

## Part 1 Short Title and General Matters

### **70A-8-100 Title.**

This chapter is known as "Uniform Commercial Code -- Investment Securities."

Enacted by Chapter 204, 1996 General Session

### **70A-8-101 Definitions.**

(1) As used in this chapter:

- (a) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.
- (b) "Bearer form," as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.
- (c) "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.
- (d) "Certificated security" means a security that is represented by a certificate.
- (e) "Clearing corporation" means:
  - (i) a person that is registered as a "clearing agency" under the federal securities laws;
  - (ii) a federal reserve bank; or
  - (iii) any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.
- (f) "Communicate" means to:
  - (i) send a signed writing; or
  - (ii) transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.
- (g) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquired a security entitlement by virtue of Subsection 70A-8-501(2)(b) or (c), that person is the entitlement holder.
- (h) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.
- (i)
  - (i) "Financial asset," except as otherwise provided in Section 70A-8-102, means:
    - (A) a security;
    - (B) an obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

- (C) any property that is held by a securities intermediary for another person in a securities account if that securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this chapter.
  - (ii) As context requires, "financial asset" means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.
  - (j) "Good faith," for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this chapter, means honesty in fact and the observance of reasonable commercial standards of fair dealing.
  - (k) "Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.
  - (l) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.
  - (m) "Land company" means a mutual benefit corporation, as defined in Section 16-6a-102, that bases the use of the corporation's land on issued share ownership.
  - (n) "Registered form," as applied to a certificated security, means a form in which:
    - (i) the security certificate specifies a person entitled to the security; and
    - (ii) a transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.
  - (o) "Securities intermediary" means:
    - (i) a clearing corporation; or
    - (ii) a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.
  - (p) "Security," except as otherwise provided in Section 70A-8-102, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer that:
    - (i) is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;
    - (ii) is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and
    - (iii)
      - (A) is, or is of a type, dealt in or traded on securities 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 chapter.
  - (q) "Security certificate" means a certificate representing a security.
  - (r) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5, Security Entitlements.
  - (s) "Uncertificated security" means a security that is not represented by a certificate.
  - (t) "Water company" is as defined in Section 16-4-102.
- (2) Other definitions applying to this chapter and the sections in which they appear are:
- (a) "Appropriate person," Section 70A-8-106.
  - (b) "Control," Section 70A-8-105.
  - (c) "Delivery," Section 70A-8-301.
  - (d) "Investment company security," Section 70A-8-102.
  - (e) "Issuer," Section 70A-8-201.
  - (f) "Overissue," Section 70A-8-210.
  - (g) "Protected purchaser," Section 70A-8-303.

- (h) "Securities account," Section 70A-8-501.
- (3) In addition, Chapter 1a, Uniform Commercial Code - General Provisions, contains general definitions and principles of construction and interpretation applicable throughout this chapter.
- (4) The characterization of a person, business, or transaction for purposes of this chapter does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

Amended by Chapter 386, 2012 General Session

**70A-8-102 Rules for determining whether certain obligations and interests are securities or financial assets.**

- (1) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.
- (2) 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.
- (3) 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 chapter, 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.
- (4) A writing that is a security certificate is governed by this chapter and not by Chapter 3, Uniform Commercial Code - Negotiable Instruments, even though it also meets the requirements of that chapter. However, a negotiable instrument governed by Chapter 3, Uniform Commercial Code - Negotiable Instruments, is a financial asset if it is held in a securities account.
- (5) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.
- (6) A commodity contract, as defined in Subsection 70A-9a-102(15), is not a security or a financial asset.
- (7) A document of title is not a financial asset unless Subsection 70A-8-101(1)(i)(i)(C) applies.

Amended by Chapter 42, 2006 General Session

**70A-8-103 Acquisition of security or financial asset or interest therein.**

- (1) A person acquires a security or an interest therein, under this chapter, if:
  - (a) the person is a purchaser to whom a security is delivered pursuant to Section 70A-8-301; or
  - (b) the person acquires a security entitlement to the security pursuant to Section 70A-8-501.
- (2) A person acquires a financial asset, other than a security, or an interest therein, under this chapter, if the person acquires a security entitlement to the financial asset.
- (3) A person who acquires a security entitlement to a security or other financial asset has the rights specified in Part 5, Security Entitlements, but is a purchaser of any security, security entitlement, or other financial asset held by the securities intermediary only to the extent provided in Section 70A-8-503.
- (4) Unless the context shows that a different meaning is intended, a person who is required by other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchange, or

otherwise put in the possession of another person a security or financial asset satisfies that requirement by causing the other person to acquire an interest in the security or financial asset pursuant to Subsection (1) or (2).

Repealed and Re-enacted by Chapter 204, 1996 General Session

**70A-8-104 Notice of adverse claim.**

- (1) A person has notice of an adverse claim if:
  - (a) the person knows of the adverse claim;
  - (b) the person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or
  - (c) the person has a duty, imposed by statute or regulation, to investigate whether an adverse claim exists, and the investigation so required would establish the existence of the adverse claim.
- (2) Having knowledge that a financial asset or interest therein is or has been transferred by a representative imposes no duty of inquiry into the rightfulness of a transaction and is not notice of an adverse claim. However, a person who knows that a representative has transferred a financial asset or interest therein in a transaction that is, or whose proceeds are being used, for the individual benefit of the representative or otherwise in breach of duty has notice of an adverse claim.
- (3) An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate or sets a date on or after which the certificate is to be presented or surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the case of a transfer more than:
  - (a) one year after a date set for presentment or surrender for redemption or exchange; or
  - (b) six months after a date set for payment of money against presentation or surrender of the certificate, if money was available for payment on that date.
- (4) A purchaser of a certificated security has notice of an adverse claim if the security certificate:
  - (a) whether in bearer or registered form, has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or
  - (b) is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on the certificate is not such a statement.
- (5) Filing of a financing statement under Chapter 9a, Uniform Commercial Code - Secured Transactions, is not notice of an adverse claim to a financial asset.

Repealed and Re-enacted by Chapter 204, 1996 General Session

**70A-8-105 Control.**

- (1) A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.
- (2) A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser, and:
  - (a) the certificate is indorsed to the purchaser or in blank by an effective indorsement; or
  - (b) the certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.
- (3) A purchaser has "control" of an uncertificated security if:

- (a) the uncertificated security is delivered to the purchaser; or
  - (b) the issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.
- (4) A purchaser has "control" of a security entitlement if:
- (a) the purchaser becomes the entitlement holder;
  - (b) the securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder; or
  - (c) another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.
- (5) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.
- (6) A purchaser who has satisfied the requirements of Subsection (3)(b) or (4)(b) has control even if the registered owner in the case of Subsection (3)(b) or the entitlement holder in the case of Subsection (4)(b) retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.
- (7) An issuer or a securities intermediary may not enter into an agreement of the kind described in Subsection (3)(b) or (4)(b) without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

Amended by Chapter 252, 2000 General Session

**70A-8-106 Whether indorsement, instruction, or entitlement order is effective.**

- (1) "Appropriate person" means:
- (a) with respect to an indorsement, the person specified by a security certificate or by an effective special indorsement to be entitled to the security;
  - (b) with respect to an instruction, the registered owner of an uncertificated security;
  - (c) with respect to an entitlement order, the entitlement holder;
  - (d) if the person designated in Subsection (1)(a), (b), or (c) is deceased, the designated person's successor taking under other law or the designated person's personal representative acting for the estate of the decedent; or
  - (e) if the person designated in Subsection (1)(a), (b), or (c) lacks capacity, the designated person's guardian, conservator, or other similar representative who has power under other law to transfer the security or financial asset.
- (2) An indorsement, instruction, or entitlement order is effective if:
- (a) it is made by the appropriate person;
  - (b) it is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under Subsection 70A-8-105(3)(b) or (4)(b); or
  - (c) the appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.
- (3) An indorsement, instruction, or entitlement order made by a representative is effective even if:

- (a) the representative has failed to comply with a controlling instrument or with the law of the state having jurisdiction of the representative relationship, including any law requiring the representative to obtain court approval of the transaction; or
  - (b) the representative's action in making the indorsement, instruction, or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.
- (4) If a security is registered in the name of or specially indorsed to a person described as a representative, or if a securities account is maintained in the name of a person described as a representative, an indorsement, instruction, or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.
- (5) Effectiveness of an indorsement, instruction, or entitlement order is determined as of the date the indorsement, instruction, or entitlement order is made, and an indorsement, instruction, or entitlement order does not become ineffective by reason of any later change of circumstances.

Amended by Chapter 324, 2010 General Session

**70A-8-107 Warranties in direct holding.**

- (1) A person who transfers a certificated security to a purchaser for value warrants to the purchaser, and an indorser, if the transfer is by indorsement, warrants to any subsequent purchaser, that:
- (a) the certificate is genuine and has not been materially altered;
  - (b) the transferor or indorser does not know of any fact that might impair the validity of the security;
  - (c) there is no adverse claim to the security;
  - (d) the transfer does not violate any restriction on transfer;
  - (e) if the transfer is by indorsement, the indorsement is made by an appropriate person, or if the indorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person; and
  - (f) the transfer is otherwise effective and rightful.
- (2) A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser that:
- (a) the instruction is made by an appropriate person, or if the instruction is by an agent, the agent has actual authority to act on behalf of the appropriate person;
  - (b) the security is valid;
  - (c) there is no adverse claim to the security; and
  - (d) at the time the instruction is presented to the issuer:
    - (i) the purchaser will be entitled to the registration of transfer;
    - (ii) the transfer will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction;
    - (iii) the transfer will not violate any restriction on transfer; and
    - (iv) the requested transfer will otherwise be effective and rightful.
- (3) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants that:
- (a) the uncertificated security is valid;
  - (b) there is no adverse claim to the security;
  - (c) the transfer does not violate any restriction on transfer; and
  - (d) the transfer is otherwise effective and rightful.
- (4) A person who indorses a security certificate warrants to the issuer that:
- (a) there is no adverse claim to the security; and

- (b) the indorsement is effective.
- (5) A person who originates an instruction for registration of transfer of an uncertificated security warrants to the issuer that:
  - (a) the instruction is effective; and
  - (b) at the time the instruction is presented to the issuer the purchaser will be entitled to the registration of transfer.
- (6) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only that the person has no knowledge of any unauthorized signature in a necessary indorsement.
- (7) If a person acts as agent of another in delivering a certificated security to a purchaser, the identity of the principal was known to the person to whom the certificate was delivered, and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the principal, the person delivering the security certificate warrants only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.
- (8) A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate to another person, makes only the warranties of an agent under Subsection (7).
- (9) Except as otherwise provided in Subsection (7), a broker acting for a customer makes to the issuer and a purchaser the warranties provided in Subsections (1) through (6). A broker that delivers a security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated security, makes to the customer the warranties provided in Subsection (1) or (2), 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 the customer.

Repealed and Re-enacted by Chapter 204, 1996 General Session

**70A-8-108 Warranties in indirect holding.**

- (1) A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary that:
  - (a) the entitlement order is made by an appropriate person, or if the entitlement order is by an agent, the agent has actual authority to act on behalf of the appropriate person; and
  - (b) there is no adverse claim to the security entitlement.
- (2) A person who delivers a security certificate to a securities intermediary for credit to a securities account or originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a securities account makes to the securities intermediary the warranties specified in Subsection 70A-8-107(1) or (2).
- (3) If a securities intermediary delivers a security certificate to its entitlement holder or causes its entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary makes to the entitlement holder the warranties specified in Subsection 70A-8-107(1) or (2).

Repealed and Re-enacted by Chapter 204, 1996 General Session

**70A-8-109 Applicability -- Choice of law.**

- (1) The local law of the issuer's jurisdiction, as specified in Subsection (4), governs:
  - (a) the validity of a security;
  - (b) the rights and duties of the issuer with respect to registration of transfer;
  - (c) the effectiveness of registration of transfer by the issuer;
  - (d) whether the issuer owes any duties to an adverse claimant to a security; and
  - (e) whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.
- (2) The local law of the securities intermediary's jurisdiction, as specified in Subsection (5), governs:
  - (a) acquisition of a security entitlement from the securities intermediary;
  - (b) the rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;
  - (c) whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and
  - (d) whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.
- (3) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.
- (4) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this state may specify the law of another jurisdiction as the law governing the matters specified in Subsections (1)(b) through (e).
- (5) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:
  - (a) If an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of this part, this chapter, or this title, that jurisdiction is the securities intermediary's jurisdiction.
  - (b) If Subsection (5)(a) does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.
  - (c) If neither Subsection (5)(a) nor Subsection (5)(b) applies and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.
  - (d) If Subsections (5)(a) through (c) do not apply, the securities intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder's account is located.
  - (e) If Subsections (5)(a) through (d) do not apply, the securities intermediary's jurisdiction is the jurisdiction in which the chief executive office of the securities intermediary is located.
- (6) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other record keeping concerning the account.



Amended by Chapter 252, 2000 General Session

**70A-8-110 Clearing corporation rules.**

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

Enacted by Chapter 204, 1996 General Session

**70A-8-111 Creditor's legal process.**

- (1) The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as otherwise provided in Subsection (4). However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.
- (2) The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at its chief executive office in the United States, except as otherwise provided in Subsection (4).
- (3) The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained, except as otherwise provided in Subsection (4).
- (4) The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.
- (5) A creditor whose debtor is the owner of a certificated security, uncertificated security, or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security, or security entitlement or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process.

Enacted by Chapter 204, 1996 General Session

**70A-8-112 Statute of frauds inapplicable.**

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

Enacted by Chapter 204, 1996 General Session

**70A-8-113 Evidentiary rules concerning certificated securities.**

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

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

- (2) If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on the party claiming under the signature, but the signature is presumed to be genuine or authorized.
- (3) If signatures on a security certificate are admitted or established, production of the certificate entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security.
- (4) If it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect cannot be asserted.

Enacted by Chapter 204, 1996 General Session

**70A-8-114 Securities intermediary and others not liable to adverse claimant.**

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

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

Enacted by Chapter 204, 1996 General Session

**70A-8-115 Securities intermediary as purchaser for value.**

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

Enacted by Chapter 204, 1996 General Session