

UNIFORM COMMERCIAL CODE (EXCERPT)
Act 174 of 1962

PART 5
SECURITY ENTITLEMENTS

440.8501 "Securities account" defined; acquisition of security entitlement; conditions; directly held financial asset; issuance not as security entitlement.

Sec. 8501. (1) "Securities account" means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.

(2) Except as otherwise provided in subsections (4) and (5), a person acquires a security entitlement if a securities intermediary does 1 or more of the following:

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

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

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

(3) If 1 or more conditions described in subsection (2)(a), (b), or (c) have been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset.

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

(5) Issuance of a security is not establishment of a security entitlement.

History: Add. 1998, Act 278, Imd. Eff. July 27, 1998.

440.8502 Action based on adverse claim.

Sec. 8502. An action based on an adverse claim to a financial asset, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who acquires a security entitlement under section 8501 for value and without notice of the adverse claim.

History: Add. 1998, Act 278, Imd. Eff. July 27, 1998.

440.8503 Entitlement holder property interest.

Sec. 8503. (1) To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in section 8511.

(2) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.

(3) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) may be enforced against the securities intermediary only by exercise of the entitlement holder's rights under sections 8505 through 8508.

(4) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) may be enforced against a purchaser of the financial asset or interest in the financial asset only if all of the following apply:

(a) Insolvency proceedings have been initiated by or against the securities intermediary.

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

(c) The securities intermediary violated its obligations under section 8504 by transferring the financial asset or interest therein to the purchaser.

(d) The purchaser is not protected under subsection (5). The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset, may recover the financial asset, or interest in a financial asset, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to

recover its interest in the financial asset from the purchaser.

(5) An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection (1), whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under section 8504.

History: Add. 1998, Act 278, Imd. Eff. July 27, 1998.

440.8504 Maintenance of financial asset by securities intermediary; quantity; manner; limitation; duties; applicability to clearing corporation.

Sec. 8504. (1) A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through 1 or more other securities intermediaries.

(2) Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection (1).

(3) A securities intermediary satisfies the duty in subsection (1) if the securities intermediary does either of the following:

(a) Acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary.

(b) In the absence of agreement, exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

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

History: Add. 1998, Act 278, Imd. Eff. July 27, 1998.

440.8505 Obtaining payment or distribution made by issuer of financial asset; duties and obligations of securities intermediary.

Sec. 8505. (1) A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset. This duty is satisfied if the securities intermediary does either of the following:

(a) Acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary.

(b) In the absence of agreement, exercise due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.

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

History: Add. 1998, Act 278, Imd. Eff. July 27, 1998.

440.8506 Duty of securities intermediary to exercise rights with respect to financial asset; conditions.

Sec. 8506. A securities intermediary shall exercise rights with respect to a financial asset if directed to do so by an entitlement holder. The duty is satisfied if the securities intermediary does either of the following:

(a) Acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary.

(b) In the absence of agreement, either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

History: Add. 1998, Act 278, Imd. Eff. July 27, 1998.

440.8507 Compliance with entitlement order by securities intermediary; conditions; wrongful transfer of financial asset pursuant to ineffective entitlement order; liability.

Sec. 8507. (1) A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. The duty is satisfied if a securities intermediary does either of the following:

(a) Acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary.

(b) In the absence of agreement, exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

(2) If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to it, and pay or

credit any payments or distributions that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages.

History: Add. 1998, Act 278, Imd. Eff. July 27, 1998.

440.8508 Changing security entitlement into another form of holding; transferring financial asset to securities account of entitlement holder; duties of securities intermediary; conditions.

Sec. 8508. A securities intermediary shall act at the direction of an entitlement holder to change a security entitlement into another available form of holding for which the entitlement holder is eligible, or to cause the financial asset to be transferred to a securities account of the entitlement holder with another securities intermediary. The duty is satisfied if a securities intermediary does either of the following:

- (a) Acts as agreed upon by the entitlement holder and the securities intermediary.
- (b) In the absence of agreement, exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

History: Add. 1998, Act 278, Imd. Eff. July 27, 1998.

440.8509 Performance of duties by securities intermediary.

Sec. 8509. (1) If the substance of a duty imposed upon a securities intermediary by sections 8504 through 8508 is the subject of other statute, regulation, or rule, compliance with the statute, regulation, or rule satisfies the duty.

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

(3) The obligation of a securities intermediary to perform the duties imposed by sections 8504 through 8508 is subject to both of the following:

- (a) Rights of the securities intermediary arising out of a security interest under a security agreement with the entitlement holder or otherwise.
- (b) Rights of the securities intermediary under other law, regulation, rule, or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.

(4) Sections 8504 through 8508 do not require a securities intermediary to take any action that is prohibited by other statute, regulation, or rule.

History: Add. 1998, Act 278, Imd. Eff. July 27, 1998.

440.8510 Assertion of action based on adverse claim; prohibition; conditions; priority.

Sec. 8510. (1) In a case not covered by the priority rules in article 9 or the rules stated in subsection (3), an action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest in a security entitlement, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(2) If an adverse claim could not have been asserted against an entitlement holder under section 8502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest in a security entitlement, from the entitlement holder.

(3) In a case not covered by the priority rules in article 9, a purchaser for value of a security entitlement, or an interest in a security entitlement, who obtains control has priority over a purchaser of a security entitlement, or an interest in a security entitlement, who does not obtain control. Except as otherwise provided in subsection (4), purchasers who have control rank according to priority in time of 1 of the following:

(a) The purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained, if the purchaser obtained control under section 8106(4)(a).

(b) The securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried, if the purchaser obtained control under section 8106(4)(b).

(c) If the purchaser obtained control through another person under section 8106(4)(c), the time on which priority would be based under this subsection if the other person were the secured party.

(4) A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

History: Add. 1998, Act 278, Imd. Eff. July 27, 1998;—Am. 2000, Act 348, Eff. July 1, 2001.

440.8511 Priority of claims.

Sec. 8511. (1) Except as otherwise provided in subsections (2) and (3), if a securities intermediary does not have sufficient interest in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

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

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

History: Add. 1998, Act 278, Imd. Eff. July 27, 1998.