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SEC Amends Investment Adviser Custody Rules

In response to the Madoff Ponzi scheme and other frauds, the U.S. Securities and Exchange Commission last May proposed changes to its custody rules that apply to registered investment advisers. Following a public comment period that generated more than 1,300 comment letters, the SEC published its final rules on December 30, 2009 and established an implementation schedule that goes into effect in stages over the course of 2010. This alert discusses the new requirements. Although the SEC decided not to prohibit an adviser from maintaining custody of its client assets, the agency asserted its intent to "encourage the use of custodians independent of the adviser to maintain client assets as a best practice whenever feasible."

While the amendments relate only to SEC-registered investment advisers (or those required to be registered), they can be expected to have a ripple effect across the industry. It is increasingly likely that broader rule changes still to come will force nearly all U.S., and many non-U.S., investment advisers to register with the SEC in the next year or so. Universal registration would sweep many more investment advisers under this new custody regime.

As part of our discussion below, we break down how the rule amendments will impact particular groups of investment advisers (see Section II of this alert). The rules are different, for example, for advisers with self-custody versus those that use an independent custodian and for those that manage pooled investment vehicles versus those that have "direct" client account relationships. The rules do not affect registered investment company custody accounts, which are governed by a separate statute.

We conclude this alert with an outline of when the different components of the new rules come into effect (see Section III below). Arrangements for the most burdensome of the new requirements, e.g., the surprise examinations, the annual internal control report, and the required transition for some pooled investment vehicles to independent public accountants registered with, and subject to regular inspection by, the Public Company Accounting Oversight Board (PCAOB-registered accountants), require action within the next month or two for those to whom they apply.

The full text of the new rule release is available at http://www.sec.gov/rules/final/2009/ia-2968.pdf.[1]

I. The Custody Rule Amendments

The amendments include:

- Expanding the definition of "custody" so that an adviser would have custody of any client securities or funds that are held directly or indirectly by a "related person" (see Section I.A. below);

[1] Custody of Funds or Securities of Clients by Investment Advisers, Investment Advisers Act Release No. 2968 (Dec. 30, 2009) ("Custody Rules Release").

- Requiring a new annual surprise examination for many advisers with custody of client funds or securities (see Section I.B. below);
- Requiring a new annual internal control report for an adviser that serves, or has a related person serve, as a qualified custodian with respect to client funds or securities (see Section I.C. below);
- Modifying the account statement delivery rule (see Section I.D. below);
- Establishing that the annual audit rules for pooled investment vehicles (a) apply in the case of a liquidation and final distribution at other than year end – effectively requiring some form of new liquidation audit, and (b) are available only when certain qualified accounting firms perform the annual and at-liquidation audits (see Section I.E. below);
- Detailing the options by which an adviser to a pooled investment vehicle that uses a special purpose vehicle (SPV) to make investments should account for the assets of the SPV (see Section I.F. below); and
- Amending Form ADV and Form ADV-E (see Section I.G. below).

While not incorporated into the rules themselves, the SEC also included in the rule release an extended discussion of the type of compliance framework that it believes should characterize investment adviser custody practices (see Section I.H. below). Among other suggestions, the SEC encourages performing background and credit checks for certain personnel and limiting the number of personnel with access to client funds and securities and rotation of those personnel from time to time.

A. Custody Generally and Custody by Related Persons

Rule 206(4)-2 of the U.S. Investment Advisers Act of 1940, as amended (the "Advisers Act") imposes requirements on registered investment advisers that have "custody" of client funds or securities.[2] Under the current rule, an adviser is deemed to have custody of client funds or securities if it:

- Maintains physical custody of client funds or securities; or
- Has the authority to obtain client assets, including the right to:
  - Deduct advisory fees from a client's account; or
  - Write checks or withdraw funds on behalf of a client; or
- Acts in a capacity that gives it legal ownership or access to client funds or securities, such as general partner of a limited partnership, or a comparable position for another pooled investment vehicle.[3]

Under the amended rules, an adviser also would have custody of any client securities or funds that are held directly or indirectly by a "related person" in connection with advisory services provided to the clients.[4] A related person includes anyone who controls, is controlled by, or is under common control with the adviser.[5]

This is in contrast to the current rule that establishes that custody by a related person "may" be deemed to be custody by the adviser sufficient to trigger the custody rule, but does not automatically extend the rule to related-person custody in all cases. On the other hand, and as further discussed below, the amended rule continues to recognize that the risks to clients are different when the related person serving as custodian is "operationally independent" from the adviser.

[2] Again, an adviser does not need to comply with Rule 206(4)-2 with respect to the account of a registered investment company.

[3] *See* Rule 206(4)-2(c)(1).

[4] *See* Amended Rule 206(4)-2(d)(2) ("You have custody if a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services you provide to clients.").

[5] *See* Amended Rule 206(4)-2(d)(7).

B. Annual Surprise Examination

The purpose of the new examination requirement – which only applies when an adviser has actual or deemed custody – is to "verify that client funds and securities of which an adviser has custody are held by a qualified custodian in a separate account for each client under that client's name, or in accounts that contain only clients' fund and securities, under the investment adviser's name as agent or trustee for the clients."[6]

Elements of a Surprise Examination

When performing a surprise examination, an accountant should:

- Confirm with a qualified custodian that client funds and securities are held in either a separate account under the client's name, or in accounts under the name of the investment adviser as agent or trustee for clients;
- Confirm with the client the funds and securities held in the account and contributions and withdrawals of funds and securities; and
- Reconcile confirmations received to other evidence obtained from the adviser's records.[7]

The SEC also provided detailed new guidance to accountants on how to conduct the examination. Noting that its earlier guidance sometimes dated back 40 years, the SEC issued a full interpretive release on the topic. That interpretive release (the "Accounting Release")[8] was posted to the SEC website on the same day as the custody rule release.

Exceptions to the Surprise Examination Requirement

Under the originally proposed amendments, all registered advisers with custody of client funds or securities would have been subject to an annual surprise examination of those funds and securities – a dramatic expansion of a requirement that many advisers have avoided to date. However, the final version of the custody rules, while still expanding the reach of the examination requirement, includes several exceptions that we describe below.

Smaller investment advisers loudly objected to the surprise examination requirement, arguing that the costs associated with the surprise examinations would force them to roll back certain services they offered and otherwise put them at a disadvantage relative to larger advisers better able to absorb costs. But no relief has been extended specifically to smaller advisers. Instead, the SEC has directed its examination teams to consider special issues posed for smaller advisers and to report to the SEC on possible rule changes for the future.

Advisers that are Deemed to Have Custody Solely Due to Fee Debiting Authority

An adviser deemed to have custody of client assets solely because of its authority to deduct fees from client accounts will not be subject to the surprise examination requirement.[9]

Certain Advisers Deemed to Have Custody Solely as a Result of a Related Person Having Custody

An exception to the surprise examination requirement is available to an adviser that is deemed to have custody solely because a related person has custody if the adviser is "operationally independent" of the custodian.[10] While the SEC generally presumes that there will not be operational independence, an adviser can overcome that presumption if:

- Client assets held by the custodian are not subject to claims of the adviser's creditors;

6 *See* Commission Guidance Regarding Independent Public Account Engagements Performed Pursuant to Rule 206(4)-2 Under the Investment Advisers Act of 1940, Investment Advisers Act Release No. 2969 (Dec. 30, 2009), at 3 *available at* http://www.sec.gov/rules/interp/2009/ia-2969.pdf.

7 Closing an apparently inadvertent loophole in the earlier rule, the amended rules make privately offered securities subject to the surprise examination. *See* Custody Rule Release, at 21.

8 *See supra* note 6.

9 *See* Amended Rule 206(4)-2(b)(3).

10 See Amended Rule 206(4)-2(b)(6).

- The adviser's personnel do not have custody, possession, or access to client assets, or the power to control the disposition of such client assets to third parties;
- Advisory personnel and custodial personnel are not under common supervision;
- Advisory personnel do not hold any position with the custodian or share offices with the custodian; and
- No other circumstances can reasonably be expected to compromise the operational independence of the related person.[11]

An adviser cannot rebut the presumption if it has custody of client assets for any other reason beyond custody by a related person. As an example, the SEC notes that an adviser that serves as a trustee with respect to client assets held by an otherwise operationally independent affiliated custodian could not rebut the presumption. Those client assets would be subject to the surprise examination.

Advisers to Pooled Investment Vehicles

An adviser to a pooled investment vehicle is "deemed to satisfy" (creating a de facto exception from) the surprise examination requirement if the pooled investment vehicle:

- Is subject to an annual financial statement audit by a PCAOB-registered accountant; and
- Distributes the audited financial statements prepared in accordance with generally accepted accounting principles to its investors.[12]

This de facto exception applies solely as to the assets of the vehicle and not to other client assets for which the adviser has custody. Those other client assets would be subject to the surprise examination.

Which Accountants Are Eligible to Conduct Surprise Examinations?

Under the amended rules, when an adviser, or a person related to the adviser, serves as the qualified custodian ("self-custody"), the surprise examination must be performed by a PCAOB-registered accountant.[13] An adviser that does not self-custody could use any independent public accountant to conduct the surprise examination.

SEC Reporting Requirements

Under the amended rules, investment advisers subject to the surprise examination are required to enter into a written agreement with an independent accountant that requires the accountant to notify the SEC within one business day of finding material discrepancies, and to submit the Form ADV-E to the SEC within 120 days of the surprise examination.[14]

The accountant conducting the surprise examination also would be required to submit a Form ADV-E within four business days of its resignation or the termination of the agreement providing information about the resignation or termination.[15] This report is publicly available and applies to all resignations or terminations, however routine.

C. Internal Control Report

Under the amended rules, an adviser that self-custodies client funds or securities must obtain, at least annually, an internal control report from a PCAOB-registered accountant.[16] An adviser that uses a related person to custody client assets, but is able to rely on an exception from the surprise examination requirements (e.g., because custody is with an operationally independent

[11] These factors are similar to the factors that the SEC staff has used historically in determining whether an adviser has custody of client assets indirectly due to the custody of a related person.

[12] *See* Amended Rule 206(4)-2(b)(4).

[13] *See* Amended Rule 206(4)-2(a)(6)(i).

[14] *See* Amended Rule 206(4)-2(a)(4).

[15] *See* Amended Rule 206(4)-2(a)(4)(iii).

[16] *See* Amended Rule 206(4)-2(a)(6)(ii).

affiliate or all clients are pooled investment vehicles relying on the annual audit exception), must still obtain an internal report from the related party.

Because of the expense involved in commissioning such a report, this was one of the most controversial aspects of the original rule proposal. It nonetheless was adopted as part of the amended rules basically without change from the form proposed.

The required elements of the report are set forth in the Accounting Release, and include a description of:

- Relevant controls in place regarding the custodial services, including safeguards of funds and securities;
- Tests that were performed on these controls; and
- Results of the tests.[17]

Accountants conducting an internal report are permitted to rely on their own audit work performed for other purposes, including audit work performed to meet existing regulatory requirements.[18] The SEC noted that custodians often provide Type II SAS 70 reports to certain clients, and that a custodian could use a report that it has already obtained to satisfy the report requirement for several related advisers whose clients use the custodian.

A copy of the report must be kept by the adviser as a required record for five years.[19]

D. Account Statement Delivery Rule

The current custody rules specify who must send account statements to clients, with the options largely being that either (a) the custodian sends the statements and the adviser has a "reasonable belief" that the mailings are being done or (b) the adviser sends the statements but also accepts a surprise examination requirement along the lines of that now being applied to advisers with custody of client assets more generally. The amended rules establish a number of changes to that basic format, as described below.

Special Rules for Advisers Sending Their Own Account Statements

Under the amended rules, an adviser that has actual or deemed custody of client funds or securities and sends its own account statements will no longer be able to avoid having the custodian also send account statements.[20] An adviser wishing to send its own account statements previously could opt to accept a surprise examination requirement in lieu of corresponding statements being sent by the custodian. With that option no longer available, an adviser that has actual or deemed custody of client funds or securities and sends its own account statements now must both undergo a surprise examination and have a reasonable belief that the custodian is also sending statements.

Thus, the only remaining exception to sending account statements directly from a qualified custodian would be the annual audit exception available to advisers to pooled investment vehicles. Even that exception is under review. The SEC expressed concern that this exception may provide insufficient protection to investors in pooled investment vehicles, and noted that it had directed the SEC staff to explore solutions to this potential shortcoming that still respect the confidential nature of the adviser's proprietary trading information (proprietary information being the original basis for the exception from account statement delivery requirements for pooled investment vehicles).

Revision of Notice Advisers Send to Clients Upon Opening a Custodial Account on Their Behalf

Under the current custody rules, an adviser that opens a custodial account on a client's behalf is required to send a notice to the client identifying the custodian's name,

[17] *See* Accounting Release, at 6.

[18] *See* Custody Rule Release, at 28.

[19] See Custody Rule Release, at 51.

[20] *See* Custody Rule Release at 7.

address and manner in which the funds or securities are maintained.[21] Under the amended rules, if an adviser elects to send its own account statements to clients (which, again, would be in addition to a parallel mailing by the custodian), that initial notice must also "urge" clients to compare any account statements received from the adviser with account statements received from the custodian.[22] In addition, under the amended rules, an adviser that sends its own account statements is required to include in subsequent statements a caution to the investor to compare the information the adviser sends with the information in the custodian's account statements.[23]

Requirement that Reasonable Belief of Delivery by the Custodian Be Based on "Due Inquiry"

The amended rules require advisers to form their reasonable belief that a custodian is sending account statements only after "due inquiry." The SEC did not prescribe a single method of due inquiry, but commented positively on the practice of obtaining a copy of the account statement sent to the client from the custodian.[24] The SEC also rejected the notion that it is sufficient to confirm that the custodian posts account statements to a website to which clients have access. That, said the SEC, confirms access, not delivery.[25]

E. New Rules for Pooled Investment Vehicles

Only PCAOB-Registered Accountants Are Eligible to Perform Pooled Investment Vehicle Audits (At Least When Reliance on the Annual Audit Exception Is Sought)

An adviser to a pooled investment vehicle can avoid the rules requiring delivery of account statements, and do so without triggering a surprise account examination, so long as the pooled investment vehicle is audited at least annually, and distributes its audited financial statements to the investors within 120 days of the end of its fiscal year.[26] This widely relied upon exception now will be available only when the audit firm is a PCAOB-registered accountant. While a number of commenters had urged an exception for vehicles that use non-U.S. audit firms, on the theory that in some jurisdictions there will be a limited pool of PCAOB-registered accountants available to perform audits, no such exception was incorporated into the final rules.

Liquidation Audits

The amended rules establish that the account delivery requirement exception for pooled investment vehicles applies in the case of a liquidation and final distribution at other than year end.[27] Since liquidation audits have not been standard practice in the industry, this requires a new "at liquidation" audit intended to ensure that liquidation proceeds are properly accounted. It remains unclear, however, what sort of audit would be performed "at liquidation," when presumably assets have already been distributed.

[21] *See* Rule 206(4)-2(a)(2).

[22] *See* Amended Rule 206(4)-2(a)(2).

[23] *See* Amended Rule 206(4)-2(a)(2).

[24] *See* Custody Rule Release, at 9.

[25] *See id.*

[26] *See* Rule 206(4)-2(b)(3). The SEC notes that the staff's view that an adviser of a fund of funds may distribute audited financial statements to investors within 180 days of the end of the fiscal year is not affected by these amendments. *See* Custody Rule Release, at 17, n.45.

[27] *See* Amended Rule 206(4)-2(b)(4)(iii).

F. Treatment of SPVs

In a section of the release that was not presaged by any earlier discussion by the SEC in its proposing release, the SEC discussed special issues presented by a pooled investment vehicle using one or more special purpose vehicles (SPVs) to facilitate its investments.

First, the release commented that amended Rule 206(4)-2(c) provides that the account statement delivery requirement is not met if all of the investors in a pooled investment vehicle to which the account statements or audited financial statements are sent are themselves pooled investment vehicles related to the adviser. In other words, establishing a chain of vehicles investing one into another cannot be used to disrupt the delivery of meaningful statements to the ultimate investors.

Second, the SEC offered guidance on how to treat the assets held through an SPV under the custody rules. In sum, the adviser can treat an SPV in one of two ways:

- Treating the SPV as a separate client: If the adviser treats the SPV as a separate client, the adviser is required to comply, with respect to the assets of the SPV, with the custody rule's audited financial statements distribution or account statement and surprise examination requirements. If the adviser chooses to comply with the rule by distributing audited financial statements, it is required to distribute the audited financial statements of the SPV to the beneficial owners of the pooled investment vehicle.
- Treating the assets of the SPV as assets of the client: If the adviser treats the SPV's assets as assets of the pooled investment vehicle of which it has custody, such assets must be included in the pooled investment vehicle's financial statement audit or surprise examination. Effectively, the separate existence of the SPV is disregarded and "looked through" under this approach.

G. Amendments to Form ADV and Form ADV-E

Amendments to Form ADV

The SEC is adopting several changes to Form ADV, which is the investment adviser registration form, including:

- Item 7: An adviser must report all related persons that are broker-dealers and identify which, if any, serve as custodians for funds or securities of the adviser's clients;
- Schedule 7.A.: An adviser must report whether it has determined that it has overcome the presumption that it is not operationally independent from a related person and is therefore not subject to the surprise examination requirement;
- Item 9: An adviser must report:
  - Whether the adviser or a related person has custody of client assets;
  - If the adviser or a related person acts as an adviser to a pooled investment vehicle:
    - Whether the pool is audited; and
    - Whether an independent public accountant conducts an annual surprise examination of client assets;
  - Whether an independent public accountant prepares an internal control report with respect to the adviser or its related person; and
  - Whether the adviser or a related person serves as qualified custodian for the adviser's clients.

  Advisers are also required to provide additional information on Schedule D regarding the various matters just outlined for Item 9.

Amendments to Form ADV-E

Form ADV-E is the form used to report a surprise examination of client funds and securities. The SEC

adopted three amendments to the instructions to Form ADV-E to:

- Require electronic filing of Form ADV-E and the accountant's examination certificate;
- Reflect the new requirement that Form ADV-E and the examination certificate be filed within 120 days of the time chosen by the accountant for the surprise examination; and
- Reflect the new requirement that the accountant file a termination statement.

H. Compliance Policies and Procedures

Registered investment advisers are required to adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act.[28] After reciting that requirement in the release, the SEC suggested that advisers with custody of client assets should give the "elevated risks" of accepting custody "appropriate attention" when designing and implementing a firm's compliance policies. In particular, the SEC suggested that firms consider implementing the following policies and procedures:

- Conduct background checks on employees with access to client assets;
- Require the authorization of more than one employee to transfer assets;
- Limit the number of employees permitted to interact with custodians and rotate them on a periodic basis;
- Segregate the duties of advisory personnel from those of custodial personnel (at least in cases when the adviser serves as the custodian);
- Require that any problems be brought to the immediate attention of the management of the adviser;
- Prohibit employees from acquiring custody of assets by prohibiting them from becoming trustees for client assets or obtaining powers of attorney for clients separate from the advisory firm;
- If the adviser permits employees to serve in capacities whereby the firm acquires custody, assure that employee custodial practices conform to the firm's policies and procedures; and
- Ensure that the adviser's chief compliance officer (CCO) has access to sufficient information on these matters to enforce the adviser's policies and procedures.[29]

A CCO of an adviser with custody of client assets should consider implementing procedures that allow the CCO to test the effectiveness of the firm's controls. Examples offered by the SEC include:

- Testing the reconciliation of account statements prepared by the adviser against those prepared by the custodian; and
- Comparing client addresses obtained from the clients' qualified custodians with the addresses maintained by the adviser.[30]

In addition, the SEC provided guidance regarding the types of policies and procedures that an adviser that has authority to deduct advisory fees directly from client accounts should have in place to reasonably ensure that clients are billed accurately in accordance with the terms of their advisory contracts, including:

- Periodic testing of fee calculations to determine accuracy;
- Testing of the overall reasonableness of the amount of fees deducted from all client accounts for a period of time; and

[28] *See* Rule 206(4)-7.

[29] *See* Custody Rule Release, at 42-43.

[30] *See id.* at 44-45.

- Segregating duties between personnel responsible for processing billing invoices and those responsible for reviewing invoices.

The SEC added that the appropriate controls that an adviser might adopt necessarily depend on the size of the adviser, with larger firms having more detailed procedures and a greater ability to rely on procedures that provide for segregation of functions.

II. Impact on Specific Groups of Investment Advisers

The following discussion highlights special considerations applicable to advisers under several different circumstances. All advisers should also consider the new compliance program guidance from the release.

Advisers to Pooled Investment Vehicles

An adviser to a pooled investment vehicle would:

- Be required to (a) obtain an annual (and new at-liquidation) financial statement audit for each pooled investment vehicle by a PCAOB-registered accountant and distribute the financial statements to the vehicle's beneficial owners or (b) undergo the new annual surprise examination as to the assets of the vehicle and have a reasonable belief that the custodian provides account statements to the vehicle's investors. Presumably, most advisers will continue to opt to rely on the year-end audit exception and therefore avoid the surprise examination and delivery of statements;
- For a firm that is not using a PCAOB-registered accountant to perform a vehicle's year-end audits, transitioning to such an account will be required to avoid the surprise examination requirement and the account statement delivery requirement;
- For a firm that has self-custody of a pooled investment vehicle's assets because the firm or a related person serves as the qualified custodian for the assets, obtain the new internal control report from a PCAOB-registered accountant;
- Consider applicability of new guidance regarding investments held through SPVs; and
- Be subject to the amendments to Forms ADV and ADV-E.

Advisers with Self-Custody

An adviser that serves, or has a related person serve, as the qualified custodian to the adviser's client assets would:

- Be required to obtain the surprise examination report from a PCAOB-registered accountant, unless the adviser qualifies for the limited exception to the rule for advisers that are operationally independent from the related person custodian;
- Be required to obtain an internal control report, again from a PCAOB-registered accountant;
- No longer be able to avoid the requirement that it have a reasonable belief that the custodian provides account statements directly to clients even if the adviser undergoes a surprise examination – and therefore would no longer be able to simply send account statements directly from the adviser unless a corresponding mailing is made by the custodian;
- Need to form its reasonable belief that the custodian is sending client account statements after "due inquiry";
- if the adviser sends account statements, need to include a statement, in the notice that is required to be sent to a client when the adviser opens a custodial account for the client, and in subsequent communications with clients, urging the client to compare the account statements sent by the adviser with the account statements sent by the custodian; and
- Be subject to the amendments to Forms ADV and ADV-E.

Advisers Without Self-Custody but With Fee-Debiting Authority

An adviser that has custody of a client's assets because it has fee-debiting authority would:

- No longer be able to avoid the requirement that it have a reasonable belief that the custodian provides account statements to the vehicle's investors even if it undergoes a surprise examination – and therefore would no longer be able to simply send account statements directly from the adviser unless a corresponding mailing is made by the custodian;
- Need to form its reasonable belief that the custodian is sending client account statements after "due inquiry";
- If the adviser sends account statements, need to include a statement, in the notice that is required to be sent to a client when the adviser opens a custodial account for the client, and in subsequent communications with clients, urging the client to compare the account statements sent by the adviser with the account statements sent by the custodian; and
- Be subject to the amendments to Forms ADV and ADV-E.

III. Effective Date and Compliance Dates

Effective Date

The effective date of the amendments is March 12, 2010.

Compliance Dates

Advisers must comply with the amended rules on and after the effective date, subject to the following specific phase-in requirements.

Surprise Examinations

An investment adviser subject to the surprise examination requirement must enter into a written agreement with an independent public accountant that provides that the first examination will occur:

- Prior to December 31, 2010; or
- If the adviser becomes subject to the requirement after the effective date, within six months of becoming subject to the requirement.

If the adviser itself, or through a related person custodian that is not operationally independent, maintains client assets as qualified custodian, the agreement must provide for the first surprise examination to occur no later than six months after obtaining the internal control report.

Internal Control Report

An investment adviser subject to the internal control report requirement must obtain or receive the report within six months of becoming subject to the requirement.

Audits of Pooled Investment Vehicles

An investment adviser will be deemed to satisfy (and therefore be effectively exempt from) the surprise examination requirement as to its pooled investment vehicle clients if it enters into a contract with a PCAOB-registered accountant for an audit of each vehicle's fiscal years beginning on or after January 1, 2010. For funds with December 31 fiscal year-ends, this means the 2010 audit will be the first audit subject to the new requirement.

Forms ADV and ADV-E

Advisers must provide responses to the revised Form ADV in their first annual amendment after January 1, 2011.

This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

If you wish to receive more information on the topics covered in this memorandum, you may contact your regular Shearman & Sterling contact person or any of the following:

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