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
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.]
entered into on a national securities exchange relating to foreign currency.

on any [security] (group or index of securities including any interest therein or based on the value thereof)] [security] (group or index of securities including any interest therein or based on the value thereof)]

subscription. A “subscription” is an agreement of intent to buy newly issued securities.

stock. “Stock” is the ownership of a corporation represented by shares that are a claim on the corporation’s earnings and assets.

treasury stock. “Treasury stock” is stock reacquired by the issuing company and available for retirement or resale.

voting-trust certificate. A “voting trust certificate” is a transferable certificate of beneficial interest in a voting trust, a limited-life trust set up to permit control of a corporation by a few individuals, called voting trustees. The certificates, which are issued by the voting trust to stockholders in exchange for their common stock, represent all the rights of common stock except voting rights. The common stock is then registered on the books of the corporation in the names of the trustees.

USE NOTES

1. It is generally a question of law as to whether or not a specific instrument is a security. If the instrument is a novel, uncommon or irregular device, the jury must be instructed on underlying factual disputes. An “investment contract” is a type of security which almost always requires a factual determination to be made. This instruction contains definitions of the common
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
State v. Vincent, 104 N.M. 710, 726 P.2d 864 (Ct. App. 1986) (sale of time-share memberships -
question whether a time-share contract was an investment contract).

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