

action of any kind, legal or equitable, to compel the issue, reissue, or delivery of a like security or to obtain damages or any other relief as a result of or in connection with such registration may be brought, subject to subsection (2), by the true owner or any other person against an issuer, authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its securities, more than 8 years after the date on which such registration to a person not entitled has taken place.

"(2) The time limitation in subsection (1) may not be tolled or suspended for any reason. This section is additional to, and does not prevent or affect the application of, any other statute of limitations as a defense to any action. This section applies to claims or causes of action which have accrued before this act becomes effective as well as to those which accrue after this act becomes effective. This section does not apply to any action against an issuer which at the time of such registration has fewer than fifty persons registered upon books maintained for that purpose as holders of the class and series, if any, of the security so registered to the person not entitled to it."

Comment

This proposed new section is recommended by this committee in an endeavor to relieve the intolerable storage problem faced by many corporations and transfer agents as a result of the vast number of stock and bond transfers during recent decades. In view of the differences in statute of limitation periods in the various States in which a corporation is doing business, the lack of complete certainty as to when some statutory periods start, and the tolling of statutory periods for incompetency and other reasons, a number of corporations and transfer agents, in order to meet possible claims, are retaining all canceled security certificates from the time they started business, and others are retaining such certificates for long periods of many years. Insofar as this committee has been able to ascertain, claims based on allegedly wrongful registration of transfer are few in number, and inquiries concerning canceled certificates are rare well before the end of 8 years after registration. However, since the legal risk of loss exists, there is great reluctance to give up the evidence needed to prevent such loss. As a result, in the District of Columbia the canceled certificates and supporting documents are retained indefinitely, and their constantly growing accumulations needlessly add to business costs and tie up a tremendous amount of space which is becoming difficult to find and which could be better used by the community as well as by the corporations and their agents.

Under this new section of the statute of limitations on any claim against a corporation or a transfer agent as a result of an alleged illegal registration of a security transfer would be 8 years and would commence on the date of the registration complained of. There would be no tolling of the statute. Thus, after 8 years a corporation or transfer agent would be able to dispose of its canceled security certificates without fear of losing evidence needed to support its position in a lawsuit.

This proposed absolute statutory period of 8 years from the date of registration without provision for tolling would put no unreasonable burden on registered security holders. Since most issuers having at least 50 security holders and maintaining transfer books (sec. 8-201(3)) or having a transfer agent or other like agent for the registration of its securities now communicate with their registered security holders on some regular basis as by sending dividend and interest checks, notices of annual meetings and annual reports, a security holder not receiving any communication from his issuer over as few as 3 years should be on notice that there is some question as to his status sufficient to require him to make inquiry.

The protection of this section would be denied to issuers having fewer than 50 security holders of the class involved because such corporations do not often have the canceled certificate storage problem and thus need the relief sought, and further because they often conduct their business in an informal manner without any regular communications to security holders.

The proposed new section would not bar any action against the wrongdoer who instigated the wrongful registration. It would merely provide a reasonable limitation for the benefit of the party performing the ministerial act of registration and issue of a new certificate. The fact that the issuer and the transfer agent and other like agents would not receive the protection of the section for a period of 8 years is ample to insure careful performance of their work under article 8 of the UCC.

The existing District of Columbia statute of limitations applicable to actions against issuers and transfer agents for wrongful registrations is 3 years from the time when the right to maintain the action accrued, with tolling of the statute