



California Corporate & Securities Law

The Law Governing Investment Securities May Be A Matter Of Choice

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One might expect that the rights and duties of a California issuer with respect to the registration of transfer of investment securities would be governed by California law. After all, Section 8110(a) of the California Uniform Commercial Code provides that the local law of an issuer's jurisdiction applies to such matters and Section 8110(d) defines "issuer's jurisdiction" as the jurisdiction under which the issuer of the security is organized.

Surprisingly, however, Section 8110(d) goes on to say that an issuer organized under the laws of California may specify the laws of another jurisdiction as the laws governing the following:

- The rights and duties of the issuer with respect to registration of transfer;
- The effectiveness of registration of transfer by the issuer;
- Whether the issuer owes any duties to an adverse claimant of the security; and
- Whether an adverse claim can be asserted against a person to whom transfer of a certificated security is registered or a person who obtains control of an uncertificated security.

Notably, an issuer may not select another jurisdiction to govern the fundamental corporate law question of the validity of the security.

Delaware seems to be a bit more protective. It allows issuers in other jurisdictions to select Delaware law, if the law of the other jurisdiction so permits. However, Delaware's version of Section 8110(d) doesn't include the last sentence permitting Delaware issuers to select the laws of another jurisdiction.

While one might be inclined to view this as another California oddity, Section 8110 is actually part of Article 8 of the Uniform Commercial Code (Here in California, we refer to UCC Articles as "Divisions"). The drafters of the UCC included this provision with the idea that it might remove obstacles to the development of true uncertificated book-entry systems.

However, my guess, and it is just a guess, is that very few corporations are aware of this opportunity and even fewer (if any) have actually availed themselves of it. I'd love to hear from anyone who has actually selected another jurisdiction's law pursuant to Section 8110(d).

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