Cleary, Gottlieb, Steen & Hamilton LLP **Sullivan & Cromwell LLP**

July 1, 2005

Mr. Cono R. Namorato,
Director,
Office of Professional Responsibility,
Internal Revenue Service,
Room 3000 IR,
1111 Constitution Avenue, N.W.,
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Mr. Stephen A. Whitlock,
Deputy Director,
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Re: Proper Interpretation of Section 10.35 of Circular 230
As Applied to Certain Letters and Opinions Issued In
Connection With Capital Markets & M&A Transactions

Dear Messrs. Namorato and Whitlock:

Thank you for talking to us on Wednesday June 29, 2005, regarding the correct interpretation of Section 10.35 of Circular 230 as it applies to certain letters and opinions issued in connection with securities offerings and M&A transactions. As we discussed on our call, we are writing to provide a record, for the benefit of ourselves and other affected practitioners, that sets forth our approach to Circular 230. We believe that our approach is a proper, reasonable and common sense way to meet the objectives of Circular 230.

Specifically, as discussed below, we believe that certain letters and opinions that do no more than (i) refer to the disclosure made in the document provided to investors, (ii) confirm the accuracy of the tax disclosure in particular, or (iii) confirm an opinion described in such tax disclosure need not contain the "opt-out legend" if the underlying tax disclosure itself complies with Section 10.35.

We have also discussed our interpretation of Section 10.35 with securities and tax lawyers from a large number of other firms which regularly advise on a substantial volume of capital markets and M&A transactions. We expect that this interpretation will be applied by these firms (and others) to a broad range of capital markets and M&A transactions.

We have focused on offerings of securities and M&A transactions where there is a prospectus, proxy statement or other disclosure document made available to shareholders or prospective investors. If the securities are registered with the Securities and Exchange Commission (the "SEC"), the disclosure document is required to be filed with the SEC; otherwise, the document is not filed with the SEC.

In many cases the disclosure document will include a "tax disclosure" section setting forth the anticipated U.S. Federal income tax consequences to investors or the corporation(s) involved. Accordingly, the covered opinion rules of Section 10.35 of Circular 230 would be considered. Where the disclosure document is filed with the SEC, no legend is required in order to comply with Section 10.35 because there is an exception for a tax discussion contained in documents required to be filed with the SEC (assuming, of course, the transaction is not a "listed transaction" or a "principal purpose transaction"). Where the disclosure document is not filed with the SEC, the 3-prong marketing legend will generally be included in the disclosure document in order to ensure compliance with Section 10.35.

In addition, the counsel to the issuer and the underwriters will generally issue one or more letters or, in some cases, an opinion, to the underwriters and the issuer regarding the contents of the underlying offering document. Over the years, the securities bar and capital markets participants have developed standard practices for the wording and delivery of these letters and opinions, which are intended to serve very specific purposes relating to the securities laws and securities markets procedures.

As we indicated on our call, when we discussed with the securities lawyers in our firms and other firms the possibility of adding the Circular 230 legends to these types of letters and opinions, they raised concerns and objections based upon possible securities law implications.

In light of the objectives of Circular 230, we believe that our interpretation of the rules of Section 10.35 as applied to these types of opinions and letters is correct and is a rational and common sense approach to Circular 230.

Specifically, it is our interpretation that the following types of letters or opinions, if issued without the so-called "opt-out legends", would not be considered "covered opinions" subject to the requirements of Section 10.35(c):

1. "10b-5 Letters", "Disclosure Letters" or "Negative Assurances Letters"

These letters are issued to the investment banks distributing the securities in connection with both offerings that are registered with the SEC and offerings that are not registered with the SEC (for example, so-called "Rule 144A offerings"). In many, but not all, cases the underlying disclosure document contains a tax disclosure that addresses the U.S. Federal tax consequence of investing in the securities being offered. The disclosure document may also contain statements regarding U.S. Federal tax matters affecting the issuer of the securities or other corporations involved (for example, that the issuer is entitled to a specific Federal tax credit or that the target corporation will not recognize gain in the merger).

These letters are issued by counsel to the issuer and counsel to the investment banks distributing the securities (which are generally referred to as "underwriters" when the offering is SEC-registered and as "initial purchasers" when the offering is not SEC-registered); and the letters are given a variety of names, such as those set forth above.

The letters state that the practitioner is not aware of any statement in the disclosure document that is materially false or of any statement omitted from the document that renders it materially misleading. In SEC-registered offerings, the letters also state that the practitioner is unaware of the omission of any statement required by the SEC. These letters are issued to the underwriters (or initial purchasers) in their capacity as such and are intended to assist the recipient of the letter in establishing that it has performed due diligence with respect to the contents of the offering document sufficient to avoid liability under the Federal securities laws. Because these letters are intended to be used solely by the underwriters (or initial purchasers), it is standard practice for these letters to include an explicit statement prohibiting any other person from relying on the letters and prohibiting the recipient from quoting, referring to or furnishing the letter to any purchaser or prospective purchaser of the securities.

Consistent with the purpose and content of these letters, they are never filed with the SEC, even when the underlying disclosure document is SEC-filed.

2. Opinions on the Accuracy of the U.S. Federal Income Tax Disclosure (Often Referred to as "Fair and Accurate Summary" Opinions)

These opinions are issued to the underwriters (and initial purchasers) by counsel to the issuer in both SEC-registered and non-SEC-registered offerings where the underlying disclosure document includes a tax disclosure describing the U.S. Federal income tax consequences to investors of purchasing, holding and selling the securities being offered. These opinions state, in effect, that in counsel's opinion the tax disclosure

that appears in the disclosure document is accurate or is a "fair and accurate summary" of the U.S. Federal tax consequences to investors.

These opinions are not filed with the SEC in unregistered offerings and generally are not filed in SEC-registered offerings. In some SEC-registered offerings, primarily where the tax disclosure identifies the tax counsel which advised on the tax consequences, the fair and accurate summary opinion will be filed with the SEC as an exhibit to the registration statement containing the prospectus.

3. Closing Opinions In M&A Transactions Where the Proxy Statement Describes the Closing Opinion

These opinions, issued by counsel to the acquiror and/or the target in M&A transactions, address the U.S. Federal income tax consequences of the transaction where the underlying proxy statement or registration statement includes a tax disclosure describing the U.S. Federal income tax consequences of the transaction. Depending upon the transaction, the tax disclosure in the underlying document may address the treatment of one or more of: the target corporation, the target's shareholders, the acquiror and the acquiror's shareholders. The closing opinion will be issued when the transaction closes, and, in some cases, also issued earlier at the time the proxy statement becomes effective.

The tax disclosure will either describe what the closing opinion is going to say or will make the same statements that will be made in the closing opinion. For example, sometimes the tax disclosure will state that the closing of the transaction is conditioned upon the parties receiving opinions that the merger will be a tax-free reorganization and then will describe what the tax consequences will be assuming the merger is in fact a tax-free reorganization. In other cases, the tax disclosure will state that the merger will be a tax-free reorganization, that opinions to that effect have been received as of the filing date and that "bring-down" opinions to that effect will be received at closing.

In each case, the closing opinion will either (i) reach the conclusions described, referred to or stated in the tax disclosure or (ii) simply state that the tax disclosure is the firm's opinion or is accurate. In many cases, the closing opinion will not be filed with the SEC, even if the related proxy statement is filed with the SEC.

* * *

Each of the three types of letters and opinions described above is incidental to the statements in a disclosure document. Some of these letters simply refer to the disclosure document, which has already been furnished to investors or other transaction participants, and other letters basically confirm the statements previously made to investors in the disclosure document. Accordingly, these letters and opinions do

not add anything that would require an opt-out label. Moreover, in the case of the letters and opinions that are never seen by investors, the opt-out legends would serve no purpose and make no sense. We believe that the interpretation and application of Section 10.35 described above is proper and represents a rationale and common sense approach to Circular 230.

We are pleased that we were able to confirm with you our understanding of the meaning of the new Circular 230 rules in this important securities' market context as described above. We look forward to a continuing dialogue with you concerning a reasonable and common sense interpretation of Section 10.35 in light of its purposes.

If you have any questions or would like to discuss this further, please contact either of us. Our contact information is set forth below.

Sincerely,

/s/ Leslie B. Samuels

Leslie B. Samuels

/s/ Diana L. Wollman

Diana L. Wollman

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