

North Dakota SB 2364

Relating to choice of law, the property interest in a financial asset held by a securities intermediary, priority among security interests and entitlement holders, and the law governing perfection and priority of security interests in investment property

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OUR PREDICAMENT

Q: How can we know that we no longer have property rights to securities?

A: Recovering one's own securities in the event of insolvency of the intermediary is prohibited.

Q: How can we know the above?

A: The Federal Reserve response to the Legal Certainty Group re. operation of UCC Article 8. (1)

While acknowledging that there will be competing priority claims to pooled assets in the event of insolvency, the banking lobby will have you believe that giving priority to investors to their own assets is frightening to contemplate, fraught with insurmountable difficulty, complexity and cost! Further study is required, which will take a long, long time!

AN ELEGANT SOLUTION

Q: What does the bill do? A:

1. It strikes two exceptions which have allowed secured creditors of intermediaries priority over investors in the event of insolvency of an intermediary.
2. It establishes the ability to be protected by setting the place of law in the state.

Nothing changes otherwise. Operation and legal constructs of the present system continue unhindered.

Existing contracts will not be disrupted, as they continue under the place of law set by contract.

(1) Please see Appendix I.

Freedom to set place of law by contract continues.

Existing margin accounts, to which the owner has explicitly granted control under a written agreement, continue unchanged.

Q: How then will the public benefit of the change in this law be realized?

A: Institutional investors will demand that investment contracts set the place of law in the state; those doing so will immediately have priority to pooled securities ahead of secured creditors of intermediaries. The Treasurer of the state will immediately have ability to do so, protecting the pension funds and finances of the state. Investors outside the state, indeed internationally, will seek to set investment contracts under the law of the state. In short, change for the public good will be driven by the most powerful, sophisticated investors. Other states will seek to follow in this.

IN SHORT, THIS...

is not difficult!

is not complicated!

is not costly (i.e., no expenditure whatsoever)!

can be implemented immediately!

requires no further change in law or regulation!

IS A MIRACLE!

A FINAL CONCERN

Q: What impact will this have on J.P. Morgan?

A: They will have to curtail doing what they say they are not doing.