person or his successor; or

(c) Where the person so specified is an individual and is without capacity to act by virtue of death, incompetence, infancy or otherwise -- his executor, administrator, guardian or like fiduciary; or

(d) Where the security or indorsement so specifies more than one person as tenants by the entirety or with right of survivorship and by reason of death all cannot sign -- the survivor or survivors; or

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

(f) To the extent that any of the foregoing persons may act through an agent -- his authorized agent.

(4) Unless otherwise agreed the indorser by his indorsement assumes no obligation that the security will be honored by the issuer.

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

(6) Whether the person signing is appropriate is determined as of the date of signing and an indorsement by such a person does not become unauthorized for the purposes of this division by virtue of any subsequent change of circumstances.

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(7) Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, does not render his endorsement unauthorized for the purposes of this division.

§ 8309. Effect of Indorsement Without Delivery.

An indorsement of a security whether special or in blank does not constitute a transfer until delivery of the security on which it appears or if the indorsement is on a separate document until delivery of both the document and the security.

§ 8310. Indorsement of Security in Bearer Form.

An indorsement of a security in bearer form may give notice of adverse claims (Section 8304) but does not otherwise affect any right to registration the holder may possess.

§ 8311. Effect of Unauthorized Endorsement.

Unless owner has ratified an unauthorized indorsement or is otherwise precluded from asserting its ineffectiveness

(a) He may assert its ineffectiveness against the issuer or any purchaser other than a purchaser for value and without notice of adverse claims who has in good faith received a new, reissued or reregistered security on registration of transfer; and

(b) An issuer who registers the transfer of a security upon the unauthorized indorsement is subject to liability for improper registration (Section 8404).

§ 8312. Effect of Guaranteeing Signature or Indorsement.

(1) Any person guaranteeing a signature of an indorser of a security warrants that at the time of signing

(a) The signature was genuine; and

(b) The signer was an appropriate person to indorse (Section 8308); and

(c) The signer has legal capacity to sign.

But the guarantor does not otherwise warrant the rightfulness of the particular transfer.

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(2) Any person may guarantee an indorsement of a security and by so doing warrants not only the signature (subdivision 1) but also the rightfulness of the particular transfer in all respects. But no issuer may require a guarantee of indorsement as a condition to registration of transfer.

(3) The foregoing warranties are made to any person taking or dealing with the security in reliance on the guarantee and the guarantor is liable to such person for any loss resulting from breach of the warranties.

§ 8313. When Delivery to the Purchaser Occurs; Purchaser's Broker as Holder; Notice of Adverse Claim.

(1) Delivery to a purchaser occurs when

(a) He or a person designated by him acquires possession of a security; or

(b) His broker acquires possession of a security specially indorsed to or issued in the name of the purchaser; or

(c) His broker sends him confirmation of the purchase and also by book entry or otherwise identifies a specific security in the broker's possession as belonging to the purchaser; or

(d) With respect to an identified security to be delivered while still in the possession of a third person when that person acknowledges that he holds for the purchaser; or

(e) Appropriate entries on the books of a clearing corporation are made under Section 8320.

(2) The purchaser is the owner of a security held for him by his broker, but is not the holder except as specified in paragraphs (b), (c) and (e) of subdivision (1) of this section. Where a security is part of a fungible bulk, the purchaser is the owner of a proportionate property interest in the fungible bulk.

(3) Notice of an adverse claim received by the broker or by the purchaser after the broker takes delivery as a holder for value is not effective either as to the broker or as to the purchaser. However, as between the broker and the purchaser the purchaser may demand delivery of an equivalent security as to which no notice of an adverse claim has been received.

§ 8314. Duty to Deliver, When Completed.

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(1) Unless otherwise agreed where a sale of a security is made on an exchange or otherwise through brokers

(a) The selling customer fulfills his duty to deliver when he places such a security in the possession of the selling broker or of a person designated by the broker or if requested causes an acknowledgment to be made to the selling broker that it is held for him; and

(b) The selling broker including a correspondent broker acting for a selling customer fulfills his duty to deliver by placing the security or a like security in the possession of the buying broker or a person designated by him or by effecting clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

(2) Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to deliver a security under a contract of purchase is not fulfilled until he places the security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by him or at the purchaser's request causes an acknowledgment to be made to the purchaser that it is held for him. Unless made on an exchange a sale to a broker purchasing for his own account is within this subdivision and not within subdivision (1).

§ 8315. Action Against Purchaser Based upon Wrongful Transfer.

(1) Any person against whom the transfer of a security is wrongful for any reason, including lack of delivery or his incapacity, may against any purchaser except a bona fide purchaser reclaim possession of the security or obtain possession of any new security evidencing all or part of the same rights or have damages.

(2) If the transfer is wrongful because of an unauthorized indorsement, the owner may also reclaim or obtain possession of the security or new security even from a bona fide purchaser if the ineffectiveness of the purported indorsement can be asserted against him under the provisions of this division on unauthorized indorsements (Section 8311).

(3) The right to obtain or reclaim possession of a security may be specifically enforced and its transfer enjoined and the security impounded pending the litigation.

§ 8316. Purchaser's Right to Requisites for Registration of Transfer on Books.

Unless otherwise agreed the transferor must on due demand supply his purchaser with any proof of his authority to transfer or with any other requisite which may be necessary to obtain registration of the transfer of the security but if the transfer is not for value a transferor need not do so unless the purchaser furnishes the necessary expenses. Failure to comply with a demand made within a reasonable time gives the purchaser the right to reject or rescind the transfer.

§ 8317. Attachment or Levy upon Security.

(1) No attachment or levy upon a security or any share or other interest evidenced thereby which is outstanding shall be valid until the security is actually seized by the officer making the attachment or levy; but a security which has been surrendered to the issuer may be attached or levied upon at the source.

(2) A creditor whose debtor is the owner of a security shall be entitled to such aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching such security or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process.

§ 8318. No Conversion by Good Faith Delivery.

An agent or bailee who in good faith (including observance of reasonable commercial standards if he is in the business of buying, selling or otherwise dealing with securities) has received securities and sold, pledged or delivered them according to the instructions of his principal is not liable for conversion or for participation in breach of fiduciary duty although the principal had no right to dispose of them.

§ 8319. Statute of Frauds.

(1) A contract for the sale of securities is not enforceable by way of action or defense unless

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

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(b) Delivery of the security has been accepted or payment has been made but the contract is enforceable under this provision only to the extent of such delivery or payment; or

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

(2) A contract relating to the purchase or sale of securities between a broker acting as an agent and his principal is not subject to the provisions of this section.

§ 8320. Transfer or Pledge by Book Entry.

(1) If a security

(a) Is in the custody of a clearing corporation or of a custodian bank or a nominee of either subject to the instructions of the clearing corporation; and

(b) Is in bearer form or indorsed in blank by an appropriate person or registered in the name of the clearing corporation or custodian bank or a nominee of either; and

(c) Is shown on the account of a transferor or pledgor on the books of the clearing corporation; then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of appropriate entries on the books of the clearing corporation reducing the account of the transferor or pledgor and increasing the account of the transferee or pledgee by the amount of the obligation or the number of shares or rights transferred or pledged.

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

(3) A transfer or pledge under this section has the effect of a delivery of a security in bearer form or duly indorsed in blank (Section 8301) representing the amount of the obligation or the number of shares

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or rights transferred or pledged and if a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party (Sections 9304 and 9305). A transferee or pledgee under this section is a holder.

(4) A transfer or pledge under this section does not constitute a registration of transfer under Chapter 4 of this division.

(5) That entries made on the books of the clearing corporation as provided in subdivision (1) are not appropriate does not affect the validity or effect of the entries nor the liabilities or obligations of the clearing corporation to any person adversely affected thereby.

**CHAPTER 4
REGISTRATION**

- § 8401. Duty of Issuer to Register Transfer.
- § 8402. Assurance that Indorsements are Effective.
- § 8403. Limited Duty of Inquiry.
- § 8404. Liability and Non-Liability for Registration.
- § 8405. Lost, Destroyed and Stolen Securities.
- § 8406. Duty of Authenticating Trustee, Transfer Agent or Registrar.

§ 8401. Duty of Issuer to Register Transfer.

(1) Where a security in registered form is presented to the issuer with a request to register transfer, the issuer is under a duty to register the transfer as requested if

(a) The security is indorsed by the appropriate person or persons (Section 8308); and

(b) Reasonable assurance is given that those indorsements are genuine and effective (Section 8402); and

(c) The issuer has no duty to inquire into adverse claims or has discharged any such duty (Section 8403); and

(d) Any applicable law relating to the collection of taxes has been complied with.

(2) Where an issuer is under a duty to register a transfer of a security the issuer is liable to the person presenting it for registration or his

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principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer, but in any such case the plaintiff must allege and prove that the transfer requested was in fact rightful or that he was a bona fide purchaser.

§ 8402. Assurance that Indorsements are Effective.

(1) The issuer may require the following assurance that each necessary indorsement (Section 8308) is genuine and effective.

(a) In all cases, a guarantee of the signature (subdivision (1) of Section 8312) of the person indorsing; and

(b) Where the indorsement is by an agent, appropriate assurance of authority to sign;

(c) Where the indorsement is by a fiduciary, appropriate evidence of appointment or incumbency;

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

(e) Where the indorsement is by a person not covered by any of the foregoing, assurance appropriate to the case corresponding as nearly as may be to the foregoing.

(2) A guarantee of the signature in subdivision (1) means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible. The issuer may adopt standards with respect to responsibility provided such standards are not manifestly unreasonable.

(3) Appropriate evidence of appointment or incumbency in subdivision (1) means

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

(b) In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the issuer to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the issuer to be appropriate. The issuer may adopt standards with respect to such evidence provided such standards are not manifestly unreasonable. The issuer is not charged with notice of the

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contents of any document obtained pursuant to this paragraph (b) except to the extent that the contents relate directly to the appointment or incumbency.

§ 8403. Limited Duty of Inquiry.

(1) An issuer to whom a security is presented for registration is under a duty to inquire into adverse claims if

(a) A written notification of an adverse claim is received at a time and in a manner which affords the issuer a reasonable opportunity to act on it prior to the issuance of a new, reissued or reregistered security and the notification identifies the claimant, the registered owner and the issue of which the security is a part and provides an address for communications directed to the claimant.

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

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

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

(3) Unless an issuer receives notification of an adverse claim under subdivision (1) of this section, where a security presented for registration is indorsed by the appropriate person or persons the issuer is under no duty to inquire into adverse claims.

(4) An issuer registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security.

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(5) An issuer registering transfer on an indorsement by a fiduciary is not bound to inquire whether the transfer is made in compliance with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, even though the transfer is made on the indorsement of a fiduciary to the fiduciary himself or his nominee.

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

(7) (a) No person who participates in the acquisition, disposition, assignment or transfer of a security by or to a fiduciary including a person who guarantees the signature of the fiduciary is liable for participation in any breach of fiduciary duty by reason of failure to inquire whether the transaction involves such a breach unless it is shown that he acted with knowledge that the proceeds were being used or that the transaction was wrongfully for the individual benefit of the fiduciary or otherwise in breach of duty.

(b) If a corporation or transfer agent makes a transfer pursuant to an assignment by a fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the guarantee to any person to whom the corporation or transfer agent by reason of subdivision (1) of Section 8404 incurs no liability.

(c) This subdivision (7) does not impose any liability upon the corporation or its transfer agent.

§ 8404. Liability and Non-Liability for Registration.

(1) Except as otherwise provided in any law relating to the collection of taxes, the issuer is not liable to the owner or any other person suffering loss as a result of the registration of a transfer of a security if

(a) There were on or with the security the necessary indorsements (Section 8308); and

(b) The issuer had no duty to inquire into adverse claims or has discharged any such duty (Section 8403).

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(2) Where an issuer has registered a transfer of a security to a person not entitled to it the issuer on demand must deliver a like security to the true owner unless

(a) The registration was pursuant to subdivision (1); or

(b) The owner is precluded from asserting any claim for registering the transfer under subdivision (1) of the following section; or

(c) Such delivery would result in overissue, in which case the issuer's liability is governed by Section 8104.

§ 8405. Lost, Destroyed and Stolen Securities.

(1) Where a security has been lost, apparently destroyed or wrongfully taken and the owner fails to notify the issuer of that fact within a reasonable time after he has notice of it and the issuer registers a transfer of the security before receiving such a notification, the owner is precluded from asserting against the issuer any claim for registering the transfer under the preceding section or any claim to a new security under this section.

(2) Where the owner of a security claims that the security has been lost, destroyed or wrongfully taken, the issuer must issue a new security in place of the original security if the owner

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

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

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

(3) If, after the issue of the new security, a bona fide purchaser of the original security presents it for registration of transfer, the issuer must register the transfer unless registration would result in overissue, in which event the issuer's liability is governed by Section 8104. In addition to any rights on the indemnity bond, the issuer may recover the new security from the person to whom it was issued or any person taking under him except a bona fide purchaser.

§ 8406. Duty of Authenticating Trustee, Transfer Agent or Registrar.

(1) Where a person acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its

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securities or in the issue of new securities or in the cancellation of surrendered securities

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

(b) He has with regard to the particular functions he performs the same obligation to the holder or owner of the security and has the same rights and privileges as the issuer has in regard to those functions.

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