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## 14-4310. "Security"; defined.1

2	A "security" is any [(ownership right) (right to an ownership position) (or) (creditor
3	relationship) [ownership right] [right to an ownership position] [or] [creditor relationship] and
4	includes any: <sup>2</sup>
5	[bond. A "bond" is any interest bearing instrument that obligates the issuer to pay the
6	bondholder a specified sum of money, usually at specified intervals, and to repay the principal
7	amount of the loan at maturity.]
8	[collateral-trust certificate. A "collateral-trust certificate" is a corporate debt instrument
9	which is used to back collateral-trust bonds held by a bank or other trustee.]
10	[certificate of interest or participation in a security] [[(temporary or interim certificate for) <sup>2</sup>
11	(receipt for) (guarantee of)] [temporary or interim certificate for] [receipt for] [guarantee of] <sup>2</sup> the
12	right to purchase a security.]
13	[[a] warrant or right to subscribe to or purchase any security. A "warrant" or "subscription
14	warrant" is a type of security which is usually issued together with a bond <sup>3</sup> or preferred stock, <sup>4</sup> that
15	entitles the holder to buy a proportionate amount of stock, bonds or debentures at a specified price,
16	usually higher than the market price at the time of issuance, for a period of years or to perpetuity.]
17	[[a] right to subscribe to or purchase any security. A "right" or a "subscription right" is a
18	privilege granted to existing shareholders of a corporation to subscribe to shares of a new issue of
19	stock, bonds or debentures before it is offered to the public, which normally has a life of two to
20	four weeks, is freely transferable and entitles the holder to buy the new stock, bonds or debentures
21	below the public offering price.]
22	[debenture. A "debenture" is an unsecured general debt obligation or loan backed only by

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the integrity of the borrower and usually documented by an agreement known as an "indenture".]

## Supreme Court Approved November 1, 2021

1	[draft. A "draft" is a signed, written order by which one party (drawer) instructs another
2	party (drawee) to pay a specified sum to a third party (payee). The payee and drawer are usually
3	the same person. A sight draft is payable on demand. A time draft is payable either on a definite
4	date or at a fixed time after sight or demand.]
5	[evidence of indebtedness]
6	[[any] interest or instrument commonly known as a security]
7	[investment contract. An "investment contract" means a contract:
8	1. where an individual invests his money;
9	2. in an undertaking or venture of two or more people or entities;
10	3. with an expectation of profit;
11	4. based primarily on the efforts of others.
12	An "investment" is the use of capital or money to create more money.]
13	[limited partnership interest. A "limited partnership" is an organization made up of a
14	general partner, who manages a project, and limited partners, who invest money but have limited
15	liability.]
16	[note. A "note" is a written promise to pay a specified amount to a certain person or entity
17	on demand or on a specified date.]
18	[interest in oil, gas or other mineral rights other than a landowner royalty interest in the
19	production of oil, gas or other minerals created through the execution of a lease of the lessor's
20	mineral interest.]
21	[promissory note. A "promissory note" is a written promise committing the maker to pay
22	the payee a specified sum of money either on demand or at a fixed or determined future date, with
23	or without interest.]

1	[[(put) <sup>5</sup> (call) <sup>5</sup> (straddle) <sup>5</sup> (or) (option) <sup>5</sup> ] [put] [call] [straddle] [or] [option] <sup>5</sup> entered into on
2	a national securities exchange relating to foreign currency.]
3	$[[\frac{(put)^5-(call)^5-(straddle)^5-(or)-(option)^5}]$ [put] [call] [straddle] [or] [option] <sup>5</sup> on any
4	[(security) <sup>2</sup> (group or index of securities including any interest therein or based on the value
5	thereof) [security] [group or index of securities including any interest therein or based on the
6	value thereof] $^2$ .]
7	[subscription. A "subscription" is an agreement of intent to buy newly issued securities.]
8	[stock. "Stock" is the ownership of a corporation represented by shares that are a claim on
9	the corporation's earnings and assets.]
10	[treasury stock. "Treasury stock" is stock reacquired by the issuing company and available
11	for retirement or resale. <sup>4</sup> ]
12	[voting-trust certificate. A "voting trust certificate" is a transferable certificate of beneficial
13	interest in a voting trust, a limited-life trust set up to permit control of a corporation by a few
14	individuals, called voting trustees. The certificates, which are issued by the voting trust to
15	stockholders in exchange for their common stock <sup>4</sup> , represent all the rights of common stock except
16	voting rights. The common stock is then registered on the books of the corporation in the names
17	of the trustees.]
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19	USE NOTES
20	1. It is generally a question of law as to whether or not a specific instrument is a
21	security. If the instrument is a novel, uncommon or irregular device, the jury must be instructed

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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
- 2 Securities Act of 1986] New Mexico Uniform Securities Act to describe a security. If a term is not
- 3 provided in this instruction or Section 58-13C-102(DD) of the Act, the court may draft an
- 4 appropriate definition for the jury.
- 5 2. Use only the applicable alternatives.
- 6 3. The definition of "bond" as set forth in this instruction should also be given with
- 7 this definition.
- 8 4. The definition of "stock" as set forth in this instruction should also be given with
- 9 this definition.
- 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
- 13 forth above.
- 14 [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.]
- 16 **Committee commentary.** The question of whether a specific instrument is a "security" is a
- 17 mixed question of law and fact. See committee commentary to UJI 14-4301; Modern Federal Jury
- 18 Instructions, Section 57.10; United States v. Austin, 462 F.2d 724 (10th Cir. 1972) and Roe v.
- 19 United States, 287 F.2d 435 (5th Cir. 1961) (cert. denied 368 U.S. 824, 82 S. Ct. 43, 7 L. Ed. 2d
- 20 29 (1961) ). There are numerous cases which state that the question of whether a specific
- 21 instrument is a security is a matter of fact for the jury to determine. These are usually cases
- 22 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).
- 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.