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HOUSE BILL 37

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY

RICHARD T. (DICK) KNOWLES

AN ACT

RELATING TO COMMERCIAL TRANSACTIONS; REVISING ARTICLE 8 OF THE
UNIFORM COMMERCIAL CODE REGARDING INVESTMENT SECURITIES; MAKING
CONFORMING AMENDMENTS TO OTHER ARTICLES OF THE UNIFORM
COMMERCIAL CODE; AMENDING, REPEALING AND ENACTING SECTIONS OF
THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 55-1-105 NMSA 1978 (being Laws 1961,
Chapter 96, Section 1-105, as amended) is amended to read:

"55-1-105. TERRITORIAL APPLICATION OF THE ACT--PARTIES'
POWER TO CHOOSE APPLICABLE LAW.--

(1) Except as provided in this section, when a
transaction bears a reasonable relation to this state and also
to another state or nation, the parties may agree that the law
either of this state or such other state or nation shall govern

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1 their rights and duties. Failing such agreement, the Uniform
2 Commercial Code applies to transactions bearing an appropriate
3 relation to this state.

4 (2) Where one of the following provisions of the
5 Uniform Commercial Code specifies the applicable law, that
6 provision governs and a contrary agreement is effective only to
7 the extent permitted by the law (including the conflict of laws
8 rules) so specified:

9 rights of creditors against sold goods. Section
10 55-2-402 NMSA 1978;

11 applicability of the article on leases. Sections
12 55-2A-105 and 55-2A-106 NMSA 1978;

13 applicability of the article on bank deposits and
14 collections. Section 55-4-102 NMSA 1978;

15 governing law in the article on fund transfers.
16 Section 55-4A-507 NMSA 1978;

17 applicability of the article on investment
18 securities. Section [~~55-8-106~~] 55-8-110 NMSA 1978; and
19 perfection provisions of the article on secured
20 transactions. Section 55-9-103 NMSA 1978. "

21 Section 2. Section 55-1-206 NMSA 1978 (being Laws 1961,
22 Chapter 96, Section 1-206) is amended to read:

23 "55-1-206. STATUTE OF FRAUDS FOR KINDS OF PERSONAL
24 PROPERTY NOT OTHERWISE COVERED. --

25 (1) Except in the cases described in Subsection (2)

1 of this section, a contract for the sale of personal property is
2 not enforceable by way of action or defense beyond five thousand
3 dollars (\$5,000) in amount or value or remedy unless there is
4 some writing which indicates that a contract for sale has been
5 made between the parties at a defined or stated price,
6 reasonably identifies the subject matter and is signed by the
7 party against whom enforcement is sought or by his authorized
8 agent.

9 (2) Subsection (1) of this section does not apply to
10 contracts for the sale of goods (Section [~~2-201~~] 55-2-201 NMSA
11 1978) nor of securities (Section [~~8-319~~] 55-8-313 NMSA 1978) nor
12 to security agreements (Section [~~9-203~~] 55-9-203 NMSA 1978). "

13 Section 3. Section 55-4-104 NMSA 1978 (being Laws 1961,
14 Chapter 96, Section 4-104, as amended) is amended to read:

15 "55-4-104. DEFINITIONS AND INDEX OF DEFINITIONS. --

16 (a) In this article, unless the context otherwise
17 requires:

18 (1) "account" means any deposit or credit
19 account with a bank including a demand, time, savings, passbook,
20 share draft or like account, other than an account evidenced by
21 a certificate of deposit;

22 (2) "afternoon" means the period of a day
23 between noon and midnight;

24 (3) "banking day" means the part of a day on
25 which a bank is open to the public for carrying on substantially

1 all of its banking functions;

2 (4) "clearing-house" means an association of
3 banks or other payors regularly clearing items;

4 (5) "customer" means a person having an account
5 with a bank or for whom a bank has agreed to collect items,
6 including a bank that maintains an account at another bank;

7 (6) "documentary draft" means a draft to be
8 presented for acceptance or payment if specified documents,
9 certificated securities (Section 55-8-102 NMSA 1978) or
10 instructions for uncertificated securities (Section [~~55-8-308~~]
11 55-8-102 NMSA 1978), or other certificates, statements or the
12 like are to be received by the drawee or other payor before
13 acceptance or payment of the drafts;

14 (7) "draft" means a draft as defined in Section
15 55-3-104 NMSA 1978 or an item, other than an instrument, that is
16 an order;

17 (8) "drawee" means a person ordered in a draft
18 to make payment;

19 (9) "item" means an instrument or a promise or
20 order to pay money handled by a bank for collection or payment.
21 The term does not include a payment order governed by Article 4A
22 or a credit or debit card slip;

23 (10) "midnight deadline" with respect to a bank
24 is midnight on its next banking day following the banking day on
25 which it receives the relevant item or notice or from which the

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1 time for taking action commences to run, whichever is later;

2 (11) "settle" means to pay in cash, by
3 clearing-house settlement, in a charge or credit or by
4 remittance or otherwise as agreed. A settlement may be either
5 provisional or final; and

6 (12) "suspends payments" with respect to a bank
7 means that it has been closed by order of the supervisory
8 authorities, that a public officer has been appointed to take it
9 over or that it ceases or refuses to make payments in the
10 ordinary course of business.

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

13 "agreement for electronic presentment"

14 Section 55-4-110 NMSA 1978;

15 "bank" Section 55-4-105 NMSA 1978;

16 "collecting bank" Section 55-4-105 NMSA 1978;

17 "depository bank" Section 55-4-105 NMSA 1978;

18 "intermediary bank" Section 55-4-105 NMSA 1978;

19 "payor bank" Section 55-4-105 NMSA 1978;

20 "presenting bank" Section 55-4-105 NMSA 1978; and

21 "presentment notice" Section 55-4-110 NMSA 1978.

22 (c) The following definitions in other articles
23 apply to this article:

24 "acceptance" Section 55-3-409 NMSA 1978;

25 "alteration" Section 55-3-407 NMSA 1978;

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1 "cashier's check" Section 55-3-104 NMSA 1978;
2 "certificate of deposit" Section 55-3-104 NMSA 1978;
3 "certified check" Section 55-3-409 NMSA 1978;
4 "check" Section 55-3-104 NMSA 1978;
5 "good faith" Section 55-3-103 NMSA 1978;
6 "holder in due course" Section 55-3-302 NMSA 1978;
7 "instrument" Section 55-3-104 NMSA 1978;
8 "notice of dishonor" Section 55-3-503 NMSA 1978;
9 "order" Section 55-3-103 NMSA 1978;
10 "ordinary care" Section 55-3-103 NMSA 1978;
11 "person entitled to enforce" Section 55-3-301 NMSA 1978;
12 "presentment" Section 55-3-501 NMSA 1978;
13 "promise" Section 55-3-103 NMSA 1978;
14 "prove" Section 55-3-103 NMSA 1978;
15 "teller's check" Section 55-3-104 NMSA 1978; and
16 "unauthorized signature" Section 55-3-403 NMSA 1978.

17 (d) In addition, Article 1 contains general
18 definitions and principles of construction and interpretation
19 applicable throughout this article. "

20 Section 4. Section 55-5-114 NMSA 1978 (being Laws 1961,
21 Chapter 96, Section 5-114, as amended) is amended to read:

22 "55-5-114. ISSUER'S DUTY AND PRIVILEGE TO HONOR--RIGHT TO
23 REIMBURSEMENT. --

24 (1) An issuer must honor a draft or demand for
25 payment which complies with the terms of the relevant credit

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1 regardless of whether the goods or documents conform to the
2 underlying contract for sale or other contract between the
3 customer and the beneficiary. The issuer is not excused from
4 honor of such a draft or demand by reason of an additional
5 general term that all documents must be satisfactory to the
6 issuer, but an issuer may require that specified documents must
7 be satisfactory to it.

8 (2) Unless otherwise agreed when documents appear on
9 their face to comply with the terms of a credit but a required
10 document does not in fact conform to the warranties made on
11 negotiation or transfer of a document of title (Section 55-7-507
12 NMSA 1978) or of a certificated security (Section [~~55-8-306~~
13 55-8-108 NMSA 1978) or is forged or fraudulent or there is fraud
14 in the transaction:

15 (a) the issuer must honor the draft or demand
16 for payment if honor is demanded by a negotiating bank or other
17 holder of the draft or demand which has taken the draft or
18 demand under the credit and under circumstances which would make
19 it a holder in due course (Section 55-3-302 NMSA 1978) and in an
20 appropriate case would make it a person to whom a document of
21 title has been duly negotiated (Section 55-7-502 NMSA 1978) or a
22 bona fide purchaser of a certificated security
23 (Section 55-8-302 NMSA 1978); and

24 (b) in all other cases as against its customer,
25 an issuer acting in good faith may honor the draft or demand for

1 payment despite notification from the customer of fraud, forgery
2 or other defect not apparent on the face of the documents, but a
3 court of appropriate jurisdiction may enjoin such honor.

4 (3) Unless otherwise agreed an issuer which has duly
5 honored a draft or demand for payment is entitled to immediate
6 reimbursement of any payment made under the credit and to be put
7 in effectively available funds not later than the day before
8 maturity of any acceptance made under the credit.

9 (4) When a credit provides for payment by the issuer
10 on receipt of notice that the required documents are in the
11 possession of a correspondent or other agent of the issuer:

12 (a) any payment made on receipt of such notice
13 is conditional; [and]

14 (b) the issuer may reject documents which do
15 not comply with the credit if it does so within three banking
16 days following its receipt of the documents; and

17 (c) in the event of such rejection, the issuer
18 is entitled by charge back or otherwise to return of the payment
19 made.

20 (5) In the case covered by Subsection (4) of this
21 section failure to reject documents within the time specified in
22 Subparagraph (b) of Subsection (4) of this section constitutes
23 acceptance of the documents and makes the payment final in favor
24 of the beneficiary. "

25 Section 5. Section 55-8-101 NMSA 1978 (being Laws 1961,

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1 Chapter 96, Section 8-101) is repealed and a new section of the
2 Uniform Commercial Code, Section 55-8-101 NMSA 1978, is enacted
3 to read:

4 "55-8-101. [NEW MATERIAL] SHORT TITLE. -- Chapter 55,
5 Article 8 NMSA 1978 may be cited as the "Uniform Commercial
6 Code--Investment Securities". "

7 Section 6. Section 55-8-102 NMSA 1978 (being Laws 1961,
8 Chapter 96, Section 8-102, as amended) is repealed and a new
9 section of the Uniform Commercial Code, Section 55-8-102 NMSA
10 1978, is enacted to read:

11 "55-8-102. [NEW MATERIAL] DEFINITIONS. --

12 (a) In this Article:

13 (1) "adverse claim" means a claim that a
14 claimant has a property interest in a financial asset and that
15 it is a violation of the rights of the claimant for another
16 person to hold, transfer or deal with the financial asset;

17 (2) "bearer form", as applied to a certificated
18 security, means a form in which the security is payable to the
19 bearer of the security certificate according to its terms but
20 not by reason of an indorsement;

21 (3) "broker" means a person defined as a broker
22 or dealer under the federal securities laws, but without
23 excluding a bank acting in that capacity;

24 (4) "certificated security" means a security
25 that is represented by a certificate;

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(5) "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;

(6) "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;

(7) "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 acquires a security entitlement by virtue of Section 55-8-501(b)(2) or (3) NMSA 1978, that person is the entitlement holder;

(8) "entitlement order" means a notification communicated to a securities intermediary directing transfer or

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1 redemption of a financial asset to which the entitlement holder
2 has a security entitlement;

3 (9) "financial asset", except as otherwise
4 provided in Section 55-8-103 NMSA 1978, means:

5 (i) a security;

6 (ii) an obligation of a person or a
7 share, participation or other interest in a person or in
8 property or an enterprise of a person, which is, or is of a
9 type, dealt in or traded on financial markets, or which is
10 recognized in any area in which it is issued or dealt in as a
11 medium for investment; or

12 (iii) any property that is held by a
13 securities intermediary for another person in a securities
14 account if the securities intermediary has expressly agreed with
15 the other person that the property is to be treated as a
16 financial asset under this article. As context requires, the
17 term means either the interest itself or the means by which a
18 person's claim to it is evidenced, including a certificated or
19 uncertificated security, a security certificate or a security
20 entitlement;

21 (10) "good faith", for purposes of the
22 obligation of good faith in the performance or enforcement of
23 contracts or duties within this article, means honesty in fact
24 and the observance of reasonable commercial standards of fair
25 dealing;

1 (11) "indorsement" means a signature that alone
2 or accompanied by other words is made on a security certificate
3 in registered form or on a separate document for the purpose of
4 assigning, transferring or redeeming the security or granting a
5 power to assign, transfer or redeem it;

6 (12) "instruction" means a notification
7 communicated to the issuer of an uncertificated security which
8 directs that the transfer of the security be registered or that
9 the security be redeemed;

10 (13) "registered form", as applied to a
11 certificated security, means a form in which:

12 (i) the security certificate specifies a
13 person entitled to the security; and

14 (ii) a transfer of the security may be
15 registered upon books maintained for that purpose by or on
16 behalf of the issuer or the security certificate so states;

17 (14) "securities intermediary" means:

18 (i) a clearing corporation; or

19 (ii) a person, including a bank or
20 broker, that in the ordinary course of its business maintains
21 securities accounts for others and is acting in that capacity;

22 (15) "security," except as otherwise provided
23 in Section 55-8-103 NMSA 1978, means an obligation of an issuer
24 or a share, participation or other interest in an issuer or in
25 property or an enterprise of an issuer:

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1 (i) which is represented by a security
2 certificate in bearer or registered form or the transfer of
3 which may be registered upon books maintained for that purpose
4 by or on behalf of the issuer;

5 (ii) which is one of a class or series or
6 by its terms is divisible into a class or series of shares,
7 participations, interests or obligations; and

8 (iii) which:

9 (A) is, or is of a type, dealt in
10 or traded on securities exchanges or securities markets; or

11 (B) is a medium for investment and
12 by its terms expressly provides that it is a security governed
13 by this article.

14 (16) "security certificate" means a certificate
15 representing a security;

16 (17) "security entitlement" means the rights
17 and property interest of an entitlement holder with respect to a
18 financial asset specified in Part 5 of this article; and

19 (18) "uncertificated security" means a security
20 that is not represented by a certificate.

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

23 appropriate person	Section 55-8-107 NMSA 1978;
24 control	Section 55-8-106 NMSA 1978;
25 delivery	Section 55-8-301 NMSA 1978;

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1 investment company
2 security Section 55-8-103 NMSA 1978;
3 issuer Section 55-8-201 NMSA 1978;
4 overissue Section 55-8-210 NMSA 1978;
5 protected purchaser Section 55-8-303 NMSA 1978; and
6 securities account Section 55-8-501 NMSA 1978.

7 (c) In addition, Chapter 55, Article 1 NMSA 1978
8 contains general definitions and principles of construction and
9 interpretation applicable throughout this article.

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

14 Section 7. Section 55-8-103 NMSA 1978 (being Laws 1961,
15 Chapter 96, Section 8-103, as amended) is repealed and a new
16 section of the Uniform Commercial Code, Section 55-8-103 NMSA
17 1978, is enacted to read:

18 "55-8-103. [NEW MATERIAL] RULES FOR DETERMINING WHETHER
19 CERTAIN OBLIGATIONS AND INTERESTS ARE SECURITIES OR FINANCIAL
20 ASSETS. --

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

24 (b) An "investment company security" is a security.
25 "Investment company security" means a share or similar equity

1 interest issued by an entity that is registered as an investment
2 company under the federal investment company laws, an interest
3 in a unit investment trust that is so registered or a face-
4 amount certificate issued by a face-amount certificate company
5 that is so registered. Investment company security does not
6 include an insurance policy or endowment policy or annuity
7 contract issued by an insurance company.

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

15 (d) A writing that is a security certificate is
16 governed by this Article and not by Chapter 55, Article 3 NMSA
17 1978, even though it also meets the requirements of that
18 article. However, a negotiable instrument governed by Chapter
19 55, Article 3 NMSA 1978 is a financial asset if it is held in a
20 securities account.

21 (e) An option or similar obligation issued by a
22 clearing corporation to its participants is not a security. It
23 is a financial asset.

24 (f) A commodity contract, as defined in Section
25 55-9-115 NMSA 1978, is not a security or a financial asset."

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1 Section 8. Section 55-8-104 NMSA 1978 (being Laws 1961,
2 Chapter 96, Section 8-104, as amended) is repealed and a new
3 section of the Uniform Commercial Code, Section 55-8-104 NMSA
4 1978, is enacted to read:

5 "55-8-104. [NEW MATERIAL] ACQUISITION OF SECURITY OR
6 FINANCIAL ASSET OR INTEREST THEREIN. --

7 (a) A person acquires a security or an interest
8 therein, under this article, if:

9 (1) the person is a purchaser to whom a
10 security is delivered pursuant to Section 55-8-301 NMSA 1978; or

11 (2) the person acquires a security entitlement
12 to the security pursuant to Section 55-8-501 NMSA 1978.

13 (b) A person acquires a financial asset, other than
14 a security, or an interest therein, under this article, if the
15 person acquires a security entitlement to the financial asset.

16 (c) A person who acquires a security entitlement to
17 a security or other financial asset has the rights specified in
18 Part 5 of this article, but is a purchaser of any security,
19 security entitlement or other financial asset held by the
20 securities intermediary only to the extent provided in Section
21 55-8-503 NMSA 1978.

22 (d) Unless the context shows that a different
23 meaning is intended, a person who is required by other law,
24 regulation, rule or agreement to transfer, deliver, present,
25 surrender, exchange or otherwise put in the possession of

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1 another person a security or financial asset satisfies that
2 requirement by causing the other person to acquire an interest
3 in the security or financial asset pursuant to Subsection (a) or
4 (b). "

5 Section 9. Section 55-8-105 NMSA 1978 (being Laws 1961,
6 Chapter 96, Section 8-105, as amended) is repealed and a new
7 section of the Uniform Commercial Code, Section 55-8-105 NMSA
8 1978, is enacted to read:

9 "55-8-105. [NEW MATERIAL] NOTICE OF ADVERSE CLAIM --

10 (a) A person has notice of an adverse claim if:
11 (1) the person knows of the adverse claim;
12 (2) the person is aware of facts sufficient to
13 indicate that there is a significant probability that the
14 adverse claim exists and deliberately avoids information that
15 would establish the existence of the adverse claim; or
16 (3) the person has a duty, imposed by statute
17 or regulation, to investigate whether an adverse claim exists
18 and the investigation so required would establish the existence
19 of the adverse claim.

20 (b) Having knowledge that a financial asset or
21 interest therein is or has been transferred by a representative
22 imposes no duty of inquiry into the rightfulness of a
23 transaction and is not notice of an adverse claim. However, a
24 person who knows that a representative has transferred a
25 financial asset or interest therein in a transaction that is, or

1 whose proceeds are being used, for the individual benefit of the
2 representative or otherwise in breach of duty has notice of an
3 adverse claim.

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

10 (1) one year after a date set for presentment
11 or surrender for redemption or exchange; or

12 (2) six months after a date set for payment of
13 money against presentation or surrender of the certificate, if
14 money was available for payment on that date.

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

17 (1) whether in bearer or registered form, has
18 been indorsed "for collection" or "for surrender" or for some
19 other purpose not involving transfer; or

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

24 (e) Filing of a financing statement under Article 9
25 is not notice of an adverse claim to a financial asset."

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1 Section 10. Section 55-8-106 NMSA 1978 (being Laws 1961,
2 Chapter 96, Section 8-106, as amended) is repealed and a new
3 section of the Uniform Commercial Code, Section 55-8-106 NMSA
4 1978, is enacted to read:

5 "55-8-106. [NEW MATERIAL] CONTROL. --

6 (a) A purchaser has "control" of a certificated
7 security in bearer form if the certificated security is
8 delivered to the purchaser.

9 (b) A purchaser has "control" of a certificated
10 security in registered form if the certificated security is
11 delivered to the purchaser and:

12 (1) the certificate is indorsed to the
13 purchaser or in blank by an effective indorsement; or

14 (2) the certificate is registered in the name
15 of the purchaser, upon original issue or registration of
16 transfer by the issuer.

17 (c) A purchaser has "control" of an uncertificated
18 security if:

19 (1) the uncertificated security is delivered to
20 the purchaser; or

21 (2) the issuer has agreed that it will comply
22 with instructions originated by the purchaser without further
23 consent by the registered owner.

24 (d) A purchaser has "control" of a security
25 entitlement if:

1 (1) the purchaser becomes the entitlement
2 holder; or

3 (2) the securities intermediary has agreed that
4 it will comply with entitlement orders originated by the
5 purchaser without further consent by the entitlement holder.

6 (e) If an interest in a security entitlement is
7 granted by the entitlement holder to the entitlement holder's
8 own securities intermediary, the securities intermediary has
9 control.

10 (f) A purchaser who has satisfied the requirements
11 of Subsection (c)(2) or (d)(2) has control even if the
12 registered owner in the case of Subsection (c)(2) or the
13 entitlement holder in the case of Subsection (d)(2) retains the
14 right to make substitutions for the uncertificated security or
15 security entitlement, to originate instructions or entitlement
16 orders to the issuer or securities intermediary, or otherwise to
17 deal with the uncertificated security or security entitlement.

18 (g) An issuer or a securities intermediary may not
19 enter into an agreement of the kind described in Subsection
20 (c)(2) or (d)(2) without the consent of the registered owner or
21 entitlement holder, but an issuer or a securities intermediary
22 is not required to enter into such an agreement even though the
23 registered owner or entitlement holder so directs. An issuer or
24 securities intermediary that has entered into such an agreement
25 is not required to confirm the existence of the agreement to

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1 another party unless requested to do so by the registered owner
2 or entitlement holder. "

3 Section 11. Section 55-8-107 NMSA 1978 (being Laws 1967,
4 Chapter 186, Section 2, as amended) is repealed and a new
5 section of the Uniform Commercial Code, Section 55-8-107 NMSA
6 1978, is enacted to read:

7 "55-8-107. [NEW MATERIAL] WHETHER INDORSEMENT,
8 INSTRUCTION OR ENTITLEMENT ORDER IS EFFECTIVE. --

9 (a) "Appropriate person" means:

10 (1) with respect to an indorsement, the person
11 specified by a security certificate or by an effective special
12 indorsement to be entitled to the security;

13 (2) with respect to an instruction, the
14 registered owner of an uncertificated security;

15 (3) with respect to an entitlement order, the
16 entitlement holder;

17 (4) if the person designated in Paragraph (1),
18 (2) or (3) is deceased, the designated person's successor taking
19 under other law or the designated person's personal
20 representative acting for the estate of the decedent; or

21 (5) if the person designated in Paragraph (1),
22 (2) or (3) lacks capacity, the designated person's guardian,
23 conservator or other similar representative who has power under
24 other law to transfer the security or financial asset.

25 (b) An indorsement, instruction or entitlement order

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1 is effective if:

2 (1) it is made by the appropriate person;

3 (2) it is made by a person who has power under
4 the law of agency to transfer the security or financial asset on
5 behalf of the appropriate person, including, in the case of an
6 instruction or entitlement order, a person who has control under
7 Section 55-8-106(c) (2) or (d) (2) NMSA 1978; or

8 (3) the appropriate person has ratified it or
9 is otherwise precluded from asserting its ineffectiveness.

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

12 (1) the representative has failed to comply
13 with a controlling instrument or with the law of the state
14 having jurisdiction of the representative relationship,
15 including any law requiring the representative to obtain court
16 approval of the transaction; or

17 (2) the representative's action in making the
18 indorsement, instruction or entitlement order or using the
19 proceeds of the transaction is otherwise a breach of duty.

20 (d) If a security is registered in the name of or
21 specially indorsed to a person described as a representative, or
22 if a securities account is maintained in the name of a person
23 described as a representative, an indorsement, instruction or
24 entitlement order made by the person is effective even though
25 the person is no longer serving in the described capacity.

Underscored material = new
[bracketed material] = delete

1 (e) Effectiveness of an indorsement, instruction or
2 entitlement order is determined as of the date the indorsement,
3 instruction or entitlement order is made, and an indorsement,
4 instruction or entitlement order does not become ineffective by
5 reason of any later change of circumstances."

6 Section 12. Section 55-8-108 NMSA 1978 (being Laws 1987,
7 Chapter 248, Section 9) is repealed and a new section of the
8 Uniform Commercial Code, Section 55-8-108 NMSA 1978, is enacted
9 to read:

10 "55-8-108. [NEW MATERIAL] WARRANTIES IN DIRECT HOLDING. --

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

15 (1) the certificate is genuine and has not been
16 materially altered;

17 (2) the transferor or indorser does not know of
18 any fact that might impair the validity of the security;

19 (3) there is no adverse claim to the security;

20 (4) the transfer does not violate any
21 restriction on transfer;

22 (5) if the transfer is by indorsement, the
23 indorsement is made by an appropriate person or if the
24 indorsement is by an agent, the agent has actual authority to
25 act on behalf of the appropriate person; and

1 (6) the transfer is otherwise effective and
2 rightful.

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

6 (1) the instruction is made by an appropriate
7 person, or, if the instruction is by an agent, the agent has
8 actual authority to act on behalf of the appropriate person;

9 (2) the security is valid;

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

11 and

12 (4) at the time the instruction is presented to
13 the issuer:

14 (i) the purchaser will be entitled to the
15 registration of transfer;

16 (ii) the transfer will be registered by
17 the issuer free from all liens, security interests, restrictions
18 and claims other than those specified in the instruction;

19 (iii) the transfer will not violate any
20 restriction on transfer; and

21 (iv) the requested transfer will
22 otherwise be effective and rightful.

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

- 1 (1) the uncertificated security is valid;
2 (2) there is no adverse claim to the security;
3 (3) the transfer does not violate any
4 restriction on transfer; and
5 (4) the transfer is otherwise effective and
6 rightful.

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

- 9 (1) there is no adverse claim to the security;
10 and
11 (2) the indorsement is effective.

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

- 15 (1) the instruction is effective; and
16 (2) at the time the instruction is presented to
17 the issuer the purchaser will be entitled to the registration of
18 transfer.

19 (f) A person who presents a certificated security
20 for registration of transfer or for payment or exchange warrants
21 to the issuer that the person is entitled to the registration,
22 payment or exchange, but a purchaser for value and without
23 notice of adverse claims to whom transfer is registered warrants
24 only that the person has no knowledge of any unauthorized
25 signature in a necessary indorsement.

Underscored material = new
[bracketed material] = delete

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

10 (h) A secured party who redelivers a security
11 certificate received, or after payment and on order of the
12 debtor delivers the security certificate to another person,
13 makes only the warranties of an agent under Subsection (g).

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

25 Section 13. A new section of the Uniform Commercial Code,

Underscored material = new
[bracketed material] = delete

1 Section 55-8-109 NMSA 1978, is enacted to read:

2 "55-8-109. [NEW MATERIAL] WARRANTIES IN INDIRECT
3 HOLDING. --

4 (a) A person who originates an entitlement order to
5 a securities intermediary warrants to the securities
6 intermediary that:

7 (1) the entitlement order is made by an
8 appropriate person, or if the entitlement order is by an agent,
9 the agent has actual authority to act on behalf of the
10 appropriate person; and

11 (2) there is no adverse claim to the security
12 entitlement.

13 (b) A person who delivers a security certificate to
14 a securities intermediary for credit to a securities account or
15 originates an instruction with respect to an uncertificated
16 security directing that the uncertificated security be credited
17 to a securities account makes to the securities intermediary the
18 warranties specified in Section 8-108(a) or (b).

19 (c) If a securities intermediary delivers a security
20 certificate to its entitlement holder or causes its entitlement
21 holder to be registered as the owner of an uncertificated
22 security, the securities intermediary makes to the entitlement
23 holder the warranties specified in Section 55-8-108(a) or (b)
24 NMSA 1978. "

25 Section 14. A new section of the Uniform Commercial Code,

Underscored material = new
[bracketed material] = delete

1 Section 55-8-110 NMSA 1978, is enacted to read:

2 "55-8-110. [NEW MATERIAL] APPLICABILITY--CHOICE OF LAW --

3 (a) The local law of the issuer's jurisdiction, as
4 specified in Subsection (d), governs:

5 (1) the validity of a security;

6 (2) the rights and duties of the issuer with
7 respect to registration of transfer;

8 (3) the effectiveness of registration of
9 transfer by the issuer;

10 (4) whether the issuer owes any duties to an
11 adverse claimant to a security; and

12 (5) whether an adverse claim can be asserted
13 against a person to whom transfer of a certificated or
14 uncertificated security is registered or a person who obtains
15 control of an uncertificated security.

16 (b) The local law of the securities intermediary's
17 jurisdiction, as specified in Subsection (e), governs:

18 (1) acquisition of a security entitlement from
19 the securities intermediary;

20 (2) the rights and duties of the securities
21 intermediary and entitlement holder arising out of a security
22 entitlement;

23 (3) whether the securities intermediary owes
24 any duties to an adverse claimant to a security entitlement; and

25 (4) whether an adverse claim can be asserted

1 against a person who acquires a security entitlement from the
2 securities intermediary or a person who purchases a security
3 entitlement or interest therein from an entitlement holder.

4 (c) The local law of the jurisdiction in which a
5 security certificate is located at the time of delivery governs
6 whether an adverse claim can be asserted against a person to
7 whom the security certificate is delivered.

8 (d) "Issuer's jurisdiction" means the jurisdiction
9 under which the issuer of the security is organized or, if
10 permitted by the law of that jurisdiction, the law of another
11 jurisdiction specified by the issuer. An issuer organized under
12 the law of this State may specify the law of another
13 jurisdiction as the law governing the matters specified in
14 Subsection (a)(2) through (5).

15 (e) The following rules determine a "securities
16 intermediary's jurisdiction" for purposes of this section:

17 (1) if an agreement between the securities
18 intermediary and its entitlement holder specifies that it is
19 governed by the law of a particular jurisdiction, that
20 jurisdiction is the securities intermediary's jurisdiction;

21 (2) if an agreement between the securities
22 intermediary and its entitlement holder does not specify the
23 governing law as provided in Paragraph (1), but expressly
24 specifies that the securities account is maintained at an office
25 in a particular jurisdiction, that jurisdiction is the

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1 securities intermediary's jurisdiction;

2 (3) if an agreement between the securities
3 intermediary and its entitlement holder does not specify a
4 jurisdiction as provided in Paragraph (1) or (2), the securities
5 intermediary's jurisdiction is the jurisdiction in which is
6 located the office identified in an account statement as the
7 office serving the entitlement holder's account; or

8 (4) if an agreement between the securities
9 intermediary and its entitlement holder does not specify a
10 jurisdiction as provided in Paragraph (1) or (2) and an account
11 statement does not identify an office serving the entitlement
12 holder's account as provided in Paragraph (3), the securities
13 intermediary's jurisdiction is the jurisdiction in which is
14 located the chief executive office of the securities
15 intermediary.

16 (f) A securities intermediary's jurisdiction is not
17 determined by the physical location of certificates representing
18 financial assets or by the jurisdiction in which is organized
19 the issuer of the financial asset with respect to which an
20 entitlement holder has a security entitlement or by the location
21 of facilities for data processing or other record keeping
22 concerning the account. "

23 Section 15. A new section of the Uniform Commercial Code,
24 Section 55-8-111 NMSA 1978, is enacted to read:

25 "55-8-111. [NEW MATERIAL] CLEARING CORPORATION RULES. -- A

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[bracketed material] = delete

1 rule adopted by a clearing corporation governing rights and
2 obligations among the clearing corporation and its participants
3 in the clearing corporation is effective even if the rule
4 conflicts with this [Act] and affects another party who does not
5 consent to the rule."

6 Section 16. A new section of the Uniform Commercial Code,
7 Section 55-8-112 NMSA 1978, is enacted to read:

8 "55-8-112. [NEW MATERIAL] CREDITOR'S LEGAL PROCESS.--

9 (a) The interest of a debtor in a certificated
10 security may be reached by a creditor only by actual seizure of
11 the security certificate by the officer making the attachment or
12 levy, except as otherwise provided in Subsection (d). However,
13 a certificated security for which the certificate has been
14 surrendered to the issuer may be reached by a creditor by legal
15 process upon the issuer.

16 (b) The interest of a debtor in an uncertificated
17 security may be reached by a creditor only by legal process upon
18 the issuer at its chief executive office in the United States,
19 except as otherwise provided in Subsection (d).

20 (c) The interest of a debtor in a security
21 entitlement may be reached by a creditor only by legal process
22 upon the securities intermediary with whom the debtor's
23 securities account is maintained, except as otherwise provided
24 in Subsection (d).

25 (d) The interest of a debtor in a certificated

Underscored material = new
[bracketed material] = delete

1 security for which the certificate is in the possession of a
2 secured party or in an uncertificated security registered in the
3 name of a secured party or a security entitlement maintained in
4 the name of a secured party may be reached by a creditor by
5 legal process upon the secured party.

6 (e) A creditor whose debtor is the owner of a
7 certificated security, uncertificated security or security
8 entitlement is entitled to aid from a court of competent
9 jurisdiction, by injunction or otherwise, in reaching the
10 certificated security, uncertificated security or security
11 entitlement or in satisfying the claim by means allowed at law
12 or in equity in regard to property that cannot readily be
13 reached by other legal process. "

14 Section 17. A new section of the Uniform Commercial Code,
15 Section 55-8-113 NMSA 1978, is enacted to read:

16 "55-8-113. [NEW MATERIAL] STATUTE OF FRAUDS
17 INAPPLICABLE. --A contract or modification of a contract for the
18 sale or purchase of a security is enforceable whether or not
19 there is a writing signed or record authenticated by a party
20 against whom enforcement is sought, even if the contract or
21 modification is not capable of performance within one year of
22 its making. "

23 Section 18. A new section of the Uniform Commercial Code,
24 Section 55-8-114 NMSA 1978, is enacted to read:

25 "55-8-114. [NEW MATERIAL] EVIDENTIARY RULES CONCERNING

Underscored material = new
[bracketed material] = delete

1 CERTIFICATED SECURITIES. --The following rules apply in an action
2 on a certificated security against the issuer:

3 (1) unless specifically denied in the pleadings,
4 each signature on a security certificate or in a necessary
5 indorsement is admitted;

6 (2) if the effectiveness of a signature is put in
7 issue, the burden of establishing effectiveness is on the party
8 claiming under the signature, but the signature is presumed to
9 be genuine or authorized;

10 (3) if signatures on a security certificate are
11 admitted or established, production of the certificate entitles
12 a holder to recover on it unless the defendant establishes a
13 defense or a defect going to the validity of the security; or

14 (4) if it is shown that a defense or defect exists,
15 the plaintiff has the burden of establishing that the plaintiff
16 or some person under whom the plaintiff claims is a person
17 against whom the defense or defect cannot be asserted."

18 Section 19. A new section of the Uniform Commercial Code,
19 Section 55-8-115 NMSA 1978, is enacted to read:

20 "55-8-115. [NEW MATERIAL] SECURITIES INTERMEDIARY AND
21 OTHERS NOT LIABLE TO ADVERSE CLAIMANT. --A securities
22 intermediary that has transferred a financial asset pursuant to
23 an effective entitlement order, or a broker or other agent or
24 bailee that has dealt with a financial asset at the direction of
25 its customer or principal, is not liable to a person having an

1 adverse claim to the financial asset, unless the securities
2 intermediary or broker or other agent or bailee:

3 (1) took the action after it had been served with an
4 injunction, restraining order or other legal process enjoining
5 it from doing so, issued by a court of competent jurisdiction
6 and had a reasonable opportunity to act on the injunction,
7 restraining order or other legal process;

8 (2) acted in collusion with the wrongdoer in
9 violating the rights of the adverse claimant; or

10 (3) in the case of a security certificate that has
11 been stolen, acted with notice of the adverse claim. "

12 Section 20. A new section of the Uniform Commercial Code,
13 Section 55-8-116 NMSA 1978, is enacted to read:

14 "55-8-116. [NEW MATERIAL] SECURITIES INTERMEDIARY AS
15 PURCHASER FOR VALUE. --A securities intermediary that receives a
16 financial asset and establishes a security entitlement to the
17 financial asset in favor of an entitlement holder is a purchaser
18 for value of the financial asset. A securities intermediary
19 that acquires a security entitlement to a financial asset from
20 another securities intermediary acquires the security
21 entitlement for value if the securities intermediary acquiring
22 the security entitlement establishes a security entitlement to
23 the financial asset in favor of an entitlement holder. "

24 Section 21. Section 55-8-201 NMSA 1978 (being Laws 1961,
25 Chapter 96, Section 8-201, as amended) is repealed and a new

Underscored material = new
[bracketed material] = delete

1 section of the Uniform Commercial Code, Section 55-8-201 NMSA
2 1978, is enacted to read:

3 "55-8-201. [NEW MATERIAL] ISSUER. --

4 (a) With respect to an obligation on or a defense to
5 a security, an "issuer" includes a person that:

6 (1) places or authorizes the placing of its
7 name on a security certificate, other than as authenticating
8 trustee, registrar, transfer agent or the like, to evidence a
9 share, participation or other interest in its property or in an
10 enterprise or to evidence its duty to perform an obligation
11 represented by the certificate;

12 (2) creates a share, participation or other
13 interest in its property or in an enterprise, or undertakes an
14 obligation, that is an uncertificated security;

15 (3) directly or indirectly creates a fractional
16 interest in its rights or property, if the fractional interest
17 is represented by a security certificate; or

18 (4) becomes responsible for, or in place of,
19 another person described as an issuer in this section.

20 (b) With respect to an obligation on or defense to a
21 security, a guarantor is an issuer to the extent of its
22 guaranty, whether or not its obligation is noted on a security
23 certificate.

24 (c) With respect to a registration of a transfer,
25 issuer means a person on whose behalf transfer books are

Underscored material = new
[bracketed material] = delete

1 maintained. "

2 Section 22. Section 55-8-202 NMSA 1978 (being Laws 1961,
3 Chapter 96, Section 8-202, as amended) is repealed and a new
4 section of the Uniform Commercial Code, Section 55-8-202 NMSA
5 1978, is enacted to read:

6 "55-8-202. [NEW MATERIAL] ISSUER'S RESPONSIBILITY AND
7 DEFENSES- - NOTICE OF DEFECT OR DEFENSE. - -

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

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

25 (1) a security other than one issued by a

1 government or governmental subdivision, agency or
2 instrumentality, even though issued with a defect going to its
3 validity, is valid in the hands of a purchaser for value and
4 without notice of the particular defect unless the defect
5 involves a violation of a constitutional provision. In that
6 case, the security is valid in the hands of a purchaser for
7 value and without notice of the defect, other than one who takes
8 by original issue; and

9 (2) Paragraph (1) applies to an issuer that is
10 a government or governmental subdivision, agency or
11 instrumentality only if there has been substantial compliance
12 with the legal requirements governing the issue or the issuer
13 has received a substantial consideration for the issue as a
14 whole or for the particular security and a stated purpose of the
15 issue is one for which the issuer has power to borrow money or
16 issue the security.

17 (c) Except as otherwise provided in Section
18 55-8-205 NMSA 1978, lack of genuineness of a certificated
19 security is a complete defense, even against a purchaser for
20 value and without notice.

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

Underscored material = new
[bracketed material] = delete

1 (e) This section does not affect the right of a
2 party to cancel a contract for a security "when, as and if
3 issued" or "when distributed" in the event of a material change
4 in the character of the security that is the subject of the
5 contract or in the plan or arrangement pursuant to which the
6 security is to be issued or distributed.

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

12 Section 23. Section 55-8-203 NMSA 1978 (being Laws 1961,
13 Chapter 96, Section 8-203, as amended) is repealed and a new
14 section of the Uniform Commercial Code, Section 55-8-203 NMSA
15 1978, is enacted to read:

16 "55-8-203. [NEW MATERIAL] STALENESS AS NOTICE OF DEFECT
17 OR DEFENSE. --After an act or event, other than a call that has
18 been revoked, creating a right to immediate performance of the
19 principal obligation represented by a certificated security or
20 setting a date on or after which the security is to be presented
21 or surrendered for redemption or exchange, a purchaser is
22 charged with notice of any defect in its issue or defense of the
23 issuer, if the act or event:

24 (1) requires the payment of money, the delivery of a
25 certificated security, the registration of transfer of an

Underscored material = new
[bracketed material] = delete

1 uncertificated security, or any of them, on presentation or
2 surrender of the security certificate, the money or security is
3 available on the date set for payment or exchange, and the
4 purchaser takes the security more than one year after that date;
5 or

6 (2) is not covered by paragraph (1) and the
7 purchaser takes the security more than two years after the date
8 set for surrender or presentation or the date on which
9 performance became due. "

10 Section 24. Section 55-8-204 NMSA 1978 (being Laws 1961,
11 Chapter 96, Section 8-204, as amended) is repealed and a new
12 section of the Uniform Commercial Code, Section 55-8-204 NMSA
13 1978, is enacted to read:

14 "55-8-204. [NEW MATERIAL] EFFECT OF ISSUER'S RESTRICTION
15 ON TRANSFER. --A restriction on transfer of a security imposed by
16 the issuer, even if otherwise lawful, is ineffective against a
17 person without knowledge of the restriction unless:

18 (1) the security is certificated and the restriction
19 is noted conspicuously on the security certificate; or

20 (2) the security is uncertificated and the
21 registered owner has been notified of the restriction. "

22 Section 25. Section 55-8-205 NMSA 1978 (being Laws 1961,
23 Chapter 96, Section 8-205, as amended) is repealed and a new
24 section of the Uniform Commercial Code, Section 55-8-205 NMSA
25 1978, is enacted to read:

Underscored material = new
[bracketed material] = delete

1 "55-8-205. [NEW MATERIAL] EFFECT OF UNAUTHORIZED
2 SIGNATURE ON SECURITY CERTIFICATE. --An unauthorized signature
3 placed on a security certificate before or in the course of
4 issue is ineffective, but the signature is effective in favor of
5 a purchaser for value of the certificated security if the
6 purchaser is without notice of the lack of authority and the
7 signing has been done by:

8 (1) an authenticating trustee, registrar, transfer
9 agent or other person entrusted by the issuer with the signing
10 of the security certificate or of similar security certificates
11 or the immediate preparation for signing of any of them; or

12 (2) an employee of the issuer or of any of the
13 persons listed in paragraph (1), entrusted with responsible
14 handling of the security certificate. "

15 Section 26. Section 55-8-206 NMSA 1978 (being Laws 1961,
16 Chapter 96, Section 8-206, as amended) is repealed and a new
17 section of the Uniform Commercial Code, Section 55-8-206 NMSA
18 1978, is enacted to read:

19 "55-8-206. [NEW MATERIAL] COMPLETION OR ALTERATION OF
20 SECURITY CERTIFICATE. --

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

24 (1) any person may complete it by filling in
25 the blanks as authorized; and

Underscored material = new
[bracketed material] = delete

1 (2) even if the blanks are incorrectly filled
2 in, the security certificate as completed is enforceable by a
3 purchaser who took it for value and without notice of the
4 incorrectness.

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

8 Section 27. Section 55-8-207 (being Laws 1961, Chapter 96,
9 Section 8-207, as amended) is repealed and a new section of the
10 Uniform Commercial Code, Section 55-8-207 NMSA 1978, is enacted
11 to read:

12 "55-8-207. [NEW MATERIAL] RIGHTS AND DUTIES OF ISSUER
13 WITH RESPECT TO REGISTERED OWNERS. --

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

21 (b) Chapter 55, Article 8 NMSA 1978 does not affect
22 the liability of the registered owner of a security for a call,
23 assessment or the like. "

24 Section 28. Section 55-8-208 NMSA 1978 (being Laws 1961,
25 Chapter 96, Section 8-208, as amended) is repealed and a new

Underscored material = new
[bracketed material] = delete

1 section of the Uniform Commercial Code, Section 55-8-208 NMSA
2 1978, is enacted to read:

3 "55-8-208. [NEW MATERIAL] EFFECT OF SIGNATURE OF
4 AUTHENTICATING TRUSTEE, REGISTRAR OR TRANSFER AGENT. --

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

9 (1) the certificate is genuine;

10 (2) the person's own participation in the issue
11 of the security is within the person's capacity and within the
12 scope of the authority received by the person from the issuer;
13 and

14 (3) the person has reasonable grounds to
15 believe that the certificated security is in the form and within
16 the amount the issuer is authorized to issue.

17 (b) Unless otherwise agreed, a person signing under
18 subsection (a) does not assume responsibility for the validity
19 of the security in other respects. "

20 Section 29. A new section of the Uniform Commercial Code,
21 Section 55-8-209 NMSA 1978, is enacted to read:

22 "55-8-209. [NEW MATERIAL] ISSUER'S LIEN. --A lien in favor
23 of an issuer upon a certificated security is valid against a
24 purchaser only if the right of the issuer to the lien is noted
25 conspicuously on the security certificate. "

Underscored material = new
[bracketed material] = delete

1 Section 30. A new section of the Uniform Commercial Code,
2 Section 55-8-210 NMSA 1978, is enacted to read:

3 "55-8-210. [NEW MATERIAL] OVERISSUE. --

4 (a) In this section, "overissue" means the issue of
5 securities in excess of the amount the issuer has corporate
6 power to issue, but an overissue does not occur if appropriate
7 action has cured the overissue.

8 (b) Except as otherwise provided in Subsections (c)
9 and (d), the provisions of Chapter 55, Article 8 NMSA 1978 which
10 validate a security or compel its issue or reissue do not apply
11 to the extent that validation, issue or reissue would result in
12 overissue.

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

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

24 Section 31. Section 55-8-301 NMSA 1978 (being Laws 1961,
25 Chapter 96, Section 8-301, as amended) is repealed and a new

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Underscored material = new
[bracketed material] = delete

1 section of the Uniform Commercial Code, Section 55-8-301 NMSA
2 1978, is enacted to read:

3 "55-8-301. [NEW MATERIAL] DELIVERY. --

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

6 (1) the purchaser acquires possession of the
7 security certificate;

8 (2) another person, other than a securities
9 intermediary, either acquires possession of the security
10 certificate on behalf of the purchaser or, having previously
11 acquired possession of the certificate, acknowledges that it
12 holds for the purchaser; or

13 (3) a securities intermediary acting on behalf
14 of the purchaser acquires possession of the security
15 certificate, only if the certificate is in registered form and
16 has been specially indorsed to the purchaser by an effective
17 indorsement.

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

20 (1) the issuer registers the purchaser as the
21 registered owner, upon original issue or registration of
22 transfer; or

23 (2) another person, other than a securities
24 intermediary, either becomes the registered owner of the
25 uncertificated security on behalf of the purchaser or, having

Underscored material = new
[bracketed material] = delete

1 previously become the registered owner, acknowledges that it
2 holds for the purchaser. "

3 Section 32. Section 55-8-302 NMSA 1978 (being Laws 1961,
4 Chapter 96, Section 8-302, as amended) is repealed and a new
5 section of the Uniform Commercial Code, Section 55-8-302 NMSA
6 1978, is enacted to read:

7 "55-8-302. [NEW MATERIAL] RIGHTS OF PURCHASER. --

8 (a) Except as otherwise provided in Subsections (b)
9 and (c), upon delivery of a certificated or uncertificated
10 security to a purchaser, the purchaser acquires all rights in
11 the security that the transferor had or had power to transfer.

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

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

17 Section 33. Section 55-8-303 NMSA 1978 (being Laws 1961,
18 Chapter 96, Section 8-303, as amended) is repealed and a new
19 section of the Uniform Commercial Code, Section 55-8-303 NMSA
20 1978, is enacted to read:

21 "55-8-303. [NEW MATERIAL] PROTECTED PURCHASER. --

22 (a) "Protected purchaser" means a purchaser of a
23 certificated or uncertificated security, or of an interest
24 therein, who:

25 (1) gives value;

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1 (2) does not have notice of any adverse claim
2 to the security; and

3 (3) obtains control of the certificated or
4 uncertificated security.

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

8 Section 34. Section 55-8-304 NMSA 1978 (being Laws 1961,
9 Chapter 96, Section 8-304, as amended) is repealed and a new
10 section of the Uniform Commercial Code, Section 55-8-304 NMSA
11 1978, is enacted to read:

12 "55-8-304. [NEW MATERIAL] INDORSEMENT. --

13 (a) An indorsement may be in blank or special. An
14 indorsement in blank includes an indorsement to bearer. A
15 special indorsement specifies to whom a security is to be
16 transferred or who has power to transfer it. A holder may
17 convert a blank indorsement to a special indorsement.

18 (b) An indorsement purporting to be only of part of
19 a security certificate representing units intended by the issuer
20 to be separately transferable is effective to the extent of the
21 indorsement.

22 (c) An indorsement, whether special or in blank,
23 does not constitute a transfer until delivery of the certificate
24 on which it appears or, if the indorsement is on a separate
25 document, until delivery of both the document and the

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1 certificate.

2 (d) If a security certificate in registered form has
3 been delivered to a purchaser without a necessary indorsement,
4 the purchaser may become a protected purchaser only when the
5 indorsement is supplied. However, against a transferor, a
6 transfer is complete upon delivery and the purchaser has a
7 specifically enforceable right to have any necessary indorsement
8 supplied.

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

13 (f) Unless otherwise agreed, a person making an
14 indorsement assumes only the obligations provided in Section 55-
15 8-108 NMSA 1978 and not an obligation that the security will be
16 honored by the issuer. "

17 Section 35. Section 55-8-305 NMSA 1978 (being Laws 1961,
18 Chapter 96, Section 8-305, as amended) is repealed and a new
19 section of the Uniform Commercial Code, Section 55-8-305 NMSA
20 1978, is enacted to read:

21 "55-8-305. [NEW MATERIAL] INSTRUCTION. --

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

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1 (b) Unless otherwise agreed, a person initiating an
2 instruction assumes only the obligations imposed by Section 55-
3 8-108 NMSA 1978 and not an obligation that the security will be
4 honored by the issuer. "

5 Section 36. Section 55-8-306 NMSA 1978 (being Laws 1961,
6 Chapter 96, Section 8-306, as amended) is repealed and a new
7 section of the Uniform Commercial Code, Section 55-8-306 NMSA
8 1978, is enacted to read:

9 "55-8-306. [NEW MATERIAL] EFFECT OF GUARANTEEING
10 SIGNATURE, INDORSEMENT OR INSTRUCTION. --

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

- 14 (1) the signature was genuine;
15 (2) the signer was an appropriate person to
16 indorse or, if the signature is by an agent, the agent had
17 actual authority to act on behalf of the appropriate person; and
18 (3) the signer had legal capacity to sign.

19 (b) A person who guarantees a signature of the
20 originator of an instruction warrants that at the time of
21 signing:

- 22 (1) the signature was genuine;
23 (2) the signer was an appropriate person to
24 originate the instruction or, if the signature is by an agent,
25 the agent had actual authority to act on behalf of the

1 appropriate person, if the person specified in the instruction
2 as the registered owner was, in fact, the registered owner, as
3 to which fact the signature guarantor does not make a warranty;
4 and

5 (3) the signer had legal capacity to sign.

6 (c) A person who specially guarantees the signature
7 of an originator of an instruction makes the warranties of a
8 signature guarantor under Subsection (b) and also warrants that
9 at the time the instruction is presented to the issuer:

10 (1) the person specified in the instruction as
11 the registered owner of the uncertificated security will be the
12 registered owner; and

13 (2) the transfer of the uncertificated security
14 requested in the instruction will be registered by the issuer
15 free from all liens, security interests, restrictions and claims
16 other than those specified in the instruction.

17 (d) A guarantor under Subsections (a) and (b) or a
18 special guarantor under Subsection (c) does not otherwise
19 warrant the rightfulness of the transfer.

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

24 (f) A person who guarantees an instruction
25 requesting the transfer of an uncertificated security makes the

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1 warranties of a special signature guarantor under Subsection (c)
2 and also warrants the rightfulness of the transfer in all
3 respects.

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

7 (h) The warranties under this section are made to a
8 person taking or dealing with the security in reliance on the
9 guaranty, and the guarantor is liable to the person for loss
10 resulting from their breach. An indorser or originator of an
11 instruction whose signature, indorsement or instruction has been
12 guaranteed is liable to a guarantor for any loss suffered by the
13 guarantor as a result of breach of the warranties of the
14 guarantor. "

15 Section 37. Section 55-8-307 NMSA 1978 (being Laws 1961,
16 Chapter 96, Section 8-307, as amended) is repealed and a new
17 section of the Uniform Commercial Code, Section 55-8-307 NMSA
18 1978, is enacted to read:

19 "55-8-307. [NEW MATERIAL] PURCHASER'S RIGHT TO REQUISITES
20 FOR REGISTRATION OF TRANSFER. -- Unless otherwise agreed, the
21 transferor of a security on due demand shall supply the
22 purchaser with proof of authority to transfer or with any other
23 requisite necessary to obtain registration of the transfer of
24 the security, but if the transfer is not for value, a transferor
25 need not comply unless the purchaser pays the necessary

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1 expenses. If the transferor fails within a reasonable time to
2 comply with the demand, the purchaser may reject or rescind the
3 transfer. "

4 Section 38. Section 55-8-401 NMSA 1978 (being Laws 1961,
5 Chapter 96, Section 8-401, as amended) is repealed and a new
6 section of the Uniform Commercial Code, Section 55-8-401 NMSA
7 1978, is enacted to read:

8 "55-8-401. [NEW MATERIAL] DUTY OF ISSUER TO REGISTER
9 TRANSFER. --

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

15 (1) under the terms of the security the person
16 seeking registration of transfer is eligible to have the
17 security registered in its name;

18 (2) the indorsement or instruction is made by
19 the appropriate person or by an agent who has actual authority
20 to act on behalf of the appropriate person;

21 (3) reasonable assurance is given that the
22 indorsement or instruction is genuine and authorized (Section
23 55-8-402 NMSA 1978);

24 (4) any applicable law relating to the
25 collection of taxes has been complied with;

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1 (5) the transfer does not violate any
2 restriction on transfer imposed by the issuer in accordance with
3 Section 55-8-204 NMSA 1978;

4 (6) a demand that the issuer not register
5 transfer has not become effective under Section 55-8-403 NMSA
6 1978, or the issuer has complied with Section 55-8-403(b) NMSA
7 1978 but no legal process or indemnity bond is obtained as
8 provided in Section 55-8-403(d) NMSA 1978; and

9 (7) the transfer is in fact rightful or is to a
10 protected purchaser.

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

17 Section 39. Section 55-8-402 NMSA 1978 (being Laws 1961,
18 Chapter 96, Section 8-402, as amended) is repealed and a new
19 section of the Uniform Commercial Code, Section 55-8-402 NMSA
20 1978, is enacted to read:

21 "55-8-402. [NEW MATERIAL] ASSURANCE THAT INDORSEMENT OR
22 INSTRUCTION IS EFFECTIVE. --

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

1 (1) in all cases, a guaranty of the signature
2 of the person making an indorsement or originating an
3 instruction including, in the case of an instruction, reasonable
4 assurance of identity;

5 (2) if the indorsement is made or the
6 instruction is originated by an agent, appropriate assurance of
7 actual authority to sign;

8 (3) if the indorsement is made or the
9 instruction is originated by a fiduciary pursuant to Section
10 55-8-107(a)(4) or (a)(5) NMSA 1978, appropriate evidence of
11 appointment or incumbency;

12 (4) if there is more than one fiduciary,
13 reasonable assurance that all who are required to sign have done
14 so; and

15 (5) if the indorsement is made or the
16 instruction is originated by a person not covered by another
17 provision of this subsection, assurance appropriate to the case
18 corresponding as nearly as may be to the provisions of this
19 subsection.

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

22 (c) In this section:

23 (1) "guaranty of the signature" means a
24 guaranty signed by or on behalf of a person reasonably believed
25 by the issuer to be responsible. An issuer may adopt standards

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1 with respect to responsibility if they are not manifestly
2 unreasonable; and

3 (2) "appropriate evidence of appointment or
4 incumbency" means:

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

10 (ii) in any other case, a copy of a
11 document showing the appointment or a certificate issued by or
12 on behalf of a person reasonably believed by an issuer to be
13 responsible or, in the absence of that document or certificate,
14 other evidence the issuer reasonably considered appropriate. "

15 Section 40. Section 55-8-403 NMSA 1978 (being Laws 1961,
16 Chapter 96, Section 8-403, as amended) is repealed and a new
17 section of the Uniform Commercial Code, Section 55-8-403 NMSA
18 1978, is enacted to read:

19 "55-8-403. [NEW MATERIAL] DEMAND THAT ISSUER NOT REGISTER
20 TRANSFER. --

21 (a) A person who is an appropriate person to make an
22 indorsement or originate an instruction may demand that the
23 issuer not register transfer of a security by communicating to
24 the issuer a notification that identifies the registered owner
25 and the issue of which the security is a part and provides an

1 address for communications directed to the person making the
2 demand. The demand is effective only if it is received by the
3 issuer at a time and in a manner affording the issuer reasonable
4 opportunity to act on it.

5 (b) If a certificated security in registered form is
6 presented to an issuer with a request to register transfer or an
7 instruction is presented to an issuer with a request to register
8 transfer of an uncertificated security after a demand that the
9 issuer not register transfer has become effective, the issuer
10 shall promptly communicate to (i) the person who initiated the
11 demand at the address provided in the demand and (ii) the person
12 who presented the security for registration of transfer or
13 initiated the instruction requesting registration of transfer a
14 notification stating that:

15 (1) the certificated security has been
16 presented for registration of transfer or instruction for
17 registration of transfer of uncertificated security has been
18 received;

19 (2) a demand that the issuer not register
20 transfer had previously been received; and

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

25 (c) The period described in Subsection (b)(3) may

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1 not exceed 30 days after the date of communication of the
2 notification. A shorter period may be specified by the issuer
3 if it is not manifestly unreasonable.

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

10 (1) obtain an appropriate restraining order,
11 injunction or other process from a court of competent
12 jurisdiction enjoining the issuer from registering the transfer;
13 or

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

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

22 Section 41. Section 55-8-404 NMSA 1978 (being Laws 1961,
23 Chapter 96, Section 8-404, as amended) is repealed and a new
24 section of the Uniform Commercial Code, Section 55-8-404 NMSA
25 1978, is enacted to read:

1 "55-8-404. [~~NEW MATERIAL~~] WRONGFUL REGISTRATION. --

2 (a) Except as otherwise provided in Section
3 55-8-406 NMSA 1978, an issuer is liable for wrongful
4 registration of transfer if the issuer has registered a transfer
5 of a security to a person not entitled to it and the transfer
6 was registered:

7 (1) pursuant to an ineffective indorsement or
8 instruction;

9 (2) after a demand that the issuer not register
10 transfer became effective under Section 55-8-403(a) NMSA 1978,
11 and the issuer did not comply with Section 55-8-403(b) NMSA
12 1978;

13 (3) after the issuer had been served with an
14 injunction, restraining order or other legal process enjoining
15 it from registering the transfer, issued by a court of competent
16 jurisdiction, and the issuer had a reasonable opportunity to act
17 on the injunction, restraining order or other legal process; or

18 (4) by an issuer acting in collusion with the
19 wrongdoer.

20 (b) An issuer that is liable for wrongful
21 registration of transfer under subsection (a) on demand shall
22 provide the person entitled to the security with a like
23 certificated or uncertificated security and any payments or
24 distributions that the person did not receive as a result of the
25 wrongful registration. If an overissue would result, the

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1 issuer's liability to provide the person with a like security is
2 governed by Section 55-8-210 NMSA 1978.

3 (c) Except as otherwise provided in Subsection (a)
4 or in a law relating to the collection of taxes, an issuer is
5 not liable to an owner or other person suffering loss as a
6 result of the registration of a transfer of a security if
7 registration was made pursuant to an effective indorsement or
8 instruction."

9 Section 42. Section 55-8-405 NMSA 1978 (being Laws 1961,
10 Chapter 96, Section 8-405, as amended) is repealed and a new
11 section of the Uniform Commercial Code, Section 55-8-405 NMSA
12 1978, is enacted to read:

13 "55-8-405. [NEW MATERIAL] REPLACEMENT OF LOST, DESTROYED
14 OR WRONGFULLY TAKEN SECURITY CERTIFICATE. --

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

19 (1) so requests before the issuer has notice
20 that the certificate has been acquired by a protected purchaser;

21 (2) files with the issuer a sufficient
22 indemnity bond; and

23 (3) satisfies other reasonable requirements
24 imposed by the issuer.

25 (b) If, after the issue of a new security

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1 certificate, a protected purchaser of the original certificate
2 presents it for registration of transfer, the issuer shall
3 register the transfer unless an overissue would result. In that
4 case, the issuer's liability is governed by Section
5 55-8-210 NMSA 1978. In addition to any rights on the indemnity
6 bond, an issuer may recover the new certificate from a person to
7 whom it was issued or any person taking under that person,
8 except a protected purchaser. "

9 Section 43. Section 55-8-406 NMSA 1978 (being Laws 1961,
10 Chapter 96, Section 8-406, as amended) is repealed and a new
11 section of the Uniform Commercial Code, Section 55-8-406 NMSA
12 1978, is enacted to read:

13 "55-8-406. [NEW MATERIAL] OBLIGATION TO NOTIFY ISSUER OF
14 LOST, DESTROYED OR WRONGFULLY TAKEN SECURITY
15 CERTIFICATE. --If a security certificate has been lost,
16 apparently destroyed or wrongfully taken, and the owner fails to
17 notify the issuer of that fact within a reasonable time after
18 the owner has notice of it and the issuer registers a transfer
19 of the security before receiving notification, the owner may not
20 assert against the issuer a claim for registering the transfer
21 under Section 55-8-404 NMSA 1978 or a claim to a new security
22 certificate under Section 55-8-405 NMSA 1978. "

23 Section 44. Section 55-8-407 NMSA 1978 (being Laws 1987,
24 Chapter 248, Section 45) is repealed and a new section of the
25 Uniform Commercial Code, Section 55-8-407 NMSA 1978, is enacted

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1 to read:

2 "55-8-407. [NEW MATERIAL] AUTHENTICATING TRUSTEE,
3 TRANSFER AGENT AND REGISTRAR. -- A person acting as authenticating
4 trustee, transfer agent, registrar or other agent for an issuer
5 in the registration of a transfer of its securities, in the
6 issue of new security certificates or uncertificated securities
7 or in the cancellation of surrendered security certificates has
8 the same obligation to the holder or owner of a certificated or
9 uncertificated security with regard to the particular functions
10 performed as the issuer has in regard to those functions."

11 Section 45. A new section of the Uniform Commercial Code,
12 Section 55-8-501 NMSA 1978, is enacted to read:

13 "55-8-501. [NEW MATERIAL] SECURITIES ACCOUNT--
14 ACQUISITION OF SECURITY ENTITLEMENT FROM SECURITIES
15 INTERMEDIARY. --

16 (a) "Securities account" means an account to which a
17 financial asset is or may be credited in accordance with an
18 agreement under which the person maintaining the account
19 undertakes to treat the person for whom the account is
20 maintained as entitled to exercise the rights that comprise the
21 financial asset.

22 (b) Except as otherwise provided in Subsections (d)
23 and (e), a person acquires a security entitlement if a
24 securities intermediary:

25 (1) indicates by book entry that a financial

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1 asset has been credited to the person's securities account;

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

6 (3) becomes obligated under other law,
7 regulation or rule to credit a financial asset to the person's
8 securities account.

9 (c) If a condition of subsection (b) has been met, a
10 person has a security entitlement even though the securities
11 intermediary does not itself hold the financial asset.

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

19 (e) Issuance of a security is not establishment of a
20 security entitlement. "

21 Section 46. A new section of the Uniform Commercial Code,
22 Section 55-8-502 NMSA 1978, is enacted to read:

23 "55-8-502. [NEW MATERIAL] ASSERTION OF ADVERSE CLAIM
24 AGAINST ENTITLEMENT HOLDER. -- An action based on an adverse claim
25 to a financial asset, whether framed in conversion, replevin,

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1 constructive trust, equitable lien or other theory, may not be
2 asserted against a person who acquires a security entitlement
3 under Section 55-8-501 NMSA 1978 for value and without notice of
4 the adverse claim "

5 Section 47. A new section of the Uniform Commercial Code,
6 Section 55-8-503 NMSA 1978, is enacted to read:

7 "55-8-503. [NEW MATERIAL] PROPERTY INTEREST OF
8 ENTITLEMENT HOLDER IN FINANCIAL ASSET HELD BY SECURITIES
9 INTERMEDIARY. --

10 (a) To the extent necessary for a securities
11 intermediary to satisfy all security entitlements with respect
12 to a particular financial asset, all interests in that financial
13 asset held by the securities intermediary are held by the
14 securities intermediary for the entitlement holders, are not
15 property of the securities intermediary and are not subject to
16 claims of creditors of the securities intermediary, except as
17 otherwise provided in Section 55-8-511 NMSA 1978.

18 (b) An entitlement holder's property interest with
19 respect to a particular financial asset under Subsection (a) is
20 a pro rata property interest in all interests in that financial
21 asset held by the securities intermediary, without regard to the
22 time the entitlement holder acquired the security entitlement or
23 the time the securities intermediary acquired the interest in
24 that financial asset.

25 (c) An entitlement holder's property interest with

1 respect to a particular financial asset under Subsection (a) may
2 be enforced against the securities intermediary only by exercise
3 of the entitlement holder's rights under Sections
4 55-8-505 through 55-8-508 NMSA 1978.

5 (d) An entitlement holder's property interest with
6 respect to a particular financial asset under Subsection (a) may
7 be enforced against a purchaser of the financial asset or
8 interest therein only if:

9 (1) insolvency proceedings have been initiated
10 by or against the securities intermediary;

11 (2) the securities intermediary does not have
12 sufficient interests in the financial asset to satisfy the
13 security entitlements of all of its entitlement holders to that
14 financial asset;

15 (3) the securities intermediary violated its
16 obligations under Section 55-8-504 NMSA 1978 by transferring the
17 financial asset or interest therein to the purchaser; and

18 (4) the purchaser is not protected under
19 Subsection (e). The trustee or other liquidator, acting on
20 behalf of all entitlement holders having security entitlements
21 with respect to a particular financial asset, may recover the
22 financial asset or interest therein from the purchaser. If the
23 trustee or other liquidator elects not to pursue that right, an
24 entitlement holder whose security entitlement remains
25 unsatisfied has the right to recover its interest in the

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1 financial asset from the purchaser.

2 (e) An action based on the entitlement holder's
3 property interest with respect to a particular financial asset
4 under Subsection (a), whether framed in conversion, replevin,
5 constructive trust, equitable lien or other theory, may not be
6 asserted against any purchaser of a financial asset or interest
7 therein who gives value, obtains control and does not act in
8 collusion with the securities intermediary in violating the
9 securities intermediary's obligations under Section
10 55-8-504 NMSA 1978. "

11 Section 48. A new section of the Uniform Commercial Code,
12 Section 55-8-504 NMSA 1978, is enacted to read:

13 "55-8-504. [NEW MATERIAL] DUTY OF SECURITIES INTERMEDIARY
14 TO MAINTAIN FINANCIAL ASSET. --

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

22 (b) Except to the extent otherwise agreed by its
23 entitlement holder, a securities intermediary may not grant any
24 security interests in a financial asset it is obligated to
25 maintain pursuant to Subsection (a).

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1 (c) A securities intermediary satisfies the duty in
2 Subsection (a) if:

3 (1) the securities intermediary acts with
4 respect to the duty as agreed upon by the entitlement holder and
5 the securities intermediary; or

6 (2) in the absence of agreement, the securities
7 intermediary exercises due care in accordance with reasonable
8 commercial standards to obtain and maintain the financial asset.

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

13 Section 49. A new section of the Uniform Commercial Code,
14 Section 55-8-505 NMSA 1978, is enacted to read:

15 "55-8-505. [NEW MATERIAL] DUTY OF SECURITIES INTERMEDIARY
16 WITH RESPECT TO PAYMENTS AND DISTRIBUTIONS. --

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

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

24 (2) in the absence of agreement, the securities
25 intermediary exercises due care in accordance with reasonable

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1 commercial standards to attempt to obtain the payment or
2 distribution.

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

7 Section 50. A new section of the Uniform Commercial Code,
8 Section 55-8-506 NMSA 1978, is enacted to read:

9 "55-8-506. [NEW MATERIAL] DUTY OF SECURITIES INTERMEDIARY
10 TO EXERCISE RIGHTS AS DIRECTED BY ENTITLEMENT HOLDER. -- A

11 securities intermediary shall exercise rights with respect to a
12 financial asset if directed to do so by an entitlement holder.

13 A securities intermediary satisfies the duty if:

14 (1) the securities intermediary acts with
15 respect to the duty as agreed upon by the entitlement holder and
16 the securities intermediary; or

17 (2) in the absence of agreement, the securities
18 intermediary either places the entitlement holder in a position
19 to exercise the rights directly or exercises due care in
20 accordance with reasonable commercial standards to follow the
21 direction of the entitlement holder. "

22 Section 51. A new section of the Uniform Commercial Code,
23 Section 55-8-507 NMSA 1978, is enacted to read:

24 "55-8-507. [NEW MATERIAL] DUTY OF SECURITIES INTERMEDIARY
25 TO COMPLY WITH ENTITLEMENT ORDER. --

Underscored material = new
[bracketed material] = delete

1 (a) A securities intermediary shall comply with an
2 entitlement order if the entitlement order is originated by the
3 appropriate person, the securities intermediary has had
4 reasonable opportunity to assure itself that the entitlement
5 order is genuine and authorized, and the securities intermediary
6 has had reasonable opportunity to comply with the entitlement
7 order. A securities intermediary satisfies the duty if:

8 (1) the securities intermediary acts with
9 respect to the duty as agreed upon by the entitlement holder and
10 the securities intermediary; or

11 (2) in the absence of agreement, the securities
12 intermediary exercises due care in accordance with reasonable
13 commercial standards to comply with the entitlement order.

14 (b) If a securities intermediary transfers a
15 financial asset pursuant to an ineffective entitlement order,
16 the securities intermediary shall reestablish a security
17 entitlement in favor of the person entitled to it and pay or
18 credit any payments or distributions that the person did not
19 receive as a result of the wrongful transfer. If the securities
20 intermediary does not reestablish a security entitlement, the
21 securities intermediary is liable to the entitlement holder for
22 damages. "

23 Section 52. A new section of the Uniform Commercial Code,
24 Section 55-8-508 NMSA 1978, is enacted to read:

25 "55-8-508. [NEW MATERIAL] DUTY OF SECURITIES INTERMEDIARY

Underscored material = new
[bracketed material] = delete

1 TO CHANGE ENTITLEMENT HOLDER' S POSITION TO OTHER FORM OF
2 SECURITY HOLDING. -- A securities intermediary shall act at the
3 direction of an entitlement holder to change a security
4 entitlement into another available form of holding for which the
5 entitlement holder is eligible or to cause the financial asset
6 to be transferred to a securities account of the entitlement
7 holder with another securities intermediary. A securities
8 intermediary satisfies the duty if:

9 (1) the securities intermediary acts as agreed upon
10 by the entitlement holder and the securities intermediary; or

11 (2) in the absence of agreement, the securities
12 intermediary exercises due care in accordance with reasonable
13 commercial standards to follow the direction of the entitlement
14 holder. "

15 Section 53. A new section of the Uniform Commercial Code,
16 Section 55-8-509 NMSA 1978, is enacted to read:

17 "55-8-509. [NEW MATERIAL] SPECIFICATION OF DUTIES OF
18 SECURITIES INTERMEDIARY BY OTHER STATUTE OR REGULATION-- MANNER
19 OF PERFORMANCE OF DUTIES OF SECURITIES INTERMEDIARY AND EXERCISE
20 OF RIGHTS OF ENTITLEMENT HOLDER. --

21 (a) If the substance of a duty imposed upon a
22 securities intermediary by Sections 55-8-504 through 55-8-508
23 NMSA 1978 is the subject of other statute, regulation or rule,
24 compliance with that statute, regulation or rule satisfies the
25 duty.

Underscored material = new
[bracketed material] = delete

1 (b) To the extent that specific standards for the
2 performance of the duties of a securities intermediary or the
3 exercise of the rights of an entitlement holder are not
4 specified by other statute, regulation or rule or by agreement
5 between the securities intermediary and entitlement holder, the
6 securities intermediary shall perform its duties and the
7 entitlement holder shall exercise its rights in a commercially
8 reasonable manner.

9 (c) The obligation of a securities intermediary to
10 perform the duties imposed by Sections 55-8-504 through
11 55-8-508 NMSA 1978 is subject to:

12 (1) rights of the securities intermediary
13 arising out of a security interest under a security agreement
14 with the entitlement holder or otherwise; and

15 (2) rights of the securities intermediary under
16 other law, regulation, rule, or agreement to withhold
17 performance of its duties as a result of unfulfilled obligations
18 of the entitlement holder to the securities intermediary.

19 (d) Sections 55-8-504 through 55-8-508 NMSA 1978 do
20 not require a securities intermediary to take any action that is
21 prohibited by other statute, regulation, or rule."

22 Section 54. A new section of the Uniform Commercial Code,
23 Section 55-8-510 NMSA 1978, is enacted to read:

24 "55-8-510. [NEW MATERIAL] RIGHTS OF PURCHASER OF SECURITY
25 ENTITLEMENT FROM ENTITLEMENT HOLDER. --

Underscored material = new
[bracketed material] = delete

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

8 (b) If an adverse claim could not have been asserted
9 against an entitlement holder under Section 55-8-502 NMSA 1978,
10 the adverse claim cannot be asserted against a person who
11 purchases a security entitlement, or an interest therein, from
12 the entitlement holder.

13 (c) In a case not covered by the priority rules in
14 Chapter 55, Article 9 NMSA 1978, a purchaser for value of a
15 security entitlement, or an interest therein, who obtains
16 control has priority over a purchaser of a security entitlement,
17 or an interest therein, who does not obtain control. Purchasers
18 who have control rank equally, except that a securities
19 intermediary as purchaser has priority over a conflicting
20 purchaser who has control unless otherwise agreed by the
21 securities intermediary. "

22 Section 55. A new section of the Uniform Commercial Code,
23 Section 55-8-511 NMSA 1978, is enacted to read:

24 "55-8-511. [NEW MATERIAL] PRIORITY AMONG SECURITY
25 INTERESTS AND ENTITLEMENT HOLDERS. --

Underscored material = new
[bracketed material] = delete

1 (a) Except as otherwise provided in Subsections (b)
2 and (c), if a securities intermediary does not have sufficient
3 interests in a particular financial asset to satisfy both its
4 obligations to entitlement holders who have security
5 entitlements to that financial asset and its obligation to a
6 creditor of the securities intermediary who has a security
7 interest in that financial asset, the claims of entitlement
8 holders, other than the creditor, have priority over the claim
9 of the creditor.

10 (b) A claim of a creditor of a securities
11 intermediary who has a security interest in a financial asset
12 held by a securities intermediary has priority over claims of
13 the securities intermediary's entitlement holders who have
14 security entitlements with respect to that financial asset if
15 the creditor has control over the financial asset.

16 (c) If a clearing corporation does not have
17 sufficient financial assets to satisfy both its obligations to
18 entitlement holders who have security entitlements with respect
19 to a financial asset and its obligation to a creditor of the
20 clearing corporation who has a security interest in that
21 financial asset, the claim of the creditor has priority over the
22 claims of entitlement holders. "

23 Section 56. Section 55-9-103 NMSA 1978 (being Laws 1961,
24 Chapter 96, Section 9-103, as amended) is amended to read:

25 "55-9-103. PERFECTION OF SECURITY INTERESTS IN MULTIPLE

Underscored material = new
[bracketed material] = delete

1 STATE TRANSACTIONS. --

2 (1) Documents, instruments and ordinary goods.

3 (a) This subsection applies to documents and
4 instruments and to goods other than those covered by a
5 certificate of title described in Subsection (2) of this
6 section, mobile goods described in Subsection (3) of this
7 section and minerals described in Subsection (5) of this
8 section.

9 (b) Except as otherwise provided in this
10 subsection, perfection and the effect of perfection or non-
11 perfection of a security interest in collateral are governed by
12 the law of the jurisdiction where the collateral is when the
13 last event occurs on which is based the assertion that the
14 security interest is perfected or unperfected.

15 (c) If the parties to a transaction creating a
16 purchase money security interest in goods in one jurisdiction
17 understand at the time that the security interest attaches that
18 the goods will be kept in another jurisdiction, then the law of
19 the other jurisdiction governs the perfection and the effect of
20 perfection or non-perfection of the security interest from the
21 time it attaches until thirty days after the debtor receives
22 possession of the goods and thereafter if the goods are taken to
23 the other jurisdiction before the end of the thirty-day period.

24 (d) When collateral is brought into and kept in
25 this state while subject to a security interest perfected under

Underscored material = new
[bracketed material] = delete

1 the law of the jurisdiction from which the collateral was
2 removed, the security interest remains perfected, but if action
3 is required by Sections 55-9-301 through 55-9-318 NMSA 1978 to
4 perfect the security interest:

5 (i) if the action is not taken before the
6 expiration of the period of perfection in the other jurisdiction
7 or the end of four months after the collateral is brought into
8 this state, whichever period first expires, the security
9 interest becomes unperfected at the end of that period and is
10 thereafter deemed to have been unperfected as against a person
11 who became a purchaser after removal;

12 (ii) if the action is taken before the
13 expiration of the period specified in Subparagraph (i) of this
14 paragraph, the security interest continues perfected thereafter;
15 or

16 (iii) for the purpose of priority over a
17 buyer of consumer goods (Subsection (2) of Section 55-9-307 NMSA
18 1978), the period of the effectiveness of a filing in the
19 jurisdiction from which the collateral is removed is governed by
20 the rules with respect to perfection in Subparagraphs (i) and
21 (ii) of this paragraph.

22 (2) Certificate of title.

23 (a) This subsection applies to goods covered by
24 a certificate of title issued under a statute of this state or
25 of another jurisdiction under the law of which indication of a

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[bracketed material] = delete

1 security interest on the certificate is required as a condition
2 of perfection.

3 (b) Except as otherwise provided in this
4 subsection, perfection and the effect of perfection or non-
5 perfection of the security interest are governed by the law
6 (including the conflict of laws rules) of the jurisdiction
7 issuing the certificate until four months after the goods are
8 removed from that jurisdiction and thereafter until the goods
9 are registered in another jurisdiction, but in any event not
10 beyond surrender of the certificate. After the expiration of
11 that period, the goods are not covered by the certificate of
12 title within the meaning of this section.

13 (c) Except with respect to the rights of a
14 buyer described in the next paragraph, a security interest,
15 perfected in another jurisdiction otherwise than by notation on
16 a certificate of title, in goods brought into this state and
17 thereafter covered by a certificate of title issued by this
18 state is subject to the rules stated in Paragraph (d) of
19 Subsection (1) of this section.

20 (d) If goods are brought into this state while
21 a security interest therein is perfected in any manner under the
22 law of the jurisdiction from which the goods are removed and a
23 certificate of title is issued by this state and the certificate
24 does not show that the goods are subject to the security
25 interest or that they may be subject to security interests not

1 shown on the certificate, the security interest is subordinate
2 to the rights of a buyer of the goods who is not in the business
3 of selling goods of that kind to the extent that he gives value
4 and receives delivery of the goods after issuance of the
5 certificate and without knowledge of the security interest.

6 (3) Accounts, general intangibles and mobile goods.

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

18 (b) The law (including the conflict of laws
19 rules) of the jurisdiction in which the debtor is located
20 governs the perfection and the effect of perfection or non-
21 perfection of the security interest.

22 (c) If, however, the debtor is located in a
23 jurisdiction which is not a part of the United States and which
24 does not provide for perfection of the security interest by
25 filing or recording in that jurisdiction, the law of the

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1 jurisdiction in the United States in which the debtor has its
2 major executive office in the United States governs the
3 perfection and the effect of perfection or non-perfection of the
4 security interest through filing. In the alternative, if the
5 debtor is located in a jurisdiction which is not a part of the
6 United States or Canada and the collateral is accounts or
7 general intangibles for money due or to become due, the security
8 interest may be perfected by notification to the accounts
9 debtor. As used in this paragraph, "United States" includes its
10 territories and possessions and the Commonwealth of Puerto Rico.

11 (d) A debtor shall be deemed located at his
12 place of business if he has one, at his chief executive office
13 if he has more than one place of business, otherwise at his
14 residence. If, however, the debtor is a foreign air carrier
15 under the Federal Aviation Act of 1958, as amended, it shall be
16 deemed located at the designated office of the agent upon whom
17 service of process may be made on behalf of the foreign air
18 carrier.

19 (e) A security interest perfected under the law
20 of the jurisdiction of the location of the debtor is perfected
21 until the expiration of four months after a change of the
22 debtor's location to another jurisdiction or until perfection
23 would have ceased by the law of the first jurisdiction,
24 whichever period first expires. Unless perfected in the new
25 jurisdiction before the end of that period, it becomes

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1 unperfected thereafter and is deemed to have been unperfected as
2 against a person who became a purchaser after the change.

3 (4) Chattel paper.

4 The rules stated for goods in Subsection (1) of this
5 section apply to a possessory security interest in chattel
6 paper. The rules stated for accounts in Subsection (3) of this
7 section apply to a nonpossessory security interest in chattel
8 paper, but the security interest may not be perfected by noti-
9 fication to the account debtor.

10 (5) Minerals.

11 Perfection and the effect of perfection or non-
12 perfection of a security interest which is created by a debtor
13 who has an interest in minerals or the like (including oil and
14 gas) before extraction and which attaches thereto as extracted
15 or which attaches to an account resulting from the sale thereof
16 at the wellhead or minehead are governed by the law (including
17 the conflict of laws rules) of the jurisdiction wherein the
18 wellhead or minehead is located.

19 (6) ~~[Uncertificated securities]~~ Investment property.

20 ~~[The law (including the conflict of laws rules) of~~
21 ~~the jurisdiction of organization of the issuer governs the~~
22 ~~perfection and the effect of perfection or nonperfection of a~~
23 ~~security interest in uncertificated securities]"~~

24 (a) This subsection applies to investment
25 property.

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1 (b) Except as otherwise provided in Paragraph
2 (f), during the time that a security certificate is located in a
3 jurisdiction, perfection of a security interest, the effect of
4 perfection or non-perfection and the priority of a security
5 interest in the certified security represented thereby are
6 governed by the local law of that jurisdiction.

7 (c) Except as otherwise provided in Paragraph
8 (f), perfection of a security interest, the effect of perfection
9 or non-perfection and the priority of a security interest in an
10 uncertificated security are governed by the local law of the
11 issuer's jurisdiction as specified in Section 8-110(d).

12 (d) Except as otherwise provided in Paragraph
13 (f), perfection of a security interest, the effect of perfection
14 or non-perfection and the priority of a security interest in a
15 security entitlement or securities account are governed by the
16 local law of the securities intermediary's jurisdiction as
17 specified in Section 8-110(e).

18 (e) Except as otherwise provided in Paragraph
19 (f), perfection of a security interest, the effect of perfection
20 or non-perfection and the priority of a security interest in a
21 commodity contract or commodity account are governed by the
22 local law of the commodity intermediary's jurisdiction. The
23 following rules determine a "commodity intermediary's
24 jurisdiction" for purposes of this paragraph:

25 (i) if an agreement between the commodity

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1 intermediary and commodity customer specifies that it is
2 governed by the law of a particular jurisdiction, that
3 jurisdiction is the commodity intermediary's jurisdiction:

4 (ii) if an agreement between the
5 commodity intermediary and commodity customer does not specify
6 the governing law as provided in Subparagraph (i), but expressly
7 specifies that the commodity account is maintained at an office
8 in a particular jurisdiction, that jurisdiction is the commodity
9 intermediary's jurisdiction:

10 (iii) if an agreement between the
11 commodity intermediary and commodity customer does not specify a
12 jurisdiction as provided in Subparagraphs (i) or (ii), the
13 commodity intermediary's jurisdiction is the jurisdiction in
14 which is located the office identified in an account statement
15 as the office serving the commodity customer's account; and

16 (iv) if an agreement between the
17 commodity intermediary and commodity customer does not specify a
18 jurisdiction as provided in Subparagraphs (i) or (ii) and an
19 account statement does not identify an office serving the
20 commodity customer's account as provided in Subparagraph (iii),
21 the commodity intermediary's jurisdiction is the jurisdiction in
22 which is located the chief executive office of the commodity
23 intermediary.

24 (f) Perfection of a security interest by
25 filing, automatic perfection of a security interest in

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[bracketed material] = delete

1 investment property granted by a broker or securities
2 intermediary and automatic perfection of a security interest in
3 a commodity contract or commodity account granted by a commodity
4 intermediary are governed by the local law of the jurisdiction
5 in which the debtor is located."

6 Section 57. Section 55-9-105 NMSA 1978 (being Laws 1961,
7 Chapter 96, Section 9-105, as amended) is amended to read:

8 "55-9-105. DEFINITIONS AND INDEX OF DEFINITIONS. --

9 (1) In Chapter 55, Article 9 NMSA 1978, unless the
10 context otherwise requires:

11 (a) "account debtor" means the person who is
12 obligated on an account, chattel paper or general intangible;

13 (b) "chattel paper" means a writing or writings
14 which evidence both a monetary obligation and a security
15 interest in or a lease of specific goods, but a charter or other
16 contract involving the use or hire of a vessel is not chattel
17 paper. When a transaction is evidenced both by such a security
18 agreement or a lease and by an instrument or a series of
19 instruments, the group of writings taken together constitutes
20 chattel paper;

21 (c) "collateral" means the property subject to
22 a security interest and includes accounts and chattel paper
23 which have been sold;

24 (d) "debtor" means the person who owes payment
25 or other performance of the obligation secured, whether or not

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[bracketed material] = delete

1 he owns or has rights in the collateral, and includes the seller
2 of accounts or chattel paper. Where the debtor and the owner of
3 the collateral are not the same person, the term "debtor" means
4 the owner of the collateral in any provision of the article
5 dealing with the collateral, the obligor in any provision
6 dealing with the obligation and may include both where the
7 context so requires;

8 (e) "deposit account" means a demand, time,
9 savings, passbook or like account maintained with a bank,
10 savings and loan association, credit union or like organization,
11 other than an account evidenced by a certificate of deposit;

12 (f) "document" means document of title as
13 defined in the general definitions of Article 1 (Section
14 55-1-201 NMSA 1978) and a receipt of the kind described in
15 Subsection (2) of Section 55-7-201 NMSA 1978;

16 (g) "encumbrance" includes real estate
17 mortgages and other liens on real estate and all other rights in
18 real estate that are not ownership interests;

19 (h) "goods" includes all things which are
20 movable at the time the security interest attaches or which are
21 fixtures (Section 55-9-313 NMSA 1978), but does not include
22 money, documents, instruments, investment property, commodity
23 contracts, accounts, chattel paper, general intangibles or
24 minerals or the like (including oil and gas) before extraction.
25 "Goods" also includes standing timber which is to be cut and

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1 removed under a conveyance or contract for sale, the unborn
2 young of animals and growing crops;

3 (i) "instrument" means a negotiable instrument
4 (defined in Section 55-3-104 NMSA 1978) [~~or a certificated~~
5 ~~security (defined in Section 55-8-102 NMSA 1978)]~~ or any other
6 writing which evidences a right to the payment of money and is
7 not itself a security agreement or lease and is of a type which
8 is in ordinary course of business transferred by delivery with
9 any necessary indorsement or assignment. The term does not
10 include investment property;

11 (j) "mortgage" means a consensual interest
12 created by a real estate mortgage, a trust deed on real estate
13 or the like;

14 (k) an advance is made "pursuant to commitment"
15 if the secured party has bound himself to make it, whether or
16 not a subsequent event of default or other event not within his
17 control has relieved or may relieve him from his obligation;

18 (l) "security agreement" means an agreement
19 which creates or provides for a security interest;

20 (m) "secured party" means a lender, seller or
21 other person in whose favor there is a security interest,
22 including a person to whom accounts or chattel paper have been
23 sold. When the holders of obligations issued under an indenture
24 of trust, equipment trust agreement or the like are represented
25 by a trustee or other person, the representative is the secured

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1 party; and

2 (n) "transmitting utility" means any person
3 primarily engaged in the railroad, street railway or trolley bus
4 business, the electric or electronics communications
5 transmission business, the transmission of goods by pipeline or
6 the transmission or the production and transmission of
7 electricity, steam, gas or water or the provision of sewer
8 service.

9 (2) Other definitions applying to Chapter 55,
10 Article 9 NMSA 1978 and the sections in which they appear are:

11 "account". Section 55-9-106 NMSA 1978;

12 "attach". Section 55-9-203 NMSA 1978;

13 "commodity contract". Section 55-9-115 NMSA 1978;

14 "commodity customer". Section 55-9-115 NMSA 1978;

15 "commodity intermediary". Section 55-9-115 NMSA
16 1978;

17 "construction mortgage". Subsection 1 of Section
18 55-9-313 NMSA 1978;

19 "consumer goods". Subsection (1) of Section
20 55-9-109 NMSA 1978;

21 "control". Section 55-9-115 NMSA 1978;

22 "equipment". Subsection (2) of Section 55-9-109 NMSA
23 1978;

24 "farm products". Subsection (3) of Section 55-9-109
25 NMSA 1978;

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1 "fixture". Section 55-9-313 NMSA 1978;
2 "fixture filing". Section 55-9-313 NMSA 1978;
3 "general intangibles". Section 55-9-106 NMSA 1978;
4 "inventory". Subsection (4) of Section 55-9-109 NMSA
5 1978;
6 "investment property". Section 55-9-115 NMSA 1978;
7 "lien creditor". Subsection (3) of Section 55-9-301
8 NMSA 1978;
9 "proceeds". Subsection (1) of Section 55-9-306 NMSA
10 1978;
11 "purchase money security interest". Section
12 55-9-107 NMSA 1978; and
13 "United States". Section 55-9-103 NMSA 1978.
14 (3) The following definitions in other articles
15 apply to Chapter 55, Article 9 NMSA 1978:
16 "broker". Section 55-8-102 NMSA 1978;
17 "certificated security". Section 55-8-102 NMSA 1978;
18 "check". Section 55-3-104 NMSA 1978;
19 "clearing corporation". Section 55-8-102 NMSA 1978;
20 "contract for sale". Section 55-2-106 NMSA 1978;
21 "control". Section 55-8-106 NMSA 1978;
22 "delivery". Section 55-8-301 NMSA 1978;
23 "entitlement holder". Section 55-8-102 NMSA 1978;
24 "financial asset". Section 55-8-102 NMSA 1978;
25 "holder in due course". Section 55-3-302 NMSA 1978;

Underscored material = new
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1 "note". Section 55-3-104 NMSA 1978;
2 "sale". Section 55-2-106 NMSA 1978; [~~and~~]
3 "securities intermediary". Section 55-8-102 NMSA
4 1978;
5 "security". Section 55-8-102 NMSA 1978;
6 "security certificate". Section 55-8-102 NMSA 1978;
7 and
8 "security entitlement". Section 55-8-102 NMSA 1978.

9 (4) In addition, Chapter 55, Article 1 NMSA 1978
10 contains general definitions and principles of construction and
11 interpretation applicable throughout Chapter 55, Article 9 NMSA
12 1978. "

13 Section 58. Section 55-9-106 NMSA 1978 (being Laws 1961,
14 Chapter 96, Section 9-106, as amended) is amended to read:

15 "55-9-106. DEFINITIONS-- "ACCOUNT"-- "GENERAL
16 INTANGIBLES".-- "Account" means any right to payment for goods
17 sold or leased or for services rendered which is not evidenced
18 by an instrument or chattel paper, whether or not it has been
19 earned by performance. "General intangibles" means any personal
20 property (including things in action) other than goods,
21 accounts, chattel paper, documents, instruments, investment
22 property and money. All rights to payment earned or unearned
23 under a charter or other contract involving the use or hire of a
24 vessel and all rights incident to the charter or contract are
25 accounts. "

Underscored material = new
[bracketed material] = delete

1 Section 59. A new section of the Uniform Commercial Code,
2 Section 55-9-115 NMSA 1978, is enacted to read:

3 "55-9-115. [NEW MATERIAL] INVESTMENT PROPERTY. --

4 (1) In this Article:

5 (a) "commodity account" means an account
6 maintained by a commodity intermediary in which a commodity
7 contract is carried for a commodity customer;

8 (b) "commodity contract" means a commodity
9 futures contract, an option on a commodity futures contract, a
10 commodity option or other contract that, in each case, is:

11 (i) traded on or subject to the rules of
12 a board of trade that has been designated as a contract market
13 for such a contract pursuant to the federal commodities laws; or

14 (ii) traded on a foreign commodity board
15 of trade, exchange or market and is carried on the books of a
16 commodity intermediary for a commodity customer;

17 (c) "commodity customer" means a person for
18 whom a commodity intermediary carries a commodity contract on
19 its books;

20 (d) "commodity intermediary" means:

21 (i) a person who is registered as a
22 futures commission merchant under the federal commodities laws;
23 or

24 (ii) a person who in the ordinary course
25 of its business provides clearance or settlement services for a

Underscored material = new
[bracketed material] = delete

1 board of trade that has been designated as a contract market
2 pursuant to the federal commodities laws;

3 (e) "control" with respect to a certificated
4 security, uncertificated security or security entitlement has
5 the meaning specified in Section 8-106. A secured party has
6 control over a commodity contract if by agreement among the
7 commodity customer, the commodity intermediary, and the secured
8 party, the commodity intermediary, has agreed that it will apply
9 any value distributed on account of the commodity contract as
10 directed by the secured party without further consent by the
11 commodity customer. If a commodity customer grants a security
12 interest in a commodity contract to its own commodity
13 intermediary, the commodity intermediary as secured party has
14 control. A secured party has control over a securities account
15 or commodity account if the secured party has control over all
16 security entitlements or commodity contracts carried in the
17 securities account or commodity account; and

18 (f) "investment property" means:

19 (i) a security, whether certificated or
20 uncertificated;

21 (ii) a security entitlement;

22 (iii) a securities account;

23 (iv) a commodity contract; or

24 (v) a commodity account.

25 (2) Attachment or perfection of a security interest

1 in a securities account is also attachment or perfection of a
2 security interest in all security entitlements carried in the
3 securities account. Attachment or perfection of a security
4 interest in a commodity account is also attachment or perfection
5 of a security interest in all commodity contracts carried in the
6 commodity account.

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

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

22 (a) a security interest in investment property
23 may be perfected by control;

24 (b) except as otherwise provided in Paragraphs
25 (c) and (d), a security interest in investment property may be

1 perfected by filing;

2 (c) if the debtor is a broker or securities
3 intermediary a security interest in investment property is
4 perfected when it attaches. The filing of a financing statement
5 with respect to a security interest in investment property
6 granted by a broker or securities intermediary has no effect for
7 purposes of perfection or priority with respect to that security
8 interest; and

9 (d) if a debtor is a commodity intermediary, a
10 security interest in a commodity contract or a commodity account
11 is perfected when it attaches. The filing of a financing
12 statement with respect to a security interest in a commodity
13 contract or a commodity account granted by a commodity
14 intermediary has no effect for purposes of perfection or
15 priority with respect to that security interest.

16 (5) Priority between conflicting security interests
17 in the same investment property is governed by the following
18 rules:

19 (a) a security interest of a secured party who
20 has control over investment property has priority over a
21 security interest of a secured party who does not have control
22 over the investment property;

23 (b) except as otherwise provided in Paragraphs
24 (c) and (d), conflicting security interests of secured parties,
25 each of whom has control, rank equally;

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[bracketed material] = delete

1 (c) except as otherwise agreed by the
2 securities intermediary, a security interest in a security
3 entitlement or a securities account granted to the debtor's own
4 securities intermediary has priority over any security interest
5 granted by the debtor to another secured party;

6 (d) except as otherwise agreed by the commodity
7 intermediary, a security interest in a commodity contract or a
8 commodity account granted to the debtor's own commodity
9 intermediary has priority over any security interest granted by
10 the debtor to another secured party;

11 (e) conflicting security interests granted by a
12 broker, a securities intermediary or a commodity intermediary
13 which are perfected without control rank equally; and

14 (f) in all other cases, priority between
15 conflicting security interests in investment property is
16 governed by Section 9-312(5), (6) and (7). Section 9-312(4)
17 does not apply to investment property.

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

Underscored material = new
[bracketed material] = delete

1 Section 60. A new section of the Uniform Commercial Code,
2 Section 55-9-116 NMSA 1978, is enacted to read:

3 "55-9-116. [NEW MATERIAL] SECURITY INTEREST ARISING IN
4 PURCHASE OR DELIVERY OF FINANCIAL ASSET. --

5 (1) If a person buys a financial asset through a
6 securities intermediary in a transaction in which the buyer is
7 obligated to pay the purchase price to the securities
8 intermediary at the time of the purchase, and the securities
9 intermediary credits the financial asset to the buyer's
10 securities account before the buyer pays the securities
11 intermediary, the securities intermediary has a security
12 interest in the buyer's security entitlement securing the
13 buyer's obligation to pay. A security agreement is not required
14 for attachment or enforceability of the security interest, and
15 the security interest is automatically perfected.

16 (2) If a certificated security or other financial
17 asset represented by a writing which in the ordinary course of
18 business is transferred by delivery with any necessary
19 indorsement or assignment is delivered pursuant to an agreement
20 between persons in the business of dealing with such securities
21 or financial assets and the agreement calls for delivery versus
22 payment, the person delivering the certificate or other
23 financial asset has a security interest in the certificated
24 security or other financial asset securing the seller's right to
25 receive payment. A security agreement is not required for

Underscored material = new
[bracketed material] = delete

1 attachment or enforceability of the security interest, and the
2 security interest is automatically perfected. "

3 Section 61. Section 55-9-203 NMSA 1978 (being Laws 1961,
4 Chapter 96, Section 9-203, as amended) is amended to read:

5 "55-9-203. ATTACHMENT AND ENFORCEABILITY OF SECURITY
6 INTEREST-- PROCEEDS-- FORMAL REQUISITES. --

7 (1) Subject to the provisions of Section 55-4-210
8 NMSA 1978 on the security interest of a collecting bank,
9 [~~Section 55-8-321 NMSA 1978 on security interests in securities~~]
10 Sections 55-9-115 and 55-9-116 NMSA 1978 on security interests
11 in investment property and Section 55-9-113 NMSA 1978 on a
12 security interest arising under the article on sales (Article 2)
13 or the article on leases (Article 2A), a security interest is
14 not enforceable against the debtor or third parties with respect
15 to the collateral and does not attach unless:

16 (a) the collateral is in the possession of the
17 secured party pursuant to agreement, the collateral is
18 investment property and the secured party has control pursuant
19 to agreement. or the debtor has signed a security agreement that
20 contains a description of the collateral and in addition, when
21 the security interest covers crops growing or to be grown or
22 timber to be cut, a description of the land concerned;

23 (b) value has been given; and

24 (c) the debtor has rights in the collateral.

25 (2) A security interest attaches when it becomes

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[bracketed material] = delete

1 enforceable against the debtor with respect to the collateral.
2 Attachment occurs as soon as all of the events specified in
3 Subsection (1) of this section have taken place unless explicit
4 agreement postpones the time of attaching.

5 (3) Unless otherwise agreed, a security agreement
6 gives the secured party the rights to proceeds provided by
7 Section 55-9-306 NMSA 1978.

8 (4) A transaction, although subject to Chapter 55,
9 Article 9 NMSA 1978, is also subject to the Oil and Gas Products
10 Lien Act; Sections 56-1-1 through 56-1-15 NMSA 1978 (pertaining
11 to retail installment sales); Sections [~~56-8-15 through 56-8-20~~]
12 56-12-1 through 56-12-16 NMSA 1978 (pertaining to credit
13 extended by pawnbrokers [~~traders and others~~]); the New Mexico
14 Bank Installment Loan Act of 1959; the New Mexico Small Loan Act
15 of 1955; and the Motor Vehicle Sales Finance Act. In the case
16 of conflict between the provisions of Chapter 55, Article 9 NMSA
17 1978 and any such statute, the provisions of such statute
18 control. Failure to comply with any applicable statute has only
19 the effect which is specified therein."

20 Section 62. Section 55-9-301 NMSA 1978 (being Laws 1961,
21 Chapter 96, Section 9-301, as amended) is amended to read:

22 "55-9-301. PERSONS WHO TAKE PRIORITY OVER UNPERFECTED
23 SECURITY INTERESTS-- RIGHT OF "LIEN CREDITOR". --

24 (1) Except as otherwise provided in Subsection (2)
25 of this section, an unperfected security interest is subordinate

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[bracketed material] = delete

1 to the rights of:

2 (a) persons entitled to priority under Section
3 55-9-312 NMSA 1978;

4 (b) a person who becomes a lien creditor before
5 the security interest is perfected;

6 (c) in the case of goods, instruments,
7 documents and chattel paper, a person who is not a secured party
8 and who is a transferee in bulk or other buyer not in ordinary
9 course of business or is a buyer of farm products in ordinary
10 course of business, to the extent that he gives value and
11 receives delivery of the collateral without knowledge of the
12 security interest and before it is perfected; and

13 (d) in the case of accounts, [~~and~~] general
14 intangibles and investment property, a person who is not a
15 secured party and who is a transferee to the extent that he
16 gives value without knowledge of the security interest and
17 before it is perfected.

18 (2) If the secured party files with respect to a
19 purchase money security interest before or within twenty days
20 after the debtor receives possession of the collateral, he takes
21 priority over the rights of a transferee in bulk or of a lien
22 creditor which arise between the time the security interest
23 attaches and the time of filing.

24 (3) A "lien creditor" means a creditor who has
25 acquired a lien on the property involved by attachment, levy or

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[bracketed material] = delete

1 the like and includes an assignee for benefit of creditors from
2 the time of assignment and a trustee in bankruptcy from the date
3 of the filing of the petition or a receiver in equity from the
4 time of appointment.

5 (4) A person who becomes a lien creditor while a
6 security interest is perfected takes subject to the security
7 interest only to the extent that it secures advances made before
8 he becomes a lien creditor or within forty-five days thereafter
9 or made without knowledge of the lien or pursuant to a
10 commitment entered into without knowledge of the lien."

11 Section 63. Section 55-9-302 NMSA 1978 (being Laws 1961,
12 Chapter 96, Section 9-302, as amended) is amended to read:

13 "55-9-302. WHEN FILING IS REQUIRED TO PERFECT SECURITY
14 INTEREST--SECURITY INTERESTS TO WHICH FILING PROVISIONS OF THIS
15 ARTICLE DO NOT APPLY. --

16 (1) A financing statement must be filed to perfect
17 all security interests except the following:

18 (a) a security interest in collateral in
19 possession of the secured party under Section 55-9-305 NMSA
20 1978;

21 (b) a security interest temporarily perfected
22 in instruments, certificated securities or documents without
23 delivery under Section 55-9-304 NMSA 1978 or in proceeds for a
24 ten-day period under Section 55-9-306 NMSA 1978;

25 (c) a security interest created by an

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[bracketed material] = delete

1 assignment of a beneficial interest in a trust or a decedent's
2 estate;

3 (d) a purchase money security interest in
4 consumer goods; but filing is required for a motor vehicle
5 required to be registered; and fixture filing is required for
6 priority over conflicting interests in fixtures to the extent
7 provided in Section 55-9-313 NMSA 1978;

8 (e) an assignment of accounts that does not
9 alone or in conjunction with other assignments to the same
10 assignee transfer a significant part of the outstanding accounts
11 of the assignor;

12 (f) a security interest of a collecting bank
13 (Section 55-4-210 NMSA 1978) [~~or in securities (Section~~
14 ~~55-8-321 NMSA 1978)~~] or arising under the article on sales
15 (Article 2) or the article on leases (Article 2A) (see Section
16 55-9-113 NMSA 1978) or covered in Subsection (3) of this
17 section; [~~or~~]

18 (g) an assignment for the benefit of all the
19 creditors of the transferor and subsequent transfers by the
20 assignee thereunder; or

21 (h) a security interest in personal property
22 which is perfected without filing under Section 55-9-515
23 or 55-9-116 NMSA 1978.

24 (2) If a secured party assigns a perfected security
25 interest, no filing under this article is required in order to

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1 continue the perfected status of the security interest against
2 creditors of and transferees from the original debtor.

3 (3) The filing of a financing statement otherwise
4 required by Chapter 55, Article 9 NMSA 1978 is not necessary or
5 effective to perfect a security interest in property subject to:

6 (a) a statute or treaty of the United States
7 that provides for a national or international registration or a
8 national or international certificate of title or that specifies
9 a place of filing different from that specified in this article
10 for filing of the security interest; ~~[or]~~

11 (b) the following statutes of this state:
12 Sections 66-3-201 through 66-3-204 of the Motor Vehicle Code and
13 any other certificate of title statute covering automobiles,
14 trailers, mobile homes, boats, farm tractors or the like; but
15 during any period in which collateral is inventory held for sale
16 by a person who is in the business of selling goods of that
17 kind, the filing provisions of Chapter 55, Article 9 NMSA 1978
18 apply to a security interest in that collateral created by him
19 as debtor; or

20 (c) a certificate of title statute of another
21 jurisdiction under the law of which indication of a security
22 interest on the certificate is required as a condition of
23 perfection (Subsection (2) of Section 55-9-103 NMSA 1978).

24 (4) Compliance with a statute or treaty described in
25 Subsection (3) of this section is equivalent to the filing of a

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[bracketed material] = delete

1 financing statement under Chapter 55, Article 9 NMSA 1978, and a
2 security interest in property subject to the statute or treaty
3 can be perfected only by compliance therewith except as provided
4 in Section 55-9-103 NMSA 1978 on multiple state transactions.
5 Duration and renewal of perfection of a security interest
6 perfected by compliance with the statute or treaty are governed
7 by the provisions of the statute or treaty; in other respects
8 the security interest is subject to Chapter 55, Article 9 NMSA
9 1978. "

10 Section 64. Section 55-9-304 NMSA 1978 (being Laws 1961,
11 Chapter 96, Section 9-304, as amended) is amended to read:

12 "55-9-304. PERFECTION OF SECURITY INTEREST IN INSTRUMENTS,
13 DOCUMENTS AND GOODS COVERED BY DOCUMENTS--PERFECTION BY
14 PERMISSIVE FILING--TEMPORARY PERFECTION WITHOUT FILING OR
15 TRANSFER OF POSSESSION. --

16 (1) A security interest in chattel paper or
17 negotiable documents may be perfected by filing. A security
18 interest in money or instruments (other than [certificated
19 securities or] instruments which constitute part of chattel
20 paper) can be perfected only by the secured party's taking
21 possession, except as provided in Subsections (4) and (5) of
22 this section and Subsections (2) and (3) of Section 55-9-306
23 NMSA 1978 on proceeds.

24 (2) During the period that goods are in the
25 possession of the issuer of a negotiable document therefor, a

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[bracketed material] = delete

1 security interest in the goods is perfected by perfecting a
2 security interest in the document, and any security interest in
3 the goods otherwise perfected during such period is subject
4 thereto.

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

10 (4) A security interest in instruments [~~other than~~
11 ~~certificated securities~~], certificated securities or negotiable
12 documents is perfected without filing or the taking of
13 possession for a period of twenty-one days from the time it
14 attaches to the extent that it arises for new value given under
15 a written security agreement.

16 (5) A security interest remains perfected for a
17 period of twenty-one days without filing where a secured party
18 having a perfected security interest in an instrument [~~other~~
19 ~~than a certificated security~~], a certificated security, a
20 negotiable document or goods in possession of a bailee other
21 than one who has issued a negotiable document therefor:

22 (a) makes available to the debtor the goods or
23 documents representing the goods for the purpose of ultimate
24 sale or exchange or for the purpose of loading, unloading,
25 storing, shipping, transshipping, manufacturing, processing or

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[bracketed material] = delete

1 otherwise dealing with them in a manner preliminary to their
2 sale or exchange, but priority between conflicting security
3 interests in the goods is subject to Subsection (3) of Section
4 55-9-312 NMSA 1978; or

5 (b) delivers the instrument or certificated
6 security to the debtor for the purpose of ultimate sale or
7 exchange or of presentation, collection, renewal or registration
8 of transfer.

9 (6) After the twenty-one-day period in Subsections
10 (4) and (5) of this section, perfection depends upon compliance
11 with applicable provisions of Chapter 55, Article 9 NMSA 1978. "

12 Section 65. Section 55-9-305 NMSA 1978 (being Laws 1961,
13 Chapter 96, Section 9-305, as amended) is amended to read:

14 "55-9-305. WHEN POSSESSION BY SECURED PARTY PERFECTS
15 SECURITY INTEREST WITHOUT FILING. --A security interest in
16 letters of credit and advices of credit (Paragraph (a) of
17 Subsection 2 of Section 55-5-116 NMSA 1978), goods, instruments
18 [~~(other than certificated securities)~~], money, negotiable
19 documents or chattel paper may be perfected by the secured
20 party's taking possession of the collateral. If such collateral
21 other than goods covered by a negotiable document is held by a
22 bailee, the secured party is deemed to have possession from the
23 time the bailee receives notification of the secured party's
24 interest. A security interest is perfected by possession from
25 the time possession is taken without relation back and continues

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[bracketed material] = delete

1 only so long as possession is retained, unless otherwise
2 specified in Chapter 55, Article 9 NMSA 1978. The security
3 interest may be otherwise perfected as provided in that article
4 before or after the period of possession by the secured party."

5 Section 66. Section 55-9-306 NMSA 1978 (being Laws 1961,
6 Chapter 96, Section 9-306, as amended) is amended to read:

7 "55-9-306. "PROCEEDS"--SECURED PARTY'S RIGHTS ON
8 DISPOSITION OF COLLATERAL.--

9 (1) "Proceeds" includes whatever is received upon
10 the sale, exchange, collection or other disposition of
11 collateral or proceeds. Insurance payable by reason of loss or
12 damage to the collateral is proceeds, except to the extent that
13 it is payable to a person other than a party to the security
14 agreement. Any payments or distributions made with respect to
15 investment property collateral are proceeds. Money, checks,
16 deposit accounts and the like are "cash proceeds". All other
17 proceeds are "non-cash proceeds".

18 (2) Except where [~~this article~~] Chapter 55, Article
19 9 NMSA 1978 otherwise provides, a security interest continues in
20 collateral notwithstanding sale, exchange or other disposition
21 thereof unless the disposition was authorized by the secured
22 party in the security agreement or otherwise and also continues
23 in any identifiable proceeds, including collections, received by
24 the debtor.

25 (3) The security interest in proceeds is a

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1 continuously perfected security interest if the interest in the
2 original collateral was perfected, but it ceases to be a
3 perfected security interest and becomes unperfected ten days
4 after receipt of the proceeds by the debtor unless:

5 (a) a filed financing statement covers the
6 original collateral and the proceeds are collateral in which a
7 security interest may be perfected by filing in the office or
8 offices where the financing statement has been filed and, if the
9 proceeds are acquired with cash proceeds, the description of
10 collateral in the financing statement indicates the types of
11 property constituting the proceeds; [or]

12 (b) a filed financing statement covers the
13 original collateral and the proceeds are identifiable cash
14 proceeds; [or]

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

17 [~~e~~] (d) the security interest in the proceeds
18 is perfected before the expiration of the ten-day period.

19 Except as provided in this section, a security interest in
20 proceeds can be perfected only by the methods or under the
21 circumstances permitted in [~~this article~~] Chapter 55, Article 9
22 NMSA 1978 for original collateral of the same type.

23 (4) In the event of insolvency proceedings
24 instituted by or against a debtor, a secured party with a
25 perfected security interest in proceeds has a perfected security

1 interest only in the following proceeds:

2 (a) in identifiable non-cash proceeds and in
3 separate deposit accounts containing only proceeds;

4 (b) in identifiable cash proceeds in the form
5 of money which is neither commingled with other money nor
6 deposited in a deposit account prior to the insolvency
7 proceedings;

8 (c) in identifiable cash proceeds in the form
9 of checks and the like which are not deposited in a deposit
10 account prior to the insolvency proceedings; and

11 (d) in all cash and deposit accounts of the
12 debtor in which proceeds have been commingled with other funds,
13 but the perfected security interest under this Paragraph (d) is:

14 (i) subject to any right of set-off; and

15 (ii) limited to an amount not greater
16 than the amount of any cash proceeds received by the debtor
17 within ten days before the institution of the insolvency
18 proceedings less the sum of (I) the payments to the secured
19 party on account of cash proceeds received by the debtor during
20 such period and (II) the cash proceeds received by the debtor
21 during such period to which the secured party is entitled under
22 Paragraphs (a) through (c) of this Subsection [~~(4)~~].

23 (5) If a sale of goods results in an account or
24 chattel paper which is transferred by the seller to a secured
25 party, and if the goods are returned to or are repossessed by

Underscored material = new
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1 the seller or the secured party, the following rules determine
2 priorities:

3 (a) if the goods were collateral at the time of
4 sale, for an indebtedness of the seller which is still unpaid,
5 the original security interest attaches again to the goods and
6 continues as a perfected security interest if it was perfected
7 at the time when the goods were sold. If the security interest
8 was originally perfected by a filing which is still effective,
9 nothing further is required to continue the perfected status; in
10 any other case, the secured party ~~must~~ take possession of the
11 returned or repossessed goods or ~~must~~ file;

12 (b) an unpaid transferee of the chattel paper
13 has a security interest in the goods against the transferor.
14 Such security interest is prior to a security interest asserted
15 under Paragraph (a) of this subsection to the extent that the
16 transferee of the chattel paper was entitled to priority under
17 Section ~~[9-308]~~ 55-9-308 NMSA 1978;

18 (c) an unpaid transferee of the account has a
19 security interest in the goods against the transferor. Such
20 security interest is subordinate to a security interest asserted
21 under Paragraph (a) of this subsection; and

22 (d) a security interest of an unpaid transferee
23 asserted under Paragraph (b) or (c) of this subsection ~~must~~ be
24 perfected for protection against creditors of the transferor and
25 purchasers of the returned or repossessed goods. "

Underscored material = new
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1 Section 67. Section 55-9-309 NMSA 1978 (being Laws 1961,
2 Chapter 96, Section 9-309, as amended) is amended to read:

3 "55-9-309. PROTECTION OF PURCHASERS OF INSTRUMENTS AND
4 DOCUMENTS AND SECURITIES. --Nothing in this article limits the
5 rights of a holder in due course of a negotiable instrument
6 (Section 55-3-302 NMSA 1978) or a holder to whom a negotiable
7 document of title has been duly negotiated (Section 55-7-501
8 NMSA 1978) or a [~~bona-fide~~] protected purchaser of a security
9 (Section [~~55-8-302~~] 55-8-303 NMSA 1978) and such holders or
10 purchasers take priority over an earlier security interest even
11 though perfected. Filing under this article does not constitute
12 notice of the security interest to such holders or purchasers. "

13 Section 68. Section 55-9-312 NMSA 1978 (being Laws 1961,
14 Chapter 96, Section 9-312, as amended) is amended to read:

15 "55-9-312. PRIORITIES AMONG CONFLICTING SECURITY INTERESTS
16 IN THE SAME COLLATERAL. --

17 (1) The rules of priority stated in other sections
18 of this part and in the following sections shall govern when
19 applicable: Section 55-4-210 NMSA 1978 with respect to the
20 security interests of collecting banks in items being collected,
21 accompanying documents and proceeds; Section
22 55-9-103 NMSA 1978 on security interests related to other
23 jurisdictions; [~~and~~] Section 55-9-114 NMSA 1978 on consignments;
24 and Section 55-9-115 on security interests in investment
25 property.

1 (2) A perfected security interest in crops, for new
2 value given to enable the debtor to produce the crops during the
3 production season and given not more than three months before
4 the crops become growing crops by planting or otherwise, takes
5 priority over an earlier perfected security interest to the
6 extent that such earlier interest secures obligations due more
7 than six months before the crops become growing crops by
8 planting or otherwise, even though the person giving new value
9 had knowledge of the earlier security interest.

10 (3) A perfected purchase money security interest in
11 inventory has priority over a conflicting security interest in
12 the same inventory and also has priority in identifiable cash
13 proceeds received on or before the delivery of the inventory to
14 a buyer if:

15 (a) the purchase money security interest is
16 perfected at the time the debtor receives possession of the
17 inventory;

18 (b) the purchase money secured party gives
19 notification in writing to the holder of the conflicting
20 security interest if the holder had filed a financing statement
21 covering the same types of inventory (i) before the date of the
22 filing made by the purchase money secured party, or (ii) before
23 the beginning of the twenty-one-day period where the purchase
24 money security interest is temporarily perfected without filing
25 or possession (Subsection (5) of Section 55-9-304 NMSA 1978);

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[bracketed material] = delete

1 (c) the holder of the conflicting security
2 interest receives the notification within five years before the
3 debtor receives possession of the inventory; and

4 (d) the notification states that the person
5 giving the notice has or expects to acquire a purchase money
6 security interest in inventory of the debtor, describing such
7 inventory by item or type.

8 (4) A purchase money security interest in collateral
9 other than inventory has priority over a conflicting security
10 interest in the same collateral or its proceeds if the purchase
11 money security interest is perfected at the time the debtor
12 receives possession of the collateral or within twenty days
13 thereafter.

14 (5) In all cases not governed by other rules stated
15 in this section (including cases of purchase money security
16 interests that do not qualify for the special priorities set
17 forth in Subsections (3) and (4) of this section), priority
18 between conflicting security interests in the same collateral
19 shall be determined according to the following rules:

20 (a) conflicting security interests rank
21 according to priority in time of filing or perfection. Priority
22 dates from the time a filing is first made covering the
23 collateral or the time the security interest is first perfected,
24 whichever is earlier, provided that there is no period
25 thereafter when there is neither filing nor perfection; and

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[bracketed material] = delete

1 (b) so long as conflicting security interests
2 are unperfected, the first to attach has priority.

3 (6) For the purposes of Subsection (5) of this
4 section, a date of filing or perfection as to collateral is also
5 a date of filing or perfection as to proceeds.

6 (7) If future advances are made while a security
7 interest is perfected by filing, by the taking of possession or
8 under Section [~~55-8-321 on securities~~] 55-9-115 or 55-9-116 NMSA
9 1978 on security interests in personal property, the security
10 interest has the same priority for the purposes of Subsection
11 (5) of this section with respect to the future advances as it
12 does with respect to the first advance. If a commitment is made
13 before or while the security interest is so perfected, the
14 security interest has the same priority with respect to advances
15 made pursuant thereto. In other cases a perfected security
16 interest has priority from the date the advance is made."

17 Section 69. SAVING CLAUSE. --

18 (a) Chapter 55, Article 8 NMSA 1978 does not affect
19 an action or proceeding commenced before that Article takes
20 effect.

21 (b) If a security interest in a security is
22 perfected at the date Chapter 55, Article 8 NMSA 1978 takes
23 effect and the action by which the security interest was
24 perfected would suffice to perfect a security interest under
25 that article, no further action is required to continue

Underscored material = new
[bracketed material] = delete

1 perfection. If a security interest in a security is perfected
2 at the date Chapter 55, Article 8 NMSA 1978 takes effect but the
3 action by which the security interest was perfected would not
4 suffice to perfect a security interest under that article, the
5 security interest remains perfected for a period of four months
6 after the effective date and continues perfected thereafter if
7 appropriate action to perfect under Chapter 55, Article 8 NMSA
8 1978 is taken within that period. If a security interest is
9 perfected at the date Chapter 55, Article 8 NMSA 1978 takes
10 effect and the security interest can be perfected by filing
11 under that article, a financing statement signed by the secured
12 party instead of the debtor may be filed within that period to
13 continue perfection or thereafter to perfect.

14 Section 70. REPEAL. -- Sections 55-8-308 through 55-8-321
15 and Section 55-8-408 NMSA 1978 (being Laws 1961, Chapter 96,
16 Sections 8-308 through 8-319, Laws 1967, Chapter 186, Section 3,
17 Laws 1987, Chapter 248, Sections 38 and 46, as amended) are
18 repealed.

State of New Mexico House of Representatives

FORTY- SECOND LEGISLATURE

SECOND SESSION, 1996

January 24, 1996

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 37

has had it under consideration and reports same with
recommendation that it DO PASS, amended as follows:

1. On page 80, line 5, after the period insert:

“The rules in Paragraphs (c), (d) and (e) of Subsection (3)
of this section apply to security interests to which this
paragraph applies.”.

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FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

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Respectfully submitted,

Cisco McSorley, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

Excused: Alwin, Baca, Christensen, Larranaga, Luna, Sanchez,

R. G.

Absent: None

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February 12, 1996

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10 Mr. President:

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Your JUDICIARY COMMITTEE, to whom has been referred

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HOUSE BILL 37, as amended

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has had it under consideration and reports same with

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recommendation that it DO PASS, and thence referred to the

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CORPORATIONS AND TRANSPORTATION COMMITTEE.

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Respectfully submitted,

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Janice D. Paster, Chairman

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Adopted _____ Not Adopted _____

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(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: None

Absent: Carraro, Cisneros, Tsosie, Vernon

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Underscored material = new
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