

§ 25-9-328. Priority of security interests in investment property.

The following rules govern priority among conflicting security interests in the same investment property:

- (1) A security interest held by a secured party having control of investment property under G.S. 25-9-106 has priority over a security interest held by a secured party that does not have control of the investment property.
- (2) Except as otherwise provided in subdivisions (3) and (4) of this section, conflicting security interests held by secured parties each of which has control under G.S. 25-9-106 rank according to priority in time of:
 - a. If the collateral is a security, obtaining control;
 - b. If the collateral is a security entitlement carried in a securities account and:
 1. If the secured party obtained control under G.S. 25-8-106(d)(1), the secured party's becoming the person for which the securities account is maintained;
 2. If the secured party obtained control under G.S. 25-8-106(d)(2), the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or
 3. If the secured party obtained control through another person under G.S. 25-8-106(d)(3), the time on which priority would be based under this subdivision if the other person were the secured party; or
 - c. If the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in G.S. 25-9-106(b)(2) with respect to commodity contracts carried or to be carried with the commodity intermediary.
- (3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.
- (4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.
- (5) A security interest in a certificated security in registered form which is perfected by taking delivery under G.S. 25-9-313(a) and not by control under G.S. 25-9-314 has priority over a conflicting security interest perfected by a method other than control.
- (6) Conflicting security interests created by a broker, securities intermediary, or commodity intermediary which are perfected without control under G.S. 25-9-106 rank equally.
- (7) In all other cases, priority among conflicting security interests in investment property is governed by G.S. 25-9-322 and G.S. 25-9-323. (1997-181, s. 5; 2000-169, s. 1.)