

[As approved by the Joint Committee on Statement of Opinion Practices on March 28, 2017 and by the Legal Opinions Committee of the American Bar Association's Business Law Section on April 7, 2017, subject to approval by the Board of Directors of the Working Group on Legal Opinions Foundation]

CORE OPINION PRINCIPLES

The following *Core Opinion Principles* are drawn from the *Statement of Opinion Practices*, ___ BUS. LAW. ___ () (the "*Statement*"), and are intended to have the same meaning as the provisions of the *Statement* from which they are drawn. The *Statement*, which has been approved by the bar associations and other lawyer groups identified in Schedule I to the *Statement*, describes selected aspects of customary practice and other practices followed throughout the United States in the giving and receiving of closing opinions. In doing so, it amplifies the *Statement on the Role of Customary Practice in the Preparation and Understanding of Third-Party Legal Opinions*, 63 BUS. LAW. 1277 (Aug. 2008). The *Core Opinion Principles* are designed for use by opinion givers (both law firms and law departments of organizations) who wish to incorporate or attach to their opinion letters a more concise statement of some of the opinion principles included in the *Statement*.

CORE OPINION PRINCIPLES

1. General

1.1 *Customary Practice.* Third-party legal opinion letters given at the closing of a business transaction (“closing opinions”) by counsel for one party (the “opinion giver”) to another party (the “opinion recipient,” which term includes any other person expressly authorized to rely on the closing opinion) are prepared and understood in accordance with the customary practice of lawyers who regularly give them and lawyers who regularly review them for opinion recipients. The phrase “customary practice” refers principally to the work lawyers are expected to perform to give the opinions included in a closing opinion and the way certain words and phrases commonly used in closing opinions are understood.

1.2 *Varying Customary Practice.* The application of customary practice to a closing opinion or a particular opinion may be varied by a statement in the closing opinion or the opinion or by an understanding with the opinion recipient or its counsel.

1.3 *Expression of Professional Judgment.* An opinion expresses the professional judgment of the opinion giver regarding the legal issues the opinion addresses. It is not a guarantee that a court will reach any particular result.

1.4 *Reliance by Recipients.* In accepting a closing opinion, an opinion recipient ordinarily need not take any action to verify the opinions it contains. However, an opinion recipient is not entitled to rely on an opinion if it knows the opinion to be incorrect or if its reliance on the opinion is otherwise unreasonable under the circumstances.

1.5 *Good Faith.* An opinion giver and an opinion recipient and its counsel are each entitled to expect that the other is acting in good faith with respect to a closing opinion.

1.6 *Opinion Recipient and Customary Practice.* An opinion giver is entitled to presume that the opinion recipient is familiar with, or has obtained advice about, customary practice as it applies to the opinions it is receiving from the opinion giver.

1.7 *Only Matters Specifically Addressed.* A closing opinion covers only those matters it specifically addresses.

1.8 *Matters Beyond the Expertise of Lawyers.* Opinion givers should not be expected to give opinions on matters that are not within the expertise of lawyers (for example, financial statement analysis, economic forecasting and valuation). When an opinion depends on a matter not within the expertise of lawyers, an opinion giver is entitled to rely on a certificate from an appropriate source or an express assumption with regard to the matter.

2. Facts and Assumptions

2.1 *Reliance on Factual Information and Use of Assumptions.* Because the lawyers preparing a closing opinion (the “opinion preparers”) typically will not have personal knowledge of all of the facts they need to support the opinions being given, they ordinarily are entitled to base those opinions on factual information provided by others, including their client, and on factual assumptions.

2.2 *Reliance on Facts Provided by Third Parties.* Opinion givers are entitled to rely on factual information provided by others unless the opinion preparers know that information to be false or unreliable. Information may be unreliable, for example, if it is irregular on its face or has been provided by an inappropriate source.

2.3 *Scope of Inquiry.* Opinion preparers are not expected to conduct a factual inquiry of the other lawyers in their law firm or a review of the firm’s records, except to the extent they recognize that a particular lawyer is reasonably likely to have or a particular record is reasonably likely to contain information not otherwise known to them that they need to give an opinion.

2.4 *Reliance on Representations That Are Legal Conclusions.* An opinion should not be based on a representation that is tantamount to the legal conclusion it expresses. An opinion may, however, be based on a legal conclusion in a certificate of an appropriate government official.

2.5 *Factual Assumptions.* Some factual assumptions on which opinions are based need to be stated expressly; others do not. Examples of factual assumptions that ordinarily do not need to be stated expressly are assumptions of general application that apply regardless of the type of transaction or the nature of the parties. These include, for example, assumptions that copies of documents are identical to the originals, signatures are genuine, and the parties other than the opinion giver’s client or a non-client whose obligations are covered by the opinion have the power and have taken the necessary action to enter into the

transaction, and the agreements those parties have entered into with the opinion giver's client are enforceable against them.

3. Law

3.1 *Covered Law.* When a closing opinion states that an opinion covers the law of a specific jurisdiction or particular laws, the opinion covers no other law or laws.

3.2 *Applicable Law.* An opinion on the law of a jurisdiction covers only the law of that jurisdiction that lawyers practicing in the jurisdiction, exercising customary professional diligence in similar circumstances, would reasonably recognize as being applicable to the client or transaction that is the subject of the opinion. A closing opinion does not cover some laws (for example, securities, tax and insolvency laws) that are otherwise applicable to the matters it addresses. A closing opinion also does not cover municipal and other local law. An opinion may, however, cover law that would not otherwise be covered if the closing opinion so states or the opinion does so expressly.

4. Miscellaneous

4.1 *Date.* A closing opinion speaks as of its date. An opinion giver has no obligation to update a closing opinion for subsequent events or legal developments.

4.2 *Reliance.* A closing opinion may be relied on only by its addressee and any other person expressly authorized to rely.