

STATEMENT OF OPINION PRACTICES

REVISED TEXT (MARCH 31, 2016)

SOURCE TEXT

COMPARISON REVISED AND SOURCE TEXT

INTRODUCTION

Third-party legal opinion letters (“closing opinions”) are given at the closing of a business transaction by counsel for one party to another party to satisfy a condition to the other party’s obligation to close. A closing opinion includes opinions on specific legal matters and, in so doing, serves as a part of the opinion recipient’s diligence.

This Statement of Opinion Practices (this “Statement”)¹ describes selected aspects of customary practice and other practices generally followed throughout the United States in the giving and receiving of closing opinions.

[¹ This *Statement* is drawn principally from: Comm. on Legal Op. of the Section of Bus. Law of the Am. Bar Ass’n, *Legal Opinions Principles*, 53 BUS. LAW. 831 (May 1998), and Comm. on Legal Op., *Guidelines for the Preparation of Closing Opinions*, 57 BUS. LAW. 875 (Feb. 2002). It updates the *Principles* in its entirety and selected provisions of the *Guidelines*. The other provisions of the *Guidelines* are unaffected, and no inference

The Section of Business Law of the American Bar Association has adopted the following *Guidelines* for preparing legal opinions delivered at the closing of a business transaction by counsel for one party to another party (or parties) (“closing opinions”).¹ These *Guidelines* replace the *Guidelines* included in the Section’s 1991 *Third-Party Legal Opinion Report*² and reflect developments in customary practice in the decade since 1991.³ These *Guidelines* complement and are intended to be read and applied with the Section’s *Legal Opinion Principles*⁴ adopted in 1998 for closing opinions that do not adopt the *Legal Opinion Accord* included in the Section’s 1991 *Report*.⁵ Like the *Legal Opinion Principles*, these *Guidelines* provide guidance⁶ regarding closing opinions whether or not referred to in an opinion letter.

[¹ These *Guidelines* use “closing opinion” and “opinion letter” interchangeably. “Opinion” refers to a legal conclusion expressed in a closing opinion.

² Committee on Legal Opinions,

INTRODUCTION

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Third-party legal opinion letters (“closing opinions”) are given at the closing of a business transaction by counsel for one party to another party ~~(or parties) (“closing opinions”).¹ These *Guidelines* replace the *Guidelines* included in the Section’s 1991 *Third-Party Legal Opinion Report*² and reflect developments in customary practice in the decade since 1991.³ These *Guidelines* complement and are intended to be read and applied with the Section’s *Legal Opinion Principles*⁴ adopted in 1998 for closing opinions that do not adopt the *Legal Opinion Accord* included in the Section’s 1991 *Report*.⁵ Like the *Legal Opinion Principles*, these *Guidelines* provide guidance⁶ regarding closing opinions whether or not referred to in an opinion letter.~~ to satisfy a condition to the other party’s obligation to close. A closing opinion includes opinions on specific legal matters and, in so doing, serves as a part of the opinion recipient’s

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<p>should be drawn from their omission from this <i>Statement</i>.]</p>	<p>Third-Party Legal Opinion Report, Including the Legal Opinion Accord, of the Section of Business Law, American Bar Association, 47 BUS. LAW. 167 (1991).</p> <p>³ See, e.g., RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§ 51(2), 95 (2000) [hereinafter RESTATEMENT]; TriBar Opinion Committee, <i>Third-Party “Closing” Opinions</i>, 53 BUS. LAW. 591 (1998) [hereinafter 1998 TriBar Report].</p> <p>⁴ Committee on Legal Opinions, <i>Legal Opinion Principles</i>, 53 BUS. LAW. 831 (1998). A copy of the <i>Legal Opinion Principles</i> is included with these <i>Guidelines</i> as Appendix A.</p> <p>⁵ These <i>Guidelines</i> also apply to opinions that adopt the <i>Accord</i>. in the event of any inconsistencies between these <i>Guidelines</i> and the <i>Accord</i>, the <i>Accord</i> controls for opinions that adopt it. The adoption of the <i>Legal Opinion Principles</i> and these <i>Guidelines</i> is not intended to discourage use of the <i>Accord</i>.</p> <p>⁶ In appropriate circumstances opinion givers and opinion recipients (or their counsel) may together decide not to follow</p>	<p><u>diligence.</u></p> <p><u>This Statement of Opinion Practices (this “Statement”)¹ describes selected aspects of customary practice and other practices generally followed throughout the United States in the giving and receiving of closing opinions.</u></p> <p>[¹ These Guidelines use “closing opinion” and “opinion letter” interchangeably. “Opinion” refers to a legal conclusion expressed in a closing opinion.</p> <p>² Committee on Legal Opinions, <i>Third-Party Legal Opinion Report, Including the Legal Opinion Accord, of the Section of Business Law, American Bar Association, 47 BUS. LAW. 167 (1991).</i></p> <p>³ See, e.g., RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§ 51(2), 95 (2000) [hereinafter RESTATEMENT]; TriBar Opinion Committee, <i>Third-Party “Closing” Opinions</i>, 53 BUS. LAW. 591 (1998) [hereinafter 1998 TriBar Report].</p> <p>⁴ Committee on Legal Opinions, <i>Legal Opinion Principles</i>, 53 BUS. LAW. 831 (1998). A copy of the <i>Legal Opinion Principles</i> is included with these <i>Guidelines</i> as Appendix</p>

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	these <i>Guidelines</i> in particular respects.]	<p data-bbox="1383 305 1423 337">A.</p> <p data-bbox="1383 362 2003 667">⁵These <i>Guidelines</i> also apply to opinions that adopt the <i>Accord</i>. in the event of any inconsistencies between these <i>Guidelines</i> and the <i>Accord</i>, the <i>Accord</i> controls for opinions that adopt it. The adoption of the <i>Legal Opinion Principles</i> and these <i>Guidelines</i> is not intended to discourage use of the <i>Accord</i>.</p> <p data-bbox="1383 691 2003 1317">⁶In appropriate circumstances opinion givers and opinion recipients (or their counsel) may together decide not to follow these <i>Guidelines</i> in particular respects.]<u>This Statement is drawn principally from: Comm. on Legal Op. of the Section of Bus. Law of the Am. Bar Ass'n, <i>Legal Opinions Principles</i>, 53 BUS. LAW. 831 (May 1998), and Comm. on Legal Op., <i>Guidelines for the Preparation of Closing Opinions</i>, 57 BUS. LAW. 875 (Feb. 2002). It updates the <i>Principles</i> in its entirety and selected provisions of the <i>Guidelines</i>. The other provisions of the <i>Guidelines</i> are unaffected, and no inference should be drawn from their omission from this Statement.]</u></p>

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CUSTOMARY PRACTICE

Closing opinions 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 opinions (customary diligence) and the way certain words and phrases commonly used in closing opinions are understood (customary usage).² The customary practices described in this Statement apply to closing opinions whether or not this Statement is referred to, incorporated by reference in, or attached to a closing opinion.³

[² See *Statement on the Role of Customary Practice in the Preparation and Understanding of Third-Party Legal Opinions*, 63 BUS. LAW. 1277 (Aug. 2008) attached as **Appendix A**, which has been approved by the bar associations and other lawyer groups listed at the end of that Statement.

³ See *infra* Section 10 (*Varying Customary*

The matters usually addressed in opinion letters, the meaning of the language normally used, and the scope and nature of the work counsel is expected to perform are based (whether or not so stated) on the customary practice of lawyers who regularly give, and lawyers who regularly advise opinion recipients regarding, opinions of the kind involved. These *Legal Opinion Principles* are intended to provide a ready reference to selected aspects of customary practice.

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LEGAL OBLIGATIONS AND RULES OF PROFESSIONAL CONDUCT

When they give closing opinions, lawyers are subject to generally applicable legal obligations and to the rules governing the professional conduct of lawyers.⁴

[⁴ These include rules relating to the duties of an opinion giver to its own client. Counsel for an opinion recipient also has duties to its client, the recipient, including with regard to the closing opinion.]

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GENERAL	GENERAL	GENERAL
Expression of Professional Judgment	The opinions contained in an opinion letter are expressions of professional judgment regarding the legal matters addressed and not guarantees that a court will reach any particular result.	<u>Expression of Professional Judgment</u> The opinions contained <u>An opinion</u> in ana <u>closing</u> opinion letter are expressions of professional judgment regarding the legal matters addressed and not <u>expresses the professional judgment of an opinion giver about how the highest court of the jurisdiction whose law is covered by that opinion would resolve the legal issues the opinion addresses. It is not a guarantee that a court will reach any particular result.</u>
Bankruptcy Exception and Equitable Principles Limitation	FRAUDULENT TRANSFER [18. The “bankruptcy exception” (which is implied even when not stated) excludes the effect of fraudulent transfer laws from the enforceability opinion. <i>See</i> 1998 TriBar Report, <i>supra</i> note 3, at 6124.]	FRAUDULENT TRANSFER <u>Bankruptcy Exception and Equitable Principles Limitation</u> [18. The “bankruptcy exception” (which is implied even when not stated) excludes the effect of fraudulent transfer laws from the enforceability opinion and equitable principles limitation apply to opinions whether or not they are expressly stated. <i>See</i> 1998 TriBar Report, <i>supra</i> note 3, at 6124.] <u>[18. The “bankruptcy exception” (which is implied even when not stated) excludes the effect of fraudulent transfer laws from the enforceability opinion and equitable principles limitation apply to opinions whether or not they are expressly stated. <i>See</i> 1998 TriBar Report, <i>supra</i> note 3, at 6124.]</u>

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<p>Cost and Benefit</p> <p>The benefit to the recipient of a closing opinion and of any particular opinion should warrant the time and expense it requires.</p>	<p>Coverage</p> <p>The benefit of an opinion to the recipient should warrant the time and expense required to prepare it.⁷</p> <p>[⁷ When the benefit of an opinion to the recipient is not sufficient, depending on the circumstances, the scope of the particular opinion could be limited (e.g., the opinion on an agreement could be limited to due authorization, execution and delivery) or the opinion could be omitted entirely (<i>see infra</i> § 4.2 (opinion on all of a company’s outstanding equity securities may not be cost justified)).]</p>	<p>Coverage<u>Cost and Benefit</u></p> <p>The benefit of an opinion to the recipient <u>of a closing opinion and of any particular opinion</u> should warrant the time and expense required to prepare it <u>requires</u>.⁷</p> <p>[⁷ When the benefit of an opinion to the recipient is not sufficient, depending on the circumstances, the scope of the particular opinion could be limited (e.g., the opinion on an agreement could be limited to due authorization, execution and delivery) or the opinion could be omitted entirely (<i>see infra</i> § 4.2 (opinion on all of a company’s outstanding equity securities may not be cost justified)).]</p>
<p>Golden Rule</p> <p>Opinion givers and counsel for opinion recipients should be guided by a sense of professionalism and not treat opinions as if they were terms in a business negotiation. An opinion giver should not be expected to give an opinion that counsel for the opinion recipient would not give in similar circumstances if that counsel were the opinion giver and had the requisite competence to give the opinion.</p>	<p>Golden Rule</p> <p>An opinion giver should not be asked to render an opinion that counsel for the opinion recipient would not render if it were the opinion giver and possessed the requisite expertise. Similarly, an opinion giver should not refuse to render an opinion that lawyers experienced in the matters under consideration would commonly render in comparable situations, assuming that the requested opinion is</p>	<p>Golden Rule</p> <p>An opinion giver should not be asked to render an opinion that counsel for the opinion recipient would not render if it were the opinion giver and possessed the requisite expertise. Similarly, an opinion giver should not refuse to render an opinion that lawyers experienced in the matters under consideration would commonly render in comparable situations, assuming that the requested opinion is</p>

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<p>Correspondingly, before declining to give an opinion it is competent to give, an opinion giver should consider whether a lawyer in similar circumstances would ordinarily give the opinion.</p>	<p>otherwise consistent with these <i>Guidelines</i> and the opinion giver has the requisite expertise and in its professional judgment is able to render the opinion. Opinion givers and counsel for opinion recipients should be guided by a sense of professionalism and not treat opinions simply as if they were terms in a business negotiation.</p>	<p>otherwise consistent with these <i>Guidelines</i> and the opinion giver has the requisite expertise and in its professional judgment is able to render the opinion. Opinion givers and counsel for opinion recipients should be guided by a sense of professionalism and not treat opinions simply as if they were terms in a business negotiation. <u>Opinion givers and counsel for opinion recipients should be guided by a sense of professionalism and not treat opinions as if they were terms in a business negotiation.</u> <u>An opinion giver should not be expected to give an opinion that counsel for the opinion recipient would not give in similar circumstances if that counsel were the opinion giver and had the requisite competence to give the opinion.</u> <u>Correspondingly, before declining to give an opinion it is competent to give, an opinion giver should consider whether a lawyer in similar circumstances would ordinarily give the opinion.</u></p>
<p>Reliance by Recipients</p>	<p>In accepting an opinion letter, an opinion recipient ordinarily need not take any</p>	<p><u>Reliance by Recipients</u></p>
<p>action to verify the opinions it contains.</p>	<p>recipient ordinarily need not take any</p>	<p>In accepting an <u>a closing</u> opinion letter, an opinion recipient ordinarily need not take any action to verify the opinions it contains.</p>

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<p>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.</p>	<p>action to verify the opinions it contains.</p>	<p><u>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.</u></p>
<p>Good Faith</p>	<p>The lawyer or lawyers preparing an opinion letter and the opinion recipient and its legal counsel are each entitled to assume that the others are acting in good faith with respect to the opinion letter.</p>	<p><u>Good Faith</u></p> <p>The lawyer or lawyers preparing an <u>closing</u> opinion letter (the “<u>opinion preparers</u>”) and the opinion recipient and its legal counsel are each entitled to assume <u>expect</u> that the others are acting in good faith with respect to the <u>closing</u> opinion letter.</p>

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<p>FACTS AND ASSUMPTIONS</p> <p>Reliance on Factual Information and Use of Assumptions</p> <p>Because opinion preparers ordinarily will not have personal knowledge of all of the facts they need to support the opinions they are giving, opinions ordinarily are based on factual information obtained from others, including the client, and on factual assumptions.</p>	<p>FACTS</p> <p>The lawyers who are responsible for preparing an opinion letter do not ordinarily have personal knowledge of all of the factual information needed to support the opinions it contains. Thus, those lawyers necessarily rely in large measure on factual information obtained from others, particularly company officials.</p>	<p>FACTS <u>AND ASSUMPTIONS</u></p> <p><u>Reliance on Factual Information and Use of Assumptions</u></p> <p>The lawyers who are responsible for preparing an <u>Because</u> opinion letter do not <u>preparers</u> ordinarily <u>will not</u> have personal knowledge of all of the factual information needed <u>facts they need</u> to support the opinions it contains. Thus, those lawyers necessarily rely in large measure <u>they are giving, opinions ordinarily are based</u> on factual information obtained from others, particularly company officials. Customary practice permits such reliance unless the factual information on which the lawyers preparing the opinion letter are relying appears irregular on its face or has been provided by an inappropriate source <u>including the client, and on factual assumptions.</u></p>
<p>Reliance on Facts Provided by Third Parties</p> <p>Opinion preparers are entitled to rely on factual information obtained from others</p>	<p>Customary practice permits such reliance unless the factual information on which the lawyers preparing the opinion letter are</p>	<p><u>Reliance on Facts Provided by Third Parties</u></p> <p>Customary practice permits such reliance unless the factual information on which the</p>

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<p>unless they 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.</p>	<p>relying appears irregular on its face or has been provided by an inappropriate source.</p>	<p>lawyers preparing the opinion letter are relying appears<u>Opinion preparers are entitled to rely on factual information obtained from others unless they know that information to be false or unreliable. Information may be unreliable, for example, if it is</u> irregular on its face or has been provided by an inappropriate source.</p>
<p>Scope of Inquiry</p>	<p>As a matter of customary practice the lawyers preparing an opinion letter are not expected to conduct a factual inquiry of the other lawyers in their firm or a review of the firm's files, except to the extent the lawyers preparing the opinion letter have identified a particular lawyer or file as being reasonably likely to have or contain information not otherwise known to them that they need to support an opinion.</p>	<p><u>Scope of Inquiry</u></p> <p>As a matter of customary practice the lawyers preparing an opinion letter<u>Opinion preparers</u> are not expected to conduct a factual inquiry of the other lawyers in their <u>law</u> firm or a review of the firm's files<u>records</u>, except to the extent the lawyers preparing the opinion letter have identified<u>preparers recognize that</u> a particular lawyer or file as being reasonably likely to have or contain<u>has or a particular record contains</u> information not otherwise known to them<u>the opinion preparers</u> that they need to support<u>give</u> an opinion.⁵</p> <p><u>[⁵ References in this Statement to a law firm also include, when appropriate in the context, a law department of an organization.]</u></p>

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Opinions Should Not Be Based on Representations of Law

An opinion should not be based on a representation that is tantamount to the legal conclusions being expressed. An opinion may be based on legal conclusions in a certificate of an appropriate government official.

An opinion should not be based on a factual representation that is tantamount to the legal conclusion being expressed. An opinion ordinarily may be based, however, on legal conclusions contained in a certificate of a government official.

[Opinions Should Not Be Based on Representations of Law](#)

An opinion should not be based on a ~~factual~~ representation that is tantamount to the legal ~~conclusion~~conclusions being expressed. An opinion ~~ordinarily~~ may be based, ~~however~~, on legal conclusions ~~contained~~ in a certificate of ~~a~~an appropriate government official.

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 have the power and have taken the necessary action to enter into the transaction and the documents are enforceable against them. Opinion preparers should not rely on an unstated

Opinions customarily are based in part on factual assumptions. Some factual assumptions need to be stated expressly. Others ordinarily 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 assumptions that copies of documents are identical to the originals, signatures are genuine and the parties other than the opinion giver's client have the power to enter into the transaction.

[Factual Assumptions](#)

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assumption they know to be incorrect or otherwise unreliable.⁶

[⁶ This is in contrast to a stated assumption, which may be relied on so long as the opinion preparers do not recognize that it will mislead the opinion recipient. *See infra* Section 12 (*No Opinion That Will Mislead Recipient*).]

[enforceable against them. Opinion preparers should not rely on an unstated assumption they know to be incorrect or otherwise unreliable.⁶](#)

[\[⁶ This is in contrast to a stated assumption, which may be relied on so long as the opinion preparers do not recognize that it will mislead the opinion recipient. *See infra* Section 12 \(*No Opinion That Will Mislead Recipient*\).\]](#)

Presumption of Regularity

Opinion preparers may rely on a presumption of regularity for matters relating to the client (for example, actions taken at meetings during the period covered by a missing minute book) that are not verifiable from the client's records, if that presumption is not inconsistent with those records and such reliance is not otherwise inappropriate under the circumstances. Opinion preparers may rely on the presumption without stating their reliance in the closing opinion unless they consider a reference to the presumption to be necessary because of the significance of the matters being presumed.

Presumption of Regularity

An opinion giver may rely upon the presumption of regularity⁹ for matters relating to its client, such as actions taken at meetings during the period covered by a missing minute book, that are not verifiable from the client's records (assuming the matters are not inconsistent with those records). Opinion givers ordinarily need not disclose their reliance on the presumption.¹⁰

[⁹ *See* Rogers v. Hill, 289 U.S. 582, 591 (1933).

¹⁰ An exception is when, based on the available facts, the lawyers preparing the opinion conclude that the deficiency in

Presumption of Regularity

~~An opinion giver~~ [Opinion preparers](#) may rely ~~upon the~~ [on a](#) presumption of regularity⁹ for matters relating to ~~its~~ [the](#) client (~~for example, such as~~ [actions taken at meetings during the period covered by a missing minute book,](#)) that are not verifiable from the client's records (~~assuming the matters are, if that~~ [presumption is](#) not inconsistent with those records). ~~Opinion givers ordinarily need not disclose their reliance on the presumption.¹⁰~~

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	company records is likely to be significant.]	opinion conclude that the deficiency and such reliance is not otherwise inappropriate under the circumstances. Opinion preparers may rely on the presumption without stating their reliance in company records is likely to be significant.] <u>the closing opinion unless they consider a reference to the presumption to be necessary because of the significance of the matters being presumed.</u>
Limited Factual Confirmations and Negative Assurance	Lack of Knowledge of Particular Factual Matters	Lack of Knowledge of Particular <u>Limited Factual Matters</u> Confirmations and Negative Assurance
An opinion giver ordinarily should not be asked to confirm factual matters, even if the confirmation is limited to the knowledge of the opinion preparers. A confirmation of factual matters, for example, the accuracy of the representations and warranties in an agreement or the information in a disclosure document (except as indicated below), does not require the exercise of professional judgment by lawyers and therefore is not the proper subject for an opinion even when limited by a broadly-worded disclaimer. An exception is the confirmation sometimes requested regarding particular legal proceedings to	An opinion giver normally should not be asked to state that it lacks knowledge of particular factual matters. ¹⁶ Matters such as the absence of prior security interests or the accuracy of the representations and warranties in an agreement or the information in a disclosure document (subject to section 4.5 below) do not require the exercise of professional judgment and are inappropriate subjects for a legal opinion even when the opinion is limited by a broadly worded disclaimer. [¹⁶ The principal exception is the “confirmation” often included in closing	An opinion giver normally <u>ordinarily</u> should not be asked to state that it lacks <u>confirm</u> factual matters, even if the <u>confirmation is limited to the</u> knowledge of particular <u>the opinion preparers. A confirmation of</u> factual matters. ¹⁶ Matters such as the absence of prior security interests or, for example, the accuracy of the representations and warranties in an agreement or the information in a disclosure document (subject to section 4.5 <u>except as indicated</u> below) do, does not require the exercise of professional judgment and are inappropriate subjects for

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<p>which the client is a party.⁷ Negative assurance regarding the adequacy of disclosures in a prospectus or other disclosure documents may be provided in limited circumstances in connection with a sale of securities to assist the opinion recipient to establish a due diligence or similar defense.</p> <p>[⁷This <i>Statement</i> also applies, when appropriate in the context, to confirmations.]</p>	<p>opinions regarding the opinion giver’s knowledge of legal proceedings to which the client is a party. <i>See supra</i> § 3.4.]</p>	<p>a legal <u>by lawyers and therefore is not the proper subject for an</u> opinion even when the opinion is limited by a broadly <u>-worded</u> disclaimer.</p> <p>[¹⁶The principal <u>An</u> exception is the “confirmation” often included in closing opinions sometimes requested regarding the opinion giver’s knowledge of <u>particular</u> legal proceedings to which the client is a party. See supra § 3.4. <u>⁷ Negative assurance regarding the adequacy of disclosures in a prospectus or other disclosure documents may be provided in limited circumstances in connection with a sale of securities to assist the opinion recipient to establish a due diligence or similar defense.</u></p> <p><u>[⁷ This <i>Statement</i> also applies, when appropriate in the context, to confirmations.]</u></p>
<p>LAW</p> <p>Covered Jurisdiction</p>	<p>LAW</p> <p>Opinion letters customarily specify the jurisdiction(s) whose law they are intended to cover and sometimes limit their coverage to specified statutes or regulations of the named jurisdiction(s). When that is done,</p>	<p>LAW</p> <p><u>Covered Jurisdiction</u></p> <p>Opinion letters customarily specify the jurisdiction(s) whose law they are intended to cover and sometimes limit their coverage</p>

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an opinion letter should not be read to cover the substance or effect of the law of other Jurisdiction(s) or other statutes or regulations.

~~to specified statutes or regulations of the named jurisdiction(s). When that is done, an opinion letter should not be read to cover the substance or effect of the law of other Jurisdiction(s) or other statutes or regulations.~~When a closing opinion states that it covers the law of a specific jurisdiction or particular laws of a jurisdiction, it does not cover any other law or laws.

Applicable Law

An opinion addresses only the law of a jurisdiction being covered that lawyers practicing in that jurisdiction, exercising customary professional diligence in similar circumstances, would reasonably recognize as being applicable to the client or the 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, unless it does so expressly. A closing opinion also does not cover municipal and other local law, unless it does so expressly.

An opinion letter covers only law that a lawyer in the jurisdiction(s) whose law is being covered by the opinion letter² exercising customary professional diligence would reasonably be expected to recognize as being applicable to the entity, transaction, or agreement to which the opinion letter relates.

An opinion letter should not be read to cover municipal or other local laws unless it does so expressly.

Even when they are generally recognized as being directly applicable, some laws (such as securities, tax, and insolvency laws) are understood as a matter of customary

Applicable Law

An opinion ~~letter covers~~addresses only the law that of a lawyer in the jurisdiction(s) whose law is being covered ~~by the opinion letter²~~that lawyers practicing in that jurisdiction, exercising customary professional diligence in similar circumstances, would reasonably ~~be expected to~~ recognize as being applicable to the ~~entity, client or the~~ entity, client or the transaction, ~~or agreement to which~~ that is the subject of the opinion ~~letter relates.~~

~~An A closing opinion letter should~~does not be read to cover municipal or other local laws ~~unless it does so expressly.~~

~~Even when they are generally recognized as~~

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	<p>practice to be covered only when an opinion refers to them expressly.</p> <p>[² See § II.A.]</p>	<p>being directly applicable, cover some laws (such as for example, securities, tax, and insolvency laws) are understood as a matter of customary practice to be covered only when an opinion refers to them and <u>insolvency laws</u>) that are otherwise <u>applicable to the matters it addresses, unless it does so expressly.</u> A closing <u>opinion also does not cover municipal and other local law, unless it does so</u> expressly.</p> <p>[² See § II.A.]</p>
SCOPE	SCOPE	SCOPE
Matters Addressed	Coverage	Coverage
<p>The opinions included in a closing opinion should be limited to reasonably specific and determinable matters of law that involve the exercise of professional judgment by the opinion giver. A closing opinion addresses only those matters it specifically addresses.</p>	<p>The opinions included in a closing opinion should be limited to reasonably specific and determinable matters that involve the exercise of professional judgment by the opinion giver.</p>	<p><u>Matters Addressed</u></p> <p>The opinions included in a closing opinion should be limited to reasonably specific and determinable matters <u>of law</u> that involve the exercise of professional judgment by the opinion giver.</p> <p>Opinion givers should not be asked for opinions that are beyond the professional competence of lawyers. To the extent a matter such as financial statement analysis, economic forecasting, or valuation is relevant to an <u>A closing opinion, an opinion</u></p>

REVISED TEXT (MARCH 31, 2016)	SOURCE TEXT	COMPARISON REVISED AND SOURCE TEXT
Matters Beyond the Expertise of Lawyers	Professional Competence	Professional Competence <u>Matters Beyond the Expertise of Lawyers</u>
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 that expertise is needed to give an opinion, the opinion preparers may rely on a certificate from an appropriate source or an express assumption with regard to those matters.	Opinion givers should not be asked for opinions that are beyond the professional competence of lawyers. To the extent a matter such as financial statement analysis, economic forecasting, or valuation is relevant to an opinion, an opinion giver may properly rely on a factual certificate or assumption.	Opinion givers should not be asked <u>for expected to give</u> opinions <u>on matters</u> that are beyond <u>not within</u> the professional competence <u>expertise</u> of lawyers. To the extent a matter such as <u>(for example,</u> financial statement analysis, economic forecasting, or and valuation). <u>When that expertise</u> is relevant <u>needed</u> to <u>give</u> an opinion, an <u>the</u> opinion giver <u>preparers</u> may properly rely on a factual certificate or from <u>an appropriate source or an express assumption</u> <u>with regard to those matters</u> .
Relevance	Relevance	Relevance
Opinion requests should be limited to matters that are reasonably related to the opinion giver's client and the transaction that is the subject of the closing opinion. Depending on the circumstances, the value of a closing opinion can be furthered by limiting assumptions, exceptions and qualifications to those reasonably related to	Opinion requests should be limited to matters that are reasonably related to the transaction. Closing opinions should not include assumptions, exceptions, and limitations that do not relate to the transaction and the opinions given.	Opinion requests should be limited to matters that are reasonably related to the <u>opinion giver's client and the</u> transaction. Closing opinions should not include assumptions, exceptions, and limitations that do not relate to <u>that is the subject of the closing opinion. Depending on the circumstances, the value of a closing</u>

REVISED TEXT (MARCH 31, 2016)	SOURCE TEXT	COMPARISON REVISED AND SOURCE TEXT
the client and the transaction.		<u>opinion can be furthered by limiting assumptions, exceptions and qualifications to those reasonably related to the client and the transaction</u> and the opinions given.
PROCESS	PROCESS	PROCESS
Opinion Recipient and Customary Practice	Reliance	Reliance
An opinion giver is entitled to presume that the opinion recipient is familiar with, or has obtained advice about, customary practice concerning the opinions it is receiving.	An opinion giver is entitled to assume, without so stating, that in relying on a closing opinion the opinion recipient (alone or with its counsel) is familiar with customary practice concerning the preparation and interpretation of closing opinions.	<u>Opinion Recipient and Customary Practice</u> An opinion giver is entitled to assume, without so stating, that in relying on a closing opinion <u>presume that</u> the opinion recipient (alone or with its counsel) is familiar with, <u>or has obtained advice about,</u> customary practice concerning the preparation and interpretation of closing opinions <u>it is receiving.</u>
Other Counsel's Opinion	Other Counsel's Opinion	Other Counsel's Opinion
An opinion giver should not be expected to express its concurrence in the substance of an opinion of other counsel.	When the opinion giver lacks the legal expertise to render a requested opinion, consideration should be given to whether that opinion should be sought from other counsel. An opinion of other counsel should be sought by the opinion recipient only when the opinion's benefits justify its costs. A primary opinion giver normally	When the opinion giver lacks the legal expertise to render a requested opinion, consideration should be given to whether that opinion should be sought from other counsel. An opinion of other counsel should be sought by the opinion recipient only when the opinion's benefits justify its costs. A primary opinion giver normally <u>An</u>

REVISED TEXT (MARCH 31, 2016)	SOURCE TEXT	COMPARISON REVISED AND SOURCE TEXT
	should not be asked to express its concurrence in the substance of an opinion of other counsel.	<u>opinion giver</u> should not be asked <u>expected</u> to express its concurrence in the substance of an opinion of other counsel.

REVISED TEXT (MARCH 31, 2016)	SOURCE TEXT	COMPARISON REVISED AND SOURCE TEXT
<p>Financial Interest in or Other Relationship with Client</p> <p>Opinion preparers ordinarily do not attempt to determine whether others in their law firm have a financial interest in, or other relationship with, the client. In addition, closing opinions ordinarily do not disclose any such financial interest or other relationship that the opinion preparers or others in their firm may have. If the opinion preparers know of such a financial interest or relationship, even if they plan to disclose it, they should consider whether it will compromise their professional judgment with respect to the opinions they are giving.</p>	<p>Financial Interest in or Other Relationship with Client</p> <p>Lawyers preparing a closing opinion do not normally attempt to determine whether others in their firm have a financial interest (including an equity or prospective equity interest) in, or other relationship with, the client nor do they ordinarily disclose in an opinion letter any such interest or relationship that they or others in the firm may have. Although some lawyers may choose to make such disclosures, disclosure does not excuse those preparing a closing opinion from considering whether a financial interest in, or relationship with, the client that is known to them will compromise their professional judgment in delivering the closing opinion.</p>	<p>Financial Interest in or Other Relationship with Client</p> <p>Lawyers preparing a closing opinion<u>Opinion preparers ordinarily</u> do not normally attempt to determine whether others in their <u>law</u> firm have a financial interest (including an equity or prospective equity interest) in, or other relationship with, the client nor do they. <u>In addition, closing opinions</u> ordinarily <u>do not</u> disclose in an opinion letter any such <u>financial</u> interest or <u>other</u> relationship that they<u>the opinion preparers</u> or others in the firm may have. Although some lawyers may choose to make such disclosures, disclosure does not excuse those preparing a closing opinion from considering whether<u>their firm may have. If the opinion preparers know of such</u> a financial interest in, or relationship with, the client that is known to them, <u>even if they plan to disclose it, they should consider whether it</u> will compromise their professional judgment in delivering the closing opinion<u>with respect to the opinions they are giving.</u></p>

REVISED TEXT (MARCH 31, 2016)	SOURCE TEXT	COMPARISON REVISED AND SOURCE TEXT
<p>Client Consent and Disclosure of Information</p> <p>When the client’s consent to the delivery of a closing opinion is required by the rules of professional conduct, that consent can be inferred from the circumstances of the transaction, and ordinarily is inferred from a provision in the agreement making the delivery of a closing opinion a condition to closing. If an opinion would require a disclosure that the opinion preparers recognize would likely affect the client’s interest materially and adversely, they should discuss the disclosure with the client and not give the opinion unless the client consents to the disclosure.</p>	<p>Client Consent and Confidential Information</p> <p>When the client’s consent to the delivery of a closing opinion is required by applicable rules of professional conduct, that consent normally may be inferred from a provision in the agreement that makes delivery of a closing opinion a condition to closing. The opinions contained in a closing opinion ordinarily do not disclose information the client would wish to keep confidential. If, however, an opinion would require disclosure of information that the lawyers preparing the opinion are aware the client would wish to keep confidential, the implications should be discussed with the client and the opinion should not be rendered unless the client consents to the disclosure.</p>	<p>Client Consent and Confidential<u>Disclosure of</u> Information</p> <p>When the client’s consent to the delivery of a closing opinion is required by applicable<u>the</u> rules of professional conduct, that consent normally may be<u>can be</u> <u>inferred from the circumstances of the transaction, and ordinarily is</u> inferred from a provision in the agreement that <u>makes</u>making the delivery of a closing opinion a condition to closing. The opinions contained in a closing opinion ordinarily do not disclose information the client would wish to keep confidential. If, however,<u>If</u> an opinion would require <u>a</u> disclosure of information that the lawyers preparing the opinion are aware the client would wish to keep confidential, the implications should be discussed<u>opinion preparers recognize would likely affect the client’s interest materially and adversely, they should discuss the disclosure</u> with the client and <u>not give</u> the opinion should not be rendered unless the client consents to the disclosure.</p>
DATE	DATE	DATE

REVISED TEXT (MARCH 31, 2016)	SOURCE TEXT	COMPARISON REVISED AND SOURCE TEXT
<p>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.</p>	<p>An opinion letter speaks as of its date. An opinion giver has no obligation to update an opinion letter for subsequent events or legal developments.</p>	<p>An<u>A closing</u> opinion letter speaks as of its date. An opinion giver has no obligation to update an<u>a closing</u> opinion letter for subsequent events or legal developments.</p>

<p>VARYING CUSTOMARY PRACTICE</p>	<p>An opinion giver may vary the customary meaning of an opinion or the scope and nature of the work customarily required to support it by including an express statement in the opinion letter or by reaching an express understanding with the opinion recipient or its counsel.</p>	<p><u>VARYING CUSTOMARY PRACTICE</u> An opinion giver may vary the<u>The</u> customary meaning of an opinion or the scope and nature of the work customarily required to support it <u>may be varied</u> by including an express<u>a</u> statement in the <u>closing</u> opinion letter or by reaching an express understanding with the opinion recipient or its<u>other person entitled to rely on the opinion or the recipient's or other person's</u> counsel.</p>

<p>RELIANCE</p>	<p>RELIANCE</p> <p>On occasion, a closing opinion expressly authorizes persons to whom it is not addressed (for example, assignees of notes) to rely on it. Those persons are permitted to rely on the closing opinion to the same extent as – but to no greater extent than – the addressee.</p>	<p>RELIANCE</p> <p><u>A closing opinion may be relied on only by its addressee and any other person expressly authorized to rely.</u>⁸ On occasion, a closing opinion expressly authorizes persons to whom it is not addressed (for example, assignees of notes) to rely on it. Those persons are permitted to rely on the closing opinion to the same extent as – but to no greater extent</p>

REVISED TEXT (MARCH 31, 2016)	SOURCE TEXT	COMPARISON REVISED AND SOURCE TEXT
<p>NO OPINIONS THAT WILL MISLEAD RECIPIENT</p> <p>An opinion giver should not give an opinion that the opinion preparers recognize will mislead the opinion recipient with regard to the matters addressed by that opinion.⁹</p> <p>[⁹ See TriBar Op. Comm., <i>Third-Party “Closing” Opinions</i>, 53 BUS. LAW. 591, 602-03 (§1.4(d)) (Feb. 1998) for a general discussion of this subject, including the role of disclosure. An opinion giver may limit an opinion with specific language so long as the opinion preparers do not recognize that the limitation itself will mislead the recipient. See <i>supra</i> Section 10 (<i>Varying Customary Practice</i>).]</p>	<p>MISLEADING OPINIONS</p> <p>An opinion giver should not render an opinion that the opinion giver recognizes will mislead the recipient with regard to the matters addressed by the opinions given.⁸</p> <p>[⁸ For a general discussion of this subject (including the role of disclosure), see 1998 TriBar Report, <i>supra</i> note 3 at 602-03, 607. This <i>Guideline</i> does not preclude limiting the matters addressed by an opinion through the use of specific language if the limitation itself will not mislead the recipient. See <i>Legal Opinion Principles</i> §§ I.B, I.C. For an opinion giver’s ethical obligations to its client, see <i>infra</i> § 2.4.]</p>	<p>than—the addressee.^[8 This section does not address the circumstances in which reliance by others may be permitted by law.]</p> <hr/> <p>MISLEADINGNO OPINIONS <u>THAT WILL MISLEAD RECIPIENT</u></p> <p>An opinion giver should not render<u>give</u> an opinion that the opinion giver recognizes<u>preparers recognize</u> will mislead the <u>opinion</u> recipient with regard to the matters addressed by the opinions given.⁸<u>that opinion.</u>⁹</p> <p>[For⁹ See TriBar Op. Comm., <i>Third-Party “Closing” Opinions</i>, 53 BUS. LAW. 591, 602-03 (§1.4(d)) (Feb. 1998) for a general discussion of this subject, (including the role of disclosure), see 1998 TriBar Report, supra note 3 at 602-03, 607. This Guideline does not preclude limiting the matters addressed by an opinion through the use of specific language if. <u>An opinion giver may limit an opinion with specific language so long as the opinion preparers do not recognize that the limitation itself will not mislead the recipient. See <i>Legal Opinion Principles</i> §§ I.B, I.C. For an opinion giver’s ethical obligations to its client, see <i>infra</i> § 2.4.</u>^{<u>supra</u>}</p>

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[Section 10 \(Varying Customary Practice\).](#)

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