

INVESTMENT SECURITIES ARTICLE 8—UNIFORM COMMERCIAL CODE

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Article 8, Ohio Revised Code sections 1308.01 to 1308.36, inclusive, is a negotiable instruments law dealing with investment securities. It deals with bearer bonds and debentures, commonly referred to as "coupon bonds" and "coupon debentures," now governed by the Negotiable Instruments Law,¹ and stock certificates, now provided for by the Uniform Stock Transfer Act.² In addition, it deals with registered bonds, debentures, and other types of investment securities not now covered by any uniform statutes.³ Article 8 is not intended as a substitute for and does not conflict with the Ohio Securities Act ("Blue Sky" law).⁴ It is not a corporation code, and does not conflict with the Ohio General Corporation Law.⁵

Article 8 modernizes and makes uniform the law applicable to investment securities in the light of the experience accumulated during the period of over half a century of expansion in the number and types of investment securities. It treats bonds, stocks, and other types of investment securities together in regards to issuers' defenses, adverse claims, and registration. It provides a comprehensive set of rules governing the transfer of investment securities.

SECURITIES COVERED BY ARTICLE 8

A "security" is defined in Revised Code section 1308.01(A)(1), or UCC 8-102(1)(a), as an instrument which: .

- (a) is issued in bearer or registered form; and
- (b) is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and
- (c) is either one of a class or series or by its terms is divisible into a class or series of instruments; and
- (d) evidences a share, participation, or other interest in property or in an enterprise or evidences an obligation of the issuer.

The definition is functional and it is believed will cover any instrument

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¹ Ohio Rev. Code §§ 1301.01 to 1301.86 (present statutes).

² Ohio Rev. Code §§ 1705.01 to 1705.21 (present statutes).

³ Registered bonds and debentures are not now covered by the Negotiable Instruments Law because not "payable to order or to bearer" Ohio Rev. Code 1301.03(D) (1953).

⁴ Ohio Rev. Code §§ 1707.01 to 1707.99.

⁵ Ohio Rev. Code §§ 1701.01 to 1701.99.

which securities markets are likely to regard as suitable for trading.⁶

Instruments issued in usual form which probably come within the definition of security include: (1) government bonds; (2) corporate bonds and debentures (secured and unsecured) including collateral trust and income bonds; (3) corporate stocks; (4) equipment trust certificates; (5) interim certificates; (6) voting trust certificates; (7) investment trust and mutual fund shares; (8) bond coupons; (9) land trust certificates; (10) fractional undivided interests in oil, gas and mineral leases; (11) cooperative apartment stock; (12) stock purchase warrants; and (13) rights to receive shares or a fraction thereof (*e.g.*, as stock dividend).⁷ On the other hand, the definition will not cover all instruments which are considered securities under the Federal Securities Act of 1933, as amended,⁸ or the Ohio Securities Act.⁹ If an instrument is a security as defined in Revised Code section 1308.01(A)(1) (UCC 8-102(1)(a)) it is governed by article 8 (Revised Code sections 1308.01 to 1308.36, inclusive) and not by article 3 (Revised Code sections 1303.01 to 1303.78, inclusive) even though it also meets the requirements of article 3.¹⁰

A security is in "registered form" when it specifies a person entitled to the security or to the rights it evidences and when its transfer may be registered upon books maintained for that purpose by or on behalf of an issuer or the security so states.¹¹ A security is in "bearer form" when it runs to bearer according to its terms and not by reason of any indorsement.¹²

Special provisions of the Ohio General Corporation Law relating to (1) the surviving joint tenant record holder of shares and the suspension of the rights as a shareholder on failure to surrender certificates for shares for cancellation and exchange,¹³ (2) statements on certificates for shares, restrictions on the right to transfer shares, and reservations of liens on shares,¹⁴ (3) the employment by a corporation of agents to transfer or register shares,¹⁵ (4) the recogni-

⁶ Securities markets include the over-the-counter market.

⁷ The above listing appears in New York, Report of the Law Revision Commission for 1955, Study of the Uniform Commercial Code, Article 8—Investment Securities, Document No. 65(I), p. 1887-1889.

⁸ 48 Stat. 74 (1933); 15 USC 77a-77aa, as amended. For the definition of a "security," see Section 2(1).

⁹ Ohio Rev. Code §§ 1707.01 to 1707.99. For the definition of a "security," see Ohio Rev. Code § 1707.01(B).

¹⁰ Ohio Rev. Code § 1308.01(A)(2) (UCC § 8-102(1)(b)).

¹¹ Ohio Rev. Code § 1308.01(A)(3) (UCC § 8-102(1)(c)).

¹² Ohio Rev. Code § 1308.01(A)(4) (UCC § 8-102(1)(d)).

¹³ Ohio Rev. Code § 1701.24 (1953).

¹⁴ Ohio Rev. Code § 1701.25 (1953).

¹⁵ Ohio Rev. Code § 1701.26 (1953).

tion by a corporation and its agents of record ownership of shares and other securities,¹⁶ (5) the closing of share transfer books against transfer of shares,¹⁷ and (6) the suspension of all rights accruing from shares after a demand for relief by a dissenting shareholder,¹⁸ will govern to the exclusion of Revised Code 1308.01 to 1308.36, inclusive, on the same subject, except where it clearly appears that the special provision is cumulative, in which case both it and the provisions of Revised Code 1308.01 to 1308.36, inclusive, shall apply.¹⁹

ISSUE—ISSUER

The objective of article 8 is to cut off any defenses of an issuer of a security as against a purchaser for value and without notice to the maximum practicable extent. With respect to obligations on or defenses to a security, the "issuer" is broadly defined. It includes a person who places or authorizes the placing of his name on a security (otherwise than as authenticating trustee, registrar or transfer agent, or the like) to evidence that it represents a share or participation in his property or in an enterprise, or to evidence his duty to perform an obligation evidenced by the security, or who creates fractional interests in his rights or property which are evidenced by securities, or who becomes responsible for or in place of any other person described as an issuer.²⁰ A guarantor is an issuer to the extent of his guaranty, whether or not his obligation is noted on the security.²¹ However, with respect to registration of transfer, "issuer" means a person on whose behalf transfer books are maintained.

The first problem dealt with concerning an issuer's defenses is incorporation by reference in a security of another instrument, such as an indenture, agreement, constitution or statute. Illustrations include the reference to an indenture under which a corporate bond or debenture was issued and a reference to legislation by which the obligation of a governmental unit was authorized. Ohio Revised Code section 1308.07(A)²² validates such incorporation by reference, subject to the limitation that the terms so referred to do not conflict with the

¹⁶ Ohio Rev. Code § 1701.28 (1953).

¹⁷ Ohio Rev. Code § 1701.45 (1953).

¹⁸ Ohio Rev. Code § 1701.85 (1953).

¹⁹ Ohio Rev. Code § 1308.01(J). There is, obviously, no comparable provision of the UCC.

²⁰ Ohio Rev. Code § 1308.06(A) (UCC § 8-201(1)).

²¹ Ohio Rev. Code § 1308.06(B) (UCC § 8-201(2)).

²² UCC § 8-202(1). Heretofore incorporation by reference has presented problems under Ohio Rev. Code § 1301.03(B) (1953) requiring a negotiable instrument to contain an unconditional promise to pay.

stated terms. Similarly, issuer's liens²³ and restrictions on the transfer of securities imposed by the issuer²⁴ must be noted conspicuously on the security.

A security of a private issuer, as contrasted with a governmental issuer, is valid in the hands of a purchaser for value and without notice of a defect, even if the defect is one "going to its validity."²⁵ However, if the defect involves a violation of constitutional provisions, such a purchaser takes subject to the issuer's defenses, but the security is valid in the hands of a subsequent purchaser (one who takes other than by original issue²⁶) for value who has no notice of the defect. This distinction will be unimportant in Ohio where there are no constitutional provisions requiring that substantial value be given for securities of private issuers.

An overissue²⁷ of securities, although generally regarded as a defect going to validity, is an exception to the rule of validity set forth in Revised Code section 1308.07(B)(1). An issuer is not required to recognize as valid a security which constitutes an over-issue.²⁸ However, if an identical security which does not constitute an overissue is reasonably available for purchase, the person entitled to validation may compel the issuer to purchase and deliver such a security to him against surrender of the security, if any, which he holds, or if a security is not so available for purchase, such person may recover from the issuer the price he or the last purchaser paid for it, with interest from the date of his demand.²⁹

A security issued by a governmental issuer with a defect going to its validity is valid in the hands of a purchaser for value without notice of the defect only if there has been substantial compliance with the legal requirements governing the issue, or the issuer has received substantial consideration and the stated purpose of the issue is one

²³ Ohio Rev. Code § 1308.02 (UCC § 8-103).

²⁴ Ohio Rev. Code § 1308.09 (UCC § 8-204). However, this section makes the restriction effective against a person with actual knowledge of it, even though not noted on the security.

²⁵ Ohio Rev. Code § 1308.07(B)(1) (UCC § 8-202(2)(a)).

²⁶ Ohio Rev. Code § 1308.01(C) (UCC § 8-102(3)).

²⁷ The issue of securities in excess of the amount which the issuer has corporate power to issue. Ohio Rev. Code § 1308.01(F) (UCC § 8-104(2)).

²⁸ Ohio Rev. Code § 1308.03(A) (UCC § 8-104(1)).

²⁹ Ohio Rev. Code § 1308.03(A)(1) and (2) (UCC § 8-104(1)(a) and (b)). The right to compel the issuer to purchase and deliver an identical security is new. The right to recover damages is well established, but the measure of damages has varied. The purchase price of the security to the last holder who gave value for it is adopted as being the fairest means of reducing the possibility of speculation by the purchaser. See Comment to UCC § 8-104.

for which the issuer has power to borrow money or issue the security. Where the defect involves a violation of constitutional provisions, the original purchaser is without protection, but if either of the above mentioned conditions is satisfied, a subsequent purchaser for value and without notice is protected.³⁰ As a practical matter, the problem of policing governmental issuers has been alleviated by the present practice of underwriters to require legal opinions as to the validity of the issue.

As has always been the case, forged or counterfeit securities are void even in the hands of a purchaser for value and without notice.³¹ However, if an unauthorized signature is placed on a security prior to or in the course of issue by an authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security or of similar securities or their immediate preparation for signing, or by an employee of the issuer or any of the foregoing entrusted with responsible handling of the security, the security is validated in the hands of a purchaser for value and without notice of the lack of authority.³² This represents an extension of the present case law.³³

The provision of the Negotiable Instruments Law that a holder in due course must take the instrument "before it was overdue"³⁴ is abolished in the case of investment securities. Its application to such securities was never appropriate, because they may be called for redemption or exchange before their stated maturity. Article 8 charges a purchaser with notice of a defect in issue of a security if he takes it more than one year after the date set for its payment or delivery of other securities in exchange therefor and the necessary funds or other securities are available, or in any other case if he takes the security more than two years after the date set for surrender or presentation or the date on which such performance becomes due.³⁵

³⁰ Ohio Rev. Code § 1308.07(B)(2) (UCC § 8-202(2)(b)).

³¹ Ohio Rev. Code § 1308.07(C) (UCC § 8-202(3)).

³² Ohio Rev. Code § 1308.10 (UCC § 8-205).

³³ The Comment to UCC 8-205 indicates that such section expressly rejects the technical distinction made by courts reluctant to recognize forged signatures, between cases where the forger signs a signature he is authorized to sign under proper circumstances and those in which he signs a signature he is never authorized to sign. The purchaser is rarely in a position to determine the exact authority of the signer but the issuer can protect itself against forgery by careful selection of employees and bonding. However, the issuer is not held liable for the honesty of an employee not entrusted with the signing, preparation or responsible handling of similar securities and whose forgery the issuer had no reason to anticipate.

³⁴ Ohio Rev. Code § 1301.54 (1953).

³⁵ Ohio Rev. Code § 1308.08 (UCC § 8-203). The problem of matured securities is thus dealt with in terms of the effect of such event in giving notice of the issuer's defenses

A useful provision is included in article 8 fixing the measure of responsibility of an authenticating trustee, registrar or transfer agent who places his signature on a security. Such a signer warrants to a purchaser for value and without notice that the security is not forged or counterfeit and is in proper form;³⁶ that he has capacity to act as such trustee, registrar, or transfer agent and is acting within the scope of the authorization received from the issuer; and that he has reasonable grounds to believe the security is within the amount the issuer is authorized to issue.³⁷ However, such trustee, registrar or transfer agent does not assume responsibility for the validity of the security in other respects.

PURCHASE

Part 3 of article 8³⁸ deals with the rights of successive holders or claimants to securities in the case of sales and transfers. First and foremost a bona fide purchaser acquires a perfect title to the security.³⁹ A "bona fide purchaser" is a purchaser for value in good faith and without notice of any adverse claim who takes delivery of a security in bearer form or of one in registered form issued to him or indorsed to him or in blank.⁴⁰ "Adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.⁴¹ The bona fide purchaser is the counterpart of the "holder in due course" under the Negotiable Instruments Law.⁴²

Article 8 contains express provisions as to when a purchaser will be charged with notice of adverse claims. He will be so charged if the security has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer.⁴³ A new provision provides

and not in terms of "negotiability." If a security is in circulation long after it has been called for payment or exchange, this should give rise to questions as to its validity in a purchaser's mind. This section also recognizes that defaulted securities are frequently traded in and a purchaser should not be placed on notice of a defect in issue by default until expiration of a reasonable period after default.

³⁶ Ohio proper form is defined in Ohio Rev. Code § 1308.01(B) (UCC § 8-102(2)).

³⁷ Ohio Rev. Code § 1308.13 (UCC § 8-208). This new statutory provision reflects the results achieved by the cases.

³⁸ Ohio Rev. Code § 1308.14 to 1308.30, inclusive (UCC § 8-301-319).

³⁹ Ohio Rev. Code § 1308.14(B) (UCC § 8-301(2)).

⁴⁰ Ohio Rev. Code § 1308.01(D) (UCC § 8-302).

⁴¹ Ohio Rev. Code § 1308.14(A) (UCC § 8-301(1)).

⁴² Ohio Rev. Code § 1301.54 (1953). Note, however, that Ohio Rev. Code § 1308.01 (D) neither requires that the security be "complete and regular upon its face" nor that "the purchaser became the holder of it before it was overdue."

⁴³ Ohio Rev. Code § 1308.15(A)(1) (UCC § 8-304(1)(a)). This is similar to Rev. Code § 1301.38 and Ohio Rev. Code § 1301.39 (1953).

he is so charged if the security is in bearer form and has on it an unambiguous statement that it is the property of a person other than a transferor, but that the mere writing of a name on the security is not such a statement.⁴⁴ But the fact that the purchaser has notice that the security is held for a third person, or is registered in the name of or indorsed to a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute notice of adverse claims, except where the purchaser has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty.⁴⁵

Similarly as in the case of issuer's defenses, the rule of the Negotiable Instruments Law that a holder in due course must purchase the instrument "before it was overdue"⁴⁶ is abolished in the case of transfers.⁴⁷ However, the purchase of an overdue instrument will in some cases constitute notice of adverse claims. A purchaser will be charged with notice of adverse claims if he purchases the security after one year from any date set for presentment or surrender for redemption or exchange, or after six months from any date set for payment of money against presentment or surrender of the security if funds are available for payment.⁴⁸ The periods of time are shorter than those used to constitute notice of issuer's defenses.⁴⁹ A default of itself does not constitute notice of adverse claims.

TRANSFER OF SECURITIES

For securities in registered form the simplified method of indorsement set forth in the Uniform Stock Transfer Act is adopted; namely, execution by an appropriate person on the security or on a separate document (usually called a stock power) of an assignment or transfer of the security, or when the signature of such person is written without more upon the back of the security.⁵⁰ The very sensible rule is stated that the indorser assumes no obligation that the security will be honored by the issuer.⁵¹ This was always the case with stock

⁴⁴ Ohio Rev. Code § 1308.15(A)(2) (UCC § 8-304(1)(b)).

⁴⁵ Ohio Rev. Code § 1308.15(B) (UCC § 8-304(2)). This is a new provision and further extends the theory of Ohio Rev. Code §§ 1339.04 and 1339.05 (1953), the latter of which is repealed.

⁴⁶ Ohio Rev. Code § 1301.54(B) (1953).

⁴⁷ Ohio Rev. Code § 1308.16 (UCC § 8-305).

⁴⁸ Ohio Rev. Code § 1308.16(A) and (B) (UCC § 8-305(a) and (b)).

⁴⁹ Ohio Rev. Code § 1308.08 (UCC § 8-203).

⁵⁰ Ohio Rev. Code § 1308.19(A) (UCC § 8-308(1)). "Appropriate person" is defined in Ohio Rev. Code § 1308.19(C) (UCC § 8-308(3)). Usually it will be the registered owner or the person to whom the security has been specially indorsed, but may be a successor fiduciary, an executor, administrator, guardian, or an authorized agent.

⁵¹ Ohio Rev. Code § 1308.19(D) (UCC § 8-308(4)).

certificates under the Uniform Stock Transfer Act, but was not the rule for debt securities subject to the Negotiable Instruments Law unless the indorsement was made without recourse. However, the indorser as a transferor does warrant to a purchaser for value that his transfer is rightful, the security is genuine and has not been materially altered, and he knows of no fact which might impair the validity of the security.⁵²

There may be an indorsement of a part of a security representing units intended by the issuer to be separately transferable.⁵³

The Uniform Stock Transfer Act contains no provision with respect to the effect of an unauthorized or forged indorsement. The Negotiable Instruments Law gave no effect to a forged indorsement unless the holder was precluded from setting up the forgery.⁵⁴ Article 8 adopts the rule of the Negotiable Instruments Law, but limits it by providing that the owner may not assert the ineffectiveness of a forged indorsement against a purchaser for value and without notice of adverse claims who has in good faith received a new security on registration of transfer.⁵⁵ Most purchases of securities are now made through brokers and a purchaser receives and sees only a certificate or debenture registered in his name. Such a purchaser cannot possibly be held to have notice of or to have relied on a forged indorsement on the original security transferred. The original owner of the security which has been transferred on the basis of a forged indorsement is protected by the issuer's liability for wrongful registration of transfer.⁵⁶ The issuer's recourse is against the forger or the guarantor of the forger's signature.⁵⁷

Statutory recognition is made of the prevailing practice of "guarantee of signature." A guarantor of an indorser's signature on a security warrants that at the time of signing the signature was genuine, the signer was an appropriate person to indorse as provided in Ohio Revised Code section 1308.19(C),⁵⁸ and that the signer had

⁵² Ohio Rev. Code § 1308.17(B) (UCC § 8-306(2)).

⁵³ Ohio Rev. Code § 1308.19(E) (UCC § 8-308(5)). An example would be 50 shares out of a 100 share certificate. Partial indorsements were not permitted by the Negotiable Instruments Law. Ohio Rev. Code § 1301.34 (1953). The rights of a transferee under a partial indorsement to the status of a bona fide purchaser are left to the case law.

⁵⁴ Ohio Rev. Code § 1301.25 (1953).

⁵⁵ Ohio Rev. Code § 1308.22(A) (UCC § 8-311(a)).

⁵⁶ Ohio Rev. Code § 1308.22(B) (UCC § 8-311(b)); Ohio Rev. Code § 1308.34(B) (UCC § 8-404(2)).

⁵⁷ Ohio Rev. Code § 1308.23 (UCC § 8-312). The issuer is required to deliver a like security to the true owner unless such delivery would result in an overissue in which case the issuer's liability is governed by Ohio Rev. Code § 1308.03 (UCC § 8-104).

⁵⁸ UCC 8-308(3).

legal capacity to sign, but he does not warrant the rightfulness of the transfer.⁵⁹ The issuer may require in all cases the guarantee of the signature of the indorser.⁶⁰ A new concept is introduced, a "guarantee of indorsement." Such a guarantor, in addition to the warranties made by a guarantor of a signature, also warrants the rightfulness of the particular transfer.⁶¹ However, an issuer may not require a guarantee of indorsement as a condition to registration of transfer. The warranties of a guarantor of a signature or indorsement are made to any person taking or dealing with the security in reliance in the guarantee (including an issuer), and the guarantor is liable to such person for any loss resulting from breach of the warranties.⁶²

STATUTE OF FRAUDS

A contract for the sale of securities is not enforceable by way of action or defense unless (a) there is some writing signed by the party against whom enforcement is sought or his authorized agent or broker sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price; or (b) delivery of the security has been accepted or payment has been made but the contract is enforceable only to the extent of such delivery or payment; or (c) within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under (a) above has been received by the party against whom enforcement is sought and he has failed to object in writing to its contents within ten days after its receipt; or (d) the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract was made for sale of a stated quantity of described securities at a defined or stated price.⁶³

DEALINGS THROUGH BROKERS

Article 8 recognizes that the bulk of securities trading is done through brokers and attempts to state the effect of the relationship of broker⁶⁴ and customer and the rights and liabilities of each in terms of

⁵⁹ Ohio Rev. Code § 1308.23(A) (UCC § 8-312(1)).

⁶⁰ Ohio Rev. Code § 1308.32(A) (UCC § 8-402(1)).

⁶¹ Ohio Rev. Code § 1308.23(B) (UCC § 8-312(2)).

⁶² Ohio Rev. Code § 1308.23(C) (UCC § 8-312(3)).

⁶³ Ohio Rev. Code § 1308.30 (UCC § 8-319). This conforms the statute of frauds provisions with regard to securities to the policy of the provisions in article 2 on sale of goods.

⁶⁴ Broker is defined in Ohio Rev. Code § 1308.01(E) (UCC § 8-303) as a person engaged for all or part of his time in the business of buying and selling securities, who in the transaction concerned acts for, or buys a security from or sells a security to a customer.

actual practice and understanding in securities markets. Thus, delivery of a security is completed in some cases while the security is still in the hands of the broker. Delivery to a purchaser occurs either when his broker acquires possession of the security specially indorsed to or issued in the name of the purchaser, when his broker sends him confirmation of the purchase, when by book entry or other means the broker identifies a specific security in such broker's possession as belonging to the purchaser, or when his broker acknowledges that he holds for the purchaser an identified security in the broker's possession to be delivered to the purchaser.⁶⁵ In any one of these situations delivery to the purchaser is complete, and no intervening notice of adverse claims before the purchaser takes actual physical possession of the security can divest him of his rights. On the other hand, notice of adverse claims to the purchaser's broker received before delivery of the security to such broker constitutes notice to the purchaser.⁶⁶ However, despite a confirmation of purchase, and a book entry and other indication that the security is part of a fungible bulk held for customers by the broker and the purchaser's acquisition of a proportionate property interest in such fungible bulk, the purchaser is not the holder of securities held for him by his broker.⁶⁷ If the purchaser receives notice of an adverse claim prior to specific identification or actual receipt of possession of the security he cannot become a bona fide purchaser and he is entitled to refuse to accept delivery of such security from the broker.⁶⁸

On the seller's side of a transaction made on an exchange or otherwise through a broker, the seller's duty to deliver is fulfilled when he delivers the security sold into the possession of the selling broker or, if requested, causes an acknowledgement to be made to the selling broker that it is held for him.⁶⁹ The selling broker fulfills his duty to deliver by delivering the security or a like security into the possession of the buying broker or by affecting clearance of the sale in accordance with rules of the exchange on which the transaction took place.⁷⁰

A broker who in good faith has received securities and sold, pledged or delivered them according to the instructions of his principal is not liable for conversion although the principal had no right to

⁶⁵ Ohio Rev. Code § 1308.24(A)(2), (3), and (4) (UCC § 8-313(1)(b), (c), and (d)).

⁶⁶ Ohio Rev. Code § 1308.15 (UCC § 8-304).

⁶⁷ Ohio Rev. Code § 1308.24(B) (UCC § 8-313(2)).

⁶⁸ See Comment to (UCC 8-313).

⁶⁹ Ohio Rev. Code § 1308.25(A)(1) (UCC § 8-314(1)(a)).

⁷⁰ Ohio Rev. Code § 1308.25(A)(2) (UCC § 8-314(1)(b)).

dispose of them.⁷¹ This is a new statutory provision designed to relieve the broker of liability for so-called "innocent conversion."

REGISTRATION OF TRANSFERS

Part 4⁷² of article 8 contains provisions governing registration of registered bonds and debentures, stock certificates, warrants and other registered securities.⁷³ These provisions provide a practical and reasonable set of rules and procedures under which the presenter of the security for registration, the issuer and its transfer agent and registrar can operate with clearly defined limits of responsibility to register transfers rapidly and simply. Ohio has heretofore had statutory provisions designed to protect the issuer and transfer agents in dealing with holders of securities who are fiduciaries or minors.⁷⁴ These statutes have not been repealed in connection with the enactment of the Uniform Commercial Code.

The problem is approached affirmatively by placing a duty on the issuer⁷⁵ to register a requested transfer of a registered security presented to it if it is indorsed by the appropriate person or persons,⁷⁶ reasonable assurance is given that such indorsements are genuine and effective,⁷⁷ the issuer has no duty to inquire into adverse claims or has discharged such duty,⁷⁸ the applicable law relating to the collection of taxes has been complied with, and the transfer is in fact rightful or is to a bona fide purchaser.⁷⁹ If the issuer refuses to register the transfer or unreasonably delays in registering he is liable to the presenter or his principal for resulting loss.⁸⁰ The presenter of

⁷¹ Ohio Rev. Code § 1308.28 (UCC § 8-318).

⁷² Ohio Rev. Code § 1308.31 to Rev. Code § 1308.36, inclusive (UCC §§ 8-401 to 8-406 inclusive).

⁷³ These provisions are a codification of decisional law with some clarification, with one important exception—the rejection of the almost uniform common law rule in the United States to the effect that an issuer when asked to register a transfer made by a fiduciary must determine whether the particular transfer is rightful.

⁷⁴ Ohio Rev. Code §§ 1701.28, 1339.01, 1339.02, 2109.29.

⁷⁵ As used in Part 4, the person on whose behalf transfer books are maintained. Ohio Rev. Code § 1308.06(C) (UCC § 8-201(3)). A transfer agent, registrar or indenture trustee is under a similar duty to register a transfer. Ohio Rev. Code § 1308.36 (A)(2) (UCC § 8-406(1)(b)).

⁷⁶ The appropriate person or persons to indorse are spelled out in Ohio Rev. Code § 1308.19(C) (UCC § 8-308(3)).

⁷⁷ The assurance which the issuer may require is specified in Rev. Code § 1308.32 (UCC § 8-402).

⁷⁸ When an issuer is under a duty of inquiry and how such duty may be discharged is provided in Rev. Code § 1308.33 (UCC § 8-403).

⁷⁹ Ohio Rev. Code § 1308.31 (UCC § 8-401).

⁸⁰ Ohio Rev. Code § 1308.31(B) (UCC § 8-401(2)).

the security for registration warrants to the issuer that he is entitled to the registration, but a purchaser for value without notice of adverse claims who receives a new security or registration of transfer warrants only that he has no knowledge of any unauthorized signature in a necessary indorsement.⁸¹

The issuer must be given reasonable assurance that the necessary indorsements are genuine and effective. It may require a guarantee of the signature⁸² of the person indorsing.⁸³ Where the indorsement is by an agent, the issuer may require appropriate assurance of the authority of such agent.⁸⁴ When the indorsement is by a court-appointed fiduciary, the issuer may require a court certificate dated within 60 days before the date of presentation for transfer, and where the indorsement is by a fiduciary who has not been court-appointed, a copy of the document⁸⁵ showing the appointment or an incumbency certificate signed by a person reasonably believed by the issuer to be responsible.⁸⁶ Where there is more than one fiduciary, the issuer may require reasonable assurance that all who are required to sign have signed.⁸⁷ However, the failure of a fiduciary to obtain court approval of the transfer of a security or to comply with other requirements does not make his indorsement unauthorized.⁸⁸ Hence court orders and other controlling instruments are not required. However, the issuer may elect to require reasonable assurance beyond that specified in Revised Code section 1308.32,⁸⁹ but if it does so and, for a purpose other than to obtain appropriate evidence of appointment or incumbency of a non-court appointed fiduciary, requires and obtains a copy of a will, trust indenture, articles of co-partnership, by-laws or other

⁸¹ Ohio Rev. Code § 1308.17(A) (UCC § 8-306(1)).

⁸² Ohio Rev. Code § 1308.23(A) (UCC § 8-312(1)) sets forth the warranties of a guarantor of signature.

⁸³ Ohio Rev. Code § 1308.32(A)(1) (UCC § 8-402(1)(a)).

⁸⁴ Ohio Rev. Code § 1308.32(A)(2) (UCC § 8-402(1)(b)).

⁸⁵ The issuer is not charged with notice of the contents of such document except as it relates to the appointment or incumbency. Ohio Rev. Code § 1308.32(C)(2) (UCC § 8-402(3)(b)).

⁸⁶ Ohio Rev. Code § 1308.32(A)(3), C(1), and (2) (UCC § 8-402(1)(c), 3(a), and (b)). The issuer will require this assurance only where the security is registered in the name of a decedent or other person from or through whom the fiduciary derived his rights. Once the security has been properly registered in the name of a fiduciary and such fiduciary then seeks to transfer that security, no certificate of appointment or incumbency is required since, under Rev. Code § 1308.33(C)(1), or UCC § 8-403(3)(a), an issuer may assume without injury that the newly registered owner continues to be the fiduciary until written notice is received that the fiduciary is no longer acting as such with respect to the particular security.

⁸⁷ Ohio Rev. Code § 1308.32(A)(4) (UCC § 8-402(1)(d)).

⁸⁸ Ohio Rev. Code § 1308.19(G) (UCC § 8-308(7)).

⁸⁹ UCC 8-402.

controlling instrument, it is charged with notice of all matters contained therein affecting the transfer.⁹⁰

An issuer is under a duty to inquire into adverse claims of which it receives notice in any one of three ways: (1) the issuer may receive actual notice of such claim, but such a notice must be in writing, must identify the claimant, the registered owner and the issue of which the security is a part, and must provide an address for communication with the claimant;⁹¹ (2) the issuer may receive notice of such claim from a controlling instrument which it has elected to require under Revised Code section 1308.32(D);⁹² and (3) the issuer may receive written notice that a fiduciary in whose name a security is registered is no longer acting as such with respect to the security.⁹³ An issuer placed under a duty of inquiry may discharge the same by any reasonable means, including giving notice to an adverse claimant by registered or certified mail that the security has been presented for registration of transfer and that such transfer will be registered unless within 30 days from the date of the mailing of such notice, either an injunction is issued by a court of competent jurisdiction or an indemnity bond sufficient to protect the issuer from any loss which it may suffer by complying with the adverse claim is filed with the issuer.⁹⁴

The issuer is expressly exonerated from any liability to the owner or any other person suffering loss as a result of the registration of a transfer if in fact the necessary indorsements were on the security and the issuer had no duty to inquire into adverse claims or has discharged such duty.⁹⁵

Finally there is an express statutory provision as to the duty of an authenticating trustee, transfer agent or registrar. They have a duty to the issuer to exercise good faith and due diligence in performing their functions and have with regard to their functions the same obligations to the holder or owner of the security and the same rights and privileges as the issuer. Notice to these persons is notice to the issuer with respect to the functions they perform.⁹⁶ This represents a rejection of the cases which regarded these persons solely as agents of the issuer and refused to hold them liable to the owner of a security for refusal to register a transfer.⁹⁷

⁹⁰ Ohio Rev. Code § 1308.32(D) (UCC § 8-402(4)). This should result in discouraging issuers from requiring controlling documents.

⁹¹ Ohio Rev. Code § 1308.33(A)(1) (UCC § 8-403(1)(a)).

⁹² UCC 8-402(4).

⁹³ Ohio Rev. Code § 1308.33(C)(1) (UCC § 8-403(3)(a)).

⁹⁴ Ohio Rev. Code § 1308.33(B) (UCC § 8-403(2)).

⁹⁵ Ohio Rev. Code § 1308.34 (UCC § 8-404).

⁹⁶ Ohio Rev. Code § 1308.36 (UCC § 8-406).

⁹⁷ See Comment too UCC 8-406.

CONFLICT OF LAWS

The validity of a security and the rights and duties of the issuer with respect to registration of transfer are governed by the law (including the conflict of laws rules) of the jurisdiction of incorporation of the issuer.⁹⁸ This is a simple provision, but unfortunately it does not answer all the problems. If the issuer is organized in a state which has not adopted the Uniform Commercial Code, or if an important part of the transaction takes place in such a state, or if there is some other significant factor which may be controlled by the laws of such a state, it may not be clear whether the Code or the laws of the non-Code state apply. There will be difficulties about a guarantee of signature given in a non-Code state, even where the issuer is incorporated under the laws of a Code state.⁹⁹

CONCLUSION

Article 8 is highly technical as befits its subject. Nevertheless it has been carefully conceived and drafted. Its principal benefits lie in its scope, which expands the number and kinds of securities included in its coverage, its recognition of the realities of present day trading in securities on exchanges and through brokers, and in its provisions for the registration of transfers of securities.

⁹⁸ Ohio Rev. Code 1308.05 (UCC 8-106).

⁹⁹ See Bankers Manual on the Uniform Commercial Code (Mass.) section 6.3, page 84 and section 6.9, page 98. See also, "Some Changes in the Law of Investment Securities made by the Revised Commercial Code" 32 Pennsylvania Bar Association Quarterly, March, 1961, page 237 at 242-244.