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## COMMERCIAL CODE Investment Securities: Replace Article 8 of the Georgia Commercial Code

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## COMMERCIAL CODE

### *Investment Securities: Replace Article 8 of the Georgia Commercial Code*

CODE SECTIONS: O.C.G.A. §§ 11-1-201, 11-5-114, 11-8-101 to  
-408, 11-9-103, -105, -203, -302, -304, -305, -309,  
-312 (amended)

BILL NUMBER: HB 761

ACT NUMBER: 1369

SUMMARY: The Act replaces Article 8 of the Commercial  
Code, which governs investment securities, with  
the 1977 Amendments to Article 8 drafted by  
the Uniform Law Commissioners. The Act  
provides a legal framework for the transfer of  
interests in "uncertified" securities, which are  
securities that do not require actual certificates  
to evidence ownership thereof. Certain  
conforming amendments to Articles 1, 5, and 9  
of the Commercial Code are included in the Act.

EFFECTIVE DATE: July 1, 1992

#### *History*

Originally adopted in all states except Louisiana, Article 8 of the Uniform Commercial Code (UCC) governs transfers of investment securities, which are typically in the form of stocks and bonds.<sup>1</sup> Under the original version of Article 8, the 1958 Official Text (Original Article 8), ownership of an investment security is evidenced by a certificate which embodies the inherent rights represented by the security and may be treated as the property it represents.<sup>2</sup>

Drafted by the Uniform Conference of Commissioners on Uniform State Laws in conjunction with the American Bar Association and the American Law Institute,<sup>3</sup> the 1977 Amendments to Article 8 of the UCC (the 1977 Amendments) provide a legal framework for the transfer

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1. THE AMERICAN LAW INSTITUTE AND THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, 1977 AMENDMENTS TO ARTICLE 8, INVESTMENT SECURITIES AND RELATED SECTIONS WITH COMMENTS AND APPENDIX SHOWING 1977 CHANGES AND REASONS FOR CHANGE xiii (1978), [hereinafter ARTICLE 8 COMMENTS AND REASONS FOR CHANGE]. Georgia adopted the UCC (1958 Official Version) in 1962. 1962 Ga. Laws 156.

2. U.C.C. §§ 8-101 to -406 (1958), reprinted in ARTICLE 8 COMMENTS AND REASONS FOR CHANGE, *supra* note 1, app. at 173-242.

3. ARTICLE 8 COMMENTS AND REASONS FOR CHANGE, *supra* note 1, app. at 161.

of "uncertified" securities, which are securities that do not require actual certificates to represent ownership.<sup>4</sup> The 1977 Amendments establish "a coherent group of rules for the issuers, buyers, sellers, and other persons dealing with uncertified securities,"<sup>5</sup> the provisions of which functionally parallel the rules of Original Article 8 with respect to certified securities.<sup>6</sup>

Most investors that trade securities maintain accounts with brokers, and thus they never actually see the certificates, which are physically kept by the brokerage house or firm on the investor's behalf. The impetus for drafting the 1977 Amendments arose from the "paperwork crunch" resulting from the enormous growth in the trading of securities during the 1960s.<sup>7</sup> Under Original Article 8, a security is defined, in part, as an "instrument which is issued in bearer or registered form,"<sup>8</sup> and thus Original Article 8 does not apply to "a share, participation, or other interest in property or an enterprise of the issuer or an obligation of an issuer"<sup>9</sup> not represented by a certificate.

Formed in response to the paperwork crunch, the Committee of Stock Certificates of the Section of Corporation, Banking and Business Law of the American Bar Association formulated two recommendations to alleviate the securities industry's problems in handling the mountains of paperwork generated by the transfer of securities.<sup>10</sup> The first recommendation was to permit corporations to issue stock in uncertified form through an amendment to the Model Business Corporation Act.<sup>11</sup> The second recommendation was that Article 8 be revised to "provide rules to regulate the rights, duties, and obligations of the issuers of, and persons dealing with, uncertified investment securities."<sup>12</sup>

In Georgia, corporations have been authorized by law to issue shares of stock without actual stock certificates since July 1, 1989.<sup>13</sup> However, Georgia law did not provide a mechanism for the transfer or pledging of uncertified securities.<sup>14</sup> This situation placed Georgia businesses at a

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4. *Id.* app. at 162.

5. *Id.*

6. *Id.*

7. *Id.* app. at 161.

8. U.C.C. § 8-102(1)(a)(i) (1958), reprinted in ARTICLE 8 COMMENTS AND REASONS FOR CHANGE, *supra* note 1, app. at 184-85.

9. U.C.C. § 8-102(b) (1977), reprinted in ARTICLE 8 COMMENTS AND REASONS FOR CHANGE, *supra* note 1, app. at 184-85.

10. ARTICLE 8 COMMENTS AND REASONS FOR CHANGE, *supra* note 1, app. at 161.

11. *Id.* Article 8 of the UCC does not compel or authorize issuance of uncertified securities. *Id.* app. at 162.

12. *Id.* app. at 161.

13. O.C.G.A. § 14-2-626(a) (1989).

14. Telephone Interview with Rep. Tommy Chambless (June 10, 1992) [hereinafter Chambless Interview]. Two fact sheets prepared by the Uniform Commercial Code Committee of the Georgia State Bar entitled "Why Georgia Needs the Article 8

disadvantage compared to other states that had adopted the 1977 Amendments because, without an adequate legal basis for transactions involving uncertified securities, lenders in Georgia would not accept such securities as collateral for credit.<sup>15</sup>

Moreover, several members of the General Assembly feared that new businesses desiring the benefits of uncertified securities would incorporate in other states that had adopted the 1977 Amendments.<sup>16</sup> For example, the use of uncertified securities allows issuers to replace often cumbersome paper intensive systems with more efficient computer technology.<sup>17</sup> In addition, brokers trading in uncertified securities issued by out-of-state issuers could not be assured that such transactions on behalf of their Georgia customers would be valid under prior law.<sup>18</sup>

### HB 761

HB 761 was introduced at the recommendation of the Uniform Commercial Code Committee of the Georgia State Bar Association.<sup>19</sup> As passed, HB 761 adopts the 1977 Amendments to Article 8 together with conforming amendments to other sections of the Commercial Code<sup>20</sup> as the body of law governing the transfer of investment securities in Georgia.<sup>21</sup> Thus, Georgia has joined the majority of states

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Amendments" and "Questions and Answers on the 1977 Amendments to Article 8 of the Uniform Commercial Code" were distributed by Rep. Chambless to Members of the General Assembly. House Committee on the Judiciary, Undated Handouts (available in Georgia State University College of Law Library) [hereinafter Article 8 Fact Sheets].

15. Article 8 Fact Sheets, *supra* note 14.

16. *Id.*

17. *Id.*

18. *Id.*

19. Chambless Interview, *supra* note 14. The function of the Uniform Commercial Code Committee of the Georgia State Bar Association is to review all uniform commercial codes passed by the National Conference of Commissioners on Uniform State Laws and to make recommendations for the adoption of those uniform commercial codes that will be beneficial to Georgia. Telephone Interview with Richard Kessler, Chairman of the Uniform Commercial Code Committee of the Georgia State Bar (Apr. 7, 1992). The Act was cosponsored by Rep. Tommy Chambless, House District No. 133, Rep. Charles Thomas, House District No. 69, and Rep. Boyd Pettit, House District No. 19.

20. O.C.G.A. § 11-1-201(5) (Supp. 1992) (definition of "bearer" clarified to include only certified securities); O.C.G.A. § 11-5-114 (Supp. 1992) (clarifies that an issuer's obligation to honor a draft for payment excludes uncertified securities); O.C.G.A. §§ 11-9-103, -105(d)(i), -203, -302, -304, -305, -309, -312(7) (Supp. 1992); *see infra* notes 88-97 and accompanying text for summary of conforming amendments to Article 9.

21. Because of the complex nature of HB 761, it was introduced during the 1991 legislative session with the expectation that it would not be passed until 1992 in order to allow ample time for study and discussion by legislators. HB 761 was

by adopting the 1977 Amendments<sup>22</sup> and now has the framework to enjoy the benefits of uncertified investment securities.

Although Article 8 of the Georgia Commercial Code is deleted in its entirety and the 1977 Amendments are substituted therefor, the effect of the Act is not a repeal of the rules governing certified securities; rather, it establishes a parallel set of rules for the transfer of uncertified securities. Part 1 of the Act begins by expanding the definition of security<sup>23</sup> to include both a certified security, which is represented by an "instrument issued in bearer or registered form,"<sup>24</sup> as well as an uncertified security, which is "a share, participation, or other interest in property or an enterprise of the issuer or an obligation of the issuer . . . not represented by an instrument."<sup>25</sup>

The Act does not favor either system of transfer, and it allows for the issuance of both certified and uncertified securities within a particular issue of securities.<sup>26</sup> Accordingly, certified and uncertified securities of the same issue are fungible, and performance by the seller in a transaction can be fulfilled by the transfer of either form of security.<sup>27</sup> Likewise, a buyer is obligated to pay the purchase price regardless of which type of security is delivered.<sup>28</sup>

The following discussion first focuses on the mechanism for transferring uncertified securities under the Act. Next, creation of a security interest in an uncertified security is discussed and compared to the procedure used for certified securities. The three substantive changes in the prior law governing certified securities are noted. Finally, the conforming amendments to Article 9 of the Commercial Code are summarized.

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adopted in the original form in which it was introduced. Final Composite Status Sheet, Mar. 31, 1992.

22. UNIFORM COMMERCIAL CODE, 2C U.L.A. 1 (1991).

23. O.C.G.A. § 11-8-102(c) (Supp. 1992).

24. *Id.* § 11-8-102(1)(a)(i) (Supp. 1992).

25. *Id.* § 11-8-102(b) (Supp. 1992). Section 11-8-102(c) states that "[i]f a certified security has been retained by or surrendered to the issuer or its transfer agent for reasons other than registration or transfer, other temporary purpose, payment, exchange, or acquisition by the issuer, that security shall be treated as an uncertified security for purposes of this article." *Id.* § 11-8-102(c) (Supp. 1992). Accordingly, an issuer who issues certified securities but does not deliver the certificates to the owner should follow the applicable rules for uncertified securities. ARTICLE 8 COMMENTS AND REASONS FOR CHANGE, *supra* note 1, app. at 177-78.

26. Article 8 Fact Sheets, *supra* note 14; see ARTICLE 8 COMMENTS AND REASONS FOR CHANGE, *supra* note 1, app. at 162-63.

27. ARTICLE 8 COMMENTS AND REASONS FOR CHANGE, *supra* note 1, app. at 168.

28. *Id.*

*The Mechanics of Transfer*

The Act retains the basic transfer rule for certified securities, which is transfer by delivery.<sup>29</sup> Registration of the transfer of a certified security is accomplished by delivery of the security, duly indorsed, to the issuer.<sup>30</sup> Delivery or pledge of a certified security, which has been duly indorsed, to a lender or other secured party remains the method by which a security interest is created.<sup>31</sup>

The basic rule for uncertified securities is transfer by registration with the issuer. Part 1 of the Act adds definitions of "initial transaction statement"<sup>32</sup> and "instruction,"<sup>33</sup> which together provide the mechanism for the transfer of uncertified securities.

The transfer of an uncertified security is initiated when a transferor sends an instruction, defined as "an order to the issuer of an uncertified security requesting the transfer, pledge, or release from pledge of the uncertified security."<sup>34</sup> An instruction must be made by an "appropriate person," which is either the registered owner or the registered pledgee.<sup>35</sup> The point in time in which the transfer is effective depends upon the nature of the transaction.<sup>36</sup> Immediately following the transfer, the issuer must confirm the transaction by forwarding identical initial transaction statements (ITS) to both parties.<sup>37</sup>

29. O.C.G.A. § 11-8-313(a) (Supp. 1992).

30. *Id.* § 11-8-401(1) (Supp. 1992); see also ARTICLE 8 COMMENTS AND REASONS FOR CHANGE, *supra* note 1, app. at 164.

31. ARTICLE 8 COMMENTS AND REASONS FOR CHANGE, *supra* note 1, app. at 164.

32. O.C.G.A. § 11-8-102(5) (Supp. 1992) (referencing O.C.G.A. § 11-8-408 (Supp. 1992)). The initial transaction statement encompasses two types of statements. Transaction statements provide notice to the transferor that his interest has been reduced, and provide notice to the transferee of the registration of his interest. ARTICLE 8 COMMENTS AND REASONS FOR CHANGE, *supra* note 1, app. at 241. Periodic statements set forth the positions of owners and pledgees at specific points in time. *Id.*

33. O.C.G.A. § 11-8-102(5) (Supp. 1992) (referencing O.C.G.A. § 11-8-308 (Supp. 1992)).

34. *Id.* § 11-8-308(4) (Supp. 1992).

35. *Id.* § 11-8-308(7) (Supp. 1992). The definition of appropriate person also includes the representative of the owner or pledgee. O.C.G.A. § 11-8-308(8) (Supp. 1992). A person who initiates an instruction warrants to the issuer that he is, in fact, an appropriate person entitled to the registration of the transfer. O.C.G.A. § 11-8-306(5) (Supp. 1992); see ARTICLE 8 COMMENTS AND REASONS FOR CHANGE, *supra* note 1, app. at 169.

36. O.C.G.A. § 11-8-313(1) (Supp. 1992).

37. *Id.* § 11-8-408(1) (Supp. 1992). While the transaction statements must be sent to both the transferor and the transferee within two days of the date on which the relevant registration occurred, "it is contemplated that such statements will be prepared virtually simultaneously with the actual registration and sent immediately thereafter." ARTICLE 8 COMMENTS AND REASONS FOR CHANGE, *supra* note 1, app. at 241.

It is important to recognize that an ITS is not a negotiable instrument,<sup>38</sup> and any representations made thereon are not of a continuing nature.<sup>39</sup> In other words, an ITS merely evidences facts at the time of its issuance<sup>40</sup> and may not be relied on by anyone other than the addressee.<sup>41</sup> Consequently, the Act requires the issuer to place a warning on each ITS.<sup>42</sup> If the ITS discloses an issuer's right to a lien,<sup>43</sup> the terms of a security,<sup>44</sup> restrictions on transfer,<sup>45</sup> adverse claims,<sup>46</sup> or defenses,<sup>47</sup> then the purchaser is deemed to have notice thereof.<sup>48</sup> A prudent transferee will withhold consideration for an uncertified security, in escrow or otherwise, until the time of receipt of an ITS from the issuer stating that the uncertified security is, in fact, as the transferor represented it to be, without liens or other defects.<sup>49</sup>

As a condition of honoring an instruction, the issuer is entitled to receive certain assurances that the endorsement of an uncertified security is genuine and effective.<sup>50</sup> The issuer may require a reasonable assurance of identity of the person originating the instruction by means of a "guarantee of the signature,<sup>51</sup> . . . including a warranty of the taxpayer identification number or, . . . other reasonable assurance of identity."<sup>52</sup> Where an endorsement is made or an instruction is originated by an agent or fiduciary, the issuer is entitled to certain additional assurances.<sup>53</sup>

Although it formerly governed the point at which "delivery" of a security occurs,<sup>54</sup> section 11-8-313 now sets forth the various methods

38. O.C.G.A. § 11-8-105(2) (Supp. 1992). *Contra* O.C.G.A. § 11-8-105(1) (Supp. 1992) ("[c]ertified securities . . . are negotiable securities").

39. ARTICLE 8 COMMENTS AND REASONS FOR CHANGE, *supra* note 1, app. at 180-81.

40. O.C.G.A. § 11-8-105(3)(d) (Supp. 1992).

41. ARTICLE 8 COMMENTS AND REASONS FOR CHANGE, *supra* note 1, app. at 167.

42. O.C.G.A. § 11-8-408(9) (Supp. 1992). The warning must state that "[t]his statement is merely a record of the rights of the addressee as of the time of its issuance. Delivery of this statement, of itself, confers no rights on the recipient. This statement is neither a negotiable instrument nor a security." *Id.*

43. O.C.G.A. § 11-8-103(b) (Supp. 1992).

44. *Id.* § 11-8-202(1) (Supp. 1992).

45. *Id.* § 11-8-204(b) (Supp. 1992).

46. *Id.* § 11-8-304(2) (Supp. 1992).

47. *Id.* § 11-8-202(1) (Supp. 1992).

48. ARTICLE 8 COMMENTS AND REASONS FOR CHANGE, *supra* note 1, app. at 167, 171.

49. *Id.*

50. O.C.G.A. § 11-8-402 (Supp. 1992). The issuer is entitled to the same assurances before registering the transfer of a certified security. *Id.*

51. A "guarantee of signature" is defined as "a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible." O.C.G.A. § 11-8-402(2) (Supp. 1992).

52. O.C.G.A. § 11-8-402(1)(a) (Supp. 1992).

53. *Id.* § 11-8-402(1)(b)-(e), (3) (Supp. 1992).

54. 1966 Ga. Laws 168, 169 (formerly found at O.C.G.A. § 11-8-313 (1982)); 1962

of transfer provided by the Act and establishes the point in time in a given transaction when the transfer of a security, certified or uncertified, actually occurs.<sup>55</sup> The concept of transfer includes purchase and sale transactions as well as creation of security interests.<sup>56</sup> Under the Act, a valid transfer is a prerequisite for the creation of a security interest in both certified and uncertified investment securities.<sup>57</sup>

The scope of section 11-8-313 is further expanded by the replacement of the term "broker"<sup>58</sup> with "financial intermediary."<sup>59</sup> The broader concept of financial intermediary, which includes both brokers and nominees, reflects the modern practice of using nominee registrations in bank custody accounts and security depositories as well as in traditional brokerage accounts.<sup>60</sup> By adding provisions regarding the delivery of certified securities to financial intermediaries and other third parties on behalf of the actual purchaser, section 11-8-313 constitutes a substantive change in the law governing certified securities.<sup>61</sup>

### *The Creation of Security Interests*

The Article 9 terms "debtor,"<sup>62</sup> "secured party,"<sup>63</sup> and "security agreement"<sup>64</sup> as defined in section 11-9-105 of the Code<sup>65</sup> are incorporated into Article 8 by the Act to accommodate the creation of a nonpossessory security interest in an uncertified security.<sup>66</sup> Two methods are available under the Act that enable the owner of an

Ga. Laws 156, 370-71.

55. O.C.G.A. § 11-8-313(1) (Supp. 1992).

56. ARTICLE 8 COMMENTS AND REASONS FOR CHANGE, *supra* note 1, app. at 213.

57. *Id.*

58. 1966 Ga. Laws 168, 169 (formerly found at O.C.G.A. § 11-8-313 (1982)); 1962 Ga. Laws 156, 370-71.

59. A "financial intermediary" is defined as "a bank, broker, clearing corporation or other person (or the nominee of any of them) which in the ordinary course of its business maintains security accounts for its customers and is acting in that capacity." O.C.G.A. § 11-8-313(4) (Supp. 1992).

60. O.C.G.A. § 11-8-313(1)(c)-(d), (2)-(3) (Supp. 1992); *see* ARTICLE 8 COMMENTS AND REASONS FOR CHANGE, *supra* note 1, app. at 172, 212.

61. O.C.G.A. § 11-8-313(c), (d)(i), (e) (Supp. 1992); *see* ARTICLE 8 COMMENTS AND REASONS FOR CHANGE, *supra* note 1, app. at 212.

62. O.C.G.A. § 11-9-105(1)(d) (Supp. 1992).

63. *Id.* § 11-9-105(1)(m) (Supp. 1992).

64. *Id.* § 11-9-105(1)(l) (Supp. 1992).

65. *Id.* § 11-9-105 (Supp. 1992). Article 9 governs secured transactions. *Id.*

66. *Id.* § 11-8-102(5) (Supp. 1992); ARTICLE 8 COMMENTS AND REASONS FOR CHANGE, *supra* note 1, app. at 166. The normal filing requirements under Article 9 do not apply to security interests in certified securities because the interest is possessory. O.C.G.A. § 11-9-302(1)(a) (Supp. 1992).



uncertified investment security to use the security as collateral to secure debt.

The first method, registration of transfer by an instruction sent to the issuer, is an outright transfer of all ownership rights, and thus is analogous to the physical delivery of a certified security to the lender.<sup>67</sup> If the party holding a certified investment security as collateral registers the transfer with the issuer, the secured party effectively possesses all of the ownership rights in the security, including notices, dividends, voting rights, and the power to transfer.<sup>68</sup> However, if the secured party does not register the transfer of a certified security with the issuer, the debtor continues to have the ability to exercise voting rights and to receive notices and dividends. If dividends received by the debtor are in the form of additional shares of stock rather than cash, those additional shares of stock will not be subject to the pledge.<sup>69</sup> Accordingly, the delivery of a certified investment security without registration of the transfer with the issuer confers only the power to transfer the investment security in the possession of the secured party.<sup>70</sup>

A second method of creating a security interest in an uncertified investment security under the Act is registration of a pledge.<sup>71</sup> When a pledge is registered, the debtor enjoys all the rights of ownership except for the power to order transfer, which is held by the secured party.<sup>72</sup> However, if dividends are issued in the form of additional shares of stock rather than cash, such shares will be subject to the pledge.<sup>73</sup> Therefore, the secured party has the benefit of additional collateral in the event dividends are paid in the form of shares of stock.

Release of a security interest in a certified security is accomplished by redelivery of the security to the debtor.<sup>74</sup> When an uncertified security has been transferred by registration to the secured party,

67. ARTICLE 8 COMMENTS AND REASONS FOR CHANGE, *supra* note 1, app. at 164; see *supra* text accompanying notes 29-37.

68. ARTICLE 8 COMMENTS AND REASONS FOR CHANGE, *supra* note 1, app. at 165.

69. *Id.*

70. *Id.*

71. O.C.G.A. § 11-8-108 (Supp. 1992); see ARTICLE 8 COMMENTS AND REASONS FOR CHANGE, *supra* note 1, app. at 164.

72. O.C.G.A. § 11-8-207 (Supp. 1992). Section 11-8-207(4) specifies the methods by which the pledgee may effect transfers of the security. O.C.G.A. § 11-8-207(4) (Supp. 1992); see ARTICLE 8 COMMENTS AND REASONS FOR CHANGE, *supra* note 1, app. at 165.

73. O.C.G.A. § 11-8-207(6)(a) (Supp. 1992). This result is not possible where the pledgee is the unregistered holder of a certified security. Without registration, the issuer has no notice that the pledgee has possession of the security, and dividends in the form of additional shares of stock will be delivered to the pledgor. ARTICLE 8 COMMENTS AND REASONS FOR CHANGE, *supra* note 1, app. at 165.

74. O.C.G.A. § 11-8-321(4) (Supp. 1992).

release of the security interest is accomplished by the registration of a transfer back to the debtor.<sup>75</sup> When the security interest has been established by the registration of a pledge, the registered pledgee must originate an instruction of release to the issuer,<sup>76</sup> who must send a confirming statement to the parties.<sup>77</sup>

Unlike the prior law, the Act incorporates the Article 9 concept of perfection of a security interest in an investment security into Article 8.<sup>78</sup> However, no filing is required to perfect an interest in either certified or uncertified investment securities.<sup>79</sup> Another difference from an Article 9 security interest is that, except as required under section 11-8-321(3)(b) together with the corresponding rules in section 11-8-313(1)(h)-(j), a written security agreement is not required.<sup>80</sup> Sections 11-8-321 and 11-8-313(1)(h)-(j) are new sections of the Act, and to the extent that they apply to the transfer and perfection of a security interest in a certified investment security other than by delivery and possession, they are substantive changes to the prior law.<sup>81</sup>

Formerly entitled "Attachment or Levy Upon Security,"<sup>82</sup> section 11-8-317 of the Act has been substantially rewritten to encompass additional creditors' rights in both certified and uncertified investment securities.<sup>83</sup> The method by which a creditor reaches an uncertified investment security registered in the name of the debtor is by serving legal process upon the issuer's chief executive officer.<sup>84</sup>

With regard to certified investment securities, the Act retains the requirement that actual seizure of a certified security in the debtor's possession is necessary to validate a creditor's lien.<sup>85</sup> However, language added to section 11-8-317 substantively changes prior law by allowing a creditor to establish a lien on a certified security held by a financial intermediary or other third party by service on that third party.<sup>86</sup> Such a lien does not affect the third party's possession, but in the event the third party transfers the security to another for value, the lien will transfer to the proceeds.<sup>87</sup>

75. *Id.*; see ARTICLE 8 COMMENTS AND REASONS FOR CHANGE, *supra* note 1, app. at 166-67.

76. O.C.G.A. § 11-8-308(4), (7)(b), (8) (Supp. 1992).

77. *Id.* § 11-8-408(3) (Supp. 1992).

78. *Id.* § 11-8-321 (Supp. 1992).

79. *Id.* § 11-8-321(3)(a) (Supp. 1992).

80. *Id.* § 11-8-321(3)(b) (Supp. 1992).

81. ARTICLE 8 COMMENTS AND REASONS FOR CHANGE, *supra* note 1, app. at 162.

82. 1962 Ga. Laws 156, 372 (formerly found at O.C.G.A. § 11-8-317 (1982)).

83. O.C.G.A. § 11-8-317 (Supp. 1992).

84. *Id.* § 11-8-317(2) (Supp. 1992).

85. *Id.* § 11-8-317(1) (Supp. 1992); see ARTICLE 8 COMMENTS AND REASONS FOR CHANGE, *supra* note 1, app. at 219.

86. *Id.* § 11-8-317(3)-(4) (Supp. 1992).

87. *Id.* § 11-8-317(5) (Supp. 1992); see ARTICLE 8 COMMENTS AND REASONS FOR

*Conforming Amendments to Article 9*

Article 9 of the Commercial Code<sup>88</sup> governs secured transactions, and the amendment of certain sections was necessary to conform with changes made to Article 8 by the Act. The definition of an "instrument" under Article 9 is clarified so as to apply only to certified securities.<sup>89</sup> In addition, the protection afforded a bonafide purchaser of a certified security that has been wrongfully transferred by a financial intermediary or secured party is extended to bonafide purchasers of uncertified securities.<sup>90</sup>

Under the general rule of section 11-9-203, a security interest does not attach and therefore it is not enforceable unless "the collateral is in possession of the secured party pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral."<sup>91</sup> The Act expressly provides that the provisions of section 11-8-313(1) determine when possession, or the functional equivalent thereof, of a signed security agreement is required to create a valid security interest in an investment security.<sup>92</sup>

Amendments to sections 11-9-302(1), 11-9-304, and 11-9-305 generally remove investment securities from the perfection provisions of Article 9.<sup>93</sup> However, the addition of subsection 7 to section 11-9-312 protects future advances made by a secured party regardless of the method by which the secured party perfected his interest in an investment security under section 11-8-321.<sup>94</sup>

The amendment to section 11-9-103, which governs the perfection of security interests in multiple state transactions, excludes uncertified securities from the definition of general intangibles.<sup>95</sup> Thus, the general rule that the laws of the jurisdiction in which the debtor is located govern the perfection and nonperfection of intangibles does not apply to uncertified securities.<sup>96</sup> Finally, a new provision under section

CHANGE, *supra* note 1, app. at 221.

88. *Id.* §§ 11-9-101 to -405 (1982).

89. *Id.* § 11-9-105 (Supp. 1992).

90. *Id.* § 11-9-309 (Supp. 1992); see ARTICLE 8 COMMENTS AND REASONS FOR CHANGE, *supra* note 1, app. at 247.

91. O.C.G.A. § 11-9-203(1)(a) (Supp. 1992). The other two requirements for the attachment and enforceability of a security interest are that "value has been given and the debtor has rights in the collateral." O.C.G.A. § 11-9-203(1)(b)-(c) (Supp. 1992).

92. *Id.* § 11-8-313(1) (Supp. 1992); see ARTICLE 8 COMMENTS AND REASONS FOR CHANGE, *supra* note 1, app. at 213.

93. O.C.G.A. §§ 11-9-302(1) (exempting certain security interests from the requirement of a filed financing statement), -304 (perfection of a security interest in instruments), -305 (perfection by possession) (Supp. 1992); see *supra* text accompanying notes 79-81.

94. O.C.G.A. § 11-9-312(7) (Supp. 1992).

95. *Id.* § 11-9-103(3)(a) (Supp. 1992).

96. *Id.*; see ARTICLE 8 COMMENTS AND REASONS FOR CHANGE, *supra* note 1, app. at

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11-9-103 provides that the laws of the jurisdiction under which the issuer is organized govern the perfection and nonperfection of security interests in uncertified securities.<sup>97</sup>

*Suzan E. Roth*

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97. O.C.G.A. § 11-9-103(6) (Supp. 1992).