

Advance Conflict Waiver Form Language
July 2009

On April 1, 2009, New York implemented new rules of professional conduct that now require that consents regarding potential conflicts of interest be confirmed in writing. We are therefore sending this email to confirm our mutual understanding with respect to this subject as it relates to the situations described below. As we discussed in our [meeting] [telephone call] on [INSERT DATE], 2009, this email is meant to memorialize our existing understanding with you as to these matters.

In the course of our work for you (which term is meant to include your affiliates that are parties to the types of transactions contemplated by this advance consent, but is not meant to include portfolio companies or your parent holding company, except to the extent that your parent holding company is a party to such a transaction), we may represent others with interests that are different from, inconsistent with or adverse to your interests in the following situations:

- We may act as “designated underwriters’ counsel” or “designated counterparty counsel” for a company, where the company expects us to act for any financial institution that is ultimately hired to assist the company in capital raising or act as counterparty to the company in a transaction. In any such case more than one financial institution may be competing for an assignment, and we are generally not able to disclose to any client that we are advising other financial institutions on similar or different financing alternatives.

- We may represent more than one potential financing source or derivative counterparty, such as a bank, investment bank or other financial institution, pursuing potential business relating to the same company, transaction or situation in the credit, capital markets, advisory and derivatives business areas. When we are hired by more than one client in such situations, we are generally not able to disclose the multiple representations to any client.

- We may represent corporate, financial, private equity or other clients in commercial transactions in which you are also involved in the credit, capital markets, advisory and derivatives business areas, including: a client that is borrowing money from you as a lender or from a syndicate of which you are a member; a client raising money in the capital markets in a transaction underwritten or placed by you; a client buying or selling assets from or to you or your affiliated investment fund or a third party for whom you are acting as financial advisor; a client that is a co-investor alongside you; a client that is an investor or creditor in a company or an underwriter of securities or arranger of credit for a company in which you are also an investor or creditor or for which you are also an underwriter of securities or arranger of credit; or a client in which you are an investor; or in each case providing advice with respect to such a transaction previously entered into.

- We may represent a debtor or other party in a reorganization or bankruptcy in which you are a creditor or adviser (provided that we acknowledge that your advance consent stated below will not extend to such situations in which we

represented you as administrative agent, or in a similar capacity as lead agent, on a particular credit).

- Where we are advising you in a transaction facing a company or other counterparty, we may represent that counterparty in unrelated matters.

In these specific examples, you consent in advance to our representation of other parties. Your consent does not extend to situations other than those described above.

This advance consent is not intended to allow us to represent, in the same transaction, multiple parties facing each other as counterparties, and is not intended to allow us to represent other clients in making claims or seeking equitable remedies against you, or defending against any claim by you, in litigation, arbitration or other similar forms of dispute resolution (“adversarial proceedings”) without your specific consent at the time. Without limiting the generality of the foregoing, in bankruptcy proceedings the advance consent confirmed by this e-mail is not intended to extend to adversarial proceedings against you or lenders for whom you act as agent (i) asserting lender liability or other claims of misconduct, (ii) challenging the validity or priority of any lien or security interest held by you or such lenders, (iii) asserting a claim for avoidance or recovery of a voidable transfer, (iv) challenging the validity of the underlying client transaction (e.g., credit default swaps) or (v) objecting to the validity of any claim (other than the calculation of damages).

We will not accept an engagement from another client in the situations described above unless we believe that our representation of that other client will not have an adverse effect on the exercise of our independent professional judgment on your behalf in the matters in which we represent you. Where we represent more than one potential financing source pursuing potential financing business relating to the same company, transaction or situation (other than in the “designated underwriters’ counsel” or “designated counterparty counsel” situations), the lead partner representing you and any core team working with that partner will not be part of the core team representing any other potential financing source, but certain matters may be handled by a “shared” team (e.g. due diligence), and members of the team representing you may consult with other lawyers at the firm, including lawyers who may be on or consulting with the core team representing another party, with respect to issues raised by the potential transaction, either in order to provide consistent legal advice to all of our clients or because the issue relates to a specialty area (e.g. tax, ERISA, industry-specific regulation) in which we have limited resources.

Notwithstanding the foregoing, we will keep all confidential information, whether written or oral, that we receive from you confidential from third parties (except as may be required for legal or regulatory reasons) and we will not use any such information for any other client’s benefit without your express consent. You will

not assert that (a) our possession of such information, even if it relates to a matter for which we are representing another client or may be known to someone here working on the matter, is a basis for disqualifying us from representing another client in any matter in which you or any other party has an interest or (b) our failure to share with you any confidential information received from another client constitutes a breach of any duty we may owe you, including any duty regarding information disclosure.

We acknowledge that your consent is based on the assumption that any other client that engages us in such situations will agree not to use such engagement as grounds to object to our representation of you on unrelated matters. In addition, you agree that if you engage us in such situations where another of our clients is involved, you will not use that engagement as grounds to object to our representation of that other client on unrelated matters.

This advance consent will remain in effect until you notify us in writing, with specific reference to this email, that you no longer wish this consent to be in effect, in which event this advance consent will not apply to any engagements entered into thereafter. You may also notify us prior to our acceptance of any engagement for you that the particular engagement shall not be subject to this advance consent.