IN OUR OPINION

THE NEWSLETTER OF
THE COMMITTEE ON LEGAL OPINIONS

ABA BUSINESS LAW SECTION

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FROM THE CHAIR

You should be receiving this newsletter after the first of the year, so let me wish you the very best for 2013. You will notice both a new name and new format for the newsletter. Don Glazer gets credit for the new name, and I will select an appropriate prize (perhaps an autographed copy of his book!). We welcome your reactions to these changes. This is a year of leadership transition for the Committee as my term as chair comes to an end in August. We have new leadership in place to take over the reins and insure a smooth transition for the important work of the Committee. I will spare you a retrospective for now. However, I do want to identify some of the important work of the Committee, as reflected elsewhere in this newsletter.

- The Report on the 2010 Survey of Law Firm Opinion Practices has been completed and will be posted on our website and published in The Business Lawyer. It provides invaluable insights that will be useful to law firms in managing their own opinion practices. Thanks to John Power, who led the effort, Don Glazer, its editor-in-chief, and all members of the survey subcommittee, who are identified in the report and in the summary of the report in this newsletter.
• Significant progress has been made on the Report on Outbound Cross Border Opinions and the plan is to issue the report during 2013. There has been in depth analysis of issues relevant to outbound cross-border opinions that has not been done to this extent before. This report, when it is issued, will make a major contribution to opinion learning and will be an invaluable resource to practitioners, who increasingly are involved in cross border transactions. It also will provide the basis for constructive dialogue on opinion practice with our colleagues in other countries, a project this Committee is uniquely situated to undertake. Ettore Santucci continues to admirably lead this effort as Reporter, ably assisted by the other members of the report’s editorial group.

• Our Committee continues to be the leader in dealing with other groups on important opinion issues. An example is our interaction with the American Institute of Certified Public Accountants described elsewhere in this newsletter on its proposal to expand the form of legal opinion required in connection with audits of off-balance sheet arrangements (what we have known as “true sale” opinions). This is an important project because what auditors are seeking does not mesh entirely with what lawyers can provide, and the objective of our effort is to seek common ground that works on behalf of the mutual clients of the accountants and lawyers. Thanks go to Steve Weise, acting for this Committee, and Will Buck, acting for the Business Law Section’s Securitization and Structured Finance Committee, for undertaking leadership of the project.

• We continue to address evolving opinion issues and to provide practical guidance. An example is the dialogue on our listserv, a summary of which, thanks to the good work of Jim Fotenos, our newsletter editor, is included in the newsletter. Another example is the article below by David Brittenham on challenges presented by the Dodd-Frank Act and its implementing regulations and interpretations for opinions on transactions that involve swaps and other derivatives. We also have a summary of an important recent New York Court of Appeals decision relating to the New York choice-of-law statute, written by Jim Gadsden and Jim Fotenos.

As you can see, we have been busy as a Committee serving our members and providing guidance on opinion practice to assist the profession. Our next meeting will be at the Section’s Spring Meeting in Washington, D.C. on April 4-6, 2013. I hope to see many of you there.

- Stan Keller
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• The joint project with the Working Group on Legal Opinions on identifying common opinion practices is nearing completion of its first phase, with the anticipated submission for comment and approval of an initial statement of certain common opinion practices. This is an important initiative for expanding a common base of understanding of national opinion practices and among different areas of practice. I am serving as co-chair and Steve Weise has been playing a central role in this project as well, serving as lead reporter. Other members of the Committee also are involved.
Committee on Legal Opinions
Friday, April 5, 2013
Committee Meeting:
8:30 a.m. – 10:30 a.m.
Reception:
5:00 p.m. — 6:30 p.m.
Saturday, April 6, 2013
Program: “Opinions on Key Procedural Provisions in Domestic and Cross-Border Transaction Agreements: What is the Same, What is Different, and What are People Doing?”
2:30 – 4:30 p.m.

Committee on Federal Regulation of Securities, Subcommittee on Securities Law Opinions
Friday, April 5, 2013
Subcommittee Meeting:
2:00 p.m. – 3:00 p.m.

Professional Responsibility Committee
Friday, April 5, 2013
Committee Meeting:
9:00 a.m. — 10:30 a.m.
Program: Ethics 20/20: What It Did and What It Left Undone — Next Time Let’s Be Bolder!”
10:30 a.m. – 12:30 p.m.

Committee on Audit Responses
Saturday, April 6, 2013
Committee Meeting:
10:00 p.m. — 11:00 p.m.

Law & Accounting Committee
Saturday, April 6, 2013
Committee Meeting
11:00 a.m. — 12:30 p.m.
Program: “Key Accounting and Financial Reporting Developments for Business Lawyers”
2:30 p.m. – 4:30 p.m.

Working Group on Legal Opinions
New York, New York
May 13 and 14, 2013
The Business Law Section held its Fall Meeting in Washington, D.C. on November 16-17, 2012. The following are reports on meetings and programs at the Fall Meeting of interest to members of the Committee on Legal Opinions.

Meeting of the Committee on Legal Opinions

The Committee met on November 16, 2012. Following is a summary of the meeting:

Survey of Law Firm Opinion Practices. In 2010 the Committee circulated a confidential survey of law firm practices in preparing and giving third-party closing opinions in business transactions, including firm limitations on the giving of certain opinions. A Survey Subcommittee was responsible for the project, with John Power as its reporter and Don Glazer as its editor-in-chief. The Committee received 252 completed responses to the 2010 survey (compared to 50 responses to its earlier 2002 survey).

A draft of the Subcommittee’s report compiling the results of the survey had previously been circulated to the members of the Committee and was extensively reviewed at the Committee’s meeting held in conjunction with the ABA’s annual meeting in Chicago on August 5, 2012. John Power reported that editorial but not substantive revisions had been made to the report following the August 5 meeting, and submitted the report to the Committee for its approval. John thanked the members of the Subcommittee for their diligence, in particular Don Glazer as its editor-in-chief.

Arthur Field suggested that the report more emphatically stress what it intends to accomplish, namely to inform law firm opinion committees of current practices, and that that emphasis be stated up front. John Power indicated that the Subcommittee would attempt to do this.

After further discussion, and upon motion duly made and seconded, the survey report was unanimously approved in substantially the form presented to the meeting, with such changes as the Subcommittee or the reporter and editor-in-chief approve. It will now be finalized and submitted to The Business Lawyer for publication in 2013. [See “Legal Opinion Reports – ABA 2010 Opinion Survey Report” in this issue.]

Joint Project on Common Opinion Practices. Steve Weise, Proskauer Rose LLP, Los Angeles, reported on the status of the joint project undertaken by the Committee and the Working Group on Legal Opinions (“WGLO”) in preparing a description of common opinion practices. The working group formed for this project is comprised of Steve as reporter and Pete Ezell (Baker, Donelson, Bearman, Caldwell & Berkowitz, PC) and Steve Tarry (Vinson & Elkins LLP) as co-reporters, and also includes co-chairs Ken Jacobson (Katten Muchin Rosenman LLP), Committee chair Stan Keller, and Vladimir Rossman (McDermott Will & Emory), as well as representatives of this Committee and of a number of state and other bar associations.

The working group has reviewed several exposure drafts of portions of a report. Challenges confronting the group include resolving differing practices among practice specialties in the taking of opinion exceptions (the tailored versus the laundry list approach).

The objective of the participants in the project, including WGLO and this Committee, is to secure broad acceptance of a statement on common opinion practices by state bar opinion groups and other relevant parties, similar to that achieved by the Statement on the Role of Customary Practice in the Preparation and
AICPA Project to Revise True-Sale Opinion Requirements. Steve Weise reported on the proposal by the American Institute of Certified Public Accountants to strengthen true-sale opinions by requiring such opinions to address additionally all applicable laws, including fraudulent conveyance laws and perfection issues. Structured finance practitioners have voiced concerns about the proposal. Steve is representing this Committee in expressing similar concerns to the AICPA. Those interested in the subject should contact Steve (sweise@proskauer.com). See “Recent Developments — AICPA Proposes Expansion of Form of True Sale Opinion” herein.

California VC Sample Opinion. Tim Hoxie, Vice-Chair of the Committee and a Co-Chair of the Opinions Committee of the Business Law Section of the California State Bar, reported on that Committee’s development of a sample venture capital financing closing opinion. Tim hopes that the sample opinion will receive final approval by the California Committee in the Spring of 2013 and then be submitted for publication to The Business Lawyer. Those interested in reviewing the current draft of the VC opinion should contact Tim (tghoxie@jonesday) or his Co-Chair Rick Frasch at mfrasch@aol.com.

Cross-Border Report. The bulk of the meeting of the Committee was taken up with a review of the Committee’s outbound cross-border legal opinions report (“Cross-Border Closing Opinions of U.S. Counsel”). Ettore Santucci, Goodwin Procter LLP, Boston, the reporter for the project, gave an update on the status of the Report. A draft of the Report, which is nearing completion, was circulated to the members of the Committee through its listserve on November 6. Ettore and his subcommittee (Truman Bidwell, Daniel Bushner, Peter Castellon, Silvia Chin, Ed Fleischman, Rick Frasch, Don Glazer, Jerry Hyman, Stan Keller, Noël Para, John Power, Jim Rosenhauer, and Elizabeth van Schilfgaarden), received wide praise for the depth, rigor, and clarity of the Report. Discussion topics included the role of U.S. customary practice in interpreting outbound cross-border opinions and opinions on choice of law and choice of forum clauses.

In domestic practice, “as if” remedies or enforceability opinions are often given when the governing law of an agreement addressed by the opinion is that of a state other than the state whose law is covered by the opinion. After extensive analysis, the subcommittee concludes in its Report (at pages 7-8) that the giving of “as if” remedies opinions in the cross-border context is ill advised. A suggestion was made that this conclusion be strengthened by the addition of a statement that a request for an “as if” remedies opinion in the cross-border context is inappropriate.

It is the hope of the subcommittee to present the cross-border report for approval of the Committee in 2013.

WGLO. The meeting scheduled for the Working Group on Legal Opinions on October 29-30, 2012 was cancelled due to Hurricane Sandy. WGLO’s program scheduled for October — Fuld@40 — will be the subject at the Spring 2013 meeting of WGLO, to be held May 13 and 14, 2013. [WGLO held a webinar on recent developments on December 4, 2012. See “Webinar on Recent Developments” below.]
Subcommittee on Securities Law Opinions, Committee on Federal Regulation of Securities

The Subcommittee met on November 17, 2012, and discussed future projects that it might pursue.

The principal topic discussed was a possible update of the Subcommittee’s 2007 report on “No Registration Opinions” (63 Bus. Law. 187). The update would address the impact on opinion practice of the regulatory revisions permitting general solicitation and general advertising in the context of Regulation D and Rule 144A offerings contemplated by Section 201(a) of the JOBS Act. It would also afford an opportunity to consider other market or practice changes since issuance of the original report. The Subcommittee discussed the SEC’s currently pending rule proposal to implement Section 201(a), how the proposed changes might affect market practices, and the distinct question of how the rule and market practice changes might affect no-registration opinion practice. There was particular discussion of the new requirement for “verification” of “accredited investor” status in Rule 506 offerings involving general solicitation. Although the update work cannot start in earnest until final rules are adopted, there appeared to be consensus that this is an important project that should be pursued promptly thereafter.

The Subcommittee also discussed a possible project relating to “due diligence” opinions/confirmations requested in securities offerings of counsel with special expertise (for example, as to intellectual property matters, or specialized regulatory matters). The Chair had previously circulated materials from a WGLO panel on IP counsel opinions, the principal thrust of which was that such counsel could most appropriately address these matters through negative assurance. There appeared to be consensus that this could be another project worth pursuing.

The next meeting of the Subcommittee will be in Washington, D.C. on April 5, 2013.

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Committee on Audit Responses

The Committee on Audit Responses met on November 16, 2012.

Audit Letter Handbook Update. The recently circulated draft introductory update for a proposed new edition of the Auditor’s Letter Handbook was discussed. It was noted that the Handbook will include the American Bar Association’s Statement of Policy Regarding Lawyers’ Responses to Auditors’ Requests for Information (the “ABA Statement”), related ABA Committee reports and statements, Statement on Auditing Standards No. 12 as it now exists (both as adopted by the American Institute of Certified Public Accountants and by the Public Company Accounting Oversight Board), and related audit interpretations. In response to an inquiry, the meeting attendees concurred with the draft introductory statement, which will be included in the new edition.

Communications with Audit Committees. Tom White of WilmerHale reported on the new PCAOB auditing standard regarding communications with audit committees (AS 16), which will replace SAS 61. It is pending approval before the Securities and Exchange Commission. [The SEC approved it on December 17, 2012.] The new standard in many respects formalizes standard practice, but it also adds a new element: inquiry of the audit committee about matters relevant to the audit, including violations or possible violations of laws and regulations.

The standard is not a totally new concept — auditors have always needed to consider the possibility of fraud, and therefore inquire whether the audit committee has knowledge of fraud, suspected fraud or alleged fraud, or has received whistleblower allegations of fraudulent
matters. In addition, management provides representation letters about fraud and possible legal violations affecting financial statements, and CEO and CFO certifications also include statements regarding fraud. Management is also asked for a representation, with respect to contingency disclosure, that there are no matters requiring accrual, and no unasserted claims as to which lawyers have recommended disclosure. The new standard arguably is broader insofar as it calls for inquiries about legal violations or possible legal violations that may not involve fraud and might not be limited to violations affecting financial statements.

A concern about the new standard is that it may intrude on attorney-client privileged communications because it is so broad — addressing not only fraud, but also possible violations of law. It is not unreasonable for the auditors to ask about violations, but auditors should not require an audit committee to disclose privileged communications. It was suggested that there needs to be clear understanding on what the required inquiry means.

Stan Keller noted that similar language has been found in some KPMG requests (described sometimes as coming from “rogue offices” of KPMG) which were considered to be inconsistent with the ABA Statement. The new standard appears designed to expand communications, with the risk that auditors may press for more information than may be appropriate. Dialogue on these issues is ongoing.

It was noted that at an earlier meeting of the Law and Accounting Committee Linda Griggs of Morgan Lewis had noted that lawyers will need to counsel audit committee members on how to respond in a manner that avoids loss of the attorney-client privilege. For example it may be acceptable for audit committee members to describe a matter, but not to say that their lawyers have advised on the matter, since that could jeopardize the privilege on a subject matter basis.

It was noted that the concern is that the broader question may now be part of the conduct of audits, and audit committee members need to be prepared to say nothing more than that the matter exists. If a committee member says that the person is “aware of an investigation,” auditors may ask for more information about the substance of counsel’s report.

It was noted that there is uncertainty as to whether materiality is necessary for the standard to require a response.

Stan Keller noted that the audit committee is a primary source of information. If there is an allegation that involves fraud, under today’s standard there is already an obligation to disclose to auditors. Tom White again noted that under the proposed changes, the standard expands from fraud to other categories. Questions include whether the matter will affect financial statements, and whether companies can argue that as to “ordinary course” legal issues management and audit committees should not be expected to disclose the contents of such communications to auditors.

It was also reported that that the International Ethics Standards Board for Accountants has proposed broad illegal acts disclosure in an exposure draft.

Miscellaneous. The earlier Law and Accounting Committee meeting had discussed proposed PCAOB changes to the auditors’ reporting model that would require more in auditors’ reports than the current “pass/fail” approach.

At an earlier meeting, Meredith Cross, Director of the SEC’s Division of Corporation Finance, had said that nothing had changed concerning loss contingency disclosure. The topic is not on the FASB’s agenda, but the SEC continues to focus on the quality of such disclosures.

The FASB is considering whether management must make an assessment of the “going concern” status of a company. This would be a prediction of going concern status.
over a “reasonable period of time” — what is such a period? One suggestion made was 12 months plus a reasonable period, but not more than 24 months.

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Program on Firm Opinion Practices

The Committee on Legal Opinions sponsored a program at the fall meeting of the ABA’s Business Law Section entitled “What’s Going On? Current Law Firm Opinion Practices as Illustrated by Responses to the ABA 2010 Survey.” Using the 2010 survey responses as background, the panelists provided a broad view of firm opinion practices based on their experience. Examples include:

- The panel confirmed that there are wide variations in law firm opinion practices and agreed that a significant reason for the variations is differences is the culture, history and general organization of law firms. Although responses to general survey questions sometimes seemed to suggest similar practices among law firms of the same size, textual comments and responses to more detailed questions demonstrated wide variations at more specific levels.

- The survey report often refers to firm mandates, prohibitions, and requirements for the firm’s opinion practice, in effect establishing “rules” that cannot be varied without “waivers.” As pointed out in a footnote in the report, these words suggest a degree of formality that does not exist in many firms. Panelists reflected different experiences on the formality of firm policies.

- Survey responses indicated that most responding firms had model opinions and opinion letters. But the models might seem unimportant management tools since most firms did not require their use, rather merely “preferring” their use as a starting place. But models are often more important than they seem. Panelists noted that many firms use an annotated model opinion to set forth firm opinion policies. Often an opinion recipient provides the form of opinion it wants, but an opinion giver model provides important guidance to opinion preparers in the negotiation process. Moreover, many firms insist on using their model language for certain opinions.

John Power moderated the program, and the panelists were Carolan Berkley, Don Glazer, Dick Howe, Tim Hoxie, and Anna Mills.

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WGLO WEBINAR ON RECENT DEVELOPMENTS

On December 4, 2012, the Working Group on Legal Opinions sponsored a webinar for its members on recent legal opinion developments, originally planned for the fall WGLO seminar, which was cancelled because of Hurricane Sandy. John Power moderated the panel and the panelists were Don Glazer, Rick Frasch, Stan Keller, Andy Pitts, Ettore Santucci and Steve Weise.

Recent and Pending Bar Reports. The panel discussed four recent or pending bar opinion reports, as well as other developments. John Power noted that fewer bar opinion reports are pending than in many years. See “Legal Opinion Reports - Chart of Published and Pending Reports” below (updated to December 31, 2012). Moreover, two reports shown in the chart as pending are now final and ready for submission for publication: the report of the Committee on Legal Opinions on the 2010 ABA Survey of Law Firm Opinion Practices and the ABA Subcommittee on Securities Law Opinions report on opinions in SEC filings.
California Sample Venture Capital Opinion. Rick Frasch is the reporter for this pending project, which is based on a California report on opinions in venture capital transactions published in 2009 in The Business Lawyer (65 Bus. Law. 161). Rick expects to complete the sample opinion in 2013. Venture capital transactions frequently have limited budgets for legal fees, and one result is that recipients often accept opinions that expressly limit the diligence conducted by the opinion giver. For example, opinion letters in many venture capital transactions include a provision expressly excepting from the coverage of some or all specific opinions any matter referred to in a schedule of exceptions to the representations and warranties in the principal agreement. The draft sample opinion reflects this practice, and that has proven controversial.

ABA Report on Outbound Cross-Border Opinions. Ettore Santucci, the reporter for this pending report, expects it to be finished in 2013. The drafting subcommittee recently concluded that the “golden rule” of opinion practice (counsel for a recipient should not request an opinion it would not give) does not fit well in cross-border opinion practice. For example, non-U.S. recipient counsel requesting a U.S. opinion would usually never give an opinion under U.S. customary practice on U.S. law, and might give opinions under its local practice that U.S. lawyers do not give. The report will recommend that counsel in cross-border transactions rely on more generalized “rules of engagement,” for example using a cost/benefit analysis and dealing with each other in a professional manner, rather than relying on the golden rule as such.

Report on Legal Opinions in SEC Filings by the ABA Subcommittee on Securities Law Opinions. Andy Pitts, the reporter, summarized this recently completed report. See “Recent Developments — Report on Legal Opinions in SEC Filings (2012 Update)” herein. He noted that Exhibit 5 opinion practice likely will be affected in the future by changes in the nature of public offerings of securities.

Committee on Legal Opinions’ Report on the 2010 ABA Survey of Law Firm Opinion Practices. Don Glazer, editor-in-chief of this recently completed report (John Power was the reporter), summarized the report’s findings on law firm survey responses to questions about practices in giving no-litigation confirmations. Most firms reported that they gave these confirmations, at least sometimes. However, many tried to limit them beyond the typical knowledge limitation, for example by covering only litigation their firm was handling (which would not need a knowledge limitation) or by covering only litigation that could materially and adversely affect the transaction (rather than the opinion giver’s client generally). Textual comments from responding firms suggested that many firms prefer not to give these confirmations at all, possibly because of recent recoveries against firms that gave them, for example the Dean Foods case. See “Recent Developments — ABA 2010 Opinion Survey Report” herein.

Effect of the JOBS Act on No-registration Opinions. Stan Keller raised questions about how the JOBS Act and regulations implementing it will impact the giving no-registration opinions. For example, in Rule 506 offerings using general solicitation after the rule has been amended, while the opinion giver will no longer need to be concerned about the absence of general solicitation, will the issuer’s obligation to take reasonable steps to verify an accredited investor’s status expand the diligence required by the opinion giver or will opinion givers continue to rely on assumptions and various certifications received? Will the opinion giver have to satisfy itself, not only that all purchasers are accredited investors but also that the issuer has taken reasonable steps to verify the investors’ status? Even if there is no general solicitation in a Rule 506 offering, will the increased focus on verification of accredited investor status affect the level of diligence required to form a reasonable belief as to an investor’s status as an accredited investor in traditional Rule 506 offerings? A likely result is that opinion givers will assume or rely on certifications as to the taking of reasonable verification steps when that is a condition, just
as they do now for the absence of solicitations but that they may need to do more diligence to be able to rely on such assumptions and certifications.

_AICPA Proposals for Expanding Beyond “True Sale” Opinions._ Steve Weise reported on recent discussions between representatives of the Committee on Legal Opinions and the American Institute of Certified Public Accountants regarding AICPA proposals to expand the coverage of opinion letters on the isolation of assets from the transferor in the sale and contribution of such assets to special purpose entities. Under the AICPA proposals the form of opinion letter from lawyers would cover, in addition to “true sale” issues covered under existing guidance, perfection of the transfer under UCC Article 9 (where applicable), fraudulent transfer issues, and an undefined set of risks under “all” principles that might arise under “all” insolvency laws. The Committee is addressing these issues with the accounting profession. See “Recent Developments — AICPA Proposes Expansion of the Form of True Sale Opinions” herein.

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1. _No Registration Opinions Addressed to the Placement Agent_

By his inquiry to the listserv of November 6, 2012, Samuel E. Stumpf, Jr., of Bass Berry & Sims PLC, Nashville, asked whether it is customary for a placement agent in a Reg D or other private placement to receive an opinion, addressed to it, to the effect that the offering is exempt from the registration requirements of the Securities Act of 1933. Sam’s question was prompted by a placement agent insisting on the inclusion of such a requirement in its engagement letter with an issuer that is a client of Sam’s firm.

The reaction to Sam’s inquiry was mixed, depending largely on the nature of the private placement. It was noted by Phillip A. Quatrini, Rimon, PC, McLean, Virginia, that in more formal private placements, such as those conducted under Rule 144A and in “PIPE” (private investment in public equity) transactions, it is common for the placement agent to ask for a no registration opinion, because the placement agent may be deemed a statutory underwriter and will want to satisfy its due diligence requirements. On the other hand, for less formal offerings (venture capital, angel rounds, etc.), such a request is less common.

Several responders noted that no registration opinions depend in large part on how the offering was conducted and therefore require reliance upon the placement agent for satisfaction of this condition (Keith Higgins, Ropes & Gray LLP, Boston; Herrick Lidstone, Jr., Greenwood Village, Colorado) Joan Waller of Secore & Waller L.L.P., Dallas, observed that the “entitlement to a Reg D exemption depends in part on how the offering is conducted, i.e., whether the placement agent complies with the Reg D restrictions.” Rick Goyne, Baker Botts L.L.P., Dallas, noted that the “placement agent itself is frequently requested to provide a letter to the issuer and opining counsel containing representations as to the traditional Section 4(2) private placement criteria in the context of traditional institutional private placements.”

**NOTES FROM THE LISTSERVE**

[Editor’s Note: Dialogues on the Committee’s listserv are not intended to be authoritative pronouncements of customary opinion practice, but represent the views of individual lawyers on opinion topics of current interest. Members of the Committee may review the comments referred to below by clicking on the “Archives” link under “Listerves” on the Committee’s website.]
Stan Keller expressed the view that it is not inappropriate for placement agents to seek and for lawyers to give no registration opinions if one otherwise is being given to the purchasers, and referred readers to the “No Registration Opinions” Report of the Subcommittee on Securities Law Opinions, Committee on Federal Regulation of Securities, published in 63 Bus. Law. 187 (2007). Such opinions require factual underpinnings that the opinion preparers need to satisfy themselves on in one way or another, or expressly assume. But, as noted by Stan, placement agents do not always get no registration opinions, particularly in smaller offerings. Whether an opinion is justified may depend on a cost-benefit analysis.

Stan added that, except in limited circumstances when the disclosure work closely replicates what is done in a public offering, it is neither common nor appropriate for there to be negative assurance given by issuer’s counsel to a placement agent and, it is rarely, if ever, appropriate for negative assurance to be provided to investors.

Robert Morris of Reed Smith LLP, Philadelphia, argued for analyzing the issue separately for Rule 144A transactions, Reg D transactions, and statutory private placements, noting that it is ordinarily not that difficult to provide a no registration opinion in a Rule 144A transaction; somewhat more difficult to provide such an opinion in a Reg D transaction (although, in Robert’s experience, such opinions are frequently given); and, in statutory Section 4(2) private placements, a no-registration opinion is quite difficult to render.

Picking up on Stan Keller’s observations about negative assurance confirmations, Jeffrey Rubin of Hogan Lovells US LLP, New York, observed that outside of the Rule 144A/Reg S context, issuer’s counsel should “resist strongly requests to provide negative assurance letters.” Noted Jeffrey, the “practice has developed that counsel will not provide such letters unless they have engaged in public offering-type diligence, which is rarely the case in non-144A/Reg S private placements.”


2. Maintaining a File of Opinion Letters Delivered by the Firm

Numerous responses were prompted by the December 18, 2012 inquiry by Kent Shafer of Miller, Canfield, Paddock and Stone, P.L.C., Detroit, on the practices firms follow in maintaining a file of all opinion letters. Kent reported that his firm’s malpractice insurer was recommending the maintenance of such a central file. Kent asked whether other firms follow this practice, including whether the file includes all opinion letters or only those addressing certain questions.

Charles Menges, McGuireWoods LLP, Richmond, Virginia, responded that his firm maintains an electronic opinion library and that all formal opinion letters are required to be filed in the opinion library after they are issued. A form is to be completed after each submission so that certain key information can be indexed for future retrieval, such as the names of the lawyers involved, the addressees, opposing counsel, and the type of transaction. Stan Keller responded that the Committee on Legal Opinions’ 2010 survey of law firm opinion practices addresses this subject, with the survey results showing that about one-half of firms responding maintain an archive of opinion letters they give, with less than one-quarter maintaining a file of opinions given by other firms.

Aline Ryan of Hudson Cook, LLP, Hanover, Maryland, reported that her firm keeps a copy of the original opinion letter in the client file only, centrally filing only copies of audit letter responses (as well as retaining a copy in the
Because third-party opinions receive an opinion committee review, but the opinion letter itself may be sent by any partner, they are more difficult to centralize.

Norman Powell of Young Conaway Stargatt & Taylor LLP, Wilmington, responded that, given the continuing migration from paper-based to electronic files, the inquiry really should be whether an opinion giver can produce a given opinion and the documents reviewed for the opinion. The question for Norm is, regardless of whether one maintains a separate segregated (and perhaps duplicative) file consisting of delivered opinions, whether a firm follows protocols that would allow it to assemble an opinion delivered by the firm and the materials on which the opinion preparers relied quickly and easily (e.g., a distinct document type or other searchable field in an electronic document management system).

Edward Wender of Venable LLP, Baltimore, noted that his firm has an opinion committee and process whereby all opinions are reviewed and a final copy provided to the opinion committee. The file includes closing opinions of all sorts, from the mundane to the sophisticated. Carolan Berkley of Stradley Ronon Stevens & Young, LLP, Philadelphia, takes the position that because documents are preserved on her firm’s word processing system, they are, in that sense, “maintained,” also noting that to facilitate searches opinions might be coded. Charles Sweet of Bingham McCutchen LLP, Washington, DC, noted that under his firm’s opinion policies, the matter partner is required to retain the opinion (as well as the related internal opinion clearance materials) in the permanent deal file. Finally, Carlos Cruz-Abrams, of Kendall, Koenig & Oelsner PC, Boulder, Colorado, reported that his firm maintains separate opinion folders, with backup sub-folders (under each electronic matter file), thus permitting searches for all folders labeled “opinion” or in individual transaction files.

We have not been able to summarize all of the opinion dialogues that have occurred on the listserv since publication of the Fall 2012 issue of the newsletter. Those dialogues not summarized here include a discussion of legal opinions on Extended Validation SSL Digital Certificates, opinions on the enforceability of close-out provisions of an ISDA master agreement, and a discussion of limiting reliance on closing opinions by the use of the so-called “Wachovia” formulation. To review these dialogues, go to the “Archives” link under “Listserves” on the Committee’s website.

As always, members are encouraged to raise legal opinion issues on the listserv and to participate in the exchanges. Members also are encouraged to bring new developments (such as recent case law or newly identified issues) to the attention of Committee members through the listserv.

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**RECENT DEVELOPMENTS**

**Opinions on Transactions Involving Swaps**

The joint final rules of the CFTC and SEC on the definition of “swap” and “security-based swap” became effective on October 12, 2012. Release No. 33-9338, 34-67453. In the adopting release, the CFTC stated that the term “swap” includes a guarantee of a swap, and as a result any guarantee of a swap may be provided only by an “eligible contract participant,” or “ECP.” An ECP generally includes, among others, an entity that either (1) has total assets exceeding $10,000,000, or (2) has a net worth exceeding $1,000,000 and enters into a swap in connection
with conducting or managing asset or liability risk in its business.

Concurrently with these rules becoming effective, the CFTC’s Office of General Counsel issued a no-action letter that expanded slightly the categories of non-ECPs that, for limited periods of time, will be able to guarantee swap obligations of others.

Under these rules, as interpreted by the CFTC, if a corporate borrower enters into a swap to hedge its interest rate risk arising under its credit agreement and any of its subsidiaries provides an upstream guarantee for its swap obligations, then that subsidiary must be an ECP. In other words, an upstream guarantee of a swap by a non-ECP subsidiary is not enforceable.

The requirement that a swap guarantor be an ECP for its guarantee to be enforceable has potential consequences for financing transactions and related enforceability opinions. It is common for U.S. subsidiaries of a U.S. borrower under a credit facility to guarantee the U.S. borrower’s obligations under that facility. The guaranteed obligations often include hedging obligations incurred by the U.S. borrower, often with a lender or affiliate. The hedging obligations may relate to hedging variable rate interest under that facility, or to other matters such as currency or commodity risk.

At closing, an opinion is typically rendered by borrower’s counsel, addressed to the lenders, concerning, among other things, the enforceability of the subsidiary guarantees.

In many situations, it may not be feasible to determine whether every subsidiary guarantor is an ECP with sufficient total assets or net worth. Among other things, members of U.S. corporate groups are generally not required to have individually separate financial statements. In addition, the ECP requirement must be met each time that a swap is entered into. In many financings, the guarantee is entered into at the initial closing or when the entity becomes a subsidiary, and will likely remain in place for years. Since swaps are likely to be renewed or replaced from time to time, it is possible that a subsidiary swap guarantee would meet the test at one point in time and fail it at another.

In some financings, the borrower can exclude certain immaterial subsidiaries from the guarantor group for administrative and cost reasons, typically subject to asset value or revenue thresholds. That exclusion could as a practical matter mitigate or eliminate the issue for the borrower, but will likely be difficult or impractical to rely on for purposes of an enforceability opinion.

For future financing transactions, the parties may wish to consider the advisability of limiting the scope of subsidiary guarantees to the extent the guarantee of a swap obligation would be illegal under the Commodities Act and related rules and interpretations. Particularly in the absence of such an exclusion, practitioners may wish to consider the advisability of including an appropriate qualification in any opinion addressing the enforceability of guarantees of swap obligations.

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AICPA Proposes Expansion of Form of True Sale Opinion

To allow “sale” treatment for a transfer of financial assets, the transferor's accountants must conclude under generally accepted accounting principles that the asset has been “legally isolated” from the transferor. The accountants can obtain support for this conclusion through a legal opinion, which can qualify as evidential information in support of the isolation conclusion. A form of opinion to provide this support for a key element of the isolation conclusion was agreed upon by the accounting and legal professions over ten years ago. The accounting profession, through the American Institute of Certified Public
Accountants, is now working on an update of its interpretation in this area. The update significantly expands the scope of the opinion that would be requested by accountants and as proposed would cover all elements of legal isolation.

**Existing Accounting Interpretation.** In December 2001, the accounting profession issued AU 9336 (“The Use of Legal Interpretations as Evidential Matter to Support Management’s Assertion that a Transfer of Financial Assets Has Met the Isolation Criterion in Paragraph 9(a) of Financial Accounting Standards Board Statement No. 140”), which addressed reliance upon legal opinions in connection with “legal isolation.” The ABA’s Committee on Legal Opinions participated in that process and an approach was developed that has worked well over the years. FAS 140, codified in Accounting Standards Codification (“ASC”) Topic 860 (“Broad Transactions — Transfers and Servicing”), provides the following accounting approach:

“Derecognition of transferred financial assets is appropriate only if the available evidence provides reasonable assurance that the transferred financial assets would be beyond the reach of the powers of a bankruptcy trustee or other receiver for the transferor . . . [and] put presumptively beyond the reach of the transferor . . . and its creditors . . . .”

ASC Topic 860-10-40-8, 40-9 (emphasis added).

In this connection, the AU 9336 interpretation, now codified in ASC Topic 860, refers to the evidential support provided by a “true sale” opinion:

“In the context of U.S. bankruptcy laws, a true sale opinion from an attorney is often required to support a conclusion that transferred financial assets are isolated from the transferor . . . and its creditors.

. . . .

A true sale opinion is an attorney’s conclusion that the transferred financial assets have been sold and are beyond the reach of the transferor’s creditors and that a court would conclude that the transferred financial assets would not be included in the transferor’s bankruptcy estate.”


Although this description of the opinion suggests that it might cover all of the legal issues involved in the legal isolation of the financial assets being transferred to the purchaser, the actual form of the opinion agreed upon covers just the "true sale" aspect of legal isolation, and not the other key issues involved in the “isolation” of an asset for accounting purposes. The following is from AU 9336 and is a typical form of this opinion:

“. . . the transfer of the Financial Assets from the Seller to the Purchaser would be considered to be a sale (or a true sale) of the Financial Assets from the Seller to the Purchaser and not a loan . . .”

AU 9336 ¶ 1.13.

**The Current Proposal.** The accounting profession, in the wake of the financial crisis, which resulted in many off-balance sheet liabilities being restored to the balance sheets of the transferor financial institutions, has recently undertaken to examine how to approach these matters and has prepared a proposed new statement to address these issues.

The **accounting** test is substantially similar, based on FAS 166 (codified in ASC 860-10-40), which amended FAS 140:

“The transferred financial assets have been isolated from the transferor—put presumptively beyond the reach of the transferor and its creditors, even in bankruptcy or other receivership. Transferred financial assets are isolated in bankruptcy or other receivership only if the transferred assets would be . . .

. . . .
beyond the reach of the powers of a bankruptcy trustee or other receiver for the transferor or any of its consolidated affiliates included in the financial statements being presented.”


The suggested opinion letter has a considerably broader scope and, instead of covering just the “sale” aspect of legal isolation, would cover all aspects of legal isolation, as follows:

“We believe (or it is our opinion) that in a properly presented and argued case, under all principles of law and equity which may have material application to the parties or the transactions described herein, the transfer of financial assets (“Financial Assets”) would be considered to be a sale (or a true sale) of the Financial Assets and not a transfer thereof for security in respect of a loan and, accordingly:

“1. The Financial Assets and the proceeds thereof transferred to the Purchaser by the Seller in accordance with the Purchase Agreement would not be deemed to be property of (or be recoverable by) the Seller, any member of the Selling Group or their creditors for purposes of all applicable bankruptcy, insolvency, conservatorship, receivership or other similar proceedings which may generally affect the rights of creditors, or otherwise by proceedings in law or equity, and

“2. No person or entity that subsequently purchases or otherwise acquires from the Seller an interest in the Financial Assets, for value and without notice of the Purchaser’s interest therein, would thereby obtain rights in or to the Financial Assets which are senior to (or would otherwise defeat) the rights obtained by the Purchaser under the Purchase Agreement.”

(Emphasis added.)

The principal changes in the proposed opinion language from the existing language are:

- The opinion would cover whether the transaction is a “sale” (as does existing guidance), but the opinion would also cover whether the asset is “recoverable” by the transferor or its creditors, i.e., whether the transfer is a fraudulent transfer or other similar voidable transfer.

- The opinion would cover the possible application of “all” insolvency and similar laws (again, including fraudulent transfer laws) and not just (as under existing guidance) the Bankruptcy Code.

- The opinion would cover whether a creditor of the transferor could recover the sold asset.

Note: This describes a de facto perfection opinion under Article 9 of the UCC (where Article 9 applies, as in the sale of payment right that is not a "security" under Article 8).

- The opinion would cover whether the transaction is structured in a way that a transferee for value and without notice of the “sale” could obtain senior rights (not covered at all by the existing customary form of true sale opinion). The opinion would cover holder in due course and protected purchaser issues under Articles 3 and 8 of the UCC, even if the transfer were perfected (where Article 9 applies to the transfer, as in the case of a sale of an instrument).

Note: This would require possession of the note or of the security by the purchaser. Thus, in effect, the opinion would have to include an opinion that no third party could obtain “control” of the
Financial Asset (if a “security” under Article 8 of the Uniform Commercial Code were involved) and an equivalent opinion under Articles 3 and 9 for the transfer of notes that are not “securities.”

The proposed form of opinion would therefore cover a far greater portion of “isolation” issues than does the current form of accepted true sale opinion.

**Evaluation of Proposal.** The opinion proposed by the AICPA presents obvious challenges for lawyers. The Business Law Section has formed a group to address the proposal. Will Buck of Sidley Austin LLP (on behalf of the Securitization & Structured Finance Committee) and Steve Weise of Proskauer Rose LLP (on behalf of the Legal Opinions Committee) are heading the effort. In addition, the Section's Law and Accounting Committee is involved. The objective is to find common ground on matters that accountants need to support true sale treatment and that lawyers are in a position to give opinions on, and that makes sense for their common client. If you have an interest in these matters, please communicate with Steve Weise.

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**N.Y. Court of Appeals Affirms Parties’ Choice of New York Law**


No matter. The trial court, the appellate division of the trial court, and the Court of Appeals all confirmed the effectiveness of the parties’ choice of New York law under Section 5-1401(1) of New York’s General Obligations Law. When specified conditions are met, Section 5-1401(1) permits parties, whether or not resident in or doing business in New York, to select New York law as the law governing their commercial agreements and directs New York courts to give effect to the choice of New York law. No other conflicts-of-law analysis is necessary. 2012 WL 6571286 at *4. Concluded the Court of Appeals:

“It strains credulity that the parties would have chosen to leave the question of the applicable substantive law unanswered and would have desired a court to engage in a complicated conflict-of-laws analysis, delaying resolution of any dispute and increasing litigation expenses. We therefore conclude that parties are not required to expressly exclude New York conflict-of-laws principles in their choice-of-law provision in order to avail themselves of New York substantive law.”

*Id.*
The Court supported its conclusion by citing the Restatement (Second) of Conflict of Laws § 187 (§ 187(2)), which states that an express exclusion of a chosen law’s conflict-of-law rules is unnecessary where the parties by their contract have selected the law of that state to govern their contractual rights and duties. 2012 WL 6571286 at *4.

The guarantor argued that its guaranty was void under Brazilian law because it was never authorized by its board of directors. The trial court rejected the contention based on the language of the guaranty itself, which included a waiver of all defenses. Even if the trial court accepted the guarantor’s argument, however, it found that the guarantor was nevertheless bound by the guaranty under the doctrine of apparent authority, as articulated under New York law. Apparent authority existed, according to the trial court, because the guaranty was signed by two executive officers and directors of the guarantor, and the guarantor’s in-house counsel and its Brazilian counsel had rendered closing opinions that the guaranty had been duly authorized, executed, and delivered and constituted the legal, valid, and binding obligation of the guarantor, enforceable in accordance with its terms, and that the choice of New York law as the governing law of the guaranty would be recognized and given effect by the courts of Brazil. 2009 WL 2421423 at *5, *8-10 (NY Sup. Ct., July 31, 2009). The Appellate Division of the Supreme Court affirmed the trial court’s conclusions, as modified, concluding that, under New York law, the plaintiff had failed to establish its entitlement to summary judgment pursuant to the doctrine of apparent authority by reason of the lack of evidence that it relied on any “words or conduct” of the guarantor that the two officers who signed the guaranty were authorized to execute it (the Appellate Division, in its short opinion, apparently was not persuaded that opinions of counsel established “apparent authority” on behalf of the individuals who sign the guaranty), but concluded that the guaranty had been “implicitly ratified” by the guarantor because its indirect subsidiary had received $30 million as a result of the loan guaranteed by guarantor. 83 A.D.3d 573, 575, 922 N.Y.S.2d 308, 311-312 (2011).

The internal affairs doctrine, to the effect that the internal affairs of a corporation are governed by the law of the jurisdiction of its organization, is not expressly mentioned in the opinions of the trial court, Appellate Division or the Court of Appeals. The issue was briefed, however. Plaintiff contended, through counsel (Skadden Arps), that the doctrine did not apply to the case because this case involved a third party and was not an intramural dispute over corporate governance among the guarantor’s constituents and did not implicate their duties to one another. See, e.g., Brief for Plaintiff-Respondent in the Appellate Division of the Supreme Court, dated August 11, 2010, 2010 WL 9008181 at *28-*31.

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- The Editor

LEGAL OPINION REPORTS

ABA 2010 Opinion Survey Report

On November 16, 2012, at the fall meeting of the ABA’s Business Law Section, the Committee on Legal Opinions approved its Report on the 2010 Survey of Law Firm Opinion Practices. See “Fall 2012 Meeting of the ABA Business Law Section -- Meeting of the Committee on Legal Opinions” herein.

Two hundred fifty-two law firms of diverse size and location gave confidential responses to the survey summarized in the report about their internal opinion practices. The report provides information to law firms considering their own
internal opinion practices about what other firms do. The responses and the report were not intended to and do not establish standards of practice.

In general, responding firms of similar size tended to use similar techniques to manage their opinion practice, but the details of these techniques varied widely. Survey responses indicated some significant differences in practice between large and small firms.

As the report states, nearly all responding firms had internal polices for giving opinions. Most firms had at least one opinion committee, with the larger the firm the greater the likelihood of its having a committee. The details of how committees were used varied. Most firms also require, at least sometimes, involvement of a partner who has not worked on the transaction before giving an opinion. The details of how the review process worked varied widely. Moreover, most firms had models for opinion letters and specific opinions, and preferred the use of the models as a starting point. However, few required their use. In general, small law firms had fewer internal opinion policies or structures than larger ones.

The report also summarizes responses to survey questions on firm policies regarding particular opinions. For example, most non-Delaware firms gave straight-forward opinions on Delaware corporations and limited liability companies, with the larger the firm the greater the likelihood of its giving such opinions. Most firms also gave opinions on Article 9 of the Uniform Commercial Code of other states. Moreover, most firms gave no-litigation confirmations, although many preferred not to give them or tried to limit their scope.

The drafting subcommittee for the survey and the report consisted of John Power, Reporter, Don Glazer, Editor-in-Chief, Carolan Berkley, Arthur Cohen, John Evangelakos, Rick Frasch, Doug Haas, Steve Hazen, Tim Hoxie, Christina Houston, Dick Howe, Jerry Hyman, Stan Keller, Anna Mills and Topper Webb.

- John B. Power
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Report on Legal Opinions in SEC Filings (2012 Update)

The ABA Subcommittee on Securities Law Opinions of the Committee on Federal Regulation of Securities has completed its report on legal opinions in SEC filings (“Exhibit 5 opinions”), updating the 2004 report on this topic to reflect developments in Exhibit 5 opinion practice since 2004, including the publication on October 14, 2011 of Staff Legal Bulletin No. 19 (“SLB 19”) of the SEC Division of Corporation Finance. The report, which will be published in The Business Lawyer, covers such issues as appropriate assumptions in Exhibit 5 opinions, consents by counsel, appropriate opinion language for different types of securities and opinions in particular types of offerings.

There have been significant developments in Exhibit 5 opinion practice since the ABA 2004 report was published. For example, less than two years after the 2004 report was published, the SEC’s “Securities Offering Reform” rule amendments became effective. Securities Offering Reform significantly changed both Exhibit 5 opinion practice as well as third-party closing opinion practice in the securities offering context, (i) introducing the concept of a “well-known seasoned issuer” (or “WKSI”), (ii) permitting WKSIs to file shelf registration statements registering an unlimited amount of securities, and (iii) introducing the “time of sale” (which is when there is a binding contract) as a new time at which to measure potential securities law liability.

Another notable development since the publication of the 2004 report has been the increasing diversity of types of securities issued in registered offerings. Since 2004, a limited
liability company ("LLC") structure has been used in several initial public offerings, including several high profile hedge funds and private equity sponsors. Because LLC interests differ fundamentally from common stock of a corporation, the “legally issued, fully paid and nonassessable” formulation of the Exhibit 5 opinion for common stock set forth in Regulation S-K Item 601 is inapposite, and practitioners and the SEC Staff have had to work together to develop an acceptable formulation of the Exhibit 5 opinion for LLC interests. Happily, in SLB 19, the SEC Staff has formalized its views on appropriate Exhibit 5 opinion formulations for a wide variety of securities.

In addition to a growing diversity in the types of securities issued in public offerings, the law itself has changed. So, for example, whereas prior to 2004 an opinion on the valid issuance of the common stock of a Delaware corporation required knowledge of the Delaware Constitution, in addition to the Delaware General Corporation Law and related judicial decisions, the provision of the Delaware Constitution relating to the due issuance of corporate stock has since been repealed. The consequence of this has been to change the accepted meaning in Exhibit 5 opinions of references to the Delaware General Corporation Law.

Another development in Exhibit 5 opinion practice is the SEC’s willingness to accept separate opinion letters regarding specific matters governed by the law of different jurisdictions rather than requiring one counsel to provide a single “all-inclusive” Exhibit 5 opinion that relies as to matters of law outside that counsel’s competence on supporting opinions from counsel competent in those other jurisdictions. The SEC’s willingness to accept either the “separate opinion” approach (which has become the typical approach in third party closing opinion practice) or the “reliance” approach is set forth clearly in SLB 19.

Perhaps one of the most gratifying aspects of SLB 19 is that it affirmatively endorses “customary practice” as relevant to Exhibit 5 opinions. This recognition of the relevance of customary practice to Exhibit 5 opinions and specific references in SLB 19 to bar association reports describing customary practice is a powerful endorsement of the evolution of opinion practice over the years.

Lawyers providing Exhibit 5 opinions will be greatly assisted by SLB 19, both because it provides specific guidance in a range of areas, and also because the issuance of SLB 19 has been accompanied by internal SEC Staff training intended to enhance consistency among Staff comments on Exhibit 5 opinions. The updated ABA report should provide helpful assistance in understanding SLB 19 and provide additional guidance where SLB 19 may not provide clear advice.

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Chart of Published and Pending Reports

[Editor’s Note: The chart of published and pending legal opinion reports below has been prepared by John Power, O’Melveny & Myers LLP, Los Angeles, and is current through December 31, 2012.]

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1 These reports are available (or soon will be available) in the Legal Opinion Resource Center on the web site of the ABA Legal Opinions Committee, [http://apps.americanbar.org/buslaw/tribar/](http://apps.americanbar.org/buslaw/tribar/).
Recently Published Reports (continued)

Pennsylvania 2007 Update
Tennessee 2011 Report
Texas 2009 Supplement to Comprehensive Report
TriBar 2008 Preferred Stock
2011 Secondary Sales of Securities
2011 LLC Membership Interests
Multiple Bar Associations 2008 Customary Practice Statement

Pending Reports

ABA Business Law Section
Outbound Cross-Border Opinions – Committee on Legal Opinions
Survey of Office Practices – Committee on Legal Opinions
Legal Opinions in SEC Filings (Update) – Subcommittee on Securities Law Opinions
No Registration Opinions (Update) – Subcommittee on Securities Law Opinions
Handbook on Audit Letter Responses (Update) – Committee on Audit Responses

California Sample Venture Capital Opinion

South Carolina Comprehensive Report

TriBar Limited Partnership Opinions

Texas Comprehensive Report Update

Multiple Bar Associations Commonly Accepted Opinion Practices
MEMBERSHIP

If you are not a member of our Committee and would like to join, or you know someone who would like to join the Committee and receive our newsletter, please direct him or her here. If you have not visited the website lately, we recommend you do so. Our mission statement, prior newsletters, and opinion resource materials are posted there. For answers to any questions about membership, you should contact our membership chair Anna Mills at amills@vwlawfirm.com.

NEXT NEWSLETTER

We expect the next newsletter to be circulated March or April of this year. Please forward cases, news and items of interest to Stan Keller (stanley.keller@edwardswildman.com) or Jim Fotenos (jfotenos@greeneradovsky.com)

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2 The URL is http://apps.americanbar.org/dch/committee.cfm?com=CL510000.