

SEC Issues No-Action Letter Permitting Reliance Upon Section 3(a)(9) in Exchanges of Securities with Upstream Guarantees

January 13, 2010 | Client Update

Today, the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission issued a no-action letter to Davis Polk, Cleary Gottlieb and O’Melveny & Myers permitting reliance upon Section 3(a)(9) of the Securities Act of 1933 for the issuance of a new parent security in exchange for an outstanding parent security that has one or more “upstream” guarantees from the parent’s 100%-owned subsidiaries (the “3(a)(9) Upstream Guarantee Letter”). All of the prior Staff no-action positions involving the availability of Section 3(a)(9) for exchanges of guaranteed securities had involved “downstream” guarantees (i.e., situations where the parent guaranteed a security issued by one or more of its subsidiaries) as opposed to “upstream” guarantees.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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