POLICY TIP SHEET

Revising UCC Article 8 to Put Investors First—Not Wall Street

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THE PROBLEMS

- **UCC Article 8 stripped investors of direct property rights, replacing ownership with fragile "security entitlements," which are effectively contracts.**
- **Legal title of securities now rests with the Depository Trust Company, an entity owned and operated by Wall Street's biggest financial institutions, through DTC's nominee Cede & Co.**
- **Priority rules (§8-511) allow secured creditors to take control of customer assets in a broker failure—even when a broker acts illegally—and push investors to the back of the line in bankruptcy proceedings.**
- **Past single-firm collapses (Lehman Brothers, Sentinel, MF Global) prove that supposedly protected customer assets can be frozen, diverted, or made inaccessible for years.**
- **Federal safeguards like SEC segregation rules and SIPC insurance collapse under stress and were never intended for a systemic financial crisis.**
- **In a broad market crash, cascading broker failures would expose millions of Americans to catastrophic losses while too-big-to-fail banks are made whole first.**

THE SOLUTIONS

- **Amend UCC Article 8 to eliminate §8-511's exceptions so customers—not secured creditors—recover their securities first.**
- **Revise choice-of-law rules so investor disputes are governed by the courts of the state enacting reforms, not Wall Street's favored jurisdictions.**
- **Establish a legislative study committee to identify other UCC provisions—in Article 8 or elsewhere—that erode individual rights.**

INTRODUCTION

Most people believe the stocks, bonds, and other securities they have purchased belong to them outright. In today's system, however, they do not. Amendments to Article 8 of the Uniform Commercial Code (UCC) quietly stripped away Americans' longstanding ownership rights and replaced them with fragile contractual claims, leaving their securities vulnerable to seizure in a financial crisis or when intermediaries misuse customer assets. This paper explains how Article 8 works, why it matters for property rights and investor security, and what state-level reforms lawmakers can pursue to protect their constituents in the event of a market collapse.[1]

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UNIFORM COMMERCIAL CODE: BACKGROUND

The Uniform Commercial Code was created in the mid-twentieth century by the Uniform Law Commission (ULC), working jointly with the American Law Institute (ALI). As noted on the ULC's website, the UCC is a "comprehensive set of laws governing all commercial transactions in the United States."[2] The ULC and ALI draft and promote model laws for adoption by state legislatures and remain the primary drivers of UCC revisions today.[3] Importantly, the UCC is a uniform state law, not a federal statute. All 50 states have adopted the UCC in largely identical form to ensure consistency in interstate commerce.

Because the UCC is highly technical, most policymakers and members of the public are unfamiliar with its details. This complexity, combined with the longstanding reputations of the ULC and ALI as non-partisan legal specialists purporting to serve the public, has allowed major revisions to move forward with little debate or independent analysis. In practice, however, the ULC and ALI have repeatedly used this deference to push through changes that undermine individual rights and concentrate power in the hands of a narrow class of political and financial elites.[4]

One of the most consequential changes to the Uniform Commercial Code came in the 1990s, when the ULC and ALI rewrote Article 8, which governs investment securities. This overhaul—enacted with little to no public awareness by legislatures in all 50 states and most federal jurisdictions between 1994 and 2002[5]—fundamentally eroded Americans' property rights to their own investments. And in a financial crisis, these revisions allow the world's largest financial institutions to seize investors' assets, with little recourse available to the ordinary Americans who think the securities they paid for truly belong to them.

UCC ARTICLE 8: THE DESTRUCTION OF PROPERTY RIGHTS AND RISK TO INDIVIDUAL INVESTORS

The 1994 amendments to UCC Article 8 were marketed as a routine modernization meant to accommodate rapidly proliferating electronic trading and the broader transition from paper certificates to digital securities. In reality, they redefined the nature of securities ownership itself. Stocks, bonds, and exchange-traded funds are no longer treated as property in the hands of investors. Instead, the law replaced direct ownership with a new, far weaker arrangement: investors now hold only contractual claims to the assets they purchase, while true legal title flows upward to Wall Street intermediaries and ultimately the central securities depository.

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Redefining Ownership

Under revised Article 8, investors no longer own the securities in their accounts. Instead, they hold a "security entitlement"[6]—a contractual claim against their intermediary. The registered owner is almost always the Depository Trust Company (DTC), through its nominee Cede & Co., with DTC holding securities in pooled form on behalf of major banks and brokerage houses.[7] Brokerage statements may show stock positions and balances, but neither investors nor brokers own identifiable securities. Investors hold a proportional interest in the shares of their broker, while their broker holds a proportional interest in the issuer's shares held at DTC,[8] which today holds approximately $87.1 trillion in assets.[9]

This pooled structure also enables Wall Street to reuse customer securities for transactions such as short sales and derivatives—arrangements that would be far more difficult if investors retained direct ownership. Cede & Co. alone appears on issuer books as the legal owner. DTC itself is a subsidiary of the Depository Trust & Clearing Corporation (DTCC),[10] a company owned by the very same banks and brokers that rely on it.[11] In other words, Wall Street's most powerful financial institutions collectively own the system, run the system, and hold legal title to the securities on which the entire system depends.

The consequences of this arrangement become clear in a crisis. UCC §8-503 states that securities held by an intermediary are not the property of the intermediary and are not subject to its creditors—but the Code then immediately sets priority rules that create a crucial exception.[12] Under the priority rules in §8-511,[13] if a broker pledges customer assets as collateral and a secured creditor gains legal "control" of those assets, that creditor has priority over the broker's own customers. In plain English: if a broker borrows from a large bank and uses its customers' securities to back the loan, that bank has first claim if the broker fails. Investors are demoted to the position of unsecured creditors, standing at the back of the line in bankruptcy court.

Scholarly Warnings and Structural Bias

The principal drafters of revised Article 8 themselves acknowledged that these changes were not merely technical updates. James Rogers, the lead reporter, described the project as "Armageddon planning" for the financial system—a way to ensure market continuity in the worst-case scenario.[14] Yet Rogers also conceded there was "very little specific description" of the systemic risk that supposedly justified the overhaul.[15] Paul Shupack, another drafter, was even more candid. Shupack admitted that the conclusion that prior law posed a systemic threat "is the SEC's, not mine," and that he had "no basis independent of the SEC studies" to support it.[16] In other words, lawmakers stripped away investors' property rights based on the unsubstantiated claims of government regulators.

Writing contemporaneously, independent legal scholars confirmed how dramatically the Article 8

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revisions tilted the system in favor of Wall Street. Law professor Kathleen Patchel observed that bank lobbyists and interest groups were "prime players" in shaping the law and warned of the UCC revision process that "a powerful business lobby like the banking industry can and will block a uniform law that does not meet its expectations,"[17] with the result being a system "almost custom-made for the creation and enactment of pro-business legislation."[18]

Securities law professor Francis Facciolo described the drafting history as marked by "collusion" and the "progressive watering down" of investor protections.[19] He noted that revised Article 8 "creates a new type of property interest" that is not a claim to any specific asset, but merely "a package of rights" against an intermediary[20]—making it "extremely unlikely" an investor could ever prove ownership of a particular security.[21]

Commercial law scholar Russell Hakes added that entitlement holders have only "extremely limited rights" beyond their broker and "no rights against the issuer,"[22] and that the revised framework "favors secured lenders to the securities industry in virtually every instance."[23] Although he acknowledged these preferences may "facilitate much needed credit," Hakes warned they achieve this by "shifting the risk of intermediary misbehavior almost entirely onto entitlement holders" and "go further than necessary," reflecting "over-zealousness on the part of the securities industry in establishing a legal scheme to protect its lenders."[24]

In short, scholars across the field agree that revised Article 8 entrenched a system designed to insulate brokers and banks from risk while leaving ordinary investors exposed—a reality that defenders of the new system consistently dismiss by pointing to supposed safeguards.

Illusory Investor Safeguards

Advocates of the current system often insist that federal law imposes strong investor protections. The Securities and Exchange Commission's (SEC) Customer Protection Rule (Rule 15c3-3) generally requires brokers to segregate fully paid customer securities and prohibits them from using customer securities as collateral in their own lending agreements.[25] On paper, this should keep customer property off-limits. In practice, however, these regulations collapse in a crisis. Even when intermediaries act improperly—or outright illegally—customer assets can still be pulled into insolvency proceedings or frozen in a failure.[26] History shows that supposedly "segregated" property has repeatedly been plundered by failing brokers desperate to survive.

The collapse of Lehman Brothers in 2008 may be the most salient example. For nearly two years prior to its failure, Lehman had been using customer accounts as collateral for proprietary borrowing arrangements with JPMorgan Chase.[27] Once Lehman collapsed, JPMorgan asserted liens over roughly $333 million in customer assets, freezing them in place.[28] At the same time, DTCC canceled and reversed nearly half a billion dollars in pending transactions, trapping those assets in Lehman's bankruptcy estate.[29] But these initial, high-profile freezes were only the tip of the iceberg. Beyond them, billions in customer assets remained tied up for years as secured creditors claimed priority, with most distributions delayed until nearly five years after Lehman's bankruptcy,[30] and a smaller set of disputed claims not resolved until the case was fully closed in 2022.[31]

Lehman was not unique. In 2007, Sentinel Management Group pledged more than $300 million in client securities to secure its own borrowings, [32] leaving customers tied up in litigation that dragged on for nearly a decade.[33,34] Just four years later, MF Global raided more than $1.6 billion from segregated accounts,[35] forcing tens of thousands of customers to wait years for repayment while bankruptcy courts traced their assets.[36] Together, Lehman, Sentinel, and MF Global show that the promise of segregation was illusory—when crisis hit, customer assets were seized, frozen, or diverted as though the rules did not exist, leaving investors stranded for years while institutions protected themselves.

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The lesson is not that assets are never recovered, but that "eventual recovery" is no victory. Investors locked out for months or years lose liquidity, dividends, and the time value of money—sometimes missing entire market rebounds. Lehman's customers were eventually made whole, but only after years of litigation and extraordinary action by the Securities Investor Protection Corporation and the bankruptcy trustee.[37] That outcome was unusual and cannot be assumed in future crises, especially if multiple large brokers fail at once. The system is designed to protect institutions before individuals. Lehman's failure was a major crisis, yet a full systemic collapse would inflict far greater losses on investors.

Beyond these fragile segregation requirements, the other safeguard most often cited is the Securities Investor Protection Corporation (SIPC). Much like how the Federal Deposit Insurance Corporation (FDIC) insures bank accounts, SIPC insures brokerage accounts up to $500,000, including a $250,000 cap for cash.[38] Yet the program's reserve fund is minuscule relative to industry exposures. At the end of 2023—the most recent year for which data are available on SIPC's website—SIPC's reserve fund held less than $5 billion.[39] By comparison, as of June 2025, Fidelity alone administers $16.4 trillion in client assets,[40] meaning SIPC would cover only 0.03 percent of that total.

Some brokers carry excess insurance to supplement SIPC. For example, Fidelity provides a private insurance policy that offers up to $1 billion in aggregate "excess of SIPC" coverage—the maximum available in the entire industry.[41] Yet $1 billion spread across millions of accounts is negligible compared to Fidelity's size, and like SIPC, the policy excludes investment losses and most other claims while a broker remains in business.

In a systemic crisis, no effective safety net exists to cover losses across multiple large brokers. SIPC was designed for isolated failures, not a market collapse—leaving investors exposed precisely when they need protection most. And because the liabilities built on those entitlements vastly exceed the collateral available, the gap in a broad financial crash would be catastrophic.

Ultimately, the changes to UCC Article 8 replaced ownership with a fragile contractual claim and force ordinary American investors to shoulder the full risk burden when things go wrong. Investors no longer own their securities. When a broker pledges customer assets as collateral for its own borrowing, those securities are immediately exposed. If that broker goes bankrupt, its secured creditors—typically the largest banks—take priority over the very investors whose capital fuels Wall Street's profits. In those circumstances, Article 8's priority rules ensure investors are treated as unsecured creditors—even when their broker has acted illegally and the investors themselves are entirely blameless.

In a systemic crash involving cascading broker failures, the system would function exactly as designed: everyone but the investor would be made whole first. And if the crisis is severe enough, millions of Americans could see their life savings siphoned into the coffers of Wall Street's biggest banks.

POLICY RECOMMENDATIONS

Though only a wholesale restructuring of the modern U.S. securities system could fully restore direct property rights, state policymakers can take practical steps to give investors back a measure of control over the assets they believe they own, while strengthening protections under the current framework.

- **Reestablish investor priority**: Amend UCC Article 8 so that when an intermediary fails, customers—not secured creditors—are first in line to recover their securities. This reform would strike the exceptions in §8-511's priority rules and restore investors' claims ahead of Wall Street lenders.
- **Keep disputes in-state**: Revise Article 8's choice-of-law provisions so that disputes between investors and financial institutions are governed by the law and courts of the state that enacts these reforms, rather than defaulting to New York or another Wall Street jurisdiction. State protections should not be overridden by boilerplate contracts.
- **Establish a UCC review committee**: Create a legislative study committee to examine the Uniform Commercial Code more broadly and recommend further reforms where uniform provisions erode individual rights, with particular attention to securities, payments, collateral, and digital assets.

These reforms will not solve every problem embedded in today's securities system, but they represent concrete and achievable steps toward rebalancing the law in favor of ordinary investors while limiting systemic risk.

Endnotes

1 This paper substantially revises and supersedes a 2024 *Policy Tip Sheet* on UCC Article 8; the earlier edition remains available at Heartland.org. See: Jack McPherrin and Justin Haskins, "Revising Article 8 of the Uniform Commercial Code to Protect Americans' Property Rights," The Heartland Institute, March 12, 2024, https://heartland.org/publications/revising-article-8-of-the-uniform-commercial-code-to-protect-americans-property-rights/

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15 James Steven Rogers, "Policy Perspectives on Revised U.C.C. Article 8," p. 1447.

16 Francis J. Facciolo quoting Paul Shupack, memorandum to Members of the Uniform State Laws Committee of the Association of the Bar of the City of New York, June 6, 1995, see: Francis J. Facciolo, "Father Knows Best, Revised Article 8 and the Individual Investor," *Florida State University Law Review*, Volume 27, Issue 3, 2000, p. 626, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3357689

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