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Legal Opinions on Secondary Sales of Stock

by Scott FitzGibbon and Donald W. Glazer

Many sales of stock from one stockholder to another ("secondary sales"), including large block sales in the public market, are conducted without the benefit of a legal opinion on the rights the buyer is acquiring in the shares. However, where the secondary sale is part of a registered public offering, the underwriters ordinarily require such an opinion as a matter of course. A "secondary sale opinion" also is sometimes required when a company is acquired through the purchase of all its outstanding stock.¹ The purpose of such an opinion is to assure the buyer that the seller is the owner of the shares and that the buyer is acquiring all of the seller's rights in the shares free of any restrictions on transfer, adverse claims, and the like.

Most of the key clauses in a standard opinion have been honed by generations of corporate lawyers and, while interpretations may vary, the words ordinarily do not. By way of contrast, the opinion on sales of stock from one stockholder to another varies from firm to firm and from lawyer to lawyer. Its wording has not benefitted from the same scrutiny given other opinion clauses, and

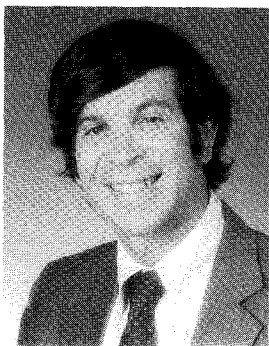
some of its most common formulations reflect an unfortunate lack of precision. One formulation frequently used, for example, states that the buyer is acquiring "good title" or "marketable title" to the shares free of liens, encumbrances, and restrictions on transfer.² "Title" and "encumbrances," however, while used in other legal contexts, are not used by corporate law or Article 8 of the Uniform Commercial Code to define the rights of a purchaser of stock.³ Lacking firm statutory grounding, those terms are susceptible to a variety of interpretations. "Marketable title," for example, might be taken to convey an unintended assurance that the shares are eligible to be traded publicly or to be sold without registration under the Securities Act of 1933.

The fact that the wording of the opinion on secondary sales is not set in stone is also its saving grace. Lawyers have more leeway than they do with other opinion clauses to draft an opinion that satisfies the legitimate needs of the opinion recipient while using terms and concepts that have a solid basis in applicable commercial and corporate law. This article proposes such an opinion. The authors hope that this opinion, which has been accepted by several New York and Boston law firms, will over time come into general use.

Article 8 of the Uniform Commercial Code governs the rights acquired by a purchaser of securities.⁴ Under stated conditions, Article 8 provides that a bona fide purchaser without notice acquires "the rights in the security which his transferor had,"⁵ "free of any adverse claims,"⁶ liens in favor of the issuer,⁷ and restrictions on transfer imposed by the issuer.⁸

The "rights in the security which [the] transferor had" derive from corporate law, where registered ownership is the key concept. Under the law of most states, the person shown on the corporation's stock records to be the owner of the shares is the registered owner and is entitled to be treated as a shareholder for all purposes, including voting, receipt of notice, and payment of dividends.⁹

A properly drafted opinion on secondary sales should use the same terms and concepts as Article 8 and the applicable corporation statute.¹⁰ It should state that the seller was the registered owner of the shares immediately prior to the transfer, that the buyer "has acquired all the rights of the seller in the shares," and that "the shares in the hands of the buyer are free of any adverse claim, any lien in favor of the issuer, and any restrictions on transfer imposed by the issuer."¹¹ In appropriate cases the opinion may also state that the buyer "is the registered owner of the shares." (Often, however, the transfer will not be registered in the



EDITOR'S NOTES

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stock books of the issuer and new certificates will not be issued until after the closing.)

A full opinion in the form suggested in this article might state:¹² Immediately prior to the consummation of the transactions described in the Agreement the Seller was the sole registered owner of the Shares. You are now the registered owner of the Shares and, assuming you have purchased the Shares for value in good faith and without notice of any adverse claim, have acquired all the rights of the Seller in the Shares free of any adverse claim, any lien in favor of the issuer, and any restrictions on transfer imposed by the issuer. The owner of the Shares, if other than the Seller, is precluded from asserting against you the ineffectiveness of any unauthorized indorsement.

An opinion along the lines suggested covers the following matters:¹³

1. First, the opinion confirms that a court would recognize the existence of the shares. A lawyer could not, for example, give the opinion about stock that was void because it was issued in excess of the number of shares authorized in the corporation's charter.¹⁴ Ordinarily, the lawyer opining on rights in stock also passes elsewhere in his opinion on the due authorization and valid issuance of all outstanding shares, which would include the shares covered by the rights in stock opinion.¹⁵ Where the lawyer, perhaps acting solely as counsel for the selling stockholders, is not required to opine on the status of all outstanding shares, he may properly rely on the opinion of company counsel as to the due authorization and valid issuance of the shares being transferred. Alternatively, counsel may expressly assume the due authorization and valid issuance of those shares.

If a defect exists in any outstanding shares, the lawyer still might be able to give the opinion by confirming that the defect does not relate to the shares being transferred. However, the lineage of specific shares often cannot be traced, and purchasers, in any event, are likely to insist that the corporation cure the defect whether or not it relates to the shares being sold.

2. Second, the opinion confirms that the buyer and seller have legal authority to act and that those acting on their behalf are authorized to do so. Counsel for the seller usually assumes the capacity of the buyer and the authority of its agents. Where the seller is a natural person, counsel should confirm that the seller is of sound mind and sufficient age:¹⁶ points that are in most cases obvious but that in some instances may merit an express as-

sumption or qualification. Where the seller is a corporation, counsel should confirm that it has the corporate power to sell the shares, that the sale was duly authorized by the appropriate body, and that the person indorsing the stock certificate was authorized to do so.¹⁷ Where the seller is an estate, trust, a conservatorship or the like, counsel should confirm that the fiduciary has the necessary authority¹⁸ and that any necessary court approval has been obtained.¹⁹

3. Third, the opinion confirms that no applicable provision of corporate law, of Article 8 or of the charter or bylaws of the issuing corporation prohibits the buyer from acquiring or holding the shares. The opinion could not be given, for example, where stock of a professional corporation was transferred to a nonprofessional who was not permitted by the applicable corporation statute to be a stockholder.

The opinion also confirms that no provision of corporate law, Article 8, or the charter or bylaws prevents the buyer from exercising the normal rights of a holder of the shares. If the buyer were the holder of more than ten percent of the corporation's outstanding stock, for example, an antitakeover provision in the charter might limit the buyer's voting rights. Assuming the seller were not similarly restricted, such a limitation would require an express exception to the statement that the buyer "has acquired all the rights of the seller in the shares."²⁰

A harder question is presented where the sale takes place after a record date but before a dividend payment or meeting date. In those circumstances the seller, as a matter of corporate law, is entitled to receive the dividend or to vote at the meeting unless it has assigned that right to the buyer. However, the opinion on secondary sales refers to the rights of a seller *as a stockholder*, and once a record date has passed the right to receive the dividend or to vote is no longer a right incident to the stock, but rather an independent right created by corporate or contract law. Once a dividend has been declared, for example, a stockholder's right to receive the dividend derives from a debtor-creditor relationship with the corporation. Thus, where a record date has passed prior to the sale, an opinion qualification ought not be necessary even if the payment or meeting date is still pending. Counsel will, nevertheless, want to be sure that any misunderstanding on the part of the buyer with regard to the rights it is acquiring is corrected. Another more fundamental question is whether the opinion could be given if the transaction violated or gave rise to adverse claims under some

provision of law outside Article 8 or applicable corporate law. For example, a purchase might violate a state tender offer statute or the notice requirements of the Hart-Scott-Rodino Antitrust Improvements Act.²¹ While compliance with laws outside Article 8 and applicable corporate law may well be important to the buyer, the scope of the inquiry the lawyer would be required to make before giving the opinion is so broad that it is unreasonable to interpret the opinion to cover such matters unless it does so expressly. Compliance with specified statutes is typically the subject of another clause of the standard opinion and still another clause, carefully hedged, is sometimes included to cover compliance with laws generally.²²

4. Fourth, the opinion confirms that at the time of sale the seller was the sole registered owner of the shares, free of any transfer restrictions or adverse claims. The lawyer should examine the seller's stock certificate to confirm that it is in the name of the seller and does not bear any restrictive legends. He should also obtain confirmation from the issuer that the seller is the sole registered owner of the shares, that there are no transfer restrictions noted in the stock records, and that the only request the issuer has received to record a transfer of the shares is to the purchaser in the transaction in question. In addition, the lawyer should obtain from the seller a written representation that it is the sole registered owner and beneficial owner of the shares²³ and that the shares are not subject to any restriction on transfer or adverse claims.²⁴ If any restrictions or adverse claims exist, the lawyer should confirm that they have been waived.

Even without a waiver, adverse claims not known to buyer may be cut off by Article 8.²⁵ This, however, does not justify delivery of an opinion where seller's counsel knows of unwaived adverse claims, nor does it excuse counsel from inquiring into the possible existence of such claims, as suggested above.²⁶ A transaction that to counsel's knowledge breaches the rights of an adverse claimant could expose counsel to aider and abettor liability. In addition, the transaction would be at risk until the last minute, since the grounds on which the opinion is based would be undercut if at any time prior to the closing the buyer learned of or was given reason to know of the claim.²⁷ As to adverse claims not known to counsel, however, counsel may, after due inquiry, rely on Article 8 and in doing so should include in the opinion an express assumption that buyer has purchased the shares in good faith and without notice of any adverse claim.

5. Fifth, the opinion confirms that the transaction was in fact a sale, that it conformed to the terms of any purchase and sale agreement between the parties, and that it conveyed to the buyer all the seller's rights in the shares. Many of the provisions of Article 8 on which the opinion relies are applicable only to a "bona fide purchaser for the value."²⁸ Thus, the opinion does not apply to transfers to others, such as donees or transferees in a judicial sale.

If the parties have entered into a purchase and sale agreement, counsel must confirm that all material contractual obligations required to be performed by the buyer prior to the closing have been satisfied. A violation of the terms of a purchase and sale agreement might give rise to claims on the part of the seller that are not cut off by the "bona fide purchaser" doctrine of Article 8.

A seller may reserve various rights in the shares such as a right of first refusal on subsequent transfers or, if payment of a portion of the purchase price is deferred, a security interest (even if unperfected) in the shares²⁹ and a proxy to vote the shares in the event of a default. Any such reservation would require a qualification in the opinion.

6. Sixth, the opinion confirms that the transfer of the shares from the seller to the buyer has been completed. The lawyer should confirm, first, that the seller has received the agreed-upon purchase price. The lawyer should also confirm that the seller has delivered to the buyer a stock certificate for the shares in proper form and properly indorsed for transfer,³⁰ together with anything else necessary to enable the buyer to require the corporation to register the buyer as the sole registered owner of the shares. These requirements are contained in Article 8, corporate law, and the corporation's charter and bylaws.

7. Finally, if the opinion states that the buyer is the registered owner of the shares, it confirms that the buyer has been entered on the stock books of the corporation as the sole owner of the shares, and that the corporation has delivered to the buyer a new stock certificate, registered in the name of the buyer and not containing any restrictive legend or notation as to the presence of any liens or adverse claims.³¹ The lawyer should be able to confirm this by examining the new stock certificate and obtaining a written confirmation from the company or its transfer agent concerning the stock records.

Issuance of a new stock certificate registered in the name of the buyer also permits counsel to opine that "the owner of the shares, if other than

the seller, is precluded from asserting against the buyer the ineffectiveness of any unauthorized indorsement."³² Where this is an important issue, the buyer should insist that a new stock certificate in its name be delivered at the closing.³³

The opinion suggested here passes on the rights the buyer is acquiring from the seller, confirming that the buyer is obtaining those rights free of any adverse claims. The opinion does *not* confirm that the shares in the hands of the buyer will, in fact, be free of all claims. A buyer's rights in securities depend, of course, not only on the law relating to stock transfers but also on laws governing property rights generally, such as community property laws, and on decrees, orders, and contractual obligations applicable specifically to the buyer, such as tax liens, security interests in after-acquired property,³⁴ and the like. Some forms of opinion recommended in published commentaries, such as one confirming that the buyer is the owner of the shares, "free and clear of any adverse claims,"³⁵ fail to observe this distinction between the rights acquired by a buyer under Article 8 and applicable corporate law and the rights a buyer will, in fact, have in the shares. The opinion suggested in this article avoids this pitfall by passing only on the rights acquired by buyer from seller.

NOTES

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1. An opinion is sometimes requested about ownership of a subsidiary's stock. One form of opinion states, for example, that "[a]ll of the outstanding shares of Capital stock of each of the subsidiaries . . . are owned by the company, free and clear of any adverse claim." Halloran, *Rendering Opinions of Law — Opinions in Registered Offerings*, in *OPINION LETTERS OF COUNSEL* 9, 21 (Practising Law Institute, 1984). Such opinions do not raise the commercial law questions discussed in this article.

2. The Subcommittee on Opinion Writing of the Massachusetts Bar Association Committee on Corporate, Banking, and Business Law included the following in its omnibus opinion:

The Stockholders are conveying to Buyer good and valid title to all of the outstanding shares of the capital stock of the Company, free and clear of any liens, pledges, agreements or claims known to us, and the certificates evidencing the ownership of such shares are in proper form for the enforcement of the rights and limitations of rights pertaining to said shares which are set forth in the Charter and By-Laws of the Company.

Omnibus Opinion for Use by Seller's Counsel in the Sale of a Closely-Held Business 61 Mass. L.Q. 108, 111 (1976) (citations omitted).

Other forms of opinion include:

The shares of capital stock to be purchased by the underwriters from the selling shareholders have been duly and validly transferred and sold to the underwriters pursuant to the underwriting agreement.

The delivery by the selling shareholders to the several underwriters of certificates for the shares of capital stock being sold by them against payment therefore as provided in the underwriting agreement will pass good and marketable title to such shares to the several underwriters, free and clear of all liens, encumbrances, equities and claims whatsoever (assuming the underwriters are not aware of any defect in title).

Wolfson, *Opinions of Counsel to the Underwriters in Public Offerings of Securities*, in *OPINION LETTER OF COUNSEL* 1985, 79, 89 (Practising Law Institute, 1985).

The following formulations have been employed or requested in recent transactions:

each of the Selling Stockholders has good and marketable title to the Shares to be sold by such Selling Stockholder, and has full legal right, power and authority, and all consents and approvals required by law (which shall be specified), to enter into this agreement and to sell, assign, transfer and deliver the Shares in the manner provided herein; such sale, assignment, transfer and delivery is not subject to any right of first refusal or other contractual restriction and upon the delivery of the certificates for the Selling Stockholders' Shares and payment for such Shares pursuant to this agreement good and marketable title to such Shares will pass to the several Underwriters free and clear of any restriction on transfer, lien, claim, security interest, equity or other encumbrance known to such counsel and after due inquiry . . .

[g]ood and marketable title to the shares of the stock being sold by the Selling Stockholders, certificates for which have been delivered to the Underwriters against payment therefore pursuant to the Underwriting Agreement, has been conveyed to the several Underwriters.

3. See Halloran, *Rendering Opinions of Law — Opinions in Registered Offerings*, in *OPINION LETTERS OF COUNSEL* 9, 35 (Practising Law Institute, 1984).

4. In some states shares in a closely held corporation are not treated as "securities" for purposes of Article 8. See Hawklund, Alderman and Schneider, *UCC Series* §8-102:02 (1986). The opinion suggested in this article is intended to apply only to transactions governed by Article 8.

5. Uniform Commercial Code §8-301(1).

6. Uniform Commercial Code §8-302(3) provides that "[a] bona fide purchaser in addition to acquiring the rights of a purchaser . . . also acquires his interest in the security free of any adverse claim." "Bona fide purchaser" is defined to include "a purchaser for value in good faith and without notice of any adverse claim . . . who takes delivery of a certificated security in bearer form or in registered form, issued or indorsed to him or in blank." Section 8-302(1). The Official Comment to this section states that "there may be claims of ownership that are not 'adverse', e.g., the claim of a principal against his agent including that of a customer against his broker.

7. See Uniform Commercial Code §8-103, which provides that "[a] lien upon a [certificated] security in favor of an issuer thereof is valid against a purchaser only if . . . the right of the issuer to the lien is noted conspicuously thereon."

8. See Uniform Commercial Code §8-204, which provides that "[a] restriction on transfer of a [certificated] security imposed by the issuer, even though otherwise lawful, is ineffective against any person without actual knowledge of it unless . . . the restriction is noted conspicuously thereon."

9. Cf. Uniform Commercial Code §8-207(1) ("Prior to due presentment for registration of transfer of a certificated security in registered form, the issuer . . . may treat the registered owner as the person exclusively entitled to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner."). An unregistered transferee of shares need not be recognized by the corporation as a shareholder for most purposes. *Salt Dome Oil Corp. v. Shenck*, 28 Del. Ch. 433, 41 A.2d 583 (S. Ct. Del. 1945). Sometimes the person shown on the corporation's books as the owner of the shares is called the "holder of record," "shareholder of record," "record owner," "record holder." In this article the term "registered owner" is used because that is the term used in Section 8-207. Some lawyers may prefer to use the term used in the applicable corporation statute. Section 7.23 of the Revised Model Business Corporation Act provides that "[a] corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as a shareholder. The extent of this recognition may be determined in the procedure." The Comment makes it clear that this section is largely intended to permit corporations to afford shareholder rights to beneficial owners of securities of which the record owner is a securities depository. The day may come when corporations commonly use a Section 7.23 procedure in a way that will permit the lawyer to give an unqualified "rights in stock" opinion to a transferee who is merely a beneficial owner of stock owned of record by a securities depository.

10. See Report of the Committee on Corporations Regarding Legal Opinions in Business Transactions, 14 PAC. L.J. 1001, 105 . . . 253 (1983).

11. One recent underwriting agreement called for an opinion from seller's counsel that "the selling stockholder is the sole record owner of such Shares, and . . . upon delivery of certificates issued to the Underwriters for such Shares in registered form and payment therefore, each Underwriter who takes such delivery and makes such payment in good faith and without notice of any adverse claim will acquire all the rights of the Selling

Stockholder in such shares free of any adverse claim, lien in favor of the issuer and restriction on transfer imposed by the issuer."

12. If buyer is not yet a registered owner of the shares, the opinion should read as follows:

Immediately prior to the consummation of the transactions described in the Agreement the Seller was the registered owner of the Shares. Upon registration of the Shares in your name in the stock records of the Company, you will, assuming you have purchased the Shares for value in good faith and without notice of any adverse claim, have acquired all the rights of the Seller in the Shares free of any adverse claim, any lien in favor of the issuer, and any restrictions on transfer imposed by the issuer.

The form of opinion suggested in this article relates to transactions in stock in registered form, not to bearer stock, which is treated differently under Article 8.

13. The rights acquired by a buyer of stock may depend upon the law of several jurisdictions. Matters concerning the validity and transferability of the shares are governed by the law of the issuer's state of incorporation. Commercial law questions may be governed by the law of the state selected in the purchase and sale agreement or the state where the transaction occurred. The seller's capacity and authority to act may depend on the law of the state where he resides or, in the case of a corporation, the state of incorporation. Lawyers often seek the opinion of local counsel on the laws of other jurisdictions. Sometimes lawyers expressly assume that Article 8 has the same meaning under the law of the relevant state as it has in the state where the lawyer is admitted to practice. Wolfson, *Opinions of Counsel to the Underwriters in Public Offerings of Securities*, in OPINION LETTERS OF COUNSEL 1985, 79, 92, (Practising Law Institute, 1985).

14. Section 8-104 of the Uniform Commercial Code provides that "[t]he provisions of this Article which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue." Overissue is defined as "the issue of securities in excess of the amount the issuer has corporate power to issue." Section 8-104 does provide relief under some circumstances for a purchaser of such securities.

15. The opinion that shares are duly authorized and validly issued is the subject of an article by the authors of this article to be published in the *Washington & Lee Review* in late 1986.

16. Most states provide by statute that a person has capacity to contract starting at age eighteen. See, e.g. N.Y. Gen. Oblig. Law §3-101. The Restatement rule is that "[u]nless a statute provides otherwise, a natural person has the capacity to incur only voidable contractual duties until the beginning of the day before the person's eighteenth birthday." Restatement of Contracts 2d §14 (1979).

17. Even an unauthorized indorsement may be effective to transfer the shares under Article 8 if the buyer obtains a new certificate upon registration of transfer. Section 8-311 provides:

Unless the owner or pledgee has ratified an unauthorized indorsement or instruction or is otherwise precluded from asserting its ineffectiveness . . . he may assert its ineffectiveness against the issuer or any purchaser, other than a purchaser for value and without notice of adverse claims, who has in good faith received a new, reissued, or re-registered certificated security on registration of transfer. . . .

Section 8-311 is not likely, however, to be much

help to the opinioning lawyer. Another part of the standard opinion typically confirms due authorization of the sale, and even if it does not counsel will not want to render an opinion on a transaction his client has not properly authorized.

18. Section 8-304(3) provides that (absent knowledge of a breach of duty):

the fact that the purchaser . . . has notice that the security is . . . registered in the name of a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute constructive notice of adverse claims.

Nevertheless, counsel will want to review the relevant instruments to confirm the fiduciary's authority.

19. See Wolfson, *Opinions of Counsel to the Underwriters in Public Offerings of Securities*, in *OPINION LETTERS OF COUNSEL* 1985, 79, 90 (Practising Law Institute, 1985).

20. "Poison pill" warrants that trade with (and are not separable from) the common stock until certain specified events take place raise a similar issue. By their terms such rights are often null and void in the hands of a holder of more than a stated percentage of the corporation's outstanding stock. Although poison pill warrants are created by contract rather than by the charter and, hence, are not technically stock, a buyer of stock might well expect that it will acquire all the rights of the transferor, including those represented by poison pill warrants. An opinion qualification, therefore, might well be in order where to counsel's knowledge the buyer is in the process of acquiring stock in excess of the percentage stated in the warrants.

21. 15 U.S.C. §181(a) (1982).

22. But as noted *infra* the lawyer could not give an unqualified "secondary sale" opinion as to shares subject to restrictions on transfer imposed by the issuer to assure compliance with state or federal securities laws.

23. The inquiry as to beneficial ownership is designed to flush out possible adverse claims.

24. Often, the lawyer can rely on such a representation in the underwriting agreement or the stock purchase and sale agreement.

25. See Uniform Commercial Code §§8-301 and 8-302.

26. See Wolfson, *Opinion of Counsel to the Underwriters in Public Offerings of Securities*, in *OPINION LETTERS OF COUNSEL* 1985, 79, 91 (Practising Law Institute, 1985) ("Conflict: inquiry may disclose defects which prevent underwriters from being bona fide purchaser. But query if a purchase by underwriter without at least rudimentary inquiry can be made in good faith?").

27. The protections of Section 8-302 extend only to those who take "without notice of any adverse claim." Section 1-201(25) provides:

A person has 'notice' of a fact when

- (a) he has actual knowledge of it; or
- (b) he has received a notice or notification of it; or
- (c) from all the facts and circumstances known to

him at the time in question he has reason to know that it exists.

28. Uniform Commercial Code §8-302.

29. Under Article 8, security interest in certificated securities are in many instances not enforceable and do not attach unless the secured party possesses the certificate. See Uniform Commercial Code §§8-323 and 321. Nevertheless, a lawyer could not give the opinion if the purchase and sale agreement purported to create a security interest in favor of the seller even if the seller had delivered his certificates to the buyer.

30. Section 8-308(1) provides that "[a]n indorsement of

a certificated security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or his signature is written without more upon the back of the security." Section 8-308(6) defines "appropriate person" for this purpose as "the person specified by the certificated security or by special indorsement to be entitled to the security." Section 8-304(1) provides that "[a] purchaser . . . of a certificated security is charged with notice of adverse claims if . . . the security . . . has been indorsed 'for collection' or 'for surrender' or for some other purpose not involving transfer."

31. The opinion can sometimes be based on a confirmation from the corporation that the buyer is the registered owner and that the new certificates are in the process of being issued.

32. See Uniform Commercial Code §3-311(a).

33. In an underwritten public offering this could be accomplished through the issuance to the underwriters of a "jumbo" stock certificate which would then be endorsed back to the company and broken down.

34. The effectiveness of any such attempt to create a security interest would of course be in doubt because of Section 8-313 and 8-321 of the Uniform Commercial Code, which make security interests in certificated securities unenforceable in many instances unless the secured party possesses the certificate.

35. E.g.: "Upon delivery of the shares . . . to be sold by each [seller] pursuant to the Underwriting Agreement, the Underwriters will own such shares . . . free and clear of any adverse claim (assuming the Underwriters are bona fide purchasers within the meaning of Section 8302 of Division 8 of the California Uniform Commercial Code.'). Halloran, *Rendering Opinions of Law — Opinions in Registered Offerings*, in *OPINION LETTERS OF COUNSEL* 9, 35 (Practising Law Institute, 1984):

"[u]pon payment for, and delivery of the shares in accordance with the terms of the Agreement, and assuming the Purchaser is acquiring the shares in good faith without notice of any adverse claim, the Purchaser will be the owner of the Shares, free and clear of any adverse claim." *Report of the Committee on Corporations Regarding Legal Opinions in Business Transactions*, 14 *PAC. L.J.* 1001, 1052 (1983).

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