

Glossary of Indian Tribal Finance

(Second Edition)

Townsend Hyatt



orrick

Glossary of Indian Tribal Finance

(Second Edition)

Townsend Hyatt

orrick.com



Contents

Introduction1

About the Author2

About Orrick2

A3 N74

B12 O78

C19 P81

D30 Q88

E38 R89

F43 S96

G49 T104

H53 U110

I55 V112

J62 W113

K63 Y114

L64 Z117

M69

Introduction

Discussions about borrowing money can be confusing. Bankers, lawyers and other industry professionals use terminology that is widely understood within the business but which is not a part of everyday conversation. If you have ever picked up a credit agreement or tried to evaluate a financing proposal, you may have felt like you needed an interpreter.

This glossary is intended as a handy reference guide for tribal leaders and finance officers and for those who work closely with them. We have tried to cover a variety of borrowing situations from bank loans, to taxable or tax-exempt bonds, to high-yield note offerings and more. In each case, we have tailored the explanations to the unique circumstances that affect Indian tribal governments and business enterprises when they borrow money for tribal projects. The glossary is not meant to be comprehensive, and it is not intended as legal advice. We hope you find it useful.

ABOUT THE AUTHOR

Townsend Hyatt is a partner at Orrick in Portland, Oregon. For over twenty years, he has represented Indian tribal borrowers as well as financial institutions doing business in Indian country. He is ranked in Band One (highest category) by Chambers USA and also by U.S. News / Best Lawyers in the field of Native American law. Mr. Hyatt can be reached by email at thyatt@orrick.com or by telephone at 503.943.4820.

Mr. Hyatt gratefully acknowledges the contributions made by his colleague, **Courtney Muraski**, in publishing the first edition of this glossary.

ABOUT ORRICK

Orrick, Herrington & Sutcliffe LLP represents Indian tribal governments and their business enterprises around the country in debt financings of almost every type. In addition, we represent many financial institutions who provide funding for tribal projects. Our Tribal Finance Group includes attorneys and legal professionals in various practice areas throughout the firm, including Public Finance, Corporate, Banking, Tax, Litigation and Securities practices.

- A -

ABOVE PAR – When the current trading price of a bond is above its face value. For instance, a bond may trade above par if interest rates have declined since the bond was issued.

ACCELERATION – A remedy available following an event of default that remains uncured. Future principal and interest payments on indebtedness are declared to be immediately due and payable prior to the scheduled maturity date.

ACCORDION – A provision in a credit agreement allowing the tribal borrower to request an increase of its borrowing capacity under a revolving loan. The tribal borrower may ask one or more of the existing lenders to increase the amount of their commitments usually on the same terms already in place (interest rate, maturity, etc.). If the lenders are willing, then their commitments may be increased subject to certain conditions (such as no existing defaults). The existing credit agreement expands—like an accordion—and thus the name. It is important to note that an accordion is not pre-committed financing as the lenders are not required to increase their commitments. *Compare: INCREMENTAL FACILITY.*

ACCOUNT CONTROL AGREEMENT – An agreement that is used to perfect a secured lender’s interest in collateral held in a deposit account or securities account. An account control agreement provides that upon notice from the secured party, the party holding the collateral will follow instructions of the secured party with respect to the collateral without any further consent from the debtor. *See: CONTROL.*

ACCREDITED INVESTOR – An investor who meets the requirements described in Rule 501 of Regulation D under the ‘33 Act. In general, accredited investors include a variety of institutional investors (such as banks, insurance companies, investment companies, corporations and partnerships) and may also include high net worth individuals who are capable of understanding

the risk and bearing the potential loss of an investment. Indian tribes are not expressly recognized in the '33 Act as accredited investors. *Compare: SOPHISTICATED INVESTOR.*

ACCRUED INTEREST – Interest that is earned but has not yet been paid.

AD VALOREM TAX – A tax that is “according to value,” meaning it is based on the value of an item of property or a transaction. Usually, it is expressed as a percentage.

ADDITIONAL BONDS – A supplemental series of bonds issued under the same trust indenture or which otherwise has a lien on the trust estate pledged to outstanding bonds. Additional bonds usually are on parity with outstanding bonds, but in some cases they may have either a subordinate lien or a senior lien on the trust estate. An additional debt test in the trust indenture will govern the ability to issue additional bonds.

ADDITIONAL DEBT – Indebtedness (whether in the form of bonds, a loan or otherwise) that is in addition to a particular borrowing. Most credit agreements and trust indentures place limits on the amount of additional debt that a tribal issuer may incur without the lenders’ or bondholders’ approval. This general limitation may be subject to exception through application of an additional debt test based on leverage or performance or through certain “baskets” of additional debt that is expressly permitted by the bank or bond documents.

ADDITIONAL DEBT TEST – A contractual covenant that limits the tribe’s ability to incur more debt after the loan is closed or the bonds are issued. The covenant may limit all debt, or it may limit only certain kinds of debt. Usually, the test includes a financial ratio that measures the relationship between net revenues or EBITDA and debt service requirements for both the existing debt and the proposed debt on an historical pro forma basis.

ADMINISTRATIVE AGENT – In a syndicated loan, the bank handling administrative duties on behalf of the other banks who are parties to the credit agreement. In most cases, the administrative agent is the bank with the largest pro rata commitment.

ADMINISTRATIVE AGENT FEE – A fee charged by the Administrative Agent for services rendered in that capacity under a credit agreement. In most cases, it is an annual fee negotiated at the time a fee letter or commitment letter is signed.

ADVANCE – The provision of funds (i.e., a borrowing) under a credit agreement.

ADVANCE REFUNDING – A tax-exempt refunding in which the bonds being paid off remain outstanding for longer than 90 days after new refunding bonds are issued. Proceeds of the new refunding bonds are invested in yield-restricted investments that are used (with limited exceptions) to pay principal and interest on the old bonds until they are retired.

AFFILIATE – A business organization that has some common ownership or control with another business organization.

AFFILIATE TRANSACTION – A type of transaction that is entered into between a borrower and an affiliate that may or may not be in the ordinary course of business. Financing agreements will usually permit certain types of affiliate transactions and restrict others unless specified conditions are satisfied. These provisions are usually called “affiliate transaction covenants.”

AFFIRMATIVE COVENANT – A type of covenant that requires a tribal borrower to affirmatively do some particular act, for example, provide ongoing financial reports. *Compare: NEGATIVE COVENANT.*

AFTER-ACQUIRED PROPERTY CLAUSE – A provision in a security agreement or other document stating that the lender’s security interest extends to certain types of future property acquired by the debtor.

AGGREGATE COMMITMENT – A term used to describe the total (aggregate) commitments of all lenders pursuant to a credit agreement.

AGGREGATE PRINCIPAL AMOUNT – The total dollar principal amount of all bonds and other parity debt that is outstanding on any particular date.

ALL IN COST or ALL INCLUSIVE COST (AIC) – A measurement of the total cost of a bond financing, expressed as the interest paid or received for total costs of the financing. All-in costs include spread, discount, interest payments, and any other fees resulting from the transaction. Some banks, for example, may quote an all-in cost of a loan, expressed as a percentage of the loan’s face value.

ALTA SURVEY – A real property survey prepared by a professional surveyor for a title company and/or lender, which includes boundary lines, location of main buildings including improvements, location of ancillary buildings, the

identification of access to the land and easements (access rights by service companies such as water, gas, telephone, railways and other utilities) and the identification of any encroachments from or upon the land. An ALTA/ACSM land survey meets requirements detailed by the American Land Title Association, the National Society of Professional Surveyors and the American Congress on Surveying and Mapping. *See: AS BUILT SURVEY.*

ALTERNATIVE MINIMUM TAX (AMT) – An alternative method of calculating federal income tax that is designed to ensure that individual and corporate taxpayers cannot avoid liability for paying federal income tax. Certain tax preference items, such as interest on some private activity bonds that would otherwise be exempt from taxation, are added to the gross income of the taxpayer for purposes of calculating the federal income tax liability. Tax-exempt bonds subject to AMT price and trade differently than bonds that are not subject to AMT.

ALTERNATIVE TRANSACTION FEE – A fee owed to the arranger or lender under a tail provision.

AMEND AND EXTEND (A&E) – Extending the maturity of a revolving or term loan under a credit agreement on a non-pro rata basis. The maturity of loans provided by certain lenders are extended while the maturity of other loans is unchanged. Often this is done by amending the credit agreement to include two different tranches—one with an extended maturity (usually at current-market pricing) and the other with no change in maturity or pricing. An A&E reduces refinancing risk by allowing a tribal borrower to extend the maturity of a portion of its debt and is generally less expensive than a full refinancing. *Compare: ACCORDION.*

AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA) – Legislation enacted in February 2009 as economic stimulus legislation that contained a number of provisions that benefit Indian country, such as Tribal Economic Development (TED) Bonds and Build America Bonds (BABs).

AMORTIZATION – The process of paying off the principal of a debt through regular periodic payments. Usually, such payments are made on a monthly basis. The payments may go immediately towards reducing the principal balance, or they may go into a sinking fund to be used for that purpose on a future date. Borrowings may be structured to amortize on a level debt service basis, on a level principal basis, with a balloon maturity, or otherwise. *See: TERM. Compare: BULLET MATURITY.*

AMORTIZATION PERIOD – The period of time over which a debt amortizes. The amortization period may or may not coincide with the term of the debt. For example, a borrowing with an interest-only period would have an amortization period that is shorter than the term of the borrowing.

AMORTIZATION SCHEDULE – See: *DEBT SERVICE SCHEDULE*.

AMT – See: *ALTERNATIVE MINIMUM TAX*.

ANNUAL DEBT SERVICE – For any year in question, the amount of debt service coming due in that year (whether by scheduled maturity, mandatory redemption or otherwise).

ANTI-FRAUD PROVISIONS – These are federal securities laws that prohibit fraud in the form of material misstatements or omissions in connection with issuance and sale of securities, including tribal bonds. In particular, these include Section 17(a) of the '33 Act, Section 10(b) of the '34 Act, Rule 10b-5 and other related rules.

APPLICABLE MARGIN – An additional amount (expressed as a percentage) that is added to the base rate or to the LIBOR rate to determine the interest rate payable on variable rate debt. Credit agreements often allow the borrower to select an interest rate based on either the base rate or LIBOR, plus a specified percentage. The specified percentage is the applicable margin, which is often based on a function of grid-based pricing or some other measure of performance. See: *GRID BASED PRICING*.

ARBITRAGE – The buying and selling of something in different markets and profiting from the difference in price between the markets. In tax-exempt finance, arbitrage refers to borrowing at a cheaper, tax-exempt rate of interest and investing the proceeds in higher yielding taxable obligations. Federal tax law generally restricts the ability of a governmental borrower to earn arbitrage by using tax-exempt debt, and there is a complex set of federal rules and regulations designed to prevent impermissible levels of arbitrage earnings.

ARBITRAGE CERTIFICATE – A document executed by a governmental borrower when issuing tax-exempt debt certifying various matters relating to how the proceeds of the borrowing will be expended and invested prior to expenditure. The arbitrage certificate is intended to underscore the importance of complying with federal tax laws relating to arbitrage.

ARBITRAGE EARNINGS – Investment earnings on proceeds of a tax-exempt

borrowing (and certain related funds) that exceed the yield on the borrowing itself.

ARBITRAGE REBATE – Payments made by a governmental issuer to the U.S. Treasury to offset any arbitrage earnings on tax-exempt debt and related funds, except for earnings not required to be rebated under limited exemptions. Generally, the calculation of arbitrage rebate is made once every five years during the life of tax-exempt debt.

ARBITRAGE YIELD – For federal tax law purposes, the yield on an issue of tax-exempt debt obligations used to calculate the amount of arbitrage earned, positive or negative, by a governmental borrower.

ARBITRATION – A dispute resolution mechanism where two or more parties submit their disagreement to a single arbitrator or a panel of arbitrators for resolution. Arbitration decisions are generally binding on the parties, and the U.S. Supreme Court has held that agreements to arbitrate, under certain circumstances, may constitute a waiver of tribal sovereign immunity.

ARRA – *See: AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.*

ARRANGER – A lender (or its affiliate) who plays the role of coordinating other participants and “arranging” the transaction.

ARTICLE 8 – This is the article under the UCC that governs securities.

ARTICLE 9 – This is the article under the UCC that governs the creation, attachment and perfection of security interests in personal property and fixtures.

AS-BUILT SURVEY – A survey of real property showing buildings, utilities and other improvements. Lenders often require this as a follow-up diligence item once construction of a project has been completed.

ASSESSMENT – A charge imposed on the owner of real property to pay the cost of improvements that directly serve or benefit that property.

ASSET SALE CLAUSE – An affirmative covenant requiring a borrower to make an unscheduled mandatory prepayment of its debt from any net cash proceeds that were obtained from a sale of business assets outside the ordinary course.

ASSIGNMENT – The transfer of a contractual agreement between two parties.

An assignor usually transfers all of its rights and interests to an assignee. So, if a lender assigns its loan and rights under a credit agreement, the assignee steps into the shoes of the original lender. *Compare: PARTICIPATION.*

AT PAR – A bond issued at par is sold at its face value. *Compare: ABOVE PAR; BELOW PAR.*

ATTACHMENT – A procedure established under Article 9 of the UCC which creditors must comply with in order to obtain a security interest in property owned by a debtor. Attachment alone does not establish priority over other creditors. *See: PERFECTED SECURITY INTEREST.*

ATTORNEY GENERAL – Chief legal officer of a tribe. *See: GENERAL COUNSEL.*

AUCTION RATE SECURITIES – Variable rate securities whose interest rate is reset periodically under an auction process. Some tribes have acquired auction rate securities as part of their own investment portfolio, but very few tribes have issued their own auction rate securities.

AUDIT REPORT – The most reliable type of financial statements. The report is prepared by an auditor following its audit or investigation of a tribal borrower's financial position and results of operations for a given period of time. Typically, the report should include: (a) a statement of the scope of the audit; (b) explanatory comments concerning exceptions from generally accepted accounting principles and auditing standards; (c) expression or disclaimer of opinions; (d) explanatory comments concerning verification procedures; (e) financial statements and schedules; and (f) statistical tables, supplementary comments and recommendations.

AUDITED FINANCIAL STATEMENTS – *See: AUDIT REPORT.*

AUTHENTICATION – Attestation on a bond certificate by a bond trustee that the bond is genuine and authentic.

AUTHORITY – A special purpose division or instrumentality of a tribal government, usually formed for a particular purpose, such as an economic development authority or a housing authority. Unlike a corporation, an authority in most cases has no separate legal existence from the tribe itself, and so it functions much like an agency of state government would function. In some cases, tribal authorities are created for the purpose of financing projects through the issuance of bonds or other debt and then operating the project that is being financed. Tribal authorities enjoy varying degrees of

independence and autonomy based on whatever powers are delegated to them by the host tribal government.

AUTHORIZED DENOMINATION – The dollar amount(s) in which bonds or other securities may be issued and sold as authorized by a trust indenture. The lowest dollar amount is often referred to as the “minimum denomination.”

AUTHORIZED REPRESENTATIVE – A term that refers to an individual that is designated by a governing body to take certain actions in connection with a borrowing. They may have delegated authority to sign documents or approve certain financing terms.

AUTHORIZING RESOLUTION – A resolution or other action taken by a tribal borrower’s governing body to authorize a financing transaction. Depending on the circumstances, this may be a resolution of General Council, Tribal Council or an enterprise board. The resolution is adopted prior to closing the transaction and will often include the following elements, among others: (i) a description of the project and the proposed borrowing, (ii) citation to provisions of tribal law that permit the borrowing, (iii) security and sources of repayment for the borrowing, (iv) a list of the various contracts and other material documents that are being approved, (v) the adoption of certain laws for purposes of the transaction, (vi) a finding that the transaction complies with tribal law, (vii) a limited waiver of sovereign immunity and process for dispute resolution, and (viii) a nonimpairment covenant. In most cases, the authorizing resolution will be adopted by tribal council. However, in some cases, tribal law may not delegate such powers to the tribal council, and approval must be from the general council in the form of a vote or referendum.

AVAILABILITY – The amount of additional borrowing capacity that remains under a revolver at any given point in time. Availability often goes down according to a negotiated schedule.

AVERAGE ANNUAL DEBT SERVICE – For any year in question, the average amount of annual debt service coming due each year over the life of the bonds. Sometimes the final year leading up to the maturity date is not counted for purposes of this calculation. Average annual debt service may be used as part of the debt service coverage ratio or for calculating the debt service reserve fund requirement.

AVERAGE LIFE – A measurement of how rapidly a borrowing will be repaid. Specifically, it is the weighted period of time required to repay half of a borrowing through scheduled principal payments. The average life is sometimes referred to as the “weighted average life” or the “weighted average maturity” and is an informational requirement for purposes of completing an IRS 8038-G form.

- B -

BALANCE SHEET – A report showing the assets, liabilities and equity of the tribal borrower as of a particular date. A financial “snapshot.” *Compare: INCOME STATEMENT.*

BALLOON PAYMENT – A payment, which usually comes at maturity, where a disproportionately large portion of the principal amount of the debt comes due in a large, single “balloon” payment.

BANK BOOK – *See: CONFIDENTIAL INFORMATION MEMORANDUM.*

BANK QUALIFICATION (or BANK QUALIFIED) – Shorthand expression for a “qualified tax-exempt obligation” under Section 265 of the Internal Revenue Code. This is a special category of tax-exempt debt having benefits particularly attractive to banks. Specifically, in addition to the benefits of tax exemption, banks who make bank qualified loans or buy bank qualified bonds can deduct up to 80% of the associated carrying costs. Bank qualified status may be available in borrowings for essential governmental functions if the tribal issuer reasonably expects not to incur more than \$10 million of tax-exempt debt in the same calendar year as the borrowing in question.

BANK SECRECY ACT – Shorthand for the Financial Recordkeeping and Reporting of Currency and Foreign Transactions Act of 1970. This legislation is designed to detect illegal activity through tracking monetary transactions by requiring that financial institutions and certain businesses (such as casinos) file reports of suspicious activity. Representations and warranties geared towards Bank Secrecy Act compliance are often included in loan documents.

BANKRUPTCY CODE – The U.S. Bankruptcy Code (Title 11 of the US Code) sets forth a process under federal law whereby a person or entity may restructure its debts and obligations if it is unable to pay. However, as a matter of law, it is unclear if Indian tribes or their subordinate entities are eligible to use the Bankruptcy Code.

BASE RATE – A variable rate of interest used for credit agreements, often defined to mean the higher of (i) the prime rate, (ii) the federal funds effective rate plus a specific percent, and (iii) the daily or monthly LIBOR rate plus a specific percent.

BASE RATE LOAN – A loan bearing interest as a function of the base rate, usually the base rate plus the applicable margin.

BASIS POINT – 1/100 of 1 percent (.01%), used to express yield differentials. For example, if a yield increases from 8.25% to 8.26%, the difference is referred to as a one basis point increase. Often a basis point is referred to as “bp.”

BASKET – One or more categories of additional debt that a borrower may incur under the terms of the financing agreements. For example, an equipment “basket” that allows the tribe to incur additional debt for equipment up to a certain dollar limit.

BELOW PAR – When a bond’s current trading price is below its face value. A bond may trade below par when interest rates have risen since the bond was issued, when there is an excess supply of similar bonds, or when there are credit concerns about the bond.

BENEFICIAL OWNER – The person (or persons) to whom the benefits of ownership of bonds or other securities run, even though the bonds or securities may be registered in the name of another person (such as DTC) or held in an account over which another person has investment discretion.
Compare: BONDHOLDER.

BEST EFFORTS – An agreement by the financial party who is leading the transaction (typically, an arranger or placement agent) to use commercially reasonable efforts to find lenders (if the transaction is structured as a loan) or to find investors (if the transaction is structured as a securities offering). A best efforts undertaking is not a commitment by the financial party itself to provide the actual funds which the tribal borrower or tribal issuer is seeking.
Compare: FIRM COMMITMENT UNDERWRITING.

BIA – See: *BUREAU OF INDIAN AFFAIRS.*

BIA GUARANTEED LOAN – A loan for “economic development” purposes that is federally guaranteed through a program administered by the Office of Indian Energy and Economic Development pursuant to the Indian Financing Act of 1974. For qualified loans, the federal government guarantees up

to 90% of the unpaid principal and interest on loans to tribal governments, commercial enterprises and Indian-owned businesses.

BIG BOY LETTER – See: *INVESTOR LETTER*.

BLANKET LETTER OF REPRESENTATIONS (BLOR) – See: *DTC LETTER OF REPRESENTATIONS*.

BLENDED RATE – (1) An interest rate charged on a loan that is in between an old rate and a new rate. A blended rate is typically offered through the refinancing of a previous loan. (2) A rate calculated for accounting purposes to better understand the debt obligation for several loans with different rates or the revenue from streams of interest income. The blended rate is used to calculate the pooled cost of funds.

BLOR – Acronym for blanket letter of representations.

BLUE-SKY LAWS – A term that generally refers to state securities laws (as distinguished from federal securities laws). Although these laws vary from state to state, most contain provisions concerning (a) prohibitions against fraud, (b) regulation of broker-dealers doing business in the state, and (c) registration of securities. Blue sky laws may require that certain types of disclosure notices be included in offering documents.

BLUE-SKY MEMORANDUM – A memorandum that describes the treatment of a particular new issue of bonds or other securities under the blue-sky laws of the various states.

BMA – See: *BOND MARKET ASSOCIATION*.

BMA INDEX – The BMA Index is a national, seven-day high-grade market index composed of tax-exempt variable rate demand obligations with outstanding amounts of at least \$10 million that have the highest short-term rating, have their interest rate reset weekly, pay interest on a monthly basis and are not subject to the alternative minimum tax. The BMA Municipal Swap Index (formerly the PSA Municipal Swap Index) tracks market movements and is often used as a benchmark variable rate in tax-exempt interest rate swap transactions.

BOILERPLATE – Standardized language of a type frequently used in contracts and other legal documents, which is understood to have a particular meaning in context. Examples of boilerplate include certain liability disclaimers and cautionary statements.

BOND – The most common type of debt security issued by governments, including tribal governments. There are many different kinds of bonds, which are separately defined and discussed herein. The majority of securities offered by tribal issuers are bonds (as opposed to other types of securities). Therefore, in this glossary we use the word “bond” in a broader, generic sense to include any kind of debt security of a tribal issuer, including senior notes, certificates of participation and other types of securities.

BOND BUYER, THE – The major trade newspaper of the tax-exempt muni industry. The Bond Buyer occasionally reports on developments in Indian tribal finance as well.

BOND COUNSEL – A nationally recognized law firm retained by the tribal issuer to review legal matters and provide an opinion on the validity and, if applicable, the tax-exempt status of the borrowing.

BOND COUNSEL OPINION – *See: OPINION OF COUNSEL.*

BOND FUND – Another name for the debt service fund, which is usually held by a trustee under a trust indenture for payment of debt service on bonds.

BONDHOLDER – The person or entity having a true and legal ownership interest in a bond. In the case of book-entry only bonds, the beneficial owner will often be treated as the bondholder under the purchase agreement, although for certain purposes the entity holding the global certificates representing the entire issue will retain the rights of the bondholder under the purchase agreement. *Compare: BENEFICIAL OWNER.*

BOND INSURANCE – A guarantee of payment provided by a bond insurance company with respect to principal and interest on bonds as they become due if the issuer fails to make required payments.

BOND MARKET ASSOCIATION – The international trade association for the bond market industry. In 2006, the Bond Market Association merged with the Securities Industry Association to form the Securities Industry and Financial Markets Association (SIFMA).

BOND PROCEEDS – The money realized from the issuance and sale of bonds that is paid to the issuer by the purchaser(s) or underwriter of the bonds. Bond proceeds are used to finance the project or other purpose for which the bonds were issued and to pay certain costs of issuance.

BOND PLACEMENT AGREEMENT – See: *PLACEMENT AGREEMENT*.

BOND PURCHASE AGREEMENT (BPA) – See: *PURCHASE AGREEMENT*.

BOND REGISTER – A record, kept by a transfer agent or registrar on behalf of the tribal issuer, that lists the names and addresses of the holders of registered bonds. See: *REGISTRAR*; *TRANSFER AGENT*.

BOND YIELD – A calculation of yield with respect to tax-exempt bond under the Internal Revenue Code for purposes of determining compliance with applicable arbitrage regulations. See: *ARBITRAGE*. Compare: *YIELD*.

BOOK-ENTRY ONLY (BEO) or BOOK-ENTRY SECURITY – A bond or other security that is not available to purchasers in physical form. Instead, it is held in the form of a single, global certificate. Ownership interests of, and transfers of ownership by, investors are reflected solely by appropriate books and record entries. Most bonds are in book-entry only form, and tribal issuers enter into a blanket letter of representations with DTC. See: *GLOBAL NOTE OR CERTIFICATE*.

BOOK RUNNER – The party who determines proportionate allocations among the various lenders or initial purchasers in a syndicate.

BOOK VALUE – The value at which an asset is carried on the financial records of its owner. The book value may differ from the original market value or the current market value.

BORROWER – The tribal party who borrows the money and is the primary obligor on the debt. The term “borrower” is generally used in loan transactions, whereas the term “issuer” is generally used in bond and other securities offerings. The borrower may be the tribal government itself, or it may be a tribal corporation, authority, enterprise or instrumentality.

BORROWER’S COUNSEL – The law firm that represents the tribal borrower in a loan transaction.

BOX – The front portion of an offering memorandum containing a summary description of the offering, the tribal issuer, the business or revenues pledged to support the bonds, historical financial information and material terms and conditions of the financing. This summary is often enclosed within a “box” printed around the outer margins of the pages.

BP – See: *BASIS POINT*.

BPA – See: *PURCHASE AGREEMENT*.

BREAKAGE COSTS – Costs that a lender incurs resulting from a tribal borrower’s action or inaction with respect to a LIBOR loan. For example, if the tribal borrower prepays a LIBOR loan on a day other than the last day of the applicable interest period.

BRIDGE LOAN – A short-term loan (often up to one year) used to provide funding until permanent financing is in place.

BRING DOWN – Reaffirmation of some prior representation, warranty of other statement of fact or opinion. Typically, a bring down certificate references the prior statement, reaffirms its accuracy as of the date it was originally made, and provides that the statement continues to be true and correct as of a new date.

BROKER – Person or firm that acts as an intermediary by purchasing and selling bonds and other securities for others rather than for its own account through agency trades.

BROKER-DEALER – General term for a securities firm engaged in both buying and selling securities for customers (agency trades) and also buying and selling for its own account (principal trades).

BUCKETS – Accounts established within a waterfall.

BUILD AMERICA BOND – A type of taxable bond authorized by ARRA. With Build America Bonds, the federal government pays 35% of the interest cost on the bonds in the form of a federal subsidy. Authority for issuing Build America Bonds expired at the end of calendar year 2011.

BULLET MATURITY – A single long-term maturity that has no amortization of principal prior to maturity. However, in some case, there may be a sinking fund established for the debt. *Compare: BALLOON PAYMENT; SERIAL BONDS; TERM BONDS.*

BUREAU OF INDIAN AFFAIRS (BIA) – The federal agency within the U.S. Department of the Interior that provides services to and oversees many affairs of American Indians and Alaska Natives.

BUSINESS DAY – A term used to describe any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close. If

such day relates to any eurodollar rate loan, means any such day that is also a London banking day.

BUSINESS INTERRUPTION INSURANCE – A type of insurance policy that pays for operating costs of a business (including debt service) for a certain period of time after occurrence of a covered loss. Lenders usually require business interruption insurance in addition to casualty and liability insurance.

BUY SIDE – Institutional investors.

- C -

CALL – See: *REDEMPTION*.

CALL DATE – A date on which bonds may or must be called for redemption.

CALL PERIOD – Period of time during which a tribal issuer may exercise its option to call bonds. Usually, the call period begins when the call protection has expired, but in some cases the call period may be only on certain dates or subject to certain conditions following the non-call period. During the call period, the bonds are referred to as “callable.” See: *NON-CALL PERIOD*.

CALL PROTECTION – Trust indenture provisions that limit a tribal issuer’s ability to redeem bonds prior to maturity or that act as a disincentive to the exercise of optional redemption rights (such as a make whole).

CALLABLE – Subject to optional redemption.

CAP – An upper limit on something that varies or fluctuates under a contract. See: *INTEREST RATE CAP* or *CEILING*.

CAP EX – See: *CAPITAL EXPENDITURES*.

CAP TABLE – Table often included in an offering memorandum showing the tribal issuer’s overall capital structure (debt and equity) as of a particular date. The cap table usually shows both historical numbers and as-adjusted numbers in separate columns that give effect to the use of proceeds as contemplated by the offering.

CAPITAL APPRECIATION BOND – See: *ZERO COUPON BOND*.

CAPITAL EXPENDITURES – Expenditures that are made for the acquisition of or addition to fixed assets and that are capitalized on the tribal borrower’s balance sheet. Capitalized expenditures are then amortized over a period of time longer than one year instead of being treated as an expense incurred during the current period. Credit agreements often contain negative

covenants, which limit the amount of capital expenditures that the borrower may incur.

CAPITAL LEASE – A type of lease that, for accounting and financial reporting purposes, more closely resembles a purchase of the asset that is the subject of the lease. Frequently, the lessor takes ownership of the asset at the end of the lease term. Under GAAP, a capital lease is recorded as both long-term debt and a depreciable asset on the balance sheet of the lessee / borrower. *Compare: OPERATING LEASE.*

CAPITAL MARKETS – *See: INVESTMENT BANKING.*

CAPITALIZED – When something is recorded as a capital expenditure.

CAPITALIZED INTEREST – Borrowed proceeds set aside to pay interest on the borrowing as it accrues for a specified period of time. For example, interest may be capitalized during a project construction period so that the borrower is better assured it can meet debt service requirements during the construction period, after which the project is expected to become operational and produce revenues. Capitalized interest is sometimes referred to as “funded interest.”

CARVE-OUT – An exception to a negative covenant.

CASH COLLATERALIZE – To pledge and deposit cash or cash equivalents as collateral for obligations. Sometimes cash collateralization requirements begin at inception of a loan, and other times they may arise during the life of a loan due to intervening events, such as failure to meet certain operational covenants.

CASH EQUIVALENTS – Generally recognized as short-term, highly liquid investments that are readily convertible into cash and are highly rated such that there is perceived to be minimal risk of changes in value.

CASH FLOW – A financial and accounting term that describes the net amount of cash from operations. Cash flow may be represented as a comparison of cash receipts (revenues) to required payments (e.g., debt service and operating expenses).

CASH SWEEP – *See: EXCESS CASH FLOW SWEEP.*

CEDE & CO. – *See: REGISTERED OWNER.*

CERTIFICATED SECURITY – A security whose ownership may be represented by a physical document. *Compare: BOOK-ENTRY ONLY.*

CERTIFICATE OF INSURANCE – A document that describes a borrower’s insurance policies, levels of coverage, etc., which may be provided for informational purposes.

CERTIFICATE OF PARTICIPATION (COP) – A security evidencing an undivided, pro rata share in a specific stream of pledged revenues, usually lease payments by the issuer that are subject to annual appropriation. The certificate generally entitles the holder to receive a share, or participation, in the lease payments from a particular project. Although common for tax-exempt financings by municipalities, COP structures are rarely seen in Indian country.

CHANGE IN USE – A change in the use of assets financed on a tax-exempt basis from one consistent with tax requirements to one not consistent with tax requirements. Remediation of a change in use may require full or partial call or defeasance of the related tax-exempt bonds.

CHANGE OF CONTROL – An event or series of events by which a borrower ceases to own and control its business, or another person acquires the ability to exercise, directly or indirectly, a controlling influence over the management or policies of the borrower (e.g., through voting rights). Financing agreements often include “change of control” provisions that may trigger an event of default or mandatory redemption.

CHANGE ORDER – The process by which the parties agree to make a change to the scope of work under a construction contract. Change orders may affect cost, timing and other important variables for work being performed. As a result, lenders may reserve the right to review and / or approve change orders.

CHATTEL – An antiquated term for personal property.

CIM – *See: CONFIDENTIAL INFORMATION MEMORANDUM.*

CIRCLE UP – A process where underwriter’s counsel circles select numbers contained in the offering memorandum and sends them to tribal issuer’s accountant to be covered by the comfort letter. *See: TICK AND TIE.*

CLASS I GAMING – Class I gaming as defined in IGRA at 25 USC §2703(6).

This category includes social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.

CLASS II GAMING – Class II gaming as defined in IGRA at 25 USC §2703(7). Class II gaming principally means (i) bingo (whether or not played using electronic, computer, or other technologic aids), (ii) pull tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and (iii) certain card games that are permitted by the laws of the state or not prohibited by the laws of the state if played in conformity with those state laws. Class II gaming does not include (a) any banking card games, such as baccarat or blackjack (21), or (b) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

CLASS III GAMING – Class III gaming as defined in IGRA at 25 USC §2703(8). Class III gaming means all forms of gaming that are not class I gaming or class II gaming. Class III gaming requires either a gaming compact or secretarial procedures.

CLEAN-DOWN – A provision in a revolving loan agreement that requires the borrower to periodically pay off or reduce its debt obligations under the loan agreement for a certain period of time.

CLEARANCE – The process of delivering bonds or other securities from a seller to a buyer, either directly or through their agents. *Compare: SETTLEMENT.*

CLOSING – Generally refers to the date on which all financing documents are executed and delivered by the parties and, in most cases, all conditions for the release of funds have been satisfied.

CLOSING CERTIFICATE – A certificate signed by the tribal issuer at closing that contains certain representations and factual statements required by the transaction participants. It may also contain attachments or exhibits with legal documents necessary to establish legal authority to enter into the financing transaction and related governing body approvals.

CLOSING CHECKLIST – A list of all documents that must be executed and / or delivered as a condition to closing.

CLOSING IN ESCROW – *See: DRY CLOSING.*

CLOSING TRANSCRIPT – A compilation or binder of all agreements, certificates, legal opinions and other materials relevant to the borrowing that are delivered at the closing.

CLUB DEAL – A type of syndicated loan (usually smaller) where the lead bank and other members of the lending consortium share relatively equally in the fees earned.

CODE – See: *INTERNAL REVENUE CODE*.

COLLAR – (1) An agreement combining an interest rate cap and an interest rate floor. (2) An agreement used in conjunction with variable rate debt establishing a range of maximum and minimum interest rates for the debt.

COLLATERAL – Property pledged, mortgaged, or assigned by a borrower to secure the repayment of indebtedness.

COLLATERAL AGENT – A secured party who acts as agent for various creditors that share a security interest in the same collateral. The collateral agent's duties are usually defined by a collateral agency agreement between the tribal borrower, the collateral agent and the various creditors for whose benefit the collateral agent serves.

COLLATERAL AGREEMENT – A collateral agreement as defined under IGRA in 25 CFR §502.5. Specifically, it includes any contract, whether or not in writing, that is related, directly or indirectly, to a management contract, or to any rights, duties or obligations created between a tribe (or any of its members, entities, or organizations) and a management contractor or subcontractor (or any person or entity related to a management contractor or subcontractor).

COLLATERAL VALUE – The estimated fair market value of assets being used as loan collateral, typically determined by some kind of appraisal both initially and on a continuing basis.

COLLATERALIZATION RISK – Risk that circumstances will arise in the future under which a tribal borrower would have to post collateral pursuant to certain interest rate swap agreement provisions.

CO-MANAGER – A term used to describe when there is more than one manager in an offering of bonds or other securities.

COMFORT LETTER – A letter prepared by an independent auditor for the

tribal issuer that is addressed to the placement agent or initial purchaser of bonds concerning the auditor's review of certain financial information contained in the offering memorandum. Comfort letters provide varying levels of assurance (comfort) on the accuracy of financial information presented in the offering memorandum. In so doing, they help establish a due diligence defense for the placement agent or initial purchaser. *See: SAS 72; TICK AND TIE.*

COMMERCIAL BANKING – The division of banking that deals primarily with accepting deposits and making loans. If a tribal borrower seeks to raise money through a loan or other facility provided under a credit agreement (i.e., not a securities offering), the tribal borrower will be dealing primarily with the commercial banking side of the bank. *Compare: INVESTMENT BANKING.*

COMMITMENT – The amount of money that each lender is obligated to provide to the borrower under a credit agreement in the form of loans or other extensions of credit. The exact dollar amount of each lender's commitment is spelled out in a schedule attached to the credit agreement. *Compare: AGGREGATE COMMITMENT.*

COMMITMENT FEE – Fee charged to the tribal borrower for credit made available but not yet used under the credit agreement. Commitment fees may be charged on a recurring basis and may be a function of grid-based pricing. The lenders charge a commitment fee to keep a revolver or line of credit open, or to guarantee a loan at a certain date even though the credit is not being used at that particular time. *Compare: FACILITY FEE.*

COMMITMENT LETTER – A letter agreement that describes the terms and conditions under which a lender agrees to provide financing to a borrower. It is usually accompanied by a term sheet and fee letter. *Compare: ENGAGEMENT LETTER.*

COMPACT – *See: GAMING COMPACT.*

COMPLETION BOND – A type of financial contract that functions much like an insurance policy to guarantee construction of a project will be completed on time and without unpaid claims owed to subcontractors in the event the general contractor runs out of money.

COMPLIANCE CERTIFICATE – A periodic report (usually quarterly) delivered by the tribal borrower to establish that it has satisfied financial and other covenants required by the borrowing documents. Such certificates are often

required on an ongoing basis throughout the life of a loan at periodic intervals pursuant to covenant requirements for ongoing reporting to lenders.

COMPOUND INTEREST – Interest computed by applying the simple rate of interest to calculate interest on principal plus interest on successive increments of interest earned in prior periods.

CONDITIONS PRECEDENT – Conditions that are required to be satisfied prior to closing. For example, providing evidence of insurance.

CONDITIONS SUBSEQUENT – Conditions that are required to be satisfied after closing. For example, completion of an as-built survey.

CONDEMNATION – See: *EMINENT DOMAIN*.

CONDUIT FINANCING – A type of financing where the governmental issuer of the bonds loans the bond proceeds to an unaffiliated third party who undertakes to repay the bonds. Conduit financings are usually motivated by a tax advantage where the third party is not itself eligible to borrow directly on a tax-exempt basis but may do so through the conduit issuer. Conduit financings are quite common in the municipal bond market but are less common in the tribal bond market.

CONFI – Slang for confidentiality agreement.

CONFIDENTIAL INFORMATION MEMORANDUM (CIM) – A marketing book, usually prepared by the arranger, to help syndicate a credit facility. The confidential information memorandum is used for syndicated loans, and not for bond or securities offerings. As such, the confidential information memorandum is shorter and does not attempt to include all material information in the way that an offering memorandum does.

CONFIDENTIALITY AGREEMENT – An agreement that requires the parties to keep confidential and not disclose certain matters, usually subject to certain exceptions.

CONFIRMATION – A document governed by the ISDA master agreement that is executed for an individual transaction, itemizing the specific terms and conditions for that particular transaction.

CONSENT SOLICITATION – A request from an issuer sent to existing bondholders seeking approval for amendments to the trust indenture which the issuer is not permitted to make unilaterally. A consent solicitation is

usually part of a tender offer, and bondholders receive a fee for giving their consent.

CONSIDERATION – A legal term used to describe the benefit or bargained-for exchange that one party receives from the other party in connection with a contract.

CONSOLIDATED STATEMENTS – Show the combined assets, liabilities, net worth, income, expense, net income, and cash flows for a related group of companies or entities. Consolidated statements disregard the distinction between separate legal entities and treat a parent firm and its subsidiaries as a single economic entity.

CONSTRUCTION FUND – A fund held by a trustee under a trust indenture where bond proceeds are deposited and invested until disbursement and application to pay project costs.

CONSULTING ENGINEER – An expert who assists in the preparation of feasibility studies for proposed construction projects. See: *FEASIBILITY STUDY*.

CONTINGENCY – Additional funds set aside in a construction budget to cover unforeseen costs relating to a project.

CONTINGENT LIABILITY – A debt or obligation that becomes a liability upon the occurrence of certain conditions.

CONTINUING DISCLOSURE – Refers to those items of financial reporting and other material events or information which a tribal borrower undertakes to provide to bond investors on a continuing basis. Often it includes annual, quarterly and other periodic financial information that is in addition to that which is mandated by Rule 144A(d)(4). It may also include disclosure of certain material events. While municipalities in the bond market must follow the continuing disclosure requirements of SEC Rule 15c2-12, this rule does not apply to tribal bonds which are not “municipal securities.” For this reason, continuing disclosure for tribal bonds is almost always a function of meeting the minimum requirements of Rule 144A(d)(4) plus providing whatever else the tribe may agree to disclose on an ongoing basis under the indenture.

CONTROL – (1) Under the UCC, “control” is how a secured party achieves a perfected security interest in collateral consisting of deposit accounts, securities accounts, or securities. Control is established through execution of

an account control agreement. (2) In a different context, "control" may refer to some other entity's ability to exercise, directly or indirectly, a controlling influence over the management or policies of the tribal borrower's business operations. See: *CHANGE OF CONTROL*.

CONTROL AGREEMENT – See: *ACCOUNT CONTROL AGREEMENT*.

COST PLUS – A type of construction contract under which the owner pays the contractor for actual costs incurred for construction plus an additional percentage as profit.

COSTS OF ISSUANCE – The expenses associated with the sale of a new issue of bonds, including such items as printing, legal, consulting, rating agency fees, and others. In some cases, the spread or placement fee may be considered a cost of issuance.

COUNTERPARTY – A party in an interest rate swap transaction.

COUNTERPARTY CREDIT RISK – The risk that a party to an interest rate swap will not be able to meet all of its financial obligations under the interest rate swap agreement.

COUPON – The annual rate of interest payable on a bond expressed as a percentage of the principal amount. The coupon rate does not take into account any discount or premium.

COVENANT – A contractual obligation where a party promises to take or refrain from taking certain actions or to comply with certain requirements. See: *AFFIRMATIVE COVENANT*; *NEGATIVE COVENANT*.

COVENANT LITE – A credit agreement with fewer financial or other protective covenants than would ordinarily be required by the market.

COVENANT STRIPPING – Removing material covenants from a trust indenture through consent solicitation in contemplation of a tender offer.

COVERAGE – See: *DEBT SERVICE COVERAGE*; *FIXED CHARGE COVERAGE*.

CREDIT AGREEMENT – Loan document containing the terms of a loan from a lender to a borrower. A credit agreement contains definitions, representations, warranties, covenants, defaults, remedies, and other key provisions that govern the lending and borrowing relationships between the parties. A credit agreement may provide one or more types of credit facilities.

CREDIT ENHANCEMENT – Using the credit of an entity other than the issuer or borrower to provide additional assurance of payment for a financing and thus “enhance” the underlying credit. Letters of credit or insurance for bonds and loan guarantees are examples of credit enhancement.

CREDIT FACILITY – Debt of various types under a credit agreement. It may include a term loan, a revolving loan, a letter of credit, a swingline, or other extensions of credit by the lenders to the tribal borrower.

CREDIT RATING – See: *RATING*.

CREDIT SUPPORT – Collateral that can be in the form of cash and/or marketable securities posted by one party to an interest rate swap agreement to reduce the credit exposure of its counterparty.

CREDIT SUPPORT ANNEX – A document governed by the ISDA master agreement that states the provisions and circumstances under which posting of collateral is required.

CREDIT WATCH – An alert issued by a rating agency to the market of potential changes, either positive or negative, in the rating of an issue of outstanding bonds. Such bonds sometimes are said to be placed on a “watchlist” or on “rating watch.” See: *DOWNGRADE*.

CREDITOR – A party who is owed money by a debtor.

CREDITWORTHINESS – A measure of a borrower’s or issuer’s past and future ability to repay debts.

CRITICAL PATH – In a construction project, this is the series of connected tasks that must be completed according to a particular sequence and schedule so the project can be finished as planned.

CROSS-COLLATERALIZATION – When collateral for one debt also serves as collateral for other debts.

CROSS-DEFAULT – When a default under one agreement triggers a default under other agreements.

CURE – To correct a default or event of default and come back into compliance. Certain types of default may be subject to cure while others may not be. See: *GRACE PERIOD*.

CURRENT ASSET – An item on the balance sheet that is cash or a cash equivalent or which can be converted into cash within a year. Examples in addition to cash include investments, inventory and accounts receivable. *Compare: FIXED ASSET.*

CURRENT REFUNDING – A refunding where the existing tax-exempt bonds will be paid off within 90 days or less from the date that the new tax-exempt bonds are issued. *Compare: ADVANCE REFUNDING.*

CUSIP NUMBER (COMMITTEE ON UNIFORM SECURITIES IDENTIFICATION PROCEDURES) – An identification number assigned to each maturity of a bond issue, which is intended to help facilitate the identification and clearance of those bonds. Tax-exempt bonds and taxable bonds receive separate CUSIP numbers. Likewise, bonds sold under Rule 144A versus Reg S have separate CUSIP numbers.

- D -

DACA – See: *DEPOSIT ACCOUNT CONTROL AGREEMENT*.

DATED DATE – The date from which interest on bonds starts to accrue, even though the issue may actually be delivered at some later date. *Compare: DELIVERY DATE*.

DEALER – A person or firm that engages in the business of underwriting, trading, and selling bonds or other securities for its own account acting as principal.

DEALER MANAGEMENT AGREEMENT – A contract entered into between a dealer and a tribal issuer made in connection with a proposed tender offer.

DEBT – See: *INDEBTEDNESS*.

DEBT LIMIT – The maximum amount of indebtedness a government may incur by law. Most tribal governments do not have constitutional or statutory debt limits. However, they may have limitations on how debt is incurred—for example, it may require approval of the general membership.

DEBT SERVICE – The amount of money necessary to pay principal, interest, and other requirements (e.g., sinking fund installments) on debt obligations as they come due. This amount is also known as the “debt service requirement.” “Annual debt service” refers to the total principal and interest paid in a calendar year or fiscal year. “Total debt service” refers to the total principal and interest paid throughout the life of a bond issue. “Average annual debt service” refers to the average debt service payable each year on an issue. See: *AMORTIZATION; DEBT SERVICE SCHEDULE; LEVEL DEBT SERVICE; LEVEL PRINCIPAL*.

DEBT SERVICE COVERAGE (RATIO) – For a particular period of time (e.g., the last quarter or LTM), the ratio of (i) pledged revenues (the numerator), to (ii) debt service requirements for that same period (or, in some cases, maximum annual debt service) (the denominator). For bond issues, this

ratio is often referred to as “debt service coverage” or the “coverage ratio.” Debt service coverage ratios are common for bond financings, but are less common for loans, which tend to use fixed-charge coverage ratios.

DEBT SERVICE FUND – A fund into which a tribal bond issuer makes periodic deposits to assure the timely availability of sufficient moneys for the payment of debt service on bonds. Typically, the amounts of the revenues to be deposited into the debt service fund and the timing of such deposits are structured to ensure a proper matching between deposits and payments becoming due—i.e., monthly deposits of one-sixth of interest next due and one-twelfth of principal next due. For many issues, the debt service fund may contain a separate principal account and interest account in which moneys for such respective purposes are held. *See: DEBT SERVICE SCHEDULE.*

DEBT SERVICE REQUIREMENTS – *See: DEBT SERVICE.*

DEBT SERVICE RESERVE FUND or RESERVE FUND – A fund in which moneys are placed in reserve to be used to cover debt service obligations if revenues are insufficient. A debt service reserve fund may be entirely funded with bond proceeds at the time of issuance, it may be funded over time through the accumulation of pledged revenues, or may be funded only upon the occurrence of a specified event (e.g., upon failure to comply with a covenant in the trust indenture). If a debt service reserve fund is drawn upon, the issuer is required to replenish the fund from revenues according to some schedule and waterfall of priorities. Debt service reserve funds are quite common for fixed-rate bonds (especially tax-exempt bonds), but reserve funds are less common for loans or high-yield note offerings.

DEBT SERVICE RESERVE FUND REQUIREMENT – The amount required by the trust indenture to be maintained in the debt service reserve fund. For tax-exempt bonds, the Code provides that the debt service reserve fund may not exceed the lesser of: (i) 10% of the stated principal amount of the bonds; (ii) maximum annual debt service on the bonds; or (iii) 125% of average annual adjusted debt service on the bonds.

DEBT SERVICE SCHEDULE – A schedule showing the periodic principal and interest payment requirements over the life of the debt. The debt service schedule usually appears in the trust indenture and in the offering memorandum for bonds. Fixed-rate bond issues typically pay interest twice a year (every six months) and pay principal one time each year. Commercial bank loans, on the other hand, typically pay interest monthly or quarterly

and amortize principal over five to seven years. Because most loans are at a variable (rather than fixed) rate of interest, debt service schedules are less common for loans.

DECLINATION LETTER – A letter issued by the Office of General Counsel of the NIGC finding that a particular agreement or group of agreements do not constitute a “management contract” within the meaning of IGRA. Parties to financing agreements that involve tribal gaming operations may seek a declination letter from the NIGC for some assurance that the financing arrangement does not violate IGRA. Frequently, receipt of a declination letter is a condition to closing the transaction. Declination letters may also include a finding that the financing does not violate the “sole proprietary interest” rule of IGRA as well. Declination letters are not binding on a court.

DEED OF TRUST – A document used to convey an interest in real property to a trustee for purposes of securing the repayment of debt. In some states, deeds of trust are used instead of mortgages. Except in rare cases, land held in trust by the United States for a tribe cannot be subjected to a deed of trust. However, leasehold deeds of trust on trust lands are possible. See: *LEASEHOLD DEED OF TRUST; MORTGAGE*.

DEFAULT – A failure to comply with any covenant or duty imposed under the borrowing agreements. The most serious event of default, sometimes referred to as a “monetary” default, occurs when the borrower fails to pay principal or interest when due. Other defaults, sometimes referred to as “technical” defaults, result when specifically defined events of default occur, such as failure to maintain financial covenants or comply with reporting or other requirements. Some defaults may come with a grace period (i.e., an allowance of time to cure the default). If the default is not cured during the grace period, then it may ripen into an event of default and trigger remedies. See: *ACCELERATION*.

DEFAULT RATE – An increased rate of interest that may apply when a borrower is in default. An increase of 2% (200 basis points) or higher is common. In addition, late payment charges may also apply.

DEFEASANCE or DEFEASED – Terminating the bondholders’ lien on the trust estate in advance of the maturity date by meeting requirements set forth in the trust indenture. This is sometimes referred to as a “legal defeasance.” Defeasance usually occurs in connection with a refinancing of outstanding bonds after irrevocably providing for their future payment with

proceeds from the refinancing. In some cases, the trust indenture may not provide a procedure for termination of bondholders' rights and interests except through final payment of all outstanding debt in full. In that case, depositing funds for future payment of the outstanding debt may free up pledged revenues for other purposes without triggering a legal defeasance. This is sometimes referred to as an "economic defeasance" or "financial defeasance." If for some reason the funds deposited in an economic or financial defeasance turn out to be insufficient to make future payment of the outstanding debt, the tribal issuer would continue to be legally obligated to make payment on such debt from the pledged revenues.

DEFICIENCY JUDGMENT – A judgment that may be rendered by a court against a debtor finding that the sale of collateral that was foreclosed upon by the creditors did not fully cover the outstanding indebtedness. Therefore, the court enters a judgment against the debtor holding the debtor liable for additional money.

DEFICIT – When expenditures exceed revenues.

DE-LEVERAGE – Paying off debt.

DELIVERY DATE – The date on which bonds are delivered, which usually coincides with the closing date.

DEMAND NOTE – A loan for which the lender can demand payment in full at any time, usually with limited advance notice.

DENOMINATION – The face amount of a bond or note. *See: AUTHORIZED DENOMINATION.*

DEPARTMENT OF THE INTERIOR – The executive department of the United States government that is most directly responsible for the management of Indian affairs.

DEPOSIT ACCOUNT – A demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property (such as securities) or accounts evidenced by an instrument. Tribal borrowers often pledge certain deposit accounts as collateral for a borrowing pursuant to a security agreement and a deposit account control agreement.

DEPOSIT ACCOUNT CONTROL AGREEMENT – A type of account control agreement used to perfect a security interest in a deposit account.

DEPOSITORY – (1) A registered clearing agency that provides immobilization, safekeeping and book-entry clearance of securities and settlement services to its participants. (2) Under some financing structures, a trustee, bank or other financial institution into which pledged revenues are deposited for application according to a waterfall of payment priorities.

DEPOSITORY TRUST COMPANY (DTC) – The most widely-used depository service for bonds and other debt securities. DTC holds physical certificates for bonds and issues receipts to owners through the computerized book-entry system. Bonds held by DTC are immobilized so that they can be traded on a book-entry basis, which facilitates subsequent purchases and sales of the bonds.

DEPRECIATION – The amount by which a fixed asset’s accounting or book value is periodically reduced to reflect the fact that the economic value of the asset diminishes over time.

DERIVATIVE – A product whose value is derived from the value of underlying assets, interest rates, currency exchange rates, or indices. The term encompasses a wide range of products offered in the marketplace, including interest rate swaps, caps, floors, collars, and other synthetic variable rate products.

DESCRIPTION OF COLLATERAL – A description used in loan documentation and financing statements that specifies what collateral is subject to the lien of the security agreement that pledges the collateral as security for the loan.

DESCRIPTION OF NOTES – Portion of an offering memorandum in high-yield financings that summarizes the terms of the notes being offered for sale by the tribal issuer. Also called the “DON,” it is negotiated while the preliminary offering memorandum is being drafted, and it is quickly transformed into a trust indenture after pricing.

DESK – Short for trading desk, meaning the department within an investment banking firm responsible for executing transactions in securities.

DETERMINATION OF TAXABILITY – A determination by the Internal Revenue Service, following an audit of a tax-exempt financing, that the financing does not qualify for tax-exemption. Such determinations are normally instantly followed by an assessment of tax on lenders. Tribal issuers are always given the opportunity to preserve tax-exemption by making a

penalty payment to the IRS.

DIRECTOR AND OFFICER QUESTIONNAIRE – As part of the due diligence process, an initial purchaser or placement agent will often require that directors and officers of a borrower’s governing body complete these forms that ask specific questions about their background, experience, relationships, and potential conflicts of interest. The questionnaires are used to identify information to disclose in an offering memorandum.

DISBURSEMENTS – In the generic sense, disbursements are simply cash payments. However, this term is more often used in the bond context to mean proceeds released from a construction fund to pay project costs. There may be a separate disbursement agreement and a disbursement agent who handle this process.

DISCLOSURE – The process of providing accurate and complete information material to the purchase and sale of bonds or other securities. In a primary offering of bonds, this is done through the preliminary and final offering memoranda. After the primary offering has closed, disclosure obligations continue and are usually prescribed as a matter of contract by the trust indenture as well as applicable securities laws.

DISCLOSURE COUNSEL – An attorney or law firm retained by the issuer to provide advice to the tribal issuer on disclosure obligations and to help prepare the offering memorandum.

DISCOUNT – Generally, the amount by which the principal amount or par value of a bond exceeds the sale price paid for the bond. For tax purposes, the actual amount of discount with respect to a particular bond may be affected by the existence of any original issue discount or original issue premium. *Compare: PREMIUM.*

DISPOSITION – A term used to describe the transferring of money or assets from one person to another. Financing agreements often have negative covenants that limit the types of dispositions that the tribal borrower may make in order to prevent depletion of collateral.

DISTRESSED DEBT – Generally, this refers to debt that is either in default or dangerously close to payment default. Because most tribal borrowings are limited recourse financings, distressed tribal debt is usually restructured to provide new payment terms – for instance, adjusting interest rates, amortization schedule, excess cash flow sweeps, etc.

DISTRIBUTION – Commonly used in financing agreements to describe any transfer of cash or other property from any fund or account maintained for business enterprise purposes to any fund or account that is not maintained exclusively for similar purposes. For example, the transfer of revenues from a gaming enterprise fund or account to the tribe’s general fund or other accounts (or for purposes of making per capita payments) would be considered a distribution. Transaction documents typically contain provisions that restrict distributions. Distributions are sometimes referred to as restricted payments.

DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT – Federal statute enacted in 2010 that affects the financial services industry and implements financial regulatory reform.

DON – See: *DESCRIPTION OF NOTES*.

DOUBLE-BARRELED OBLIGATION – A debt that is secured both by a defined source of revenues and the general obligation of a tribal borrower.

DOWNGRADE – The lowering of a bond rating by a rating agency due to a deterioration of credit quality.

DRAW – An individual borrowing and advance of funds under a credit agreement.

DRAWDOWN SCHEDULE – A schedule of estimated expenditures to be made from borrowed proceeds and other available moneys on a construction project. Such schedule typically shows periodic payments, or “draws,” to the contractor at progressive stages of completion of the project.

DRY CLOSING – Closing without funding where documents are executed and delivered but funding cannot occur, either because certain conditions have not been satisfied or because funding must take place on a particular date that has not arrived yet. Often the documents are described as being “held in escrow,” meaning the parties have signed but have not authorized the release of signatures yet.

DTC – See: *DEPOSITORY TRUST COMPANY*.

DTC LETTER OF REPRESENTATIONS – A letter entered into between an issuer and DTC providing for the book-entry qualification of bonds or other securities. For tribal bonds, there may be special riders attached to the DTC letter of representations, such as a Rule 144A rider or a Regulation S rider.

DUE DILIGENCE – The process in which a lender or underwriter, with the assistance of legal counsel, investigates the legal, financial and other affairs of a tribal borrower so that all credit risks are identified and understood. In a securities offering, a due diligence investigation is made by the underwriter to help ensure disclosure of all material facts to potential investors and promote the accuracy and completeness of information contained in the offering document. *See: 10B-5 REPRESENTATION.*

DUE DILIGENCE DEFENSE – A legal defense that may be asserted by an underwriter, placement agent or initial purchaser in a securities fraud action to rebut claims alleging responsibility for the misstatement or omission of material facts (i.e., poor disclosure) or a violation of Rule 10b-5.

DUE DILIGENCE LIST – A list of various documents requested for review, which is circulated by the attorneys for the parties who are providing the financing. The list helps focus the working group's due diligence efforts with the goal of ensuring full and complete disclosure.

- E -

EASEMENT – Some other party’s legal right to use real property. Even federal trust lands may be subject to easements for roadways, utilities and other public rights of way, and these should be reflected in a title status report. Lenders usually want to know whether a particular project site is subject to easements or encumbrances that might affect the tribe’s use of the land.

EBITDA – Acronym for earnings before interest, taxes, depreciation, and amortization. EBITDA is a supplemental measure of performance that is widely used (particularly in gaming), but it is not defined under or presented in accordance with generally accepted accounting principles. Because EBITDA is a non-GAAP term, it is subject to wide variation in usage and meaning within the industry. In each case, it may also be subject to various “adjustments” which are designed to better reflect the unique facts and circumstances of a particular tribal borrower (often referred to as “adjusted EBITDA”). In a tribal gaming loan, EBITDA may be defined as income (or net income) before distributions to the tribe, interest, depreciation, and amortization. If a tribal gaming operation includes multiple gaming sites, EBITDA may be presented as “consolidated EBITDA,” showing the results from all facilities on a consolidated basis. The financing agreement will typically contain a lengthy definition of components that are added to, and subtracted from, (net) income in order to arrive at EBITDA.

EBITDA MARGIN – Like EBITDA, this is a non-GAAP term subject to wide variation in usage and meaning. However, it often is used to mean EBITDA divided by net revenues.

ECONOMIC USEFUL LIFE – The period of time over which an asset is expected to produce economic benefits for its owner. The economic useful life may be shorter than the physical life of the asset.

ELECTRONIC PLATFORM – Any of several proprietary services that allow

subscribers (often financial institutions) to disseminate information about a financing electronically over a secure data site. Intralinks is one example.

ELIGIBLE SECURITIES – Typically refers to the types of securities that are authorized under the trust indenture to be held in escrow for the purpose of defeasance obligations.

EMINENT DOMAIN – The power of a government (including a tribal government) to take private property for a public purpose. Most financing agreements include representations, warranties, and covenants by the tribal borrower that it will not exercise its sovereign powers through eminent domain (sometimes called “condemnation”) to take property that serves as collateral for the borrowing or is otherwise important to the borrowing.

EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 (ERISA) – Legislation that includes standards for vesting requirements and funding of pension plans. Financing agreements often include representations, warranties, and covenants regarding ERISA compliance by the borrower.

ENCUMBRANCE – See: *LIEN*.

ENGAGEMENT LETTER – A letter agreement retaining the services of one or more banking firms for a financing. Typically, it is called an engagement letter (or mandate letter) if the financing is a bond issue. For commercial loans, it is more often called a commitment letter. In either case, it is prepared by the bankers and presented to the tribal borrower for signature. It usually spells out material terms and conditions of the proposal, and the engagement is for a specific period of time.

ENTERPRISE ACTIVITY or FUND – A tribal business enterprise, activity, or fund established for commercial purposes. Enterprise funds are generally segregated as to purpose and use from other funds and accounts of the tribal government with the intent that revenues generated by the enterprise will be devoted principally to funding all operations of the enterprise, including payment of debt service on borrowings by the enterprise. However, in some cases, enterprise revenues may be used to pay for or secure non-enterprise borrowings. For instance, a tribal government might pledge its gaming revenues to support a borrowing for governmental facilities that are not self-supporting, such as an administration building, a health clinic or a school.

ENVIRONMENTAL ASSESSMENT (EA) – An initial review undertaken to determine what effects, if any, a project or action may have on the surrounding local environment. Environmental effects may include air and water quality, noise, traffic and other factors. The findings under an environmental assessment may determine whether preparation of an environmental impact statement is necessary.

ENVIRONMENTAL IMPACT STATEMENT (EIS) – A more thorough and comprehensive environmental review and report undertaken to determine the impact on the environment of a particular project. An environmental impact statement may be triggered under NEPA when there is some “major action” by a federal agency – such as approval of a management contract by the NIGC.

ENVIRONMENTAL LAWS – A broad body of federal, state, and tribal laws relating to protection of the environment. Loan documentation typically requires borrowers to comply with all applicable environmental laws and make representations and warranties related to such compliance with applicable environmental laws.

ENVIRONMENTAL SITE ASSESSMENT (ESA) – A report undertaken to identify existing or potential environmental contamination on a piece of real property. A Phase I ESA will attempt to identify any “recognized environmental conditions” or other “areas of concern,” but it may not include lab analysis of soil, water, air, hazardous substances or other site conditions. If further testing and lab analysis is believed necessary upon completion of the Phase I ESA, then a lender may require completion of a Phase II ESA.

EQUITY CONTRIBUTION – Contribution made by the borrower using its own funds to pay for certain costs of a project. Many project finance agreements require the borrower to make (or already have made) some measure of equity contribution to the project in order to access funds.

EQUITY FINANCING – A term used to describe raising capital by issuing stock as compared to debt financing, which involves raising capital by issuing bonds or borrowing money.

ERISA – See: *EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974*.

ERISA AFFILIATE – Means any trade or business (whether or not incorporated) that, together with a borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302

of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

ESCROW ACCOUNT – An account established with a third party (the escrow agent) who holds deposits in the account exclusively for certain purposes. Deposits in the escrow account are subject to release only in accordance with certain procedures defined by the parties in an escrow agreement. For example, in an advance refunding, the issuer may establish an escrow account held by an escrow agent who agrees to apply proceeds in the account solely for payment of debt service on the bonds that are being advance refunded. *See: ADVANCE REFUNDING; ESCROW AGREEMENT.*

ESCROW AGREEMENT – An agreement between a tribal borrower and an escrow agent that establishes an Escrow Account in connection with an advance refunding.

ESCROWED TO MATURITY – *See: ADVANCE REFUNDING.*

ESSENTIAL GOVERNMENTAL FUNCTION – The touchstone requirement for tax-exempt borrowings by Indian tribes. The general rule is that Indian tribal governments and their recognized political subdivisions may borrow on a tax-exempt basis so long as substantially all of the proceeds are used in the exercise of an “essential governmental function.” Under Section 7871(e) of the Code, essential governmental function does not include “any function which is not customarily performed by state and local governments with general taxing powers.” Thus, the Code defines what tribes may do by analogy to what state and local governments customarily do. Furthermore, the IRS has interpreted “essential governmental function” to exclude any projects with commercial or industrial elements. As a result of this limitation, Indian tribes are much more constrained than state and local governments are in using tax-exempt debt. There are two notable exceptions to the “essential governmental function” limitation, namely TED bonds and certain “manufacturing facility” bonds. However, each of these exceptions comes with important limitations that keep the playing field uneven between tribal governments versus state and local governments. The U.S. Treasury has recommended that Congress remove the “essential governmental services” requirement and instead place Indian tribal governments on relative parity with state and local governments in their ability to make use of tax-exempt financing.

EURODOLLAR – Another name for LIBOR.

EVENT OF DEFAULT – Event of default often refers to a default that has ripened into an “event of default” as a result of the giving of notice, the passage of time, or both.

EVERGREEN – An automatic renewal feature in a contract that applies unless one of the parties gives notice of intent not to renew.

EXCESS CASH FLOW SWEEP – Provision in a credit agreement requiring a tribal borrower to make mandatory prepayments using excess cash generated for each period of operations (usually measured quarterly). Determining what constitutes “excess” cash will depend on how the credit agreement defines it.

EXCHANGE ACT – See: '34 ACT.

EXCHANGE OFFER – When new bonds are offered in exchange for outstanding bonds – for example, in the context of restructuring distressed debt.

EXCISE TAX – A tax levied upon the manufacture, sale or consumption of commodities, upon the license to pursue certain occupations, or upon corporate privileges within a taxing jurisdiction. Examples of such taxes include sales and use taxes and taxes on alcohol and cigarettes.

EXEMPT SECURITY – Bonds or other securities that are categorically exempt and not subject to registration requirements of the '33 Act or the reporting requirements of the '34 Act. Bonds issued by states and local governments are exempt securities under Section 3(a)(2) of the '33 Act, but bonds offered by tribal issuers are not exempt and must instead be issued as registered securities or sold as part of an exempt transaction (usually through a private placement). *Compare: REGISTERED SECURITIES.*

EXPENSED – When a cost is recorded as a current expense for the period it is incurred. *Compare: CAPITALIZED.*

- F -

FACE AMOUNT – See: *PAR VALUE*.

FACILITIES LICENSE – A license issued by the tribe for each facility in which it conducts gaming, as required by IGRA at 25 USC §2710(b)(1).

FACILITY FEE – A fee charged to a tribal borrower based on the total amount (used and unused) of a revolving loan commitment. A facility fee is sometimes used in lieu of a commitment fee. Like a commitment fee, a facility fee may be charged on a recurring basis and may be a function of grid-based pricing. Compare: *COMMITMENT FEE*.

FASB – See: *FINANCIAL ACCOUNTING STANDARDS BOARD*.

FAST – See: *FULLY AUTOMATED SECURITIES TRANSFER*.

FEASIBILITY STUDY – A report, usually prepared by an independent consultant, on the economic feasibility of a proposed project.

FEDERAL FUNDS RATE – The interest rate at which banks lend immediately available funds to each other overnight.

FEDERAL REGISTER – A daily publication that contains the federal agency regulations and other legal documents of the executive branch of the federal government. It includes proposed changes to rules, regulations, and standards of federal agencies, and it covers a wide range of governmental activities. Regulations and rules that are finally approved appear in the Code of Federal Regulations.

FEDERALLY RECOGNIZED TRIBE – A tribe that is recognized by the federal government pursuant to treaty, legislation, executive order or the recognition process set forth in 25 CFR §83.

FEE LETTER – A letter between a lender and a borrower that describes the fees payable in connection with one or more credit facilities.

FF&E – Acronym for furnishings, fixtures, and equipment.

FF&E FINANCING – Indebtedness incurred to finance the acquisition or improvement of FF&E, which is sometimes done through a credit facility separate from the construction financing.

FINAL OFFERING MEMORANDUM – See: *OFFERING MEMORANDUM*.

FINANCIAL ACCOUNTING STANDARDS BOARD (FASB) – A standard-setting body that prescribes authoritative standards of financial accounting and reporting for the guidance of private sector entities.

FINANCIAL ADVISOR – An independent consultant who advises a tribal borrower on matters pertinent to a financing, such as structure, timing, marketing, fairness of pricing, terms, and credit ratings. A financial advisor may also provide advice on cash flow management, investment matters and general business advice.

FINANCIAL COVENANTS – Generally refers to maintenance covenants in a credit agreement that measure quarterly financial performance – e.g., leverage ratio, fixed-charge coverage ratio, minimum EBITDA, etc.

FINANCIAL SOURCE – A term used in some gaming compacts or tribal gaming ordinances to describe persons who, directly or indirectly, provide financing to a tribal gaming operation. A financial source may or may not need to be licensed as a condition of providing financing. Gaming is a heavily regulated industry, and most providers of goods or services to tribal gaming operations must be licensed. The question of licensing (or exemption from licensing) is a threshold question in any financing for tribal gaming operations.

FINANCING STATEMENT – A form that is filed by a secured lender which provides details of a secured transaction in order to perfect the lender's security interest in personal property that is pledged as collateral. A UCC-1 form is perhaps the best example.

FINRA – Short for Financial Industry Regulatory Authority, Inc., which exercises regulatory oversight of securities firms. FINRA is a consolidation of the former NASD and NYSE regulatory functions.

FIRM COMMITMENT UNDERWRITING – A contractual commitment by the underwriters (or the initial purchasers in a Rule 144A offering) to buy bond

pursuant to the terms of the purchase agreement and thus provide the tribal issuer with funds it is seeking to raise. *Compare: BEST EFFORTS.*

FIRST LIEN – A lien that has priority over all other liens against the collateral that is pledged, but which is usually subject to certain permitted liens. Most long-term debt of tribal borrowers is secured on a first lien basis. *Compare: SUBORDINATE LIEN.*

FISCAL AGENT – One of the roles performed by a trustee in a bond issue. A fiscal agent acts as custodian of money and executes certain functions, including disbursement of bond proceeds and acting as paying agent. *See: TRUSTEE; PAYING AGENT.*

FISCAL YEAR – A twelve-month period at the end of which financial position and results of operations of an entity are determined. Financial reporting, budgeting, and accounting periods are determined on the basis of the applicable fiscal year.

FITCH RATINGS – A nationally recognized rating agency that provides ratings on bonds and other securities.

FIXED ASSET – Sometimes called a “tangible asset” or “property, plant and equipment” (PP&E). This is an asset having a useful life of more than a year and that is subject to depreciation. A business owner buys fixed assets without any intention of reselling them in the near term. Rather, fixed assets are what enable the business owner to produce the product or service sold. Examples of fixed assets include land, buildings, furniture and fixtures, and equipment. *Compare: CURRENT ASSET.*

FIXED CHARGE COVERAGE RATIO – The ratio of EBITDA (or adjusted EBITDA) to fixed charges, which is tested quarterly in most cases. The fixed charge coverage ratio is a very important financial covenant in many tribal financings because it limits the amount of distributions or restricted payments that can be made by a tribal business enterprise to the tribal government. For instance, a credit agreement may require the business enterprise to maintain a fixed-charge coverage ratio of not less than 1.10 to 1.0 for each test period. Failure to meet the ratio could mean that future distributions to the tribe are suspended or that the tribe must return any prior distributions made in violation of the fixed-charge coverage ratio.

FIXED CHARGES – For purposes of calculating the fixed-charge coverage ratio, fixed charges usually include interest expense and regularly scheduled

principal payments on debt, maintenance capital expenditures or unfinanced capital expenditures. In addition, credit agreements often treat as fixed charges distributions or restricted payments made to the tribal government from a tribal business enterprise.

FIXED INCOME OBLIGATION – Another name for bonds or other securities that pay a fixed rate of interest.

FIXED RATE – An interest rate that does not change, but instead remains fixed for the life of the borrowing. *Compare: VARIABLE RATE.*

FIXED RATE SWAP – An interest rate swap under which the tribal borrower pays a provider a fixed rate in exchange for receiving a floating rate. This is most commonly used to convert variable rate bonds into synthetic fixed rate obligations. *See: INTEREST RATE SWAP AGREEMENT.*

FIXTURE – Personal property that is fixed or attached to the underlying real property in such a way that real property laws may apply to it. A heating, ventilation, and air conditioning (HVAC) system is an example of a fixture.

FLOATER – A descriptive term for a bond with a variable or “floating” interest rate.

FLOATING RATE – *See: VARIABLE RATE.*

FLOATING RATE SWAP – A swap under which the tribal borrower pays a provider a variable rate and receives a fixed rate. This is usually associated with an issue of fixed-rate bonds where the tribal issuer wishes to convert to a synthetic floating rate. *See: INTEREST RATE SWAP AGREEMENT.*

FLOW OF FUNDS – *See: WATERFALL.*

FLOOR – *See: INTEREST RATE FLOOR.*

FORBEARANCE AGREEMENT – Following an event of default, this is an agreement entered into between a borrower and its lenders or the trustee, who agree not to exercise certain rights and remedies and give the borrower time to cure the default in exchange for certain assurances from the borrower. A forbearance agreement may also be a precursor for a restructuring of some sort.

FORCE MAJEURE CLAUSE – The term force majeure means superior force. A force majeure clause is contained in a contract to protect the parties in

the event that the contract cannot be performed due to causes outside the control of the parties. While common in many other types of contracts, financing agreements usually do not contain force majeure clauses that would excuse nonpayment.

FORECLOSURE – This term generally refers to the exercise of remedies by a secured party against collateral following a default and failure to cure by the borrower.

FORM 8-K – A form used to notify investors of certain material events that is filed with the SEC. Most tribal issuers are not required to make 8-K filings because most tribal issuers do not report under the '34 Act. However, it is common in high-yield financings for the tribal issuer to agree to provide current reports (including Form 8-K notifications) to the trustee (but not the SEC) as if the tribal issuer were subject to the '34 Act requirements.

FORM 8038-G – A form filed with the IRS in connection with any tax-exempt debt describing the tribal issuer or tribal borrower, the principal amount of the tax-exempt debt, the interest rates (whether fixed or variable), and other information.

FORM 10-K – An annual reporting form filed with the SEC by companies who are subject to the '34 Act. Most tribal issuers are not required to make 10-K filings because most tribal issuers do not report under the '34 Act. However, it is common in high-yield financings for the tribal issuer to agree to provide annual reports of the type contemplated by Form 10-K to the trustee (but not the SEC) as if the tribal issuer were subject to the '34 Act requirements.

FORM 10-Q – In addition to a 10-K, a public company is required to file a 10-Q, which is a quarterly report. Most tribal issuers are not required to make 10-Q filings because most tribal issuers do not report under the '34 Act. However, it is common in high-yield financings for the tribal issuer to agree to provide current reports (including Form 10-Q notifications) to the trustee (but not the SEC) as if the tribal issuer were subject to the '34 Act requirements.

FORWARD – A contract in which the parties agree to settle their respective obligations, usually as buyer and seller, at some specified future date based upon current market price at the time the contract is executed. For example, a forward may provide for the delivery of securities on specified future dates at fixed yields for the purpose of optimizing the investment of a debt service reserve fund.

FORWARD-LOOKING STATEMENTS – Under securities laws, these are statements that relate to future events rather than historical fact—basically, predictions as to what may happen. Statements regarding expected financial condition, results of operations, business, strategies and financing plans are categorized as forward-looking statements. In addition, words such as “anticipate,” “expect,” “plan,” “intend,” “designed,” “estimate,” “adjust” and similar expressions are forward-looking statements. Forward-looking statements involve known and unknown risks, uncertainties and other factors that could cause actual results, performance, achievements or industry results to differ materially from any future results, performance or achievements expressed or implied. Consequently, these statements are usually qualified by cautionary disclaimers in the offering memorandum.

FORWARD SWAP – An interest rate swap under which the accrual and exchange of cash flows commences at a later date rather than the current date.

FULL FAITH AND CREDIT – Usually means debt that is supported by all legally available funds of the tribal borrower. However, a pledge of all legally available funds does not mean there is a security interest granted in all of those funds. “Full faith and credit” is sometimes used interchangeably with general obligation, and it can mean different things for different tribal borrowers.

FULLY AUTOMATED SECURITIES TRANSFER (FAST) – A system created by the Depository Trust and Clearing Corporation whereby certificates for registered securities are maintained at the offices of individual registrars and can be transferred to a beneficial owner in a more timely and efficient manner.

FUNDS FLOW – Generally refers to the order in which payment and delivery occurs and proceeds are applied in connection with closing a bond issue.
Compare: FLOW OF FUNDS.

FUNDS FLOW MEMORANDUM – A document that is part of the closing transcript for a financing that describes how the funds from closing will flow, in particular who gets paid how much, when and how. If the transaction is a refinancing, the funds flow memorandum describes the details relating to paying off existing debt.

- G -

GAAP – See: *GENERALLY ACCEPTED ACCOUNTING PRINCIPLES*.

GAMING – Generic description for class II and class III gaming as conducted by federally recognized Indian tribes under IGRA and, in each case, a tribal gaming ordinance.

GAMING COMMISSION – See: *TRIBAL GAMING COMMISSION*.

GAMING COMPACT – A contractual agreement between a tribe and a state for the regulation of class III gaming. Under IGRA, class III gaming activities are lawful on Indian lands only if such activities are conducted in accordance with a gaming compact or if conducted pursuant to secretarial procedures.

GAMING ORDINANCE – See: *TRIBAL GAMING ORDINANCE*.

GAMING REDEMPTION – Provision in a trust indenture where, in the event a bondholder is determined to be unsuitable or unable to obtain necessary licenses, the tribal issuer may either redeem that bondholder's bonds at a redemption price of par, or require the bondholder to trade the bonds to another suitable investor. Because gaming is a highly regulated industry where financial sources may require licensure, this is a common feature in trust indentures for gaming financings.

GASB – See: *GOVERNMENTAL ACCOUNTING STANDARDS BOARD*.

GENERAL COUNCIL – Usually refers to all members of a tribe who are eligible to vote. For most tribes, the general council is the ultimate source of legal authority. In some cases, approval by general council may be required to incur debt. More often, however, the general council delegates certain powers to the elected representatives on tribal council. The powers to enter into contracts, borrow money, and pledge certain assets are usually delegated to tribal council.

GENERAL COUNSEL – Chief legal officer for an organization. General

counsel usually suggests a corporate position, whereas attorney general is more often a governmental position.

GENERAL OBLIGATION (G.O.) – An obligation payable from any and all legally available sources of a tribal borrower. For most governmental borrowings, a general obligation means the debt is supported by a pledge of taxes. However, most tribal governments have little or no tax base to pledge, and instead pledge particular revenue streams or assets to secure their borrowings. Nevertheless, the concept of a general obligation is important to many lenders. In some cases, a credit agreement may provide that if the tribal borrower does certain things to impair the contract, then the lenders are no longer limited in their recourse and instead the debt becomes a general obligation of the tribe. This is commonly referred to as a “springing G.O.” See: *SPRINGING COVENANTS*. Compare: *LIMITED RECOURSE*.

GENERALLY ACCEPTED ACCOUNTING PRINCIPLES (GAAP) – Authoritative standards for reporting financial information and preparing financial statements. There are differences in GAAP as applied by the Government Accounting Standards Board (GASB) versus the Financial Accounting Standards Board (FASB).

GLOBAL NOTE or CERTIFICATE – A single certificate, sometimes referred to as a “jumbo certificate,” representing an entire maturity of an issue of bonds or other securities. Such certificates are often used in book-entry systems. The issuer issues a global certificate that is then deposited with a securities depository or other book-entry agent and kept safely by the agent until maturity. The bonds are available to beneficial owners only in book-entry form, and no certificates can be obtained. See: *BOOK-ENTRY ONLY*.

G.O. – See: *GENERAL OBLIGATION*.

GOOD FAITH DEPOSIT – A deposit made by the tribal borrower with a lender in conjunction with execution of a commitment letter. Typically, the good faith deposit is applied towards due diligence, legal and other transactional costs while the financing is being structured.

GOVERNING LAW – The law that governs a particular transaction. Financings by tribal borrowers or tribal issuers are governed by a combination of federal and tribal law and, in most cases, some state law. Although state commercial laws generally do not apply in Indian country, the parties to a financing will usually agree that the laws of a particular state will also govern

the financing documents. New York law is typical for high-yield note offerings and large syndicated credit facilities. Local state law is more common for other types of borrowings.

GOVERNMENTAL ACCOUNTING STANDARDS BOARD (GASB) –

A standard-setting body, associated with the Financial Accounting Foundation and comparable to the Financial Accounting Standards Board. GASB prescribes standard accounting practices for governmental units in maintaining their financial records and releasing financial data to the public. *Compare: FINANCIAL ACCOUNTING STANDARDS BOARD.*

GOVERNMENT FINANCE OFFICERS ASSOCIATION (GFOA) – An

organization of state and local government finance officers formed to improve professional standards of government fiscal and debt administration.

GRACE PERIOD – A period of time allowed to cure a default before it ripens into an event of default. Not all defaults have grace periods, and grace periods are not all of the same length. There are variations based on type of default.

GRANTING CLAUSE – That portion of a security agreement or a trust indenture that describes the nature of the pledge and the collateral being offered to secure the borrowing.

GRANTOR – A party who grants an interest (usually a security interest) in something.

GREENSHOE – *See: ACCORDION.*

GREENFIELD PROJECT – A brand new project to be built on land not previously used for other purposes.

GRID-BASED PRICING – When the interest rate payable under a credit agreement fluctuates based on the pricing grid, usually as a function of the leverage ratio tested quarterly. In most cases, grid-based pricing means the greater the leverage, the greater the interest rate.

GROSS PLEDGE – Pledging all of something as collateral. For example, a pledge of gross revenues of a particular activity means a pledge of all revenues derived from that activity, prior to deductions for operating expenses or other purposes.

GROSS-UP CLAUSE – A provision in the financing agreements requiring

the tribal borrower or tribal issuer to increase the payments it is required to make on the debt, usually as a result of some tax event. The two most common examples are (1) an increased rate of interest will apply if tax-exempt obligations are later determined to be taxable, or (2) increased payments are owed if a lender is later subjected to withholding taxes by some local taxing authority.

GUARANTEE – See: *GUARANTY* or *GUARANTY AGREEMENT*.

GUARANTY or GUARANTY AGREEMENT – An agreement of a third party (the guarantor) to cover payment obligations owed by another party (the primary obligor).

- H -

HAIRCUT – A reduction or discount.

HAZARDOUS MATERIALS / SUBSTANCES – Environmental contaminants that lenders do not want responsibility or liability for. As a result, most credit agreements contain representations, warranties and covenants by the borrower regarding the absence or containment of hazardous substances, and the borrower usually undertakes to indemnify the lender for any claims relating to hazardous substances.

HEDGE – (1) A tactic (or a financial product) used to limit potential losses or gains associated with an existing financial position, asset or liability. (2) A method of reducing investment risk by making investments designed to offset the risks of existing investments.

HEDGE FUND – A type of investment fund that uses sophisticated strategies to generate returns higher than traditional stock and bond investments.

HIGH-YIELD – Term generally used to describe a bond or note offering that is below investment grade. Most high yield offerings by tribal issuers are (i) highly leveraged, (ii) large in principal amount (i.e., over \$100 million), (iii) issued by a tribal authority, corporation, or other special purpose entity, (iv) come due in a bullet maturity, and (v) are refinanced or restructured. A high-yield note trades at yields higher than investment grade bonds and has limited liquidity and marketability. *See: NON-INVESTMENT GRADE.*

HOLDER – The owner of a bond or other security. *See: BONDHOLDER.*

HOLDING PERIOD – Rule 144(d) of the '33 Act requires that restricted securities (such as privately placed bonds) be held for a period of time before they may be resold. For tribal bonds, the holding period would ordinarily be one year because tribes are not subject to the reporting requirements of the '34 Act. Notwithstanding the one-year holding period, tribal bonds may be resold prior to conclusion of the holding period if they qualify under Rule 144A

or Reg S. Most tribal bonds are issued with a qualified resale right under Rule 144A that renders the holding period unnecessary.



IGRA – See: *INDIAN GAMING REGULATORY ACT OF 1988*.

IMPROVEMENT – This generally refers to buildings or other structures built upon a piece of real property.

IN THE MONEY – Refers to the tribal borrower’s financial position under an interest rate swap if it would be owed a payment by the other party if a swap were terminated at the prevailing market price.

INCOME STATEMENT – A report showing the results of operation of the tribal borrower over a particular period of time. *Compare: BALANCE SHEET*.

INCREMENTAL FACILITY – Similar to an accordion. However, instead of simply expanding existing commitments, an incremental facility allows for creation of a whole new tranche of loans under a credit agreement. The incremental facility may be a revolver or a term loan, and it may have different terms (interest rate, maturity, etc.) from the existing credit facility. Like an accordion, it is not pre-committed financing and it is subject to a number of conditions precedent. *Compare: ACCORDION*.

INCUMBENCY CERTIFICATE – Document that certifies the names and signatures of representatives who are legally authorized to execute and deliver documents on behalf of the tribal borrower.

INCURRENCE COVENANTS – Negative covenants that (i) prohibit the tribal borrower from doing certain things (such as incurring additional debt) unless certain conditions are met, and (ii) are tested for compliance only at the time the proposed action occurs. Incurrence covenants are common to high-yield trust indentures, while maintenance covenants (which are tested on a recurring basis) are more common to credit agreements. Many trust indentures for tribal issuers contain a combination of incurrence covenants and maintenance covenants. *Compare: MAINTENANCE COVENANT*.

INDEBTEDNESS – A legal obligation to repay borrowed money, usually at a particular rate (or rates) of interest and over a timetable negotiated between the parties. Bonds and notes are indebtedness in the form of securities, while loans and other credit facilities are indebtedness that is not in the form of a security.

INDEMNIFICATION – The obligation of one party to cover the cost of claims or liabilities incurred by another, usually as a result of some contractual relationship between the two parties. The responsibility could include reimbursing for costs, expenses, or other liabilities and may be for certain specifically listed events or circumstances.

INDENTURE – *See: TRUST INDENTURE.*

INDEPENDENT CONSULTANT – A third-party professional retained by the tribal borrower to provide advice on a particular subject matter. Financing agreements sometimes contain provisions that require the tribal borrower to retain an independent consultant to advise on certain matters (e.g., insurance coverage) or on operational profitability. However, the requirement to retain a consultant can raise management concerns under IGRA if the tribal borrower is required to implement the independent consultant’s advice. Therefore, care must be taken in how these covenants are structured for transactions that relate to gaming. *See: MANAGEMENT; LAKE OF THE TORCHES CASE.*

INDIAN GAMING REGULATORY ACT OF 1988 (IGRA) – The cornerstone of federal regulation of Indian gaming. All gaming activities on Indian lands are subject to IGRA, which Congress enacted in 1988. The purpose of IGRA was to provide a statutory basis for the conduct of gaming by Indian tribes and to promote tribal economic development, self sufficiency, and strong tribal governments. IGRA divides gaming into three classes, which are regulated differently. *See: CLASS I GAMING, CLASS II GAMING, and CLASS III GAMING.*

INDIAN LANDS – Lands that are eligible for the conduct of gaming under IGRA. The term “Indian lands” means (A) all lands within the limits of any Indian reservation; and (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power. IGRA generally prohibits gaming on lands that have been acquired in trust or restricted fee status for gaming purposes after October 17, 1988, unless certain conditions are met.

INDIAN TRIBAL GOVERNMENTAL TAX STATUS ACT OF 1982 – Federal legislation which provided that Indian tribal governments and their recognized political subdivisions would be treated as states for certain tax purposes. This is the major piece of legislation that amended the Code to permit tribes to issue tax-exempt debt.

INDUCEMENT RESOLUTION – *See: REIMBURSEMENT RESOLUTION.*

INITIAL ADVANCE – The first advance of funds under a credit agreement. This may or may not coincide with the closing. The credit agreement will usually list various conditions precedent that must be satisfied prior to the initial advance. If those are not completed by the closing date, then the initial advance will occur later once all conditions have been met.

INITIAL PURCHASER – The investment bank that initially buys the bonds or notes sold by a tribal issuer pursuant to a Rule 144A or Regulation S offering. In most cases, the initial purchaser immediately resells the securities to qualified institutional buyers in reliance upon Rule 144A or to foreign investors in reliance upon Regulation S. The initial purchaser functions much like an underwriter does—i.e., buying the tribe’s bonds and reselling them just like a firm commitment underwriting. Technically, though, it is not an “underwriting” under federal securities laws.

INITIATIVE POWERS – Process by which voting members of a tribe may initiate legislation, usually through filing of an initiative petition to be acted upon by the general council or by tribal council. In most financings with a tribal obligor, there are covenants prohibiting the exercise of initiative powers in a way that would impair the financing agreements or cause a material adverse effect, and it is usually an event of default if those powers are so exercised.

INSTITUTIONAL INVESTOR – Pension funds, mutual funds, money managers, insurance companies, investment banks, commercial trusts, endowment funds, hedge funds, and other organizations who invest large sums of money.

INTEGRATION CLAUSE – *See: MERGER CLAUSE.*

INTERCREDITOR AGREEMENT – An agreement between multiple creditors that describes their respective rights and remedies with respect to shared collateral.

INTEREST – The amount paid by the tribe for the use of borrowed money.

This amount is generally calculated as an annual percentage of the principal amount.

INTEREST-ONLY PERIOD – A period during which no repayments of principal are being made by the tribal borrower. Interest-only periods are common during construction or in the ramping up of a project whose revenues will be used to service the debt.

INTEREST PAYMENT DATE – Any date on which interest (and sometimes principal) payments are due. For most loans, the interest payment date is either monthly or at the end of the applicable interest period. Bonds, on the other hand, usually pay interest semiannually. Depending upon how the loan or bond amortizes, some portion of the principal balance may also be due and payable on an interest payment date.

INTEREST PERIOD – The length of time over which a loan bears interest at a particular rate. Interest periods can vary widely depending upon the type of loan. For instance, the credit agreement may provide for interest periods on LIBOR loans of 1, 3, 6, 9 or 12 months.

INTEREST RATE – The annual rate, expressed as a percentage of principal, payable as interest on any debt. Often referred to as the “coupon” for bonds and other securities.

INTEREST RATE CAP or CEILING – A financial contract between a tribal borrower and a financial counterparty with respect to variable rate debt in which the counterparty agrees to pay any portion of the interest that exceeds a designated interest rate. The cap creates an upper limit on the interest rate cost to the tribal borrower without establishing a maximum interest rate payable to holders of the debt. *Compare: COLLAR; INTEREST RATE FLOOR.*

INTEREST RATE FLOOR – A financial contract that provides a minimum interest rate (“floor”) that the tribal borrower must pay on variable rate debt even if the method for determining the variable rate would otherwise provide for a lower rate of interest. For instance, LIBOR floors are sometimes included in credit agreements. A floor may also be used as part of a collar purchased for variable rate debt. *Compare: COLLAR; INTEREST RATE CAP OR CEILING.*

INTEREST RATE RISK – The risks associated with changes in interest rates (i.e., the risk that changes in interest rates will adversely affect a tribe’s position with respect to borrowing costs, reinvestment opportunities, at-market investment termination, etc.).

INTEREST RATE SWAP AGREEMENT – A contract between a tribal borrower and a counterparty (i.e., a financial institution) to exchange (or “swap”) interest payments in order to reduce interest rate risk exposure. For example, a tribal borrower may agree to make payments to the counterparty based upon a fixed rate of interest in exchange for the counterparty’s promise to make payments on the underlying debt based upon a variable rate. In this manner, the tribal borrower achieves a synthetic fixed rate on its debt. Interest rate swap agreements are common and sometimes are even required under the credit agreement. *See: FIXED RATE SWAP; FLOATING RATE SWAP.*

INTERIM FINANCING – *See: BRIDGE LOAN.*

INTERIM PERIOD FINANCIAL STATEMENTS – Unaudited financial statements, sometimes known as “stub period financials,” covering an interim period (or periods) since the most recent audited financial statements for the tribal obligor. *Compare: AUDIT REPORT.*

INTERNAL REVENUE CODE – The Internal Revenue Code of 1986 is also known as the Federal Tax Code or, more simply, the Code. Among other things, the Code under sections 103 and 7871 governs the exclusion of interest on tribal bonds from gross income for federal income tax purposes. *See: TAX-EXEMPT FINANCING.*

INTERNAL REVENUE SERVICE (IRS) – *See: IRS.*

INVESTMENT BANKING – The division of banking that relates primarily to the creation of capital for borrowers through the underwriting, purchase, placement, and trading of securities. If a tribe seeks to raise money through issuance of bonds, notes, or other securities, the tribe will be dealing primarily with the investment banking side of the bank (sometimes called “capital markets”). *Compare: COMMERCIAL BANKING.*

INVESTMENT COMPANY ACT OF 1940 – A federal statute passed in 1940 that regulates investment companies. See 15 USCA § 80a-1 et seq. Financing agreements may include representations and warranties by the tribal borrower that it is not an “investment company” for purposes of this statute.

INVESTMENT GRADE – A rating of creditworthiness as determined by a rating agency for bonds or other securities with a high probability of repayment. Bonds rated “BBB-” or higher by Standard & Poor’s or Fitch Ratings or “Baa” or higher by Moody’s Investors Service, Inc., are generally deemed to be investment grade. Notes and other short term obligations

rated "F3" or higher by Fitch Ratings, "MIG 3" or "VMIG 3" or higher by Moody's Investors Services, Inc., or "SP-2" or higher by Standard & Poor's are also deemed to be investment grade. Some buyers will not purchase bonds that are rated below investment grade. Most bonds and other securities issued by tribal issuers are either non-investment grade or unrated. However, a number of tribes have achieved investment grade-rated status for their bonds. See: *RATING*.

INVESTOR LETTER – A letter signed by an investor representing that it is an accredited investor and acknowledging an understanding of the risks associated with the bonds or other securities being offered. An investor letter usually contains representations by the investor about its financial ability to take such risks, its access to information about the bonds, its intent to hold the bonds for investment purposes (i.e., not for resale), and certain other matters relevant to the issue. This letter is sometimes referred to as a "big boy letter" or "sophisticated investor letter." Some investor letters are said to "travel" if they include a representation on the part of the purchasing investor to the effect that, if the investor resells the bonds, it will require the purchaser to sign an identical letter. See: *ACCREDITED INVESTOR*; *PRIVATE PLACEMENT*.

INVESTOR PRESENTATION – A summary description of a bond offering that is used to market the bonds to potential investors. It is prepared by the investment bankers and is based on excerpts from the preliminary offering memorandum.

IRS – The Internal Revenue Service is the federal agency within the U.S. Department of Treasury responsible for administering federal tax laws, including the Code. Within the IRS, there is a Tax Exempt Bond (TEB) Office that is responsible for tax-exempt obligations. Also within the IRS is an Indian Tribal Governments Office, which was established to help Indian tribes deal with federal tax matters. The Indian Tribal Governments Office includes field groups that provide assistance to Indian tribal governments. Tax issues that may be relevant to Indian tribal governments include employment tax matters, pensions and ERISA, distributions to tribal members, tax-exempt financing, and other governmental programs.

IRS AUDIT or EXAMINATION – Process through which the IRS reviews the facts surrounding a particular tax-exempt borrowing to confirm that it is in compliance with federal tax law. An IRS audit may be the result of random selection (just as it is for individual taxpayers), or the IRS may be targeting

transactions of a specific type for examination. At one time, the IRS announced that tax-exempt debt issued by Indian tribes was a category targeted group.

ISDA – The International Swap and Derivatives Association, Inc.

ISDA MASTER AGREEMENT – The standardized master legal agreement for all derivative transactions providing standardized definitions, terms, and representations governing the interest rate swap transactions.

ISSUE – An issue of bonds or other securities identified by name and series designation to distinguish it from other issues.

ISSUE PRICE – The price at which bonds are sold to investors for the first time. It may be at par or at a premium or a discount. As the bonds are subsequently traded, the price may be above or below the issue price.

ISSUER – The tribal party who issues bonds or other securities and is obligated to repay them. The issuer may be the tribal government itself, or it may be a tribal corporation, authority, enterprise or instrumentality.
Compare: BORROWER.

ISSUER'S COUNSEL – The law firm that represents the tribal issuer in a securities offering. *Compare: BOND COUNSEL.*

ISSUING BANK – The bank that issues a letter of credit for the tribal borrower's benefit pursuant to a credit agreement. Although multiple banks may share in the commitment for the letter of credit, only one bank actually issues the letter of credit.

- J -

JUNIOR CREDITOR – A creditor with a junior lien.

JUNIOR LIEN – Another name for subordinate lien. *Compare: FIRST LIEN.*

JUNK BONDS – A bond or other security that is rated below investment grade.

- K -

KICKOFF MEETING – The first meeting of the working group for a new financing. The kickoff meeting usually occurs after the various professionals (bankers, lawyers, financial advisors, etc.) have been retained. The purpose of the meeting is to establish a group consensus about structure, timing, division of responsibilities, and general direction.

KNOW YOUR CUSTOMER (KYC) – Part of a lender’s Patriot Act compliance duties which require the bank to verify the identity of its clients and take other enhanced due diligence measures intended to prevent fraud, theft, money laundering and the financing of terrorism.

- L -

L-PLUS – Shorthand for LIBOR plus, or the applicable margin for a LIBOR loan. For instance, “L+250” means an interest rate equal to LIBOR plus an applicable margin of 250 basis points.

LAKE OF THE TORCHES (LAC DU FLAMBEAU) CASE – A federal court decision from January 2010 that nullified a trust indenture between a tribal issuer (Lake of the Torches Economic Development Corporation) and a trustee on grounds that the trust indenture violated IGRA. Specifically, the district court found that certain provisions of the trust indenture gave management authority to persons other than the tribal issuer, and the trust indenture had not been approved by NIGC. Accordingly, the district court ruled the trust indenture was void. See *Wells Fargo Bank, Nat’l Ass’n v. Lake of the Torches Econ. Dev. Corp.*, 677 F. Supp. 2d 1056 (W.D. Wis. 2010). The district court’s decision was upheld in part by the Seventh Circuit Court of Appeals. See *Wells Fargo Bank, Nat’l Ass’n v. Lake of the Torches Econ. Dev. Corp.*, No. 10-2069 (7th Cir. September 6, 2011). However, the Seventh Circuit remanded the case to the district court to allow the trustee and bondholders to amend their complaint to raise equitable claims. The Lake of the Torches Decision had a profound chilling effect on financings for Indian tribes, and it highlighted the importance of drafting financing covenants carefully in order to avoid unintended management consequences. As a result of the decision, it has become routine to seek declination letters from the NIGC for financing agreements that concern Indian gaming. As of the date this glossary was printed, the case is still on remand. See: *MANAGEMENT*; *MANAGEMENT ACTIVITIES DISCLAIMER*; *DECLINATION LETTER*.

L/C – Abbreviation for letter of credit. Sometimes, “LOC.”

LEAD ARRANGER – Within a syndicated credit facility, this is the bank with primary responsibility for structuring and coordinating the transaction. The lead arranger may be a commercial bank or it may be an investment banking affiliate of a commercial bank.

LEAD BANK – An unofficial title usually meant to suggest the bank with the largest share of the total commitment when more than one bank is involved.

LEAD MANAGER – This can mean the lead arranger in a bank deal, or it can mean the underwriter / initial purchaser who manages a bond offering for the tribal issuer.

LEASEHOLD DEED OF TRUST – An agreement giving a lender a lien on a borrower's leasehold interest in real property. For example, a tribe might lease federal trust land and improvements (e.g., a hotel site) to a wholly owned tribal corporation for a period of years at a nominal rent. The tribal corporation then borrows money from a lender and grants to the lender a security interest in personal property associated with the hotel but also a lien on the corporation's interest in the lease from the tribe. Although the lender cannot foreclose upon and sell the trust land, the leasehold deed of trust does give the lender an additional remedy. In an event of default, and assuming the leasehold deed of trust complies with applicable federal and tribal law, the lender could displace the tribal corporation and take over the lease from the tribe. However, the additional leverage provided by a leasehold deed of trust may be only theoretical if the lender cannot make more profitable use of the project site than the tribal corporation was able to do.

LEFT PLACEMENT or LEFT SIDE – The lead manager whose name appears in the position of greatest prominence in the offering memorandum (i.e., at the top left side among the list of co-managers or initial purchasers).

LEGAL DEFEASANCE – See: *DEFEASANCE* or *DEFEASED*.

LEGAL OPINION – See: *OPINION OF COUNSEL*.

LENDER – A bank or lending institution that loans money to a tribal borrower.

LETTER OF CREDIT (LOC) – A commitment issued by a commercial bank (the issuing bank) to some third party (the beneficiary), at the request of a borrower, obligating the issuing bank to honor demands for payment made by the third party against the borrower. As such, the letter of credit functions like a guaranty from the issuing bank. Letters of credit are sometimes described as being either "standby" or "direct pay," depending upon when the obligation to pay arises. The issuing bank's obligation to pay under a standby letter of credit is triggered if the borrower fails to pay the third party. However, the issuing bank's obligation to pay under a direct pay letter of credit is automatic. That is, the issuing bank pays the beneficiary and then seeks reimbursement

from the borrower. Either way, a draw on the letter of credit is treated as an advance under the credit agreement (or reimbursement agreement). Tribal issuers sometimes will use a letter of credit as both a liquidity facility and credit enhancement for variable rate bonds. A letter of credit also provides the added benefit of providing an exemption from registration under the '33 Act for the tribal issuer's bonds that are supported by the letter of credit. See: *CREDIT ENHANCEMENT*; *CREDIT FACILITY*; *LIQUIDITY FACILITY*.

LEVEL DEBT SERVICE – Retirement of debt according to a schedule in which the amount of total debt service payments each year (i.e., principal and interest) remains relatively constant over the life of the debt. Compare: *LEVEL PRINCIPAL*.

LEVEL PRINCIPAL – Retirement of debt according to a schedule in which the amount of total principal payments each year remains relatively constant over the life of the debt. This method of amortization results in declining annual debt service as the annual amount of interest payments declines in relation to principal that is paid down. This is sometimes referred to as declining debt service. Compare: *LEVEL DEBT SERVICE*. See: *DEBT SERVICE*.

LEVERAGE – The total amount of debt one has.

LEVERAGE RATIO – A ratio used for financial covenants and calculated as total debt (leverage) divided by a tribal's borrower's EBITDA for the LTM. It is a standard provision in credit agreements and used both as a maintenance covenant and also as a factor in grid-based pricing. The leverage ratio is usually tested at the end of each fiscal quarter.

LIBOR – Acronym for "London Inter-Bank Offered Rate," which designates the rate at which major banks loan money to each other. LIBOR is determined on a daily basis and is the world's most widely used benchmark for short-term interest rates. Most credit agreements have an option permitting the tribal borrower to borrow at LIBOR plus the applicable margin.

LIBOR FLOOR – See: *INTEREST RATE FLOOR*.

LIBOR LOAN – A loan that bears interest based on LIBOR (e.g., LIBOR plus the applicable margin).

LIBOR TRANCHE – One or more LIBOR loans made under the same credit agreement that have interest periods that begin and end on the same dates.

LIEN – A security interest in or encumbrance upon real or personal property of the tribal borrower. Most financing agreements contain covenants that prohibit the tribal borrower from incurring liens, other than a narrow list of permitted liens.

LIEN SEARCH – A process of searching state and local records to find out if there are liens filed against a borrower’s property. Sometimes called a “UCC search.”

LIEN WAIVER – A written acknowledgment by a contractor, subcontractor or supplier to a construction project that they have been paid for work performed to date and they waive their right to try and place a lien on the project. Although tribes have sovereign immunity and federal trust land is not subject to mechanics’ or materialsmen’s liens, construction lenders may still expect the tribe to obtain lien waivers as the project is being built. Lenders do not want unpaid and possibly litigious contractors threatening the project.

LIMITED RECOURSE – A financing secured by and payable from specific collateral pledged by the tribal borrower where, in an event of default or upon acceleration, the creditor’s recourse is limited to the pledged revenues and other collateral specifically pledged to repay the debt. *Compare: GENERAL OBLIGATION; REVENUE OBLIGATION.*

LINE OF CREDIT – An arrangement between a bank and a borrower establishing a maximum loan balance that the borrower may maintain. The borrower can draw on the line of credit at any time, as long as it does not exceed the maximum permitted balance set forth in the agreement. This is sometimes referred to as a revolving line of credit.

LIQUIDITY – (1) The ability to convert an investment or asset into cash. If an investment can be sold with few restrictions and there is an active market for such investments, then it is considered highly liquid. (2) Liquidity may also describe a tribal borrower’s capacity to meet its short-term payment obligations.

LIQUIDITY COVENANT – A covenant in which the tribal borrower agrees to maintain a certain level of liquidity, usually in the form of cash and cash equivalents.

LIQUIDITY FACILITY – A letter of credit, standby bond purchase agreement, or other arrangement used to provide liquidity to a tribal issuer to purchase variable rate demand obligations that have been tendered to the tribal issuer

or the remarketing agent but which cannot be immediately remarketed to new investors. The bank providing the liquidity facility typically purchases VRDO bonds (or provides funds to the remarketing agent to purchase the VRDO bonds) until such time as they can be remarketed. *Compare: CREDIT FACILITY. See: LETTER OF CREDIT; STANDBY BOND PURCHASE AGREEMENT.*

LOAN – One or more advances of money by a lender or group of lenders under a credit agreement of some kind. A loan is not a security, whereas bonds or notes issued under a trust indenture are securities. Loans can be in the form of term loans, revolving loans, swinglines, and other credit facilities. *Compare: SECURITY.*

LOAN AGREEMENT – *See: CREDIT AGREEMENT.*

LOAN PARTICIPATION – An arrangement in which two or more lenders share in a loan to one tribal borrower.

LOC – *See: LETTER OF CREDIT.*

LOCKBOX – A contractual arrangement giving a secured party possession of cash collateral. Under most lockbox arrangements, gross revenues are deposited by the tribal borrower directly with the secured party, who then releases funds back to the tribal borrower in accordance with the waterfall priorities. *See: WATERFALL.*

LONG-TERM – When used in a financing context, this term usually means longer than one year.

LOSS PAYEE – The person or persons who are beneficiaries and payees of an insurance policy. Typically, a lender expects to be a loss payee under a tribe's property and casualty insurance policy in a limited recourse financing because it is the lender's collateral that is being insured.

LOWER FLOATER – *See: VARIABLE RATE DEMAND OBLIGATION.*

LTM – Acronym for latest twelve months. Financial covenants are usually tested at the end of each fiscal quarter, and LTM essentially means the same thing as rolling fiscal year (i.e., the most recently completed four-quarter period).

- M -

MAC – Acronym for Material Adverse Change.

MADS – Acronym for Maximum Annual Debt Service.

MAE – Acronym for Material Adverse Effect.

MAINTENANCE CAPITAL EXPENDITURES – Capital expenditures made for maintaining, repairing, or refurbishing capital assets. Generally, this does not include capital expenditures made to expand or grow the business but rather those capital expenditures that keep the business running smoothly at current levels. See: *CAPITAL EXPENDITURES*.

MAINTENANCE COVENANT – A covenant requiring the borrower to meet or exceed certain financial performance criteria (e.g., a leverage ratio or a fixed-charge coverage ratio). Unlike incurrence covenants, which are tested for compliance only at a particular point in time, maintenance covenants are tested on a recurring basis (usually quarterly). Maintenance covenants are found in all credit agreements and in most trust indentures for tribal issuers.

MAKE WHOLE – A prepayment provision that allows a tribal issuer to redeem bonds prior to maturity without the consent of bondholders, but which is subject to payment of a costly premium designed to “make whole” the investment expectations of bondholders. The premium is usually a lump sum derived from a formula based on the net present value of interest payments remaining on the bonds either until maturity or until an earlier date when the bonds are redeemable at a fixed price.

MANAGEMENT – Term used to describe planning, organizing, directing, coordinating, or controlling functions exercised by an outside party in connection with Indian gaming activities. An agreement which involves management of an Indian gaming operation is subject to special requirements under IGRA.

MANAGEMENT ACTIVITIES DISCLAIMER – Standardized language routinely included for borrowings that relate to Indian gaming operations. The language serves as a blanket prohibition and disclaimer of any intent to manage the tribal borrower’s gaming activities. The language most commonly used lists various activities (which are defined as “management activities”) and then provides that the financing parties shall not engage in management activities. The language originated in a declination letter provided by the NIGC in January 2009.

MANAGEMENT CONTRACT – A contract involving management by a third party of all or part of a tribe’s gaming operations. IGRA prohibits outside parties from managing tribal casinos except pursuant to a contract meeting certain criteria that have been reviewed and approved by the NIGC. Contracts violating this prohibition are void. The presence of one or more management functions—or even the contractual right to engage in them—may constitute “management” within the meaning of IGRA. Care must be taken when drafting financing agreements to avoid triggering management issues unintentionally. *See: LAKE OF THE TORCHES CASE; DECLINATION LETTER.*

MANAGEMENT’S DISCUSSION & ANALYSIS (MD&A) – Shorthand for management’s discussion and analysis of financial condition and results of operation. This is a narrative explanation within the offering memorandum or periodic reports of a tribal issuer about the financial condition, changes in financial condition, and results of operations for its commercial activities. It provides operating results for different periods (e.g., annual, quarterly, or LTM) in comparative form. MD&A typically includes a description of liquidity, capital resources, results of operations, specific events or trends, market risks, and uncertainties. In this case, “management” does not mean third-party management of gaming. Instead, “management” here simply refers to those who have primary responsibility for overseeing commercial activities of a tribal issuer.

MANAGER – (1) Member of an underwriting group charged with primary responsibility for conducting the affairs of the group. The manager usually takes the largest underwriting commitment. (2) One who provides services pursuant to a management contract for gaming. *See: LEAD MANAGER.*

MANDATE LETTER – Another name for engagement letter.

MANDATORY CALL – *See: MANDATORY REDEMPTION.*

MANDATORY PREPAYMENT – Provision in a credit agreement requiring the borrower to make prepayments on a credit facility to the extent the tribal borrower has received cash from certain sources – for example, from excess cash or from proceeds of an insurance claim or the sale of assets.
See: EXCESS CASH FLOW SWEEP; CLEAN-DOWN.

MANDATORY PURCHASE – In most cases, this has the same meaning as mandatory redemption. However, in other cases it may mean a mandatory offer to purchase bonds, such as following a change of control. In the latter case, the bondholder may reject the offer.

MANDATORY REDEMPTION – Requirement under a trust indenture that the tribal issuer must redeem bonds, in whole or part, prior to maturity either as a result of some event (such as a determination of taxability or gaming law redemption) or in accordance with a mandatory redemption schedule. Mandatory redemption includes payment of principal plus accrued interest on the bonds being redeemed and, in some cases, a premium.
See: REDEMPTION.

MANDATORY REDEMPTION FUND – Fund into which the issuer makes periodic deposits to be used to pay mandatory redemption. Often called a “sinking fund.”

MANDATORY REDEMPTION SCHEDULE – A schedule established at the time of pricing to retire term bonds through periodic payments over time.

MANDATORY TENDER – Requirement that a bondholder must surrender its bonds to the tribal issuer or to a tender agent for purchase upon the occurrence of certain events or upon a predetermined tender date. This is sometimes referred to as a “mandatory put.” *Compare: TENDER OPTION.*

MARK-TO-MARKET – (1) Calculation of the value of a financial instrument (e.g., an interest rate swap) based on the current market rates or prices of the underlying asset or liability. (2) A requirement under GAAP to adjust the value of financial instruments periodically to reflect their current market price.

MATERIAL – *See: MATERIALITY.*

MATERIAL ADVERSE CHANGE – A change or development having a material adverse effect. *See: MATERIAL ADVERSE EFFECT.*

MATERIAL ADVERSE EFFECT – Definitions may vary, but the term is used

in financing documents to describe (a) a material adverse change in or effect upon the operations, business, assets, properties, liabilities (actual or contingent), condition (financial or otherwise), or prospects of a tribal borrower; (b) a material impairment of the rights and remedies of the lenders or investors under the financing documents, or of the ability of the tribal borrower to perform its obligations; or (c) a material adverse effect upon the legality, validity, or enforceability of any of the financing documents. A material adverse effect can give rise to a default or have other consequences under the financing documents. Also, a tribal borrower's representations or covenants under the financing agreements may be qualified to the extent that failure to comply would not have a material adverse effect.

MATERIAL AGREEMENT – An agreement that is material such that it merits discussion in the offering memorandum. For example, the following are often considered material agreements for a tribal issuer in a gaming financing: compacts (including any agreements required by the compacts, such as agreements with local governments), construction agreements, disbursement agreements, and intercreditor agreements (if any).

MATERIAL OMISSION – The failure to disclose material information necessary to comply with applicable securities laws. The term comes from Rule 10b-5, which provides that it shall be unlawful in connection with the purchase or sale of bonds or other securities to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. See: *RULE 10B-5*.

MATERIALITY – The standard for determining what information should be disclosed to investors in a securities offering. Information is considered “material” if there is a substantial likelihood a reasonable investor would consider it important in making investment decisions with respect to a security. Stated another way, material facts are those that a reasonable investor would view as significantly altering the total mix of available information. Unfortunately, there is no bright-line, all-purpose test for determining materiality in a securities offering. Rather, it is a standard that requires the exercise of judgment, in light of the facts and circumstances, about whether certain information is material.

MATURITY or MATURITY DATE – The date that some or all of the principal of a borrowing becomes due and payable. Loans typically have only one maturity date, which is the final maturity. Bond issues, however, may have

multiple maturities of serial or term obligations.

MATURITY SCHEDULE – An amortization schedule listing the maturity dates and maturity values of each maturity of bonds. The maturity schedule often appears on the inside cover of the offering memorandum. *Compare: DEBT SERVICE SCHEDULE. See: AMORTIZATION SCHEDULE.*

MAXIMUM ANNUAL DEBT SERVICE – The greatest amount of annual debt service coming due in any year during the life of a bond issue. Sometimes abbreviated as “MADS,” this number may serve as the denominator in a debt service coverage ratio.

MERGER CLAUSE – Provision in a contract declaring it to be the complete and final agreement between the parties and that no additional conditions exist except those that are in the writing. It is sometimes called an integration clause.

MOODY’S INVESTORS SERVICE – A nationally recognized rating agency that provides ratings on bonds and other securities.

MORATORIUM – To suspend an obligation, such as repayment of debt. Governments can declare a moratorium, and most financing agreements contain covenants providing that the tribal borrower shall not exercise its sovereign power to do so.

MORTGAGE – Granting an interest in real property to secure the repayment of debt. Most borrowings by tribal borrowers do not involve a mortgage, though occasionally a mortgage may be given on fee land that serves as collateral for a borrowing. *See: DEED OF TRUST.*

MOU – An acronym for memorandum of understanding, which is often a kind of preliminary agreement. Agreements between tribal and local governments are frequently labelled as MOUs. Whether an MOU is a binding contract or not depends upon the individual facts and circumstances.

MUNIS – Shorthand for municipal bonds, which make up most of the tax-exempt securities market.

- N -

NASD – Short for National Association of Securities Dealers, Inc., which was consolidated into FINRA.

NATIONAL INDIAN GAMING COMMISSION (NIGC) – The federal agency within the Department of the Interior that regulates gaming activities on Indian lands pursuant to IGRA. The NIGC is responsible for administration and enforcement of IGRA. In the financing context, the NIGC is perhaps most visible for its role providing declination letters.

NATIVE AMERICAN FINANCE OFFICERS ASSOCIATION (NAFOA) – An organization that advocates and provides educational opportunities and resources to members of the Native American finance community.

NC – Acronym for non-callable.

NDA – Acronym for non-disclosure agreement.

NEGATIVE ARBITRAGE – Investment of bond proceeds and other related funds at an interest rate below the bond yield.

NEGATIVE ASSURANCE – Refers to assurances given by auditors or attorneys about disclosure that has been provided in connection with the sale of bonds or other securities. It is not a guarantee of completeness and accuracy, and it is not a legal opinion. Rather, it is a statement usually phrased in the negative to the effect that: "Nothing has come to our attention that causes us to believe the offering memorandum contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading."

NEGATIVE COVENANT – A provision that prohibits the tribal borrower from doing something. For example, a prohibition against incurring liens or a limitation on incurring additional indebtedness.

NEGATIVE PLEDGE – A promise not to pledge to someone else. For example, a tribal borrower may have certain property that is not pledged as collateral but which is nonetheless important to a financing. The lenders may allow that property to remain outside their lien, but they want assurance that the property will not be pledged to someone else and thereby compromise the lenders' interests.

NEGOTIABLE INSTRUMENT – A financial instrument that is negotiable (transferable) without the consent or knowledge of the issuer. The basic elements are (i) an unconditional promise to pay a certain sum of money, (ii) payable on demand or at a determinable future time, and (iii) payable to order or to the bearer.

NEPA – National Environmental Policy Act of 1969. A federal law administered and enforced by the U.S. Environmental Protection Agency.

NET DEBT – A measure of total debt minus cash and cash equivalents.

NET INTEREST COST (NIC) – A computation of interest expense taking into account any original issue discount or original issue premium as well as the dollar amount of interest payable over the life of a bond issue. NIC does not take into account the time value of money (as would be done in other calculation methods, such as the "true interest cost" (TIC) method). The term "net interest cost" refers to the overall rate of interest to be paid by the issuer over the life of the bonds.

NET LEASE – A net lease is one that shifts the burden to the lessee during the term of the lease to pay for costs relating to the leased property. A "triple net" lease requires the lessee to pay all taxes, insurance and maintenance costs of the property.

NET REVENUES – (1) The amount of money available after subtracting from gross revenues certain costs and expenses, such as operating costs and other expenses as provided in the financing documents. (2) Under IGRA, "net revenues" has a more precise statutory definition at 25 USC §2703(9), which is gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total operating expenses, excluding management fees. Many tribes have revenue allocation plans that follow the IGRA definition of net revenues.

NEW MONEY – A financing where proceeds are used to finance a new project as opposed to refinancing existing indebtedness.

NIGC – See: *NATIONAL INDIAN GAMING COMMISSION*.

NO-ACTION LETTER – Parties who are not sure whether a particular action would violate securities laws may request a “no-action” letter from the SEC staff. Most no-action letters provided by the SEC describe the request, analyze the particular facts and circumstances involved, discuss applicable laws and rules, and, if the SEC staff grants the request, to conclude that the SEC staff would not recommend that the commission take enforcement action against the parties.

NON-ACCREDITED INVESTOR – Any investor who is not an accredited investor.

NON-CALL PERIOD – The period during which bonds are not subject to optional redemption. Most fixed rate bonds have some non-call period to protect the investment expectations of bondholders. However, variable rate demand obligations often do not have a non-call period. Instead, they can be optionally redeemed at almost any time, subject only to notice requirements.

NON-CALLABLE – A bond that is not currently subject to optional redemption.

NON-DISCLOSURE AGREEMENT – See: *CONFIDENTIALITY AGREEMENT*.

NON-IMPAIRMENT COVENANT – Covenant providing that the tribal borrower will not exercise its sovereign powers or otherwise take actions that might impair the contractual rights and remedies of third parties under the financing documents. Non-impairment language is often included in the authorizing resolution as well as in the financing documents.

NON-INVESTMENT GRADE – A rating less than investment grade.

NON-RATED – A bond that has not been rated by any of the rating agencies.

NOTE – Another name for bonds in the high-yield market, usually issued with a maturity of ten years or less. High yield notes are securities, but promissory notes under a credit agreement are not securities. See: *SENIOR NOTES*.

NOTICE TO PROCEED – The green light for a contractor to begin work under a construction contract. The notice is given by the tribe, as the owner.

NOTIONAL AMOUNT – Similar to bond principal amount. The notional amount is used as the basis to determine the amount of interest payments

under an interest rate swap agreement. The notional amount will often amortize over time to match the amortization of the debt to which the interest rate swap is related.



OBLIGEE – The party who is owed a duty of payment and performance under a contract. For example, a lender would be an obligee to whom a borrower owes an obligation of repayment.

OBLIGOR – The party who has an affirmative obligation of payment and/or other performance under a contract. For example, a borrower under a loan or financing agreement would be an obligor on the loan.

OFF-BALANCE SHEET FINANCING – This generally refers to an operating lease (as distinguished from a capital lease) because the lease payments are not shown as debt on the lessee's balance sheet. Instead, the balance sheet shows only those lease payments due in the current period as expenses.

OFFERING – A new issue of bonds or other securities.

OFFERING MEMORANDUM (OM) – Disclosure documents prepared by a tribal issuer in connection with a new offering. The offering memorandum is produced in two stages: (1) the preliminary offering memorandum, which is used to market the bonds, and (2) the final offering memorandum, which is produced after pricing and includes all final terms.

OFFERING PRICE – The price or yield at which bonds are offered to investors.

OID – See: *ORIGINAL ISSUE DISCOUNT*.

OPEN MARKET PURCHASE – When an issuer buys back its own bonds on the open market. This is more common when the bonds are trading at a discount and the issuer sees an opportunity to de-leverage. *Compare: TENDER OFFER.*

OPERATING EXPENSE – The day-to-day costs of operating a business, which are expensed rather than capitalized.

OPERATING LEASE – A contract that allows for use of an asset without

transferring rights of ownership to the lessee. It is sometimes called a “true lease,” and it is not recorded on the lessee’s balance sheet as long-term debt. *Compare: CAPITAL LEASE. See: OFF-BALANCE SHEET FINANCING.*

OPINION OF COUNSEL – An opinion letter rendered by one or more law firms involved in a financing and delivered to certain participants in the transaction who are entitled to rely on the opinion. For most financings in Indian country, it is a requirement of closing that an opinion of counsel for the tribal borrower be delivered to the financing parties. For bond issues, there is usually an opinion of bond counsel that addresses the validity and, if applicable, the tax-exempt status of the bonds, along with various other matters. The forms of opinions may be printed in the offering memorandum—a practice that is more common for tax-exempt bonds. An opinion of counsel is not a warranty or a guarantee of the matters covered. Rather, it is an expression of a law firm’s professional judgment regarding the matters covered by the opinion.

OPTIONAL REDEMPTION – The ability to redeem (or “call”) some or all of the bonds prior to the maturity date at the option of the issuer and without obtaining the consent of bondholders. Optional redemption terms are determined at the time of pricing and are set forth in the bond purchase agreement or bond placement agreement. Once the non-call period has lapsed, the issuer may optionally redeem bonds at the agreed-upon redemption price.

OPTIONAL TENDER – *See: TENDER OPTION.*

ORG MEETING – Short for organizational meeting, which is another way of saying kickoff meeting.

ORIGINAL ISSUE DISCOUNT (OID) – An amount by which the par value of a bond exceeds its initial offering price at the time of its original issuance. The original issue discount is accreted over the life of the bond, increasing the adjusted book value of the bond until actual payment occurs. Lenders must accrue accreted OID annually for all federal tax purposes. If a bondholder sells its bond prior to maturity, any profit realized on such sale is calculated (for tax purposes) on the adjusted book value, which is calculated for each year the bond is outstanding by adding the accretion value to the original offering price. *Compare: ORIGINAL ISSUE PREMIUM.*

ORIGINAL ISSUE PREMIUM (OIP) – The amount by which the initial offering

price of a bond at the time of its original issuance exceeds its par value. The original issue premium is amortized annually over the life of the bond, and offsets, on a dollar-for-dollar basis, any interest actually paid or accrued during the year. The amount of original issue premium received by a tribal issuer in a primary offering (the "bond premium") is generally treated as proceeds of the bond issue. If a bondholder sells its bond prior to maturity, any profit realized on such sale is calculated (for tax purposes) on the adjusted book value, which is calculated for each year the bond is outstanding by subtracting the amortization value from the original offering price. *Compare: ORIGINAL ISSUE DISCOUNT.*

OUT – An escape clause in a contract giving one or more parties the right to terminate the transaction without liability if certain things happen. For example, a purchase agreement will typically contain numerous "outs" giving the purchaser the right to cancel purchase of the tribal issuer's bonds prior to closing and without liability upon the occurrence of certain events (e.g., the discovery of material undisclosed facts).

OUT OF THE MONEY – Refers to the tribal obligor's financial position if it would owe a payment to the other party if an interest rate swap agreement were terminated at the prevailing market rate.

OUTSTANDING – Indebtedness that has been incurred and not yet paid off is considered "outstanding." However, bonds that have been defeased generally are not considered to be outstanding for purposes of many trust indenture provisions, such as covenants and security provisions.

OWNER – In the context of a construction contract, the owner of the project is the Tribe.

- P -

PAR / PAR VALUE – The stated value or face value of a bond, which includes the principal amount plus accrued and unpaid interest. Bonds can trade, be purchased or be redeemed at par, above par or below par depending on a variety of factors. *Compare: PURCHASE PRICE; REDEMPTION PRICE.*

PAY IN KIND – See: *PIK NOTES.*

PARI PASSU – A fancy way of saying parity debt.

PARITY DEBT – Other indebtedness having an equal right of payment and the same priority of lien against the collateral pledged. A credit agreement may or may not allow a tribal borrower to incur parity debt. Trust indentures usually do allow for parity debt, subject to meeting certain requirements such as meeting an additional debt test and having an intercreditor agreement in place.

PARTICIPATION – When a lender sells certain entitlements under a credit agreement to a third party. Unlike an assignment, a participation does not create direct contractual rights between the tribal borrower and the third party. A participant (unlike an assignee) does not become a lender and is not obligated to advance any funds. Rather, a participant is simply entitled to receive a proportionate amount of monies paid by the tribal borrower to the lender pursuant to the credit facility in which they are participating.

PATRIOT ACT – More formally known as the “USA Patriot Act of 2001,” it stands for Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001. It is an anti-money laundering statute applicable to financial institutions and has led to various representations that now appear in credit agreements.

PAYING AGENT – The bank or trust company responsible for transmitting payments of bond interest and principal on the issuer’s behalf to the bondholders. Most often, the trustee under a trust indenture also acts as paying agent.

PAYOFF LETTER – A letter provided by an existing lender to the borrower in anticipation of a refinancing by another lender. The existing lender informs the parties of the exact dollar amount that must be received as of a certain date in order to satisfy all obligations under the current loan and cause the existing lender to release its lien. In addition to describing the final amount of principal and interest due as well as any fees and expenses, the payoff letter usually sets forth an additional amount of interest that will accrue each day past the assumed funding date.

PERFECTED SECURITY INTEREST – A security interest that is “perfected” is one that is enforceable not only against the tribal obligor but also against third parties who might assert competing claims on the collateral. Perfecting a security interest under Article 9 is most often achieved through (i) possession of the collateral, (ii) filing a financing statement, or (iii) control. The first creditor to perfect its security interest in the collateral has the highest priority.

PERIODIC REPORTS – Annual and quarterly reports of the tribal issuer pursuant to Form 10-K and Form 10-Q. Most tribal issuers do not file periodic reports with the SEC. However, trust indentures sometimes require the tribal issuer to file with the trustee reports containing substantially all the information that would have been included in annual and quarterly reports on Form 10-K and Form 10-Q if the tribal issuer had been a reporting company under the Exchange Act.

PERMITTED DEBT – See: *ADDITIONAL DEBT*.

PERMITTED ENCUMBRANCES – See: *PERMITTED LIENS*.

PERMITTED LIENS – A negotiated list of liens that are allowed to exist on the collateral that secures a borrowing. The list will usually include a schedule of specific liens that exist on the closing date as well as future liens that may exist if they fall into one or more categories.

PERSONAL PROPERTY – Personal property is all property other than real property (land). Personal property is generally property that is moveable or intangible. Personal property that is permanently attached to land is sometimes referred to as “fixtures” and treated as if it were real property. Most borrowings by tribal entities involve collateral in the form of personal property rather than real property.

PHASE I / PHASE II ESA – See: *ENVIRONMENTAL SITE ASSESSMENT*.

PIK NOTES – PIK stands for “pay in kind.” Most bonds pay interest in cash. But, PIK notes involve payment of interest in something of value other than cash. Typically, interest that is accrued and unpaid on PIK notes is added to the principal amount in lieu of paying interest in cash on the interest payment date.

PLACEMENT AGENT – Investment banking firm engaged by a tribal issuer for the purpose of placing bonds with accredited investors in a new offering. Unlike an underwriter or an initial purchaser who buys bonds from the tribal issuer and promptly resells them, a placement agent does not buy the bonds. Rather, a placement agent finds accredited investors who buy the bonds from the tribal issuer in a private placement. *Compare: UNDERWRITER; INITIAL PURCHASER.*

PLACEMENT AGREEMENT – Contract between the placement agent and a tribal issuer setting forth the final terms, prices, and conditions upon which the placement agent will place a new issue of bonds or other securities with accredited investors.

PLACEMENT FEE – Compensation paid to a placement agent for successfully placing the bonds in a private placement.

PLAIN ENGLISH – This refers to SEC rules requiring that prospectuses for offerings of registered securities be written in “plain English” instead of legal and accounting jargon. Plain English form uses everyday words, short sentences, active voice, regular print, and personal pronouns that speak directly to the reader. In general, the corporate debt markets follow plain English rules, while the tax-exempt muni markets generally do not. Offering memoranda for tribal bonds are usually in plain English even though they are not technically subject to these SEC requirements.

PLEDGE – A promise, often coupled with granting an interest in something. In the financing context, a pledge usually refers to the sources of repayment made available (pledged) to secure the borrowing. Collateral is pledged through granting a security interest, but not all pledges include a security interest. For example, a general obligation pledge is often simply an unsecured promise to pay.

PLEDGED REVENUES – Revenues pledged by a tribal borrower to secure payment of debt. Pledged revenues are part of the collateral and are subject to a security interest granted under a security agreement or a trust indenture.

Most forms of debt incurred by tribal borrowers include some form of pledged revenues. Gaming revenues is perhaps the most common example.

PMSI – See: *PURCHASE MONEY SECURITY INTEREST*.

POINT – See: *BASIS POINT*.

PORTAL – Acronym for Private Offerings, Resales and Trading through Automated Linkages. Prior to 2009, PORTAL eligibility was required for bonds to be processed through DTC. PORTAL eligibility used to be a requirement for Rule 144A bonds delivered in book-entry form through DTC. However, PORTAL is no longer required for Rule 144A / DTC bonds.

PRE-CLOSING – Refers to the day before closing when all documents are assembled for inspection and signature and all deliverables are provided. Closing and funding happens the next morning. Pre-closing is more common for bond financings than it is for credit facilities.

PRELIMINARY EXPENDITURES – Certain types of prior expenditures that a tribal borrower may claim reimbursement for in a tax-exempt financing even without a reimbursement resolution in place. Preliminary expenditures include certain soft costs such as architectural, engineering, surveying, soil testing, costs of issuance, and similar costs.

PRELIMINARY (LIMITED) OFFERING MEMORANDUM (PLOM) – This is the preliminary version of an offering memorandum, which is used to market bonds to potential investors. It includes all disclosure that is material to the bonds except for information that will not be known until pricing (and which will be contained in the pricing supplement and final offering memorandum).

PRELIMINARY TITLE REPORT – This is a report prepared by a title company regarding a parcel of real property and describing who owns the property and what rights of others may exist in the property (e.g., easements, encumbrances, utility rights of way).

PREMIUM – (1) An amount payable on debt, in addition to principal and interest, as a result of prepaying or redeeming debt. (2) The amount by which the price paid for a bond exceeds its par value. For tax purposes, the actual amount of premium with respect to a bond may be affected by the existence of any original issue premium or original issue discount.

PRICE – The amount paid for a bond, usually expressed as a percentage of par value.

PRICING – In a bond offering, this refers to the point at which interest rates and other key terms (such as redemption provisions) are contractually established by executing the purchase agreement and the pricing supplement.

PRICING GRID – A table (or grid) contained in the credit agreement showing how the applicable margin paid by the tribal borrower changes depending upon the tribal borrower's leverage.

PRICING SUPPLEMENT – A term sheet accompanying the purchase agreement that summarizes the results of pricing (coupon, redemption provisions, etc.) so that the preliminary offering memorandum can be turned into a final offering memorandum.

PRIMARY MARKET – The issuance and sale of new bonds. *Compare: SECONDARY MARKET.*

PRIMARY OFFERING – An offering of bonds in the primary market.

PRIME RATE – Usually defined in the credit agreement to be the rate of interest in effect from time to time and publicly announced by the lender (or the administrative agent) as its prime rate. Any change in such prime rate announced by a bank typically takes effect at the opening of business on the day specified in the public announcement of such change.

PRINCIPAL – The amount of money borrowed in connection with a loan or bond issue. In most cases, the principal balance goes down over time as the borrowing is amortized. However in some borrowings, the entire principal is due in full on the maturity date (e.g., bullet maturities). Principal does not include accrued interest, which is separate.

PRIORITY – Ranking among security interests or right to receive payments. In most financings, the lenders or the bondholders will insist that their security interest be "first priority," meaning ahead of all other competing claims (secured or unsecured). Under the UCC, the first secured party to file a financing statement or otherwise perfect their security interest will have priority over other creditors.

PRIVATE ACTIVITY BOND (PAB) – A governmental borrowing that benefits private parties. While state and local governments have long been permitted by the Code to issue various kinds of private activity bonds on a tax-exempt basis, Indian tribal governments have not enjoyed the same privileges until

the introduction of the TED bond provisions. Under the Code, a borrowing is considered a private activity bond if (i) more than 10% of the proceeds are used for any private business use (the “private business use test”), and (ii) the payment of the principal of or interest on more than 10% of the proceeds is secured by or payable from property used for a private business use (the “private security or payment test”). In addition, a private activity bond also exists if the amount of proceeds used to make loans to non-governmental borrowers exceeds the lesser of 5% of the proceeds or \$5 million (the “private loan financing test”). Unless a tribal borrowing constitutes TED bonds, it will become federally taxable if the issuer takes a deliberate action that results in its becoming a PAB.

PRIVATE LETTER RULING – A narrowly tailored ruling provided by the IRS in response to a request for guidance about a specific set of facts and circumstances. Private letter rulings are binding only on the IRS and the specific taxpayer who requested it and cannot be relied upon by other parties. Some private letter rulings may later be published as revenue rulings that become binding on others.

PRIVATE PLACEMENT – A private offering of bonds or other securities without registration. This is how most bonds of tribal issuers are sold, most often with qualified resale rights pursuant to Rule 144A. *See: REGULATION D; SECTION 4(2); RULE 144A.*

PRIVATE PLACEMENT LETTER – *See: INVESTOR LETTER.*

PRIVATE PLACEMENT MEMORANDUM – *See: OFFERING MEMORANDUM.*

PRO FORMA – Financial information prepared by a tribal issuer adjusting a recent financial report to show the effects of some anticipated change, such as the incurrence of additional debt and what effect it would have on projected debt service requirements.

PROCEEDS – (1) Money that a borrower receives from a borrowing. (2) Money received upon sale or disposition of collateral.

PROJECT FINANCING – Generally, this term refers to a borrowing where repayment of the debt depends upon successful completion and operation of the project sufficient to generate enough net revenues to repay the debt as and when expected.

PROJECT FUND – *See: CONSTRUCTION FUND.*

PROMISSORY NOTE – An instrument evidencing a tribal borrower’s indebtedness incurred under a credit agreement. Unlike a note issued under a trust indenture, a promissory note under a credit agreement is not a security in most cases.

PRO-RATA SHARE – The proportion that an individual lender’s commitment bears to the aggregate commitment of all of the lenders under a credit agreement.

PROSPECTUS – Disclosure document that is part of a registration statement filed with the SEC. Most issues of bonds by tribal issuers do not involve use of a prospectus. Instead, most tribal bond issues are sold using an offering memorandum in private placements.

PROVIDER – For the purposes of this glossary, the financial institution that enters into an interest rate swap agreement with a tribal obligor, usually a commercial bank, investment bank, or insurance company.

PUNCH LIST – A list of construction tasks that still need to be completed after substantial completion of the project.

PURCHASE AGREEMENT – Sometimes called a bond purchase agreement or note purchase agreement depending upon the type of securities being offered, this is a contract entered into at the time of pricing between a tribal issuer and the initial purchaser setting forth the final terms upon which the initial purchaser agrees to buy the securities, usually with the intent of reselling them to qualified institutional buyers.

PURCHASE MONEY SECURITY INTEREST (PMSI) – A security interest taken by a seller of personal property to secure payment in full of the purchase price for that personal property. Similarly, a security interest taken by a lender in property acquired by the borrower with proceeds of the loan. Many equipment financings are done through a PMSI loan.

PURCHASE PRICE – (1) The price paid by the initial purchasers for the bonds, as set forth in the bond purchase agreement. (2) The price paid for a bond by a buyer in the secondary market. In either case, the purchase price is often expressed as a percentage of par value.

PUT – The right of a bondholder to require the tribal issuer to buy back bonds upon the occurrence of certain events and at a price set forth in the trust indenture. Usually, the price will be at par, but in some cases there may be a premium.

- Q -

QIB – See: *QUALIFIED INSTITUTIONAL BUYER*.

QUALIFIED INSTITUTIONAL BUYER (QIB) – As defined in Rule 144A(a) (1), these are entities who are permitted to buy bonds sold in a Rule 144A Offering. In general, a QIB must own and invest on a discretionary basis at least \$100 million in securities and must be an insurance company, investment company, employee benefit plan, trust fund, business development company, 501(c)(3) organization, corporation (other than a bank with net worth less than \$25 million), partnership, business trust, or investment adviser. *Compare: ACCREDITED INVESTOR; SOPHISTICATED INVESTOR.*

QUALIFIED MANAGEMENT AGREEMENT – This is different from a management agreement under IGRA. Rather, it is an agreement with a private party to manage a facility financed with tax-exempt debt that is consistent with tax-exempt status of the related bonds and does NOT result in the private manager being treated as a private user of the facility or the bonds becoming private activity bonds. See: *PRIVATE ACTIVITY BOND*.

- R -

RAP – See: *REVENUE ALLOCATION PLAN*.

RATING – An evaluation of creditworthiness made by a rating agency about a tribal issuer and/or bonds offered by the tribal issuer. A letter grade is assigned to the tribal issuer and/or the bonds, representing that rating agency's opinion regarding the likelihood that the tribal issuer will be able to pay the bonds as they become due. Ratings are made on a descending scale of letter categories: AAA being the highest, then AA, A, BBB, BB, B, etc. The rating may have a numerical modifier 1 (high), 2 (medium) or 3 (low) showing where within a particular letter category the tribal issuer's credit falls relative other similarly rated credits. Tribal issuers often obtain ratings for their bond offerings but rarely do so in connection with loans.

RATING AGENCY – One of the three major rating organizations that provide ratings: namely, Moody's Investors Service, Inc., Standard & Poor's and Fitch Ratings.

RATING AGENCY PRESENTATION – Flipbook that is a summary description of a bond offering and is used in making carefully scripted presentations to the rating agencies. It is usually prepared by the senior manager with input from the tribal issuer in anticipation of an upcoming bond offering and seeking a rating for the same. It tends to focus on strengths rather than weaknesses in the credit, and it is not a substitute for the offering memorandum. Rather, it highlights selected portions of the disclosure in the offering memorandum.

REBATE – See: *ARBITRAGE REBATE*.

RECORD DATE – The date established in the trust indenture used to determine which bondholders are entitled to receive payments on the next interest payment date. The record date is usually 15 days prior to the interest payment date.

RECOURSE – The legal right to collect on a debt, which is often secured by collateral of some kind. *See: LIMITED RECOURSE.*

RED – Another name for the preliminary offering memorandum, which is sometimes called a “red” due to the practice of printing a red, vertical notice in the left margin stating that the document is subject to completion (i.e., insertion of terms after pricing). Sometimes called a “red herring.” *See: PRELIMINARY (LIMITED) OFFERING MEMORANDUM.*

REDEMPTION – To redeem (or “call”) bonds is when a tribal issuer repurchases some or all of the bonds prior to their maturity. Redemptions may occur under a variety of circumstances, such as: (i) through sinking fund payments or at maturity of a term bond, (ii) through exercise of optional redemption rights, (iii) as a result of a bondholder exercising a put right, or (iv) as a result of some outside event that triggers a mandatory redemption of some or all of the bonds. Redemption provisions are established at the time of pricing. *Compare: TENDER.*

REDEMPTION PREMIUM – A premium paid to bondholders in connection with a redemption. Redemption premiums are more common for optional redemptions than they are for mandatory redemptions. The amount of the premium often declines once the non-call period has passed. *See: MAKE WHOLE; REDEMPTION PRICE.*

REDEMPTION PRICE – A price, in excess of the par value and expressed as a percentage of the principal amount, that the tribal issuer agrees to pay upon redemption of bonds prior to the stated maturity date. For example, a redemption price of 102 means a tribal issuer would pay 102% of the outstanding principal amount of the bond that is being redeemed, plus accrued interest on that bond. The additional 2% represents redemption premium.

REDUCING REVOLVER – *See: REVOLVER.*

REFERENDUM POWERS – The process of referring a proposed action to an electorate for approval. Many tribal constitutions permit tribal council to refer certain actions to the membership of the tribe for approval. In some cases, the incurrence of debt by a tribal borrower may require a referendum and approving vote by the membership. In most financings, the lenders or bondholders will require covenants that referendum powers will not be used after the fact in a manner that would impair the borrowing agreements.

REFINANCING – The process of paying off existing debt with proceeds of

new debt. A tribal borrower may choose to refinance for several reasons, such as: (i) to obtain a lower rate of interest, (ii) to avoid existing covenants and restrictions, or (iii) to extend the date of payment for a bullet maturity. However, the ability to refinance will be subject to whatever limitations may apply in the documents for the existing debt.

REFUNDING – A refinancing in which the tribal issuer pays off outstanding bonds by issuing new bonds. The new bonds are referred to as the “refunding obligations,” and the outstanding bonds being refinanced are referred to as the “refunded obligations” or the “prior issue.” Generally, refunded bonds are not considered a part of the issuer’s debt because the lien of the holders of the refunded obligations is on the escrowed funds—not on the originally pledged source of revenues. *See: ADVANCE REFUNDING; CURRENT REFUNDING.*

REG D – *See: REGULATION D.*

REG S – *See: REGULATION S.*

REGISTER – (1) To file a registration statement with the SEC in contemplation of a public offering of bonds or other securities. (2) To record in the books of the registrar the identity of the registered owners of bonds.

REGISTERED OWNER – The person or persons shown on the register as the owners of a series of bonds. For bonds offered through DTC, the registered owner is Cede & Co., as nominee for DTC. The actual purchasers of the bonds are referred to as beneficial owners. *See: BONDHOLDER.*

REGISTERED SECURITIES – Securities that have been registered (i.e., a registration statement has been filed) with the SEC. For reasons of cost and public reporting, very few tribal issuers have chosen to sell their bonds as registered securities. *Compare: EXEMPT SECURITY.*

REGISTRAR – The person or entity responsible for maintaining records on behalf of the issuer identifying the owners of a bond issue. The trustee under a trust indenture often also acts as registrar. *Compare: TRANSFER AGENT. See: BOND REGISTER; TRUSTEE.*

REGISTRATION – (1) The requirement under Section 5 of the ‘33 Act that all securities must be registered unless they qualify for an exemption. (2) The process of registering bonds through the registrar.

REGISTRATION RIGHTS – Contractual rights that give investors the ability

to demand that an issuer register securities with the SEC, which makes them available for sale to the public. This used to be more common for high yield bonds of tribal issuers, but most tribal bonds today do not have registration rights.

REGISTRATION STATEMENT – A document filed with the SEC as a condition of making a registered public offering of securities. The offering cannot commence until the SEC staff declares the registration statement to be “effective.” Most tribal issuers do not file registration statements because most tribal bonds are sold as part of private placement with qualified resales under Rule 144A.

REGULATION D (REG D) – This is a “safe harbor” for bond or other securities transactions that do not involve a public offering within the meaning of section 4(2) of the ‘33 Act. Reg D establishes three exemptions from the registration requirements of the ‘33 Act (Rule 504, Rule 505, and Rule 506). The central requirements of Reg D are (i) the tribal issuer cannot use general solicitation or advertising to market the bonds; (ii) the bonds may be sold to an unlimited number of accredited investors and up to thirty-five sophisticated investors; (iii) financial statements must be certified and audited; and (iv) the information provided to investors must comply with anti-fraud provisions.

REGULATION FD – Regulation under the ‘33 Act that is designed to prevent selective disclosure. If material non-public information is made available to certain parties by an issuer, Regulation FD provides that it must also be made available to the public in order to prevent insider trading. Selective disclosure problems may sometimes be cured by issuing a press release, by filing a Form 8-K or taking other steps to notify other investors. Although Regulation FD does not apply to most tribal bonds (which are not publicly traded), industry professionals nonetheless look to Regulation FD as an indicator of steps to take to prevent selective disclosure.

REGULATION S (REG S) – Regulation under the ‘33 Act governing the offer and sale of bonds or other securities to investors outside of the United States without registration. Many tribal issuers offer their bonds so that they are eligible for purchase by Reg S investors as well as purchase by QIBs.

REGULATION S-K – Regulation under the ‘33 Act that describes reporting requirements for SEC filings, including period reporting forms. Although Regulation S-K does not apply to most tribal bonds (which are not publicly traded), industry professionals nonetheless look to Regulation S-K as a

benchmark for satisfying disclosure obligations.

REGULATION S-X – Regulation under the '33 Act that sets forth form and content requirements for financial statements. Although Regulation S-X does not apply to most tribal bonds (which are not publicly traded), industry professionals nonetheless look to Regulation S-X as a benchmark for the use of financial statements in disclosure.

REIMBURSEMENT AGREEMENT – An agreement between a tribal issuer and a bank providing a letter of credit supporting payments of principal and interest on bonds. Under this agreement, the tribal issuer agrees to reimburse the bank for draws made on the letter of credit and to pay amounts owed on the bonds. *See: LETTER OF CREDIT.*

REIMBURSEMENT RESOLUTION – A resolution declaring a tribal issuer's official intent to reimburse out-of-pocket expenditures with proceeds of anticipated tax-exempt borrowing. Under the Code, a tribal issuer may reimburse itself with proceeds of tax-exempt borrowing for certain expenditures made within 60 days prior to the date of adopting the reimbursement resolution. Reimbursable costs include capital expenditures and costs of issuance items. *See: PRELIMINARY EXPENDITURES.*

RELATED PARTY – *See: AFFILIATE.*

RELIANCE LETTER – A letter that entitles a transaction participant to rely on a legal opinion even though they are not listed as an addressee of the legal opinion. The reliance letter comes from the law firm that delivered the legal opinion.

REMARKETING – The process of reselling variable rate demand obligations that have been tendered for purchase by bondholders. An investment banking firm (the remarketing agent) is hired by the tribal issuer to handle remarketings, including acting as tender agent and resetting the interest rate on variable rate demand obligations so that the bonds can be remarketed.

REP – Shorthand for "representation," as in a tribal borrower represents and warrants certain facts to be the case. Credit agreements and indentures usually contain a laundry list of reps and warranties about the tribal borrower, its laws and affairs, the collateral for the borrowing, etc.

REQUIRED LENDERS – The percentage of lenders whose approval is required under the terms of a credit agreement in order to make amendments, give

consent, or otherwise bind the lenders. The credit agreement establishes the minimum number of lenders (usually, a majority or 66⅔%) who must ratify certain actions.

RESERVE FUND – See: *DEBT SERVICE RESERVE FUND*.

RESERVE FUND REQUIREMENT – See: *DEBT SERVICE RESERVE FUND REQUIREMENT*.

RESTRICTED PAYMENT – Basically, this is another way of saying distributions. That is, payments made by a tribal borrower to its affiliates (not counting payments made to restricted subsidiaries). Some credit agreements and most trust indentures use the term restricted payments in lieu of distributions and include some kind of restricted payments test that limits the tribal borrower's ability to make distributions.

RESTRICTED SECURITY – An unregistered security that may not be resold until holding period requirements have been met or unless the security otherwise qualifies for an exception (such as resale pursuant to Rule 144A).

RESTRICTED SUBSIDIARY – An affiliate of the tribal borrower that is subject to the material covenants and restrictions binding on the tribal borrower under the trust indenture or credit agreement. Oftentimes, a restricted subsidiary is also a guarantor of the debt. *Compare: UNRESTRICTED SUBSIDIARY*.

RESTRUCTURING – Changing the payment or other material terms of a debt that cannot be repaid according to the original plan. A restructuring involves more than just adjusting financial covenants or giving a temporary waiver of default. Rather, a restructuring usually means changing fundamental terms – such as the amount that must be repaid, the period of time and amortization schedule for repayment, rates of interest on the borrowing, etc.

RETAINAGE – A portion of the construction contract price withheld by the owner from each progress payment to the contractor until the punch list is complete and all work due to be performed under the contract is finished. Retainage usually equals five to ten percent of each progress payment.

REVENUE ALLOCATION PLAN – A revenue allocation plan (or "RAP") is a plan that provides for the allocation of tribal gaming revenues to fund governmental operations and other purposes. Tribes that make per capita payments must have a gaming revenue allocation plan approved by the Bureau of Indian Affairs pursuant to 25 CFR §290. The RAP may be contained

within the tribal gaming ordinance, or it may be a separate stand-alone plan.

REVENUE OBLIGATION – Limited recourse debt payable from a specific source of pledged revenues. *Compare: GENERAL OBLIGATION.*

REVOLVER or REVOLVING LOAN – A credit facility that the tribal borrower can draw down, pay back, and draw down again subject to certain conditions. A “reducing” revolver is a revolver whose capacity (i.e., available commitment) reduces over time on scheduled commitment reduction dates.

RISK FACTORS – Portion of an offering memorandum labeled “Risk Factors,” which describes certain risks associated with an investment in the bonds being offered. For tribal transactions, identified risk factors may include risks relating to the tribal issuer’s business, risks relating to laws applicable to Indian tribes and/or gaming, risks relating to this particular offering, construction risks, and other specific risks for a particular transaction.

ROAD SHOW – A whirlwind tour to meet with potential investors in select cities prior to pricing to discuss the bonds being offered. It usually includes representatives of the tribal issuer and the investment bankers. *See: INVESTOR PRESENTATION.*

ROLLING FISCAL YEAR – *See: LTM.*

RULE 10B-5 – A rule promulgated under the ‘34 Act that makes it unlawful for any person, in connection with the purchase or sale of any bond or other security, to employ any device, scheme, or artifice to defraud; to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or to engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person. *See: DUE DILIGENCE; MATERIAL OMISSION.*

RULE 144A – A qualified resale exemption from the registration requirements of the ‘33 Act. Rule 144A allows the initial purchasers to buy bonds and resell them to QIBs without being subject to a holding period. The bonds may then continue to freely trade among QIBs in the secondary market. Most tribal issuers sell their bonds pursuant to a private placement with subsequent resales pursuant to Rule 144A. In most cases, tribal bonds remain Rule 144A “for life” and do not come with registration rights.

RULE 144A RIDER – A form attached to the DTC letter of representations for bonds that are intended to be resold pursuant to Rule 144A.

- S -

S&P – See: *STANDARD & POOR'S*.

SAFE HARBOR – A regulatory exception.

SAS 72 – Statement on Auditing Standards No. 72, which provides detailed guidelines followed by auditors when they provide comfort letters.

SAS 100 – Statement on Auditing Standards No. 100, which provides guidance on the review of interim financial information and comfort letters.

SCHEDULE TO MASTER AGREEMENT – Schedule amending or supplementing the ISDA master agreement, which sets out the specific business terms and conditions governing the transactions executed under the agreement.

SEC – See: *SECURITIES AND EXCHANGE COMMISSION*.

SECONDARY MARKET – Refers generally to the market where investors buy bonds from each other rather than from the tribal issuer. In the primary market, the price of a bond is established at the time of pricing, but in the secondary market, price fluctuation is a function of supply and demand.

SECRETARIAL PROCEDURES – Authorization given by the Secretary of the Interior to a tribe to conduct class III gaming under special provisions of IGRA at 25 USC §2710(d)(7)(B)(vii). Secretarial procedures is an alternative to a negotiated class III gaming compact and is available only in rare cases.

SECTION 4(2) – Section 4(2) of the '33 Act exempts from registration “transactions by an issuer not involving any public offering.” To qualify for this exemption, the purchasers of the bonds must (i) have enough knowledge and experience in finance and business matters to evaluate the risks and merits of the investment (the “sophisticated investor”) or be able to bear the economic risk of investing in the bonds, (ii) have access to the type of information normally provided in a prospectus for a registered offering, and (iii) agree not

to resell or distribute the bonds to the public. In addition, the tribal issuer may not use any form of public solicitation or general advertising in connection with the offering. Reg D is a private placement “safe harbor” that is available to ensure compliance with the Section 4(2). See: *REGULATION D*.

SECTION 81 – 25 U.S.C. § 81 is a federal statute providing that no agreement with an Indian tribe that encumbers Indian lands for a period of seven or more years shall be valid unless that agreement bears the approval of the Secretary of the Interior.

SECTION 17 CORPORATION – A federally-chartered tribal corporation under 25 USC §477. Section 17 corporations are wholly owned by the tribe and possess most of the same privileges and immunities as the tribe. However, a Section 17 corporation (unlike most authorities) is a legally separate entity.

SECURE – To provide collateral for the purpose of assuring payment, performance, or indemnity.

SECURED PARTY – A lender, trustee, or other person who is granted a security interest in collateral in connection with a borrowing.

SECURED TRANSACTION – Any transaction that is intended to create a security interest in personal property or fixtures. A secured transaction involves a security agreement that creates or provides for a security interest.

SECURED TRANSACTIONS ORDINANCE – A tribal ordinance that enacts, as matter of tribal commercial law, provisions that cover secured transactions in a manner closely resembling the UCC. Some tribal governments choose to adopt their own UCC (often called a secured transactions ordinance) rather than look to the UCC of the nearest state.

SECURITIES ACCOUNT – Account maintained with a bank or a broker that holds securities. Tribal borrowers often pledge certain securities accounts as collateral for a borrowing pursuant to a security agreement and a securities account control agreement.

SECURITIES ACCOUNT CONTROL AGREEMENT – An account control agreement can be used to perfect a security interest in securities or securities accounts under the UCC.

SECURITIES ACT OF 1933 – Also known as the ‘33 Act, it is the cornerstone of federal securities laws. Among other things, it provides for the system or

registration of securities, exemptions from registration, and the preparation and distribution of disclosure.

SECURITIES AND EXCHANGE COMMISSION (SEC) – The federal agency responsible for supervising and regulating the securities industry.

SECURITIES EXCHANGE ACT OF 1934 – Also known as the '34 Act. It is the federal securities law that provides for regulation of the marketplace for securities. Certain SEC rules, including but not limited to Rule 10b-5, are promulgated under the '34 Act.

SECURITY – Generally refers to an instrument evidencing debt or equity in a common enterprise in which an investment is made on the expectation of financial gain. In general—and for purposes of this glossary—debt in the form of bonds and high-yield notes are securities, whereas debt in the form of loans and other credit facilities are not securities.

SECURITY AGREEMENT – An agreement between a borrower and a secured party under which a security interest is granted in collateral and the secured party is given certain rights and remedies with respect to the collateral.

SECURITY INTEREST – An interest in property that is granted by a borrower to a lender or other secured party, which provides that the property may be used, sold, or disposed of in an event of default to help satisfy the debt. An agreement creating a security interest in real estate is called a mortgage or a deed of trust. However, in the context of borrowings by tribal entities, security interests are usually limited to personal property.

SELECTIVE DISCLOSURE – The disclosure of material nonpublic information to a select group of people who may trade on that information to the detriment of investors who do not have such information. *See: REGULATION FD.*

SELF-HELP – If a borrower defaults on its obligations under a security agreement, a secured party can seize the collateral without the involvement of a court or law enforcement officers, as long as it proceeds without breaching the peace. Such a seizure is referred to as “self-help.” The use of violence or force would generally be considered a breach of the peace. Trespass on property may or may not constitute a breach of the peace. Also referred to as “extrajudicial remedy” or “extrajudicial enforcement.”

SENIOR LIEN – Lien or right of payment that is higher relative to other outstanding debt. *Compare: SENIOR NOTES.*

SENIOR NOTES – Securities, usually in the form of notes, that rank senior to other indebtedness of a tribal issuer, but often subject to certain exceptions. Despite the name, senior notes may in fact be subordinate to other indebtedness (particularly secured debt). The designation “senior notes” is common for high-yield offerings.

SENIOR SECURED CREDIT FACILITY – A credit facility secured by a first lien on collateral pledged by a tribal borrower.

SERIAL BONDS – Bonds of a single issue that mature in consecutive years.
Compare: TERM BONDS.

SERIES OF BONDS – Bonds issued at the same time and sharing other basic characteristics. A series of bonds may consist of serial bonds, term bonds or both. An issue of bonds may consist of one or more series of bonds. For example, one series may be senior lien bonds and the other may be subordinate lien bonds, or one series may be tax-exempt bonds and the other may be taxable, or one series may bear interest at a fixed rate and the other may bear interest at a variable rate.

SERVICING FEE – A fee charged by a lender with respect to providing services to a borrower during the course of a loan transaction.

SET-OFF – (1) A debtor’s right to reduce the amount of a debt owed to a creditor by any sum that the creditor owes the debtor. By way of example, a bank that maintains a deposit account of a customer can set-off amounts owed to it by its customer by debiting amounts maintained by the customer in such deposit account. (2) Interest rate swap provision that enables a party that is entitled to a payment under the agreement (e.g., a termination payment) to satisfy that obligation by reducing the amount it owes the other party in another transaction.

SETTLEMENT – Delivery of and payment for bonds or other securities.

SETTLEMENT DATE – The date on which settlement is scheduled to occur.
Compare: TRADE DATE.

SEVERABILITY CLAUSE – A contract clause which provides that any invalid portions of the contract may be stricken, and the remaining portion of the contract survives intact as valid and enforceable. A severability clause is also known as a savings clause.

SHADOW RATING – Credit assessment by a rating agency that is not published. See: *RATING*.

SINKING FUND – A fund into which moneys are irrevocably paid and used to redeem bonds in accordance with a redemption schedule in the indenture. This term is sometimes used interchangeably with the term “mandatory redemption fund.”

SOLE PROPRIETARY INTEREST – One of IGRA’s requirements for approving tribal gaming ordinances is that the Indian tribe have the “sole proprietary interest” and responsibility for the conduct of gaming activity. Certain arrangements may violate the sole proprietary interest requirement of IGRA and, in some cases, may also constitute management contracts.

SOLVENT or SOLVENCY – The ability to pay debts as they mature and become due.

SOPHISTICATED INVESTOR – As defined in Rule 506 of the ‘33 Act, an investor who has such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the prospective investment, or someone who the issuer reasonably believes immediately prior to making any sale that such purchaser falls within this description. *Compare: ACCREDITED INVESTOR*.

SOURCES AND USES – Generally, a table set forth in an offering memorandum identifying the source from which funds are derived (including bond proceeds) and the uses to which those funds will be put.

SOVEREIGN IMMUNITY – A doctrine that precludes most civil suits against tribal entities unless expressly and unequivocally waived in accordance with tribal law. Sovereign immunity protects not only the tribal government but also tribal authorities, enterprises, instrumentalities, corporations, and other organizations. A waiver of sovereign immunity may be limited to particular collateral, a particular type of relief sought, the nature of the claim, or a specific forum.

SPECIAL TAX COUNSEL – A law firm employed to give an opinion that the interest on tax-exempt obligations qualifies for exclusion from gross income of the holders thereof for federal income tax purposes. Special tax counsel may be used for tax-exempt loans (where no firm is acting in the role of bond counsel) or in combination with bond counsel.

SPLIT RATINGS – An assignment of different ratings, one higher and one lower, on an issue of bonds or other securities by two or more rating agencies. *Compare: UNDERLYING RATING; RATING.*

SPREAD – With respect to a new issue of bonds, the differential between the price paid by the initial purchaser to the tribal issuer for the bonds and the prices at which the bonds are initially reoffered.

SPRINGING COVENANTS – Covenants or other contractual provisions which arise or “spring” into effect if certain events happen. *See: GENERAL OBLIGATION.*

STALENESS – Refers to financial information contained in an offering memorandum which is no longer considered current and therefore must be updated to provide more recent financial results. In practice, staleness of financial information for a Rule 144A offering is determined by applying rules under Regulation S-X, even though such regulation is technically applicable only to financial statements filed as part of a registration statement with the SEC. For a Rule 144A offering, staleness is determined as of the pricing date, and year-end audited financial statements and interim period financial statements in an offering memorandum become stale 135 days after the end of the fiscal period covered by the financial statements. Thus, the pricing date cannot be more than 134 days after the end of the fiscal period covered by the financial statements contained in the offering memorandum.

STANDARD & POOR’S (S&P) – A nationally recognized rating agency that provides ratings on bonds and other securities.

STANDBY BOND PURCHASE AGREEMENT – An agreement with a bank in which the bank agrees to purchase bonds (typically variable rate demand obligations) tendered for purchase in the event that they cannot be remarketed. In rare cases, very highly rated tribal issuers have provided their own standby bond purchase agreement in lieu of obtaining a bank’s commitment. *See: CREDIT ENHANCEMENT.*

STANDBY LETTER OF CREDIT – *See: LETTER OF CREDIT.*

STICKERING – Refers to the process of amending, updating or correcting disclosure that was previously provided to potential investors in a primary offering. If an offering goes as planned, stickering should not be necessary. However, in some cases, new material facts may come to light after the preliminary offering memorandum has already been printed and distributed,

or financial information contained in the preliminary offering memorandum may go stale. In such cases, a tribal issuer would provide supplemental disclosure.

STUB PERIOD FINANCIALS – See: *INTERIM PERIOD FINANCIAL STATEMENTS*.

SUB DEBT – See: *SUBORDINATE LIEN*.

SUBLIMIT – A portion of a larger credit facility that is allocated to a particular purpose – for example, a letter of credit sublimit or a swingline sublimit. A sublimit is usually part of a revolver.

SUBORDINATE LIEN – A lien or right of payment that is lower relative to other debt.

SUBSTANTIAL COMPLETION – This refers to that stage in a construction project where the work is sufficiently complete in accordance with the construction agreements so that the owner can occupy and use the project for its intended purpose. Typically, punch list items still remain to be finished after substantial completion.

SUPPLEMENTAL INDENTURE – An agreement entered into by the tribal issuer and the trustee that supplements the original trust indenture. Often, a supplemental indenture is executed in connection with the issuance of an additional series of bonds under the trust indenture or to amend certain terms of the trust indenture.

SWAP – See: *INTEREST RATE SWAP AGREEMENT*.

SWINGLINE LOAN – A flexible credit facility sometimes provided in conjunction with a revolver by one or more of the lenders (usually the administrative agent). Swingline loans give a tribal borrower faster access to funds by shortening the notice period for requests and may also permit borrowings in smaller amounts than would otherwise apply to a regular advance under a revolver. Swingline loans are usually made in smaller amounts and must be repaid within a shorter period of time (less than two weeks). Swingline loans serve as interim funding until a regular revolving loan can be obtained from the full syndicate of lenders.

SYNDICATE – A banking group. The term may refer to a group of lenders who provide a loan under a credit agreement, or it may refer to a group of

initial purchasers who buy bonds from a tribal issuer and resell them under Rule 144A.

SYNDICATED LOAN – A loan provided by a syndicate.

SYNTHETIC FIXED RATE – The resulting rate a tribal borrower will pay on variable rate debt after entering into a floating-to-fixed rate swap. See: *INTEREST RATE SWAP AGREEMENT*.

SYNTHETIC FLOATING RATE – The resulting rate a tribal borrower will pay on an issue of fixed rate debt after entering into a fixed-to-floating rate swap. See: *INTEREST RATE SWAP AGREEMENT*.

- T -

T-PLUS – Describes the settlement cycle between pricing and delivery of bonds or other securities. The industry convention is T+3 (meaning, the third business day following the trade date). However, the parties can (and often do) agree to a later settlement date by including a legend in the offering memorandum to that effect, making prospective purchasers aware of the agreed-upon date.

10B-5 REPRESENTATION – A representation made by the tribal issuer about the accuracy and completeness of disclosure provided in connection with a bond or other securities offering. The representation, which tracks the language of Rule 10b-5, is usually found in the purchase agreement or placement agreement as well as in various certificates executed in connection with closing. *See: DUE DILIGENCE; MATERIAL OMISSION; NEGATIVE ASSURANCE; RULE 10B 5.*

10-YEAR PAR CALL – The tribal issuer’s ability to call (optionally redeem) bonds on or after the tenth anniversary of the issue date at a redemption price equal to 100 percent of the principal amount of bonds being redeemed, plus accrued and unpaid interest without premium (i.e., par). This is a standard redemption feature in tax-exempt bond markets.

’33 ACT – Common name for the Securities Act of 1933, including rules and regulations promulgated thereunder.

’34 ACT – Common name for the Securities Exchange Act of 1934, including rules and regulations promulgated thereunder.

TAIL PROVISION – Language in an engagement letter allowing the tribal issuer to terminate the engagement but providing that the investment banking firm will be entitled to a transaction fee if the tribal issuer consummates a similar financing within some period of time after the date of termination.

TAKE OUT – A subsequent financing that fully repays and discharges existing debt.

TAX CALL – Usually refers to mandatory redemption triggered by a determination of taxability.

TAX CERTIFICATE – See: *ARBITRAGE CERTIFICATE*.

TAX-EXEMPT FINANCING – A cheaper form of borrowing that is widely used by governments, including tribal governments. The borrowing may be in the form of a loan or a bond issue. Borrowing costs are lower because the interest payments that the tribe makes are not treated as taxable income to the lenders or bondholders who provided the financing. Because the lender or bondholder does not have to pay taxes on the interest payments they receive, they are usually willing to offer financing to the tribe at a lower rate of interest. For example, the effective rate of return to an investor of 7.7% taxable loan and 5.0% tax-exempt loan is about the same. However, the lower rate of interest means lower borrowing costs for the tribe. There is an enormous market for tax-exempt debt, often referred to as the “muni market.” Although Indian tribes do not have the same wide latitude as state and local governments enjoy in funding capital projects with tax-exempt debt, Indian tribes have nonetheless successfully borrowed hundreds of millions of dollars using this form of financing. See: *ESSENTIAL GOVERNMENTAL FUNCTION*; *TRIBAL ECONOMIC DEVELOPMENT BOND*.

TECHNICAL DEFAULT – See: *DEFAULT*.

TED BONDS – See: *TRIBAL ECONOMIC DEVELOPMENT BOND*.

TENDER – Returning a bond to the tribal issuer or a tender agent for purchase. A tender may be mandatory or optional. See: *MANDATORY TENDER*; *TENDER OPTION*.

TENDER OFFER – When a tribal issuer offers to repurchase outstanding bonds from bondholders for a stated price. See: *CONSENT SOLICITATION*.

TENDER OPTION – Provision in a trust indenture under which bondholders have the right to tender their bonds to the tribal issuer for purchase at a predetermined price (usually par). This is sometimes referred to as an “optional tender” or “put option.” Compare: *MANDATORY TENDER*.

TENOR – Can mean either (i) the amount of time remaining until a credit facility matures, or (ii) the initial term of a credit facility.

TERM – The period of time over which a borrowing is scheduled to be

outstanding until repaid. Term and amortization are not the same thing. For instance, a loan might be described as having a “5-year term with a 10-year Am.” That means the loan matures in 5 years but amortizes as if it matured in 10 years. Since principal will not have fully amortized by the maturity date, a balloon payment will be due.

TERM A LOAN – See: *TERM LOAN*.

TERM B LOAN – See: *TERM LOAN*.

TERM BONDS – Bonds comprising a large part or all of a particular issue that come due in a single maturity, typically due more than one year after the final amortization of the serial bonds. The issuer agrees to make periodic payments into a sinking fund for mandatory redemption of term bonds before maturity or for payment at maturity. *Compare: SERIAL BONDS*.

TERM LOAN – Perhaps the most common type of credit facility for tribal borrowers. A term loan is a loan for a fixed principal amount that is either fully advanced at closing or drawn down over time and repaid according to an amortization schedule or as a bullet maturity. The major difference between a term loan and a revolver is that once amounts are borrowed and repaid under a term loan they may not be reborrowed. Term loans come as “term A loans” or “term B loans.” Term A loans are made by banks, have shorter maturities, amortize regularly, and have lower pricing. By contrast, term B loans are provided by institutional lenders, have longer maturities with minimal amortization prior to maturity and come with higher pricing.

TERM OUT – (1) Provision in a credit agreement stating that upon termination of a revolving loan, any outstanding balance automatically converts to a term loan which amortizes over a particular schedule. (2) Provision of an interest rate swap agreement that allows the tribal borrower to make payments over time for any amount it may be required to pay upon termination of a swap.

TERM SHEET – A summary description of the material terms of financing being offered by the lender or syndicate providing the credit facility. A term sheet typically accompanies a commitment letter and contains particular covenants, rate setting mechanisms, and other terms of the transaction.

TERMINATION PAYMENT – Payment made from one counterparty to the other if an interest rate swap is terminated prior to its scheduled termination date.

THIRD PARTY BENEFICIARY – This is someone who is a beneficiary of a contract without being a party to the contract. Credit agreements often include provisions stating that no third party beneficiaries are intended and that only the tribal borrower and the lenders (together with their permitted successors and assigns) are beneficiaries of the credit agreement. In addition, tribal waivers of sovereign immunity may disclaim any reliance by third party beneficiaries.

TICK AND TIE – Part of the comfort letter process, whereby the accountant marks each item of financial information contained in the circle up for the offering memorandum with so-called tick marks (meaning letters "A," "B," "C," "D"). Each letter corresponds to a certain level of review and verification undertaken by the accountant. *See: COMFORT LETTER.*

TIME OF SALE INFORMATION – Another way of referring to information contained in the preliminary offering memorandum together with the pricing supplement.

TITLE STATUS REPORT (TSR) – A report issued by one of the land titles and records offices within BIA regarding title to Indian land. Typically, the report contains the proper legal description of the land, current ownership, any applicable conditions, exceptions, restrictions or encumbrances on record, and whether the land is in unrestricted, restricted trust or other status as indicated by the records of the BIA.

TRADE DATE – The date on which a buyer and seller effect a transaction in securities. *Compare: SETTLEMENT DATE.*

TRANCHE – A portion of a loan or security. Each tranche usually has its own maturity date, interest rate and other characteristics that distinguish it from other borrowings under the same credit agreement or trust indenture.

TRANSCRIPT – *See: CLOSING TRANSCRIPT.*

TRANSFER AGENT – The person or entity that performs the transfer function for an issue of bonds. The trustee under a trust indenture usually acts as transfer agent. *Compare: REGISTRAR. See: REGISTERED SECURITIES; TRUSTEE.*

TRAVELING LETTER – *See: INVESTOR LETTER.*

TREASURY BONDS or TREASURY NOTES – Debt obligations of the United

States government sold by the Treasury Department in the form of bills, notes and bonds backed by the full faith and credit of the United States government.

TRIBAL BORROWER – As used in this glossary, “tribal borrower” means the tribal entity that incurs the debt, whether the debt is in the form of a loan or the issue of bonds or other securities.

TRIBAL COUNCIL – As used in this glossary, this refers to the elected governing body of a tribe. In practice, tribes may instead refer to their tribal council as business council, business committee, board of trustees or some other title.

TRIBAL ECONOMIC DEVELOPMENT BOND (TED BOND) – A particular type of tax-exempt bond authorized by ARRA. Up to \$2 billion in TED bonds in the aggregate were authorized to be issued by tribes nationwide. TED bonds allow tribes to use tax-exempt financing for a much wider variety of projects than just essential governmental functions. Qualifications for TED bonds include: (1) a project must be located on the reservation; (2) tribes cannot finance property actually used in gaming or any portion of a building in which gaming occurs; (3) a tribe must apply to the IRS and receive an allocation of volume cap; and (4) a tribe must designate bonds as TED bonds for purposes of the Code. *See: TAX-EXEMPT FINANCING.*

TRIBAL GAMING COMMISSION – A tribal agency or authority that is identified in a tribal gaming ordinance as having authority or regulatory oversight of tribal gaming operations and facilities.

TRIBAL GAMING ORDINANCE – An ordinance enacted by a tribe that may authorize different classes of gaming and is required to be approved on behalf of the chairman of the NIGC pursuant to 25 U.S.C. § 2710(e), as amended. Tribal gaming ordinances contain provisions relating to licensing of certain parties and the operation of tribal gaming facilities.

TRIBAL ISSUER – As used in this glossary, “tribal issuer” means the tribal entity that incurs debt through the issuance of securities (usually bonds or notes). The term “issuer” implies a securities offering, whereas the term “borrower” implies a loan or other form of indebtedness that is not subject to securities laws. The tribal issuer may be the tribe itself, or it may be an enterprise, authority, corporation or other unit which may or may not have a separate legal existence from the tribe. *Compare: TRIBAL BORROWER.*

TRIBAL MANUFACTURING FACILITY BONDS – A special type of tax-

exempt private activity bond which tribes are permitted to issue under Section 7871(c)(3) of the Code. Unfortunately, very few of these bonds have actually been issued due to employment requirements that must be satisfied at the time the bond are issued and on a recurring basis.

TRIPLE NET LEASE – See: *NET LEASE*.

TRUSTEE – A financial institution with trust powers that acts in a fiduciary capacity for the benefit of the bondholders in enforcing the terms of the trust indenture. In many cases, the trustee also acts as paying agent, registrar and/or transfer agent for the obligations. See: *TRUST INDENTURE*.

TRUST ESTATE – A term used to describe the sources of payment that are pledged to the trustee for the benefit of bondholders under a trust indenture. The trust estate is usually described in the recitals to a trust indenture.

TRUST INDENTURE – A financing contract between the tribal issuer and a trustee pursuant to which the bonds are issued, authenticated and delivered. The trustee administers the trust estate specified in the trust indenture on behalf of the bondholders. The trust indenture establishes the rights, duties, responsibilities and remedies of the tribal issuer and the trustee.

TURN – An amount equal to the tribal borrower's EBITDA for the latest twelve months, it is often used to describe leverage. For example, two and a half "turns" means a leverage ratio of 2.5 to 1.

- U -

UCC – See: *UNIFORM COMMERCIAL CODE*.

UCC SEARCH – A review of records in different states or jurisdictions to determine if there are liens against property owned by a borrower. A UCC search will produce records of UCC financing statements that have been filed against a debtor by various creditors to reflect the priority of their security interests.

UNDERLYING RATING – For bonds with credit enhancement, the underlying rating refers to the rating (if any) assigned by a rating agency to the bond without regard to the credit enhancement.

UNDERWRITE or UNDERWRITING – The process of purchasing a new issue of bonds and offering those bonds publicly for sale to investors. Underwritings are done for bonds which have been registered with the SEC or bonds which are exempt securities. However, most bonds issued by tribal issuers are restricted securities and do not have an underwriter. See: *UNDERWRITER*.

UNDERWRITER – The investment bank that purchases a new issue of bonds or other securities for resale in a primary offering. Technically, there is no underwriter in an offering of tribal bonds (except in rare cases where the bonds are either registered with the SEC or backed by a commercial letter of credit and sold through a public offering). Most tribal bonds are instead sold as part of an exempt transaction. Rather than acting as an underwriter, the investment bank serves as a placement agent or as an initial purchaser for a Rule 144A offering. Nevertheless, the term “underwriter” is often used (imprecisely) to mean a placement agent or an initial purchaser.

UNDERWRITER’S COUNSEL – Law firm hired to represent the placement agent or initial purchaser in connection with a new issue of bonds offered by a tribal issuer. See: *UNDERWRITER*.

UNDERWRITER'S DISCOUNT – See: *SPREAD*.

UNDERWRITING PERIOD – The period during a primary offering in which the placement agent or the initial purchaser is considered to be engaged in marketing the bonds to prospective investors.

UNIFORM COMMERCIAL CODE (UCC) – A uniform act codified in all states relating to commercial transactions and contracts involving personal property. The UCC has been adopted by all fifty states, but there are some variations among the states. Some tribal governments have adopted their own UCCs, and sometimes they look to the UCC of the state in which they are located. See: *ARTICLE 9; SECURED TRANSACTIONS ORDINANCE*.

UNRESTRICTED SUBSIDIARY - An affiliate of the tribal borrower that is not subject to the covenants and restrictions binding on the tribal borrower under the trust indenture or credit agreement. Compare: *RESTRICTED SUBSIDIARY*.

UNSECURED – An unsecured borrowing is one where no collateral is pledged and no lien is granted. General obligations are often unsecured.

USURY LAWS – Laws that establish maximum allowable interest rates that may be charged for specific types of loans. Most states have usury laws which may or may not apply to financings by tribal borrowers. Financing agreements often contain representations and warranties by the tribal borrower that it does not have usury laws and/or will not adopt any usury laws that would adversely affect the financing.

- V -

VARIABLE RATE – An interest rate, sometimes referred to as a “floating rate,” on a bond that changes at intervals according to market conditions or a predetermined index or formula. *Compare: FIXED RATE.*

VARIABLE RATE DEMAND OBLIGATION (VRDO) – Floating rate obligations that have a nominal long-term maturity but have a interest rate that is reset periodically (e.g., daily or weekly). The investor has the option to put the issue back to the trustee or tender agent at any time with specified (e.g., seven days’) notice. The put price is par plus accrued interest.

VERIFICATION REPORT – In a refunding, a report, prepared by a certified public accountant or other independent third party, that demonstrates that the cash flow from investments purchased with the proceeds of the refunding obligations and other moneys are sufficient to pay the principal of and interest on the refunded obligations that are being defeased.

VOLUME CAP – In the usual sense, “volume cap” refers to the total principal amount of tax-exempt private activity bonds that may be issued by state and local governments on an annual basis based on population figures for that particular state. However, in the context of Indian tribal financings, only TED bonds are currently subject to volume cap limitations.

VOLUNTARY PREPAYMENT – A tribal borrower’s right to prepay a loan or reduce the commitment, in whole or part.

VRDB / VRDO – *See: VARIABLE RATE DEMAND OBLIGATION.*

- W -

WAIVER – When a lender or bondholders forgive an event of default or other violation of the credit agreement or trust indenture.

WATERFALL – Generally refers to the order and priority in which revenues are applied as set forth in the financing agreements. Under a typical arrangement, pledged revenues are first deposited, as and when received, into a deposit account held by the secured party or otherwise subject to a deposit account control agreement. From there, monies are applied to pay operating expenses and various other priorities, such as debt service requirements, replenishments of any debt service reserve fund requirement, maintenance capital expenditures, payment of subordinate lien debt, and so forth. In some cases, the waterfall applications may be handled directly by the tribal borrower, especially if there has been no default or covenant violation. In other cases, the waterfall may be subject to tighter controls and administered by a trustee or other secured party who collects the pledged revenues, applies them according to the waterfall, and then releases what is left back to the tribal borrower. The more controlled arrangement (of which there are many variations) is sometimes called a “lockbox.”

WEIGHTED AVERAGE LIFE or WEIGHTED AVERAGE MATURITY (WAM) –
See: AVERAGE LIFE.

WORKING CAPITAL – A term used in accounting and finance to describe the amount by which current assets exceed current liabilities.

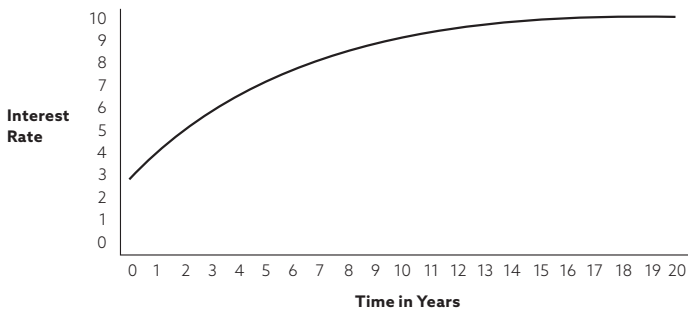
WORKOUT – *See: RESTRUCTURING.*

- Y -

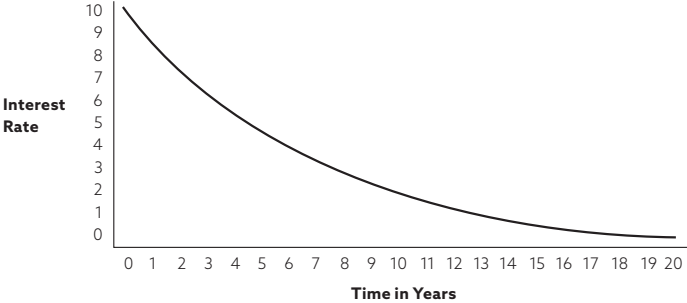
YIELD – The annual rate of return on an investment, based on the purchase price of the investment, its interest rate and the length of time the investment is held.

YIELD CURVE – A graph that plots market yields on bonds or other securities of equivalent quality but different maturities at a given point in time. The vertical axis represents the yields, while the horizontal axis depicts time to maturity. The relationship of interest rates over time, as reflected by the yield curve, will vary according to market conditions, resulting in a variety of yield curve configurations, as follows:

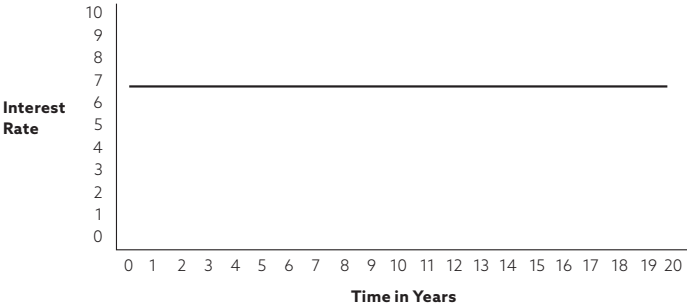
Normal or Positive Yield Curve – Indicates that short-term bonds have a lower interest rate than long-term bonds.



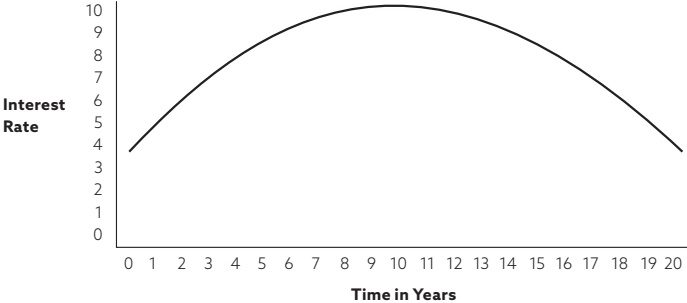
Inverted or Negative Yield Curve – Reflects the situation of short-term bonds that have a higher interest rate than long-term bonds.



Flat Yield Curve – Reflects the situation when short-term bonds and long-term bonds have approximately the same interest rates.



Humpbacked or Bell-Shaped Yield Curve – Indicates that interest rates are low in the early years, peak in the middle years and decline in the later years.



YIELD PROTECTION – Provision in the credit agreement that protects the lender’s yield on loans made to the tribal borrower. These provisions protect the lender against various risks, including increased costs, capital costs, LIBOR market disruption, illegality, breakfunding and taxes. Although very rarely invoked by lenders, yield protection clauses are nonetheless standard in credit agreements that include LIBOR loans.

YIELD REDUCTION PAYMENT – A payment made to the federal government in order to reduce the yield on investment of tax-exempt bond proceeds to meet yield restriction requirements under the Code. *See: ARBITRAGE; YIELD RESTRICTION.*

YIELD RESTRICTION – A requirement under the Code that proceeds of tax-exempt bonds not be used to make investments at a yield higher than the yield on the bonds. The Code provides certain exceptions, such as for investment of bond proceeds for reasonable temporary periods pending expenditure and investments held in “reasonably required” debt service reserve funds. *See: ARBITRAGE.*

YIELD TO MATURITY – A calculation related to bonds that reflects the rate of return an investor would receive from a bond if the bond is held to maturity.

- Z -

ZERO COUPON BOND – An original issue discount bond on which no periodic interest payments are made but which is issued at a deep discount from par, accreting (at the rate represented by the offering yield at issuance) to its full value at maturity.



Orrick, Herrington & Sutcliffe LLP

publicfinance@orrick.com

orrick.com

Houston Los Angeles New York Orange County Portland Sacramento San Francisco
Seattle Silicon Valley Washington DC Global Operations Center (Wheeling)