

14-4310. “Security”; defined.¹

A “security” is any [~~(ownership right) (right to an ownership position) (or) (creditor relationship)~~] [ownership right] [right to an ownership position] [or] [creditor relationship] and includes any:²

[bond. A “bond” is any interest bearing instrument that obligates the issuer to pay the bondholder a specified sum of money, usually at specified intervals, and to repay the principal amount of the loan at maturity.]

[collateral-trust certificate. A “collateral-trust certificate” is a corporate debt instrument which is used to back collateral-trust bonds held by a bank or other trustee.]

[certificate of interest or participation in a security] [~~((temporary or interim certificate for)~~² ~~(receipt for) (guarantee of)~~] [temporary or interim certificate for] [receipt for] [guarantee of]² the right to purchase a security.]

[[a] warrant or right to subscribe to or purchase any security. A “warrant” or “subscription warrant” is a type of security which is usually issued together with a bond³ or preferred stock,⁴ that entitles the holder to buy a proportionate amount of stock, bonds or debentures at a specified price, usually higher than the market price at the time of issuance, for a period of years or to perpetuity.]

[[a] right to subscribe to or purchase any security. A “right” or a “subscription right” is a privilege granted to existing shareholders of a corporation to subscribe to shares of a new issue of stock, bonds or debentures before it is offered to the public, which normally has a life of two to four weeks, is freely transferable and entitles the holder to buy the new stock, bonds or debentures below the public offering price.]

[debenture. A “debenture” is an unsecured general debt obligation or loan backed only by the integrity of the borrower and usually documented by an agreement known as an “indenture”.]

[draft. A “draft” is a signed, written order by which one party (drawer) instructs another party (drawee) to pay a specified sum to a third party (payee). The payee and drawer are usually the same person. A sight draft is payable on demand. A time draft is payable either on a definite date or at a fixed time after sight or demand.]

[evidence of indebtedness]

[[~~any~~] interest or instrument commonly known as a security]

[investment contract. An “investment contract” means a contract:

1. where an individual invests his money;
2. in an undertaking or venture of two or more people or entities;
3. with an expectation of profit;
4. based primarily on the efforts of others.

An “investment” is the use of capital or money to create more money.]

[limited partnership interest. A “limited partnership” is an organization made up of a general partner, who manages a project, and limited partners, who invest money but have limited liability.]

[note. A “note” is a written promise to pay a specified amount to a certain person or entity on demand or on a specified date.]

[interest in oil, gas or other mineral rights other than a landowner royalty interest in the production of oil, gas or other minerals created through the execution of a lease of the lessor’s mineral interest.]

[promissory note. A “promissory note” is a written promise committing the maker to pay the payee a specified sum of money either on demand or at a fixed or determined future date, with or without interest.]

types of securities. It does not contain a definition of all of the terms set forth in the ~~[New Mexico Securities Act of 1986]~~New Mexico Uniform Securities Act to describe a security. If a term is not provided in this instruction or Section 58-13C-102(DD) of the Act, the court may draft an appropriate definition for the jury.

2. Use only the applicable alternatives.

3. The definition of “bond” as set forth in this instruction should also be given with this definition.

4. The definition of “stock” as set forth in this instruction should also be given with this definition.

5. The definitions of “put”, “call”, “call option”, “option”, and “certificate” are set forth in UJI 14-4311 NMRA and should be given when any of these terms are used.

6. *See also* the definitions of “subscription rights” and “subscription warrants” set forth above.

[Approved, effective September 1, 1988; as amended by Supreme Court Order No. 21-8300-009, effective for all cases pending or filed on or after December 31, 2021.]

Committee commentary. — The question of whether a specific instrument is a “security” is a mixed question of law and fact. *See* committee commentary to UJI 14-4301; Modern Federal Jury Instructions, Section 57.10; *United States v. Austin*, 462 F.2d 724 (10th Cir. 1972) and *Roe v. United States*, 287 F.2d 435 (5th Cir. 1961) (*cert. denied* 368 U.S. 824, 82 S. Ct. 43, 7 L. Ed. 2d 29 (1961)). There are numerous cases which state that the question of whether a specific instrument is a security is a matter of fact for the jury to determine. These are usually cases involving an investment contract or a unique or novel type of instrument. *See State v. Shade* and

1 *State v. Vincent*, 104 N.M. 710, 726 P.2d 864 (Ct. App. 1986) (sale of time-share memberships -
2 question whether a time-share contract was an investment contract).

3 As a general rule, if the jury requests an instruction on the definition of a term used in UJI
4 Criminal, the judge is to give a Webster's Dictionary definition of the term, however, the
5 committee believed that because of the technical nature of many of the types of securities,
6 definitions should be prepared by the committee for the more commonly used terms. In preparing
7 the definitions found in UJI 14-4310, the committee relied upon numerous sources, including
8 Barron's, Dictionary of Finance and Investment Terms, Barron's, Finance and Investment
9 Handbook and securities decisions.