

Web Based Engagement and Conflict Disclosure Letter

To [Prospective Investor]:

RE: Private Placement Transaction

Introduction

This Engagement and Conflict Disclosure Letter (this “Letter”) is provided with the intention that it will be incorporated into a future Transaction Addendum Letter (“Transaction Addendum Letter”) and pertains to the use of Pre-Designated Investors’ Counsel (“Pre-Designated Counsel”) in the pre-documented (non Rule 144A) private placement market. This Letter is available on the American College of Investment Counsel (“ACIC”) website at www.aciclaw.org.

This Letter will be referenced when a law firm (the “Firm”) has been asked by an Issuer (the “Issuer”) or by an Agent (the “Agent”) to represent the legal interests of prospective or actual investors regarding a potential or actual investment (the “Matter”). The Matter will be described in a private placement memorandum (“PPM”) and the Transaction Addendum Letter. This Letter and the Transaction Addendum Letter explain the circumstances under which the Firm is prepared to act as Pre-Designated Counsel for investors (“Investor-Clients”) who consent to the Firm doing so.

The Role of the ACIC Guiding Principles

The Firm has conducted and will conduct itself in accordance with the Guiding Principles for Pre-Designated Investors’ Counsel promulgated by the ACIC (the “Guiding Principles”) and the terms stated in this Letter and the Transaction Addendum Letter. The Guiding Principles were developed with the assistance of many participants in the private placement market and are intended to set forth the general expectations of the participants in transactions such as those described by the PPM. We encourage you to become familiar with both the Guiding Principles and the terms of these Letters. If you do not have a copy of the Guiding Principles, you can obtain one on the ACIC website referenced in first paragraph of this letter. Alternatively, we will be happy to send you a copy upon request.

When the Attorney-Client Relationship Begins and Ends

Due to the nature of the marketplace regarding pre-documented private placements, an attorney-client relationship created pursuant to this Letter and the Transaction Addendum Letter differs in material respects from a traditional one lawyer-one client relationship. Consequently, the Firm will only represent an Investor-Client upon the Firm’s receipt of written confirmation (via fax, email or hand delivery) from the “Prospective Investor-Client”¹ to the effect that the Prospective Investor-Client understands and agrees to be bound by this Letter *and* the Transaction Addendum Letter and to become a client of the Firm.

¹ As used here, “Prospective” modifies the term “Client” and refers to any investor who is not yet a client of Pre-Designated Counsel, whether before or after circle.

For your information, and in accordance with the Guiding Principles, the Firm has already performed certain legal services relating to the Matter. For example, the Firm drafted or reviewed and commented upon the draft Note Purchase Agreement (“NPA”) included with the PPM following discussions with the Issuer and its counsel. The Firm will provide each Investor-Client a memorandum describing in reasonable detail the more significant issues that were discussed and will, of course, answer any questions about such discussions and the Matter. The results of these discussion are not binding upon any Investor-Client, and the Firm will endeavor to conduct negotiations consistent with the Guiding Principles and the terms of this Letter upon request. Once begun, the attorney-client relationship will continue until completion of the Matter or until the relationship is expressly terminated by the Firm or by you. If the relationship between the Firm and an individual Investor-Client is terminated for any reason prior to completion of the Matter, the Firm may, to the extent permitted by the applicable rules of professional responsibility and as described more precisely below, continue to represent one or more other Investor-Clients in the Matter.

Third Party Payor

The Issuer and the Agent are not clients of the Firm in the Matter. The Issuer has agreed, however, to pay the Firm’s legal fees in the Matter. It is customary for borrowers to pay the legal fees incurred by their lenders in connection with private placement and other types of financing. However, each Investor-Client should consider whether it is concerned that the Issuer’s payment of fees may adversely affect the advice that Investor-Clients are given or, in other words, whether the potential benefits of Issuer-paid counsel outweigh the potential risks.

The next two sections (*Fee Arrangement and Conflicts of Interest and Potential Conflicts of Interest—Issuer and Agent*) contain transaction specific disclosures and will be completed in the Transaction Addendum Letter. The Transaction Addendum Letter should address each of the following points, even if the answer is that there are no matters to disclose.

[

Fee Arrangement

[With respect to the Matter, the Issuer has agreed to pay the Firm **[on an hourly basis / for a flat fee of \$ _____; or _____.**] The Firm has no other fee arrangements or agreements with the Issuer or any other party involved in the Matter that relate to or arise from the Firm’s retention as your counsel [**Except _____ (specify)**]. If you would like more information about the Firm’s fee arrangement with the Issuer please let us know.

Conflicts of Interest and Potential Conflicts of Interest—Issuer and Agent

As a regular participant in financial markets, the Firm has recently had or may presently have existing professional relationships with the Issuer or the Agent.

In the past 24 months, the Firm has been selected by the Issuer or Agent [**specify**] as Pre-Designated Counsel on _____ separate occasions.

The Firm's present professional relationships with the Issuer include the following kinds of matters that, in the Firm's view, are factually and legally unrelated to the Matter:

[If none, state none. Otherwise, describe—e.g.: “The Firm presently provides labor and employment law advice to the Issuer and is presently representing the Issuer in intellectual property litigation.”]

The Firm's present or past professional relationships with the Issuer include the following kinds of matters that are substantially related to the Matter:

[If none, state none. Otherwise, describe—e.g.: “ The Firm is presently defending the Issuer in securities fraud litigation relating to _____.”]

The Firm's present professional relationships with the Agent include the following kinds of matters that, in the Firm's view, are factually and legally unrelated to the Matter:

[If none, state none. Otherwise, describe—e.g.: “The Firm presently provides labor and employment law advice to the Agent and is presently representing the Agent in intellectual property litigation.”]

The Firm's present or past professional relationships with the Agent include the following kinds of matters that are substantially related to the Matter:

[If none, state none. Otherwise, describe—e.g.: The Firm is presently defending the Agent in securities fraud litigation relating to _____.”]

]

This Letter does not address whether, or under what circumstances, the Firm may or may not represent any other present or future clients adversely to the Investor-Client. Any such conflicts waivers must be the subject of one or more separate agreements between the Investor-Client and the Firm.

Each Prospective Investor-Client should consider whether it is concerned that any or all of these relationships may cause the Firm to be less zealous or eager in its representation on behalf of the Investor-Clients in the Matter than a firm with no such relationships. Similarly, each Prospective Investor-Client should consider whether the Firm's relationships with the Issuer and the Agent create a material risk that the Investor-Client's confidential information may somehow be compromised or disclosed notwithstanding the Firm's best efforts to prevent this. We encourage each Investor-Client to review this matter carefully with in-house or outside counsel of its choice before deciding whether to proceed pursuant to the Guiding Principles and this Letter and the Transaction Addendum Letter. If you or your counsel would like additional information about any or all of these relationships, please let me know.

Conflicts of Interest—Multiple Investor-Clients

All Investor-Clients presumably share a common interest in the successful, timely, and favorable completion of the Matter. Nevertheless, one or more Investor-Clients may disagree on the proposed terms of a transaction. In addition, the representation of the Investor-Clients is made more complex by the fact that the Investor-Clients are competitors who may not share pricing or other competitive information in a manner that violates antitrust or other trade regulation laws. The Firm's representation of the Investor-Clients is therefore subject to the following limitations:

- The Firm will not share with one Investor-Client any pricing or equivalently competitively sensitive information provided by another Investor-Client. In other words, this information will be treated as confidential at the individual Investor-Client level.
- The Firm will share all other material information among Investor-Clients except **[describe any proposed additional exceptions in the Transaction Addendum Letter_____]**. In other words, this shared information will be treated as confidential at the group level but not at the individual Investor-Client level.
- Because, as noted above, there is information the Firm can not share among the Investor-Clients, the Firm's obligation of confidentiality to a particular Investor-Client could conflict with the Firm's obligation to keep other Investor-Clients fully informed of all aspects of the Matter. If such a conflict of interest were to arise and to the extent permitted by the relevant rules of professional responsibility, by this Letter and the Transaction Addendum letter you are prospectively waiving this conflict.
- In the event of a dispute between the Investor-Clients, the Firm will not be able to advocate for the position of one Investor-Client and against the position of another Investor-Client. In fact, the best the Firm could do would be to lay out the possible alternatives including alternative approaches of which it is aware, giving the Investor-Clients the meaningful merits and risks pertaining to each one and suggesting that Investor-Clients review the matter with separate counsel in order to look after their separate interests.
- The Firm will raise with the Issuer and/or the Agent any points for negotiation that one or more Investor-Clients wish to raise but will not disclose to the Issuer and/or the Agent the identity of the Investor-Client raising a point without the Investor-Client's consent. Any Investor-Client is also free, on its own, to raise any additional point on its own with the Issuer and/or the Agent.
- If, after all negotiations are completed, the Issuer and one or more Investor-Clients, however selected, wish to proceed with a transaction on terms agreeable to them, the Firm will assist those Investor-Clients in closing that transaction. In other words, the Firm will proceed on behalf of Investor-Clients that wish to close a transaction even if one or more Investor-Clients would prefer that the Firm not do so or, in fact, object to the Firm doing so.

In short, the Firm's freedom of action or ability to act on behalf of any one Investor-Client, and the individual Investor-Client's ability to claim attorney-client privilege, will necessarily be less than they would be if the Firm only had a single client. As with the other conflicts and

limitations described in the Guiding Principles and this Letter and the Transaction Addendum Letter, each Investor-Client should carefully review this matter with such counsel before deciding whether to proceed pursuant to the Guiding Principles, this Letter, and the Transaction Addendum Letter.

For the sake of completeness, we also note that the Firm also represents the other Investor-Clients in other similar transactions or on other matters. Since the structure of the Firm's proposed relationship with its clients is intended to avoid the Firm taking sides between its clients, this may not be of material concern. If, however, you or your counsel would like additional information on this subject, please let me know.

Conclusion

The limitations described in the Guiding Principles and in this Letter and the Transaction Addendum Letter are important. We therefore encourage each Prospective Investor-Client to review the terms of the Guiding Principles, this Letter, and the Transaction Addendum Letter with independent in-house or outside counsel of their choice and only to agree to them if such Investor-Client not only understands them but also are satisfied that the terms are reasonable and appropriate under the circumstances. We have considered the matter in light of the Guiding Principles and the ethical rules that apply to the Firm, and have formed the professional judgment that we can appropriately represent you in the Matter in the manner contemplated by the Guiding Principles, this Letter and the Transaction Addendum Letter, assuming of course that you agree to the provisions of this Letter and are willing by your signature to the Transaction Addendum Letter, by return email or in separate correspondence, to waive all conflicts of interest set forth in this Letter and the Transaction Addendum Letter. If you or your independent counsel have any questions that you would like me to address before you reach a decision on these matters, please let us know.

Draft Transaction Addendum Letter to Web Based Engagement and Conflict Disclosure Letter

Dear Prospective Investor

RE: Describe Proposed Private Placement

The law firm of _____ (the “Firm”) has been asked by _____ (the “Issuer”) or by _____ (the “Agent”) to represent the legal interests of prospective or actual investors regarding the potential or actual investment referenced above (the “Matter”). This letter (the “Transaction Addendum Letter”) is provided to complete the Web Based Engagement and Conflict Disclosure Letter (“Web Based Letter”) available at the American College of Investment Counsel website at www.aciclaw.org. This Transaction Addendum Letter must be read together with the Web Based Letter. The Firm will not be able to represent you in this matter unless and until you have reviewed **both** letters and acknowledge your understanding and acceptance of the terms of both documents. If you have difficulty accessing the Web Based Letter, please let one of us know immediately and we will provide you with a copy. Listed at the end of this letter is a list of attorneys assigned to this matter and their individual contact information. Do not sign this Transaction Addendum Letter if you have not received and reviewed the Web Based Letter.

The following two sections (*Fee Arrangement and Conflicts of Interest and Potential Conflicts of Interest—Issuer and Agent*) contain transaction specific disclosures that are necessarily incomplete in the Web Based Letter.

Pursuant to the terms of the Web Based Letter, the Firm wishes to disclose and discuss the following matters:

Fee Arrangement

With respect to this Matter, the Issuer has agreed to pay the Firm [on an hourly basis/ for a flat fee of \$ _____; or _____.] The Firm has no other fee arrangements or agreements with the Issuer or any other party involved in the Matter that relate to or arise from the Firm’s retention as your counsel [except _____ (specify)]. If you would like more information about the Firm’s fee arrangement with the Issuer please let me know.

Conflicts of Interest and Potential Conflicts of Interest—Issuer and Agent

As a regular participant in financial markets, the Firm has recently had or may presently have existing professional relationships with the Issuer or the Agent.

In the past 24 months, the Firm has been selected by the Issuer or Agent [specify] as Pre-Designated Counsel on ____ separate occasions.

The Firm's present professional relationships with the Issuer include the following kinds of matters that, in the Firm's view, are factually and legally unrelated to the Matter:

[If none, state none. Otherwise, describe—e.g.: “The Firm presently provides labor and employment law advice to the Issuer and is presently representing the Issuer in intellectual property litigation.”]

The Firm's present or past professional relationships with the Issuer include the following kinds of matters that are substantially related to the Matter:

[If none, state none. Otherwise, describe—e.g.: “ The Firm is presently defending the Issuer in securities fraud litigation relating to _____.”]

The Firm's present professional relationships with the Agent include the following kinds of matters that, in the Firm's view, are factually and legally unrelated to the Matter:

[If none, state none. Otherwise, describe—e.g.: “The Firm presently provides labor and employment law advice to the Agent and is presently representing the Agent in intellectual property litigation.”]

The Firm's present or past professional relationships with the Agent include the following kinds of matters that are substantially related to the Matter:

[If none, state none. Otherwise, describe—e.g.: The Firm is presently defending the Agent in securities fraud litigation relating to _____.”]

We strongly encourage you to review these disclosures with your own counsel (either in-house or outside counsel). If after reviewing these disclosures in their entirety as well as all of the other disclosures, advisories and restrictions contained in the Web Based Letter you wish to consent to the Firm acting as your counsel in the Matter as Pre-Designated Counsel, we will require that you acknowledge and affirmatively waive the conflicts and restrictions contained in both the Web Based Letter and this Transaction Addendum Letter. If you have any questions about either document, please contact me before you return this Transaction Addendum.

VTY

Signature Block of Firm

Acknowledgement

The undersigned certifies having reviewed and understood the Web Based Letter located at www.aciclaw.org.

Sign and Date

After reviewing the Web Based Letter *and* the Transaction Addendum Letter, the undersigned consents to the representation by the Firm on the terms and conditions described and expressly waives the conflicts of interest described in *both* letters.

Sign and Date.

Insert the contact information for each lawyer assigned to this Matter:

Name
Direct Phone
Email

Name
Direct Phone
Email

Name
Direct Phone
Email