



**FLOTT  
& Co.**  
ATTORNEYS

*A Virginia  
Professional  
Corporation*

## ***NOTICE***

**To: All Persons Receiving E-mail from Flott & Co. PC**

**Re: Flott & Co. PC E-mail Notice Addendum**

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This document describes the conditions of confidentiality, privilege, and scope related to e-mail transmitted by Flott & Co. PC.

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### **Confidentiality:**

Any e-mail (including by reference any files attached to such e-mail) directed to or originating from the "flottco.com" domain hyperlinked to this document is intended solely for the information and use of the persons authorized to review the e-mail at the e-mail addresses listed in the "From", "To", "CC", or "Bcc" fields (the "Address Fields") shown in the e-mail header and may contain information that is legally privileged from disclosure and/or otherwise confidential. If you or someone you have knowledge of is a recipient of e-mail from the flottco.com domain and is not an addressee (or an authorized representative of an addressee), such recipient is advised that any review, disclosure, reproduction, re-transmission or other dissemination or use of the e-mail or any attachments to it is strictly prohibited. If you are not authorized to receive e-mail at one of the addresses listed Address Fields and accidentally received the e-mail, please send a message to Flott & Co. PC at [administration@flottco.com](mailto:administration@flottco.com), or call by telephone at (703) 525-5110, letting us know of your mistaken receipt of the e-mail and the circumstances by which you received it. Please also immediately delete the e-mail from any computer in your control and destroy all physical copies of it. Thank you.

### **Attorney Client Privilege:**

All of the email directed to or originating from the "flottco.com" domain is being sent or received by a validly licenced US law firm engaged in the practice of law. Thus, any recipient of such email should be aware that any such work related email may be protected under the attorney-client privilege afforded under US law and the laws of other nations.

### **Internal Revenue Service Circular 230:**

The U.S. Treasury and the Internal Revenue Service updated regulations governing practice before the Internal Revenue Service and made them effective after June 20, 2005 for written U.S. federal tax advice provided by persons practicing before the IRS. These regulations are termed "Circular 230."

### ***A Brief Summary of Circular 230***

The effect of Circular 230 is far-reaching. Written tax advice that is considered a "covered opinion" must comply with numerous requirements. These provisions would require providers of U.S. federal tax advice to conduct extensive due diligence regarding the facts and assumptions underlying the transaction or arrangement (including assumptions as to future events and financial projections), and representations provided; to analyze not only applicable law but "potentially

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applicable judicial doctrines”; and generally not to assume the favorable resolution of any U.S. federal tax issue. Certain additional disclosures may be required to be made in connection with the tax advice.

**Covered Opinions:** In general, Circular 230 treats written tax advice, which may include an e-mail, as a “covered opinion” if it concerns:

- **Listed Transactions:** a “listed transaction” (basically, a transaction identified on an Internal Revenue Service list of identified tax shelters) or a transaction that is substantially similar to a listed transaction;
- **Principal Purpose Transactions:** a partnership or other entity, an investment plan or arrangement, or any other plan or arrangement, the “principal purpose” of which is the avoidance or evasion of any U.S. federal tax;  
Or
- **Significant Purpose Transactions:** a partnership or other entity, an investment plan or arrangement, or any other plan or arrangement, a “significant purpose” of which is the avoidance or evasion of any U.S. federal tax, and it is:
  - **Reliance Opinions:** a “reliance opinion,” which is tax advice at a “more likely than not” level;
  - **Marketed Opinions:** a “marketed opinion,” which is tax advice that is intended to be used or referred to by someone other than us in promoting, marketing or recommending a partnership or other entity, an investment plan or arrangement, or any other plan or arrangement, to one or more other taxpayers;
  - **Confidential Opinions:** advice where we have required an agreement of confidentiality as a condition of communicating the advice; or
  - **Contingency Fees:** advice where some or all of our fees are contingent on the successful outcome of a U.S. federal tax matter, or refundable if not successful.

#### *Exclusions from Circular 230 Covered Opinions*

Explicitly excluded from Circular 230 classification as a “covered opinion” are:

- **Reasonable Basis Transactions:** transactions where the Internal Revenue Service does not have a “reasonable basis” for challenge;
- **Post-Return Advice:** advice communicated following the date on which a return was filed; and
- **Significant Purpose Transactions (other):** “significant purpose” transactions that concern the qualification of a qualified plan or a state or local tax-exempt bond or are included in documents required to be filed with the Securities and Exchange Commission.

The regulations provide that a transaction will not meet the “principal purpose” requirement for covered opinions if it is consistent with the applicable provision and congressional intent. For example, much of our advice related to obtaining a US tax exemption under Section 883 of the US tax code falls under this definition. However, even if consistent with the legislation and congressional intent, a transaction may still be considered to have a “significant purpose” to avoid or evade US federal tax, in which case it must not meet one of the four classifications above to avoid being a covered opinion.

Probably the most important “significant purpose” exclusions are those for “reliance opinions” and “marketed opinions.” These exclusions will be applicable if the appropriate legends appear prominently in the tax advice. Both legends are intended to advise the recipient of the tax advice that he or she cannot rely on the advice for relief from penalties under the Internal Revenue Code. In addition, the legend for “marketed opinions” is intended to advise clients that they should consult their own independent tax advisors and that the advice was written in connection with marketing efforts.

**What Does This Mean for Flott & Co. PC Clients?**



Some of the day-to-day tax advice that we provide may be considered to be a “reliance opinion.” For example, if we respond to an e-mail requesting the possibility of being granted a US tax exemption under Section 883 given a particular set of facts and we respond favorably, that could be viewed as a “covered opinion” that does not comply with the Circular 230 rules. Similarly, saying “the payment should be deductible, but I need to know more,” could also be viewed as a non-complying “covered opinion.”

E-mails that, when they contain tax advice, generally contain brief tax advice can be particularly troubling under Circular 230. The purpose of the legend is to advise clients that they cannot rely on the tax advice for relief from any Internal Revenue Code penalties. It is also intended to obviate the need for the more extensive legend applicable to “marketed opinions,” by indicating that the e-mail is not intended to be used for marketing purposes.

The specific legend that we will be using for all matters discussed in this paper is as follows:

**NOTICE: This e-mail (including by reference any files attached to this e-mail) is confidential and may be subject to attorney-client privilege under US law and the laws of other nations. Unless otherwise indicated by Flott & Co. PC in writing, any US federal tax advice contained in this e-mail is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the US Internal Revenue Code or (ii) promoting, marketing or recommending to another party any matter addressed within. For further information, please see <http://www.flottco.com.emailnotice>.**

The link will lead to this paper placed as a PDF on the Flott & Co. PC website. We will also use this language as appropriate in memoranda and opinions.

We anticipate that there will be many instances where clients will want opinions without the disclaimer language. In those instances, we will work with our clients to determine whether we can conclude, after appropriate factual diligence, that either U.S. federal taxes were not a “significant purpose” of the transaction or that the Internal Revenue Service does not have a “reasonable basis” to challenge the transaction. In other instances, if desired, we would be able to provide an opinion that satisfies the extensive rules applicable to “covered opinions,” which will require much more extensive factual due diligence efforts as well as an understanding of any assumptions and projections.