

"Subsection (2) recognizes the difference between the status of a 'holder' which is important for various purposes under article 3 (subsec. (20) of sec. 1-201; sec. 8-302; subsec (2) of sec. 8-301) and the status as owner. The affirmative statement that a purchaser becomes the 'owner' of a security (either held for him by a broker or constituting part of a fungible bulk) provides protection to customers of brokers against a broker's trustee in bankruptcy and against the United States holding tax liens against the broker, to the extent the protection may be provided by State law.

"Subsection (3) provides protection to both broker and customer if notice of an adverse claim is received by the broker after the broker takes delivery as a holder for value but preserves the original principle of the 1958 text that as between the broker and his own customer, the customer is entitled to a 'good delivery' free of any notice of adverse claim. The broker is in the business of handling securities and is better equipped to clear up adverse claims and should not be permitted to pass on these problems to his customer, even though the status of the broker in whole or in part may be that of agent for his customer."

19. Add the following new section 8-320:

"Section 8-320. Transfer or Pledge Within a Central Depository System.

"(1) If a security—

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

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

"(c) is shown on the account of a transferor or pledgor on the books of the clearing corporation;

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

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

"(3) A transfer or pledge under this section has the effect of a delivery of a security in bearer form or duly indorsed in blank (section 8-301) representing the amount of the obligation or the number of shares or rights transferred or pledged. If a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party (sections 9-304 and 9-305). A transferee or pledgee under this section is a holder.

"(a) A transfer or pledge under this section does not constitute a registration of transfer under part 4 of this article.

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

*Comment of the editorial board*

"New section 8-320 enacted in New York and hereby approved recognizes and validates a newly developing, efficient, and economical method of transferring or pledging securities. The method is currently in use in New York City and may hereafter be developed and used in other financial centers. Approval of it is consistent with the underlying purposes and policies of the code 'to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties' (sec. 1-102(2)(b)). It utilizes new terms defined for the first time in recommended changes in section 8-102. The definition of 'clearing corporation' is broad enough to permit ownership of such corporation by a regulated association of security dealers as well as by a national securities exchange."

The source of this proposal is New York.

20. Add the following additional section 8-407:

"Section 8-407. Limitation of Actions.

"(1) In the event of registration, either before or after this act becomes effective of a transfer or purported transfer of a security to a person not entitled to it, no