

THE BOND PROVISIONS OF THE STIMULUS ACT

April 15, 2009

To Our Clients and Friends:

The American Recovery and Reinvestment Act of 2009 (“the Act”), creates new and expanded financing alternatives for projects that traditionally have been financed with tax-exempt bonds. Furthermore, it expands the types of projects that qualify for such financing. Prompt utilization of these provisions is advisable because they are generally available for only limited periods of time and many are subject to volume limitations. The Treasury is moving expeditiously to provide guidance, and by April 9, 2009, it had issued five separate notices on the operation of these provisions. More guidance is likely to follow.

EXPANDING THE MARKET

The Act provides for issuance of taxable debt obligations that entitle bondholders to claim federal income tax credits for periods during which they hold the bonds. In some cases, the issuer may elect to receive a federal subsidy in lieu of allowing the holders to claim a tax credit on such instruments. Consequently, the new law is designed to significantly expand the types of potential purchasers of such obligations to include investors generally not subject to U.S. tax. The Act also makes changes in the tax rules applicable to regulated investment companies to facilitate ownership of the new types of obligations by such investment companies and contemplates separation of the ownership of certain qualified tax credit bonds from the entitlement to the tax credits.

EXPANDING THE TYPES OF ELIGIBLE FACILITIES

The Act (i) expands the definition of “exempt facilities” for which tax-exempt bonds may be issued; and (ii) provides various types of bond-financing incentives to promote investment in designated types of infrastructure projects, including renewable energy, conservation and other green energy projects, as well as a wide range of facilities within economically-depressed areas. These financing alternatives are available to finance government-owned projects and, in certain cases (as mentioned below), so-called private activities.

BUILD AMERICA BONDS

Two different types of Build America Bonds (“BABs”) can be issued to finance the same kinds of expenditures (*e.g.*, capital expenditures and working capital expenditures) and may involve the same kinds of financings (*e.g.*, original new money financings, current refundings and one advance refunding) as tax-exempt governmental bonds (other than private activity bonds). Build America Bonds may not be issued for any purposes for which tax-exempt governmental bonds could not be issued under §103 (*e.g.*, prohibited second advance

refunding issues or pension annuity issues). There is no cap on the dollar amount of BABs that may be issued in 2009 and 2010.

Build America Bonds (Direct Payment) ("Direct Payment BABs"). These permit state and local governments to issue taxable bonds during 2009 and 2010 to finance traditional governmental projects and receive a payment from the Treasury of 35% of the taxable interest on the bonds.

Build America Bonds (Tax Credit) ("Tax Credit BABs"). These are identical to Direct Payment BABs except that, in lieu of the direct payment to the issuer, holders are entitled to claim a credit in an amount equal to 35% of the taxable interest on the bonds. Any tax credits received by a holder will be treated as taxable interest income.

RECOVERY ZONE BONDS

Two types of bonds may be issued in 2009 and 2010 to finance "recovery zone property" located in distressed areas referred to as "recovery zones." Recovery zone property generally includes new depreciable tangible property used in the active conduct of a qualified business. A "qualified business" is any trade or business other than rental to others of residential real property or the operation of (or provision of land for) certain recreational, gaming and other prohibited facilities. A recovery zone includes any area designated by an issuer as having significant poverty, unemployment, rate of home foreclosures or general distress, or as being economically distressed by reason of the closure or realignment of a military installation pursuant to the Defense Base Closure and Realignment Act of 1990.

Recovery Zone Economic Development Bonds. Recovery Zone Economic Development Bonds are taxable obligations that may be issued in 2009 and 2010 to finance up to \$10 billion of recovery zone property (as described above). Like Direct Payment BABs, the issuer receives a subsidy from the Treasury, except that the subsidy is increased to 45% of the interest on the bonds.

Recovery Zone Facility Bonds. Recovery Zone Facility Bonds are traditional tax-exempt bonds that may be issued in 2009 and 2010 to finance up to \$15 billion of recovery zone property (as described above). Recovery Zone Facility Bonds are treated as exempt facility bonds and so generally are subject to the same rules as other exempt facility bonds (except that they are subject to their own volume cap limitation and are permitted to be issued to finance the acquisition of existing property).

RENEWABLE ENERGY BONDS

New Clean Renewable Energy Bonds ("New CREBs"). New CREBs may be issued to finance up to \$2.4 billion of capital expenditures on facilities that produce electricity from qualified energy resources such as wind, biomass, geothermal energy and municipal solid waste (*i.e.*, the same facilities for which private companies can claim the production tax

credit). However, New CREBs must be issued by a state or local government, public power provider, cooperative electric company or certain other similar types of issuers, and a facility financed with New CREBs must be owned by either a public power provider, a state or local government or a cooperative electric company. The statute is silent as to whether the private activity bond tests apply to New CREBs. Holders of New CREBs will be entitled to a credit in an amount intended to equal 70% of the interest the Treasury estimates the issuer would ordinarily pay to sell the bonds at par. Any interest or tax credits received by a holder will be treated as taxable interest income. Applications to issue New CREBs are due August 4, 2009.

Qualified Energy Conservation Bonds ("QECS"). QECSs may be issued not only to finance capital expenditures on the same projects eligible for New CREBs, but also to finance projects aimed generally at energy conservation and reduction of greenhouse gas emissions, including, among others, mass-commuting facilities, education programs and expenditures with respect to certain research facilities. The Treasury will allocate up to \$3.2 billion of QECS funding, 30% of which may be used for private activity bonds. Holders of QECSs will be entitled to a credit in an amount intended to equal 70% of the interest the Treasury estimates the issuer would ordinarily pay to sell the bonds at par. Any interest or tax credits received by a holder will be treated as taxable interest income.

OTHER TYPES OF BONDS

The Act creates or modifies the provisions applicable to other types of bonds, most of which are likely to be of limited interest to our private sector clients in light of the nature and extent of their business activities. For example, the Act contains provisions relating to Small Issue Industrial Development Bonds, specialized types of school bonds and Tribal Economic Development Bonds.

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