Labor Cost Reduction Options for Employers in a Distressed Economy: The CARES Act and Other Considerations

by Jennifer Merrigan Fay, Robert M. Hale, Bradford J. Smith

Employers are considering whether to implement layoffs, furloughs or hours reductions in light of the economic uncertainty arising from the COVID-19 pandemic. This alert reviews significant considerations for employers that are weighing whether to implement payroll cost reductions and, if so, what options to use for doing so.

The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), which was enacted on March 27, 2020, created new programs and expanded existing programs in ways that significantly affect the options for employers. This alert identifies key aspects of the CARES Act that can affect employers' decisions in managing payroll costs during this challenging period. This alert also reviews other considerations for employers, including federal and state plant closing laws and Fair Labor Standards Act ("FLSA") requirements. This alert focuses on considerations based on federal law and the laws of California, Massachusetts and New York.

1. WHAT ARE THE BASIC DIFFERENCES BETWEEN LAYOFFS AND FURLOUGHS?

The term "layoff" is typically used to refer to the complete termination of an employment relationship. It also typically involves employment reductions driven by economic considerations or restructurings, as distinguished from employment terminations motivated by individual performance problems.

A furlough is a suspension of active employment. It is implemented in anticipation of returning an employee to active employment. An employer may promise furloughed employees job restoration at the end of a specified period or make clear that there is no guarantee to return to active employment. In the latter case, the employer may at any point convert the furlough to a complete termination of employment.

In most states, employees who are furloughed and employees who are laid off have the same rights to unemployment insurance benefits. In addition, furloughs and layoffs are each forms of adverse employment actions, and therefore employers need to ensure that their selection decisions are not affected by impermissible considerations, such as the prohibitions on employment discrimination based on protected categories.

There are some key differences between layoffs and furloughs, however, which are the result of the distinction between the suspension of active employment and the complete termination of employment:

- Benefits: Many employee benefit plans limit participation to employees who are regularly actively working at least a specified minimum number of hours per week. Some employers seek to maintain benefit plan coverage for employees who are temporarily inactive due to a furlough. If an employee is furloughed, employers may be able to continue employees' participation in employee benefit plans despite the reduction in hours since a furlough, particularly one with a specified return date, is akin to an unpaid leave of absence. Other exceptions may exist under the applicable plans or coverage may be approved by benefit plan providers. Employers that seek to continue employees' benefit plan participation should check their employee benefit plans to determine if coverage may continue during a furlough and, if not, should consult with their insurers for group medical, dental, vision, disability and life insurance plans to determine if coverage may be continued during a furlough. In light of the COVID-19 crisis, many insurers are routinely approving benefit continuation during furloughs. If benefit plan continuation is not otherwise available,

employees who are furloughed or laid off may continue group medical, dental and vision coverage through COBRA, which employers may elect to subsidize.

- Equity: Unlike employees who are laid off, furloughed employees generally continue to vest in company equity, such as stock option grants, and are not subject to the triggering of an exercise period that a complete termination initiates. Employers should review their equity plans and agreements to confirm that a furlough will not constitute the end of employment or a service relationship for these purposes.

- Continued Connection: Employees who are furloughed generally perceive that they have a continued connection to the employer, which may enhance their sense of allegiance to the employer and their readiness to return if the opportunity to do so arises. Furloughs also enable employers to scale quickly and take advantage of their previous training of employees by reintegrating them into the workplace rather than recruiting and hiring new employees after the period of economic instability.

- Severance Pay. Unless required by a severance pay plan, policy or contract, an employer has no severance pay obligations to separated employees. Nevertheless, employers that implement complete involuntary terminations of employment through a layoff typically offer severance pay in exchange for a separation agreement, including a release of legal claims and affirmative obligations like non-disparagement. Employers that implement a furlough would not typically offer severance pay, unless the furlough becomes converted to a complete termination.

Other differences that affect the implementation of layoffs and furloughs are discussed below.

2. WHAT ARE THE PROGRAMS UNDER THE CARES ACT THAT MAY AFFECT EMPLOYER DECISIONS CONCERNING THE MANAGEMENT OF PAYROLL COSTS?

The CARES Act provides funding of employers and employees through a variety of mechanisms that bear on decisions concerning the management of payroll costs. These consist of the following:

- Paycheck Protection Loan Program: Loans under the Paycheck Protection Loan Program (the "PPL Program") are available until June 30, 2020 through U.S. Small Business Administration ("SBA") lenders to some smaller employers (generally 500 or fewer, measured based on most current SBA affiliation rules, with certain exceptions and certain higher employer size thresholds in some industries). The loan amounts may be up to 2.5 times the employer's monthly payroll (but not the portion of compensation above the annual rate of $100,000) during the one year before the date of the loan, up to $10,000,000. The loans may be used to fund certain payroll costs and certain other business costs. Loans are forgivable if the proceeds are used for specific purposes during the eight week period from the date of the loan, but the amount of loan forgiveness will be reduced if the average number of full-time equivalent employees ("FTEs") per month is lower than pre-crisis levels or if the pay of those employees who were paid at the rate of $100,000 or less throughout 2019 is reduced by more than 25%, unless such reductions are eliminated by June 30, 2020. Those metrics and the other principal terms concerning the Paycheck Protection Loan Program are summarized in Goodwin's March 26, 2020 client alert.

- Emergency Loans to Mid-Sized Businesses: Larger employers (between 500 and 10,000 employees) may obtain low interest loans (no greater than 2% per year) from banks and other lenders with initial repayments deferred for at least six months. These loans are subject to certain good faith certifications, including the following:

  - The funds will be used to retain at least 90% of the recipient's workforce at full compensation and benefits until at least September 30, 2020.

- The recipient intends to restore at least 90% of the workforce that existed as of February 1, 2020 and all compensation and benefits to all workers no later than four months after the termination of the COVID-19 public health emergency declared by the Secretary of Health and Human Services.

- The recipient will not pay stock dividends or make stock buybacks while the loan is outstanding, unless subject to a pre-existing contractual obligation.

- The recipient will remain neutral in any union organizing effort during the term of the loan.

The loan agreement must also include restrictions on compensation increases and severance pay for one year beyond the repayment of the loan for employees whose compensation exceeded $425,000 in 2019 and caps on compensation (which could require some compensation reductions) for those who received at least $3,000,000 in compensation in 2019. Compensation for these purposes includes salary, bonuses, stock awards, among other forms of compensation.

- Unemployment Insurance: There are several forms of enhancements of unemployment insurance benefits under the CARES Act. The most significant enhancement affecting employers that contemplate payroll cost reductions is a federal supplement of $600 per week[1] in addition to state unemployment insurance benefits for employees through July 31, 2020.

  In addition, employees who exhaust unemployment insurance benefits may obtain up to 13 additional weeks of unemployment insurance benefits (including the federal supplement) for loss of active employment, but not beyond December 31, 2020.[2] Individuals who typically may not be eligible for unemployment benefits but are unemployed, partially unemployed, or unable or unavailable to work because of certain COVID-19-related reasons may be eligible for a total of 39 weeks of pandemic unemployment assistance through December 31, 2020. Such COVID-19 related reasons include the same circumstances that give rise to paid sick time rights under the Families First Coronavirus Response Act, detailed here, among other reasons. If an individual has the ability to telework with pay or is receiving paid sick leave or other paid leave benefits, the individual is not eligible for the extended pandemic unemployment assistance.

- Employee Retention Tax Credit: Employers that have experienced substantial business declines (a reduction in quarterly receipts for a calendar quarter of more than 50% as compared to the same calendar quarter in the prior year) or complete or partial suspension of business as a result of a government order limiting commerce, travel or group meetings may qualify for a tax credit against the 6.2% employer portion of Social Security taxes based on continued retention of employees. The credit is equal to 50% of qualifying wages, with a cap on such wages of $10,000 per employee per year. For larger employers (employers with an average of more than 100 FTEs in 2019), the credit is based on pay continuation when an employee is not providing services. For smaller employers, the credit is available based on employment continuation of both those employees providing services and those not providing services. The Employee Retention Tax Credit is not available to participants in the PPL Program, and any previously received credits are subject to recapture.

- Social Security Tax Deferral: Employers may defer payment of the employer share of Social Security taxes due through the end of 2020, with half of the deferred amount due by the end of 2021 and half by the end of 2022. This deferral is not available if a loan is forgiven under the PPL Program.

3. HOW COULD THESE PROGRAMS AFFECT DECISIONS CONCERNING LAYOFFS, FURLOUGHS AND PAY REDUCTIONS?

Each of these programs could affect employers' decisions concerning employment actions.

- PPL Program: The PPL Program provides substantial payroll support for eligible employers. In determining whether to obtain a loan under the PPL Program and in managing its payroll costs in connection with a PPL Program loan, an eligible employer should carefully analyze the factors affecting loan forgiveness. The PPL Program is designed to reduce loan forgiveness based on certain employment and compensation reductions. A key provision of the Program provides employers some breathing room to undertake payroll cost reductions without impacting loan forgiveness, as long as they eliminate those reductions consistent with the PPL Program standards. Specifically, temporary reductions in payroll through reducing employment levels or compensation occurring between February 15, 2020 and April 26, 2020 will not limit loan forgiveness to the extent that the reductions are eliminated by June 30, 2020. Thus, subject to the specific standards in the CARES Act, eligible employers may be able to undertake near-term reductions and still maintain the same level of loan forgiveness as if they had not implemented those reductions, but only if the reductions are eliminated by June 30, 2020. The loan proceeds that employers receive need to be used for an authorized purpose, but there are substantial authorized purposes other than payroll expenditures, such as mortgage interest, rent, utilities and interest on pre-loan debt obligations.

- Emergency Loans to Mid-Sized Businesses: This program provides an opportunity for low interest loans. However, it does not include loan forgiveness terms. Instead, there is simply a right not to commence repayment for at least six months. In addition, the certifications concerning maintaining and restoring employment and compensation levels and not opposing union organizing efforts may not be realistic for many employers. Even if those are possible certifications, employers need to consider the restrictions on compensating highly paid employees.

- Unemployment Insurance: The enhancement of unemployment benefits could have a significant effect on decisions about how to address near-term payroll costs. The near-term $600 per week enhancement through July 31, 2020 will provide many employees with considerable replacement of their pre-layoff or furlough income for that period. Specifically, in Massachusetts, these enhanced benefits result in a maximum unemployment benefit of $1,423 (or an annualized rate of $73,996) per week. In New York, this results in a maximum weekly benefit increase from $504 per week to $1,104 per week[3]. California caps weekly unemployment benefits at $450, which together with the $600 federal benefit results in a maximum weekly benefit of $1,050. Although there usually is a seven day waiting period following an employee's termination before unemployment benefits start, this waiting period has presently been waived in Massachusetts, New York and California. In addition, the CARES Act authorizes full federal funding for the first week of unemployment benefits through December 31, 2020.[4]

  This combination of unemployment insurance enhancements obviously cushions employees from some effects of the drop of employee income during a period of unemployment insurance eligibility until July 31, 2020.[5] An employer could lay off or furlough employees, recognizing that employees will receive an income enhancement as a result of the $600 per week payments and the elimination of the one week waiting period.[6] If an employer seeks to save payroll costs while retaining a connection to its affected workforce, it could furlough employees, recognizing that they will have an opportunity for enhanced unemployment insurance through July 31, 2020. Indeed, those employers that utilize the PPL Program could conduct a near-term furlough and recall employees by June 30, 2020 to mitigate any adverse effect due to the metrics for calculating any reduction in the loan forgiveness due to the employer.

- Employee Retention Tax Credit: Larger employers for purposes of the Employee Retention Tax Credit that meet the criteria to qualify for that tax credit (i.e., a substantial business decline or a complete or partial suspension of business) could consider retaining employees on a paid basis despite the absence of work

for them to perform and take advantage of the 50% tax credit.

- Social Security Tax Deferral: While the Social Security tax deferral will no doubt be helpful to employers, the amounts involved presumably will not affect employment retention decisions in all but the closest cases.

4. WHAT CONSIDERATIONS ARISE FROM FEDERAL AND STATE PLANT CLOSING LAWS?

Both layoffs and furloughs may implicate federal and state plant closing laws. The federal Worker Adjustment and Retraining Notification Act ("WARN Act") applies to employers with 100 or more employees. It generally requires 60 days' advance written notice of a plant closing or a mass layoff. A plant closing means a shutdown of a worksite or a facility or an operating unit within a worksite, causing an "employment loss" for 50 or more employees (other than certain excluded employees described below) in any 30-day period, or separate related actions causing an employment loss for 50 employees (other than excluded employees) within a 90-day period. A mass layoff means a reduction other than a plant closing, which results in an employment loss for either 500 employees at a worksite or at least 50 employees at the worksite constituting at least 33% of the worksite's workforce, also within the same 30 or 90-day periods (in each case also excluding certain employees). In each of these cases, an "employment loss" includes a furlough of more than six months or a pay reduction of more than 50% for each month in six consecutive months, as well as a complete termination of employment. To determine whether an employer is covered by the WARN Act or if the WARN Act has been triggered, those employees excluded from the count of employment losses are those working less than 20 hours per week or who have been employed fewer than six of the preceding twelve months. However, excluded employees are entitled to any required notice.

In addition to the WARN Act, several states have so-called mini-WARN Acts that provide for lower thresholds. The New York mini-WARN Act requires 90 days of advance notice in the event of a plant closing or relocation that results in an employment loss for at least 25 employees, or a mass layoff or covered reduction in work hours that affects either 250 employees at a worksite or 25 employees representing at least 33% of the workforce at that worksite. California likewise has a mini-WARN Act that covers worksites that have 75 employees in the last twelve months, and 60 days' notice obligations are triggered if just 50 employees lose their employment during a 30-day period (regardless of what percentage of the workforce is impacted) or if there is a cessation or relocations of operations at a covered worksite. It is possible that a furlough lasting more than two weeks could also trigger California's mini-WARN Act.

These generally applicable standards are subject to exceptions and recent developments that can provide employers some greater flexibility to conduct layoffs that result from the COVID-19 pandemic. Most importantly, the WARN Act and the New York mini-WARN Act include an exception for reductions due to "unforeseeable business circumstances." (While the California mini-WARN Act does not contain this exception, it was recently implemented on a temporary basis by an executive order, as explained in Goodwin's March 23, 2020 client alert.)

Under the WARN Act regulations, business circumstances are unforeseeable for these purposes if they are the result of "some sudden, dramatic, and unexpected action or condition outside the employer's control." There are two key requirements. First, the reductions must not have been "reasonably foreseeable at the time that 60-day notice would have been required." The second is that the employer must provide "as much notice as is practicable." Certainly near-term COVID-19 reductions were not reasonably foreseeable 60 days ago. However, once they become reasonably foreseeable as a result of a "sudden, dramatic, and unexpected action or condition," then the employer must give what notice it can, or it may lose the right to use this exception. A separate exception, known as the "natural disaster" exception, may also be available, but its applicability has not been tested. Regardless of whether an employer relies on either or both of these exceptions, the required

notices to employees and certain governmental entities must be given as soon as is practicable and must include "a brief statement of the reason for reducing the notice period," in addition to other required elements.

If the number of affected employees could implicate the WARN Act and if the WARN Act exceptions may be inapplicable, one of the advantages of a furlough over a layoff is that it may avoid triggering a WARN Act event. Specifically, even if the number furloughed employees equals a number of employment losses that would result in a WARN Act event, the furloughs will not be subject to the WARN Act if enough furloughed employees are recalled to work within six months of the start of the furlough.

6. WHAT CONSIDERATIONS APPLY TO PAY REDUCTIONS?

As discussed above, PPL Program participants can be subject to limits on loan forgiveness opportunities if they implement pay reductions of over 25% for employees earning less than $100,000 per year.

In addition, as noted above, while a reduction in hours can itself be an employment loss for WARN Act purposes, it will not be if an employee's reduction in hours of work does not reach more than 50% during each month of a six month period.

Further potential issues arise for employers that consider reducing salaries for exempt employees as a means of preserving cash in the event of a prolonged slowdown. While a reduction of an exempt employee's salary typically will not jeopardize exempt status, if the reduction brings the employee's salary below the minimum level required to qualify under most "white collar" exemptions, that reduction will make such an employee nonexempt and eligible for overtime. Specifically, under the FLSA and Massachusetts law, the minimum to satisfy the salary basis test is $684 weekly ($35,568 annualized), while in California the minimum salary basis threshold is $960 weekly ($49,920 annualized) for small employers and $1,040 weekly ($54,080 annualized) for employers with more than 25 employees. In New York, the minimum salary threshold depends on the employer's location. It is $58,500 in New York City, $50,700 for Westchester and Long Island, and $46,020 for the rest of the state. Once an employee is reclassified as nonexempt, U.S. Department of Labor guidance indicates that the employee may not be able to be restored to exempt status merely by increasing his or her salary (unless, for example, the salary was reduced in connection with a change or reduction in job duties and responsibilities to make it a different job, and the reversion to the higher salary is accompanied by the resumption of full duties and responsibilities).

In addition, employers contemplating pay reductions should also review any employment agreements with affected employees to assess whether the reductions would breach employment agreement terms and/or give rise to an employee's contractual right to terminate employment for "Good Reason" and become eligible for severance pay.

7. COULD AN EMPLOYER SUPPLEMENT EMPLOYEES' UNEMPLOYMENT INSURANCE BENEFITS DURING A FURLOUGH?

Unemployment insurance standards vary from state to state, so an employer should check the relevant state's unemployment insurance law to determine whether payments to furloughed employees will affect unemployment insurance benefits. In California, employer payments to supplement unemployment insurance benefits pursuant to an established plan are not considered wages and do not offset or disqualify an employee from receiving unemployment insurance benefits. In Massachusetts, by contrast, employer payments can affect benefits. An employer may pay an employee up to 1/3 of the employee's weekly unemployment insurance benefit without affecting such benefits, but payments above that amount will reduce the weekly unemployment benefit, dollar for dollar. In New York, employees who receive weekly dismissal or severance payments remain eligible for unemployment insurance benefits so long as any weekly payments are less than the maximum weekly benefit, or if any dismissal or severance payments start more than 30 days after the last

day worked. Employees who work part-time are also eligible for partial benefits if they work less than four days a week and earn the maximum weekly benefit or less. The weekly benefit amount is reduced by 25% for each of day of work. An employee's receipt of partial benefits in a week will extend the period of time that unemployment benefits may be collected.

Note that in Massachusetts, accrued vacation pay that is paid to an employee at the time of a layoff or at the commencement of an indefinite furlough will not impact the employee's receipt of unemployment benefits. However, if vacation pay is provided to an employee during a temporary furlough with a definite or approximate date of recall, the position of the Massachusetts Department of Unemployment Assistance is that the payment is disqualifying for the period to which the vacation pay can reasonably be applied.

8. WHAT ARE THE CONSEQUENCES FOR AN EMPLOYER IF A FURLOUGHED EMPLOYEE PERFORMS WORK DURING A FURLOUGH?

While a furlough may provide an employee with a greater sense of ongoing connection to the employer, an employer needs to be careful to ensure that a furloughed employee does not perform work during the furlough. Under the FLSA, any employee is entitled to be paid if the employer "suffer[s] or permit[s] [the employee] to work." Moreover, if an employee is classified as exempt and is required to be paid on a salary basis (as is required for the primary categories of exempt employees), the employee is generally entitled to be paid his or her full regular salary for the week if he or she performs any work, regardless of how much or how little work he or she performs.

This rule also applies to a workweek when an employer commences or ends a furlough. Therefore, it is important to commence a furlough at the end of a workweek and include in a furlough notice an express instruction that the furloughed employee is not authorized to perform any work while on the furlough.

Many employers suspend company email accounts and other systems access during a furlough. Doing so not only helps to preserve confidential information, but it also helps to ensure that employees are not performing work by monitoring emails.

9. COULD AN EMPLOYEE RECEIVE PAID SICK LEAVE OR PAID FAMILY LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT ("FFCRA") WHILE ON A FURLOUGH?

No. The FFCRA provides for paid sick leave and paid emergency leave under the Family and Medical Leave Act (the "FMLA") for certain specified reasons related to COVID-19. These provisions are described in Goodwin's March 19, 2020 client alert. The U.S. Department of Labor has recently issued guidance that if an employer is open on or after April 1, 2020 but furloughs an employee because it does not have enough work or business, the employee is not entitled to take paid sick leave or emergency FMLA leave under the FFCRA. The guidance states that the employee may be eligible for unemployment insurance benefits and should contact his or her state workforce agency or unemployment insurance office for specific questions about eligibility. If the employer closes its worksite while an employee is on paid sick leave or emergency FMLA leave under the FFCRA, the employer must pay the employee only for the paid leave used before the employer closed; if an employer closes its worksite before April 1, 2020 or before an employee takes paid leave under the FFCRA, the employee is not eligible for the leave, even if the employee had already requested the leave prior to the closure. The Department of Labor guidance is available here.

10. WHAT OTHER STEPS SHOULD AN EMPLOYER TAKE IF IT IMPLEMENTS A FURLOUGH?

Employers should consider the effect of a furlough on paid time off policies. Employers with "unlimited" nonaccrual vacation policies should modify or suspend such policies before a furlough to ensure that employees on a furlough do not have an expectation of continued eligibility.

Employers with traditional, accrual-based vacation policies should consider modifying those policies to ensure that vacation accruals are suspended during a furlough. Employers should also review their vacation policies and relevant state law to determine whether accrued vacation must be paid to employees at time of furlough. In California, for instance, unless the furlough is less than 10 days and there is a definitive date for return, accrued vacation must be paid out along with the final pre-furlough wages.

As noted above, employers should review all benefit plans, including medical, dental, vision, disability and life insurance to determine whether coverage may continue during a furlough and, if that is not authorized under the plans, consider reaching out to insurers to obtain authorization for coverage extensions. Some health insurers have authorized employers to continue furloughed employees on benefit plans for a defined period without triggering COBRA. If an employer is able to allow furloughed employees to remain on a plan without triggering COBRA, the employer needs to decide how to address employee premium cost-sharing, such as assuming the entire premium for the coverage or requiring the furloughed employee to make a monthly payment at the regular employee contribution level to maintain coverage.

11. THERE IS A GREAT DEAL HERE TO CONSIDER. WHAT ARE THE KEY CONSIDERATIONS THAT AN EMPLOYER SHOULD TAKE INTO ACCOUNT IN DECIDING ON A COURSE OF ACTION?

There are many considerations, but some of the key questions are the following:

- Does the employer satisfy the size and other requirements to be eligible for the PPL Program? If yes, will the employer be applying for a loan and seeking loan forgiveness?
- Do the numbers of affected employees potentially implicate the WARN Act or a mini-WARN Act?
- If the employer will be taking some action to reduce payroll costs, does the employer anticipate returning a substantial portion of its pre-COVID-19 workforce and, if so, how soon?
- Does the employer expect that it will need to scale up its workforce quickly after the crisis abates?
- Would there be substantial advantages to the employer by returning past employees instead of hiring new employees (e.g., recruiting and training costs)?
- Is it likely that the affected employees will be entitled to receive the federal supplemental unemployment insurance benefits?
- Does the employer anticipate providing some continued pay and/or benefits to employees whom it seeks to reduce from its workforce, at least temporarily?
- Would it be advantageous to obtain a release of legal claims or are the business reasons for the selection decisions so clear that the value of a release of legal claims is limited?

Every employer's situation is unique. The COVID-19 pandemic presents a constantly evolving set of challenges for employers. There are numerous employment-related issues to be considered before an employer takes any of the actions identified here, including contractual obligations, wage and hour laws, employer policies, sick leave entitlements, disability pay laws and policies, discrimination and retaliation risks, pay equity considerations, compliance with release of claims requirements under the Older Workers Benefit Protection Act, key talent retention, scalability after the crisis, employee morale and possible reputational harm

in the marketplace, to name just a few. Employment counsel should be consulted before taking any employment actions in response to the current crisis.

[1] A state must enter into and participate in an agreement with the Secretary of Labor in order to participate in the federal pandemic unemployment compensation program.

[2] A state must enter into and participate in an agreement with the Secretary of Labor in order to participate in this program as well.

[3] Governor Cuomo of New York has also announced that New York State is waiving work search requirements during the pandemic.

[4] A state must enter into and participate in an agreement with the Secretary of Labor in order to participate in this program.

[5] Note that unemployment benefits are taxable to the employee at both federal and state levels.

[6] An employee's receipt of unemployment benefits will affect the employer's experience rating, which could result in an increase in the employer's contribution rate.

* * *

Please visit Goodwin's **Coronavirus Knowledge Center**, where firm lawyers from across the globe are issuing new guidance and insights to help clients fully understand and assess the ramifications of COVID-19 and navigate the potential effects of the outbreak on their businesses.

CONTACTS:

Jennifer Merrigan Fay
Partner
+1 617 570 1943
jfay@goodwinlaw.com

Robert M. Hale
Partner
+1 617 570 1252
rhale@goodwinlaw.com

Bradford J. Smith
Partner
+1 617 570 1256
bsmith@goodwinlaw.com

---

members of Goodwin Procter (UK) LLP is available for inspection at the registered office. Goodwin Procter (UK) LLP is authorized and regulated by the Solicitors Regulation Authority.

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this informational piece (including any attachments) is not intended or written to be used, and may not be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.