**NEW ISSUE** **BOOK-ENTRY ONLY**

*In the opinion of Brown & Wood LLP, Transaction Counsel to TSASC, INC., assuming continuing compliance with the provisions of the Internal Revenue Code of 1986, as amended (the "**Code**"), as described herein, interest on the Series 1999-1 Bonds will not be includable in the gross income of the owners thereof for federal, New York State or New York City income tax purposes. See "Tax Exemption and Other Tax Matters" herein for further information.*

# $709,280,000

## TSASC, INC.

## Tobacco Flexible Amortization Bonds (TFABs), Series 1999-1

TSASC, INC. ("**TSASC**") is a local development corporation organized under the Not-For-Profit Corporation Law of the State of New York. TSASC is an instrumentality of, but separate and apart from, The City of New York (the "**City**").

The Tobacco Flexible Amortization Bonds (TFABs), Series 1999-1 (the "**Series 1999-1 Bonds**") are the first of four parity series (each, a "**Series**") of bonds of TSASC designated as "Tobacco Flexible Amortization Bonds" (the "**Program Bonds**") expected to be issued pursuant to an Indenture, dated as of November 1, 1999 (the "**Indenture**"), between TSASC and United States Trust Company of New York, as trustee (the "**Indenture Trustee**"), and a series supplement related to each such Series. The Program Bonds are expected to be issued in the approximate principal amount of $2.8 billion.

The Series 1999-1 Bonds are being issued to finance TSASC's purchase of all of the City's future right, title and interest under (i) the Master Settlement Agreement (the "**MSA**") that was entered into by participating cigarette manufacturers, 46 states and six other U.S. jurisdictions in November 1998 in settlement of certain smoking-related litigation and (ii) the Consent Decree and Final Judgment related thereto, including the City's right to receive certain initial and annual payments (such payments and rights, as more fully defined herein, the "**TSRs**") to be made by the participating manufacturers under the MSA. The City will use the portion of such purchase price represented by the net proceeds of the Series 1999-1 Bonds for capital projects of the City.

*(Continued on next page)*

**Payment of the Series 1999-1 Bonds is dependent on receipt of TSRs. The amount of TSRs actually collected is dependent on many factors including cigarette consumption and the finances of participating cigarette manufacturers. See "Risk Factors" beginning on page 15 for a discussion of certain factors that should be considered in connection with an investment in the Series 1999-1 Bonds.**

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**See Inside Cover for Dated Date, Interest Rates, Prices, Yields, Rated Maturities and Planned Principal Payments**

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**The Bonds shall not be debt of the State of New York (the "State") or the City, and neither the State nor the City shall be liable thereon. TSASC shall not have the power to pledge the credit, the revenues or the taxing power of the State or the City, and neither the credit, nor the revenues nor the taxing power of the State or the City shall be, or shall be deemed to be, pledged to the payment of any of the Bonds. TSASC has no taxing power.**

| | | |
|---|---|---|
| Salomon Smith Barney | Bear, Stearns & Co. Inc. | J.P. Morgan & Co. |
| Goldman, Sachs & Co. | Morgan Stanley Dean Witter | PaineWebber Incorporated |

Advest, Inc. • A.G. Edwards & Sons, Inc. • M.R. Beal & Company • BNY Capital Markets, Inc.
Chase Securities Inc. • CIBC World Markets • Dain Rauscher, Inc. • First Albany Corporation
Fleet Securities, Inc. • Greenwich Partners, LLC • Gruntal & Co., Inc. • Lebenthal & Co. Inc. • Lehman Brothers
David Lerner Associates Inc. • Loop Capital Markets, LLC • Merrill Lynch & Co. • Prudential Securities Incorporated
Pryor, McClendon, Counts & Co., Inc. • Ramirez & Co., Inc. • Raymond James & Associates, Inc. • Roosevelt & Cross Inc.
Schroeder & Co. Inc. • Siebert Brandford Shank & Co., LLC • William E. Simon & Sons Municipal Securities, Inc.

**November 5, 1999**

*(Continued from front cover)*

The Series 1999-1 Bonds and the other Series of Program Bonds will be secured by and payable solely from (i) the TSRs and investment earnings on accounts pledged under the Indenture (as more fully defined herein, the "**Collections**"), (ii) amounts held in certain reserve accounts established under the Indenture (as more fully defined herein, the "**Reserves**") and (iii) amounts held in the other accounts established under the Indenture. TSASC has no financial assets other than the TSRs, the Reserves and amounts held in accounts established under the Indenture.

Interest on the Series 1999-1 Bonds is payable semi-annually on January 15 and July 15 of each year, commencing July 15, 2000.

The Series 1999-1 Bonds have Rated Maturities as set forth on the inside cover hereof. Failure to pay interest on the Series 1999-1 Bonds or failure to pay principal of the Series 1999-1 Bonds on a cumulative basis in accordance with the Rated Maturities will constitute an Event of Default as described herein. **The ratings of the Series 1999-1 Bonds address the ability of TSASC to pay interest when due and make cumulative principal payments in accordance with the Rated Maturities.** Interest payments and principal payments required by the Rated Maturities will be made from Collections and, if necessary, Reserves.

TSASC has covenanted to apply all available Collections, pursuant to the Indenture, to make the Planned Principal Payments for each Planned Principal Payment Date as set forth on the inside cover hereof. Planned Principal Payments are substantially earlier than Rated Maturities and, to the extent made, will be credited against the Rated Maturities and will not be made from the Liquidity Reserve Account. Failure to pay principal on a cumulative basis in accordance with the Planned Principal Payments will not constitute an Event of Default. However, no payments will be made to the City with respect to the Residual Certificate (as defined herein), and no additional Program Bonds may be issued, as described herein, unless TSASC is current on all Planned Principal Payments. **The ratings of the Series 1999-1 Bonds do not address the payment of principal according to the Planned Principal Payments.** If TSASC is unable to make any Planned Principal Payment, principal of the Series 1999-1 Bonds will be paid, to the extent of available Collections, as frequently as semiannually on each subsequent Distribution Date (as defined herein) until TSASC has paid all Planned Principal Payments due on a cumulative basis.

The Series 1999-1 Bonds are subject to optional redemption and, under certain circumstances, Extraordinary Prepayment prior to their respective Planned Principal Payment Dates, as described herein. The Series 1999-1 Bonds are also subject to sinking fund redemptions as described herein.

*The Series 1999-1 Bonds are offered when, as and if issued and accepted by the Underwriters, subject to the approval of legality by Brown & Wood LLP, New York, New York, as Transaction Counsel. Certain legal matters with respect to TSASC and the City will be passed upon by the City's Corporation Counsel and Brown & Wood LLP, as Transaction Counsel. Certain legal matters will be passed upon for the Underwriters by Orrick, Herrington & Sutcliffe LLP, New York, New York, as Underwriters' Counsel. It is expected that the Series 1999-1 Bonds will be available for delivery in book-entry only form through The Depository Trust Company in New York, New York on or about November 18, 1999.*

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# $709,280,000
# Series 1999-1 Bonds
# Principal Amortization
# Dated: Date of Delivery

| Principal Amount | Rated Maturity Date July 15 | Planned Principal Payment Date July 15 | Interest Rate | Price or Yield to PPPD(1) | Price or Yield to RMD(2) |
|---|---|---|---|---|---|
| $ 5,620,000 | 2003 | 2000 | 4.000% | 4.100% | 4.019% |
| 3,015,000 | 2003 | 2001 | 4.500 | 4.550 | 4.524 |
| 2,875,000 | 2004 | 2001 | 4.500 | 4.600 | 4.538 |
| 3,485,000 | 2005 | 2001 | 4.600 | 4.650 | 4.616 |
| 55,000 | 2006 | 2001 | 4.625 | 4.700 | 4.646 |
| 3,915,000 | 2006 | 2002 | 4.800 | 4.850 | 4.822 |
| 4,425,000 | 2007 | 2002 | 4.875 | 4.900 | 4.885 |
| 575,000 | 2008 | 2002 | 4.875 | 4.950 | 4.902 |
| 5,435,000 | 2008 | 2003 | 5.000 | 5.050 | 5.024 |
| 3,080,000 | 2009 | 2003 | 5.000 | 5.100 | 5.044 |
| 3,610,000 | 2009 | 2004 | 5.125 | 5.200 | 5.166 |
| 2,910,000 | 2010 | 2004 | 5.200 | 5.250 | 5.225 |
| 4,670,000 | 2010 | 2005 | 5.250 | 5.300 | 5.280 |
| 2,675,000 | 2011 | 2005 | 5.250 | 5.350 | 5.306 |
| 5,600,000 | 2011 | 2006 | 5.375 | 5.400 | 5.391 |
| 2,460,000 | 2012 | 2006 | 5.375 | 5.450 | 5.421 |
| 5,945,000 | 2012 | 2007 | 5.400 | 5.500 | 5.468 |
| 2,825,000 | 2013 | 2007 | 5.500 | 5.550 | 5.532 |
| 6,390,000 | 2013 | 2008 | 5.500 | 5.600 | 5.572 |
| 4,155,000 | 2014 | 2008 | 5.600 | 5.650 | 5.634 |
| 5,890,000 | 2014 | 2009 | 5.700 | 5.750 | 5.737 |
| 5,795,000 | 2015 | 2009 | 5.750 | 5.800 | 5.786 |
| 1,595,000 | 2015 | 2010 | 5.875 | 5.900 | 5.894 |
| 8,060,000 | 2016 | 2010 | 5.875 | 5.920 | 5.908 |
| 3,395,000 | 2017 | 2010 | 5.900 | 5.950 | 5.936 |
| 5,650,000 | 2017 | 2011 | 5.900 | 6.000 | 5.977 |
| 8,315,000 | 2018 | 2011 | 6.000 | 6.050 | 6.037 |
| 7,325,000 | 2018 | 2012 | 6.000 | 6.080 | 6.063 |
| 7,705,000 | 2019 | 2012 | 6.000 | 6.100 | 6.077 |
| $ 9,455,000 | 2019 | 2013 | 6.000% | 6.130% | 6.105% |
| 6,850,000 | 2020 | 2013 | 6.000 | 6.130 | 6.102 |
| 10,075,000 | 2020 | 2014 | 6.000 | 6.150 | 6.123 |
| 7,540,000 | 2021 | 2014 | 6.000 | 6.150 | 6.121 |
| 10,920,000† | 2021 | 2015 | 6.250 | 6.350 | 6.336 |
| 7,940,000† | 2022 | 2015 | 6.250 | 6.350 | 6.336 |
| 12,375,000† | 2022 | 2016 | 6.250 | 6.350 | 6.336 |
| 8,220,000† | 2023 | 2016 | 6.250 | 6.350 | 6.336 |
| 13,195,000† | 2023 | 2017 | 6.250 | 6.350 | 6.336 |
| 9,205,000† | 2024 | 2017 | 6.250 | 6.350 | 6.336 |
| 13,405,000† | 2024 | 2018 | 6.250 | 6.350 | 6.336 |
| 17,405,000† | 2025 | 2018 | 6.250 | 6.350 | 6.336 |
| 5,680,000† | 2025 | 2019 | 6.250 | 6.350 | 6.336 |
| 24,190,000† | 2026 | 2019 | 6.250 | 6.350 | 6.336 |
| 3,445,000† | 2027 | 2019 | 6.250 | 6.350 | 6.336 |
| 23,005,000†† | 2027 | 2020 | 6.250 | 6.400 | 6.383 |
| 12,940,000†† | 2028 | 2020 | 6.250 | 6.400 | 6.383 |
| 12,690,000†† | 2028 | 2021 | 6.250 | 6.400 | 6.383 |
| 24,675,000†† | 2029 | 2021 | 6.250 | 6.400 | 6.383 |
| 1,615,000†† | 2029 | 2022 | 6.250 | 6.400 | 6.383 |
| 27,055,000†† | 2030 | 2022 | 6.250 | 6.400 | 6.383 |
| 10,435,000†† | 2031 | 2022 | 6.250 | 6.400 | 6.383 |
| 18,460,000†† | 2031 | 2023 | 6.250 | 6.400 | 6.383 |
| 22,425,000†† | 2032 | 2023 | 6.250 | 6.400 | 6.383 |
| 8,425,000†† | 2032 | 2024 | 6.250 | 6.400 | 6.383 |
| 32,810,000†† | 2033 | 2024 | 6.250 | 6.400 | 6.383 |
| 1,460,000†† | 2034 | 2024 | 6.250 | 6.400 | 6.383 |
| 33,940,000††† | 2034 | 2025 | 6.375 | 6.450 | 6.444 |
| 10,740,000††† | 2035 | 2025 | 6.375 | 6.450 | 6.444 |
| 27,175,000††† | 2035 | 2026 | 6.375 | 6.450 | 6.444 |
| 18,095,000††† | 2036 | 2026 | 6.375 | 6.450 | 6.444 |
| 22,605,000††† | 2036 | 2027 | 6.375 | 6.450 | 6.444 |
| 23,545,000††† | 2037 | 2027 | 6.375 | 6.450 | 6.444 |
| 15,645,000††† | 2037 | 2028 | 6.375 | 6.450 | 6.444 |
| 31,300,000††† | 2038 | 2028 | 6.375 | 6.450 | 6.444 |
| 5,785,000††† | 2038 | 2029 | 6.375 | 6.450 | 6.444 |
| 37,105,000††† | 2039 | 2029 | 6.375 | 6.450 | 6.444 |

(1) PPPD means Planned Principal Payment Date.
(2) RMD means Rated Maturity Date.
† Sinking Fund Installment of $125,980,000 Term Bonds with Rated Maturity Date of July 15, 2027 and Planned Payment Date of July 15, 2019
†† Sinking Fund Installment of $195,995,000 Term Bonds with Rated Maturity Date of July 15, 2034 and Planned Payment Date of July 15, 2024
††† Sinking Fund Installment of $225,935,000 Term Bonds with Rated Maturity Date of July 15, 2039 and Planned Payment Date of July 15, 2029

**$709,280,000**

**Series 1999-1 Bonds**

| July 15[1] | Rated Maturities: Rated Maturity Amount | Rated Maturities: Cumulative Rated Maturities | Planned Principal Payments: Planned Principal Payment | Planned Principal Payments: Cumulative Planned Principal Payments | Cumulative Excess of Planned Principal Payments Over Rated Maturities |
|---|---|---|---|---|---|
| 2000 | $ 0 | $ 0 | $ 5,620,000 | $ 5,620,000 | $ 5,620,000 |
| 2001 | 0 | 0 | 9,430,000 | 15,050,000 | 15,050,000 |
| 2002 | 0 | 0 | 8,915,000 | 23,965,000 | 23,965,000 |
| 2003 | 8,635,000 | 8,635,000 | 8,515,000 | 32,480,000 | 23,845,000 |
| 2004 | 2,875,000 | 11,510,000 | 6,520,000 | 39,000,000 | 27,490,000 |
| 2005 | 3,485,000 | 14,995,000 | 7,345,000 | 46,345,000 | 31,350,000 |
| 2006 | 3,970,000 | 18,965,000 | 8,060,000 | 54,405,000 | 35,440,000 |
| 2007 | 4,425,000 | 23,390,000 | 8,770,000 | 63,175,000 | 39,785,000 |
| 2008 | 6,010,000 | 29,400,000 | 10,545,000 | 73,720,000 | 44,320,000 |
| 2009 | 6,690,000 | 36,090,000 | 11,685,000 | 85,405,000 | 49,315,000 |
| 2010 | 7,580,000 | 43,670,000 | 13,050,000 | 98,455,000 | 54,785,000 |
| 2011 | 8,275,000 | 51,945,000 | 13,965,000 | 112,420,000 | 60,475,000 |
| 2012 | 8,405,000 | 60,350,000 | 15,030,000 | 127,450,000 | 67,100,000 |
| 2013 | 9,215,000 | 69,565,000 | 16,305,000 | 143,755,000 | 74,190,000 |
| 2014 | 10,045,000 | 79,610,000 | 17,615,000 | 161,370,000 | 81,760,000 |
| 2015 | 7,390,000 | 87,000,000 | 18,860,000 | 180,230,000 | 93,230,000 |
| 2016 | 8,060,000 | 95,060,000 | 20,595,000 | 200,825,000 | 105,765,000 |
| 2017 | 9,045,000 | 104,105,000 | 22,400,000 | 223,225,000 | 119,120,000 |
| 2018 | 15,640,000 | 119,745,000 | 30,810,000 | 254,035,000 | 134,290,000 |
| 2019 | 17,160,000 | 136,905,000 | 33,315,000 | 287,350,000 | 150,445,000 |
| 2020 | 16,925,000 | 153,830,000 | 35,945,000 | 323,295,000 | 169,465,000 |
| 2021 | 18,460,000 | 172,290,000 | 37,365,000 | 360,660,000 | 188,370,000 |
| 2022 | 20,315,000 | 192,605,000 | 39,105,000 | 399,765,000 | 207,160,000 |
| 2023 | 21,415,000 | 214,020,000 | 40,885,000 | 440,650,000 | 226,630,000 |
| 2024 | 22,610,000 | 236,630,000 | 42,695,000 | 483,345,000 | 246,715,000 |
| 2025 | 23,085,000 | 259,715,000 | 44,680,000 | 528,025,000 | 268,310,000 |
| 2026 | 24,190,000 | 283,905,000 | 45,270,000 | 573,295,000 | 289,390,000 |
| 2027 | 26,450,000 | 310,355,000 | 46,150,000 | 619,445,000 | 309,090,000 |
| 2028 | 25,630,000 | 335,985,000 | 46,945,000 | 666,390,000 | 330,405,000 |
| 2029 | 26,290,000 | 362,275,000 | 42,890,000 | 709,280,000 | 347,005,000 |
| 2030 | 27,055,000 | 389,330,000 | 0 | 0 | — |
| 2031 | 28,895,000 | 418,225,000 | 0 | 0 | — |
| 2032 | 30,850,000 | 449,075,000 | 0 | 0 | — |
| 2033 | 32,810,000 | 481,885,000 | 0 | 0 | — |
| 2034 | 35,400,000 | 517,285,000 | 0 | 0 | — |
| 2035 | 37,915,000 | 555,200,000 | 0 | 0 | — |
| 2036 | 40,700,000 | 595,900,000 | 0 | 0 | — |
| 2037 | 39,190,000 | 635,090,000 | 0 | 0 | — |
| 2038 | 37,085,000 | 672,175,000 | 0 | 0 | — |
| 2039 | 37,105,000 | 709,280,000 | 0 | 0 | — |

(1) Interest is payable January 15 and July 15 of each year, commencing July 15, 2000. Planned Principal Payments and Rated Maturities are scheduled only on July 15 of each year although principal could be paid semi-annually if the actual principal payments are slower than Planned Principal Payments.

CERTAIN PERSONS PARTICIPATING IN THIS OFFERING MAY ENGAGE IN TRANSACTIONS THAT STABILIZE OR MAINTAIN THE PRICE OF THE SECURITIES AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET, OR OTHERWISE AFFECT THE PRICE OF THE SECURITIES OFFERED HEREBY, INCLUDING OVER-ALLOTMENT AND STABILIZING TRANSACTIONS. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

NO DEALER, BROKER, SALESPERSON OR OTHER PERSON IS AUTHORIZED IN CONNECTION WITH ANY OFFERING MADE HEREBY TO GIVE ANY INFORMATION OR MAKE ANY REPRESENTATION OTHER THAN AS CONTAINED HEREIN, AND, IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATION MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY TSASC, THE CITY OR THE UNDERWRITERS. THIS OFFERING CIRCULAR DOES NOT CONSTITUTE AN OFFER TO SELL, OR A SOLICITATION OF AN OFFER TO BUY, ANY OF THE SECURITIES OFFERED HEREBY BY ANY PERSON IN ANY JURISDICTION IN WHICH IT IS UNLAWFUL FOR SUCH PERSON TO MAKE SUCH AN OFFER OR SOLICITATION.

THERE IS CURRENTLY NO SECONDARY MARKET FOR THE SERIES 1999-1 BONDS AND THERE CAN BE NO ASSURANCE THAT ONE WILL DEVELOP, OR IF ONE DEVELOPS, THAT IT WILL CONTINUE.

The information set forth herein has been furnished by TSASC, the City and WEFA (as defined herein) and includes information obtained from other sources, all of which are believed to be reliable. The information and expressions of opinion contained herein are subject to change without notice and neither the delivery of this Offering Circular nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of TSASC or the matters covered by the report of WEFA included as Appendix A to this Offering Circular since the date hereof or that the information contained herein is correct as of any date subsequent to the date hereof. Such information and expressions of opinion are made for the purpose of providing information to prospective investors and are not to be used for any other purpose or relied on by any other party.

This Offering Circular contains forecasts, projections and estimates that are based on current expectations or assumptions. In light of the important factors that may materially affect the amount of Collections (see "RISK FACTORS" and "DESCRIPTION OF THE MASTER SETTLEMENT AGREEMENT" herein), the inclusion in this Offering Circular of such forecasts, projections and estimates should not be regarded as a representation by TSASC, the City, WEFA or the Underwriters that such forecasts, projections and estimates will occur. Such forecasts, projections and estimates are not intended as representations of fact or guarantees of results.

If and when included in this Offering Circular, the words "expects," "forecasts," "projects," "intends," "anticipates," "estimates," "assumes," and analogous expressions are intended to identify forward-looking statements, and any such statements inherently are subject to a variety of risks and uncertainties that could cause actual results to differ materially from those that have been projected. Such risks and uncertainties include, among others, general economic and business conditions, changes in political, social and economic conditions, regulatory initiatives and compliance with governmental regulations, litigation and various other events, conditions and circumstances, many of which are beyond the control of TSASC. These forward-looking statements speak only as of the date of this Offering Circular. TSASC disclaims any obligation or undertaking to release publicly any updates or revisions to any forward-looking statement contained herein to reflect any changes in TSASC's expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based.

THE SERIES 1999-1 BONDS HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION, ANY STATE SECURITIES COMMISSION OR ANY OTHER REGULATORY AUTHORITY, NOR HAS ANY OF THE FOREGOING PASSED UPON THE ACCURACY OR ADEQUACY OF THIS OFFERING CIRCULAR. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

## SUMMARY STATEMENT

*This Summary Statement is subject in all respects to more complete information contained in this Offering Circular and should not be considered a complete statement of the facts material to making an investment decision. The offering of the Series 1999-1 Bonds to potential investors is made only by means of the entire Offering Circular. For definitions of certain terms used herein, see "Index of Defined Terms" herein.*

**Overview** .....

TSASC is issuing $709,280,000 aggregate principal amount of its Tobacco Flexible Amortization Bonds, Series 1999-1 (the "**Series 1999-1 Bonds**") in order to provide funds to purchase from The City of New York (the "**City**") all of the City's future right, title and interest under the Master Settlement Agreement (the "**MSA**") and the Consent Decree and Final Judgment (the "**Decree**") as described herein. The Series 1999-1 Bonds are the first of four series (each, a "**Series**") of parity bonds of TSASC expected to be issued annually for such purpose (the "**Program Bonds**"). The Program Bonds are expected to be issued in the approximate principal amount of $2.8 billion. The Series 1999-1 Bonds, together with the other Series of Program Bonds and any other senior parity bonds are collectively referred to herein as the "**Senior Bonds.**" The Senior Bonds, any bond anticipation notes ("**BANs**") and any Subordinate Bonds (as defined herein) are referred to herein as "**Bonds.**"

The City will use the net proceeds of the Series 1999-1 Bonds to pay, or reimburse itself for the payment of, the costs of certain capital projects of the City.

The MSA was entered into on November 23, 1998, between the attorneys general of 46 states (including New York), the District of Columbia, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa and the Territory of the Northern Marianas (collectively, the "**Settling States**") and the four largest United States tobacco manufacturers: Philip Morris Incorporated ("**Philip Morris**"), R.J. Reynolds Tobacco Company ("**Reynolds Tobacco**"), Brown & Williamson Tobacco Corporation ("**B&W**") and Lorillard Tobacco Company ("**Lorillard**") (collectively, the "**Original Participating Manufacturers**" or "**OPMs**"). The OPMs accounted for approximately 97% of the United States domestic cigarette market in 1998. The MSA resolved cigarette smoking-related litigation between the Settling States and the OPMs and released the OPMs from past and present smoking-related claims and provides for a continuing release of future smoking related claims, in exchange for certain payments to be made to the Settling States (including Initial Payments and Annual Payments, as defined herein), as well as certain tobacco advertising and marketing restrictions, among other things.

The MSA provides for tobacco companies other than the OPMs to become parties to the MSA. Tobacco companies that become parties to the MSA after the OPMs are referred to herein as "**Subsequent Participating Manufacturers**" or "**SPMs,**" and the SPMs, together with the OPMs, are referred to herein as the "**Participating Manufacturers**" or "**PMs.**" In the aggregate, the PMs that have signed the MSA to date accounted for approximately 99.7% of the United States domestic cigarette market in 1998, according to an

estimate by the National Association of Attorneys General. Tobacco companies that do not become parties to the MSA are referred to herein as "**Non-Participating Manufacturers**" or "**NPMs.**"

**New York Consent Decree**..... Under the MSA, the State of New York (the "**State**") is entitled to 12.7620310% of the Initial Payments and Annual Payments made by PMs under the MSA. The Decree, which was entered by the Supreme Court of the State of New York in December 1998, allocates this share of the Initial Payments and Annual Payments among the State (51.176%), the City (26.670%) and all other counties within the State (22.154%). The City is selling all of its future right, title and interest under the MSA and the Decree to TSASC. As a result, TSASC will be entitled to receive approximately 3.40% of the future Initial Payments and Annual Payments made by the PMs under the MSA. The State is entitled to receive additional payments in which the City does not have an interest under the Decree. The moneys to which TSASC is entitled will not pass through the State and are not subject to State appropriation.

The Decree became final on August 17, 1999 and is not subject to further appeal. As a result, New York State has achieved State-Specific Finality (as defined herein) under the MSA and TSASC's share of the Initial Payments and Annual Payments made under the MSA will begin to be paid to the Indenture Trustee upon the earlier to occur of (i) 80% of the Settling States by number and dollar volume entitlement achieving State-Specific Finality or (ii) June 30, 2000. As of October 27, 1999, 43 of the Settling States, representing 83% of the Settling States by number and approximately 66% by dollar volume entitlement had achieved State-Specific Finality.

**Master Settlement Agreement**..... The MSA is an industry-wide settlement of litigation between the Settling States and the Participating Manufacturers. Pursuant to the MSA, the Settling States and the PMs agreed to settle all past, present and future smoking-related claims in exchange for an agreement by the PMs to make Initial Payments, Annual Payments and certain other payments to the Settling States as described below, to abide by more stringent tobacco advertising and marketing restrictions and to fund educational programs among other things.

Under the MSA, the OPMs are required to make the following payments (in which the City has an interest under the Decree) to the Settling States (i) five initial payments ranging from $2.4 billion to $2.7 billion (the "**Initial Payments**"), the first of which (in the amount of $2.4 billion) was deposited in December 1998 with an escrow agent appointed pursuant to the MSA (the "**MSA Escrow Agent**"), and the remainder of which are required to be made annually on each January 10, from January 10, 2000 through January 10, 2003, and (ii) annual payments (the "**Annual Payments**") which are required to be made annually on each April 15, commencing April 15, 2000, and continuing in perpetuity in the following amounts, which will be adjusted as hereinafter described:

| Year | Base Amount | Year | Base Amount |
|---|---|---|---|
| 2000 ..... | $4,500,000,000 | 2010 ..... | $8,139,000,000 |
| 2001 ..... | 5,000,000,000 | 2011 ..... | 8,139,000,000 |
| 2002 ..... | 6,500,000,000 | 2012 ..... | 8,139,000,000 |
| 2003 ..... | 6,500,000,000 | 2013 ..... | 8,139,000,000 |
| 2004 ..... | 8,000,000,000 | 2014 ..... | 8,139,000,000 |
| 2005 ..... | 8,000,000,000 | 2015 ..... | 8,139,000,000 |
| 2006 ..... | 8,000,000,000 | 2016 ..... | 8,139,000,000 |
| 2007 ..... | 8,000,000,000 | 2017 ..... | 8,139,000,000 |
| 2008 ..... | 8,139,000,000 | 2018 ..... | 9,000,000,000 |
| 2009 ..... | 8,139,000,000 | thereafter ... | 9,000,000,000 |

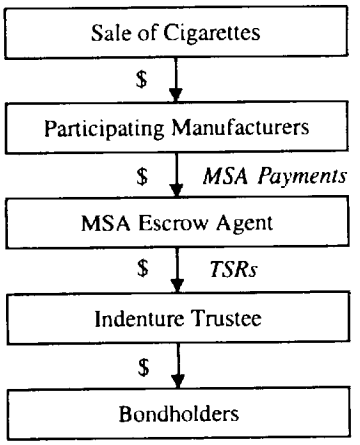
Each OPM is required to pay an allocable portion of each remaining Initial Payment and each Annual Payment based on its respective market share of the United States cigarette market during the preceding calendar year, subject to certain adjustments as described herein. Each SPM has Annual Payment obligations under the MSA (separate from the payment obligations of the OPMs) according to its market share only if its market share exceeds the higher of its 1998 market share or 125% of its 1997 market share. The SPMs have no payment obligation with respect to the Initial Payments under the MSA. The payment obligations under the MSA follow tobacco product brands if they are transferred by any of the PMs. Payments by the PMs under the MSA are required to be made to the MSA Escrow Agent, which is required, in turn, to remit an allocable share of such payments to the parties entitled thereto, including TSASC's Indenture Trustee as described herein.

The Initial Payments and Annual Payments due under the MSA are subject to numerous adjustments, some of which may be material. Such adjustments include, among others, reductions for decreased domestic cigarette shipments and, in the case of the Annual Payments, increases related to inflation in an amount of not less than 3% per year.

**Sale of Tobacco Settlement Revenues** ..... Pursuant to a Purchase and Sale Agreement, to be dated the Closing Date (the "**TSR Purchase Agreement**"), the City will sell to TSASC all of its future right, title and interest under the MSA and Decree, including the City's right to receive its portion of Initial Payments and Annual Payments made by the PMs (the "**Tobacco Settlement Revenues**" or "**TSRs**"). Under the Indenture, TSASC will assign and pledge the TSRs to the Indenture Trustee. Accordingly, TSRs will be paid directly by the MSA Escrow Agent to the Indenture Trustee.

The purchase price to be paid by TSASC to the City under the TSR Purchase Agreement will consist of: (i) the net proceeds of the sale of the Series 1999-1 Bonds and (ii) TSASC's 100% beneficial ownership interest in the TSASC Tobacco Settlement Trust (the "**Trust**"), the assets of which consist primarily of a security (the "**Residual Certificate**") which will entitle the Trust (and thus the City) to the net proceeds of TSASC's future issues of Bonds (other than refunding Bonds), and to TSRs received by TSASC that are not required to pay various expenses, debt service or required reserves with respect to the Bonds.

**Flow of TSR Payments** ..... Upon the sale of the TSRs to TSASC, the MSA Escrow Agent will disburse the TSRs from the New York State-Specific Account directly to the Indenture Trustee. The following diagram depicts the flow of TSRs.




Any excess not needed to pay Bondholders, pay various expenses or fund reserves under the Indenture will be paid to the holder of the Residual Certificate.

TSASC intends to make public information relating to TSRs as it receives such information.

**Industry Overview** ..... The four OPMs, Philip Morris, Reynolds Tobacco, B&W and Lorillard, are also the four largest manufacturers of cigarettes in the United States (based on 1998 market share). Several smaller domestic companies and foreign companies with a combined market share of approximately 3% in 1998 also manufacture cigarettes for the United States market. The market for cigarettes is highly competitive, characterized by brand recognition and loyalty. Excluding sales taxes, United States domestic retail expenditures on cigarettes were an estimated $53.2 billion in 1998.

**Cigarette Consumption** ..... People have smoked tobacco for centuries. Domestic cigarette consumption grew dramatically in the 20th century, reaching a peak of 640 billion cigarettes in 1981. Consumption declined in the 1980's and 1990's, reaching a level of 465 billion cigarettes in 1998. A number of factors affect consumption, including, but not limited to, pricing, advertising, health warnings, restrictions on smoking in public places, nicotine dependence, youth consumption, general population trends, disposable income and the trend over time.

**WEFA Report** ..... In order to forecast future domestic consumption, WEFA, Inc. ("**WEFA**"), an international econometric and consulting firm, was retained to forecast cigarette consumption in the United States from 1999 through 2042. Using data from 1965 to 1998 and standard multivariant regression analysis, WEFA analyzed population, the price of cigarettes, disposable income, advertising expenditures by tobacco companies, incidence of youth smoking and the impact of qualitative variables such as bans on television and radio advertising and restrictions on public smoking to build an empirical model of

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| | United States cigarette consumption. WEFA's report entitled *A Forecast of Total U.S. Cigarette Consumption (1999-2042)* (the "**WEFA Report**") is attached hereto as Appendix A and should be read in its entirety for an understanding of the assumptions on which it is based and the conclusions it reaches.<br>While the WEFA Report is based on United States cigarette consumption, MSA payments are computed based in part on shipments in or to the fifty United States, the District of Columbia and Puerto Rico. The quantities of cigarettes shipped and cigarettes consumed within the United States may not match at any given point in time as a result of various factors, such as inventory adjustments, but are substantially the same when compared over a period of time. |
| **Collateral** | The Senior Bonds will be secured by a perfected first-priority security interest in, and pledge of, all of TSASC's tangible and intangible assets, including the TSRs and all investment earnings on amounts on deposit in the Accounts established under the Indenture (collectively, the "**Collections**"), all amounts on deposit in the Liquidity Reserve Account, the Trapping Account and the Extraordinary Prepayment Account, if any (collectively, the "**Reserves**"), and all amounts on deposit in the other Accounts established under the Indenture. |
| **Issuer** | TSASC is a special purpose, bankruptcy-remote local development corporation incorporated under the provisions of Section 1411 of the New York State Not-For-Profit Corporation Law. TSASC is an instrumentality of, but separate and apart from, the City. TSASC will be operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. TSASC has authority under Federal tax law to issue tax exempt bonds. |
| **Securities Offered** | The Series 1999-1 Bonds will be issued pursuant to an Indenture, dated as of November 1, 1999 (the "**Indenture**"), between TSASC and United States Trust Company of New York, as trustee (the "**Indenture Trustee**"), and a supplement to the Indenture (the "**Series 1999-1 Supplement**"), dated as of the Closing Date, between TSASC and the Indenture Trustee. Each subsequent Series of Bonds will be issued pursuant to the Indenture and a series supplement to the Indenture (each, a "**Series Supplement**").<br>It is expected that the Series 1999-1 Bonds will be delivered in book-entry form through the facilities of The Depository Trust Company, New York, New York ("**DTC**"), on or about November 18, 1999 (the "**Closing Date**"). Individual purchases of beneficial ownership interests may be made in the principal amount of $5,000 or any integral multiple thereof. Beneficial owners of the Series 1999-1 Bonds will not receive physical delivery of bond certificates. |
| **Other Program Bonds** | TSASC may issue Program Bonds other than the Series 1999-1 Bonds if: (i) aggregate annual debt service (calculated separately for Rated Maturities and Planned Principal Payments) on all outstanding Senior Bonds, after giving effect to the proposed issuance, does not exceed the Annual Program Debt Service Schedules in any Fiscal Year (see "THE SERIES 1999-1 BONDS—Annual Program Debt Service Schedules" herein); (ii) the Liquidity Reserve Account and the Trapping Account are funded to their respective requirements; |

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| | (iii) TSASC is current on all Cumulative Planned Principal Payments Due on the outstanding Senior Bonds; and (iv) no Event of Default has occurred under the Indenture. The estimated amount of Program Bonds of $2.8 billion reflects these requirements. The actual amounts of Program Bonds may be higher or lower depending on actual Annual Program Debt Service Schedules at the time of issuance (see "THE SERIES 1999-1 BONDS—Annual Program Debt Service Schedules" herein). |
| **Additional Senior Bonds** | TSASC may issue additional Senior Bonds on a parity with the Series 1999-1 Bonds and other Program Bonds as refunding Bonds or upon confirmation from each Rating Agency then rating the Senior Bonds that such issuance will not cause the outstanding ratings on any Senior Bonds to be lowered or withdrawn (such confirmation, a "**Rating Confirmation**"). |
| **Bond Anticipation Notes (BANs)** | TSASC may issue BANs (a) upon Rating Confirmation or (b) subject to authorization of a Series of Program Bonds in anticipation of which the BANs are to be issued and satisfaction of the conditions described above for the issuance of Program Bonds or (c) to renew BANs. The principal of any BANs will not be payable from Collections. Interest on BANs will be payable from Collections either on a parity with, or junior to, payments of interest on Senior Bonds, as specified by Series Supplement. |
| **Subordinate Bonds** | TSASC may issue additional Bonds that are subordinate to the Series 1999-1 Bonds, the other Series of Program Bonds, any other Senior Bonds and BANs ("**Subordinate Bonds**") upon Rating Confirmation. |
| **Bond Structuring Assumptions and Methodology** | Certain assumptions and methodology were used to calculate a forecast of Collections to be received by TSASC, including a forecast of United States cigarette consumption based on the WEFA Report and the application of certain adjustments and offsets to payments to be made by the PMs pursuant to the MSA. Once Collections were forecasted, certain structuring assumptions for the Bonds were applied. The Rated Maturities, Planned Principal Payments and other features of the Program Bonds were determined, based on desired Program Bond proceeds, by targeting debt service coverage ratios necessary to achieve certain credit ratings on the Program Bonds and providing credit enhancement for the Program Bonds through Planned Principal Payments.<br><br>No assurance can be given, however, that events will occur in accordance with such assumptions. Any deviations from such assumptions could be material. See "SUMMARY OF BOND STRUCTURING ASSUMPTIONS AND AMORTIZATION." |
| **Interest** | Interest on the outstanding principal amount of the Series 1999-1 Bonds will be payable on each January 15 and July 15, commencing July 15, 2000. Interest will be computed on the basis of a 360-day year consisting of twelve 30-day months. If on any Distribution Date there are insufficient funds to pay all interest then due on the Senior Bonds, available amounts will be allocated pro rata among all Senior Bonds based on the respective amounts of interest due thereon. Interest on the Series 1999-1 Bonds through July 15, 2000 will be funded from proceeds of the Series 1999-1 Bonds. |

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| **Liquidity Reserve Account** ..... | A reserve account (the "**Liquidity Reserve Account**") will be established and held by the Indenture Trustee and initially funded from proceeds of the issuance of the Series 1999-1 Bonds in an amount equal to maximum annual debt service on the Series 1999-1 Bonds, assuming principal is paid in accordance with the Rated Maturities of the Series 1999-1 Bonds. TSASC is required to maintain a balance in the Liquidity Reserve Account, to the extent of available funds (including proceeds of Senior Bonds available therefor), equal to the sum of the maximum annual debt service (including in each Fiscal Year, Rated Maturities but not Planned Principal Payments) on all Senior Bonds, assuming at all times (if any Senior Bonds are outstanding) that principal has been and will be paid only in accordance with Rated Maturities (the "**Liquidity Reserve Requirement**").<br><br>Amounts on deposit in the Liquidity Reserve Account will be available to pay interest on the Senior Bonds and to pay Rated Maturities, to the extent Collections are insufficient for such purposes. Amounts in the Liquidity Reserve Account will not be available to make Planned Principal Payments or Extraordinary Prepayments. Amounts withdrawn from the Liquidity Reserve Account will be replenished from Collections as described herein. |
| **Rated Maturities** ..... | The "**Rated Maturities**" for the Series 1999-1 Bonds represent the minimum amount of principal that TSASC must pay as of the specified Distribution Date (each, a "**Rated Maturity Date**") in order to avoid an Event of Default as described herein. All payments of principal made on the Series 1999-1 Bonds will be credited against the Rated Maturities in order of maturity. **The ratings of the Series 1999-1 Bonds address the ability of TSASC to pay interest when due and to make cumulative principal payments in accordance with the Rated Maturities.** Payments of principal required by the Rated Maturities will be made from Collections and, if necessary, Reserves.<br><br>A failure by TSASC to pay an amount of principal of the Series 1999-1 Bonds equal to the Cumulative Rated Maturities Due for such Bonds as of any Rated Maturity Date, which takes into account all payments of principal made on or before such Rated Maturity Date, will constitute an Event of Default under the Indenture and will result in the Extraordinary Prepayment of the Series 1999-1 Bonds on a semiannual basis as described herein. The term "**Cumulative Rated Maturities Due**" means, as of any date, an amount equal to the excess, if any, of (x) the sum of the principal amount of the Rated Maturity for such date, if any, plus the aggregate principal amount of the Rated Maturities for each prior Rated Maturity Date over (y) principal payments, including Planned Principal Payments, previously made on the applicable Bonds. As of any calculation date, if principal has been paid in accordance with Planned Principal Payments, the Cumulative Rated Maturities Due will be zero. |
| **Planned Principal Payments** ..... | The Planned Principal Payments for the Series 1999-1 Bonds represent the amount of principal that TSASC has covenanted to pay, to the extent of available Collections, as of the specified Distribution Date (each, a "**Planned Principal Payment Date**"). The Liquidity Reserve Account will not be available to make Planned Principal |

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| | Payments. To the extent Planned Principal Payments are made, they will be credited against the Rated Maturities. Failure to pay Planned Principal Payments will not constitute an Event of Default. If TSASC is unable to make a Planned Principal Payment on any Planned Principal Payment Date, principal will be paid, to the extent of available Collections and money in the Trapping Account, semiannually on each subsequent Distribution Date until TSASC has paid a cumulative amount of principal of the Series 1999-1 Bonds equal to the Cumulative Planned Principal Payments Due for such Bonds. The term "**Cumulative Planned Principal Payments Due**" means, as of any date, an amount equal to the excess, if any, of (x) the sum of the Planned Principal Payment for such date, if any, plus the aggregate Planned Principal Payments for each prior Planned Principal Payment Date over (y) the aggregate principal payments previously made on the applicable Bonds. Payments will not be made on the Residual Certificate and no additional Program Bonds may be issued unless and until TSASC has paid a cumulative amount of principal of the Program Bonds equal to the Cumulative Planned Principal Payments Due for such Bonds. **The ratings of the Series 1999-1 Bonds do not address the payment of principal in accordance with Planned Principal Payments.** |
| **Actual Amortization** | Each Series 1999-1 Bond (or sinking fund installment with respect to a term Series 1999-1 Bond) will have a Rated Maturity Date and a Planned Principal Payment Date. Actual amortization will be dependent on the Collections and Reserves. Collections and Reserves will be allocated among each of the outstanding Series of Bonds according to the priority of payments described below under "—Distributions and Priorities" on a pro rata basis as described below. For this purpose, "**pro rata**" means that Collections and Reserves will be allocated to each Series by the application of a fraction, the numerator of which is equal to the amount due on such Series and the denominator of which is equal to the sum of similar amounts due for the same level of priority for all of the outstanding Series.<br><br>Collections and Reserves available to pay Rated Maturities on any Distribution Date will be first allocated pro rata among all Series of Senior Bonds according to the Cumulative Rated Maturities Due on each Series of Senior Bonds on such Distribution Date and for any Series of Senior Bonds, in order of Rated Maturities, and if no Event of Default has occurred, within a Rated Maturity by lot in $5,000 denominations or, if an Event of Default has occurred, in equal proportions among the Senior Bonds within a Rated Maturity.<br><br>Collections and any money in the Trapping Account available to pay Planned Principal Payments on Senior Bonds will be allocated (i) in order of Planned Principal Payment Dates of the Senior Bonds, (ii) pro rata within the same Planned Principal Payment Date according to Planned Principal Payments then due on each Series of Senior Bonds and (iii) for any Series of Senior Bonds, in order of Rated Maturities, and if no Event of Default has occurred, within a Rated Maturity by lot in $5,000 denominations or, if an Event of Default has occurred, in equal proportions among the Senior Bonds within a Rated Maturity. |

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| **Optional Redemption** | The Series 1999-1 Bonds having Planned Principal Payment Dates on or before July 15, 2009 are not subject to redemption at TSASC's option prior to their respective Planned Principal Payment Dates. The Series 1999-1 Bonds having Planned Principal Payment Dates on or after July 15, 2010 are not subject to redemption at TSASC's option prior to July 15, 2009 but are subject to redemption at TSASC's option at any time on or after July 15, 2009, in whole or in part, at a redemption price of (i) 101% of the principal amount thereof, prior to July 15, 2010, and (ii) par, on or after July 15, 2010. All Series 1999-1 Bonds are subject to redemption without premium from sources other than Collections on or after their respective Planned Principal Payment Dates. TSASC may select dates, amounts, interest rates and maturities of Series 1999-1 Bonds for optional redemption at its sole discretion. |
| **Trapping Account** | An additional reserve account (the "**Trapping Account**") will be established and held by the Indenture Trustee and funded to the Trapping Requirement, at the Trapping Amount, during the existence of a Trapping Event. "**Trapping Event**" means a Consumption Decline Trapping Event, a Downgrade Trapping Event, a Lump Sum Trapping Event, a Model Statute Trapping Event or an NPM Trapping Event. "**Trapping Requirement**" means the greatest of the Consumption Decline Trapping Requirement, the Downgrade Trapping Requirement, the Lump Sum Trapping Requirement, the Model Statute Trapping Requirement or the NPM Trapping Requirement. "**Trapping Amount**" means (i) a fraction of the money available, prior to the deposit for Junior Payments (as hereinafter defined), equal to the ratio of the initial principal amount of previously issued Program Bonds to $2.8 billion, or (ii) in the event of a Lump Sum Trapping Event only, the lump sum, or (iii) with respect to a Trapping Event that is not in effect, zero.<br><br>"**Consumption Decline Trapping Event**" means shipments of cigarettes in or to the 50 United States, the District of Columbia and Puerto Rico are less in any year preceding a Deposit Date than the shipment numbers set forth under "SECURITY—Accounts—Trapping Account" herein. "**Consumption Decline Trapping Requirement**" means 25% of the principal amount of the Outstanding Program Bonds until (i) two years after the end of a Consumption Decline Trapping Event of no more than two years' duration or (ii) three years after the end of a Consumption Decline Trapping Event of more than two years' duration; and thereafter zero.<br><br>"**Downgrade Trapping Event**" means, as of any Deposit Date (as hereinafter defined), that an OPM with a Market Share (as defined in the MSA) of 7% or more in the calendar year preceding such Deposit Date is rated (or if such OPM is not rated, whose parent corporation is rated) below Baa3 by Moody's or BBB– by S&P. "**Downgrade Trapping Requirement**" means 25% of the principal amount of Outstanding Program Bonds until one year after the end of a Downgrade Trapping Event; and thereafter zero; and in any event zero if the applicable OPM has assumed the MSA in bankruptcy and is current on all MSA payments. |

"**Lump Sum Trapping Event**" means the receipt after June 30, 2002 of a lump sum in lieu of future TSRs that causes (or is expected to cause, as evidenced by an officer's certificate of TSASC) the amount available prior to the deposit for Junior Payments in a Fiscal Year to exceed the sum of the amounts (excluding any such lump sums) that were so available over the three preceding Fiscal Years. "**Lump Sum Trapping Requirement**" means the lump sum until there has occurred a twelve-month period, commencing at least twelve months after the most recent Lump Sum Trapping Event, in which the Trapping Account was at no point reduced below the Lump Sum Trapping Requirement and thereafter zero.

"**Model Statute Trapping Event**" means, as of any Deposit Date, that (a) the aggregate Market Share of the NPMs exceeds 3% in the calendar year preceding such Deposit Date and (b) the Model Statute (as hereinafter defined) is found to be invalid (i) in the New York Supreme Court or United States District Court in the State of New York and an appeal of such finding has not been filed within three months or after such three month period the finding of such court has not been stayed or (ii) in 25 states or states that in aggregate account for at least 50% of the payments under the MSA or (iii) by an appellate court having jurisdiction over New York on federal or New York State law or (iv) on federal grounds in any United States Court of Appeals. "**Model Statute Trapping Requirement**" means 25% of the principal amount of the Outstanding Program Bonds until one year after the end of a Model Statute Trapping Event; and thereafter zero.

"**NPM Trapping Event**" means, as of any Deposit Date, that the aggregate Market Share of the NPMs exceeds 7% in the calendar year preceding such Deposit Date. "**NPM Trapping Requirement**" means the lesser of (i) 6% of the principal amount of Outstanding Program Bonds for each full percentage point by which the aggregate Market Share of the NPMs exceeds 7% and (ii) 65% of such principal amount; which amount, as calculated immediately prior to the NPM Trapping Event ceasing to be in effect, shall remain the same for one year and thereafter shall be zero.

Following the occurrence of a Trapping Event, amounts that otherwise would have been paid on the Residual Certificate will be deposited in the Trapping Account to the extent required by the Indenture and will be available to pay interest, Rated Maturities, Planned Principal Payments and Extraordinary Prepayments, in that order.

Amounts in the Trapping Account in excess of the Trapping Requirement on any Distribution Date will be transferred to the Collection Account.

**Events of Default; Extraordinary Prepayment** .....

The occurrence of any of the following events will constitute an "**Event of Default**" under the Indenture: (i) the failure by TSASC to pay when due interest on the Senior Bonds or certain BANs or the failure by TSASC to pay any Rated Maturity of the Senior Bonds when due, (ii) the failure by TSASC to observe or perform any other provision of the Indenture which is not remedied within 30 days after notice thereof and which a majority in interest of the holders of

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| | the Senior Bonds determines should constitute an Event of Default, (iii) the institution of bankruptcy, reorganization, arrangement or insolvency proceedings by TSASC which are not dismissed within 60 days or (iv) the failure by the City to observe or perform its covenant to not limit or alter the rights of TSASC necessary to fulfill the terms of TSASC's agreements with the holders of the outstanding Bonds under the Indenture, or in any way impair the rights and remedies of such holders or the security for the Bonds and which failure is not remedied within 30 days after notice thereof and a majority in interest of the holders of the Senior Bonds determines such failure should constitute an Event of Default. Upon the occurrence of an Event of Default, the outstanding Senior Bonds will be prepaid on the succeeding Distribution Dates in an amount equal to the available funds on deposit in the Extraordinary Prepayment Account (as described below) and the Trapping Account, without premium (any resulting prepayment of a Senior Bond prior to its Planned Principal Payment Date is referred to herein as an "**Extraordinary Prepayment**"). |
| **Extraordinary Prepayment Account** | If an Event of Default has occurred, on each Deposit Date after the payment of certain expenses, all current and past due interest on the Senior Bonds, Cumulative Rated Maturities Due and Cumulative Planned Principal Payments Due and the replenishment of the Liquidity Reserve Account, Collections will be deposited in the Extraordinary Prepayment Account and applied to Extraordinary Prepayments of the Senior Bonds on the succeeding Distribution Dates. |
| **Distributions and Priorities** | The Indenture Trustee will deposit the Collections in the Collection Account. Amounts deposited during the period January 1 through June 30 in any Fiscal Year (each period from July 1 through the following June 30, a "**Fiscal Year**") will be applied to expenses and debt service requirements on the Bonds for the then current and the next Fiscal Year. Amounts, if any, deposited during the period July 1 through December 31 in any Fiscal Year will be applied to expenses and debt service requirements on the Bonds for the current Fiscal Year.<br>Not later than five Business Days following each deposit of TSRs to the Collection Account (each, a "**Deposit Date**"), the Indenture Trustee will withdraw Collections on deposit in the Collection Account (to the extent Collections are in excess of amounts required to pay Trustee fees and expenses), and transfer such amounts as follows:<br>(i) to TSASC an amount specified by officer's certificate not to exceed $1,000,000 (adjusted for inflation as described herein, the "**Operating Cap**") for each Fiscal Year, plus any arbitrage and rebate penalties, plus the amount necessary to provide for payment of certain credit enhancement and liquidity provider fees, if any, in each case for the current Fiscal Year and if the Deposit Date is between January 1 and June 30, for the following Fiscal Year;<br>(ii) to the Debt Service Account an amount sufficient to cause the amount on deposit therein to equal interest due (including interest at the stated rate on principal of Outstanding Bonds and on overdue interest, if any) on the Senior Bonds on the |

next succeeding Distribution Date, plus parity interest on BANs, swap payments and interest on variable-rate Senior Bonds due during the Semiannual Period including such Distribution Date, together with any such interest and payments unpaid from prior Distribution Dates;

(iii) to the Debt Service Account an amount sufficient to cause the amount therein to equal the Cumulative Rated Maturities Due during the current Fiscal Year and, if the Deposit Date is during the period from January 1 through June 30 of any year, during the next Fiscal Year;

(iv) to replenish the Liquidity Reserve Account until the amount on deposit therein equals the Liquidity Reserve Requirement;

(v) to the Debt Service Account an amount which, together with the amount deposited pursuant to clause (ii) above, will cause the amount therein to equal interest on the Senior Bonds, parity interest on BANs and swap payments, in each case due (a) during the current Fiscal Year and, (b) if the Deposit Date is during the period from January 1 through June 30 of any year, during the next Fiscal Year (or, in the case of interest on variable-rate Senior Bonds, parity interest on BANs and swap payments, during the last complete Semiannual Period in such next Fiscal Year), assuming that principal payments will be made on the Bonds in the amounts deposited pursuant to clause (iii) above and (vi) below;

(vi) to the Debt Service Account an amount which, together with the amount deposited pursuant to clause (iii) above, will cause the amount therein to equal the Cumulative Planned Principal Payments Due during the current Fiscal Year and, if the Deposit Date is during the period from January 1 through June 30 of any year, during the next Fiscal Year;

(vii) if an Event of Default has occurred, to the Extraordinary Prepayment Account all amounts remaining;

(viii) if a Trapping Event has occurred and is continuing, to the Trapping Account, the lesser of the Trapping Amount or the amount necessary to make the amount therein equal to the Trapping Requirement;

(ix) in the amounts and to the accounts specified by Series Supplement for payments on Subordinate Bonds, termination and certain other payments on swaps, term-out and subordinate payments with respect to credit enhancement, subordinate payments of interest and principal of BANs and any other subordinate payments specified by the Indenture (collectively, the "**Junior Payments**"); and

(x) to TSASC to pay Operating Expenses other than those paid under (i) above, if any, specified by officer's certificate.

For purposes of calculating amounts required to be deposited to the Debt Service Account, swap payments and interest on variable-rate Senior Bonds will be assumed at the maximum rate specified by Series Supplement payable on such Senior Bond or swap; and money so deposited will be transferred to the Collection Account pursuant to officer's certificates of TSASC reporting accruals at lower rates.

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| | On each Distribution Date, the Indenture Trustee will apply amounts in the various accounts in the following order of priority:<br>(i) from the Collection Account, to the Trustee, to pay Trustee fees and expenses pursuant to the Indenture;<br>(ii) from the Debt Service Account, the Liquidity Reserve Account and the Trapping Account, in that order, to pay interest (including interest at the stated rate on principal of Outstanding Bonds and on overdue interest, if any) on the Senior Bonds, parity interest on BANs and swap payments due on such Distribution Date, plus any such unpaid interest and payments from prior Distribution Dates;<br>(iii) from the Debt Service Account, the Liquidity Reserve Account and the Trapping Account, in that order, to pay the Cumulative Rated Maturities Due on such Distribution Date;<br>(iv) from the Liquidity Reserve Account, any amount remaining in excess of the Liquidity Reserve Requirement, to the Collection Account;<br>(v) from the Debt Service Account and the Trapping Account, in that order, in the amount required, to make Cumulative Planned Principal Payments Due on such Distribution Date;<br>(vi) from the Extraordinary Prepayment Account and the Trapping Account, in that order, if an Event of Default has occurred, to pay Extraordinary Prepayments on Senior Bonds pro rata;<br>(vii) from the Trapping Account, any amount remaining in excess of the Trapping Requirement, to the Collection Account;<br>(viii) from the accounts therefor, to make Junior Payments;<br>(ix) from the Collection Account, to pay Operating Expenses, if any, specified by officer's certificate of TSASC; and<br>(x) from the Collection Account, any amounts remaining to the holder of the Residual Certificate.<br>If available Collections are insufficient on a Planned Principal Payment Date to make the Cumulative Planned Principal Payments Due on all Senior Bonds, such Collections will be allocated as described above under the caption "—Actual Amortization." |
| **Covenants** | Both TSASC and the City have made certain covenants for the benefit of the Bondholders. See "THE INDENTURE" for a summary of the covenants made by TSASC and "THE TSR PURCHASE AGREEMENT" for a summary of the covenants made by the City. |
| **Ratings** | The ratings for the Series 1999-1 Bonds address only the ability of TSASC to pay interest when due and to make cumulative payments in accordance with the Rated Maturities, and do not address the payment of principal at any faster rate, including in accordance with Planned Principal Payments. A security rating is not a recommendation to buy, sell or hold securities, and such ratings may be subject to revision or withdrawal at any time. |
| **Legal Considerations** | Reference is made to "LEGAL CONSIDERATIONS" for a description of certain legal issues relevant to an investment in the Series 1999-1 Bonds. |
| **Risk Factors** | Reference is made to "RISK FACTORS" for a description of certain considerations relevant to an investment in the Series 1999-1 Bonds. |

## INTRODUCTORY STATEMENT

This Offering Circular sets forth information concerning the issuance by TSASC of the Series 1999-1 Bonds in the aggregate principal amount of $709,280,000. The Series 1999-1 Bonds are being issued pursuant to the Indenture and the Series 1999-1 Supplement. The Series 1999-1 Bonds are the first of four Series of Program Bonds which are expected to be issued annually in an aggregate principal amount of approximately $2.8 billion.

TSASC is a special purpose, bankruptcy-remote local development corporation organized under the Not-For-Profit Corporation Law of the State and is an instrumentality of, but separate and apart from the City. The board of directors of TSASC will have not less than five nor more than seven directors, two of whom will be selected by the Mayor of the City but independent of the City. For additional information regarding the organization and management of TSASC, see "TSASC, INC." herein.

The issuance and sale of the Program Bonds will finance TSASC's purchase of all of the City's future right, title and interest under the MSA and the Decree, including the City's right to receive a portion of the Initial Payments and Annual Payments to be made by the PMs under the MSA. The MSA, which was entered into on November 23, 1998, resolved cigarette smoking-related litigation between the Settling States and the OPMs and released the PMs from past and present smoking-related claims, and provides for a continuing release of future smoking-related claims in exchange for payments to be made to the Settling States, as well as, among other things, certain tobacco advertising and marketing restrictions. Under the MSA, the State is entitled to 12.7620310% of the Initial Payments and Annual Payments made by the PMs under the MSA. The Decree allocates this statewide entitlement among the State, the City and certain other counties within the State. Under the Decree, the City has been allocated 26.670% of the statewide share of Initial Payments and Annual Payments to be made by the PMs under the MSA, which is approximately 3.40% of the Initial Payments and Annual Payments made by the PMs under the MSA. TSASC will be entitled to receive this amount as a result of the sale by the City of all of its future right, title and interest under the MSA and the Decree to TSASC pursuant to the TSR Purchase Agreement. See "DESCRIPTION OF THE MASTER SETTLEMENT AGREEMENT" and "NEW YORK CONSENT DECREE" herein.

The Series 1999-1 Bonds are secured, and the other Senior Bonds will be secured, by a perfected first-priority security interest in, and pledge of, TSASC's tangible and intangible assets, including its right to receive a portion of the Initial Payments and Annual Payments under the MSA and the Decree.

Interest on the Series 1999-1 Bonds will be payable on each Distribution Date. Principal of the Series 1999-1 Bonds will be paid according to Rated Maturities and Planned Principal Payments as described under "THE SERIES 1999-1 BONDS" herein. Certain methodologies and assumptions were utilized to establish the Rated Maturities and Planned Principal Payments for the Series 1999-1 Bonds as described under "SUMMARY OF BOND STRUCTURING ASSUMPTIONS AND AMORTIZATION" herein. The amount and timing of payments on the Series 1999-1 Bonds may be affected by various factors. See "RISK FACTORS" herein.

## RISK FACTORS

*Prospective investors should carefully consider the factors set forth below regarding an investment in the Series 1999-1 Bonds as well as other information contained in this Offering Circular.*

### Uncertainty as to Timing of Amortization

No assurance can be given as to the timing of amortization of the Series 1999-1 Bonds. The timing of amortization payments will be based in large part on TSASC's receipt of Collections. A certain level of Collections has been forecasted based on various assumptions including, among others, domestic cigarette consumption levels as set forth in the WEFA Report and adjustments to the payments by the PMs as required by the terms of the MSA. These assumptions are discussed in "SUMMARY OF BOND STRUCTURING ASSUMPTIONS AND AMORTIZATION" herein. Actual results will vary from the assumptions. Such variance could be material and could affect the level of Collections. A reduction in Collections below forecast levels would affect debt service coverage on the Series 1999-1 Bonds. If the reduction were material it could impair the ability of TSASC to make Planned Principal Payments or even its ability to pay Rated Maturities as they are due. As a result, actual amortization may not conform to either the Rated Maturities or the Planned Principal Payments.

Although TSASC has covenanted to amortize the Series 1999-1 Bonds pursuant to the Planned Principal Payments to the extent Collections are available, the Rating Agencies have not been asked to evaluate whether TSASC will receive Collections sufficient to enable it to make timely Planned Principal Payments. The ratings address the payment of interest when due and cumulative payments of principal in accordance with the Rated Maturities. Investors should be aware that if TSASC pays principal in accordance with the Rated Maturities, the average life of the Series 1999-1 Bonds will be significantly longer than the average life of the Series 1999-1 Bonds if they were paid pursuant to the Planned Principal Payments. If TSASC is able to pay Series 1999-1 Bonds in accordance with the Planned Principal Payments, the average life of the Series 1999-1 Bonds will be significantly shorter than if the Series 1999-1 Bonds were paid pursuant to the Rated Maturities. Any reinvestment risks from faster amortization or extension risks from slower amortization of the Series 1999-1 Bonds will be borne entirely by the Bondholders.

### Decline in Cigarette Consumption Materially Beyond Forecasted Levels May Adversely Affect Payments

*Smoking Trends.* Cigarette consumption in the United States peaked in 1981 at 640 billion cigarettes. By 1998 consumption had decreased to 465 billion. The WEFA Report forecasts a continued decline in consumption to 196 billion in 2042 under its Base Case Forecast (as hereinafter defined). This decline in consumption is based on historical trends which may not be indicative of future trends as well as other factors which may vary significantly from those assumed or forecasted by WEFA. Although the following factors were considered by WEFA, no assurance can be given that the increased awareness of health concerns, increased prices in excess of those forecasted (by reason of higher taxes, raw material costs or other factors), changing attitudes of youth toward smoking, restrictions on smoking in public and private spaces and other factors will not cause consumption to decrease materially more than has been forecasted in the WEFA Report. The PMs have agreed under the MSA to abide by more stringent tobacco advertising and marketing restrictions and to fund educational programs to reduce the use of tobacco products by underage persons, which might also cause cigarette consumption to decrease materially more than has been forecasted in the WEFA Report. A significant decline in the overall consumption of cigarettes beyond the levels forecasted in the WEFA Report could have a material adverse effect on the payments by PMs under the MSA and the amounts available to TSASC to make principal and interest payments on the Series 1999-1 Bonds and other Senior Bonds.

*Regulatory Restrictions and Legislative Initiatives.* No assurance can be given that future federal or state legislation or administrative regulations will not seek to further regulate, restrict or discourage the manufacture, sale and use of cigarettes. Such legislative or regulatory measures could severely increase the cost of cigarettes, limit the sale of cigarettes, make cigarettes less appealing to smokers or reduce the addictive qualities of cigarettes. As a result, such measures could cause the overall consumption of cigarettes to decrease materially more than forecasted in the WEFA Report and thereby have a material adverse effect on the amounts available to TSASC to make payments on the Series 1999-1 Bonds and other Senior Bonds.

**Unforeseen Payment Decreases Under the Terms of the Master Settlement Agreement**

The MSA provides that the amounts payable by the PMs are subject to numerous adjustments, some of which could be material. Such adjustments could reduce the aggregate amount of TSRs distributable to TSASC to a level below the amount required to pay Planned Principal Payments and/or Rated Maturities and interest on the Series 1999-1 Bonds. For additional information regarding the MSA and the payment adjustments, see "DESCRIPTION OF THE MASTER SETTLEMENT AGREEMENT" herein. The assumptions used to project Collections are based on the premise that certain adjustments will occur as set forth under the heading "SUMMARY OF BOND STRUCTURING ASSUMPTIONS AND AMORTIZATION". Actual adjustments could be materially different from what has been assumed.

Payments under the MSA are based on the number of cigarettes shipped domestically and the WEFA Report is based on historical consumption of cigarettes on which excise taxes were paid. Certain cigarettes manufactured for delivery outside of the United States find their way into the domestic black market. If this were to increase significantly, it could result in an unforeseen decrease in the calculation under the MSA of cigarettes shipped domestically and therefore could adversely affect MSA payments.

**Risks Related to the Master Settlement Agreement**

*MSA Litigation.* Certain cigarette importers, cigarette distributors, native American tribes, taxpayers' groups and other parties have instituted litigation against the PMs, certain Settling States and other public entities, alleging, among other things, that the MSA violates certain provisions of the federal constitution, federal antitrust laws, federal civil rights laws, state consumer protection laws and unfair competition laws, some of which actions, if ultimately successful, could result in a determination that the MSA is void or voidable. These lawsuits seek, among other things, an injunction against the states from collecting any monies under the MSA and against the tobacco manufacturers from collecting any cigarette price increases related to the MSA. Various legal challenges to continued enforcement of the terms of the MSA may also arise in the future. In the event of an adverse court ruling, Bondholders could incur a complete loss of their investment. See also "—Limited Remedies" herein. For a description of certain opinions to be delivered to TSASC by Transaction Counsel with respect to the MSA, see "LEGAL CONSIDERATIONS" herein.

*Severability.* Most of the major provisions of the MSA are not severable. If a court materially modifies, renders unenforceable or finds unlawful any nonseverable provision, the attorneys general of the Settling States and the OPMs are to attempt to negotiate substitute terms. However, if any OPM does not agree to the substitute terms, the MSA terminates in all Settling States affected by the court's ruling.

*Model Statute.* Pursuant to the MSA, a downward adjustment is made to the Annual Payments payable by a PM if such PM experiences a loss of market share in the United States to NPMs as a result of such PM's participation in the MSA. A Settling State may mitigate the effect of this adjustment by adopting and enforcing a Model Statute, as hereinafter described. The State has adopted a Model Statute. One of the cases challenging the enforceability of the MSA also challenges the constitutionality of the Model Statute. Although a determination that the Model Statute is unconstitutional would have no effect on the enforceability of the MSA itself, such a determination could have an adverse effect on payments to be made under the MSA if an NPM were to gain market share in the future.

*Amendments and Waivers.* The State may consent to an amendment or waiver to the MSA without the consent of either TSASC or the Bondholders. While it is assumed that the economic interests of the State and the Bondholders will be the same, no assurance can be given that that will be the case and that such an amendment or waiver would not have a material adverse effect on the Bondholders.

*Reliance on State Enforcement.* The State may not and has not conveyed to any of the City, TSASC or the Bondholders any right to enforce the terms of the MSA. Pursuant to its terms, the MSA, as it relates to the State, can only be enforced by the State. Although the State is entitled to a substantial portion of each Initial Payment and Annual Payment under the MSA, no assurance can be given that the State will enforce any particular provision of the MSA. Failure to do so may have a material adverse effect on the Bondholders.

*State Impairment.* It is possible that the State could in the future attempt to claim some or all of the TSRs for itself or otherwise interfere with the security for the Bonds. See "LEGAL CONSIDERATIONS" herein.

**Tobacco Industry Litigation**

Each of the PMs is engaged in litigation brought by or on behalf of numerous smokers alleging that smoking has been injurious to their health, as well as non-smokers alleging harm from "secondhand smoke". Such suits seek large compensatory and punitive damages in amounts ranging up to billions of dollars. In early 1999, Philip Morris lost a case in California for $51.5 million (including punitive damages of $50 million) and a case in Oregon for $80.3 million (including punitive damages of $79.5 million). The punitive damages awards in these cases have been reduced to $26.5 million and $32.0 million, respectively, and are on appeal by Philip Morris. However, no assurance can be given as to the outcome of such appeals or that future plaintiffs will not also obtain similarly large judgments.

In addition, plaintiffs have sought to bring class action suits against the tobacco manufacturers. Courts have historically not certified class actions against the tobacco companies because of the individual circumstances related to each smoker's election to smoke and the nature of the alleged harm. In *Engle v. R.J. Reynolds, et al.*, however, a case brought in May 1994 in Florida state court in Dade County, a class was certified by the trial court and upheld on appeal based upon the finding that while certain individual issues must be tried individually, the basic issues involved in determining liability are common to all class members and may be tried as a class. Certain OPMs have indicated in their public filings that in a worst case scenario, the court could enter a judgment for punitive damages on behalf of the entire class in an amount not capable of being bonded, resulting in the possible execution of the judgment before it could be overturned on appeal. Such OPMs have stated that they believe this result would be contrary to U.S. and Florida law. See "TOBACCO INDUSTRY—Civil Litigation" herein.

Certain third party payors such as union pension funds have also sought to bring suits aggregating a number of individual claims against the tobacco companies. To date such suits have been unsuccessful; however, no assurance can be given that such a suit would not be successful in the future or that if successful the recovery against a PM would not be material.

No assurance can be given as to the number or nature of future claims against the tobacco industry. New causes of action could result in unforeseen material liabilities which may adversely affect payments under the MSA. For a further discussion of civil litigation against the tobacco industry, see "TOBACCO INDUSTRY—Civil Litigation" herein.

**Federal Litigation**

In September 1999, the United States Department of Justice filed a lawsuit against the OPMs, certain other tobacco companies and parent entities, and two tobacco research and lobbying organizations. Among other remedies, the federal lawsuit seeks to recoup Medicare and other medical expenses of the federal government for smoking-related illnesses of the elderly, veterans and federal employees, and to require that the defendant tobacco companies disgorge profits under the federal Racketeering Influenced and Corrupt Organizations Act ("**RICO**"). The federal government is accusing the tobacco companies of consumer fraud for failing to disclose health risks. If the federal government were successful in such litigation it could have a material adverse effect on the ability of the PMs to meet their obligations under the MSA or could result in a decision by the PMs to increase prices substantially, which could, in turn, reduce consumption more than forecasted by the WEFA Report. For a further discussion of the federal litigation against the tobacco industry, see "TOBACCO INDUSTRY—Civil Litigation" herein.

**Insolvency of PMs May Delay or Reduce Payments**

Title 11 of the United States Code (the "**Bankruptcy Code**") may affect the ability of the State (and, thus, the City, TSASC and the Bondholders) to enforce their respective rights under the MSA and the Decree if a PM were to become a debtor under the Bankruptcy Code. For example, under the Bankruptcy Code, virtually all actions to collect money from the bankrupt are automatically stayed upon the commencement of the bankruptcy case and the bankrupt is prohibited during the pendency of the bankruptcy case from making most payments owed under a contract entered into by the bankrupt prior to the commencement of the bankruptcy case without permission of the bankruptcy court. Thus, delays in payments under the MSA by the bankrupt PM would be likely, which could result in delays in, or reductions of amounts available for, payments of the Bonds.

Bondholders could also incur a loss on their investment. Other risks associated with bankruptcy of a PM include the risk that the State (and, therefore, the City and TSASC) may not be able to terminate or cause the termination of the MSA or to exercise their other remedies under the MSA or the Decree and the risk that under the Bankruptcy Code, provided certain procedural and substantive safeguards are met, the obligations of the bankrupt PM under the MSA may be modified. For example, if the PM rejects the MSA in bankruptcy, resulting in a claim in favor of TSASC (and, thus, the Indenture Trustee and Bondholders) for damages, the bankruptcy court may approve a plan of reorganization or liquidation of the bankrupt PM which alters the timing (for a longer or shorter period than the payments on the Bonds) or the amount of payments to be made by the bankrupt PM in respect of the MSA. Additionally, the bankruptcy court may approve a reorganization or liquidation plan which provides for TSASC (and, thus, the Indenture Trustee and the Bondholders) to receive a payment on account of its claim for damages resulting from rejection of the MSA in the form of property other than cash (such as securities). The absence of an enforceable Model Statute could have an effect on the decision of a bankrupt PM to accept or reject the MSA. For a fuller description of certain bankruptcy issues and a description of certain legal opinions to be delivered to TSASC by Transaction Counsel with respect to PM bankruptcy matters, see "LEGAL CONSIDERATIONS" herein.

**Recharacterization of the Transfer of TSRs as a Secured Borrowing Would Invalidate Sale of TSRs**

The City is only authorized by statute to file a voluntary petition for bankruptcy under the Bankruptcy Code. If the City were to become a debtor under the Bankruptcy Code, a creditor or the City might argue that the transfer of the TSRs from the City to TSASC was (or should be recharacterized as) a pledge to secure a borrowing rather than an absolute sale. A determination that the sale by the City of the TSRs was a secured borrowing by the City would invalidate such sale, since the City is not authorized to make such a secured borrowing. If the sale were invalidated, TSASC would have no source from which to pay the Bonds. If the transactions contemplated are treated as a sale, however, the TSRs would not be part of the City's bankruptcy estate and would not be available to the creditors of the City. For a fuller description of certain bankruptcy issues and a description of certain legal opinions to be delivered to TSASC by Transaction Counsel with respect to bankruptcy matters, see "LEGAL CONSIDERATIONS" herein.

**Substantive Consolidation of the City and TSASC May Result in Losses**

TSASC and the City have taken and will take steps that are intended to ensure that a voluntary petition for relief by the City under the Bankruptcy Code will not result in the substantive consolidation of the assets and liabilities of TSASC with those of the City. Nevertheless, a court may determine that the activities of TSASC will result in the assets and liabilities of TSASC being substantively consolidated with those of the City in a bankruptcy or insolvency proceeding. Any such order would adversely affect TSASC's ability to receive TSRs, and Bondholders could therefore incur losses on their investment. For a fuller description of certain bankruptcy issues and a description of certain legal opinions to be delivered to TSASC by Transaction Counsel with respect to bankruptcy matters, see "LEGAL CONSIDERATIONS" herein.

**Limited Resources of TSASC**

The Series 1999-1 Bonds are payable only from the assets of TSASC. In the event that the assets of TSASC have been exhausted, no amounts will thereafter be paid on the Series 1999-1 Bonds. The Series 1999-1 Bonds are not obligations of the City or the State, and no recourse may be had to either for payment of amounts owing on the Series 1999-1 Bonds. Investors in the Series 1999-1 Bonds must look solely to the assets of TSASC for repayment of their investment. TSASC's only source of funds for payments on the Series 1999-1 Bonds are the Collections, the Reserves and amounts on deposit in pledged accounts pursuant to the Indenture.

**Limited Remedies**

The Indenture Trustee is limited under the terms of the TSR Purchase Agreement to enforcing the terms of such agreement and to receiving the TSRs and applying them in accordance with the Indenture. If an Event of Default occurs, the Indenture Trustee cannot sell its rights under the TSR Purchase Agreement. Neither the City nor TSASC has made any representation or warranty that the MSA is enforceable. Remedies under the TSR

Purchase Agreement do not include the repurchase by the City of the TSRs under any circumstances, including unenforceability of the MSA or breach of any representation or warranty.

**Limited Liquidity of the Series 1999-1 Bonds**

There is currently no secondary market for the Series 1999-1 Bonds. While the Underwriters intend to make a secondary market in the Series 1999-1 Bonds they are under no obligation to do so. There can be no assurance that a secondary market for the Series 1999-1 Bonds will develop, or if a secondary market does develop, that it will provide Bondholders with liquidity or that it will continue for the life of the Series 1999-1 Bonds. Consequently, any purchaser of the Series 1999-1 Bonds must be prepared to hold such securities for an indefinite period of time.

**Limited Nature of Ratings; Reduction or Withdrawal of a Rating**

Any rating assigned to Senior Bonds of a Series by a Rating Agency will reflect such Rating Agency's assessment of the likelihood that Senior Bonds of such Series will receive payments of interest and Rated Maturities. However, any such rating will not address the likelihood that the Planned Principal Payments will be made on each Planned Principal Payment Date. The rating of the Senior Bonds of a Series will not be a recommendation to purchase, hold or sell such Senior Bonds and such rating will not address the marketability of such Senior Bonds, any market price or suitability for a particular investor. There is no assurance that any rating will remain for any given period of time or that any rating will not be lowered or withdrawn entirely by a Rating Agency if in such Rating Agency's judgment circumstances so warrant based on factors prevailing at the time, including, but not limited to, the evaluation by such Rating Agency of the financial outlook for the tobacco industry or the issuance of additional Series of Program Bonds. Any such reduction or withdrawal of a rating, if it were to occur, could adversely affect the market value of the Senior Bonds.

**Year 2000 Compliance**

The "Year 2000" problem is the term generally used to describe the potential failure of information technology components relating to dates on or after January 1, 2000 because existing computer hardware and software frequently use only two digits to identify a year; hence, the years 2000 and 1900 may be confused. Because of the dependence of the PMs, the MSA Escrow Agent, the Indenture Trustee and TSASC (or any of their respective vendors or third party service providers) on computers for their operations, failure to achieve "Year 2000" readiness may have a material and adverse effect on the operations or finances of any such entity on or after January 1, 2000, including disruptions, miscalculations or irregularities in payments made by the PMs to the MSA Escrow Agent, by the MSA Escrow Agent to the Indenture Trustee or by the Indenture Trustee to Bondholders, or in the preparation of reports to Bondholders by the Indenture Trustee.

TSASC will rely upon other entities to provide information to, or processing for, TSASC's operations and activities, including the making of payments on the Series 1999-1 Bonds. The actions of these other entities are not within TSASC's direct control. Therefore, TSASC can give no assurance that the failure by any of these other entities to achieve timely "Year 2000" readiness will not affect the ability of Bondholders to receive timely payments on the Bonds.

The foregoing represents a "Year 2000 readiness disclosure" for purposes of the Year 2000 Information and Readiness Disclosure Act.

## DESCRIPTION OF THE MASTER SETTLEMENT AGREEMENT

### General

The MSA was entered into on November 23, 1998, between the attorneys general of the Settling States and the OPMs. The MSA provides for other tobacco companies (the SPMs) to become parties to the MSA. The MSA is an industry-wide settlement of litigation between the Settling States and the PMs. The settlement represents the resolution of a large potential financial liability of the PMs for smoking-related injuries, the costs of which have been borne and likely will be borne by cigarette consumers. The OPMs are the four major United States domestic cigarette manufacturers. The MSA provides that the payment obligations of each PM pursuant to the MSA are not the obligation or responsibility of any affiliate of such PM and, further, that the remedies, penalties or sanctions that may be imposed or assessed in connection with a breach or violation of the MSA will only apply to the PMs and not against any other person or entity.

Pursuant to the MSA, the Settling States agreed to settle all past, present and future smoking-related claims against the PMs in exchange for an agreement by the PMs covering a number of issues. The PMs agreed to make payments to the Settling States, abide by more stringent advertising restrictions, and fund educational programs, among other things.

There are several types of payments to be made by PMs under the MSA, including Initial Payments which have already begun and Annual Payments beginning in 2000.[1] In general, the payments required by the MSA are calculated by reference to domestic shipments of cigarettes by the OPMs, with the amount of the payments adjusted annually roughly in proportion to the changes in total volume of cigarettes shipped by the OPMs in the United States in the preceding year. The payment responsibilities of the PMs under the MSA are recalculated each year, based on the United States market share of each individual PM for the prior year, with consideration under certain circumstances for the profitability of each OPM. SPMs make Annual Payments, but not Initial Payments, based on increases in their market share. No PM may transfer its tobacco product brands, cigarette product formulas and cigarette businesses (unless they are being transferred exclusively for use outside the United States) to any entity that is not a PM under the MSA unless such entity agrees to assume the obligations of such PM under the MSA related to such brands, formulas or businesses.

The OPMs have already made a $2.4 billion up-front Initial Payment. The OPMs collectively are required to pay nearly $7 billion in the year 2000 in Initial Payments and Annual Payments. The base amounts of the Annual Payments increase from $4.5 billion in 2000 to $9.0 billion in 2018, and are required to be made in perpetuity. Each of these numbers, with the exception of the up-front Initial Payment, is subject to certain offsets and adjustments, including an inflation adjustment to the Annual Payments of at least 3% per year. The Initial Payments and Annual Payments are required to be made to Citibank, N.A. as escrow agent (the "**MSA Escrow Agent**"), which in turn will disburse the funds to the Settling States and, in the case of the State of New York, directly to the Indenture Trustee and participating counties.

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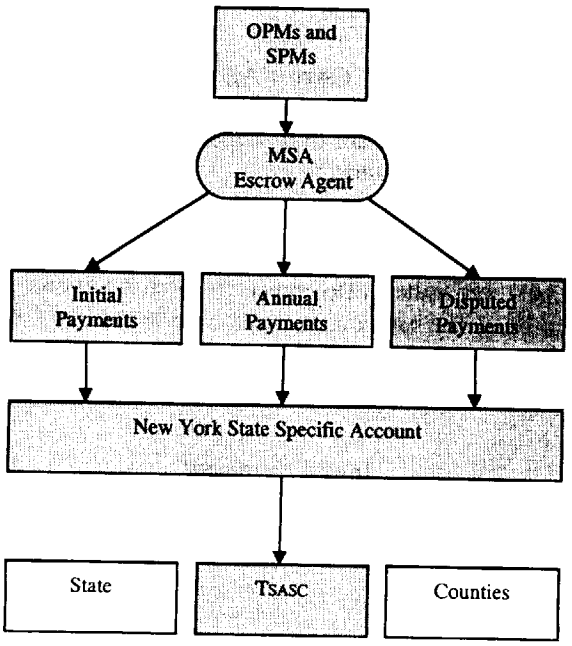
[1] Other payments that are required to be made by the PMs, such as strategic contribution payments, payments of attorneys' fees and payments to a national foundation established pursuant to the MSA, are not allocated to the City, are not available to TSASC and consequently are not discussed herein.

The following diagram depicts the flow of Initial Payments and Annual Payments to TSASC under the MSA and the Decree.

**MSA and New York State Consent Decree Payment Flow to TSASC**




By signing the MSA, the SPMs also settle past, present and future claims by the Settling States for smoking-related injuries. Distributors of PMs' products are also covered by the settlement of such claims to the same extent as the PMs. To date, nineteen SPMs have signed the MSA, which together with the OPMs, represented approximately 99.7% of the United States domestic cigarette market in 1998 according to the National Association of Attorneys General. The nineteen SPMs are Liggett Group, Inc., Commonwealth Brands, Inc., Dhanraj International, Inc., Imperial Tobacco Ltd./ITL (USA) Ltd., Japan Tobacco International USA, Inc., King Maker Marketing, Lane Limited, Lignum-2, Inc., LTD Corp., The Medallion Company, Inc., Premier Marketing Incorporated, P.T. Djarum, Santa Fe Natural Tobacco Company, Inc., Sherman 1400 Broadway N.Y.C., Inc., Société Nationale d'Exploitation Industrielle des Tabacs et Allumettes (Seita), Tobacco Exporters International (USA) Ltd. (TEI), Top Tobacco, L.P., House of Prince and Peter Stokkebye International.

The MSA provides that if any Settling State resolves claims against any NPM that are comparable to any of the claims released in the MSA on overall terms more favorable to such NPM, the same terms will be extended to all PMs.

A Settling State may avoid potential reduction in its receipts under the MSA by virtue of the NPM Adjustment (as hereinafter defined), which results from market share gains by NPMs, by enacting and enforcing the Model Statute or a Qualifying Statute (each, as defined herein). See "—MSA Provisions Relating to Model/Qualifying Statutes," below. Under the Model Statute or a Qualifying Statute, an NPM would have to make payments in a similar amount as it would under the MSA as a PM.

*There follows a brief description of the MSA. This description is not complete and is subject to, and qualified in its entirety by reference to, the copy of the MSA which is attached hereto as Appendix B.*

**Participating Manufacturer Payments into Escrow**

The MSA and the escrow agreement (the "**Escrow Agreement**") entered into by the Settling States, the PMs and the MSA Escrow Agent set up several individual escrow accounts into which the Initial Payments and the Annual Payments to be made by the PMs are to be deposited, including a state-specific account for each Settling State that achieves State-Specific Finality.

*Initial Payments.* Initial Payments are made by the OPMs. The OPMs were required to collectively pay $2.4 billion up-front. This payment was made on December 28, 1998. Additional payments are due on January 10 of each year from 2000 through 2003. The base amount to be collected as Initial Payments for each year is shown below:

**Initial Payments**

| Year | Base Amount |
|---|---|
| Up-front | $2,400,000,000 |
| 2000 | 2,472,000,000 |
| 2001 | 2,546,160,000 |
| 2002 | 2,622,544,800 |
| 2003 | 2,701,221,144 |

The respective portion of each base amount payable by each OPM is calculated, in the case of the up-front payment, based upon the respective market capitalization percentages specified in the MSA and, thereafter, based upon its Relative Market Share during the preceding calendar year. "**Relative Market Share**" is defined as an OPM's percentage share of the number of cigarettes shipped by all OPM's in or to the fifty states, the District of Columbia and Puerto Rico (defined hereafter as the "**United States**"), as measured by the OPM's reports of shipments to Management Science Associates, Inc. (or any successor acceptable to all the OPMs and a majority of the attorneys general of the Settling States who are also members of the National Association of Attorneys General executive committee). The term "**cigarette**" is defined in the MSA to mean any product that contains nicotine, is intended to be burned, contains tobacco and is likely to be offered to, or purchased by, consumers as a cigarette and includes "roll-your-own" tobacco, with 0.0325 ounces of "roll-your-own" tobacco constituting one individual "cigarette."

Other than the up-front Initial Payment, the figures in the table above are subject to modification according to the following adjustments in the following order:

- the Volume Adjustment,
- the Non-Settling States Reduction, and
- the Offset for Miscalculated or Disputed Payments.

*Annual Payments.* In addition, the OPMs are required to make Annual Payments on each April 15 beginning on April 15, 2000 and lasting in perpetuity. The base amount of each Annual Payment, which will be adjusted, is set forth below:

**Annual Payments**

| Year | Base Amount | Year | Base Amount |
|---|---|---|---|
| 2000 ..... | $4,500,000,000 | 2010..... | $8,139,000,000 |
| 2001 ..... | 5,000,000,000 | 2011..... | 8,139,000,000 |
| 2002 ..... | 6,500,000,000 | 2012..... | 8,139,000,000 |
| 2003 ..... | 6,500,000,000 | 2013..... | 8,139,000,000 |
| 2004 ..... | 8,000,000,000 | 2014..... | 8,139,000,000 |
| 2005 ..... | 8,000,000,000 | 2015..... | 8,139,000,000 |
| 2006 ..... | 8,000,000,000 | 2016..... | 8,139,000,000 |
| 2007 ..... | 8,000,000,000 | 2017..... | 8,139,000,000 |
| 2008 ..... | 8,139,000,000 | 2018..... | 9,000,000,000 |
| 2009 ..... | 8,139,000,000 | Thereafter ... | 9,000,000,000 |

The respective portion of each base amount payable by each OPM is calculated by multiplying the base amount by the OPM's Relative Market Share during the preceding calendar year. The entries in the above table will be increased by at least the minimum 3% Inflation Adjustment and reduced by the Previously-Settled States Reduction, among other adjustments, each of which is described below. The SPMs will be required to make Annual Payments if their market share increases above the higher of their 1998 Market Share or 125% of their 1997 Market Share.

The base amounts shown in the table above are subject to the following adjustments applied in the following order:

- the Inflation Adjustment,
- the Volume Adjustment,
- the Previously-Settled States Reduction,
- the Non-Settling States Reduction,
- the NPM Adjustment,
- the Offset for Miscalculated or Disputed Payments,
- the Federal Tobacco Legislation Offset,
- the Litigating Releasing Parties Offset, and
- the Offset for Claims-Over.

**Adjustments to Participating Manufacturer Payments**

The Initial Payments and the base amounts of the Annual Payments shown in the tables above are subject to certain adjustments according to formulas contained in the MSA. The applicable adjustments are applied sequentially in the order listed below.

*Inflation Adjustment.* The base amount of the Annual Payments is increased each year to account for inflation. The payment increase in each year will be 3% or a percentage equal to the percentage increase in the Consumer Price Index (or such other similar measures as may be agreed to by the Settling States and the PMs) (the "**CPI**") for the preceding year, whichever is greater (the "**Inflation Adjustment**"). The Inflation Adjustments are compounded annually on a cumulative basis beginning in 1999 and are first applied in 2000.

*Volume Adjustment.* Both Initial Payments and Annual Payments are increased or decreased by an adjustment which accounts for fluctuations in the number of cigarettes shipped by the OPMs in or to the United States (the "**Volume Adjustment**").

If the aggregate number of cigarettes shipped in or to the United States by the OPMs in any given year (the "**Actual Volume**") is greater than 475,656,000,000 cigarettes (the "**Base Volume**"), the base amount due from the OPMs is adjusted to equal the base amount (after application of the Inflation Adjustment) multiplied by a ratio, the numerator of which is the Actual Volume and the denominator of which is the Base Volume.

If the Actual Volume in a given year is less than the Base Volume, the base amount due from the OPMs (in the case of Annual Payments, after application of the Inflation Adjustment) is decreased by 98% of the percentage by which the Actual Volume is less than the Base Volume, multiplied by such base amount. If, however, the aggregate operating income of the OPMs from sales of cigarettes in the United States during the year (the "**Actual Operating Income**") is greater than $7,195,340,000, as adjusted for inflation in accordance with the Inflation Adjustment (the "**Base Operating Income**"), all or a portion of the volume reduction is added back (the "**Income Adjustment**"). The amount by which the Actual Operating Income of the OPMs exceeds the Base Operating Income is multiplied by the percentage of the allocable shares under the MSA represented by Settling States in which State-Specific Finality has been reached and divided by four, then added to the payment due. However, in no case will the amount added back due to the increase in operating income exceed the amount deducted due to the decrease in domestic volume. Any add-back due to an increase in Actual Operating Income will be allocated among the OPMs on a pro rata basis in accordance with their respective increases in Actual Operating Income over 1997 Base Operating Income.

*Previously-Settled States Reduction.* The base amounts of the Annual Payments (as adjusted by the Inflation Adjustment and the Volume Adjustment, if any) are subject to a reduction reflecting the four states that had settled with the OPMs prior to the adoption of the MSA (Mississippi, Florida, Texas and Minnesota) (the "**Previously-Settled States Reduction**"). The Previously-Settled States Reduction reduces by 12.4500000% each applicable payment on or before December 31, 2007, by 12.2373756% each applicable payment between January 1, 2008 and December 31, 2017, and by 11.0666667% each applicable payment on or after January 1, 2018. The SPMs are not entitled to any reduction pursuant to the Previously-Settled States Reduction.

*Non-Settling States Reduction.* In the event that a state originally signs onto the MSA and the MSA is subsequently terminated as to that state, the Annual Payments due from the PMs shall be reduced to account for the absence of such state. This adjustment has no effect on the amounts to be collected by states which remain a party to the MSA, and the reduction is therefore not detailed herein.

*Non-Participating Manufacturers Adjustment.* If the aggregate market share of the PMs in any year falls more than 2% below the aggregate market share held by those same PMs in 1997, and if a nationally-recognized team of economic consultants determines that the decrease is due to the effects of the MSA, an adjustment (the "**NPM Adjustment**") is applied to the Annual Payment due in the following year. The 1997 market share percentage for the PMs, less 2%, is defined as the "**Base Aggregate Participating Manufacturer Market Share.**" If the PMs' actual aggregate market share is between 0% and 16⅔% less than the Base Aggregate Participating Manufacturer Market Share, the amounts paid by the PMs will be decreased by three times the percentage decrease in the PM's actual aggregate market share. If, however, the aggregate market share loss from the Base Aggregate Participating Manufacturer Market Share is greater than 16⅔%, the NPM Adjustment will be calculated as follows:

NPM Adjustment = 50% + [50% / (Base Aggregate Participating Manufacturer Market Share −16⅔%)][market share loss −16⅔%]

Regardless of how the NPM Adjustment is calculated, it is always subtracted from the total Annual Payments due from the PMs. The NPM Adjustment applies only to the Annual Payments, and does not apply at all if the number of cigarettes shipped in or to the United States in the year prior to the year in which the payment is due by all manufacturers that were PMs prior to December 7, 1998 exceeds the number of cigarettes shipped in or to the United States by all such PMs in 1997. The NPM Adjustment is also state-specific, in that a Settling State may avoid or mitigate the effects of an NPM Adjustment by enacting and enforcing the Model Statute or a Qualifying Statue.

Any Settling State that adopts and enforces a Model Statute or Qualifying Statute is exempt from the NPM Adjustment. The decrease in total funds available due to the NPM Adjustment is allocated on a pro-rata basis among those Settling States that either (a) did not enact and enforce the Model Statute or Qualifying Statute or (b) enacted a Model Statute or Qualifying Statute that is declared invalid or unenforceable by a court of

competent jurisdiction. If a Settling State enacts and enforces the Model Statute but it is declared invalid or unenforceable by a court of competent jurisdiction, the NPM Adjustment will not exceed 65% of the amount of such state's allocated payment. If a Qualifying Statute is held invalid or unenforceable, however, such state is not entitled to any protection from the NPM Adjustment. See "—MSA Provisions Relating to Model Statute/Qualifying Statute—Status of New York Model Statute" herein.

*Offset for Miscalculated or Disputed Payments.* If the independent auditor appointed under the MSA (PricewaterhouseCoopers) receives notice of a miscalculation of an Initial Payment or an Annual Payment made by a PM within four years, the auditor will recalculate the payment and make provisions for rectifying the error (the "**Offset for Miscalculated or Disputed Payments**"). There are no time limits specified for recalculations, although the independent auditor is required to determine amounts promptly. Disputes as to determinations by the independent auditor may be submitted to binding arbitration governed by the United States Federal Arbitration Act. In the event that mispayments have been made, they will be corrected through payments with interest (in the event of underpayments) or withholdings with interest (in the event of overpayments). Interest will be at the prime rate, except where a party fails to pay undisputed amounts or fails to provide necessary information readily available to it, in which case a penalty rate of prime plus 3% applies. If a PM disputes any payment it is required to pay, it must determine whether any portion of the payment is undisputed and pay that amount for disbursement to the Settling States. The disputed portion is required to be paid into a Disputed Payments Account pending resolution of the dispute. Failure to pay such disputed amounts into the Disputed Payments Account can result in liability for interest at the penalty rate if the disputed amount was in fact properly due and owing.

*Federal Tobacco Legislation Offset.* If federal tobacco-related legislation is enacted on or before November 30, 2002 and if such legislation provides for payments by any PM to the federal government all or part of which are actually made available to any Settling State, the MSA provides that each PM will receive a continuing dollar-for-dollar offset for such amounts paid to and received by such Settling State (the "**Federal Tobacco Legislation Offset**"). The Federal Tobacco Legislation Offset applies only to that portion of the federal funds directed to a Settling State that is either unrestricted as to its use or restricted to any form of health care or to any use related to tobacco.

The Federal Tobacco Legislation Offset does not generally apply to federal funds conditioned, or appropriately allocable, either to the relinquishment of rights or benefits under the MSA or to a consent decree or actions or expenditures by the Settling State. However, if the Settling State chooses to undertake such action or expenditure, and if such actions or expenditures either (a) do not impose significant constraints on public policy choices, or (b) are both related to health or tobacco and do not require the Settling State to expend state matching funds in an amount that is significant in relation to the amount of federal funds made available to the applicable Settling State, the Federal Tobacco Legislation Offset applies. The Federal Tobacco Legislation Offset does not reduce the total amounts payable by the PM to the Settling States under the MSA by an amount greater than the amount of federal funds that the Settling States could elect to receive.

As of the date hereof, there is no federal legislation pending that would entitle PMs to receive a Federal Tobacco Legislation Offset under the MSA. The Federal Tobacco Legislation Offset only applies to legislation enacted on or before November 30, 2002.

*Litigating Releasing Parties Offset.* If any Releasing Party (as defined herein) initiates litigation against a PM for any of the claims released in the MSA, the PM may be entitled to an offset against such PM's payment obligation under the MSA (the "**Litigating Releasing Parties Offset**"). A defendant PM may offset dollar-for-dollar any amount paid in settlement, stipulated judgment or litigated judgment against the amount to be collected by the applicable Settling State under the MSA only if the PM has taken all ordinary and reasonable measures to defend that action fully and only if any settlement or stipulated judgment was consented to by the state attorney general. The Litigating Releasing Parties Offset is state-specific. Any reduction in MSA payments as a result of the Litigating Releasing Parties Offset would apply only to the Settling State of the Releasing Party.

The term "**Releasing Parties**" is defined in the MSA to mean each Settling State and any of its past, present and future agents, officials acting in their official capacities, legal representatives, agencies, departments, commissions and divisions; and also means, to the full extent of the power of the signatories to the MSA to release past, present and future claims, the following: (1) any Settling State's subdivisions (political or otherwise, including, but not limited to, municipalities, counties, parishes, villages, unincorporated districts and hospital

districts), public entities, public instrumentalities and public educational institutions; and (2) persons or entities acting in a parens patriae, sovereign, quasi-sovereign, private attorney general, qui tam, taxpayer, or any other capacity, whether or not any of them participate in the MSA, (A) to the extent that any such person or entity is seeking relief on behalf of or generally applicable to the general public in such Settling State or the people of such Settling State, as opposed solely to private or individual relief for separate and distinct injuries, or (B) to the extent that any such entity (as opposed to an individual) is seeking recovery of health-care expenses (other than premium or capitation payments for the benefit of present or retired state employees) paid or reimbursed, directly or indirectly, by a Settling State.

TSASC has been advised by its counsel that the New York State Attorney General had the power to bind the State, the City and all of the counties in the State to the terms of the MSA. However, it is not clear if the New York State Attorney General bound the Releasing Parties other than the State, the City and the New York counties. To the extent the New York State Attorney General did not bind any of the Releasing Parties in the State, such entity would not be bound by the terms of the MSA. However, in order for a Releasing Party that is not bound by the MSA to bring a suit, it would have to have a cause of action and demonstrate damages.

*Offset for Claims-Over.* If a Releasing Party pursues and collects on a released claim against an NPM or a retailer, supplier or distributor arising from the sale or distribution of tobacco products of any NPM or the supply of component parts of tobacco products to any NPM (collectively, the "**Non-Released Parties**"), and the Non-Released Party in turn successfully pursues a claim for contribution or indemnification against a Released Party (as defined herein), the Releasing Party must (a) reduce or credit against any judgment or settlement such Releasing Party obtains against the Non-Released Party the full amount of any judgment or settlement such Non-Released Party may obtain against the Released Party and (b) obtain from such Non-Released Party for the benefit of such Released Party a satisfaction in full of such Non-Released Party's judgment or settlement against the Released Party. In the event that such reduction or satisfaction in full does not fully relieve the Released Party of its duty to pay to the Non-Released Party, the PM is entitled to a dollar-for-dollar offset from its payment to the applicable Settling State (the "**Offset for Claims-Over**"). For purposes of the Offset for Claims-Over, any person or entity that is enumerated in the definition of Releasing Party set forth above is treated as a Releasing Party without regard to whether the applicable attorney general had the power to release claims of such person or entity. The Offset for Claims-Over is state-specific and would apply only to MSA payments owed to the Settling State of the Releasing Party.

The term "**Released Parties**" is defined in the MSA to mean all PMs and their past, present and future affiliates, divisions, officers, directors, employees, representatives, insurers, lenders, underwriters, tobacco-related organizations, trade associations, suppliers, agents, auditors, advertising agencies, public relations entities, attorneys, retailers and distributors (and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing). However, the term "Released Parties" does not include any person or entity (including, but not limited to, an affiliate) that is itself an NPM at any time after the MSA execution date unless such person or entity becomes a PM.

**Subsequent Participating Manufacturers**

Each SPM has payment obligations according to its market share if, and only if, its "**Market Share**" (defined in the MSA to mean a manufacturer's share (expressed as a percentage) of the total number of cigarettes sold in the United States in a given year, as measured by excise taxes (or similar taxes, in the case of Puerto Rico)) for the year preceding the payment exceeds its "**Base Share**," defined as the higher of its 1998 Market Share or 125% of its 1997 Market Share. If an SPM executes the MSA after February 22, 1999, its 1997 or 1998 Market Share, as applicable, is deemed to be zero. (Seventeen of the current nineteen SPMs signed onto the MSA on or before the February 22 deadline.) SPMs are required to make Annual Payments at the same times as the Annual Payments to be made by the OPMs, but are not required to make any payments in respect of the Initial Payments to be made by the OPMs.

For each Annual Payment, each SPM is required to pay an amount equal to the base amount of the Annual Payment owed by the OPMs, collectively, adjusted for the Volume Adjustment described above but prior to any other adjustments, reductions or offsets, multiplied by (i) the difference between that SPM's Market Share for the preceding year and its Base Share, divided by (ii) the aggregate Market Share of the OPMs for the preceding

year. Other than the foregoing application of the Volume Adjustment, payments by the SPMs are subject to the same adjustments (including the Inflation Adjustment), reductions and offsets as are the payments made by the OPMs, except for the Previously-Settled States Reduction.

Because the Annual Payments to be made by the SPMs are calculated in a manner that is different than the manner in which the Annual Payments to be made by the OPMs are calculated, a change in market share between the OPMs and the SPMs could cause the amount of Annual Payments required to be made by the PMs in the aggregate to be greater or less than the amount that would be payable if their market share remained the same. In certain circumstances, an increase in the market share of the SPMs could increase the aggregate amount of Annual Payments because the Annual Payments to be made by the SPMs are not adjusted for the Previously-Settled States Reduction. However, in other circumstances, an increase in the market share of the SPMs could decrease the aggregate amount of Annual Payments because the SPMs are not required to make any Annual Payments unless their market share increases above their Base Share, or because of the manner in which the Inflation Adjustment is applied to each SPM's payments.

**"Most Favored Nation" Provisions**

In the event that any non-foreign governmental entity other than the federal government should reach a settlement of released claims with PMs that provides more favorable terms to the governmental entity than does the MSA to the Settling States, the terms of the MSA will be modified to match those of the more favorable settlement. For such settlements reached prior to October 1, 2000, all terms of the agreement will be considered. After that date, only the non-economic terms may be considered for comparison.

In the event that any Settling State should reach a settlement of released claims with NPMs that provides more favorable terms to the NPM than the MSA does to the PMs, the terms of the MSA will be deemed modified to match the NPM settlement, but only with respect to the particular Settling State. In the event that any Settling State agrees to reduce the burden placed upon any PM by the terms of the MSA, the MSA will be deemed modified so that each PM enjoys the same reduction in burden, but only with respect to the particular Settling State. In no event will the adjustments discussed in this paragraph modify the MSA with regard to other Settling States.

**State-Specific Finality and Final Approval**

Although each of the OPMs has already made the 1998 Initial Payment to the MSA Escrow Agent, the escrowed funds may not be disbursed to an individual Settling State until the occurrence of each of two events: State-Specific Finality and Final Approval.

"**State-Specific Finality**" means, with respect to an individual Settling State, that (i) such state has settled its pending or potential litigation against the tobacco companies with a consent decree, which decree has been approved and entered by a court within the Settling State and (ii) the time for all appeals against the consent decree has expired. If any state fails to achieve State-Specific Finality on or before December 31, 2001, its participation in the MSA is automatically terminated. State-Specific Finality for the State of New York was achieved on August 17, 1999.

"**Final Approval**" means the earlier of (i) the date on which at least 80% of the Settling States, both in terms of number and of entitlement to the proceeds of the MSA, have reached State-Specific Finality or (ii) June 30, 2000. The National Association of Attorneys General has reported that as of October 27, 1999, 43 of the 52 Settling States, representing over 80% by number but approximately 66% by dollar volume entitlement, have reached State-Specific Finality.

**Disbursement of Funds from Escrow**

An independent auditor shall make all calculations necessary to determine the amounts to be paid by each PM, as well as the amounts to be disbursed to each of the Settling States. Upon completing any particular set of disbursement calculations, the auditor shall provide copies of the calculations to all parties to the MSA, who shall each have ten days within which to question or challenge the calculations. The final calculation is due from the independent auditor not less than 15 days prior to the payment due date. Such calculation is subject to further

adjustments if previously missing information is received. In the event of a challenge to the calculations, the non-challenged part of a payment shall be processed in the normal course. Challenges will be submitted to binding arbitration.

Disbursement of the funds by the MSA Escrow Agent from the escrow accounts shall occur within ten business days of receipt of the particular funds, State-Specific Finality or Final Approval, whichever comes latest. The MSA Escrow Agent will disburse the funds due to, or as directed by, each Settling State in accordance with instructions received from that state.

**Advertising and Marketing Restrictions; Educational Programs**

The MSA prohibits the PMs from certain advertising, marketing and other activities that may promote the sale of cigarettes and smokeless tobacco products ("**Tobacco Products**"). Under the MSA, the PMs are generally prohibited from targeting persons under 18 years of age within the Settling States in the advertising, promotion or marketing of Tobacco Products and from taking any action to initiate, maintain or increase smoking by underage persons within the Settling States. Specifically, the PMs may not (i) use any cartoon characters in advertising, promoting, packaging or labeling Tobacco Products; (ii) distribute any free samples of Tobacco Products except in a restricted facility where the operator thereof is able to ensure that no underage persons are present; or (iii) provide to any underage person any item in exchange for the purchase of Tobacco Products or for the furnishing of proofs-of-purchase coupons. The PMs are also prohibited from placing any new outdoor and transit advertising, and are committed to remove any existing outdoor and transit advertising for Tobacco Products in the Settling States. Other examples of prohibited activities include, subject to limited exceptions, the sponsorship of any athletic, musical, artistic or other social or cultural event in exchange for the use of tobacco brand names as part of the event; the making of payments to anyone to use, display, make reference to or use as a prop any Tobacco Product or item bearing a tobacco brand name in any motion picture, television show, theatrical production, music performance, commercial film or video game; the sale or distribution in the Settling States of any non-tobacco items containing tobacco brand names or selling messages; and the sale of packs of cigarettes containing fewer than 20 cigarettes until at least December 31, 2001.

In addition, the PMs have agreed under the MSA to provide funding for the organization and operation of a charitable foundation (the "**Foundation**") and educational programs to be operated within the Foundation. The main purpose of the Foundation will be to support programs to reduce the use of Tobacco Products by underage persons and to prevent diseases associated with the use of Tobacco Products. On March 31, 1999, and on March 31 of each subsequent year for a period of nine years thereafter, each OPM is required to pay its Relative Market Share of $25,000,000 (which is not subject to any adjustments, offsets or reductions pursuant to the MSA) to fund the Foundation. In addition, each OPM is required to pay its Relative Market Share of $250,000,000 on March 31, 1999, and $300,000,000 on March 31 of each of the subsequent four years to fund the Foundation. Furthermore, each PM may be required to pay its Relative Market Share of $300,000,000 on April 15, 2004, and on April 15 of each year thereafter in perpetuity if, during the year preceding the year when payment is due, the sum of the Market Shares of the PMs equals or exceeds 99.05%. The Foundation may also be funded by contributions made by other entities.

**Termination of Agreement**

Any state's participation in the MSA is automatically terminated if such state does not reach State-Specific Finality on or before December 31, 2001. The MSA is also terminated as to a Settling State (a) if the MSA or consent decree in that state is disapproved by a court and the time for an appeal has expired, the appeal is dismissed or the disapproval is affirmed or (b) if the representations and warranties of the attorney general of that state relating to the ability to release claims are breached or not effectively given. In addition, in the event that a PM enters bankruptcy and fails to perform its financial obligations under the MSA, the Settling States, by vote of at least 75% of the Settling States, both in terms of number and of entitlement to the proceeds of the MSA, may terminate certain financial obligations of that particular manufacturer under the MSA.

The MSA provides that if it is terminated, then the statute of limitations with respect to released claims will be tolled from the date the Settling State signed the MSA until the later of the time permitted by applicable law or one year from the date of termination and the parties will jointly move for the reinstatement of the claims and

actions dismissed pursuant to the MSA. The effect of this would be to return the parties to the positions they were in prior to the execution of the MSA.

**Severability**

By its terms, most of the major provisions of the MSA are not severable from its other terms. If a court materially modifies, renders unenforceable or finds unlawful any nonseverable provision, the attorneys general of the Settling States and the OPMs are to attempt to negotiate substitute terms. If any OPM does not agree to the substitute terms, the MSA terminates in all Settling States affected by the court's ruling.

**Amendments and Waivers**

The MSA may be amended by all PMs and Settling States affected by the amendment. The terms of any amendment will not be enforceable against any Settling State which is not a party to the amendment. Any waiver will be effective only against the parties to such waiver and only with respect to the breach specifically waived.

**MSA Provisions Relating to Model/Qualifying Statutes**

*General.* The MSA sets forth the schedule and calculation of payments to be made by the Original Participating Manufacturers to the Settling States. As described above, the Annual Payments are subject to, among other adjustments and reductions, the NPM Adjustment, which may reduce the amount of money that a Settling State receives pursuant to the MSA. The NPM Adjustment will reduce payments of a PM if such PM experiences certain losses of market share in the United States as a result of participation in the MSA.

Settling States may mitigate the effect of the NPM Adjustment by taking certain actions, including the adoption of a statute, law, regulation or rule (a "**Qualifying Statute**") which eliminates the cost disadvantages that PMs experience in relation to NPMs as a result of the provisions of the MSA. "Qualifying Statute," as defined in Section IX(d)(2)(E) of the MSA, means a statute, regulation, law, and/or rule adopted by a Settling State that "effectively and fully neutralizes the cost disadvantages that [PMs] experience vis-à-vis [NPMs] within such Settling State as a result of the provisions of the MSA." Exhibit T to the MSA sets forth a model form of Qualifying Statute (a "**Model Statute**") that will constitute a Qualifying Statute so long as the statute is enacted without modification or addition (except for particularized state procedural or technical requirements) and is not enacted in conjunction with any other legislative or regulatory proposal. The MSA also provides a procedure by which a Settling State may enact a statute that is not the Model Statute and receive a determination from a nationally recognized firm of economic consultants that such statute is a Qualifying Statute.

If a Settling State continuously has a Qualifying Statute in full force and effect and diligently enforces the provisions of such statute, the MSA states that the payments allocated to such Settling State will not be subject to a reduction due to the NPM Adjustment. Furthermore, the MSA dictates that the aggregate amount of the NPM Adjustment is to be allocated, in a pro rata manner, among all Settling States that do not adopt and enforce a Qualifying Statute. In addition, if the NPM Adjustment allocated to a particular Settling State exceeds its allocated payment, that excess is to be reallocated equally among the remaining Settling States that have not adopted and enforced a Qualifying Statute. Thus, Settling States that do not adopt and enforce a Qualifying Statute will receive reduced allocated payments if an NPM Adjustment is in effect. The MSA provides an economic incentive for most states to adopt and diligently enforce a Qualifying Statute.

The MSA provides that if a Settling State enacts a Qualifying Statute that is a Model Statute and uses its best efforts to keep the Model Statute in effect, but a court invalidates the statute, then, although that state remains subject to the NPM Adjustment, the NPM Adjustment is limited to no more, on a yearly basis, than 65% of the amount of such state's allocated payment (including reallocations described above). The determination from a nationally recognized firm of economic consultants that a statute constitutes a Qualifying Statute is subject to reconsideration in certain circumstances and such statute may later be deemed not to constitute a Qualifying Statute. In the event that a Qualifying Statute that is not a Model Statute is invalidated or declared unenforceable by a court, or, upon reconsideration by a nationally recognized firm of economic consultants, is determined not to be a Qualifying Statute, the Settling State that adopted such statute will become fully subject to the NPM Adjustment.

*Summary of the Model Statute.* One of the objectives of the MSA (as set forth in the Findings and Purpose section of the Model Statute) is to shift the financial burdens of cigarette smoking from the Settling States to the tobacco product manufacturers. The Model Statute provides that any tobacco manufacturer who does not join the MSA would be subject to the provisions of the Model Statute because

> [i]t would be contrary to the policy of the State if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the State will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the State to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

Accordingly, pursuant to the Model Statute, a tobacco manufacturer that is an NPM under the MSA must deposit an amount for each cigarette it sells into an escrow account (which amount increases on a yearly basis, as set forth in the Model Statute).

The amounts deposited into the escrow accounts by the NPMs may only be used in limited circumstances. Although the NPM receives the interest or other appreciation on such funds, the principal may only be released (i) to pay a judgment or settlement on any claim of the type that would have been released by the MSA brought against such NPM by the applicable Settling State or any Releasing Party located within such state; (ii) to the extent that the NPM establishes that the amount it was required to deposit into the escrow account was greater than such state's allocable share of the total payments that such NPM would have been required to make if it had been a Participating Manufacturer under the MSA (as determined before certain adjustments or offsets); or (iii) 25 years after the date that the funds were placed into escrow (less any amounts paid out pursuant to (i) or (ii)).

If the NPM fails to place funds into escrow as required, the attorney general of the applicable Settling State may bring a civil action on behalf of the state against the NPM. If a court finds that an NPM violated the statute, it may impose civil penalties in the following amounts: (i) an amount not to exceed 5% of the amount improperly withheld from escrow per day of the violation and in an amount not to exceed 100% of the original amount improperly withheld from escrow; (ii) in the event of a knowing violation, an amount not to exceed 15% of the amount improperly withheld from escrow per day of the violation and in an amount not to exceed 300% of the original amount improperly withheld from escrow; and (iii) in the event of a second knowing violation, the court may prohibit the NPM from selling cigarettes to consumers within such state (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed two years.

*Status of New York Model Statute.* Both houses of the New York State Legislature passed a Model Statute which was signed by the Governor on September 28, 1999 and will become effective 60 days after such date. By letter dated August 4, 1999, counsel to the OPMs confirmed that the OPMs would not dispute that the New York statute constitutes a Model Statute under the MSA.

## NEW YORK CONSENT DECREE

*There follows a brief description of the Decree. This description is not complete and is subject to, and qualified in its entirety by reference to, the copy of the Decree which is attached hereto as Appendix C.*

### Introduction and Overview

On December 23, 1998, the Consent Decree and Final Judgment (as corrected on April 14, 1999, the "**Decree**"), which governs the class action portion of New York State's action against the tobacco companies, was entered in the Supreme Court of the State of New York. The Decree provides for: (i) the allocation of the amounts in the New York state-specific account among the State, the counties of New York and the City; (ii) limitations on the rights of the counties and the City to enforce the provisions of the Decree; and (iii) the release and dismissal of claims by the counties and the City.

The City appealed from the Decree and the related order approving the Escrow Agreement and retaining jurisdiction over the Escrow Agreement (the "**Escrow Order**"), on January 14, 1999. Westchester County made a similar appeal, while Erie County appealed only from the Decree. The Appellate Division, First Department, on the motion of the State, dismissed the appeals related to the Escrow Order on April 15, 1999. With respect to the non-dismissed portion of its appeal, the City argued that the lower court did not have a sufficient record to conclude, and if presented with a sufficient record, could not have concluded, that the allocation and class settlement contained in the Decree was fair, reasonable and adequate. After hearing oral argument on June 17, 1999, the Appellate Division affirmed the Decree in a unanimous decision dated July 15, 1999. The period in which to appeal the decision of the Appellate Division expired on August 16, 1999 without any request to appeal being served. The time for all appeals against the Decree has expired and the State achieved State-Specific Finality on August 17, 1999.

### Calculating the City's Share of the Accounts and Flow of Funds

According to the formula set forth in the MSA, the State is entitled to 12.7620310% of the total amount of Initial Payments and Annual Payments deposited in the national escrow account. The allocation of the State's share of the Initial Payments and Annual Payments to be made pursuant to the MSA to the State, its counties and the City is set forth in the Decree, which provides that the State and the City are to receive 51.176% and 26.670%, respectively, of the Initial Payments and the Annual Payments. The money to which the City is entitled does not pass through the State and is not required to be appropriated by the State.

### Rights to Enforce Provisions of the Consent Decree

In addition to allocating the Initial Payments and Annual Payments among the State, its counties and the City, the Decree defines who may enforce the provisions of the Decree. The Decree expressly states that it only confers rights upon, and may be enforced only by, the State or a PM (or other Released Party under the MSA). As a result, only the State is entitled to enforce the PMs' payment obligations, and the State is prohibited expressly from assigning or transferring its enforcement rights. The Decree does provide, however, that counties and the City may enforce their payment rights against the State or against other counties.

### Release and Dismissal of Claims

The Decree further provides that, effective upon the occurrence of State-Specific Finality in the State, the counties and the City unconditionally will release and discharge all released claims against all Released Parties to the same extent that the State released its claims pursuant to the MSA. The counties and the City agree that, after the occurrence of State-Specific Finality, they will not seek to establish civil liability against any Released Party upon any released claim and that such agreement will be a complete defense to any such civil action or proceeding.

## TOBACCO INDUSTRY

*The following description of the domestic tobacco industry has been compiled from certain publicly-available documents of tobacco companies and their parent companies. Certain of those companies file annual, quarterly and certain other reports with the Securities and Exchange Commission (the "**SEC**"). Such reports are available on the SEC's website (www.sec.gov) and upon request from the Office of Public Reference of the SEC, 450 5th Street, NW, Room 1300, Washington, D.C. 20549-0102 (phone: (202) 942-8090; fax: (202) 628-9001; e-mail: publicinfo@sec.gov). Although TSASC has no knowledge of any facts indicating that the following information is inaccurate in any material respect, TSASC has not independently verified this information and cannot and does not warrant the accuracy or completeness of this information.*

### Industry Overview

There are four leading manufacturers of tobacco products in the United States that collectively accounted for approximately 97% of domestic cigarette industry retail market share in 1998. The market for cigarettes in the United States divides generally into premium and discount sales, roughly 73% and 27%, respectively, measured by volume of all domestic cigarette sales in 1998.

Philip Morris Incorporated ("**Philip Morris**"), a subsidiary of Philip Morris Companies Inc., is the largest tobacco company in the United States, with approximately 48.6% of the United States domestic retail market in 1998. Philip Morris's major premium brands are Marlboro, Virginia Slims, Benson & Hedges, Merit and Parliament. Its principal discount brands are Basic and Cambridge. Marlboro is the largest selling cigarette brand in the United States, with approximately 33.8% of the United States domestic retail market in 1998, and has been the world's largest-selling cigarette brand since 1972.

R.J. Reynolds Tobacco Company ("**Reynolds Tobacco**"), is the second largest tobacco company in the United States, with approximately 25.2% of the United States domestic retail market in 1998. On June 14, 1999, Reynolds Tobacco was spun-off from RJR Nabisco Holdings, Inc., and is now a wholly-owned subsidiary of R.J. Reynolds Tobacco Holdings, Inc. Reynolds Tobacco's major premium brands are Winston, Camel, Salem and Vantage. Its discount brands include Doral, Monarch and Best Value.

Brown & Williamson Tobacco Corporation ("**B&W**"), with headquarters in Louisville, Kentucky, is a subsidiary of British American Tobacco Incorporated, as successor to American Brands, and is the third largest tobacco company in the United States with approximately 15.0% of the United States domestic retail market in 1998. B&W's largest selling brand is GPC, a discount brand. Its other major brands are Kool, Carlton and Lucky Strike.

Lorillard, Inc. ("**Lorillard**"), a wholly owned subsidiary of Loews Corporation, is the fourth largest tobacco company in the United States with approximately 8.2% of the United States domestic retail market in 1998. Lorillard's major brands are Newport, Kent, True and Maverick. Its largest selling brand is Newport, which accounted for approximately 77% of Lorillard's sales in 1998.

The remaining 3% share of the United States retail cigarette market in 1998 was held by a number of other domestic and foreign cigarette manufacturers, including Liggett Group, Inc. ("**Liggett**"), a wholly-owned subsidiary of Brooke Group, Ltd. Liggett, the operating successor to the Liggett & Meyers Tobacco Company, is the fifth largest tobacco company in the United States with a 1.3% domestic market share (based on total cigarettes shipped) in 1998. In 1998, Liggett produced four premium brands: L&M, Chesterfield, Lark and Eve, in addition to certain discount brands including Pyramid. In May 1999, Liggett sold the L&M, Chesterfield and Lark cigarette brands to Philip Morris. Liggett is an SPM under the MSA.

The following tables depict the approximate comparative positions of the leading producers and brands in the United States domestic tobacco industry:

**Manufacturers' Retail Market Share**

| Manufacturer | 1995 | 1996 | 1997 | 1998 | First Quarter of 1999 |
|---|---|---|---|---|---|
| Philip Morris | 45.1% | 46.8% | 47.7% | 48.6% | 49.4% |
| Reynolds Tobacco | 27.0 | 25.9 | 25.4 | 25.2 | 24.4 |
| B&W/American Brands | 17.8 | 17.1 | 16.0 | 15.0 | 13.7 |
| Lorillard | 7.6 | 7.8 | 7.9 | 8.2 | 8.9 |
| Other | 2.5 | 2.4 | 3.0 | 3.0 | 3.6 |

**Top 10 Brands by Market Share—1998**

| Brand | Manufacturer | Type | Market Share |
|---|---|---|---|
| Marlboro | Philip Morris | Premium | 33.8% |
| Doral | Reynolds Tobacco | Discount | 6.4 |
| Newport | Lorillard | Premium | 5.8 |
| Winston | Reynolds Tobacco | Premium | 5.6 |
| GPC | B&W | Discount | 5.5 |
| Camel | Reynolds Tobacco | Premium | 5.3 |
| Basic | Philip Morris | Discount | 4.9 |
| Salem | Reynolds Tobacco | Premium | 3.4 |
| Kool | B&W | Premium | 3.3 |
| Virginia Slims | Philip Morris | Premium | 2.7 |

United States cigarette shipments have decreased at a compound annual rate of 1.9% over the past 10 years. From 1995 through 1997, United States cigarette shipments increased slightly from 481.1 billion to 482.9 billion cigarettes.

Wholesalers began to increase their inventories of cigarettes in mid-1997 anticipating significant price increases. Between August 1997 and July 1999, wholesale cigarette prices increased on six occasions, totaling approximately $0.70 per pack.

As a result of the MSA and other settlement-related price increases, coupled with state excise tax increases, the industry experienced a 4.6% decline in shipments to 460.8 billion cigarettes in 1998. In the first six months of 1999, reflecting further effects of the MSA and other settlement-related price increases together with a decision to lower inventories, the industry experienced a 10.0% decline in shipments from the first six months of 1998. In August 1999, the leading domestic cigarette manufacturers increased wholesale cigarette prices by $0.18 per pack in anticipation of the $0.10 per pack increase in the federal excise tax scheduled to take effect in January 2000, as well as costs related to the MSA.

The following table sets forth the industry's cigarette shipments in the United States for the five years ended December 31, 1998. The MSA payments are calculated in part on industry shipments.

| Years Ended December 31, | Shipments (Billions of Cigarettes) |
|---|---|
| 1994 | 489.6 |
| 1995 | 481.1 |
| 1996 | 483.2 |
| 1997 | 482.9 |
| 1998 | 460.8 |

### Tax Collections and Retail Expenditures

According to the United States Department of Agriculture (the "**USDA**") Economic Research Service ("**USDA-ERS**"), for the twelve months ended June 30, 1998, governmental revenues from tobacco products (the vast majority of which are from cigarettes) totalled $15.756 billion. Of this amount, $5.607 billion was paid in federal excise taxes, $7.975 billion in state excise taxes, $196 million in local excise taxes, and $1.977 billion in state sales taxes. Excluding sales taxes, the USDA-ERS estimates that retail expenditures on cigarettes equaled $53.236 billion in 1998.

### Distribution, Competition and Raw Materials

Cigarette manufacturers sell tobacco products to wholesalers (including distributors), large retail organizations, including chain stores, and the armed services. They and their affiliates and licensees also market cigarettes and other tobacco products worldwide, directly or through export sales organizations and other entities with which they have contractual arrangements.

The market for tobacco products is highly competitive and is characterized by brand recognition and loyalty, with product quality, price, marketing and packaging constituting the significant methods of competition. Promotional activities include, in certain instances and where permitted by law, allowances, the distribution of incentive items, price reductions and other discounts. Substantial advertising, merchandising display and promotional expenditures, including selective discounting, are generally necessary to maintain or improve a brand's market position. Increased selling prices and taxes on cigarettes have resulted in additional price sensitivity of cigarettes at the consumer level and in a proliferation of discounts and of brands in the discount segment of the market. Generally, sales of cigarettes in the discount segment are not as profitable as those in the premium segment.

The tobacco products of the cigarette manufacturers and their affiliates and licensees are advertised and promoted through various media, although television and radio advertising of cigarettes has been prohibited in the United States since 1971. The domestic tobacco manufacturers have agreed to marketing restrictions in the United States as part of the MSA. They are still permitted, however, to conduct advertising campaigns in magazines, at retail cigarette locations, in direct mail campaigns targeted at adult smokers and in other adult media.

### Regulatory Issues

The tobacco manufacturers are the target of numerous regulatory initiatives both domestically and abroad. These initiatives include legislation or other governmental action seeking to impose liability upon the industry for adverse health effects associated with both smoking and exposure to environmental tobacco smoke ("**ETS**"). Reports about harmful physical effects of cigarette smoking have been publicized for many years, and the sale, promotion and use of cigarettes continue to be subject to increasing governmental regulation. Since 1964, the Surgeon General of the United States and the Secretary of Health and Human Services have released a number of reports linking cigarette smoking to a broad range of health hazards, including various types of cancer, coronary heart disease and chronic lung disease, and recommending various governmental measures to reduce the incidence of smoking. Since 1966, federal law has required that health warnings be printed on each pack of cigarettes.

The Federal Trade Commission, which has regulated the manner in which cigarette manufacturers test and disclose the tar, nicotine, and carbon monoxide levels of cigarettes, has proposed revisions to the test methodology and reporting procedures established by a 1970 voluntary agreement among domestic cigarette manufacturers. In 1992, the adoption of the federal Alcohol, Drug Abuse and Mental Health Act required states both to adopt a minimum age of 18 for purchases of tobacco products and to establish a monitoring system to prevent under-age purchases. In 1993, the United States Environmental Protection Agency (the "**EPA**") issued a report that included a risk assessment of the relationship between ETS and lung cancer in nonsmokers and a determination by the EPA to classify ETS as a "Group A" carcinogen.

In 1994, the United States Occupational Safety and Health Administration announced proposed regulations that would restrict smoking in the workplace. In August 1996, the United States Food and Drug Administration

(the "**FDA**") asserted jurisdiction over cigarettes and certain other tobacco products by declaring such products to be medical devices under the provisions of the Food, Drug and Cosmetic Act and adopting regulations on the advertising, promotion and sale of cigarettes. These regulations include severe restrictions on the distribution, marketing and advertising of cigarettes, and would require the industry to comply with a wide range of labeling, reporting, recordkeeping, manufacturing and other requirements. In August 1998, a United States Court of Appeals held that the FDA had exceeded its authority by regulating tobacco products. The United States Supreme Court has granted *certiorari* and will review the decision of the Court of Appeals.

Members of Congress have introduced legislation, some of which has been the subject of hearings or floor debate, that would, among other things, subject cigarettes to additional regulatory oversight, establish and provide additional funding for anti-smoking programs, further restrict the advertising of cigarettes, and eliminate certain defenses against liability under state statutory or common law.

In addition to federal regulation and investigations, most of the states and many local jurisdictions have enacted legislation that has been in place for some time imposing various restrictions on public smoking and regulating labeling or advertising of cigarettes. Many employers have initiated programs restricting or eliminating smoking in the workplace. A number of states have enacted legislation designating a portion of increased cigarette excise taxes to fund antismoking programs, healthcare programs and/or cancer research. Federal law already prohibits smoking on all domestic airline flights of six hours duration or less and the United States Interstate Commerce Commission has banned smoking on buses transporting passengers interstate. Various common carriers have imposed additional restrictions on passenger smoking.

**Civil Litigation**

Pending claims related to tobacco products generally fall within three categories: (i) smoking and health cases alleging personal injury brought on behalf of individual plaintiffs, (ii) smoking and health cases alleging personal injury and purporting to be brought on behalf of a class of individual plaintiffs, and (iii) health care cost recovery cases brought by governmental and non-governmental plaintiffs seeking reimbursement for health care expenditures allegedly caused by cigarette smoking. Some cases have been brought by individual plaintiffs who allege cancer and/or other health effects claimed to have resulted from an individual's use of cigarettes, addiction to smoking, or exposure to environmental tobacco smoke. In other cases, plaintiffs have brought claims as class actions on behalf of large numbers of individuals for damages allegedly caused by smoking. Plaintiffs include domestic and foreign governmental entities or others, such as labor unions, private companies, HMOs, hospitals, other third party payors, native American tribes or private citizens suing on behalf of taxpayers, who seek reimbursement of health care costs allegedly incurred as a result of smoking, as well as other alleged damages. Plaintiffs seek various forms of relief, including compensatory and punitive damages, treble/multiple damages and other statutory damages and penalties, creation of medical monitoring and smoking cessation funds, disgorgement of profits, and injunctive and equitable relief.

There are approximately 65 purported class actions pending against cigarette manufacturers and other defendants. As of June 30, 1999, smoking and health class actions were pending in 28 states and the District of Columbia, as well as in certain foreign countries. Class certification has been denied or reversed by courts in 15 smoking and health class actions in seven states, the District of Columbia and Puerto Rico, while classes remain certified in three cases in Florida, Louisiana and Maryland. A number of these class certification decisions are on appeal. Class certification motions are pending in a number of the other putative smoking and health class actions.

Such class certifications do not necessarily mean that the manufacturers will incur a large liability based solely on a single negative result at trial. In *Engle v. R.J. Reynolds, et al.*, a Florida state court certified a class of smokers alleging injury due to their tobacco use. The class was certified, however, only with respect to a few basic issues concerning the general liability of the manufacturers to the members of the class. In July 1999, in the first phase of a three-phase trial, a jury found against the defendant tobacco companies on the common aspects of the individual plaintiffs' claims. The trial judge subsequently denied the defendants' motions to set aside the verdict from the first phase of the trial, grant a new trial and decertify the class, and issued an order providing that the jury in the second phase of the trial would determine punitive damages, if any, on a dollar amount basis for the entire class. The defendants appealed the order regarding the determination of punitive damages and on

October 20, 1999, Florida's 3rd District Court of Appeal upheld the trial court's order. On October 29, 1999 the defendants filed a Petition for Writ of Prohibition with the Florida Supreme Court asking it to take early jurisdiction of the case. On November 3, 1999 the Florida Supreme Court ordered that the plaintiffs serve a response to the petition on or before November 15 and that the defendants reply on or before November 22. The parties are to address only the lump-sum punitive damages proceedings. No assurance can be given as to the outcome of the petition with the Florida Supreme Court.

If the Florida Supreme Court upholds the trial court, certain OPMs have said that in worst case scenario, the court could enter a judgment for punitive damages on behalf of the entire class in an amount not capable of being bonded, resulting in the possible execution of the judgment before it could be overturned on appeal. Such OPMs have stated that they believe this result would be contrary to U.S. and Florida law.

The second phase of the *Engle* trial will determine punitive damages as well as issues of specific causation, reliance, affirmative defenses and other individual-specific issues related to the claims of the named plaintiffs. The third phase of the trial, consisting of individual trials before separate juries, would address similar issues related to the other class members' claims.

In January 1999, President Clinton announced that the United States Department of Justice would prepare a litigation plan to sue the tobacco companies. On September 22, 1999, the Department of Justice filed a lawsuit against Philip Morris, Reynolds Tobacco, B&W, Lorillard, Liggett, certain related parent companies and two tobacco industry research and lobbying organizations. Among other things, the federal lawsuit seeks to recoup Medicare and other medical expenses of the federal government relating to smoking-related illnesses and alleges violations of the federal RICO statute. The lawsuit seeks unspecified damages, disgorgement of profits by the defendant tobacco companies under the RICO statute and certain other relief, including an injunction that would require the defendants to make certain public statements in the marketing and promotion of their products regarding the health risks of tobacco and to fund anti-smoking education campaigns and smoking cessation programs. Certain OPMs have stated that they will vigorously defend against such suit.

While tobacco litigation has been ongoing for years and in recent years there has been a substantial increase in the number of tobacco-related cases being filed, the tobacco industry has never paid any damages in a smoking and health lawsuit according to a public statement by Reynolds Tobacco. The tobacco industry has, however, entered into settlements of certain lawsuits based on cigarette smoking related claims, including its settlement of *Broin v. Philip Morris Companies, Inc.* (a class action brought on behalf of flight attendants claiming injury as a result of exposure to ETS) and the lawsuits filed by Florida, Minnesota, Mississippi and Texas which were settled individually with such previously-settled states, and the lawsuits filed by the Settling States which were settled by the MSA.

## WEFA REPORT

*The following information has been extracted from the WEFA Report, a copy of which is attached hereto as Appendix A. The WEFA Report should be read in its entirety for an understanding of the assumptions on which it is based and the conclusions it reaches. The WEFA Report forecasts future United States domestic cigarette consumption. The MSA payments are based in part on cigarettes shipped in and to the United States. Cigarettes shipped and cigarette consumption may not match as a result of various factors such as inventory adjustments.*

### General

WEFA, formerly known as Wharton Econometrics, has prepared a report (the "**WEFA Report**") on the consumption of cigarettes in the United States from 1999 through 2042 entitled *A Forecast of Total U.S. Cigarette Consumption (1999-2042)*. WEFA is an internationally recognized econometric and consulting firm of over 200 economists in 16 offices worldwide. WEFA is a wholly-owned subsidiary of Primark Corporation, a publicly traded company which is a provider of financial, economic and market research information.

After considering the impact of cigarette prices, disposable income, industry advertising expenditures, the future effect of the incidence of smoking among youth and qualitative variables that capture the impact of some of the negative social legislation on smoking, WEFA developed a cigarette consumption model based on historical U.S. data between 1965 and 1998. After determining which variables to use, WEFA applied a standard regression analysis to determine the relationship between the variables. The regression analysis for the period 1965 to 1998 showed: (i) price elasticity of demand of –0.31, (ii) income elasticity of demand of 0.51, (iii) elasticity of cigarette consumption with respect to advertising expenditures of 0.017, (iv) the effects of bans on television advertising and restrictions on public smoking in any particular year are insignificant, (v) increases in incidence of youth smoking lead to increases in cigarette consumption in the future and (vi) a trend decline in per capita cigarette consumption of 2.78% per year holding other recognized significant factors constant.

The WEFA model was then used to project total U.S. consumption from 1999 through 2042. WEFA's analysis indicates that total consumption in 2042 will be 196 billion cigarettes (the "**Base Case Forecast**") representing a decline of approximately 58% from 1998 through 2042 or an annual decline of slightly less than 2%. The WEFA Report states that WEFA has a 95% statistical confidence that cigarette consumption will be within ±2.8% of the WEFA Base Case Forecast for any year. The WEFA Report further states that WEFA believes that the assumptions on which the Base Case Forecast is based are reasonable. The results of the Base Case Forecast are shown in the following table.

**WEFA Base Case Forecast of Cigarette Consumption**

| Year | Cigarettes (billions) | Year | Cigarettes (billions) | Year | Cigarettes (billions) |
|---|---|---|---|---|---|
| 1999 | 432.05 | 2014 | 328.21 | 2029 | 250.90 |
| 2000 | 430.74 | 2015 | 322.52 | 2030 | 245.59 |
| 2001 | 429.57 | 2016 | 316.58 | 2031 | 241.77 |
| 2002 | 423.38 | 2017 | 310.68 | 2032 | 237.37 |
| 2003 | 417.12 | 2018 | 304.91 | 2033 | 232.94 |
| 2004 | 409.29 | 2019 | 299.24 | 2034 | 228.49 |
| 2005 | 400.12 | 2020 | 293.30 | 2035 | 223.30 |
| 2006 | 390.60 | 2021 | 288.65 | 2036 | 218.73 |
| 2007 | 381.73 | 2022 | 283.54 | 2037 | 215.09 |
| 2008 | 373.53 | 2023 | 278.10 | 2038 | 211.63 |
| 2009 | 366.82 | 2024 | 272.98 | 2039 | 208.04 |
| 2010 | 359.60 | 2025 | 269.30 | 2040 | 204.11 |
| 2011 | 352.17 | 2026 | 265.90 | 2041 | 200.17 |
| 2012 | 344.37 | 2027 | 260.92 | 2042 | 195.99 |
| 2013 | 336.44 | 2028 | 255.92 | | |

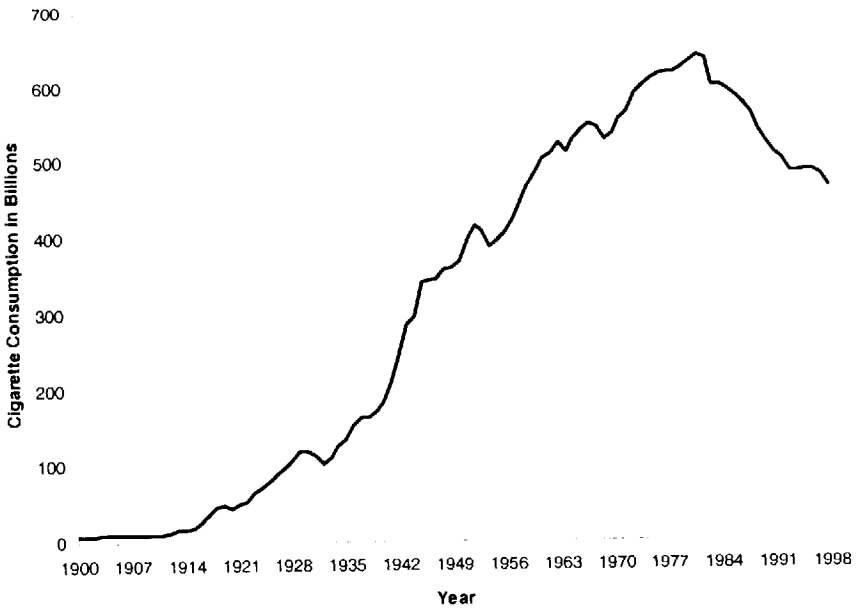
The WEFA Report also presents alternative forecasts that project higher and lower paths of cigarette consumption that predict by 2042 total U.S. cigarette consumption will be at least 172 billion and at most 217 billion cigarettes.

**Historical Consumption**

People have used tobacco products for centuries. Tobacco was first brought to Europe from America in the late 15th century and became America's major cash crop in the 17th and 18th centuries. Prior to 1900, tobacco was most frequently used in pipes, cigars and snuff. With the widespread production of manufactured cigarettes (as opposed to hand-rolled cigarettes) in the United States in the early 20th century, cigarette consumption expanded dramatically. The United States Department of Agriculture, which has compiled data on cigarette consumption since 1900, reports that consumption (which is defined as taxable United States consumer sales, plus shipments to overseas armed forces, ship stores, Puerto Rico and other United States possessions, and small tax-exempt categories as reported by the Bureau of Alcohol, Tobacco and Firearms) grew from 2.5 billion in 1900 to a peak of 640 billion in 1981. Consumption declined in the 1980's and 1990's, reaching a level of 465 billion cigarettes in 1998.

The following chart depicts United States domestic cigarette consumption from 1900 to 1998.

**Cigarette Consumption (1900 to 1998)**




While the historical trend in consumption prior to 1981 was up, there was a decline in cigarette consumption of 9.82% during the Great Depression between 1931 and 1932. Notwithstanding this steep decline, consumption rapidly increased after 1932, exceeding previous levels by 1934. Following the release of the Surgeon General's Report in 1964, cigarette consumption continued to increase 1.20% annually between 1965 and 1981. Between 1981 and 1990, however, cigarette consumption declined 2.18% annually. From 1990 to 1998, the annual rate of decline in cigarette consumption was 1.51%.

Adult per capita cigarette consumption (total consumption divided by the number of people 18 years and older) began to decline following the Surgeon General's Report in 1964. Population growth offset this decline until 1981. The adult population (people 18 years and older) grew 1.86% annually for the period 1965 through 1981, 1.17% from 1981 to 1990 and 0.99% from 1990 to 1998. Adult per capita cigarette consumption declined

0.65% annually for the period 1965 to 1981, 3.31% for the period 1981 to 1990 and 2.47% for the period 1990 to 1998. All percentages are based upon compound annual growth rates.

The following table sets forth United States domestic cigarette consumption for the five years ended December 31, 1998. The data in this table varies from statistics on cigarette shipments in the United States. While the WEFA Report is based on consumption, MSA payments are computed based in part on shipments in or to the fifty United States, the District of Columbia and Puerto Rico. The quantities of cigarettes shipped and cigarettes consumed may not match at any given point in time as a result of various factors such as inventory adjustments, but are substantially the same when compared over a period of time.

| Years Ended December 31, | Consumption (Billions of Cigarettes) |
|---|---|
| 1998 | 465 |
| 1997 | 480 |
| 1996 | 487 |
| 1995 | 487 |
| 1994 | 486 |

A number of organizations have conducted studies on United States cigarette consumption. These studies have utilized a variety of methods to estimate levels of smoking, including interviews and/or written questionnaires. Although these studies have tended to produce varying estimates of consumption levels due to a number of factors, including different survey methods and different definitions of smoking, taken together such studies provide a general approximation of consumption levels and trends. Set forth below is a brief summary of some of the more recent studies on cigarette consumption levels.

Approximately 47 million American adults were current smokers in 1995, representing approximately 24.7% of the population age 18 and older, according to the National Health Interview Survey Year 2000 Objectives Supplement, a survey that was conducted by the Bureau of the Census for the National Center for Health Statistics, Centers for Disease Control and Prevention ("**CDC**"). This survey defines "current smokers" as those persons who have smoked at least 100 cigarettes in their lifetime and who smoked every day or some days at the time of the survey. Although the percentage of adults who smoke ("**incidence**") declined from 42.4% in 1965 to 25.5% in 1990, adult incidence has remained relatively constant at approximately 25% from 1990 to 1998, according to the Tobacco Merchants Association.

Certain studies have focused in whole or in part on youth cigarette consumption. Surveys of youth typically define a "current smoker" as a person who has smoked a cigarette on one or more of the 30 days preceding the survey. The CDC's Youth Risk Behavior Survey estimated that from 1991 to 1997 incidence among high school students (grades 9 through 12) rose from 27.5% to 36.4%, representing an increase of 32.4%. According to the Monitoring the Future Study, a school-based study of cigarette consumption and drug use conducted by the Institute for Social Research at the University of Michigan, smoking incidence among eighth, tenth and twelfth graders in June 1998 was 19.1%, 27.6% and 35.1%, respectively, representing increases of 24.0% to 33.6% since 1991. However, the 1998 figures represent a decrease from the 1997 figures of 19.4% for eighth graders, 29.8% for tenth graders and 36.5% for twelfth graders.

The 1998 Household Survey on Drug Abuse conducted by the Substance Abuse and Mental Health Services Administration of the United States Department of Health and Human Services estimated that approximately 60 million Americans age 12 and older were current cigarette smokers (defined by this survey to mean they had smoked cigarettes at least once during the 30 days prior to the interview). This estimate represents an incidence rate of 27.7%, which is a decrease from the 1997 level of 29.6%. The same survey found that an estimated 18.2% of youths age 12 to 17 were current cigarette smokers in 1998 (with no statistically significant changes in this rate between 1994 and 1998) and that the rate for this group had remained relatively stable since 1988. On the other hand, the survey found that smoking among young adults age 18 to 25 followed an upward trend from 34.6% in 1994 to 40.6% in 1997 to 41.6% in 1998.

**Factors Affecting Cigarette Consumption**

Most empirical studies have found a common set of variables that are relevant in building a model of cigarette demand. These conventional analyses usually evaluate one or more of the following factors: (i) general population growth, (ii) price increases, (iii) changes in disposable income, (iv) advertising restrictions, (v) youth consumption, (vi) health warnings, (vii) smoking bans in public places, (viii) nicotine dependence and (ix) trend over time. While some of these factors were not found to have a measurable impact on changes in demand for cigarettes, all of these factors are thought to affect smoking in some manner and to be incorporated into current levels of consumption.

*General Population Growth.* WEFA forecasts that the United States population will increase from approximately 270 million in 1998 to approximately 347 million in 2030 and 380 million in 2042. This forecast is consistent with the Bureau of the Census forecast. Youth population (10-19 years old) has grown from 13.2% of the population in 1990 to 14.6% in 1998 and is expected to reach 17.7% by 2030.

*Price Increases.* Considerable effort has been devoted to empirically measuring the price elasticity of demand for cigarettes. The price elasticity of demand reflects the impact of changes in price on the demand for the product. Cigarette price elasticities from recent conventional research studies have generally fallen between an interval of –0.3 to –0.5. (In other words, as the price of cigarettes increases by 1.0% the quantity demanded decreases by 0.3% to 0.5%.) Estimates range from increases of 0.14% to decreases of 1.23%. Some research has found decreases among youths of as much as 1.41%. Based on a multivariate regression analysis using data from 1965 to 1998, WEFA found that the price elasticity of consumption is -0.31; a 1.0% increase in the price of cigarettes decreases consumption by 0.31%.

In 1997 the average price of a pack of cigarettes in nominal terms was $1.98. This increased to $2.20 per pack in 1998, representing a nominal growth in the price of cigarettes of 11.1% from 1997. During 1998 consumption declined 3.13%. This decline in consumption may not fully take into account the effect of price increases in 1998 as a result of promotions and discounts. In addition, the consumption decline is based on a full year and such price increases were not in place for the full year.

Data for the first nine months of 1999 indicate that prices have risen to an average, across the United States, of $2.84 per pack, representing a nominal growth in the price of cigarettes of 29.1% from 1998. This was primarily due to a $0.45 per pack increase in November 1998 intended to offset the costs of the MSA. On August 31, 1999, an additional increase of $0.18 per pack at the wholesale level was announced. This increase was in part in anticipation of a $0.10 per pack increase in the federal excise tax in 2000. Prices are expected to continue to increase after 2000 due to costs related to the MSA and an increase in federal excise taxes of $0.05 cents per pack scheduled for 2002, among other reasons. Premium brands are typically $0.50 to $1.00 more expensive per pack than discount brands, allowing a margin for consumers to switch to less costly discount brands in the event of price increases. Under the MSA, payments are based on the quantity (and not the price or type) of cigarettes shipped.

*Changes in Disposable Income.* Analyses from many conventional models also include the effect of real personal disposable income. Most studies have found cigarette consumption in the United States increases as disposable income increases. However, a few studies found cigarette consumption decreases as disposable income increases. Based on a multivariate regression analysis using data from 1965 to 1998, WEFA found that the income elasticity of consumption is 0.51; a 1.0% increase in real disposable income per capita increases per capita cigarette consumption by 0.51%.

*Advertising Restrictions.* In 1971, Congress amended the Federal Cigarette Labeling and Advertising Act so that cigarette advertisements were effectively banned from television and radio. However, empirical research has found little correlation between tobacco advertising and overall smoking, although advertising may have an effect on market share. Based on a multivariate regression analysis, WEFA found that the elasticity of consumption with respect to advertising is 0.017; a 1.0% increase in real advertising expenditures increases consumption by 0.017%.

*Youth Consumption.* The number of teenagers who smoke is another likely determinant of future adult consumption. While this variable has been largely ignored in empirical studies of cigarette consumption, almost all adult smokers first used cigarettes by high school and very little first use occurs after age 20. Based on a

regression analysis, WEFA has found that an increase in incidence among youth is associated with increased adult use of cigarettes in later years.

*Health Warnings.* Categorical variables also have been used to capture the effect of different time periods on cigarette consumption. For example, some researchers have identified the United States Surgeon General's Report in 1964 and subsequent mandatory health warnings on cigarette packages in 1966 as turning points in public attitudes and knowledge of the health effects of smoking. The dangers of cigarette smoking have been generally known to the public for years. Part of the negative trend in smoking identified in WEFA's model may represent the cumulative impact of various health warnings since 1966.

*Smoking Bans in Public Places.* Increasingly since the 1970s numerous states have passed laws banning smoking in public places as well as private workplaces. As of 1995, 46 states and the District of Columbia required smoke-free indoor air to some degree or in some public places. Based on a regression analysis using data from 1965 to 1998, WEFA has found the restrictions on public smoking would appear to have no independent effect on per capita cigarette consumption; there is no statistical evidence that a reduction in smoking could be identified as resulting from the imposition of various restrictions. However, the timing of the restrictions within and across states makes such statistical identification problematic. WEFA's econometric analysis included a trend variable in order to account for the effects of such variables which are difficult to quantify. Part of the negative trend in smoking identified in WEFA's model may represent the cumulative impact of the various smoking bans and restrictions.

*Nicotine Dependence.* Nicotine is widely believed to be an addictive substance. The Surgeon General and the American Medical Association ("**AMA**") both conclude that nicotine is an addictive drug which produces dependence. The American Psychiatric Association has determined that cigarette smoking causes nicotine dependence in smokers and nicotine withdrawal in those who stop smoking. The American Medical Association Council on Scientific Affairs found that one third to one half of all people who experiment with smoking become smokers.

*Trend Over Time.* Since 1964 there has been a significant decline in United States adult per capita cigarette consumption. The Surgeon General's 1964 health warning and numerous subsequent health warnings, together with the increased health awareness of the population over the past thirty years, may have contributed to decreases in cigarette consumption levels. As the awareness of the adult population continues to change in this way, overall consumption of cigarettes will decline gradually over time. WEFA's analysis includes a time trend variable in order to capture the impact of these changing health trends.

In August 1999, the CDC published the Best Practices for Comprehensive Tobacco Control Programs. Citing the success of programs in California and Massachusetts, it recommends comprehensive tobacco control programs to the states. WEFA's research has indicated, and its model incorporates, a negative impact on cigarette consumption of tobacco tax increases, and a negative trend decline in levels of smoking since the Surgeon General's warning and subsequent anti-smoking initiatives. WEFA's forecast assumes that such anti-smoking efforts will continue at their past pace and will be consistent with funding available under the MSA.

## SUMMARY OF BOND STRUCTURING ASSUMPTIONS AND AMORTIZATION

### Introduction

The following discussion describes the methodology and assumptions used to calculate a forecast of Collections to be received by TSASC (the "**Collection Methodology and Assumptions**"), as well as the methodology and assumptions used to structure a schedule of Rated Maturities and a schedule of Planned Principal Payments for the Program Bonds (the "**Structuring Assumptions**").

### Collection Methodology and Assumptions

In calculating a forecast of Collections to be received by TSASC, the forecast of cigarette consumption in the United States developed by WEFA and described as the Base Case Forecast was applied to calculate Initial Payments to be made by the OPMs and Annual Payments to be made by the PMs pursuant to the MSA. The calculation of payments required to be made was performed in accordance with the terms of the MSA; however, as described below, certain assumptions were made with respect to consumption of cigarettes in the United States and the applicability of certain adjustments and offsets to such payments set forth in the MSA. In addition, it was assumed that the PMs make all payments required to be made by them pursuant to the MSA, and that the relative market share for each of the PMs remains constant throughout the Collection forecast period at 96.4% for the OPMs, 3.3% for the SPMs and 0.3% for the NPMs.[1] It was further assumed that each company that is currently a PM remains such throughout the term of the Program Bonds.

In applying the consumption forecast from the WEFA Report, it was assumed that United States consumption, which was forecasted by WEFA, was equal to the number of cigarettes shipped in and to the United States, the District of Columbia and Puerto Rico, which is the number that is applied to determine the Volume Adjustment. The quantities of cigarettes shipped and cigarettes consumed may not match at any given point in time as a result of various factors, such as inventory adjustments, but are substantially the same when compared over a period of time. WEFA's Base Case Forecast for United States cigarette consumption is set forth herein under "WEFA Report." See Appendix A for a discussion of the assumptions underlying the projections of cigarette consumption contained in the WEFA Report.

*Initial Payments*

In accordance with the Collection Methodology and Assumptions, the amount of Initial Payments to be made by the OPMs was calculated by applying the adjustments applicable to the Initial Payments in accordance with the MSA as follows:

*Volume Adjustment.* First, the Volume Adjustment was applied to the schedule of base amounts for the Initial Payments set forth in the MSA. The Volume Adjustment was calculated for each year by applying the WEFA Base Case Forecast for United States cigarette consumption to the market share of the OPMs for the prior year. No add-back or benefit was assumed for the Income Adjustment. See "DESCRIPTION OF THE MASTER SETTLEMENT AGREEMENT—Adjustments to Participating Manufacturer Payments—Volume Adjustment" for a description of the formula used to calculate the Volume Adjustment.

*Non-Settling States Reduction.* The Non-Settling States Reduction was not applied to the Initial Payments, because such reduction has no effect on the amount of payments to be received by states that remain parties to the MSA. Thus, the Collection Methodology and Assumptions include an assumption that New York State will remain a party to the MSA.

*Offset for Miscalculated or Disputed Payments.* The Collection Methodology and Assumptions include an assumption that there will be no adjustments to the Initial Payments due to miscalculated or disputed payments.

*State Allocation Percentage for the State of New York.* The amount of Initial Payments, after application of the Volume Adjustment, was multiplied by the State Allocation Percentage for the State of New York pursuant to

[1] The relative market shares of the OPMs, SPMs and NPMs were estimated based on currently available information at approximately 97%, 2.5% and 0.5%, respectively, in 1997, approximately 97%, 2.7% and 0.3%, respectively, in 1998, and approximately 96.4%, 3.3% and 0.3%, respectively in the first quarter of 1999.

the MSA (equal to 12.7620310%) in order to determine the portion of the Initial Payments to be made by the OPMs in each year that are to be allocated to New York State.

*Consent Decree Allocation Percentage for the City.* The amount of Initial Payments in each year to be allocated to the State, calculated as described in the preceding paragraph, was multiplied by the percentage of such payments that is allocated to the City pursuant to the Decree (equal to 26.670%) in order to determine the amount of Initial Payments assumed to be received by TSASC in each year.

The following table shows the projection of Initial Payments to be received by TSASC through the year 2003, calculated in accordance with the Collection Methodology and Assumptions.

## Projection of Initial Payments to be Received by TSASC

| Date | WEFA Base Case Consumption Forecast | OPM-Adjusted Consumption | Initial Payments | Volume Adjustment | Subtotal | State Allocation | Initial Payments to State | TSASC Allocation | Initial Payments to TSASC | Interest Earned from January to July | Total Initial Payments to TSASC |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1/20/99 | 432,050,000,000 | 416,496,200,000 | | | | | | | | | |
| 1/20/00 | 430,744,594,380 | 415,237,788,982 | $2,472,000,000 | $(301,306,333) | $2,170,693,667 | 12.7620310% | $277,024,599 | 26.670% | $73,882,460 | $1,077,453 | $74,959,913 |
| 1/20/01 | 429,566,784,797 | 414,102,380,545 | 2,546,160,000 | (316,947,003) | 2,229,212,997 | 12.7620310% | 284,492,854 | 26.670% | 75,874,244 | 1,106,499 | 76,980,743 |
| 1/20/02 | 423,383,284,491 | 408,141,486,249 | 2,622,544,800 | (332,590,322) | 2,289,954,478 | 12.7620310% | 292,244,700 | 26.670% | 77,941,662 | 1,136,649 | 79,078,311 |
| 1/20/03 | 417,121,263,545 | 402,104,898,058 | 2,701,221,144 | (375,742,552) | 2,325,478,592 | 12.7620310% | 296,778,299 | 26.670% | 79,150,772 | 1,154,282 | 80,305,054 |
| 1/20/04 | 409,288,829,823 | 394,554,431,950 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/05 | 400,121,545,242 | 385,717,169,613 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/06 | 390,600,917,786 | 376,539,284,745 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/07 | 381,728,085,599 | 367,985,874,518 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/08 | 373,532,493,923 | 360,085,324,142 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/09 | 366,818,979,304 | 353,613,496,049 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/10 | 359,604,895,613 | 346,659,119,371 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/11 | 352,165,065,086 | 339,487,122,742 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/12 | 344,371,891,683 | 331,974,503,583 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/13 | 336,441,307,163 | 324,329,420,105 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/14 | 328,206,455,167 | 316,391,022,781 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/15 | 322,523,523,933 | 310,912,677,071 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/16 | 316,575,585,543 | 305,178,864,463 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/17 | 310,676,722,552 | 299,492,360,540 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/18 | 304,905,455,599 | 293,928,859,197 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/19 | 299,242,154,524 | 288,469,436,961 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/20 | 293,304,031,214 | 282,745,086,090 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/21 | 288,651,683,364 | 278,260,222,763 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/22 | 283,538,026,761 | 273,330,657,798 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/23 | 278,100,472,523 | 268,088,855,512 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/24 | 272,977,000,841 | 263,149,828,810 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/25 | 269,296,345,896 | 259,601,677,444 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/26 | 265,900,328,267 | 256,327,916,450 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/27 | 260,924,082,782 | 251,530,815,802 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/28 | 255,918,392,058 | 246,705,329,944 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/29 | 250,902,886,254 | 241,870,382,349 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/30 | 245,592,928,054 | 236,751,582,644 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/31 | 241,765,046,912 | 233,061,505,223 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/32 | 237,367,891,138 | 228,822,647,057 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/33 | 232,941,290,125 | 224,555,403,680 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/34 | 228,485,243,872 | 220,259,775,093 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/35 | 223,302,881,710 | 215,263,977,969 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/36 | 218,729,054,499 | 210,854,808,537 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/37 | 215,087,659,874 | 207,344,504,119 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/38 | 211,632,751,766 | 204,013,972,703 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/39 | 208,040,432,540 | 200,550,976,969 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/40 | 204,114,400,600 | 196,766,282,178 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/41 | 200,168,738,499 | 192,962,663,913 | 0 | 0 | 0 | 12.7620310% | 0 | 26.670% | 0 | 0 | 0 |
| 1/20/42 | 195,987,514,482 | 188,931,963,961 | | | | | | | | | |

*Annual Payments*

In accordance with the Collection Methodology and Assumptions, the amount of Annual Payments to be made by the PMs was calculated by applying the adjustments applicable to the Annual Payments in the order, and in the amounts, set out in the MSA, as follows:

*Inflation Adjustment.* First, the Inflation Adjustment was applied to the schedule of base amounts for the Annual Payments set forth in the MSA. The Inflation Adjustment was assumed to be the minimum provided in the MSA, 3% per year, compounded annually, for the entire Collection forecast period.

*Volume Adjustment.* Next, the annual amounts calculated for each year after application of the Inflation Adjustment was adjusted for the Volume Adjustment by applying the WEFA Base Case Forecast for United States cigarette consumption to the market share of the OPMs for the prior year. No add-back or benefit was assumed from any Income Adjustment. See "DESCRIPTION OF THE MASTER SETTLEMENT AGREEMENT—Adjustments to Participating Manufacturer Payments—Volume Adjustment" for a description of the formula used to calculate the Volume Adjustment.

*Previously-Settled States Reduction.* Next, the annual amounts calculated for each year after application of the Inflation Adjustment and the Volume Adjustment were reduced by the Previously-Settled States Reduction which applies only to the payments owed by the OPMs. The Previously-Settled States Reduction is as follows for each year of the following period:

| | |
|---|---|
| 2000 through 2007 | 12.4500000% |
| 2008 through 2017 | 12.2373756% |
| 2018 and after | 11.0666667% |

*Non-Settling States Reduction.* For the reasons described above under "—Initial Payments," the Non-Settling States Reduction was not applied to the Annual Payments.

*NPM Adjustment.* The NPM Adjustment will not apply to the Annual Payments payable to any state that enacts and enforces a Model Statute or a Qualifying Statute so long as such statute is not held to be unenforceable. The Collection Methodology and Assumptions include an assumption that the State will enforce a Model Statute and that it is not held to be unenforceable. For a discussion of the New York State Model Statute, see "DESCRIPTION OF THE MASTER SETTLEMENT AGREEMENT—MSA Provisions Relating to Model Statute/Qualifying Statute—Status of New York Model Statute."

*Offset for Miscalculated or Disputed Payments.* The Collection Methodology and Assumptions include an assumption that there will be no adjustments to the Annual Payments due to miscalculated or disputed payments.

*Federal Tobacco Legislation Offset.* The Collection Methodology and Assumptions include an assumption that the Federal Tobacco Legislation Offset will have no effect on payments under the MSA. As of the date hereof, no legislation has been introduced in the United States Congress that would cause this offset to apply. Unless federal legislation is enacted on or prior to November 30, 2002, this offset will not apply.

*Litigating Releasing Parties Offset.* The Collection Methodology and Assumptions include an assumption that the Litigating Releasing Parties Offset will have no effect on payments.

*Offset for Claims-Over.* The Collection Methodology and Assumptions include an assumption that the Offset for Claims-Over will have no effect on payments.

*Subsequent Participating Manufacturers.* The Collection Methodology and Assumptions assume that the relative market share of the SPMs remains constant at 3.3%, the estimated market share for the first quarter of 1999. Because the 3.3% market share is greater than 3.125% (125% of 2.5%, the SPMs' estimated 1997 market share), the SPMs are required to make Annual Payments in each year. Based on these assumptions, in the first year, the Annual Payments required to be made by the SPMs are greater than the reduction in the Annual Payments required to be made by the OPMs due to the Volume Adjustment, primarily because the SPMs' Annual Payments are not adjusted for the Previously-Settled States Reduction. However, in subsequent years, the Annual Payments required to be made by the SPMs are assumed to be less than the reduction in the Annual Payments required to be made by the OPMs due to the Volume Adjustment, primarily because of the order in which the Volume Adjustment and Inflation Adjustment are applied. As a result, based on the Collection Methodology and

Assumptions, the aggregate payments to be made by the PMs will be lower in subsequent years than if the relative aggregate market share of the OPMs were 97%, their aggregate estimated 1997 market share.

*State Allocation Percentage for the State of New York.* The amount of Annual Payments, after application of the Inflation Adjustment, the Volume Adjustment and the Previously-Settled States Reduction for each year was multiplied by the State Allocation Percentage for the State of New York (12.7620310%) in order to determine the amount of Annual Payments to be made by the PMs in each year to be allocated to New York State.

*Consent Decree Allocation Percentage for New York City.* The amount of Annual Payments in each year to be allocated to New York State, calculated as described in the preceding paragraph, was multiplied by the percentage of such payments that is allocated to New York City pursuant to the Decree (26.670%) in order to determine the amount of Annual Payments assumed to be received by TSASC in each year.

The following table shows the projection of Annual Payments and total payments (including Initial Payments) to be received by TSASC through the year 2042, calculated in accordance with the Collection Methodology and Assumptions through the year 2042.

# Projection of Annual and Total Payments to be Received by TSASC

| Date | WEFA Base Case Consumption Forecast | OPM-Adjusted Consumption | Annual Payments | Inflation Adjustment | Volume Adjustment | Previously Settled States Reduction | Subtotal | State Allocation | Annual Payments to State | TSASC Allocation | Total OPM Payments to TSASC | Total SPM Payments to TSASC | Interest Earned April to July | Total Annual Payments to TSASC | Total Initial Payments to TSASC | Total Annual Payments to TSASC | Total Payments to TSASC |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Annual Payments | | | | | | | | | | | | Total Payments | | |
| 4/25/99 | 432,050,000,000 | 416,496,200,000 | | | | | | | | | | | | | | | |
| 4/25/00 | 430,744,594,380 | 415,237,788,982 | $4,500,000,000 | $ 135,000,000 | ($ 564,949,374) | ($ 506,721,303) | $ 3,563,329,323 | 12.7620310% | $ 454,753,193 | 26.670% | $121,282,677 | $251,480 | $ 810,228 | $122,344,384 | $ 74,959,913 | $122,344,384 | $197,304,297 |
| 4/25/01 | 429,566,784,797 | 414,102,380,545 | 5,000,000,000 | 304,500,000 | (660,306,256) | (578,202,121) | 4,065,991,623 | 12.7620310% | 518,903,111 | 26.670% | 138,391,460 | 286,955 | 924,523 | 139,602,938 | 76,980,743 | 139,602,938 | 216,583,681 |
| 4/25/02 | 423,383,284,491 | 408,141,486,249 | 6,500,000,000 | 602,725,500 | (900,765,455) | (772,144,026) | 5,429,816,019 | 12.7620310% | 692,954,804 | 26.670% | 184,811,046 | 383,206 | 1,234,628 | 186,428,881 | 79,078,311 | 186,428,881 | 265,507,192 |
| 4/25/03 | 417,121,263,545 | 402,104,898,058 | 6,500,000,000 | 815,807,265 | (1,017,636,079) | (784,122,313) | 5,514,048,873 | 12.7620310% | 703,704,627 | 26.670% | 187,678,024 | 389,151 | 1,253,781 | 189,320,956 | 80,305,054 | 189,320,956 | 269,626,011 |
| 4/25/04 | 409,288,829,823 | 394,554,431,950 | 8,000,000,000 | 1,274,192,594 | (1,405,394,956) | (979,665,306) | 6,889,132,332 | 12.7620310% | 879,193,204 | 26.670% | 234,480,827 | 486,197 | 1,566,447 | 236,533,471 | 0 | 236,533,471 | 236,533,471 |
| 4/25/05 | 400,121,545,242 | 385,717,169,613 | 8,000,000,000 | 1,552,418,372 | (1,596,157,279) | (990,554,506) | 6,965,706,588 | 12.7620310% | 888,965,634 | 26.670% | 237,087,135 | 491,601 | 1,583,858 | 239,162,594 | 0 | 239,162,594 | 239,162,594 |
| 4/25/06 | 390,600,917,786 | 376,539,284,745 | 8,000,000,000 | 1,838,990,923 | (1,823,185,641) | (997,967,758) | 7,017,837,525 | 12.7620310% | 895,618,600 | 26.670% | 238,861,481 | 495,280 | 1,595,712 | 240,952,473 | 0 | 240,952,473 | 240,952,473 |
| 4/25/07 | 381,728,085,599 | 367,985,874,518 | 8,000,000,000 | 2,134,160,651 | (2,069,511,204) | (1,004,048,856) | 7,060,600,591 | 12.7620310% | 901,076,036 | 26.670% | 240,316,979 | 498,298 | 1,605,435 | 242,420,712 | 0 | 242,420,712 | 242,420,712 |
| 4/25/08 | 373,532,493,923 | 360,085,324,142 | 8,139,000,000 | 2,480,548,943 | (2,355,778,134) | (1,011,268,673) | 7,252,502,137 | 12.7620310% | 925,566,571 | 26.670% | 246,848,604 | 510,602 | 1,649,061 | 249,008,267 | 0 | 249,008,267 | 249,008,267 |
| 4/25/09 | 366,818,979,304 | 353,613,496,049 | 8,139,000,000 | 2,799,135,411 | (2,604,498,100) | (1,019,818,499) | 7,313,818,813 | 12.7620310% | 933,391,824 | 26.670% | 248,935,600 | 514,918 | 1,663,003 | 251,113,521 | 0 | 251,113,521 | 251,113,521 |
| 4/25/10 | 359,604,895,613 | 346,659,119,371 | 8,139,000,000 | 3,127,279,474 | (2,832,857,481) | (1,032,029,525) | 7,401,392,468 | 12.7620310% | 944,568,001 | 26.670% | 251,916,286 | 521,084 | 1,682,916 | 254,120,286 | 0 | 254,120,286 | 254,120,286 |
| 4/25/11 | 352,165,065,086 | 339,487,122,742 | 8,139,000,000 | 3,465,267,858 | (3,084,111,351) | (1,042,643,554) | 7,477,512,954 | 12.7620310% | 954,282,521 | 26.670% | 254,507,148 | 526,443 | 1,700,224 | 256,733,815 | 0 | 256,733,815 | 256,733,815 |
| 4/25/12 | 344,371,891,683 | 331,974,503,583 | 8,139,000,000 | 3,813,395,894 | (3,353,249,918) | (1,052,309,791) | 7,546,836,185 | 12.7620310% | 963,129,573 | 26.670% | 256,866,657 | 531,324 | 1,715,987 | 259,113,967 | 0 | 259,113,967 | 259,113,967 |
| 4/25/13 | 336,441,307,163 | 324,329,420,105 | 8,139,000,000 | 4,171,967,771 | (3,644,400,798) | (1,060,560,352) | 7,606,006,620 | 12.7620310% | 970,680,923 | 26.670% | 258,880,602 | 535,489 | 1,729,441 | 261,145,532 | 0 | 261,145,532 | 261,145,532 |
| 4/25/14 | 328,206,455,167 | 316,391,022,781 | 8,139,000,000 | 4,541,296,804 | (3,953,463,487) | (1,067,935,371) | 7,658,897,946 | 12.7620310% | 977,430,930 | 26.670% | 260,680,829 | 539,213 | 1,741,467 | 262,961,509 | 0 | 262,961,509 | 262,961,509 |
| 4/25/15 | 322,523,523,933 | 310,912,677,071 | 8,139,000,000 | 4,921,705,708 | (4,285,682,798) | (1,073,832,512) | 7,701,190,397 | 12.7620310% | 982,828,306 | 26.670% | 262,120,309 | 542,191 | 1,751,083 | 264,413,583 | 0 | 264,413,583 | 264,413,583 |
| 4/25/16 | 316,575,585,543 | 305,178,864,463 | 8,139,000,000 | 5,313,526,879 | (4,566,093,354) | (1,087,466,248) | 7,798,967,277 | 12.7620310% | 995,306,622 | 26.670% | 265,448,276 | 549,075 | 1,773,316 | 267,770,666 | 0 | 267,770,666 | 267,770,666 |
| 4/25/17 | 310,676,722,552 | 299,492,360,540 | 8,139,000,000 | 5,717,102,685 | (4,866,764,472) | (1,100,059,081) | 7,889,279,132 | 12.7620310% | 1,006,832,249 | 26.670% | 268,522,161 | 555,433 | 1,793,851 | 270,871,444 | 0 | 270,871,444 | 270,871,444 |
| 4/25/18 | 304,905,455,599 | 293,928,859,197 | 9,000,000,000 | 6,781,554,478 | (5,727,949,089) | (1,112,599,000) | 8,941,006,389 | 12.7620310% | 1,141,054,007 | 26.670% | 304,319,104 | 621,192 | 2,032,935 | 306,973,231 | 0 | 306,973,231 | 306,973,231 |
| 4/25/19 | 299,242,154,524 | 288,469,436,961 | 9,000,000,000 | 7,255,001,112 | (6,086,111,346) | (1,125,357,138) | 9,043,532,629 | 12.7620310% | 1,154,138,438 | 26.670% | 307,808,721 | 628,315 | 2,056,247 | 310,493,283 | 0 | 310,493,283 | 310,493,283 |
| 4/25/20 | 293,304,031,214 | 282,745,086,090 | 9,000,000,000 | 7,742,651,145 | (6,457,017,966) | (1,138,276,742) | 9,147,356,438 | 12.7620310% | 1,167,388,464 | 26.670% | 311,342,503 | 635,528 | 2,079,854 | 314,057,885 | 0 | 314,057,885 | 314,057,885 |
| 4/25/21 | 288,651,683,364 | 278,260,222,763 | 9,000,000,000 | 8,244,930,680 | (6,854,114,383) | (1,149,917,007) | 9,240,899,290 | 12.7620310% | 1,179,326,432 | 26.670% | 314,526,359 | 642,027 | 2,101,123 | 317,269,509 | 0 | 317,269,509 | 317,269,509 |
| 4/25/22 | 283,538,026,761 | 273,330,657,798 | 9,000,000,000 | 8,762,278,600 | (7,223,865,176) | (1,166,251,089) | 9,372,162,335 | 12.7620310% | 1,196,078,263 | 26.670% | 318,994,073 | 651,147 | 2,130,968 | 321,776,188 | 0 | 321,776,188 | 321,776,188 |
| 4/25/23 | 278,100,472,523 | 268,088,855,512 | 9,000,000,000 | 9,295,146,958 | (7,626,394,772) | (1,180,675,246) | 9,488,076,941 | 12.7620310% | 1,210,871,320 | 26.670% | 322,939,381 | 659,200 | 2,157,324 | 325,755,905 | 0 | 325,755,905 | 325,755,905 |
| 4/25/24 | 272,977,000,841 | 263,149,828,810 | 9,000,000,000 | 9,844,001,367 | (8,058,697,133) | (1,193,573,672) | 9,591,730,562 | 12.7620310% | 1,224,099,628 | 26.670% | 326,467,371 | 666,402 | 2,180,892 | 329,314,664 | 0 | 329,314,664 | 329,314,664 |
| 4/25/25 | 269,296,345,896 | 259,601,677,444 | 9,000,000,000 | 10,409,321,408 | (8,497,966,106) | (1,207,523,324) | 9,703,831,978 | 12.7620310% | 1,238,406,045 | 26.670% | 330,282,892 | 674,190 | 2,206,381 | 333,163,463 | 0 | 333,163,463 | 333,163,463 |
| 4/25/26 | 265,900,328,267 | 256,327,916,450 | 9,000,000,000 | 10,991,601,050 | (8,899,049,702) | (1,227,575,686) | 9,864,975,662 | 12.7620310% | 1,258,971,252 | 26.670% | 335,767,633 | 685,386 | 2,243,020 | 338,696,039 | 0 | 338,696,039 | 338,696,039 |
| 4/25/27 | 260,924,082,782 | 251,530,815,802 | 9,000,000,000 | 11,591,349,082 | (9,304,909,239) | (1,249,032,680) | 10,037,407,163 | 12.7620310% | 1,280,977,014 | 26.670% | 341,636,570 | 697,366 | 2,282,226 | 344,616,162 | 0 | 344,616,162 | 344,616,162 |
| 4/25/28 | 255,918,392,058 | 246,705,329,944 | 9,000,000,000 | 12,209,089,554 | (9,793,677,113) | (1,263,305,647) | 10,152,106,794 | 12.7620310% | 1,295,615,016 | 26.670% | 345,540,525 | 705,335 | 2,308,306 | 348,554,166 | 0 | 348,554,166 | 348,554,166 |
| 4/25/29 | 250,902,886,254 | 241,870,382,349 | 9,000,000,000 | 12,845,362,241 | (10,304,674,210) | (1,277,169,479) | 10,263,518,551 | 12.7620310% | 1,309,833,419 | 26.670% | 349,332,573 | 713,076 | 2,333,638 | 352,379,286 | 0 | 352,379,286 | 352,379,286 |
| 4/25/30 | 245,592,928,054 | 236,751,582,644 | 9,000,000,000 | 13,500,723,108 | (10,837,955,456) | (1,290,679,624) | 10,372,088,028 | 12.7620310% | 1,323,689,089 | 26.670% | 353,027,880 | 720,619 | 2,358,323 | 356,106,822 | 0 | 356,106,822 | 356,106,822 |
| 4/25/31 | 241,765,046,912 | 233,061,505,223 | 9,000,000,000 | 14,175,744,801 | (11,407,513,103) | (1,302,350,979) | 10,465,880,720 | 12.7620310% | 1,335,658,942 | 26.670% | 356,220,240 | 727,135 | 2,379,649 | 359,327,024 | 0 | 359,327,024 | 359,327,024 |
| 4/25/32 | 237,367,891,138 | 228,822,647,057 | 9,000,000,000 | 14,871,017,145 | (11,931,222,979) | (1,321,337,225) | 10,618,456,941 | 12.7620310% | 1,355,130,767 | 26.670% | 361,413,375 | 737,735 | 2,414,341 | 364,565,452 | 0 | 364,565,452 | 364,565,452 |
| 4/25/33 | 232,941,290,125 | 224,555,403,680 | 9,000,000,000 | 15,587,147,660 | (12,503,888,386) | (1,337,214,030) | 10,746,045,243 | 12.7620310% | 1,371,413,625 | 26.670% | 365,756,014 | 746,600 | 2,443,351 | 368,945,964 | 0 | 368,945,964 | 368,945,964 |
| 4/25/34 | 228,485,243,872 | 220,259,775,093 | 9,000,000,000 | 16,324,762,089 | (13,101,656,670) | (1,352,690,337) | 10,870,415,082 | 12.7620310% | 1,387,285,743 | 26.670% | 369,989,108 | 755,241 | 2,471,629 | 373,215,977 | 0 | 373,215,977 | 373,215,977 |
| 4/25/35 | 223,302,881,710 | 215,263,977,969 | 9,000,000,000 | 17,084,504,952 | (13,725,563,036) | (1,367,722,909) | 10,991,219,007 | 12.7620310% | 1,402,702,777 | 26.670% | 374,100,831 | 763,634 | 2,499,096 | 377,363,561 | 0 | 377,363,561 | 377,363,561 |
| 4/25/36 | 218,729,054,499 | 210,854,808,537 | 9,000,000,000 | 17,867,040,101 | (14,413,869,771) | (1,378,150,854) | 11,075,019,476 | 12.7620310% | 1,413,397,419 | 26.670% | 376,953,092 | 769,456 | 2,518,150 | 380,240,698 | 0 | 380,240,698 | 380,240,698 |
| 4/25/37 | 215,087,659,874 | 207,344,504,119 | 9,000,000,000 | 18,673,051,304 | (15,097,675,247) | (1,391,674,954) | 11,183,701,102 | 12.7620310% | 1,427,267,402 | 26.670% | 380,652,216 | 777,007 | 2,542,861 | 383,972,084 | 0 | 383,972,084 | 383,972,084 |
| 4/25/38 | 211,632,751,766 | 204,013,972,703 | 9,000,000,000 | 19,503,242,843 | (15,756,750,194) | (1,410,611,857) | 11,335,880,792 | 12.7620310% | 1,446,688,621 | 26.670% | 385,831,855 | 787,580 | 2,577,463 | 389,196,898 | 0 | 389,196,898 | 389,196,898 |
| 4/25/39 | 208,040,432,540 | 200,550,976,969 | 9,000,000,000 | 20,358,340,128 | (16,430,907,736) | (1,430,635,856) | 11,496,796,537 | 12.7620310% | 1,467,224,738 | 26.670% | 391,308,838 | 798,760 | 2,614,051 | 394,721,648 | 0 | 394,721,648 | 394,721,648 |
| 4/25/40 | 204,114,400,600 | 196,766,282,178 | 9,000,000,000 | 21,239,090,332 | (17,139,586,443) | (1,449,678,435) | 11,649,825,454 | 12.7620310% | 1,486,754,336 | 26.670% | 396,517,381 | 809,392 | 2,648,845 | 399,975,618 | 0 | 399,975,618 | 399,975,618 |
| 4/25/41 | 200,168,738,499 | 192,962,663,913 | 9,000,000,000 | 22,146,263,042 | (17,896,641,818) | (1,466,291,420) | 11,783,329,804 | 12.7620310% | 1,503,792,202 | 26.670% | 401,061,380 | 818,667 | 2,679,200 | 404,559,248 | 0 | 404,559,248 | 404,559,248 |
| 4/25/42 | 195,987,514,482 | 188,931,963,961 | 9,000,000,000 | 23,080,650,933 | (18,684,945,657) | (1,482,458,055) | 11,913,247,221 | 12.7620310% | 1,520,372,303 | 26.670% | 405,483,293 | 827,693 | 2,708,740 | 409,019,726 | 0 | 409,019,726 | 409,019,726 |

*Interest Earnings*

The Collection Methodology and Assumptions assume that the Indenture Trustee will receive ten days after January 10 in the years 2000, 2001, 2002 and 2003, TSASC's share of the Initial Payments owed by the OPMs. It is also assumed that the Indenture Trustee will receive ten days after April 15, TSASC's share of the Annual Payments owed by the PMs on each such year commencing in 2000. Interest is assumed to be earned on the Initial Payments and Annual Payments received by the Indenture Trustee at the rate of 3% per annum until the next Distribution Date, except in the case of amounts that are expected to be paid earlier to the holder of the Residual Certificate as permitted by the Indenture. No interest earnings have been assumed on the Initial Payments and the Annual Payments prior to the time they are received by the Indenture Trustee.

Interest is assumed to be earned on amounts on deposit in the Liquidity Reserve Account at the rate of 6.30% per annum in the case of the Liquidity Reserve Requirement for the Series 1999-1 Bonds and at the rate of 6.80% per annum in the case of all amounts on deposit therein attributable to other Series of Program Bonds. Amounts in the Bond Fund other than the Liquidity Reserve Account are assumed to be invested at a rate of 3.00% per annum.

**Structuring Assumptions**

*General*

The Structuring Assumptions for the Program Bonds were applied to the forecast of Collections described above. Based on the City's objective to receive approximately $2.4 billion of proceeds in equal installments over four years, Rated Maturities and Planned Principal Payments were structured to produce projected debt service coverage ratios consistent with certain credit ratings and to provide additional credit enhancement through the application of Planned Principal Payments. As used herein, "**Rated Maturity debt service coverage ratio**" means, for any period, a fraction, expressed as a multiple, the numerator of which is the amount of Collections received in such period, and the denominator of which is the sum of TSASC's operating expenses and interest and Rated Maturities required to be paid in such period. As used herein, "**Planned Principal Payment debt service coverage ratio**" means, for any period, a fraction, expressed as a multiple, the numerator of which is the amount of Collections received in such period, and the denominator of which is the sum of TSASC's operating expenses and interest and Planned Principal Payments to be paid in such period.

The Structuring Assumptions are described below:

*Desired Proceeds.* The City's objective is to receive an aggregate of approximately $2.4 billion of proceeds (in annual installments for the next four years) to use for capital purposes.

*Liquidity Reserve Account.* The Liquidity Reserve Account was established for the Program Bonds at the maximum annual debt service requirement in any year for each Series, assuming principal is paid in accordance with the Rated Maturities.

*Debt Service Coverage Ratios.* The debt service coverage ratios were targeted differently for the Rated Maturities and Planned Principal Payments, as described under "—Rated Maturities" and "—Planned Principal Payments" below.

*Capitalized Interest.* Interest on the Series 1999-1 Bonds was capitalized through the Distribution Date on July 15, 2000. Interest was capitalized for the first two Distribution Dates on the other Series of Program Bonds.

*Operating Expense Assumptions.* Operating expenses of TSASC have been assumed at the Operating Cap of $1,000,000 in 2000 and inflated at 3.0% per year. No arbitrage rebate expense was assumed since it has been assumed that the yield on TSASC investments will not exceed the yield on the Bonds.

*Issuance Dates.* The Program Bonds were assumed to be issued in four Series in November 1999 and April of 2001, 2002 and 2003.

*Interest Rates.* The Series 1999-1 Bonds will bear interest at the rates shown on page (i) of this Offering Circular. Each subsequent Series of Program Bonds was assumed to be issued at an interest rate of 7.00% per annum.

*Principal Amortization.* Principal amortization for the Program Bonds was structured differently for the Rated Maturities and Planned Principal Payments, as described below.

*Rated Maturities*

The Rated Maturities for each Series of Program Bonds were structured to repay each Series of Program Bonds within 40 years from the date of issuance of such Series and to achieve Rated Maturity debt service coverage ratios consistent with certain credit ratings, taking into account the amount of Collections projected (based on the WEFA Base Case Forecast) and the Structuring Assumptions. The Rated Maturities for each Series were determined by targeting an average debt service coverage ratio of 1.7x, with a minimum Rated Maturity debt service coverage ratio in any year of 1.3x. Further, it was determined that no Rated Maturities would be due on any Series of Program Bonds before the fourth anniversary of the date of issuance of such Series.

Failure to pay Cumulative Rated Maturities Due will constitute an Event of Default. The rating assigned to the Series 1999-1 Bonds by each Rating Agency addresses such Rating Agency's assessment of the ability of TSASC to pay interest when due and to make cumulative principal payments on the Series 1999-1 Bonds in accordance with the Rated Maturities. Money on deposit in the Liquidity Reserve Account will be available to make interest payments and principal payments in accordance with the Rated Maturities of the Program Bonds if money in the Debt Service Account is insufficient for such purpose.

Set forth below is a schedule showing estimated Rated Maturities of each of the Series of Program Bonds and the resulting estimated Rated Maturity debt service coverage ratios, assuming that Collections are received in accordance with the Collection Methodology and Assumptions, that no principal payments are made in advance of the schedule of Rated Maturities and that interest rates for each Series of Program Bonds are as described above under "Structuring Assumptions." However, the actual Rated Maturities of Program Bonds other than the Series 1999-1 Bonds will be different as a result of various factors including, without limitation, prevailing market conditions and interest rates, and will be determined at the time of issuance of such Program Bonds.

# Rated Maturities[1]

| Date | Total Available Funds[2] | Series 1999-1 Balance | Series 1999-1 Principal | Series 1999-1 Interest | Series 2001-1 Balance | Series 2001-1 Principal | Series 2001-1 Interest | Series 2002-1 Balance | Series 2002-1 Principal | Series 2002-1 Interest | Series 2003-1 Balance | Series 2003-1 Principal | Series 2003-1 Interest | Total Principal | Total Interest | Total Debt Service | Debt Service Coverage for the Series 1999-1 Bonds[3][4] | Debt Service Coverage for Program Bonds |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 11/18/99 | | $709,280,000 | | | | | | | | | | | | $ 0 | $ 28,610,081 | $ 28,610,081 | 6.94x | 6.94x |
| 7/15/00 | $198,500,240 | 709,280,000 | $ 0 | $28,610,081 | $684,500,000 | | | | | | | | | 0 | 55,437,101 | 55,437,101 | 5.04x | 3.97x |
| 7/15/01 | 219,909,769 | 709,280,000 | 0 | 43,458,351 | 684,500,000 | $ 0 | $11,978,750 | $684,500,000 | | | | | | 0 | 103,352,101 | 103,352,101 | 6.16x | 2.64x |
| 7/15/02 | 272,808,139 | 709,280,000 | 0 | 43,458,351 | 684,500,000 | 0 | 47,915,000 | 684,500,000 | $ 0 | $11,978,750 | $684,500,000 | | | | | | | |
| 7/15/03 | 280,836,695 | 700,645,000 | 8,635,000 | 43,458,351 | 684,500,000 | 0 | 47,915,000 | 684,500,000 | 0 | 47,915,000 | 684,500,000 | $ 0 | $ 11,978,750 | 8,635,000 | 151,267,101 | 159,902,101 | 5.22x | 1.76x |
| 7/15/04 | 250,634,619 | 697,770,000 | 2,875,000 | 43,097,876 | 683,605,000 | 895,000 | 47,915,000 | 684,500,000 | 0 | 47,915,000 | 684,500,000 | 0 | 47,915,000 | 3,770,000 | 186,842,876 | 190,612,876 | 5.19x | 1.31x |
| 7/15/05 | 253,228,963 | 694,285,000 | 3,485,000 | 42,968,501 | 682,895,000 | 710,000 | 47,852,350 | 684,270,000 | 230,000 | 47,915,000 | 684,500,000 | 0 | 47,915,000 | 4,425,000 | 186,650,851 | 191,075,851 | 5.20x | 1.33x |
| 7/15/06 | 254,983,020 | 690,315,000 | 3,970,000 | 42,808,191 | 681,800,000 | 1,095,000 | 47,802,650 | 683,695,000 | 575,000 | 47,898,900 | 683,610,000 | 890,000 | 47,915,000 | 6,530,000 | 186,424,741 | 192,954,741 | 5.20x | 1.32x |
| 7/15/07 | 256,414,364 | 685,890,000 | 4,425,000 | 42,617,728 | 680,355,000 | 1,445,000 | 47,726,000 | 682,805,000 | 890,000 | 47,858,650 | 682,385,000 | 1,225,000 | 47,852,700 | 7,985,000 | 186,055,078 | 194,040,078 | 5.20x | 1.32x |
| 7/15/08 | 262,963,916 | 679,880,000 | 6,010,000 | 42,402,009 | 677,560,000 | 2,795,000 | 47,624,850 | 680,610,000 | 2,195,000 | 47,796,350 | 680,205,000 | 2,180,000 | 47,766,950 | 13,180,000 | 185,590,159 | 198,770,159 | 5.19x | 1.32x |
| 7/15/09 | 265,030,026 | 673,190,000 | 6,690,000 | 42,102,228 | 674,170,000 | 3,390,000 | 47,429,200 | 677,870,000 | 2,740,000 | 47,642,700 | 677,480,000 | 2,725,000 | 47,614,350 | 15,545,000 | 184,788,478 | 200,333,478 | 5.19x | 1.32x |
| 7/15/10 | 267,996,473 | 665,610,000 | 7,580,000 | 41,763,215 | 669,980,000 | 4,190,000 | 47,191,900 | 674,375,000 | 3,495,000 | 47,450,900 | 674,385,000 | 3,095,000 | 47,423,600 | 18,360,000 | 183,829,615 | 202,189,615 | 5.19x | 1.33x |
| 7/15/11 | 270,568,476 | 657,335,000 | 8,275,000 | 41,366,720 | 665,005,000 | 4,975,000 | 46,898,600 | 670,150,000 | 4,225,000 | 47,206,250 | 670,590,000 | 3,795,000 | 47,206,950 | 21,270,000 | 182,678,520 | 203,948,520 | 5.21x | 1.33x |
| 7/15/12 | 272,905,855 | 648,930,000 | 8,405,000 | 40,925,283 | 659,235,000 | 5,770,000 | 46,550,350 | 665,185,000 | 4,965,000 | 46,910,500 | 666,090,000 | 4,500,000 | 46,941,300 | 23,640,000 | 181,327,433 | 204,967,433 | 5.29x | 1.33x |
| 7/15/13 | 274,893,364 | 639,715,000 | 9,215,000 | 40,472,028 | 652,680,000 | 6,555,000 | 46,146,450 | 659,495,000 | 5,690,000 | 46,562,950 | 663,185,000 | 2,905,000 | 46,626,300 | 24,365,000 | 179,807,728 | 204,172,728 | 5.29x | 1.35x |
| 7/15/14 | 276,663,963 | 629,670,000 | 10,045,000 | 39,965,203 | 645,325,000 | 7,355,000 | 45,687,600 | 653,070,000 | 6,425,000 | 46,164,650 | 659,715,000 | 3,470,000 | 46,422,950 | 27,295,000 | 178,240,403 | 205,535,403 | 5.29x | 1.35x |
| 7/15/15 | 278,069,298 | 622,280,000 | 7,390,000 | 39,396,793 | 637,190,000 | 8,135,000 | 45,172,750 | 645,930,000 | 7,140,000 | 45,714,900 | 656,105,000 | 3,610,000 | 46,180,050 | 26,275,000 | 176,464,493 | 202,739,493 | 5.69x | 1.37x |
| 7/15/16 | 281,378,240 | 614,220,000 | 8,060,000 | 38,969,874 | 627,850,000 | 9,340,000 | 44,603,300 | 637,665,000 | 8,265,000 | 45,215,100 | 652,010,000 | 4,095,000 | 45,927,350 | 29,760,000 | 174,715,624 | 204,475,624 | 5.73x | 1.38x |
| 7/15/17 | 284,429,432 | 605,175,000 | 9,045,000 | 38,496,349 | 617,275,000 | 10,575,000 | 43,949,500 | 630,090,000 | 7,575,000 | 44,636,550 | 647,080,000 | 4,930,000 | 45,640,700 | 32,125,000 | 172,723,099 | 204,848,099 | 5.73x | 1.39x |
| 7/15/18 | 320,480,146 | 589,535,000 | 15,640,000 | 37,962,694 | 602,020,000 | 15,255,000 | 43,209,250 | 616,780,000 | 13,310,000 | 44,106,300 | 636,595,000 | 10,485,000 | 45,295,600 | 54,690,000 | 170,573,844 | 225,263,844 | 5.76x | 1.42x |
| 7/15/19 | 323,877,593 | 572,375,000 | 17,160,000 | 37,024,294 | 585,660,000 | 16,360,000 | 42,141,400 | 602,790,000 | 13,990,000 | 43,174,600 | 625,550,000 | 11,045,000 | 44,561,650 | 58,555,000 | 166,901,944 | 225,456,944 | 5.76x | 1.44x |
| 7/15/20 | 327,258,173 | 555,450,000 | 16,925,000 | 35,994,694 | 570,355,000 | 15,305,000 | 40,996,200 | 587,910,000 | 14,880,000 | 42,195,300 | 613,510,000 | 12,040,000 | 43,788,500 | 59,150,000 | 162,974,694 | 222,124,694 | 5.96x | 1.47x |
| 7/15/21 | 330,378,988 | 536,990,000 | 18,460,000 | 34,979,194 | 554,070,000 | 16,285,000 | 39,924,850 | 572,215,000 | 15,695,000 | 41,153,700 | 600,770,000 | 12,740,000 | 42,945,700 | 63,180,000 | 159,003,444 | 222,183,444 | 5.96x | 1.49x |
| 7/15/22 | 334,793,184 | 516,675,000 | 20,315,000 | 33,844,294 | 536,455,000 | 17,615,000 | 38,784,900 | 555,980,000 | 16,235,000 | 40,055,050 | 587,105,000 | 13,665,000 | 42,053,900 | 67,830,000 | 154,738,144 | 222,568,144 | 5.97x | 1.50x |
| 7/15/23 | 338,600,286 | 495,260,000 | 21,415,000 | 32,574,606 | 519,100,000 | 17,355,000 | 37,551,850 | 538,430,000 | 17,550,000 | 38,918,600 | 571,945,000 | 15,160,000 | 41,097,350 | 71,480,000 | 150,142,406 | 221,622,406 | 6.06x | 1.53x |
| 7/15/24 | 342,082,887 | 472,650,000 | 22,610,000 | 31,236,169 | 500,505,000 | 18,595,000 | 36,337,000 | 519,575,000 | 18,855,000 | 37,690,100 | 555,600,000 | 16,345,000 | 40,036,150 | 76,405,000 | 145,299,419 | 221,704,419 | 6.14x | 1.54x |
| 7/15/25 | 345,774,264 | 449,565,000 | 23,085,000 | 29,823,044 | 480,550,000 | 19,955,000 | 35,035,350 | 498,925,000 | 20,650,000 | 36,370,250 | 537,745,000 | 17,855,000 | 38,892,000 | 81,545,000 | 140,120,644 | 221,665,644 | 6.32x | 1.56x |
| 7/15/26 | 351,201,386 | 425,375,000 | 24,190,000 | 28,380,231 | 459,090,000 | 21,460,000 | 33,638,500 | 479,140,000 | 19,785,000 | 34,924,750 | 519,115,000 | 18,630,000 | 37,642,150 | 84,065,000 | 134,585,631 | 218,650,631 | 6.46x | 1.61x |
| 7/15/27 | 356,977,660 | 398,925,000 | 26,450,000 | 26,868,356 | 436,050,000 | 23,040,000 | 32,136,300 | 459,010,000 | 20,130,000 | 33,539,800 | 499,115,000 | 20,000,000 | 36,338,050 | 89,620,000 | 128,882,506 | 218,502,506 | 6.48x | 1.63x |
| 7/15/28 | 360,562,394 | 373,295,000 | 25,630,000 | 25,215,231 | 411,640,000 | 24,410,000 | 30,523,500 | 437,615,000 | 21,395,000 | 32,130,700 | 478,905,000 | 20,210,000 | 34,938,050 | 91,645,000 | 122,807,481 | 214,452,481 | 6.87x | 1.68x |
| 7/15/29 | 364,151,185 | 347,005,000 | 26,290,000 | 23,613,356 | 386,795,000 | 24,845,000 | 28,814,800 | 415,070,000 | 22,545,000 | 30,633,050 | 457,890,000 | 21,015,000 | 33,523,350 | 94,695,000 | 116,584,556 | 211,279,556 | 7.07x | 1.72x |
| 7/15/30 | 367,735,903 | 319,950,000 | 27,055,000 | 21,970,231 | 360,420,000 | 26,375,000 | 27,075,650 | 391,405,000 | 23,665,000 | 29,054,900 | 435,230,000 | 22,660,000 | 32,052,300 | 99,755,000 | 110,153,081 | 209,908,081 | 7.28x | 1.75x |
| 7/15/31 | 370,881,102 | 291,055,000 | 28,895,000 | 20,279,294 | 332,335,000 | 28,085,000 | 25,229,400 | 366,140,000 | 25,265,000 | 27,398,350 | 412,110,000 | 23,120,000 | 30,466,100 | 105,365,000 | 103,373,144 | 208,738,144 | 7.32x | 1.78x |
| 7/15/32 | 376,042,278 | 260,205,000 | 30,850,000 | 18,473,356 | 301,615,000 | 30,720,000 | 23,263,450 | 338,715,000 | 27,425,000 | 25,629,800 | 386,940,000 | 25,170,000 | 28,847,700 | 114,165,000 | 96,214,306 | 210,379,306 | 7.40x | 1.79x |
| 7/15/33 | 380,315,220 | 227,395,000 | 32,810,000 | 16,545,231 | 269,295,000 | 32,320,000 | 21,113,050 | 309,810,000 | 28,905,000 | 23,710,050 | 359,700,000 | 27,240,000 | 27,085,800 | 121,275,000 | 88,454,131 | 209,729,131 | 7.48x | 1.81x |
| 7/15/34 | 384,503,276 | 191,995,000 | 35,400,000 | 14,494,606 | 234,345,000 | 34,950,000 | 18,850,650 | 278,910,000 | 30,900,000 | 21,686,700 | 329,960,000 | 29,740,000 | 25,179,000 | 130,990,000 | 80,210,956 | 211,200,956 | 7.49x | 1.82x |
| 7/15/35 | 388,426,444 | 154,080,000 | 37,915,000 | 12,239,681 | 197,820,000 | 36,525,000 | 16,404,150 | 245,610,000 | 33,300,000 | 19,523,700 | 298,530,000 | 31,430,000 | 23,097,200 | 139,170,000 | 71,264,731 | 210,434,731 | 7.53x | 1.85x |
| 7/15/36 | 391,116,084 | 113,380,000 | 40,700,000 | 9,822,600 | 158,710,000 | 39,110,000 | 13,847,400 | 210,235,000 | 35,375,000 | 17,192,700 | 266,015,000 | 32,515,000 | 20,897,100 | 147,700,000 | 61,759,800 | 209,459,800 | 7.53x | 1.87x |
| 7/15/37 | 394,322,390 | 74,190,000 | 39,190,000 | 7,227,975 | 117,320,000 | 41,390,000 | 11,109,700 | 174,190,000 | 36,045,000 | 14,716,450 | 231,020,000 | 34,995,000 | 18,621,050 | 151,620,000 | 51,675,175 | 203,295,175 | 8.27x | 1.94x |
| 7/15/38 | 398,776,285 | 37,105,000 | 37,085,000 | 4,729,613 | 73,680,000 | 43,640,000 | 8,212,400 | 136,915,000 | 37,275,000 | 12,193,300 | 194,030,000 | 36,990,000 | 16,171,400 | 154,990,000 | 41,306,713 | 196,296,713 | 9.29x | 2.03x |
| 7/15/39 | 403,674,192 | 0 | 37,105,000 | 2,365,444 | 29,725,000 | 33,955,000 | 5,157,600 | 96,730,000 | 40,185,000 | 9,584,050 | 154,015,000 | 40,015,000 | 13,582,100 | 151,260,000 | 30,689,194 | 181,949,194 | 9.98x | 2.22x |
| 7/15/40 | 406,346,139 | 0 | 0 | 0 | 0 | 29,725,000 | 2,780,750 | 45,420,000 | 51,310,000 | 6,771,100 | 108,225,000 | 45,790,000 | 10,781,050 | 136,825,000 | 20,332,900 | 157,157,900 | — | 2.59x |
| 7/15/41 | 408,238,972 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 45,420,000 | 3,179,400 | 55,680,000 | 52,545,000 | 7,575,750 | 97,965,000 | 10,755,150 | 108,720,150 | — | 3.75x |
| 7/15/42 | 409,305,630 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 55,680,000 | 3,897,600 | 55,680,000 | 3,897,600 | 59,577,600 | — | 6.87x |
| | | | $709,280,000 | | | $684,500,000 | | | $684,500,000 | | | $684,500,000 | | $ 2,762,780,00 | | | | |

(1) Utilizes calendar year debt service.

(2) Includes Total Payments to TSASC plus (+) earnings on Liquidity Reserve less (-) Operating Expenses.

(3) Assuming no further Program Bonds are issued. It is the current intention of TSASC to issue a total of approximately $2.8 billion of Program Bonds.

(4) Total Available Funds do not include investment earnings on the Liquidity Reserve amounts with respect to future Program Bonds for the purpose of Debt Service Coverage on the Series 1999-1 Bonds.

The estimated Rated Maturity debt service coverage ratios shown in the table above assume that Collections are received in accordance with the Collection Methodology and Assumptions and applied, subject to the payment priorities set forth in the Indenture, to pay expenses, interest as due and principal in accordance with the Rated Maturities. The actual Rated Maturity debt service coverage ratios will be higher than those shown in the above table if Collections are sufficient to pay Planned Principal Payments on each Planned Principal Payment Date. See the column entitled "Cumulative Excess of Planned Principal Payments Over Rated Maturities" on the inside front cover of this Offering Circular, which demonstrates the amount by which the outstanding principal balance of the Series 1999-1 Bonds would be reduced below the amount required pursuant to the Rated Maturities, assuming that principal is paid in accordance with the Planned Principal Payments. No assurance can be given, however, that sufficient Collections will be received to make Planned Principal Payments on each Distribution Date.

*Planned Principal Payments*

The Planned Principal Payments for each Series of Program Bonds were structured to repay each Series of Program Bonds within 30 years from the date of issuance of such Series. An average Planned Principal Payment debt service coverage ratio was targeted at 1.5x, with a minimum Planned Principal Payment debt service coverage ratio targeted at 1.3x, in each case taking into account the amount of Collections projected (based on the WEFA Base Case Forecast) and the Structuring Assumptions. No interest–only period was established for any Series of Program Bonds.

Collections and money in the Trapping Account, to the extent available, will be used to pay Planned Principal Payments. However, failure to pay principal of the Program Bonds in accordance with the Planned Principal Payments because of insufficient Collections available in the Debt Service Account and money in the Trapping Account will not constitute an Event of Default. The rating assigned to the Series 1999-1 Bonds by each Rating Agency does not address such Rating Agency's assessment of the likelihood of payment on the Series 1999-1 Bonds in accordance with the Planned Principal Payments. Money on deposit in the Liquidity Reserve Account will not be available to make principal payments in accordance with the Planned Principal Payments on the Program Bonds if amounts on deposit in the Debt Service Account and the Trapping Account are insufficient for such purpose. No amounts will be distributed with respect to the Residual Certificate unless TSASC is current with respect to Cumulative Planned Principal Payments Due. In addition, it is a condition to the issuance of additional Series of Program Bonds that the cumulative amount of principal paid on each outstanding Series of Program Bonds, as of the date of issuance of such additional Series, is at least equal to the Cumulative Planned Principal Payments Due for such Series.

Set forth below is a schedule showing estimated Planned Principal Payments for each of the Series of Program Bonds and the resulting estimated Planned Principal Payment debt service coverage ratios, assuming that Collections are received in accordance with the Collection Methodology and Assumptions. However, the actual Planned Principal Payments for Program Bonds other than the Series 1999-1 Bonds will be different as a result of various factors including, without limitation, prevailing market conditions and interest rates, and will be determined at the time of issuance of such Program Bonds.

# Planned Principal Payments[1]

| Date | Total Available Funds[2] | Series 1999-1 | | | Series 2001-1 | | | Series 2002-1 | | | Series 2003-1 | | | Total | | | Debt Service Coverage for the Series 1999-1 Bonds[3][4] | Debt Service Coverage for Program Bonds |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Balance | Principal | Interest | Balance | Principal | Interest | Balance | Principal | Interest | Balance | Principal | Interest | Principal | Interest | Debt Service | | |
| 11/18/99 | | $709,280,000 | | | | | | | | | | | | $ 5,620,000 | $ 28,610,081 | $ 34,230,081 | 5.80x | 5.80x |
| 7/15/00 | $198,500,240 | 703,660,000 | $ 5,620,000 | $28,610,081 | $684,500,000 | | | $684,500,000 | | | | | | 36,805,000 | 55,212,301 | 92,017,301 | 4.16x | 2.39x |
| 7/15/01 | 219,909,769 | 694,230,000 | 9,430,000 | 43,233,551 | 657,125,000 | $ 27,375,000 | $11,978,750 | 660,160,000 | $ 24,340,000 | $11,978,750 | $684,500,000 | | | 48,125,000 | 100,783,148 | 148,908,148 | 5.18x | 1.83x |
| 7/15/02 | 272,808,139 | 685,315,000 | 8,915,000 | 42,805,648 | 642,255,000 | 14,870,000 | 45,998,750 | 650,135,000 | 10,025,000 | 46,211,200 | 667,425,000 | $ 17,075,000 | $ 11,978,750 | 46,505,000 | 145,521,778 | 192,026,778 | 5.34x | 1.46x |
| 7/15/03 | 280,836,695 | 676,800,000 | 8,515,000 | 42,373,978 | 631,365,000 | 10,890,000 | 44,957,850 | 646,350,000 | 3,785,000 | 45,509,450 | 664,895,000 | 2,530,000 | 46,719,750 | 17,605,000 | 178,372,978 | 195,977,978 | 4.93x | 1.28x |
| 7/15/04 | 250,634,619 | 670,280,000 | 6,520,000 | 41,948,228 | 626,595,000 | 4,770,000 | 44,195,550 | 646,350,000 | 3,785,000 | 45,509,450 | 664,895,000 | 2,530,000 | 46,719,750 | 21,115,000 | 177,260,695 | 198,375,695 | 4.93x | 1.28x |
| 7/15/05 | 253,228,963 | 662,935,000 | 7,345,000 | 41,611,895 | 620,600,000 | 5,995,000 | 43,861,650 | 641,790,000 | 4,560,000 | 45,244,500 | 661,680,000 | 3,215,000 | 46,542,650 | 23,750,000 | 175,911,183 | 199,661,183 | 4.93x | 1.28x |
| 7/15/06 | 254,983,020 | 654,875,000 | 8,060,000 | 41,226,283 | 613,920,000 | 6,680,000 | 43,442,000 | 636,565,000 | 5,225,000 | 44,925,300 | 657,895,000 | 3,785,000 | 46,317,600 | 26,240,000 | 174,379,658 | 200,619,658 | 4.93x | 1.28x |
| 7/15/07 | 256,414,364 | 646,105,000 | 8,770,000 | 40,793,058 | 606,570,000 | 7,350,000 | 42,974,400 | 630,775,000 | 5,790,000 | 44,559,550 | 653,565,000 | 4,330,000 | 46,052,650 | 32,850,000 | 172,680,353 | 205,530,353 | 4.94x | 1.28x |
| 7/15/08 | 262,963,916 | 635,560,000 | 10,545,000 | 40,316,653 | 597,505,000 | 9,065,000 | 42,459,900 | 623,375,000 | 7,400,000 | 44,154,250 | 647,725,000 | 5,840,000 | 45,749,550 | 36,515,000 | 170,534,873 | 207,049,873 | 4.92x | 1.28x |
| 7/15/09 | 265,030,026 | 623,875,000 | 11,685,000 | 39,732,523 | 587,485,000 | 10,020,000 | 41,825,350 | 615,135,000 | 8,240,000 | 43,636,250 | 641,155,000 | 6,570,000 | 45,340,750 | 41,075,000 | 168,127,830 | 209,202,830 | 4.91x | 1.28x |
| 7/15/10 | 267,996,473 | 610,825,000 | 13,050,000 | 39,063,580 | 576,305,000 | 11,180,000 | 41,123,950 | 605,820,000 | 9,315,000 | 43,059,450 | 633,625,000 | 7,530,000 | 44,880,850 | 45,210,000 | 165,398,544 | 210,608,544 | 4.95x | 1.28x |
| 7/15/11 | 270,568,476 | 596,860,000 | 13,965,000 | 38,296,044 | 563,965,000 | 12,340,000 | 40,341,350 | 595,390,000 | 10,430,000 | 42,407,400 | 625,150,000 | 8,475,000 | 44,353,750 | 49,580,000 | 162,379,144 | 211,959,144 | 4.97x | 1.29x |
| 7/15/12 | 272,905,855 | 581,830,000 | 15,030,000 | 37,463,794 | 550,430,000 | 13,535,000 | 39,477,550 | 583,820,000 | 11,570,000 | 41,677,300 | 615,705,000 | 9,445,000 | 43,760,500 | 54,180,000 | 159,058,844 | 213,238,844 | 4.98x | 1.29x |
| 7/15/13 | 274,893,364 | 565,525,000 | 16,305,000 | 36,561,994 | 535,690,000 | 14,740,000 | 38,530,100 | 571,095,000 | 12,725,000 | 40,867,400 | 605,295,000 | 10,410,000 | 43,099,350 | 58,920,000 | 155,429,294 | 214,349,294 | 4.98x | 1.29x |
| 7/15/14 | 276,663,963 | 547,910,000 | 17,615,000 | 35,583,694 | 519,700,000 | 15,990,000 | 37,498,300 | 557,175,000 | 13,920,000 | 39,976,650 | 593,900,000 | 11,395,000 | 42,370,650 | 63,630,000 | 151,481,044 | 215,111,044 | 4.99x | 1.29x |
| 7/15/15 | 278,069,298 | 529,050,000 | 18,860,000 | 34,526,794 | 502,440,000 | 17,260,000 | 36,379,000 | 542,050,000 | 15,125,000 | 39,002,250 | 581,515,000 | 12,385,000 | 41,573,000 | 68,205,000 | 147,168,394 | 215,373,394 | 5.00x | 1.31x |
| 7/15/16 | 281,378,240 | 508,455,000 | 20,595,000 | 33,348,044 | 485,425,000 | 17,015,000 | 35,170,800 | 525,265,000 | 16,785,000 | 37,943,500 | 567,705,000 | 13,810,000 | 40,706,050 | 74,730,000 | 142,548,506 | 217,278,506 | 5.00x | 1.31x |
| 7/15/17 | 284,429,432 | 486,055,000 | 22,400,000 | 32,060,856 | 466,885,000 | 18,540,000 | 33,979,750 | 506,755,000 | 18,510,000 | 36,768,550 | 552,425,000 | 15,280,000 | 39,739,350 | 106,610,000 | 137,485,406 | 244,095,406 | 5.02x | 1.31x |
| 7/15/18 | 320,480,146 | 455,245,000 | 30,810,000 | 30,660,856 | 440,675,000 | 26,210,000 | 32,681,950 | 480,005,000 | 26,750,000 | 35,472,850 | 529,585,000 | 22,840,000 | 38,669,750 | 114,175,000 | 130,253,781 | 244,428,781 | 5.03x | 1.33x |
| 7/15/19 | 323,877,593 | 421,930,000 | 33,315,000 | 28,735,231 | 412,685,000 | 27,990,000 | 30,847,250 | 451,300,000 | 28,705,000 | 33,600,350 | 505,420,000 | 24,165,000 | 37,070,950 | 123,590,000 | 122,511,394 | 246,101,394 | 5.04x | 1.33x |
| 7/15/20 | 327,258,173 | 385,985,000 | 35,945,000 | 26,653,044 | 382,440,000 | 30,245,000 | 28,887,950 | 419,955,000 | 31,345,000 | 31,591,000 | 479,365,000 | 26,055,000 | 35,379,400 | 131,330,000 | 114,129,681 | 245,459,681 | 5.16x | 1.35x |
| 7/15/21 | 330,378,988 | 348,620,000 | 37,365,000 | 24,406,481 | 349,770,000 | 32,670,000 | 26,770,800 | 387,315,000 | 32,640,000 | 29,396,850 | 450,710,000 | 28,655,000 | 33,555,550 | 139,085,000 | 105,216,819 | 244,301,819 | 5.28x | 1.37x |
| 7/15/22 | 334,793,184 | 309,515,000 | 39,105,000 | 22,071,169 | 316,500,000 | 33,270,000 | 24,483,900 | 351,630,000 | 35,685,000 | 27,112,050 | 419,685,000 | 31,025,000 | 31,549,700 | 144,365,000 | 95,774,156 | 240,139,156 | 5.41x | 1.41x |
| 7/15/23 | 338,600,286 | 268,630,000 | 40,885,000 | 19,627,106 | 281,090,000 | 35,410,000 | 22,155,000 | 316,560,000 | 35,070,000 | 24,614,100 | 386,685,000 | 33,000,000 | 29,377,950 | 146,175,000 | 85,975,244 | 232,150,244 | 5.53x | 1.47x |
| 7/15/24 | 342,082,887 | 225,935,000 | 42,695,000 | 17,071,794 | 243,390,000 | 37,700,000 | 19,676,300 | 282,015,000 | 34,545,000 | 22,159,200 | 355,450,000 | 31,235,000 | 27,067,950 | 150,065,000 | 76,063,206 | 226,128,206 | 5.66x | 1.53x |
| 7/15/25 | 345,774,264 | 181,255,000 | 44,680,000 | 14,403,356 | 202,675,000 | 40,715,000 | 17,037,300 | 247,650,000 | 34,365,000 | 19,741,050 | 325,145,000 | 30,305,000 | 24,881,500 | 153,590,000 | 65,837,906 | 219,427,906 | 5.98x | 1.60x |
| 7/15/26 | 351,201,386 | 135,985,000 | 45,270,000 | 11,555,006 | 158,970,000 | 43,705,000 | 14,187,250 | 212,970,000 | 34,680,000 | 17,335,500 | 295,210,000 | 29,935,000 | 22,760,150 | 152,165,000 | 55,369,544 | 207,534,544 | 6.31x | 1.72x |
| 7/15/27 | 356,977,660 | 89,835,000 | 46,150,000 | 8,669,044 | 118,090,000 | 40,880,000 | 11,127,900 | 177,715,000 | 35,255,000 | 14,907,900 | 265,330,000 | 29,880,000 | 20,664,700 | 153,750,000 | 45,006,431 | 198,756,431 | 6.63x | 1.81x |
| 7/15/28 | 360,562,394 | 42,890,000 | 46,945,000 | 5,726,981 | 79,280,000 | 38,810,000 | 8,266,300 | 139,465,000 | 38,250,000 | 12,440,050 | 235,585,000 | 29,745,000 | 18,573,100 | 154,140,000 | 34,537,338 | 188,677,338 | 7.74x | 1.93x |
| 7/15/29 | 364,151,185 | 0 | 42,890,000 | 2,734,238 | 41,790,000 | 37,490,000 | 5,549,600 | 98,030,000 | 41,435,000 | 9,762,550 | 203,260,000 | 32,325,000 | 16,490,950 | 153,980,000 | 24,015,600 | 177,995,600 | — | 2.05x |
| 7/15/30 | 364,634,710 | 0 | 0 | 0 | 0 | 41,790,000 | 2,925,300 | 36,635,000 | 61,395,000 | 6,862,100 | 152,465,000 | 50,795,000 | 14,228,200 | 123,345,000 | 13,237,000 | 136,582,000 | — | 2.67x |
| 7/15/31 | 364,118,909 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 36,635,000 | 2,564,450 | 65,755,000 | 86,710,000 | 10,672,550 | 65,755,000 | 4,602,850 | 70,357,850 | — | 5.20x |
| 7/15/32 | 365,640,084 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 65,755,000 | 4,602,850 | 0 | 0 | 0 | — | — |
| 7/15/33 | N.A. | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | — | — |
| 7/15/34 | N.A. | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | — | — |
| 7/15/35 | N.A. | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | — | — |
| 7/15/36 | N.A. | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | — | — |
| 7/15/37 | N.A. | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | — | — |
| 7/15/38 | N.A. | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | — | — |
| 7/15/39 | N.A. | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | — | — |
| 7/15/40 | N.A. | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | — | — |
| 7/15/41 | N.A. | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | — | — |
| 7/15/42 | N.A. | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | — | — |
| | | | $709,280,000 | | | $684,500,000 | | | $684,500,000 | | | $684,500,000 | | $2,762,780,000 | | | | |

(1) Utilizes calendar year debt service.
(2) Includes Total Payments to TSASC plus (+) earnings on Liquidity Reserve less (-) Operating Expenses.
(3) Assuming no further Program Bonds are issued. It is the current intention of TSASC to issue a total of approximately $2.8 billion of Program Bonds.
(4) Total Available Funds do not include investment earnings on the Liquidity Reserve amounts with respect to future Program Bonds for the purpose of Debt Service Coverage on the Series 1999-1 Bonds

**Actual Amortization**

To the extent of available Collections, TSASC will be required to make principal payments on each Planned Principal Payment Date in an amount such that the cumulative amount of principal payments made is equal to the Cumulative Planned Principal Payments Due for such Planned Principal Payment Date. After Collections have been allocated to meet the Cumulative Planned Principal Payments Due for the next Distribution Date and certain other amounts, all remaining Collections will be released to the owner of the Residual Certificate.

Due to a number of factors, including the actual consumption of cigarettes in the United States, the amount of available Collections may fluctuate from year to year. As a result, Collections received by TSASC may be insufficient to pay Rated Maturities or sufficient to pay the Rated Maturities but insufficient to pay Planned Principal Payments. Failure to pay principal of any Senior Bonds in accordance with the Rated Maturities is an Event of Default.

Collections and Reserves available to pay Rated Maturities on any Distribution Date will be first allocated pro rata among all Series of Senior Bonds according to Cumulative Rated Maturities Due and for any Series of Senior Bonds, in order of Rated Maturities, and if no Event of Default has occurred, within a Rated Maturity by lot in $5,000 denominations or, if an Event of Default has occurred, in equal proportions among the Senior Bonds within a Rated Maturity. If Planned Principal Payments are made as due, Cumulative Rated Maturities Due will be zero. Money available to pay Planned Principal Payments on Senior Bonds will be allocated (i) in order of Planned Principal Payment Dates for the Senior Bonds, (ii) pro rata within the same Planned Principal Payment Dates according to Planned Principal Payments then due on each Series of Senior Bonds, and (iii) for any Series of Senior Bonds, in order of Rated Maturities, and if no Event of Default has occurred, within a Rated Maturity by lot in $5,000 denominations or, if an Event of Default has occurred, in equal proportions among the Senior Bonds within a Rated Maturity.

The difference between the Cumulative Planned Principal Payments Due and the actual amount of principal paid on any Planned Principal Payment Date will be required to be paid, to the extent of available Collections, on the following Distribution Date. Collections will not be released to the owner of the Residual Certificate unless all Cumulative Planned Principal Payments Due have been paid.

Future Series of Senior Bonds may have earlier Planned Principal Payment Dates with later Rated Maturity Dates than the Series 1999-1 Bonds. The allocation of money among Series of Senior Bonds with the same Planned Principal Payment Date on a pro rata basis according to Planned Principal Payments then due on each Series of Senior Bonds and then, for any Series of Senior Bonds, in order of Rated Maturities may result in the later Rated Maturities of one Series being paid prior to the earlier Rated Maturities of another Series.

**Effect of Changes in Consumption Level**

The tables below have been prepared to show the effect of changes in consumption on the weighted average lives and final principal payments on the Program Bonds. For the purpose of measuring the effect of changes in consumption level, the Series 1999-1 Bonds were assumed to pay interest at an interest rate of 6.50% per annum. Each subsequent Series of Program Bonds was assumed to pay interest at an interest rate of 7.00% per annum. The tables are based on the Collection Methodology and Assumptions and the Structuring Assumptions, except that the annual cigarette consumption varies in each case, based on WEFA's Base Case Forecast, four alternative forecasts of WEFA (the WEFA High Forecast, the WEFA Low Forecast, the WEFA Low Case 2 Extreme and the WEFA Low Case 3 Extreme, each as hereinafter defined) and two other consumption scenarios prepared by WEFA (assuming a 3.5% and 4% annual consumption decline). In each case, if actual cigarette consumption in the United States is as forecasted or assumed, and events occur as assumed by the Collection Methodology and Assumptions and the Structuring Assumptions, the final principal payments and weighted average lives of each of the Series of Program Bonds will be as set forth in such tables.

| Consumption Forecast | Series 1999-1 | | Series 2001-1 | | Series 2002-1 | | Series 2003-1 | |
|---|---|---|---|---|---|---|---|---|
| | Weighted Average Life | Final Principal Payment | Weighted Average Life | Final Principal Payment | Weighted Average Life | Final Principal Payment | Weighted Average Life | Final Principal Payment |
| WEFA Base Case Forecast | 20.32 | 29.66 | 18.97 | 29.25 | 19.52 | 29.25 | 20.76 | 29.25 |
| WEFA High Forecast | 20.32 | 29.66 | 18.97 | 29.25 | 19.52 | 29.25 | 20.76 | 29.25 |
| WEFA Low Forecast | 20.32 | 29.66 | 18.97 | 29.25 | 19.52 | 29.25 | 20.76 | 29.25 |
| WEFA Low Case 2 Extreme | 20.32 | 29.66 | 18.97 | 29.25 | 19.52 | 29.25 | 20.76 | 29.25 |
| WEFA Low Case 3 Extreme | 20.32 | 29.66 | 18.97 | 29.25 | 19.52 | 29.25 | 20.76 | 29.25 |
| 3.5% Annual Consumption Decline | 20.32 | 29.66 | 18.97 | 29.25 | 19.52 | 29.25 | 20.76 | 29.25 |
| 4.0% Annual Consumption Decline | 20.32 | 29.66 | 18.97 | 29.25 | 19.52 | 29.25 | 20.76 | 29.25 |

**Average Annual Rate of Consumption Decline**

| WEFA Base Case Forecast | WEFA High Forecast | WEFA Low Forecast | WEFA Low Case 2 Extreme | WEFA Low Case 3 Extreme |
|---|---|---|---|---|
| 1.94% | 1.72% | 2.23% | 2.56% | 2.24% |

WEFA's high forecast of consumption (the "**WEFA High Forecast**") deviates from the Base Case Forecast by assuming that the proportion of teens who begin to smoke, which has increased in the 1990's, will remain at a peak level of 9% (that is, in each year, 9% of the United States population aged 12-17 will begin to smoke daily), rather than a declining percentage that reverts to the teen smoking rates of the 1980's. Under the WEFA High Forecast, the average annual rate of decline in cigarette consumption is reduced slightly, from an average annual rate in the Base Case Forecast of 1.94%, to 1.72%.

WEFA's low forecast of consumption (the "**WEFA Low Forecast**") deviates from the Base Case Forecast by assuming a sharper price elasticity of demand. The WEFA Base Case Forecast applied a price elasticity of demand of -0.31. However, in order to develop the lowest consumption forecast that WEFA believed may be reasonably anticipated, a price elasticity of -0.40 was applied. Under this scenario, the average annual rate of decline in cigarette consumption increased to 2.23%. Under the Base Case Forecast, the rate of decline was 1.94%.

Although beyond the range of WEFA's reasonably anticipated decline in consumption, WEFA also prepared an alternative low case (the "**WEFA Low Case 2 Extreme**") that deviated from the Base Case Forecast by assuming a price elasticity of demand of -0.50. This produces a decline in consumption of an average annual rate of 2.56%. WEFA prepared another alternative low case (the "**WEFA Low Case 3 Extreme**") that deviated from the Base Case Forecast by assuming an adverse federal government settlement and tort claims of three times the size of the MSA, resulting in an immediate real price increase of 57% and an immediate decline in consumption of 14%. Despite the higher prices, this scenario would result in higher consumption than in the WEFA Low Case 2 Extreme, using the estimated price elasticity of -0.31. Under the WEFA Low Case 3 Extreme, the average annual rate of decline in cigarette consumption would be 2.24%, compared to the Base Case Forecast of 1.94%.

*No assurance can be given that actual cigarette consumption in the United States during the term of the Program Bonds will be as assumed, or that the other assumptions underlying the Collection Methodology and Assumptions and Structuring Assumptions, including that certain adjustments and offsets will not apply to payments due under the MSA, will be consistent with future events. If actual events deviate from one or more of the assumptions underlying the Collection Methodology and Assumptions or Structuring Assumptions, the amount of Collections available to pay principal of and interest on the Program Bonds could be adversely affected.*

## PLAN OF FINANCE

The Series 1999-1 Bonds are the first of four expected Series of Program Bonds, each to be issued pursuant to the Indenture and a Series Supplement. TSASC has covenanted that it will not issue additional Senior Bonds, including Program Bonds, which would cause the annual Debt Service in any future year to exceed the Annual Program Debt Service Schedules, unless it has obtained Rating Confirmation. The Program Bonds are estimated to be issued in the approximate amount of $2.8 billion. The actual amount of Program Bonds may be higher or lower depending on actual annual Debt Service at the time of issuance. Each Series will be issued on a parity with each other Series of Program Bonds.

The Program Bonds are being issued to provide funds for TSASC to purchase from the City all of the City's future right, title and interest under the MSA and the Decree. The purchase price to be paid by TSASC to the City for such purpose will consist of: (i) the net proceeds of the sale of the Series 1999-1 Bonds, and (ii) TSASC's 100% beneficial ownership interest in the Trust, the assets of which consist primarily of a security (the "**Residual Certificate**") which will entitle the Trust (and thus the City) to the net proceeds of TSASC's future issues of Bonds (other than refunding Bonds), and to TSRs received by TSASC that are not required to pay expenses, debt service or required reserves with respect to the Bonds.

## TSASC, INC.

TSASC is a special purpose, bankruptcy-remote local development corporation incorporated under the provisions of Section 1411 of the New York State Not-For-Profit Corporation Law. TSASC is a non-stock, membership corporation governed by a board of directors. TSASC will be operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. The board of directors of TSASC will have not less than five nor more than seven directors, two of whom will be selected by the Mayor of the City but independent of the City. The Certificate of Incorporation of TSASC contains the standard limitation of purposes and corporate separateness criteria to permit Transaction Counsel to opine that TSASC would not be substantively consolidated with the City in the event the City were to become a debtor under the Bankruptcy Code. See "LEGAL CONSIDERATIONS" herein. Such criteria include a requirement that there will be two directors independent of the City whose consent is required for, among other things, any bankruptcy filing by TSASC. TSASC has authority under federal tax law to issue tax exempt bonds. TSASC has no assets other than the Collections and the Reserves.

The initial directors of TSASC, serving *ex officio*, are:

| Names | Public Office |
|---|---|
| Robert M. Harding | Director of Management and Budget of the City |
| Andrew S. Eristoff | Commissioner of Finance of the City |
| Alan G. Hevesi | Comptroller of the City |
| Peter F. Vallone | Speaker of the City Council |
| Michael D. Hess | Corporation Counsel of the City |

## THE TRUST AND THE RESIDUAL CERTIFICATE

The Trust will be organized as a Delaware business trust and administered by Wilmington Trust Company, Wilmington, Delaware, as trustee. The Residual Certificate will be deposited by TSASC into the Trust, the beneficial ownership of which will be transferred by TSASC to the City as part of the purchase price of the TSRs. The organizational and operative documents of the Trust will provide for the distribution to the beneficial owner of the Trust of cash available to the Trust from payments made on the Residual Certificate after payment of the expenses of the Trust.

The Residual Certificate will represent the entitlement to receive all amounts required to be distributed pursuant to the Indenture in respect of the Residual Certificate, including the net proceeds of future Bond issues (other than refunding Bonds). Payments on the Residual Certificate from Collections are subordinate to payments on the Bonds. Delaware law expressly provides that no creditor of the beneficial owner of a Delaware business trust shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of such business trust.

## SECURITY

### Sale of TSRs

Pursuant to a Purchase and Sale Agreement, to be dated the Closing Date, the City will sell to TSASC all of the City's future right, title and interest under the MSA and the Decree, including the City's right to receive its allocable share of (i) Initial Payments made by the OPMs under the MSA, the first of which has been made by the OPMs to the MSA Escrow Agent and the remainder of which are required to be made annually on each January 10 commencing January 10, 2000 and continuing through January 10, 2003 and (ii) Annual Payments made by the PMs under the MSA, which are required to be made annually on each April 15 commencing April 15, 2000 and continuing in perpetuity (collectively, the "**Tobacco Settlement Revenues**" or "**TSRs**").

The Bonds will be secured by a perfected first-priority security interest in all of TSASC's tangible and intangible assets, including the TSRs purchased from the City.

### Payment by MSA Escrow Agent to Indenture Trustee

Upon sale by the City of the TSRs to TSASC, the MSA Escrow Agent will disburse the TSRs directly to the Indenture Trustee. The initial disbursement of TSRs is required to be made to the Indenture Trustee by the MSA Escrow Agent ten business days after the MSA Escrow Agent receives notice of Final Approval of the MSA. Such initial disbursement will include TSRs received up to the date of such initial disbursement, which may include one or more Initial Payments and Annual Payments.

### Accounts

All of the following funds and accounts will be established and held by the Indenture Trustee for the benefit of the holders of the Series 1999-1 Bonds. All funds on deposit in the following accounts will be invested in Eligible Investments.

*Collection Account.* Under the Indenture, the Indenture Trustee will establish and hold a segregated trust account (the "**Collection Account**") into which the Indenture Trustee will deposit all Collections. Funds on deposit in the Collection Account will be transferred to various other accounts under the Indenture and applied to certain other purposes as described below.

*Bond Fund.* Under the Indenture, the Indenture Trustee will establish and hold a segregated trust fund (the "**Bond Fund**") which will include the Debt Service Account, the Liquidity Reserve Account, the Extraordinary Prepayment Account and the Trapping Account.

*Debt Service Account.* Under the Indenture, the Indenture Trustee will establish and hold a segregated trust account (the "**Debt Service Account**") into which the Indenture Trustee will deposit amounts transferred from the Collection Account in respect of interest and principal payments on the Senior Bonds and from which the Indenture Trustee will make payments on the Senior Bonds in accordance with the priority of payments as described below.

*Liquidity Reserve Account.* Under the Indenture, the Indenture Trustee will establish and hold a segregated trust account (the "**Liquidity Reserve Account**") which will initially be funded from Series 1999-1 Bond proceeds. At any time, the Liquidity Reserve Account will be required to maintain a balance (the "**Liquidity Reserve Requirement**") equal to the maximum annual debt service (including in each Fiscal Year, Rated Maturities but not Planned Principal Payments) on all Senior Bonds, assuming at all times (if any Senior Bonds are outstanding) that principal has been and will be paid only in accordance with the Rated Maturities of the Senior Bonds. The initial Liquidity Reserve Requirement is $53,669,494, and such amount will be deposited into the Liquidity Reserve Account on the Closing Date.

Amounts in the Liquidity Reserve Account will be available to pay interest and Rated Maturities on Senior Bonds, including the Program Bonds, in such order, to the extent Collections are insufficient for such purpose. Amounts in the Liquidity Reserve Account are not available to make Planned Principal Payments. Amounts withdrawn from the Liquidity Reserve Account will be replenished as described in "SECURITY—Flow of Funds" herein. On each Distribution Date, amounts on deposit in the Liquidity Reserve Account in excess of the

Liquidity Reserve Requirement will be transferred to the Collection Account. All funds on deposit in the Liquidity Reserve Account will be invested in Eligible Investments.

*Extraordinary Prepayment Account.* Under the Indenture, the Indenture Trustee will establish and hold a segregated trust account (the "**Extraordinary Prepayment Account**") into which the Indenture Trustee will deposit, following the occurrence of any Event of Default, Collections after the payment of certain expenses, all current and past due interest on the Senior Bonds, Cumulative Rated Maturities Due, Cumulative Planned Principal Payments Due and the replenishment of the Liquidity Reserve Account. The Indenture Trustee will make Extraordinary Prepayments on the Senior Bonds from the Extraordinary Prepayment Account.

*Trapping Account.* Under the Indenture, the Indenture Trustee will establish and hold a segregated trust account designated as the Trapping Account. The Trapping Account will be funded from Collections to the Trapping Requirement, at the Trapping Amount, during the existence of a Trapping Event. "**Trapping Event**" means a Consumption Decline Trapping Event, a Downgrade Trapping Event, a Lump Sum Trapping Event, a Model Statute Trapping Event or an NPM Trapping Event. "**Trapping Requirement**" means the greatest of the Consumption Decline Trapping Requirement, the Downgrade Trapping Requirement, the Lump Sum Trapping Requirement, the Model Statute Trapping Requirement or the NPM Trapping Requirement. "**Trapping Amount**" means (i) a fraction of the money available, prior to the deposit for Junior Payments (as hereinafter defined), equal to the ratio of the initial principal amount of previously issued Program Bonds to $2.76 billion, or (ii) in the event of a Lump Sum Trapping Event only, the lump sum, or (iii) with respect to a Trapping Event that is not in effect, zero.

"**Consumption Decline Trapping Event**" means shipments of cigarettes in or to the 50 United States, the District of Columbia and Puerto Rico are less in any year preceding a Deposit Date than the amounts set forth below for such year:

| Year | Shipments | Year | Shipments |
|---|---|---|---|
| 1999 ..... | 367,242,500,000 | 2021 ..... | 223,705,054,607 |
| 2000 ..... | 366,132,905,223 | 2022 ..... | 212,653,520,071 |
| 2001 ..... | 365,131,767,078 | 2023 ..... | 208,575,354,392 |
| 2002 ..... | 359,875,791,817 | 2024 ..... | 197,908,325,609 |
| 2003 ..... | 354,553,074,013 | 2025 ..... | 195,239,850,775 |
| 2004 ..... | 347,895,505,350 | 2026 ..... | 186,130,229,787 |
| 2005 ..... | 340,103,313,456 | 2027 ..... | 182,646,857,948 |
| 2006 ..... | 332,010,780,118 | 2028 ..... | 172,744,914,639 |
| 2007 ..... | 324,468,872,759 | 2029 ..... | 169,359,448,221 |
| 2008 ..... | 317,502,619,835 | 2030 ..... | 159,635,403,235 |
| 2009 ..... | 311,796,132,409 | 2031 ..... | 157,147,280,493 |
| 2010 ..... | 305,664,161,271 | 2032 ..... | 148,354,931,961 |
| 2011 ..... | 299,340,305,323 | 2033 ..... | 145,588,306,328 |
| 2012 ..... | 292,716,107,931 | 2034 ..... | 137,091,146,323 |
| 2013 ..... | 285,975,111,088 | 2035 ..... | 133,981,729,026 |
| 2014 ..... | 278,975,486,892 | 2036 ..... | 125,769,206,337 |
| 2015 ..... | 274,144,995,343 | 2037 ..... | 123,675,404,428 |
| 2016 ..... | 261,174,858,073 | 2038 ..... | 116,398,013,471 |
| 2017 ..... | 256,308,296,105 | 2039 ..... | 114,422,237,897 |
| 2018 ..... | 243,924,364,479 | 2040 ..... | 107,160,060,315 |
| 2019 ..... | 239,393,723,619 | 2041 ..... | 105,088,587,712 |
| 2020 ..... | 227,310,624,191 | 2042 ..... | 97,993,757,241 |

"**Consumption Decline Trapping Requirement**" means 25% of the principal amount of the Outstanding Program Bonds until (i) two years after the end of a Consumption Decline Trapping Event of no more than two years' duration or (ii) three years after the end of a Consumption Decline Trapping Event of more than two years' duration; and thereafter zero.

"**Downgrade Trapping Event**" means, as of any Deposit Date, that an OPM with a Market Share (as defined in the MSA) of 7% or more in the calendar year preceding such Deposit Date is rated (or if such OPM is not rated, whose parent corporation is rated) below Baa3 by Moody's or BBB– by S&P. "**Downgrade Trapping Requirement**" means 25% of the principal amount of Outstanding Program Bonds until one year after the end of a Downgrade Trapping Event; and thereafter zero; and in any event zero if the applicable OPM has assumed the MSA in bankruptcy and is current on all MSA payments.

"**Lump Sum Trapping Event**" means the receipt after June 30, 2002 of a lump sum in lieu of future TSRs that causes (or is expected to cause, as evidenced by an officer's certificate of TSASC) the amount available prior to the deposit for Junior Payments in a Fiscal Year to exceed the sum of the amounts (excluding any such lump sums) that were so available over the three preceding Fiscal Years. "**Lump Sum Trapping Requirement**" means the lump sum until there has occurred a twelve-month period, commencing at least twelve months after the most recent Lump Sum Trapping Event, in which the Trapping Account was at no point reduced below the Lump Sum Trapping Requirement and thereafter zero.

"**Model Statute Trapping Event**" means, as of any Deposit Date, that (a) the aggregate Market Share of the NPMs exceeds 3% in the calendar year preceding such Deposit Date and (b) the Model Statute is found to be invalid (i) in the New York Supreme Court or United States District Court in the State of New York and an appeal of such finding has not been filed within three months or after such three month period the finding of such court has not been stayed or (ii) in 25 states or states that in aggregate account for at least 50% of the payments under the MSA or (iii) by an appellate court having jurisdiction over New York on federal or New York State law or (iv) on federal grounds in any United States Court of Appeals. "**Model Statute Trapping Requirement**" means 25% of the principal amount of the Outstanding Program Bond until one year after the end of a Model Statute Trapping Event; and thereafter zero.

"**NPM Trapping Event**" means, as of any Deposit Date, that the aggregate Market Share of the NPMs exceeds 7% in the calendar year preceding such Deposit Date. "**NPM Trapping Requirement**" means the lesser of (i) 6% of the principal amount of Outstanding Program Bonds for each full percentage point by which the aggregate Market Share of the NPMs exceeds 7% and (ii) 65% of such principal amount; which amount, as calculated immediately prior to the NPM Trapping Event ceasing to be in effect, shall remain the same for one year and thereafter shall be zero.

Following the occurrence of a Trapping Event, amounts deposited in the Trapping Account will be available to pay interest, Rated Maturities, Planned Principal Payments and Extraordinary Prepayments, in such order, to the extent Collections or other available amounts are insufficient for such purposes. On each Distribution Date, amounts on deposit in the Trapping Account in excess of the Trapping Requirement will be transferred to the Collection Account. All funds on deposit in the Trapping Account will be invested in Eligible Investments.

Amounts in the Trapping Account in excess of the Trapping Requirement on any Distribution Date will be transferred to the Collection Account.

**Flow of Funds**

The Indenture Trustee will deposit the Collections in the Collection Account. Amounts deposited during the period January 1 through June 30 in any Fiscal Year will be applied to expenses and debt service requirements on the Bonds for the current and the next Fiscal Year. Amounts, if any, deposited during the period July 1 through December 31 in any Fiscal Year will be applied to expenses and debt service requirements on the Bonds for the current Fiscal Year only.

No later than five Business Days following each deposit of TSRs to the Collection Account (each, a "**Deposit Date**"), the Indenture Trustee will withdraw Collections on deposit in the Collection Account (to the extent Collections are in excess of amounts required to pay Trustee fees and expenses), and transfer such amounts as follows:

(i) to TSASC in an amount specified by officer's certificate of TSASC, not exceeding with other applicable transfers the Operating Cap and the amount necessary to provide for Priority Payments, in each case for the current Fiscal Year and, if the Deposit Date is between January 1 and June 30, for the following Fiscal Year;

(ii) to the Debt Service Account an amount sufficient to cause the amount on deposit therein to equal interest (including interest at the stated rate on principal of Outstanding Bonds and on overdue interest, if any) due on Senior Bonds on the next Distribution Date and, in the case of Parity Payments and interest due at variable rates on Senior Bonds, to deposit in separate subaccounts within the Debt Service Account, Senior Bond interest and Parity Payments due during the Semiannual Period including such Distribution Date, together with any unpaid interest and other Parity Payments due on prior Distribution Dates;

(iii) to the Debt Service Account an amount sufficient to cause the amount therein to equal the Cumulative Rated Maturities Due during the current Fiscal Year and, if the Deposit Date is during the period from January 1 through June 30 of any year, during the next Fiscal Year;

(iv) to replenish the Liquidity Reserve Account until the amount on deposit therein equals the Liquidity Reserve Requirement;

(v) to the Debt Service Account an amount sufficient to cause the amount therein to equal Senior Bond interest and Parity Payments due (a) during the current Fiscal Year and, in the case of Parity Payments and interest due at variable rates on Senior Bonds, to deposit in separate subaccounts within the Debt Service Account, Senior Bond interest and Parity Payments due during such Fiscal Year and (b) if the Deposit Date is during the period from January 1 through June 30 of any year, during the next Fiscal Year (or, in the case of interest on variable-rate Senior Bonds, interest on parity BANs and swap payments, during the last complete Semiannual Period in such next Fiscal Year), assuming that principal payments will be made on the Bonds in the amounts deposited pursuant to clause (iii) above and clause (vi) below;

(vi) to the Debt Service Account an amount which, together with amounts deposited pursuant to clause (iii) above, will be sufficient to cause the amount therein to equal the Cumulative Planned Principal Payments Due during the current Fiscal Year and, if the Deposit Date is during the period from January 1 through June 30 of any year, during the next Fiscal Year;

(vii) if an Event of Default has occurred, to the Extraordinary Prepayment Account all amounts remaining;

(viii) if a Trapping Event has occurred and is continuing, to the Trapping Account, the lesser of the Trapping Amount or the amount necessary to make the amount therein equal to the Trapping Requirement;

(ix) in the amounts and to the accounts established by Series Supplement for Junior Payments; and

(x) to TSASC to pay Operating Expenses, if any, specified by officer's certificate.

"**Operating Cap**" means $1,000,000 in the Fiscal Year ending June 30, 2000, inflated in each following Fiscal Year by the Inflation Adjustment applicable pursuant to the MSA to the calendar year ending in such Fiscal Year, plus arbitrage rebate and penalties specified by officer's certificate of TSASC.

"**Priority Payments**" means fees payable pursuant to Ancillary Contracts that are identified by Series Supplement as Priority Payments, which shall not include payments of or in lieu of interest, principal or purchase price of Bonds.

"**Ancillary Contracts**" means contracts entered into by TSASC or for its benefit or the benefit of any of the beneficiaries of such contracts to facilitate the issuance, sale, resale, purchase, repurchase or payment of Bonds, including bond insurance, letters of credit and liquidity facilities, but excluding Swap Contracts.

"**Swap**" or "**Swap Contract**" means an interest rate exchange, currency exchange, cap, collar, hedge or similar agreement entered into by TSASC.

"**Parity Payments**" means (i) BAN interest identified as Debt Service or Parity Payments by a Series Supplement and (ii) Swap payments not to exceed the applicable Maximum Rate and does not include any payments under Ancillary Contracts.

"**Distribution Date**" means July 15, 2000 and thereafter each July 15 (which shall be the date specified in each Series Supplement as the date of Planned Principal Payments and Rated Maturities) and January 15, each additional Distribution Date selected by TSASC or the Trustee following an Event of Default, and each Distribution Date to the extent so characterized in a Supplemental Indenture.

"**Debt Service**" means interest (not to exceed the Maximum Rate), redemption premium and Planned Principal Payments (or, if so specified, Rated Maturities) due on outstanding Senior Bonds and Parity Payments. For purposes of clause (1)(b) under the caption "THE SERIES 1999-1 BONDS—Additional Series of Bonds", Debt Service includes in each year the greater of Debt Service (including interest payable as Debt Service at a default rate, if any) on each Series of BANs in anticipation of Senior Bonds and assumed Debt Service on the related authorized but unissued Series of Bonds.

"**Maximum Rate**" means (i) the highest rate payable on a Bond to holders other than parties to Ancillary Contracts, as specified by Series Supplement, or (ii) the rate specified by Series Supplement as the Maximum Rate on a Swap.

"**Junior Payments**" means (i) termination payments on Swaps and any other payments thereon in excess of the applicable Maximum Rate, (ii) BAN interest payable other than as Parity Payments, (iii) amounts payable to or for the benefit of the holders of Subordinate Bonds, (iv) Bond principal payable under term-out provisions of Ancillary Contracts, (v) other amounts due under Ancillary Contracts and not payable as Priority Payments or Debt Service, (vi) purchase price of Bonds, (vii) principal of BANs if payable from TSRs pursuant to a Series Supplement and (viii) Junior Payments so identified in or by reference to the Indenture.

"**Semiannual Period**" means (i) with respect to Initial Payments and other Collections received in January, February and March, each six-month period beginning February 1 or August 1, and (ii) with respect to all other collections, each six-month period beginning May 1 or November 1.

In calculating deposits to the Bond Fund, Swap payments and interest on variable-rate Bonds shall be assumed at the Maximum Rate; and money so deposited will be transferred to the Collection Account pursuant to officer's certificates of TSASC reporting accruals at lower rates.

After making the deposits set forth above, any amounts remaining in the Collection Account in excess of amounts required to be applied to make payments from the Collection Account described below during the current Fiscal Year and, if the Deposit Date is during the period from January 1 through June 30 of any year, during the next Fiscal Year, will be paid to the holder of the Residual Certificate.

In addition, investment earnings on amounts on deposit under the Indenture will be applied in accordance with the requirements set forth above.

On each Distribution Date, the Indenture Trustee will apply amounts in the various accounts in the following order of priority:

(i) from the Collection Account, to the Trustee, to pay Trustee fees and expenses pursuant to the Indenture;

(ii) from the Debt Service Account, the Liquidity Reserve Account and the Trapping Account, in that order, to pay Senior Bond interest (including interest at the stated rate on principal of Outstanding Bonds and on overdue interest, if any) and Parity Payments due on such Distribution Date, plus any such unpaid interest and Parity Payments from prior Distribution Dates;

(iii) from the Debt Service Account, the Liquidity Reserve Account and the Trapping Account, in that order, to pay the Cumulative Rated Maturities Due on such Distribution Date;

(iv) from the Liquidity Reserve Account, any amount remaining in excess of the Liquidity Reserve Requirement, to the Collection Account;

(v) from the Debt Service Account and the Trapping Account, in that order, in the amount required, to make Cumulative Planned Principal Payments Due on such Distribution Date;

(vi) from the Extraordinary Prepayment Account and the Trapping Account, in that order, if an Event of Default has occurred, to pay Extraordinary Prepayments on Senior Bonds pro rata;

(vii) from the Trapping Account, any amount remaining in excess of the Trapping Requirement, to the Collection Account;

(viii) from the Accounts therefor, to make Junior Payments;

(ix) from the Collection Account, to pay Operating Expenses, if any, specified by officer's certificate of TSASC; and

(x) from the Collection Account, any amounts remaining to the holder of the Residual Certificate.

Available money will be allocated among each of the outstanding Series of Bonds according to the above priority of payments on a pro rata basis, as described below. For this purpose, "**pro rata**" means that money will be allocated to each Series by the application of a fraction, the numerator of which is equal to the amount due on such Series and the denominator of which is equal to the sum of similar amounts due for the same level of priority for all of the outstanding Series. Money available to pay Rated Maturities on any Distribution Date will be first allocated pro rata among all Series of Senior Bonds according to the Cumulative Rated Maturities Due on each Series of Senior Bonds on such Distribution Date and for any Series of Senior Bonds, in order of Rated Maturities, and if no Event of Default has occurred, within a Rated Maturity by lot in $5,000 denominations or, if an Event of Default has occurred, in equal proportions among the Senior Bonds within a Rated Maturity. Money available to pay Planned Principal Payments on Senior Bonds will be allocated (i) in order of Planned Principal Payment Dates of the Senior Bonds, (ii) pro rata within the same Planned Principal Payment Date according to Planned Principal Payments then due on each Series of Senior Bonds and (iii) for any Series of Senior Bonds, in order of Rated Maturities; and in each case, if no Event of Default has occurred, within a Rated Maturity, by lot in $5,000 denominations or, if an Event of Default has occurred, in equal proportions among the Senior Bonds within a Rated Maturity.

**Events of Default**

"**Event of Default**" means any one of the events set forth below:

(i) failure to pay when due interest on any BANs (if Debt Service) or Senior Bonds, or principal at any Rated Maturity of Senior Bonds;

(ii) failure of TSASC to observe or perform any other provision of the Indenture which is not remedied within 30 days after written notice thereof is given to TSASC by the Indenture Trustee or to TSASC and the Indenture Trustee by the holders of at least 25% in principal amount of the Senior Bonds then Outstanding, if a majority in interest of the holders of the Senior Bonds declares such failure to be an Event of Default, provided that, except as specified in clause (i) above, failure to make any payment or provision therefor because of insufficiency of available Collections will not constitute a default;

(iii) bankruptcy, reorganization, arrangements or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against TSASC and, if instituted against TSASC, are not dismissed within 60 days after such institution; or

(iv) failure by the City to observe or perform its covenant to not limit or alter the rights of TSASC to fulfill the terms of TSASC's agreements with the holders of the outstanding Bonds under the Indenture, or in any way impair the rights and remedies of such holders or the security for the Bonds until the Bonds are fully paid and discharged, which failure is not remedied within 30 days after written notice thereof is given by the Indenture Trustee to the City and TSASC or by TSASC to the Indenture Trustee and the City, if a majority in interest of the holders of the Senior Bonds declares such failure to be an Event of Default.

## THE SERIES 1999-1 BONDS

*The following summary describes certain terms of the Series 1999-1 Bonds. This summary does not purport to be complete and is subject to, and qualified in its entirety by reference to, the provisions of the Indenture, the Series 1999-1 Supplement and the Series 1999-1 Bonds. Copies of the Indenture and the Series 1999-1 Supplement may be obtained upon written request to the Indenture Trustee.*

The Series 1999-1 Bonds will initially be represented by one or more bond certificates registered in the name of The Depository Trust Company or its nominee ("**DTC**"), New York, New York. DTC will act as securities depository for the Series 1999-1 Bonds. The Series 1999-1 Bonds will be available for purchase in denominations of $5,000 or any integral multiple thereof in book-entry form only. Except under the limited circumstances described herein, no Beneficial Owner of Series 1999-1 Bonds will be entitled to receive a physical certificate representing its ownership interest in such Series 1999-1 Bonds. See "THE SERIES 1999-1 BONDS—Book-Entry Only System."

### Payments of Interest

Interest on the principal balance of the Series 1999-1 Bonds will be payable on each January 15 and July 15, commencing July 15, 2000. Interest will accrue from and including the Closing Date, or from and including the most recent Distribution Date on which interest has been paid, to but excluding the following Distribution Date. Interest on the Series 1999-1 Bonds will be computed on the basis of a 360-day year.

If on any Distribution Date there are insufficient funds to pay all interest then due on the Series 1999-1 Bonds, available amounts will be allocated pro rata among all Series 1999-1 Bonds based on the respective amounts of interest due thereon. Interest on the Series 1999-1 Bonds from the Closing Date through July 15, 2000 will be funded from proceeds of the issuance of the Series 1999-1 Bonds deposited in the Debt Service Account.

For each Distribution Date, payments will be made to holders of Series 1999-1 Bonds of record (the "**Bondholders**") as of the Record Date.

"**Record Date**" means the last Business Day of the month preceding a Distribution Date, or such other date as may be specified by the Indenture or an officer's certificate; and TSASC or the Indenture Trustee may in its discretion establish special record dates for the determination of the holders of Bonds for various purposes thereof, including giving consent or direction to the Indenture Trustee.

"**Business Day**" means any day other than (i) a Saturday or a Sunday or (ii) a day on which banking institutions in New York, New York are required or authorized by law to be closed.

### Payments of Principal

Principal payments will be made on the Series 1999-1 Bonds as follows.

The "**Rated Maturities**" for the Series 1999-1 Bonds represent the minimum amounts of principal that TSASC must pay as of the specified Distribution Dates (each, a "**Rated Maturity Date**") in order to avoid an Event of Default as described herein. The Rated Maturities for the Series 1999-1 Bonds are set forth on pages i and ii hereof.

Payments of principal required by the Rated Maturities will be made from Collections and, if necessary, Reserves. A failure by TSASC to pay an amount of principal of the Series 1999-1 Bonds in accordance with the Cumulative Rated Maturities Due as of any Rated Maturity Date, which takes into account all payments of principal made on or before such Rated Maturity Date, will constitute an Event of Default under the Indenture and will result in the Extraordinary Prepayment of the Senior Bonds, to the extent of available funds, on a semiannual basis as described herein. The term "**Cumulative Rated Maturities Due**" means, as of any date, an amount equal to the excess, if any, of (x) the sum of the principal amount of the Rated Maturity for such date, if any, plus the aggregate principal amount of the Rated Maturities for each prior Rated Maturity Date over (y) principal payments, including Planned Principal Payments, previously made on the applicable Bonds. **The ratings of the Series 1999-1 Bonds address the ability of TSASC to pay interest when due and to make cumulative principal payments in accordance with the Rated Maturities.**

The "**Planned Principal Payments**" for the Series 1999-1 Bonds represent the amounts of principal that TSASC has covenanted to pay, to the extent of available Collections and money in the Trapping Account, as of the specified Distribution Dates (each, a "**Planned Principal Payment Date**"). The Planned Principal Payments for the Series 1999-1 Bonds are as set forth on pages i and ii hereof.

Planned Principal Payments will be made from Collections and money in the Trapping Account only and, to the extent made, will be credited against the Rated Maturities. Failure to pay Planned Principal Payments will not constitute an Event of Default. If TSASC is unable to make a Planned Principal Payment on any Planned Principal Payment Date, principal will be paid, to the extent of available Collections and money in the Trapping Account, as frequently as semiannually on each subsequent Distribution Date until TSASC has paid a cumulative amount of principal of the Series 1999-1 Bonds equal to the Cumulative Planned Principal Payments Due. The term "**Cumulative Planned Principal Payments Due**" means, as of any date, an amount equal to the excess, if any, of (x) the sum of the Planned Principal Payment for such date, if any, plus the aggregate Planned Principal Payments for each prior Planned Principal Payment Date over (y) principal payments previously made on the applicable Bonds. The City will not receive any payments on the Residual Certificate and no additional Program Bonds may be issued unless and until TSASC has paid a cumulative amount of principal of the Series 1999-1 Bonds equal to the Cumulative Planned Principal Payments Due. **The ratings of the Series 1999-1 Bonds do not address the payment of principal in accordance with Planned Principal Payments.**

### Extraordinary Prepayment

If an Event of Default has occurred, on each Distribution Date outstanding Senior Bonds will be prepaid, in whole or in part, in an amount equal to the available funds on deposit in the Extraordinary Prepayment Account, without premium (any such prepayment prior to a Planned Principal Payment Date, an "**Extraordinary Prepayment**"). Collections are only deposited in the Extraordinary Prepayment Account to the extent all current and past due interest on Senior Bonds has been paid and all Cumulative Planned Principal Payments Due have been paid.

### Optional Redemption

The Series 1999-1 Bonds having Planned Principal Payment Dates on or before July 15, 2009 are not subject to redemption at TSASC's option prior to their respective Planned Principal Payment Dates. The Series 1999-1 Bonds having Planned Principal Payment Dates on or after July 15, 2010 are not subject to redemption at TSASC's option prior to July 15, 2009 but are subject to redemption at TSASC's option at any time on or after July 15, 2009, in whole or in part, at a redemption price of (i) 101% of the principal amount thereof, prior to July 15, 2010 (the excess of the redemption price over par, the "**Optional Redemption Premium**") or (ii) par, on or after July 15, 2010.

All Series 1999-1 Bonds are subject to redemption without premium from sources other than Collections on or after their respective Planned Principal Payment Dates.

Thirty days' notice shall be given to holders of Series 1999-1 Bonds to be redeemed prior to maturity. TSASC may select Bonds for optional redemption at its sole discretion. On and after any date of redemption, interest will cease to accrue on any Series 1999-1 Bonds called for redemption.

### Sinking Fund Redemption

The term Series 1999-1 Bonds having a final Rated Maturity Date of July 15, 2027 are subject to mandatory sinking fund redemption on the dates and according to the Rated Maturities and, to the extent of available Collections, Planned Principal Payments set forth below at a redemption price of par plus accrued interest to the date fixed for redemption.

**$125,980,000 Term Bonds Rated Maturity Date July 15, 2027**
**Planned Principal Payment Date July 15, 2019**

| Principal Amount | Rated Maturity Date (July 15) | Planned Principal Payment Date (July 15) |
|---|---|---|
| $10,920,000 | 2021 | 2015 |
| 7,940,000 | 2022 | 2015 |
| 12,375,000 | 2022 | 2016 |
| 8,220,000 | 2023 | 2016 |
| 13,195,000 | 2023 | 2017 |
| 9,205,000 | 2024 | 2017 |
| 13,405,000 | 2024 | 2018 |
| 17,405,000 | 2025 | 2018 |
| 5,680,000 | 2025 | 2019 |
| 24,190,000 | 2026 | 2019 |
| 3,445,000 | 2027 | 2019 |

The term Series 1999-1 Bonds having a final Rated Maturity Date of July 15, 2034 are subject to mandatory sinking fund redemption on the dates and according to the Rated Maturities and, to the extent of available Collections, Planned Principal Payments set forth below at a redemption price of par plus accrued interest to the date fixed for redemption.

**$195,995,000 Term Bonds Rated Maturity Date July 15, 2034**
**Planned Principal Payment Date July 15, 2024**

| Principal Amount | Rated Maturity Date (July 15) | Planned Principal Payment Date (July 15) |
|---|---|---|
| $23,005,000 | 2027 | 2020 |
| 12,940,000 | 2028 | 2020 |
| 12,690,000 | 2028 | 2021 |
| 24,675,000 | 2029 | 2021 |
| 1,615,000 | 2029 | 2022 |
| 27,055,000 | 2030 | 2022 |
| 10,435,000 | 2031 | 2022 |
| 18,460,000 | 2031 | 2023 |
| 22,425,000 | 2032 | 2023 |
| 8,425,000 | 2032 | 2024 |
| 32,810,000 | 2033 | 2024 |
| 1,460,000 | 2034 | 2024 |

The term Series 1999-1 Bonds having a final Rated Maturity Date of July 15, 2039 are subject to mandatory sinking fund redemption on the dates and according to the Rated Maturities and, to the extent of available Collections, Planned Principal Payments set forth below at a redemption price of par plus accrued interest to the date fixed for redemption.

**$225,935,000 Term Bonds Rated Maturity Date July 15, 2039**
**Planned Principal Payment Date July 15, 2029**

| Principal Amount | Rated Maturity Date (July 15) | Planned Principal Payment Date (July 15) |
|---|---|---|
| $33,940,000 | 2034 | 2025 |
| 10,740,000 | 2035 | 2025 |
| 27,175,000 | 2035 | 2026 |
| 18,095,000 | 2036 | 2026 |
| 22,605,000 | 2036 | 2027 |
| 23,545,000 | 2037 | 2027 |
| 15,645,000 | 2037 | 2028 |
| 31,300,000 | 2038 | 2028 |
| 5,785,000 | 2038 | 2029 |
| 37,105,000 | 2039 | 2029 |

At the option of TSASC, there shall be applied to or credited against any of the required amounts the principal amount of any such Term Bonds that have been defeased, purchased or redeemed and not previously so applied or credited.

### Additional Series of Bonds

TSASC may authorize, issue, sell and deliver Bonds from time to time in such principal amounts as TSASC may determine; and may issue Bonds to renew or refund Bonds by exchange, purchase, redemption or payment, and establish such escrows therefor as it may determine. Subsequent to the issuance of the Series 1999-1 Bonds, additional Bonds may be issued:

(1) as Senior Bonds (a) with Rating Confirmation; (b) without Rating Confirmation (x) if (i) annual Debt Service, separately calculated using Planned Principal Payments and Rated Maturities, will not exceed the Annual Program Debt Service as set forth below under the caption "Annual Program Debt Service Schedules;" (ii) Cumulative Planned Principal Payments Due are current prior to the receipt of the proceeds of the Bonds to be issued; (iii) the Liquidity Reserve Account and the Trapping Account will be at least at their respective requirements; and (iv) no Event of Default has occurred; or (y) to refund Senior Bonds if annual Debt Service, separately calculated using Planned Principal Payments and Rated Maturities, will not increase in any year in which other Series of Senior Bonds are outstanding;

(2) as BANs (a) with Rating Confirmation; or (b) subject to (i) authorization of a Series of Program Bonds in anticipation of which the BANs are to be issued; and (ii) satisfaction of the conditions in clause (1)(b) above with respect to such BANs, and of such condition (i) with respect to such authorized but unissued Series of Program Bonds based upon assumed Debt Service deemed reasonable by TSASC, or (c) to renew BANs; or

(3) as Subordinate Bonds, with Rating Confirmation.

Interest on BANs may be payable from the Bond Fund on a parity with, or junior to, payments of interest on Senior Bonds or from Bond proceeds or such other sources as may be specified by Series Supplement. Principal of BANs may be payable from Bond proceeds and such other sources (but neither the Collection Account nor the Bond Fund) as may be specified by Series Supplement.

**Annual Program Debt Service Schedules**

It is a precondition to the issuance of additional Program Bonds that the annual Debt Service on all outstanding Senior Bonds after giving effect to the proposed issuance and calculated separately using Planned Principal Payments and Rated Maturities, not exceed the following amounts in the following Fiscal Years:

| Fiscal Year Ended June 30, | Rated Maturity Annual Debt Service | Planned Principal Payment Annual Debt Service | Fiscal Year Ended June 30, | Rated Maturity Annual Debt Service | Planned Principal Payment Annual Debt Service |
|---|---|---|---|---|---|
| 2000 | $ 0 | $ 0 | 2022 | $220,050,794 | $241,003,250 |
| 2001 | 50,339,257 | 55,846,857 | 2023 | 220,270,275 | 239,580,488 |
| 2002 | 79,394,601 | 114,802,724 | 2024 | 219,200,913 | 235,239,700 |
| 2003 | 127,309,601 | 171,277,463 | 2025 | 219,115,031 | 227,194,225 |
| 2004 | 183,679,364 | 214,441,753 | 2026 | 218,898,138 | 221,015,556 |
| 2005 | 190,516,864 | 195,421,836 | 2027 | 215,799,069 | 214,193,725 |
| 2006 | 190,962,796 | 197,700,939 | 2028 | 215,464,994 | 202,352,988 |
| 2007 | 192,769,909 | 198,895,420 | 2029 | 211,341,019 | 193,521,884 |
| 2008 | 193,807,618 | 199,770,005 | 2030 | 208,063,819 | 183,416,469 |
| 2009 | 198,369,318 | 204,457,613 | 2031 | 206,518,113 | 172,606,300 |
| 2010 | 199,854,046 | 205,846,351 | 2032 | 205,158,725 | 132,264,925 |
| 2011 | 201,614,068 | 207,838,187 | 2033 | 206,499,219 | 68,056,425 |
| 2012 | 203,272,976 | 209,098,844 | 2034 | 205,607,544 | — |
| 2013 | 204,207,580 | 210,298,994 | 2035 | 206,727,844 | — |
| 2014 | 203,389,065 | 211,424,069 | 2036 | 205,682,266 | — |
| 2015 | 204,647,448 | 212,375,169 | 2037 | 204,417,488 | — |
| 2016 | 201,865,058 | 212,954,719 | 2038 | 198,110,944 | — |
| 2017 | 203,479,361 | 213,063,450 | 2039 | 190,987,953 | — |
| 2018 | 203,773,471 | 214,746,956 | 2040 | 176,771,047 | — |
| 2019 | 223,427,894 | 240,479,594 | 2041 | 152,369,025 | — |
| 2020 | 223,493,319 | 240,557,588 | 2042 | 105,291,375 | — |
| 2021 | 220,139,069 | 241,910,538 | 2043 | 57,628,800 | — |

**Book-Entry Only System**

*General.* DTC is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds securities that its participants (each, a "**Direct Participant**") deposit with DTC. DTC also facilitates the settlement Among Direct Participants of securities transactions, such as transfers and pledges, in deposited securities through electronic computerized book-entry changes in Direct Participants' accounts, thereby eliminating the need for physical movement of securities certificates. Direct Participants include securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is owned by a number of its Direct Participants and by the New York Stock Exchange, Inc., the American Stock Exchange, Inc., and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others such as securities brokers and dealers, banks, and trust companies that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (each, an "**Indirect Participant,**" and together with Direct Participants, "**DTC Participants**"). The rules applicable to DTC and DTC Participants are on file with the Securities and Exchange Commission.

Purchases of beneficial interests in the Series 1999-1 Bonds under the DTC system must be made by or through Direct Participants, who will receive a credit for the Series 1999-1 Bonds on DTC's records. The ownership interest of each actual purchaser of the Series 1999-1 Bonds (each, a "**Beneficial Owner**") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written

confirmation from DTC of their purchase, but each Beneficial Owner is expected to receive written confirmations providing details of the transaction, as well as periodic statements of its holdings, from the Direct or Indirect Participant through which such Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 1999-1 Bonds are to be accomplished by entries made on the books of DTC Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive physical certificates representing their ownership interests in the Series 1999-1 Bonds, except in the event that use of the book-entry system for the Series 1999-1 Bonds is discontinued.

To facilitate subsequent transfers, all the Series 1999-1 Bonds will be registered in the name of DTC. The deposit of the Series 1999-1 Bonds with DTC and their registration in the name of Cede & Co. will effect no change in beneficial ownership. DTC will have no knowledge of the actual Beneficial Owners of the Series 1999-1 Bonds; DTC's records will reflect only the identity of the Direct Participants to whose accounts the Series 1999-1 Bonds are credited, which may or may not be the Beneficial Owners. DTC Participants will remain responsible for keeping account of their holdings on behalf of Beneficial Owners.

Neither DTC nor Cede & Co. will consent or vote with respect to the Series 1999-1 Bonds. Under its usual procedures, DTC mails an Omnibus Proxy to TSASC as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Series 1999-1 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Except as described below, neither DTC nor Cede & Co. will take any action to enforce covenants with respect to any security registered in the name of Cede & Co. Under its current procedures, on the written instructions of a Direct Participant, DTC will cause Cede & Co. to sign a demand to exercise bondholder rights as record holder of the quantity of securities specified in the Direct Participant's instructions, and not as record holder of all the securities of that issue registered in the name of Cede & Co. Also, in accordance with DTC's current procedures, all factual representations to be made by Cede & Co. to the issuer, the Indenture Trustee or any other party must be made to DTC and Cede & Co. by the Direct Participant in its instructions to DTC.

For so long as the Series 1999-1 Bonds are issued in book-entry form through the facilities of DTC, any Beneficial Owner desiring to cause TSASC or the Indenture Trustee to comply with any of its obligations with respect to the Series 1999-1 Bonds must make arrangements with the Direct Participant or Indirect Participant through whom such Beneficial Owner's ownership interest in the Series 1999-1 Bonds is recorded in order for the Direct Participant in whose DTC account such ownership interest is recorded to make the instructions to DTC described above.

NEITHER OF THE ISSUER, THE INDENTURE TRUSTEE OR ANY UNDERWRITER (OTHER THAN IN ITS CAPACITY, IF ANY, AS A DIRECT PARTICIPANT OR INDIRECT PARTICIPANT) WILL HAVE ANY OBLIGATION TO DIRECT PARTICIPANTS OR INDIRECT PARTICIPANTS OR THE PERSONS FOR WHOM THEY ACT AS NOMINEES WITH RESPECT TO DTC'S PROCEDURES OR ANY PROCEDURES OR ARRANGEMENTS BETWEEN DIRECT PARTICIPANTS, INDIRECT PARTICIPANTS AND THE PERSONS FOR WHOM THEY ACT RELATING TO THE MAKING OF ANY DEMAND BY CEDE & CO. AS THE REGISTERED OWNER OF THE SERIES 1999-1 BONDS, THE ADHERENCE TO SUCH PROCEDURES OR ARRANGEMENTS OR THE EFFECTIVENESS OF ANY ACTION TAKEN PURSUANT TO SUCH PROCEDURES OR ARRANGEMENTS.

Principal and interest payments on the Series 1999-1 Bonds registered in the name of Cede & Co. will be made to DTC. DTC's practice is to credit Direct Participants' accounts on a Distribution Date in accordance with their respective holdings shown on DTC's records unless DTC has reason to believe that it will not receive payment on such date. Payments by DTC Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such DTC Participant and not of DTC, the Indenture Trustee, or TSASC, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal and interest to DTC is the responsibility of TSASC or the Indenture Trustee, disbursement of such payments to Direct Participants shall be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners shall be the responsibility of Direct and Indirect Participants.

So long as Cede & Co. is the registered owner of the Series 1999-1 Bonds, as nominee for DTC, references in this Offering Circular to Bondholders or registered owners of the Series 1999-1 Bonds (other than under the caption "TAX EXEMPTION AND OTHER TAX MATTERS" herein) shall mean Cede & Co., as aforesaid, and shall not mean the Beneficial Owners of the Series 1999-1 Bonds.

As long as the book-entry system is used for the Series 1999-1 Bonds, the Indenture Trustee and TSASC will give any notice of redemption or any other notices required to be given to Bondholders only to DTC or its nominee. Any failure of DTC to advise any Direct Participant, or of any Direct Participant to notify any Indirect Participant, or of any Direct Participant or Indirect Participant to notify any Beneficial Owner, of any such notice and its content or effect will not affect the validity of the redemption of the Series 1999-1 Bonds called for redemption or of any other action premised on such notice. Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

BENEFICIAL OWNERS SHOULD MAKE APPROPRIATE ARRANGEMENTS WITH THEIR BROKER OR DEALER TO RECEIVE NOTICES (INCLUDING NOTICES OF REDEMPTION) AND OTHER INFORMATION REGARDING THE SERIES 1999-1 BONDS THAT MAY BE SO CONVEYED TO DIRECT PARTICIPANTS AND INDIRECT PARTICIPANTS.

If less than all of the Series 1999-1 Bonds are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant to be redeemed.

For every transfer and exchange of a beneficial ownership interest in the Series 1999-1 Bonds, the Beneficial Owner may be charged a sum sufficient to cover any tax, fee or other governmental charge, that may be imposed in relation thereto.

DTC may discontinue providing its services as securities depository with respect to the Series 1999-1 Bonds at any time by giving reasonable notice to TSASC or Indenture Trustee, or TSASC may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). Under such circumstances, in the event that a successor securities depository is not obtained, the Series 1999-1 Bonds are required to be printed and delivered to Beneficial Owners.

THE ABOVE INFORMATION CONCERNING DTC AND DTC'S BOOK-ENTRY SYSTEM HAS BEEN OBTAINED FROM SOURCES THAT THE ISSUER BELIEVES TO BE RELIABLE, BUT THE ISSUER TAKES NO RESPONSIBILITY FOR THE ACCURACY THEREOF. NEITHER OF THE ISSUER, THE CITY OR THE INDENTURE TRUSTEE WILL HAVE ANY RESPONSIBILITY OR OBLIGATION TO DTC PARTICIPANTS, BENEFICIAL OWNERS OR OTHER NOMINEES OF SUCH BENEFICIAL OWNERS FOR (1) SENDING TRANSACTION STATEMENTS; (2) MAINTAINING, SUPERVISING OR REVIEWING, OR THE ACCURACY OF, ANY RECORDS MAINTAINED BY DTC OR ANY DTC PARTICIPANT OR OTHER NOMINEES OF SUCH BENEFICIAL OWNERS; (3) PAYMENT OR THE TIMELINESS OF PAYMENT BY DTC TO ANY DTC PARTICIPANT, OR BY ANY DTC PARTICIPANT OR OTHER NOMINEES OF BENEFICIAL OWNERS TO ANY BENEFICIAL OWNER, OF ANY AMOUNT DUE IN RESPECT OF THE PRINCIPAL OF OR REDEMPTION PREMIUM, IF ANY, OR INTEREST ON THE SERIES 1999-1 BONDS; (4) DELIVERY OR TIMELY DELIVERY BY DTC TO ANY DTC PARTICIPANT, OR BY ANY DTC PARTICIPANT OR OTHER NOMINEES OF BENEFICIAL OWNERS TO ANY BENEFICIAL OWNERS, OF ANY NOTICE (INCLUDING NOTICE OF REDEMPTION) OR OTHER COMMUNICATION WHICH IS REQUIRED OR PERMITTED UNDER THE TERMS OF THE INDENTURE OR THE SERIES 1999-1 SUPPLEMENT TO BE GIVEN TO HOLDERS OR OWNERS OF THE SERIES 1999-1 BONDS; (5) THE SELECTION OF THE BENEFICIAL OWNERS TO RECEIVE PAYMENT IN THE EVENT OF ANY PARTIAL REDEMPTION OF THE SERIES 1999-1 BONDS; OR (6) ANY ACTION TAKEN BY DTC OR ITS NOMINEE AS THE REGISTERED OWNER OF THE SERIES 1999-1 BONDS.

None of TSASC, the City, the Indenture Trustee or the Underwriters can give any assurance that DTC or DTC Participants will distribute payments of principal, premium or interest on the Series 1999-1 Bonds paid to DTC or

its nominee, or send any redemption or other notices, to the Beneficial Owners, or that they will do so in a timely manner or that DTC will act in the manner described in this Offering Circular.

*Year 2000 Compliance.* DTC has advised TSASC that management of DTC is aware that some computer applications, systems, and the like for processing data ("**Systems**") that are dependent upon calendar dates, including dates before, on, and after January 1, 2000, may encounter "Year 2000 problems." DTC has informed its Participants and other members of the financial community (the "**Industry**") that it has developed and is implementing a program so that its Systems, as the same relate to the timely payment of distributions (including principal and income payments) to securityholders, book-entry deliveries, and settlement of trades within DTC, continue to function appropriately. This program includes a technical assessment and a remediation plan, each of which is complete. Additionally, DTC's plan includes a testing phase, which, DTC has advised the Industry, is expected to be completed within appropriate time frames.

However, DTC's ability to perform properly its services is also dependent upon other parties, including, but not limited to, issuers and their agents, as well as DTC Participants and third party vendors from whom DTC licenses software and hardware, and third party vendors on whom DTC relies for information or the provision of services, including telecommunication and electrical utility service providers, among others. DTC has informed the Industry that it is contacting (and will continue to contact) third party vendors from whom DTC acquires services to: (i) impress upon them the importance of such services being "Year 2000" compliant; and (ii) determine the extent of their efforts for "Year 2000" remediation (and, as appropriate, testing) of their services. In addition, DTC is in the process of developing such contingency plans as it deems appropriate.

According to DTC, the foregoing information with respect to DTC has been provided to the Industry for informational purposes only and is not intended to serve as a representation, warranty, or contract modification of any kind.

## LEGAL CONSIDERATIONS

### Bankruptcy of a PM

*General.* The enforceability of the rights and remedies of the Bondholders and of the obligations of a PM under the MSA are subject to the Bankruptcy Code and to other applicable insolvency, moratorium or similar laws relating to or affecting the enforcement of creditors' rights generally. Some of the risks associated with a bankruptcy of a PM are described below and include the risks of delay in or reduction of amount of payment or of nonpayment under the MSA and the risk that the State (and, thus, the City and/or TSASC) may be stayed for an extended time from enforcing any of their respective rights under the MSA and the Decree or with respect to the payments owed by the bankrupt PM or from commencing legal proceedings against the bankrupt PM. As a result, if a PM becomes a debtor in a bankruptcy case and defaults in making payments of the TSRs, funds available to TSASC to pay Bondholders may be reduced or eliminated.

The description of the risks associated with the bankruptcy of a PM set forth below (which is not all-inclusive) assumes that the PM is a debtor in a reorganization case under Chapter 11 of the Bankruptcy Code. If a PM becomes bankrupt and is not a debtor in a Chapter 11 case, it would be liquidated under Chapter 7 of the Bankruptcy Code, in which event its operations would cease and its assets sold. In such an event, there would likely be a significant reduction in the amount of the TSRs actually received from the PM that is in the Chapter 7 case. To the extent that the volume of cigarettes sold by other PMs increased as a result of cessation of operations by the PM being liquidated under Chapter 7 of the Bankruptcy Code, the market share of such other PMs would increase, and total TSRs would not be reduced.

Should a PM become a debtor in a bankruptcy case, the PM may be required to obtain bankruptcy court approval prior to making payments owed by it under the MSA. Legal proceedings necessary to resolve the issue regarding whether the PM's obligations under the MSA are operating expenses under the Bankruptcy Code or are otherwise authorized to be paid during the pendency of the bankruptcy proceedings could be time consuming and could result in delays in payments by the bankrupt PM.

*MSA as Executory Contract.* The treatment of the MSA under the Bankruptcy Code may be dependent upon whether the MSA is construed to be an executory contract (which is not defined by the Bankruptcy Code but generally is considered to be one in which performance remains due to some extent on both sides). Under the Bankruptcy Code, if the MSA is treated as an executory contract, a bankruptcy trustee (or a PM acting as a debtor-in-possession) would have the right to assume or reject the MSA. However, in a Chapter 11 case there is no time period within which a bankruptcy trustee (or a PM acting as debtor-in-possession) would be required to assume or reject the MSA. Legal proceedings necessary to resolve the issue regarding whether the MSA is an executory contract under the Bankruptcy Code could be time consuming and could result in delays in payments by the bankrupt PM.

Transaction Counsel will render an opinion to TSASC, subject to all the facts, assumptions and qualifications stated therein, that in a properly presented and argued case, there being no precedent directly on point, a court of competent jurisdiction would hold that the MSA constitutes an executory contract under the Bankruptcy Code.

*Assumption or Rejection of MSA.* Should a bankruptcy trustee (or a PM acting as a debtor-in-possession) determine to assume the MSA, the bankruptcy trustee (or a PM acting as debtor-in-possession) must cure all outstanding MSA payment defaults or provide "adequate assurance" that such defaults would be cured promptly. "Adequate assurance" is not defined in the Bankruptcy Code and is determined by the bankruptcy court. Thus, the assurance provided by the bankrupt PM may be less than the assurance parties to a contract would require outside of bankruptcy and could result in delays in payments by the bankrupt PM.

In the event a bankruptcy trustee (or a PM acting as a debtor-in-possession) determines to reject the MSA, TSASC (and, thus, the Indenture Trustee and the Bondholders, as collateral assignees) may then have an unsecured, nonpriority claim for damages. Rejection of an executory contract should be treated as a breach of the contract by the PM. However, under the Bankruptcy Code, TSASC (and, thus, the Indenture Trustee and the Bondholders) nevertheless may be enjoined from commencing or continuing any action against the PM in order to enforce its remedies under the MSA (including an action to collect payments due under the MSA). In addition, because amounts owed by the PM under the MSA are not fixed, legal proceedings may be necessary to quantify the claims of TSASC (and, thus, the Indenture Trustee and the Bondholders) for damages as a result of the PM's

rejection of the MSA. Such legal proceedings could be time consuming and could result in delays in payments by the bankrupt PM.

*Modification of MSA Obligations.* If the MSA is not construed to be an "executory contract" or if the PM determines to reject the MSA or if the PM is otherwise not authorized to make payments under the MSA, then a bankruptcy of the PM could result in long delays and possibly in large reductions in the amount of TSRs available to pay the Bondholders because under the Bankruptcy Code, the obligations of the PM under the MSA could be modified. For example, the bankruptcy court may approve a plan of reorganization or liquidation of the PM which alters the timing or the amount of payments to be made by the PM in respect of the MSA of a claim in favor of TSASC (and, thus, the Indenture Trustee and Bondholders).

**Bankruptcy of the City**

*True Sale.* If the City were to become a debtor under the Bankruptcy Code or other similar federal or state laws, a creditor or the City might argue that the transfer by the City of the TSRs to TSASC was (or should be recharacterized as) a pledge of the TSRs to secure a borrowing, rather than a true sale. A determination that such transfer was a secured borrowing and not a sale would invalidate the Bonds because the City is not authorized to make a secured borrowing. The City has warranted to TSASC that the sale by it of the TSRs to TSASC will be a true sale of the TSRs to TSASC. In addition, the City and TSASC have treated, and will treat, the transactions described in the TSR Purchase Agreement as a true sale and will take all actions that are required by the TSR Purchase Agreement to evidence such true sale.

Transaction Counsel will also render an opinion to TSASC, subject to all the facts, assumptions and qualifications stated therein, that, in a properly presented and argued case, there being no precedent directly on point, a court of competent jurisdiction would hold that in the event of a bankruptcy filing by the City, the TSRs sold by the City to TSASC would not be characterized as property of the City that would be available to the City's creditors.

*Non-Consolidation.* In the event of a bankruptcy or insolvency proceeding with respect to the City, a court could determine that the assets and liabilities of TSASC should be consolidated with those of the City. TSASC and the City have taken and will take steps that are intended to ensure that a voluntary petition for relief by the City under the Bankruptcy Code or similar applicable federal or state laws will not result in the substantive consolidation of the assets and liabilities of TSASC and the City.

Transaction Counsel will also render an opinion to TSASC, subject to all the facts, assumptions and qualifications stated therein, that in a properly presented and argued case, there being no precedent directly on point, a court of competent jurisdiction would not, over the objection of the Bondholders, substantively consolidate the assets and liabilities of TSASC with those of the City.

**MSA Enforceability**

Most of the major provisions of the MSA are not severable. If a court materially modifies, renders unenforceable or finds unlawful any nonseverable provision, the attorneys general of the Settling States and the OPMs are to attempt to negotiate substitute terms. However, if any OPM does not agree to the substitute terms, the MSA would terminate in all Settling States affected by the court's ruling.

Certain cigarette importers, cigarette distributors, native American tribes and smokers' rights organizations have filed actions against some, and in certain cases all, of the signatories to the MSA alleging, among other things, that the MSA violates provisions of the federal constitution, federal antitrust laws, federal civil rights laws, state consumer protection laws and unfair competition laws, which actions, if ultimately successful, could result in a determination that the MSA is void or voidable. A determination by a court that a nonseverable provision of the MSA is void or voidable would, in the absence of an agreement to a substitute term as described above, result in the termination of the MSA in all Settling States affected by the court's ruling. Accordingly, in the event of such a determination, the Bondholders could incur a complete loss of their investment.

After having considered the effect of the above-referenced actions, and subject to the assumptions and qualifications set forth below, Transaction Counsel will render an opinion to TSASC that the MSA is a valid, binding and enforceable obligation of the signatories thereto under New York law. The opinion of Transaction Counsel as to the enforceability of the MSA and the obligations of the aforementioned signatories is also subject

to the effect of bankruptcy, insolvency, reorganization, receivership, moratorium and other similar laws affecting the rights and remedies of creditors generally and to the effect of general principles of equity, whether applied by a court of law or equity.

In rendering its enforceability opinion with respect to the MSA, Transaction Counsel has assumed (i) the due organization and valid existence of each signatory to the MSA, (ii) the due authorization, execution and delivery of the MSA by each such signatory (other than the State) and its full power, authority and legal right to execute and to deliver, and to perform and observe the provisions of, the MSA, (iii) that the execution, delivery and performance by each such signatory of the MSA (other than the State) does not (1) violate the provisions of the organizational documents of such signatory, (2) violate any judgment, decree, writ, injunction, award, determination or order applicable to any such signatory, or (3) conflict with, or result in a breach of, or constitute a default under, any of the provisions of any indenture, mortgage, deed of trust, contract or other instrument to which such signatory is a party, and (iv) the absence of the need for any consent, approval, order or authorization of, or filing with or notice to, any court or other governmental authority in respect of each such signatory that was not obtained.

Counsel for the Underwriters and the Law Department of the City concur with the opinions reached by Transaction Counsel with respect to the enforceability of the MSA, although independent opinions will not be delivered by such counsel.

**Limitations on Certain Opinions of Transaction Counsel**

The opinions of Transaction Counsel described above expressly note that a court's decision regarding the matters upon which Transaction Counsel is opining would be based on such court's own analysis and interpretation of the factual evidence before it and of applicable legal principles. Thus, for example, a conclusion by such a court that the MSA is void or voidable would not necessarily constitute reversible error. Consequently, an opinion of Transaction Counsel is not a prediction of what a particular court (including any appellate court) that reached the relevant issue on the merits would hold, but, instead, is the opinion of Transaction Counsel as to the proper result to be reached by a court applying existing legal rules to the facts as properly found after appropriate briefing and argument and, in addition, is not a guarantee, but rather reflects the informed professional judgment of Transaction Counsel.

**Impairment of Contracts**

Although the MSA Escrow Agent will be instructed to pay the TSRs to the Indenture Trustee, it is possible that the State could in the future attempt to claim some or all the TSRs for itself or otherwise interfere with the security for the Bonds. In that event the Bondholders could assert constitutional claims, including claims under the State and federal Due Process Clauses and the federal Contracts Clause.

The MSA, the Decree, the TSR Purchase Agreement and the Indenture create property rights in the Bondholders, of which, under the State Constitution and the United States Constitution, the Bondholders cannot be deprived without due process of law, that is, a reasonable connection between the deprivation and the promotion of the public health, comfort, safety and welfare.

The Bondholders are further entitled to the benefit of the prohibition in the United States Constitution's Contracts Clause against any state's impairment of the obligation of contracts. This prohibition, although not absolute, is particularly strong when applied to a state's attempt to evade its own obligations. Although the State has not contracted directly with the Bondholders, it has entered into the Decree allocating New York's share of the benefits of the MSA among itself, its counties and the City. The TSRs and money derived therefrom are the sole source of payment for the Bonds.

In the absence of a great public calamity, it is unlikely that the State could alter the MSA, the Decree or the financing arrangements in a manner that would substantially impair the rights of the Bondholders to be paid from the TSRs. No assurance can be given, however, that the State will not take action adverse to the Bondholders. The outcome of any such litigation cannot be predicted with certainty and, accordingly, Bondholders could incur a loss on their investment.

## THE INDENTURE

*The following summary describes certain terms of the Indenture pursuant to which the Series 1999-1 Bonds will be issued. This summary does not purport to be complete and is subject to, and qualified in its entirety by reference to, the provisions of the Indenture, the Series 1999-1 Supplement and the Series 1999-1 Bonds. Copies of the Indenture and the Series 1999-1 Supplement may be obtained upon written request to the Indenture Trustee. See "SECURITY" and "THE SERIES 1999-1 BONDS" for further descriptions of certain terms and provisions of the Series 1999-1 Supplement and Series 1999-1 Bonds.*

### Directors, State and City Not Liable on Bonds

Neither the members, directors or officers of TSASC nor any person executing the Bonds or other obligations of TSASC will be liable personally thereon or be subject to any personal liability or accountability solely by reason of the issuance thereof.

The Bonds and other obligations of TSASC will not be a debt of either the State or the City, and neither the State nor the City will be liable thereon, nor will they be payable out of any funds other than those of TSASC; and the Bonds will contain on the face thereof a statement to such effect. (Section 103)

### Separate Accounts and Records

The parties to the Indenture represent and covenant, each for itself, that: (a) TSASC and the Indenture Trustee each will maintain its respective books, financial records and accounts (including, without limitation, inter-entity transaction accounts) in a manner so as to identify separately the assets and liabilities of each such entity; each has observed and will observe all applicable corporate or trust procedures and formalities, including, where applicable, the holding of regular periodic and special meetings of governing bodies, the recording and maintenance of minutes of such meetings, and the recording and maintenance of resolutions, if any, adopted at such meetings; and all transactions and agreements between TSASC and the Indenture Trustee have reflected and will reflect the separate legal existence of each entity and have been and will be formally documented in writing; and (b) TSASC and the Indenture Trustee, in its individual capacity, have paid and will pay their respective liabilities and losses from their own respective separate assets. In furtherance of the foregoing, TSASC has compensated and will compensate all consultants, independent contractors and agents from its own funds for services provided to it by such consultants, independent contractors and agents. (Section 104)

### Security and Pledge

Pursuant to the Indenture, TSASC assigns and pledges to the Indenture Trustee in trust upon the terms thereof (a) the Revenues, (b) all rights to receive the Revenues and the proceeds of such rights, (c) the TSRs, (d) all Accounts and assets thereof, including money, contract rights, general intangibles or other personal property, held by the Indenture Trustee under the Indenture, (e) subject to the following sentence, all rights and interest of TSASC under the TSR Purchase Agreement, including the representations, warranties and covenants of the City in the TSR Purchase Agreement and (f) any and all other property conveyed, pledged, assigned or transferred as and for additional security. Except as specifically provided in the Indenture, such assignment and pledge does not include: (i) the rights of TSASC pursuant to provisions for consent or other action by TSASC, notice to TSASC, indemnity or the filing of documents with TSASC, or otherwise for its benefit and not for that of the Beneficiaries, (ii) any right or power reserved to TSASC pursuant to the Act or other law or (iii) any limitation on the amount of the Tobacco Bonds set forth in the TSR Purchase Agreement; nor does this paragraph preclude TSASC's enforcement of its rights under and pursuant to the TSR Purchase Agreement for the benefit of the Beneficiaries as provided in the Indenture. TSASC will implement, protect and defend such assignment and pledge by all appropriate legal action, the cost thereof to be an Operating Expense. The collateral is pledged and a security interest is therein granted to secure the payment of Bonds, the Residual Certificate and payments in respect of Swaps and Ancillary Contracts, all with the respective priorities specified in the Indenture. The lien of such pledge and the obligation to perform the contractual provisions made in the Indenture will have priority over any or all other obligations and liabilities of TSASC secured by the Revenues. (Section 201)

**Defeasance**

When (a) there is held by or for the account of the Indenture Trustee Defeasance Collateral in such principal amounts, bearing fixed interest at such rates and with such maturities as will provide sufficient funds to pay or redeem all obligations to Beneficiaries (including parties to Swaps and Ancillary Contracts but excluding for this purpose the holder of the Residual Certificate) in full (to be verified by a nationally recognized firm of independent certified public accountants), (b) any required notice of redemption will have been duly given in accordance with the Indenture or irrevocable instructions to give notice will have been given to the Indenture Trustee, and (c) all the rights of the Fiduciaries have been provided for, *then* upon written notice from TSASC to the Indenture Trustee, such Beneficiaries will cease to be entitled to any benefit or security under the Indenture except the right to receive payment of the funds so held and other rights which by their nature cannot be satisfied prior to or simultaneously with termination of the lien of the Indenture, the security interests created by the Indenture (except in such funds and investments) will terminate, and TSASC and the Indenture Trustee will execute and deliver such instruments as may be necessary to discharge the Indenture Trustee's lien and security interests created in the Indenture and to make the TSRs payable to the order of TSASC. Upon such defeasance, the funds and investments required to pay or redeem the Bonds and other obligations to such Beneficiaries will be irrevocably set aside for that purpose, subject, however, to TSASC's rights to money deposited with the Indenture Trustee or a Paying Agent with respect to payments on any Bond that remains unclaimed for two years after such payments has become due and payable (Section 506 of the Indenture), and money held for defeasance will be invested only as above and applied to the retirement of the Bonds and such other obligations. (Section 202)

**Bonds of TSASC**

By Series Supplement complying procedurally and in substance with the Indenture, TSASC may authorize, issue, sell and deliver Bonds from time to time in such principal amounts as TSASC will determine; and may issue Bonds to renew or refund Bonds, by exchange, purchase, redemption or payment, and establish such escrows therefor as it may determine. (Section 301) See "THE SERIES 1999-1 BONDS —Additional Series of Bonds."

**Residual Certificate**

Subject to the provisions of the Indenture for the benefit of the Holders, Fiduciaries and parties to Swaps and Ancillary Contracts, all Collections will be paid to the registered owner of the Residual Certificate. At delivery of the Series 1999-1 Bonds, the Residual Certificate will be delivered to the Trust in exchange for the beneficial interest in the Trust. Upon TSASC's simultaneous transfer to the City of the beneficial interest in the Trust pursuant to the TSR Purchase Agreement, the Residual Certificate will, among other things, implement the payment to the City of the net proceeds of (in addition to the Series 1999-1 Bonds) the other Series of Tobacco Bonds pursuant to the Local Law. (Article IV)

**Bond Fund**

A Bond Fund is established with the Indenture Trustee and money will be deposited therein as provided in the Indenture. The money in the Bond Fund will be held in trust and, except as otherwise provided in the Indenture, will be applied solely to the payment of Debt Service. The Bond Fund includes the Debt Service Account, the Liquidity Reserve Account, the Trapping Account, the Extraordinary Prepayment Account and such other Accounts as may be established in the Bond Fund by Supplemental Indenture. (Section 502)

**Swaps and Ancillary Contracts**

TSASC may enter into, amend or terminate, as it determines to be necessary or appropriate, Swaps or Ancillary Contracts, and may by Series Supplement provide for the payment of amounts due thereunder as Junior Payments or, to the extent permitted, as Parity Payments or Priority Payments. (Section 503)

**Redemption of the Bonds**

When a Bond is to be redeemed prior to its Planned Principal Payment Date, or as a sinking fund installment, or after its Planned Principal Payment Date but prior to its Rated Maturity, the Indenture Trustee will give notice in the name of TSASC, which notice will identify the Bonds to be redeemed, state the date fixed for redemption and state that such Bonds will be redeemed at the corporate trust office of the Indenture Trustee or a

Paying Agent. The notice will further state that on such date there will become due and payable upon each Bond to be redeemed the redemption price thereof, together with interest accrued to the redemption date, and that money therefor having been deposited with the Indenture Trustee or Paying Agent, from and after such date, interest thereon will cease to accrue. The Indenture Trustee will give 30 days' notice by mail, or otherwise transmit the redemption notice in accordance with any appropriate provisions of the Indenture, to the registered owners of any Bonds which are to be redeemed, at their addresses shown on the registration books of TSASC. Such notice may be waived by any Holder of Bonds to be redeemed. Failure by a particular Holder to receive notice, or any defect in the notice to such Holder, will not affect the redemption of any other Bond.

Unless otherwise specified by Series Supplement: (a) if less than all the Outstanding Bonds of like Planned Principal Payment Date and Rated Maturity are to be redeemed, the particular Bonds to be redeemed will be selected by the Indenture Trustee by such method as it will deem fair and appropriate and which may provide for the selection for redemption of portions (equal to any authorized denominations) of the principal of Bonds of a denomination larger than the minimum authorized denomination, and (b) the Indenture Trustee will redeem any and all Bonds held by the provider of an Ancillary Contract prior to any other Bonds redeemed unless otherwise directed by an officer's certificate of TSASC. (Section 504)

**Investments**

Pending its use under the Indenture, money in the Accounts may be invested by the Indenture Trustee in Eligible Investments maturing or redeemable at the option of the holder at or before the time when such money is expected to be needed and will be so invested pursuant to written direction of TSASC if there is not then an Event of Default actually known to the Indenture Trustee. Investments will be held by the Indenture Trustee in the respective Accounts and will be sold or redeemed to the extent necessary to make payments or transfers from each Account. The Indenture Trustee will not be liable for any losses on investments made at the direction of TSASC.

In computing the amount in any Account, the value of an Eligible Investment will be determined at least as frequently as each Distribution Date and will be calculated as follows:

(a) As to investments the bid and asked prices of which are published on a regular basis in The Wall Street Journal (or, if not there, then in The New York Times): the average of the bid and asked prices for such investments so published on or most recently prior to such time of determination;

(b) As to investments the bid and asked prices of which are not published on a regular basis in The Wall Street Journal or The New York Times: the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the Indenture Trustee in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service;

(c) As to certificates of deposit and bankers acceptances: the face amount thereof, plus accrued interest; and

(d) As to any investment not specified above: the value thereof established by prior agreement between TSASC and the Indenture Trustee.

The Indenture Trustee may hold undivided interests in Eligible Investments for more than one Account (for which they are eligible) and may make interfund transfers in kind.

In respect of Defeasance Collateral held for Defeased Bonds, this section will be effective only to the extent it is consistent with other applicable provisions of the Indenture or any separate escrow agreement. (Section 505)

**Contract; Obligations to Beneficiaries**

In consideration of the purchase and acceptance of any or all of the Bonds and Swaps and Ancillary Contracts by those who will hold the same from time to time, the provisions of the Indenture will be a part of the contract of TSASC with the Beneficiaries. The pledge made in the Indenture and the covenants to be performed by TSASC will be for the equal benefit, protection and security of the Beneficiaries of the same priority. All of the Bonds or payments on Swaps or Ancillary Contracts of the same priority, regardless of the time or times of their issuance or maturity, will be of equal rank without preference, priority or distinction of any thereof over any other except as expressly provided.

Under the Indenture, TSASC covenants to pay when due all sums payable on the Bonds, from the Revenues and money designated in the Indenture, subject only to (a) the Indenture, and (b) to the extent permitted by the Indenture, (x) agreements with Holders of Bonds pledging particular collateral for the payment thereof and (y) the rights of Beneficiaries under Swaps and Ancillary Contracts. The obligation of TSASC to pay principal, interest and redemption premium, if any, to the Holders of Bonds will be absolute and unconditional, will be binding and enforceable in all circumstances whatsoever, and will not be subject to setoff, recoupment or counterclaim.

In addition, TSASC represents under the Indenture that it is duly authorized pursuant to law, including the Act, to create and issue the Bonds, to enter into the Indenture and to pledge the Revenues and other collateral purported to be pledged. The Revenues and other collateral so pledged are and will be free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with, the pledge created by the Indenture, and all corporate action on the part of TSASC to that end has been duly and validly taken. The Bonds and the provisions of the Indenture are and will be the valid and binding obligations of TSASC in accordance with their terms. (Section 601)

**Operating Expenses; Priority Payments**

TSASC will pay its Operating Expenses and make Priority Payments to the parties entitled thereto. TSASC may borrow money to pay, and repay such borrowings as, Operating Expenses. The aggregate amount of such outstanding borrowings will never exceed the Operating Cap and will be zero for at least 30 days of each Fiscal Year. (Section 602)

**Tax Covenants**

TSASC will make the following covenants under the Indenture:

(a) TSASC will at all times do and perform all acts and things permitted by law and necessary or desirable to assure that interest paid by TSASC on Tax-Exempt Bonds will be excludable from gross income for Federal income tax purposes pursuant to Section 103(a) of the Code; and no funds of TSASC will at any time be used directly or indirectly to acquire securities or obligations the acquisition or holding of which would cause any Tax-Exempt Bond to be an arbitrage bond as defined in the Code and any applicable regulations thereunder. If and to the extent required by the Code, TSASC will periodically, at such times as may be required to comply with the Code, pay as an Operating Expense the amount, if any, required by the Code to be rebated or paid as a related penalty.

(b) The property of TSASC is irrevocably dedicated to charitable purposes. No part of the income or earnings of TSASC will inure to the benefit or profit of, nor will any distribution of its property or assets be made to, any member, director or officer of TSASC, or private person, corporate or individual, or to any other private interest, except that TSASC may repay loans made to it and may repay contributions (other than dues) made to it to the extent that any such contribution may not be allowable as a deduction in computing taxable income under the Code.

(c) TSASC will not attempt to influence legislation by propaganda or otherwise, or participate in or intervene, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office.

(d) TSASC will not engage in any activities not permitted to be carried on by an organization exempt from federal income taxation pursuant to Section 501(c)(3) of the Code and the regulations thereunder. (Section 603)

**Accounts and Reports**

TSASC will:

(a) cause to be kept books of account in which complete and accurate entries will be made of its transactions relating to all funds and accounts under the Indenture, which books will at all reasonable times be subject to the inspection of the Indenture Trustee and the Holders of an aggregate of not less than 25% in principal amount of Bonds then Outstanding or their representatives duly authorized in writing;

(b) annually, within 185 days after the close of each fiscal year, deliver to the Indenture Trustee and each Rating Agency, a copy of its financial statements for such fiscal year, as audited by an independent certified public accountant or accountants;

(c) keep in effect at all times by officer's certificates, an accurate and current schedule of all Debt Service (separately shown for Planned Principal Payments and Rated Maturities) to be payable during the life of then Outstanding Bonds, Swaps and Ancillary Contracts; certifying for the purpose such estimates as may be necessary; and

(d) for each Distribution Date, provide to the Trustee and each Rating Agency a statement indicating:

(1) the amount of principal to be paid to Bondholders of each Series on such Distribution Date;

(2) the amount of interest to be paid to Bondholders of each Series on such Distribution Date;

(3) the Cumulative Rated Maturities Due and the Cumulative Planned Principal Payments Due for each Series as of that Distribution Date;

(4) the amount on deposit in each Account as of that Distribution Date;

(5) the Liquidity Reserve Requirement as of that Distribution Date;

(6) whether or not a Trapping Event has occurred and is continuing; and

(7) the Trapping Requirement, if any, as of that Distribution Date.

**Ratings**

Unless otherwise specified by Series Supplement, TSASC will pay such reasonable fees and provide such available information as may be necessary to obtain and keep in effect ratings on all the Senior Bonds from at least two nationally recognized statistical rating organizations. (Section 606)

**Affirmative Covenants**

TSASC will make the following affirmative covenants under the Indenture:

*Maintenance of Existence.* TSASC will keep in full effect its existence, rights and franchises as not-for-profit corporation under the laws of the State.

*Protection of Collateral.* TSASC will from time to time execute and deliver all documents and instruments, and will take such other action, as is necessary or advisable to: (a) maintain or preserve the lien and security interest (and the priority thereof) of the Indenture; (b) perfect, publish notice of or protect the validity of any grant made or to be made by the Indenture; (c) preserve and defend title to the Revenues and other collateral and the rights of the Indenture Trustee and the Holders in such collateral against the claims of all persons and parties, including the challenge by any party to the validity or enforceability of the Decree, the Indenture or the TSR Purchase Agreement or the performance by any party thereunder; (d) enforce the TSR Purchase Agreement; (e) pay any and all taxes levied or assessed upon all or any part of the collateral; or (f) carry out more effectively the purposes of the Indenture.

*Performance of Obligations.* TSASC (a) will diligently pursue any and all actions to enforce its rights under each instrument or agreement included in the collateral and (b) will not take any action and will use its best efforts not to permit any action to be taken by others that would release any person from any of such person's covenants or obligations under any such instrument or agreement or that would result in the amendment, hypothecation, subordination, termination or discharge of, or impair the validity or effectiveness of, any such instrument or agreement, except, in each case, as expressly provided in the Indenture, the TSR Purchase Agreement or the Decree.

*Notice of Events of Default.* TSASC will give the Indenture Trustee and Rating Agencies prompt written notice of each Event of Default under the Indenture. (Section 607)

**Negative Covenants**

TSASC will make the following negative covenants under the Indenture:

*Sale of Assets.* Except as expressly permitted by the Indenture, TSASC will not sell, transfer, exchange or otherwise dispose of any of its properties or assets that are pledged under the Indenture.

*Liquidation.* TSASC will not terminate its existence or dissolve or liquidate in whole or in part.

*Limitation of Liens.* The Corporation will not (a) permit the validity of effectiveness of the Indenture to be impaired, or permit the lien of the Indenture to be amended, hypothecated, subordinated, terminated or discharged, or permit any person to be released from any covenants or obligations with respect to the Bonds under the Indenture except as may be expressly permitted by the Indenture, (b) permit any lien, charge, excise, claim, security interest, mortgage or other encumbrance (other than the lien of the Indenture) to be created on or extend to or otherwise arise upon or burden the collateral or any part thereof or any interest therein or the proceeds thereof or (c) permit the lien of the Indenture not to constitute a valid first priority security interest in the collateral.

*Limitations on Consolidation, Merger, Sale of Assets, etc.* Except as otherwise provided in the Indenture, TSASC will not consolidate or merge with or into any other person, or convey or transfer all or substantially all of its properties or assets, unless:

(a) the person surviving such consolidation or merger (if other than TSASC or the transferee) is organized and existing under the laws of the United States or any State and expressly assumes the due and punctual payment of the principal of and premium, if any, and interest on all Bonds and the performance or observance of every agreement and covenant of TSASC in the Indenture;

(b) immediately after giving effect to such transaction, no Default has occurred and is continuing under the Indenture;

(c) TSASC has received Rating Confirmation;

(d) TSASC has received an opinion of Counsel to the effect that such transaction will not have material adverse tax consequence to TSASC or any Holder;

(e) any action as is necessary to maintain the lien and security interest created by the Indenture has been taken; and

(f) TSASC has delivered to the Indenture Trustee an officer's certificate and an opinion of Counsel to the effect that such transaction complies with the Indenture and that all conditions precedent to such transaction have been complied with.

*No Other Business.* TSASC will not engage in any business other than financing, purchasing, owning and managing the collateral in the manner contemplated by the Indenture and activities incidental thereto.

*No Borrowing.* TSASC will not issue, incur, assume, guarantee or otherwise become liable, directly or indirectly, for any indebtedness except Permitted Indebtedness. Swaps and Ancillary Contracts are not indebtedness within the meaning of this covenant.

*Guarantees, Loans, Advances and Other Liabilities.* Except as otherwise contemplated by the Indenture and the TSR Purchase Agreement, TSASC will not make any loan or advance of credit to, or guarantee (directly or indirectly or by an instrument having the effect or assuring another's payment or performance on any obligation or capability of so doing or otherwise), endorse or otherwise become contingently liable, directly or indirectly, in connection with the obligations, stock or dividends of, or own, purchase, repurchase or acquire (or agree contingently to do so) any stock, obligations, assets or securities of, or any other interest in, or make any capital contribution to, any other person.

*Restricted Payments.* TSASC will not, directly or indirectly, make payments to or distributions from the Collection Account except in accordance with the Indenture.

*Directors.* TSASC will not amend its charter or by-laws to eliminate the requirements for two directors who are independent of the City. (Section 608)

**Tobacco Settlement Revenues; City Covenant**

The City has provided through the MSA, the Decree and the TSR Purchase Agreement for (a) TSASC's ownership and receipt of the TSRs, (b) the City's receipt of the net proceeds of the Tobacco Bonds (not including refunding Bonds) and (c) the resulting benefits to the people of the City and the State. Under the Indenture, TSASC acknowledges that the MSA, the Decree and the TSR Purchase Agreement constitute important security provisions of the Bonds and waives any right to assert any claim to the contrary and agrees that it will neither in any manner directly or indirectly assert, nor in any manner directly or indirectly support the assertion by the City, the State or any other person of, any such claim to the contrary.

By acknowledging that the MSA, the Decree and the TSR Purchase Agreement constitute important security provisions of the Bonds, TSASC also acknowledges under the Indenture that, in the event of any failure or refusal by the City or the State to comply with their agreements included in the MSA, the Decree and the TSR Purchase Agreement, the Holders of the Bonds may have suffered monetary damages, the extent of the remedy for which may be, to the fullest extent permitted by applicable Federal and State law, determined, in addition to any other remedy available at law or in equity, in the course of any action taken pursuant to the Indenture; and TSASC will waive any right to assert any claim to the contrary and agrees that it will neither in any manner directly or indirectly assert, nor in any manner directly or indirectly support the assertion by the City, the State or any other person of, any claim to the effect that no such monetary damages have been suffered.

TSASC includes in the Indenture the City's pledge and agreement with the Holders of the Outstanding Bonds that the City will not limit or alter the rights of TSASC to fulfill the terms of its agreements with such Holders, or in any way impair the rights and remedies of such Holders or the security for such Bonds until such Bonds, together with the interest thereon and all costs and expenses in connection with any action or proceeding by or on behalf of such Holders, are fully paid and discharged. (Section 701)

**No Indebtedness or Funds of City**

The Indenture does not create indebtedness of the City for any purpose, including constitutional or statutory limitations. TSASC's revenues are not funds of the City. (Section 702)

**Trustee's Organization, Authorization, Capacity and Responsibility**

The Indenture Trustee represents and warrants under the Indenture that it is duly organized and validly existing under the laws of the State, having the powers of a trust company within the State, including the capacity to exercise the powers and duties of the Indenture Trustee under the Indenture, and that by proper corporate action it has duly authorized the execution and delivery of the Indenture.

The duties and responsibilities of the Indenture Trustee will be as provided by law and as set forth in the Indenture. Notwithstanding the foregoing, no provision of the Indenture will require the Indenture Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties, or in the exercise of any of its rights or powers, unless it receives indemnity satisfactory to it against any loss, liability or expense.

As Trustee under the Indenture:

(a) the Indenture Trustee may conclusively rely and will be fully protected in acting or refraining from acting upon any officer's certificate, opinion of Counsel (or both), resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper person or persons;

(b) before the Indenture Trustee acts or refrains from acting, it may require an officer's certificate or an opinion of Counsel. The Indenture Trustee will not be liable for any action it takes or omits to take in good faith in reliance on such certificate or opinion. Whenever the Indenture Trustee will deem it necessary or desirable that a matter be proved or established prior to taking or suffering or omitting to take any action, such matter (unless other evidence in respect thereof be specifically prescribed) may, in the absence of negligence or bad faith on the part of the Indenture Trustee, be deemed to be conclusively proved and established by an officer's certificate delivered to the Indenture Trustee, and such certificate, in the absence of negligence or bad faith on the part of the Indenture Trustee, will be full warrant to the Indenture Trustee

for any action taken, suffered or omitted to be taken by it under the provisions of the Indenture upon the faith thereof;

(c) any request, direction, order or demand of TSASC mentioned in the Indenture will be sufficiently evidenced by an officer's certificate (unless other evidence in respect thereof be therein specifically prescribed); and any TSASC resolution may be evidenced to the Indenture Trustee by a copy thereof certified by the secretary or an assistant secretary of TSASC;

(d) prior to the occurrence of an Event of Default, the Indenture Trustee will not be bound to make any investigation into the facts or matters stated in any resolution, certificate, officers' certificate, opinion of Counsel, TSASC resolution, statement, instrument, opinion, report, notice, request, consent, order, approval, appraisal, bond, debenture, note, coupon, security, or other paper or document unless requested in writing so to do by a Majority in Interest of the Senior Bonds affected and then Outstanding; and if the payment within a reasonable time to the Indenture Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Indenture Trustee, not reasonably assured to the Indenture Trustee by the security afforded to it by the terms of the Indenture, the Indenture Trustee may require indemnity satisfactory to it against such expenses or liabilities as a condition to proceeding. (Section 801)

**Rights and Duties of the Fiduciaries**

All money and investments received by the Fiduciaries under the Indenture will be held in trust, not commingled with any other funds, and applied solely pursuant to the provisions of the Indenture.

The Fiduciaries will keep proper accounts of their transactions under the Indenture (separate from its other accounts), which will be open to inspection on reasonable notice by TSASC and its representatives duly authorized in writing.

The Fiduciaries will not be required to monitor the financial condition of TSASC and, unless otherwise expressly provided, will not have any responsibility with respect to reports, notices, certificates or other documents filed with them hereunder, except to make them available for inspection by Beneficiaries.

Each Fiduciary will be entitled to the advice of counsel (who may be counsel for any party) and will not be liable for any action taken in good faith in reliance on such advice. Each Fiduciary may rely conclusively on any notice, certificate or other document furnished to it under the Indenture and reasonably believed by it to be genuine. A Fiduciary will not be liable for any action taken or omitted to be taken by it in good faith and reasonably believed by it to be within the discretion or power conferred upon it, or taken by it pursuant to any direction or instruction by which it is governed under the Indenture or omitted to be taken by it by reason of the lack of direction or instruction required for such action, or be responsible for the consequences of any error of judgment reasonably made by it.

The Fiduciaries will in no event be liable for the application or misapplication of funds, or for other acts or failures to act, by any person, firm or corporation except by their respective directors, officers, agents, and employees. No recourse will be had for any claim based on the Indenture, the Bonds, the Residual Certificate or any Swaps or Ancillary Contracts against any director, officer, agent or employee of any Fiduciary unless such claim is based upon the bad faith, fraud or deceit of such person.

Nothing in the Indenture will obligate any Fiduciary to pay any debt or meet any financial obligations to any person in relation to the Bonds, the Residual Certificate, Swaps or Ancillary Contracts except from money received for such purposes under the Indenture or from the exercise of the Indenture Trustee's rights thereunder.

The Fiduciaries may be or become the owner of or trade in the Bonds or enter into Swaps or Ancillary Contracts with the same rights as if they were not the Fiduciaries.

Unless otherwise specified by Series Supplement, the Fiduciaries will not be required to furnish any bond or surety.

TSASC will, as and only as an Operating Expense, indemnify and save each Fiduciary harmless against any expenses and liabilities (including reasonable legal fees and expenses) that it may incur in the exercise of its duties and that are not due to its negligence or bad faith.

Nothing in the Indenture shall relieve any Fidiciary of responsibility for its negligence, bad faith or willful misconduct.

Any fees, expenses, reimbursements or other charges which any Fiduciary may be entitled to receive from TSASC under the Indenture, if not otherwise paid, will be a first lien upon (but only upon) any funds held by the Indenture Trustee for payment of Operating Expenses. (Section 802)

**Resignation or Removal of the Indenture Trustee**

Under the Indenture, the Indenture Trustee may resign on not less than 30 days' written notice to TSASC, the Holders and Moody's. The Trustee will be removed if rated below investment grade by Moody's and each successor Trustee will have an investment grade rating from Moody's. The Indenture Trustee may be removed by written notice from TSASC (if not in Default) or a Majority in Interest of the Outstanding Senior Bonds to the Indenture Trustee and TSASC. Such resignation or removal will not take effect until a successor has been appointed and has accepted the duties of the Trustee. (Section 804)

**Successor Fiduciaries**

Any corporation or association which succeeds to the related corporate trust business of a Fiduciary as a whole or substantially as a whole, whether by sale, merger, consolidation or otherwise, will thereby become vested with all the property, rights, powers and duties thereof under the Indenture, without any further act or conveyance.

In case a Fiduciary resigns or is removed or becomes incapable of acting, or becomes bankrupt or insolvent, or if a receiver, liquidator or conservator of a Fiduciary or of its property is appointed, or if a public officer takes charge or control of a Fiduciary, or of its property or affairs, then such Fiduciary will with due care terminate its activities under the Indenture and a successor may, or in the case of the Indenture Trustee will, be appointed by TSASC. If no appointment of a successor Trustee is made within 45 days after the giving of written notice in accordance with "—Resignation or Removal of the Indenture Trustee" above (Section 804 of the Indenture) or after the occurrence of any other event requiring or authorizing such appointment, the outgoing Trustee or any Holder may apply to any court of competent jurisdiction for the appointment of such a successor. Any successor Trustee appointed under this section will be a trust company or a bank having the powers of a trust company, located in the State, having a capital and surplus of not less than $50,000,000. (Section 805)

**Fiduciaries for BANs or Subordinate Bonds**

TSASC may by Series Supplement provide for the appointment of a Fiduciary (which may be the Indenture Trustee) to represent the Holders of BANs or Subordinate Bonds, having powers and duties not inconsistent herewith. (Section 806)

**Trustee's Covenant**

The Indenture Trustee will prepare and make available to all Holders and each Rating Agency semiannual statements of allocation of funds. (Section 807)

**Action by Holders**

Any request, authorization, direction, notice, consent, waiver or other action provided by the Indenture to be given or taken by Holders of Bonds may be contained in and evidenced by one or more writings of substantially the same tenor signed by the requisite number of Holders or their attorneys duly appointed in writing. Proof of the execution of any such instrument, or of an instrument appointing any such attorney, will be sufficient for any purpose of the Indenture (except as otherwise expressly provided) if made in the following manner, but TSASC or the Indenture Trustee may nevertheless in its discretion require further or other proof in cases where it deems the same desirable. The fact and date of the execution by any Holder or his attorney of such instrument may be proved by the certificate or signature guarantee, which need not be acknowledged or verified, of an officer of a bank, trust company or securities dealer satisfactory to TSASC or to the Indenture Trustee; or of any notary public or other officer authorized to take acknowledgements of deeds to be recorded in the jurisdiction in which he purports to act, that the person signing such request or other instrument acknowledged to him the execution thereof; or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer.

The authority of the person or persons executing any such instrument on behalf of a corporate Holder may be established without further proof if such instrument is signed by a person purporting to be the president or a vice president of such corporation with a corporate seal affixed and attested by a person purporting to be its clerk or secretary or an assistant clerk or secretary. Any action of the Holder of any Bond will be irrevocable and bind all future record and beneficial owners thereof. (Section 901)

**Registered Owners**

The enumeration of certain provisions applicable to DTC as Holder of immobilized Bonds will not be construed in limitation of the rights of TSASC and each Fiduciary to rely upon the registration books in all circumstances and to treat the registered owners of Bonds as the owners thereof for all purposes not otherwise specifically provided for by law or in the Indenture. Any payment to the registered owner of a Bond will satisfy TSASC's obligations thereon to the extent of such payment. (Section 902)

**Remedies**

*Remedies of the Indenture Trustee.* If an Event of Default occurs: (a) The Indenture Trustee may, and upon written request of the Holders of 25% in principal amount of the Senior Bonds Outstanding will, in its own name by action or proceeding in accordance with the Civil Practice Law and Rules:

(1) enforce all rights of the Holders and require TSASC or, to the extent permitted by law, the City to carry out its agreements with the Holders and to perform its duties under the TSR Purchase Agreement;

(2) sue upon such Bonds;

(3) require TSASC to account as if it were the Indenture Trustee of an express trust for the Holders of such Bonds; and

(4) enjoin any acts or things which may be unlawful or in violation of the rights of the Holders of such Bonds.

(b) The Indenture Trustee will, in addition to the other provisions of this section, have and possess all of the powers necessary or appropriate for the exercise of any functions incident to the general representation of Holders in the enforcement and protection of their rights.

(c) Upon a Default of TSASC under clause (ii) under the definition herein of "Event of Default" (Section 1001(a)(1) of the Indenture) or a failure actually known to an authorized officer of the Indenture Trustee to make any other payment required hereby within 7 days after the same becomes due and payable, the Indenture Trustee will give written notice thereof to TSASC. The Indenture Trustee will give Default notices under clauses (iii) and (iv) under the definition herein of "Event of Default" (paragraphs (a) (2) and (b) of Section 1001 of the Indenture) when instructed to do so by the written direction of another Fiduciary or the owners of at least 25% in principal amount of the Outstanding Senior Bonds. The Indenture Trustee will proceed under the Indenture for the benefit of the Holders in accordance with the written direction of a Majority in Interest of the Outstanding Senior Bonds. The Indenture Trustee will not be required to take any remedial action (other than the giving of notice) unless reasonable indemnity is furnished for any expense or liability to be incurred therein. Upon receipt of written notice, direction and indemnity, and after making such investigation, if any, as it deems appropriate to verify the occurrence of any event of which it is notified as aforesaid, the Indenture Trustee will promptly pursue the remedies provided by the Indenture or any such remedies (not contrary to any such direction) as it deems appropriate for the protection of the Holders, and will act for the protection of the Holders with the same promptness and prudence as would be expected of a prudent person in the conduct of such person's own affairs.

*Extraordinary Prepayment.* If an Event of Default occurs, the Outstanding Senior Bonds will be due and payable and will be paid, in whole or in part, from all available funds in the Extraordinary Payment Account or the Trapping Account, pursuant to the provisions described in "Security—Flow of Funds" (Section 501(B)(b) of the Indenture), at the principal amount thereof plus accrued interest to the date of payment.

*Subordinate Bond Remedies.* Subject to the prior application of the Accounts to pay Debt Service, to clause (a) above (Section 1002(D) of the Indenture) and to each applicable Series Supplement, the Holders of BANs, Subordinate Bonds or the Holder of the Residual Certificate, or a Fiduciary appointed pursuant to "—

Fiduciaries for BANs or Subordinate Bonds" above (Section 806 of the Indenture), may enforce the provisions of the Indenture for their benefit by appropriate legal proceedings.

*Individual Remedies.* No one or more Holders will by his or their action affect, disturb or prejudice the pledge created by the Indenture, or enforce any right under the Indenture, except in the manner provided in the Indenture; but nothing in the Indenture will affect or impair the right of any Holder of any Bond to enforce payment of the principal of, premium, if any, or interest thereon at and after the same comes due pursuant to the Indenture, or the obligation of TSASC to pay such principal, premium, if any, and interest on each of the Bonds to the respective Holders thereof at the time, place, from the source and in the manner expressed in the Indenture and the Bonds.

*Venue.* The venue of every action, suit or special proceeding against TSASC will be laid in the County of New York.

*Waiver.* If the Indenture Trustee determines that a Default has been cured before becoming an Event of Default and before the entry of any final judgment or decree with respect to it, the Indenture Trustee may waive the Default and its consequences, by written notice to TSASC, and will do so upon written instruction of the Holders of at least 25% in principal amount of the Outstanding Senior Bonds. (Section 1002)

**Supplements and Amendments to the Indenture**

The Indenture may be:

(a) supplemented by delivery to the Indenture Trustee of an instrument certified by an authorized officer of TSASC to (1) provide for earlier or greater deposits into the Bond Fund, (2) subject any property to the lien of the Indenture, (3) add to the covenants and agreements of TSASC or surrender or limit any right or power of TSASC, (4) identify particular Bonds for purposes not inconsistent herewith, including credit or liquidity support, remarketing, serialization and defeasance, (5) cure any ambiguity or defect, (6) protect the exclusion of interest on the Tax-Exempt Bonds from gross income for Federal income tax purposes, or the exemption from registration of the Bonds under the Securities Act, or of the Indenture under the Trust Indenture Act of 1939, as amended, or (7) authorize Bonds of a Series and in connection therewith determine the matters referred to in the Indenture, and any other things relative to such Bonds that are not materially adverse to the Holders of Outstanding Bonds, or to modify or rescind any such authorization or determination at any time prior to the first authentication and delivery of such Series of Bonds (or BANs in anticipation thereof); or

(b) amended by TSASC and the Indenture Trustee, with the consent of the holder of the Residual Certificate, (1) to add provisions that are not materially adverse to the Holders, (2) to adopt amendments that do not take effect unless and until (i) no Bonds Outstanding prior to the adoption of such amendment remain Outstanding or (ii) such amendment is consented to by the Holders of such Bonds in accordance with the Indenture, or (3) pursuant to the following paragraph.

Except as provided in the foregoing paragraph, the Indenture may be amended:

(a) only with written notice to the Rating Agencies and the written consent of a Majority in Interest of the Subordinate Bonds, BANs and Senior Bonds (acting as separate classes) to be Outstanding at the effective date thereof and affected thereby; but

(b) only with the unanimous written consent of the affected Holders for any of the following purposes: (1) to extend the maturity, Rated Maturity or Planned Principal Payment Date of any Bond, (2) to reduce the principal amount, applicable premium or interest rate of any Bond, (3) to make any Bond redeemable other than in accordance with its terms, (4) to create a preference or priority of any Bond over any other Bond of the same class or (5) to reduce the percentage of the Bonds required to be represented by the Holders giving their consent to any amendment.

Any amendment of the Indenture will be accompanied by an opinion of Counsel to the effect that the amendment is permitted by law and does not adversely affect the exclusion of interest on the Tax-Exempt Bonds from gross income for Federal income tax purposes.

When TSASC determines that the requisite number of consents have been obtained for an amendment to the Indenture or the TSR Purchase Agreement which requires consents, it will, file a certificate to that effect in its records and give notice to the Indenture Trustee and the Holders. (Section 1101)

**Supplements and Amendments to the TSR Purchase Agreement**

In the event that the Indenture Trustee receives a request for a consent or other action under the TSR Purchase Agreement the Indenture Trustee may, and if consent or other action by Holders is required will, transmit a notice of such request to each Holder and request directions with respect thereto; and the Indenture Trustee (and TSASC, if applicable) will proceed in accordance with such directions (if any), the Indenture and the TSR Purchase Agreement. (Section 1102)

**Definitions**

In addition to terms defined elsewhere herein, the following terms have the following meanings in this summary, unless the context otherwise requires:

"**Accounts**" means the Collection Account, the Accounts in the Bond Fund and Accounts established by Series Supplement, which if providing for Junior Payments will be outside the Bond Fund; all of which shall be segregated trust accounts established and held by the Trustee.

"**Accreted Value**" means the voting power of a Bond for which Accreted Value is specified by Series Supplement; and has such further meaning and effect as may be specified in the Indenture.

"**Act**" means the Not-For-Profit Corporation Law of the State, as in effect from time to time.

"**Beneficiaries**" means Holders and, to the extent specified, the owner of the Residual Certificate and the parties to Swaps and Ancillary Contracts.

"**Bonds**" means all obligations issued as Bonds or BANs pursuant to Section 301.

"**Counsel**" means nationally recognized bond counsel or such other counsel as may be selected by TSASC for a specific purpose.

"**Coupon Bonds**" means coupon Bonds and Bonds registered to bearer.

"**Default**" means an Event of Default without regard to any declaration, notice or lapse of time.

"**Defeasance Collateral**" means money and (i) non-callable direct obligations of the United States of America, non-callable and non-prepayable direct federal agency obligations the timely payment of principal of and interest on which are fully and unconditionally guaranteed by the United States of America, non-callable direct obligations of the United States of America which have been stripped by the United States Treasury itself or by any Federal Reserve Bank (not including "CATS," "TIGRS" and "TRS" unless TSASC obtains Rating Confirmation with respect thereto) and the interest components of REFCORP bonds for which the underlying bond is non-callable (or non-callable before the due date of such interest component) for which separation of principal and interest is made by request to the Federal Reserve Bank of New York in book-entry form, and will exclude investments in mutual funds and unit investment trusts;

(ii) obligations timely maturing and bearing interest (but only to the extent that the full faith and credit of the United States of America are pledged to the timely payment thereof);

(iii) certificates evidencing ownership of the right to the payment of the principal of and interest on obligations described in clause (ii), provided that such obligations are held in the custody of a bank or trust company satisfactory to the Indenture Trustee in a segregated trust account in the trust department separate from the general assets of such custodian; and

(iv) bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state (x) which are not callable at the option of the obligor or otherwise prior to maturity or as to which irrevocable notice has been given by the obligor to call such bonds or obligations on the date specified in the notice, and (y) timely payment of which is fully secured by a fund consisting only of cash or obligations of the character described in clause (i), (ii) or (iii) which fund may be applied only to the payment when due of such bonds or other obligations.

"**Defeased Bonds**" means Bonds that remain in the hands of their Holders but are no longer deemed Outstanding. When a Senior Bond is to be defeased, TSASC will provide for payment of its principal on or before its Planned Principal Payment Date or, if the Planned Principal Payment Date has passed, not later than the next Distribution Date for which any required notice of redemption can be timely given.

"**Eligible Investments**" means:

(i) Defeasance Collateral;

(ii) direct obligations of, or obligations guaranteed as to timely payment of principal and interest by, FHLMC, FNMA or the Federal Farm Credit System;

(iii) demand and time deposits in or certificates of deposit of, or bankers' acceptances issued by, any bank or trust company, savings and loan association or savings bank, payable on demand or on a specified date no more than three months after the date of issuance thereof, if such deposits or instruments are rated A-1+ by S&P and P-1 by Moody's;

(iv) general obligations of, or obligations guaranteed by, any state of the United States or the District of Columbia rated at least Aa1 by Moody's and receiving one of the two highest long-term unsecured debt ratings available for such securities from S&P;

(v) commercial or finance company paper (including both non-interest-bearing discount obligations and interest bearing obligations payable on demand or on a specified date not more than three months after the date of issuance thereof) that is rated A-1+ by S&P and P-1 by Moody's;

(vi) repurchase obligations with respect to any security described in clause (i) or (ii) above entered into with a primary dealer, depository institution or trust company (acting as principal) rated A-1+ by S&P and P-1 by Moody's (if payable on demand or on a specified date no more than three months after the date of issuance thereof), or rated at least Aa1 by Moody's and in one of the two highest long-term rating categories by S&P, or collateralized in accordance with the Indenture;

(vii) securities bearing interest or sold at a discount (payable on demand or on a specified date no more than three months after the date of issuance thereof) that are issued by any corporation incorporated under the laws of the United States of America or any state thereof and rated P-1 by Moody's and either A-1+ by S&P at the time of such investment or contractual commitment providing for such investment; *provided, however*, that securities issued by any such corporation will not be Eligible Investments to the extent that investment therein would cause the then outstanding principal amount of securities issued by such corporation that are then held to exceed 20% of the aggregate principal amount of all Eligible Investments then held;

(viii) units of taxable money market funds which funds are regulated investment companies and seek to maintain a constant net asset value per share and have been rated at least Aa1 by Moody's and at least AAm or AAm-G by S&P, including if so rated any such fund which the Indenture Trustee or an affiliate of the Indenture Trustee serves as an investment advisor, administrator, shareholder, servicing agent and/or custodian or sub-custodian, notwithstanding that (x) the Indenture Trustee or an affiliate of the Indenture Trustee charges and collects fees and expenses (not exceeding current income) from such funds for services rendered, (y) the Indenture Trustee charges and collects fees and expenses for services rendered pursuant to the Indenture, and (z) services performed for such funds and pursuant to the Indenture may converge at any time (TSASC specifically authorizes the Indenture Trustee or an affiliate of the Indenture Trustee to charge and collect all fees and expenses from such funds for services rendered to such funds, in addition to any fees and expenses the Indenture Trustee may charge and collect for services rendered pursuant to the Indenture);

(ix) investment agreements or guaranteed investment contracts rated, or with any financial institution or corporation whose senior long-term debt obligations are rated, or guaranteed by a financial institution whose senior long-term debt obligations are rated, at the time such agreement or contract is entered into, at least Aa1 by Moody's and in one of the two highest long-term rating categories by S&P if TSASC has an option to terminate such agreement in the event that either such rating is downgraded below the rating on the Senior Bonds, or collateralized in accordance with the Indenture; and

(x) other obligations or securities that are non-callable and that are acceptable to each Rating Agency;

provided that no Eligible Investment may (a) except for Defeasance Collateral, evidence the right to receive only interest with respect to the obligations underlying such instrument or (b) be purchased at a price greater than par if such instrument may be prepaid or called at a price less than its purchase price prior to its stated maturity.

"**FHLMC**" means the Federal Home Loan Mortgage Corporation.

"**Fiduciary**" means the Indenture Trustee, any representative of the Holders of Bonds appointed by Series Supplement, and each Paying Agent.

"**FNMA**" means the Federal National Mortgage Association.

"**Holders**" means the registered owners of the Bonds from time to time as shown on the books of TSASC, and to the extent specified by Series Supplement, the owners of Coupon Bonds.

"**Majority in Interest**" means the Holders of a majority of the Outstanding Bonds eligible to act on a matter, measured by face value at maturity or by Accreted Value as specified in a Series Supplement.

"**Local Law**" means Local Law No. 31 of the City, enacted June 7, 1999.

"**Operating Expenses**" means all expenses incurred by TSASC in the administration of TSASC including but not limited to arbitrage rebate and penalties, salaries, administrative expenses, insurance premiums, auditing and legal expenses, fees and expenses incurred for professional consultants and fiduciaries, and all Operating Expenses so identified in the Indenture.

"**Other Series**" of Bonds means Series thereof other than the Series 1999-1 Bonds.

"**Outstanding Bonds**" means Bonds issued under the Indenture, excluding: (i) Bonds that have been exchanged or replaced, or delivered to the Indenture Trustee for credit against a principal payment; (ii) Bonds that have been paid; (iii) Bonds that have become due and for the payment of which money has been duly provided; (iv) Bonds for which there has been irrevocably set aside sufficient Defeasance Collateral timely maturing and bearing interest, to pay or redeem them; and any required notice of redemption will have been duly given in accordance with the Indenture or irrevocable instructions to give notice will have been given to the Indenture Trustee; (v) Bonds the payment of which will have been provided for pursuant to "—Defeasance" above (Section 202 of the Indenture); and (vi) for purposes of any consent or other action to be taken by the Holders of a Majority in Interest or specified percentage of Bonds, Bonds held by or for the account of TSASC, the City or any person controlling, controlled by or under common control with either of them. For the purposes of this definition, "control," when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"**Permitted Indebtedness**" means Bonds, the Residual Certificate and borrowings to pay Operating Expenses (as described in Section 601(b) of the Indenture).

"**Rated Swap**" means a Swap Contract if the counterparty is limited to entities (1) the debt securities of which are rated in one of the two highest long-term debt rating categories by Moody's and S&P or (2) the obligations of which under the contract are either so rated or guaranteed or insured by an entity the debt securities or insurance policies of which are so rated or (3) the debt securities of which are rated in the third highest long-term debt rating category by Moody's and S&P or whose obligations are guaranteed or insured by an entity so rated, in either case the obligations of which under the contract are continuously and fully secured by Eligible Investments meeting criteria provided by Moody's and S&P to TSASC and then in effect.

"**Revenues**" means the TSRs and all aid, rents, fees, charges, payments, investment earnings and other income and receipts (including Bond proceeds but only to the extent deposited in an Account) paid or payable to TSASC or the Indenture Trustee for the account of TSASC or the Beneficiaries.

## THE TSR PURCHASE AGREEMENT

*The following summary describes certain terms of the TSR Purchase Agreement. This summary does not purport to be complete and is subject to, and qualified in its entirety by reference to, the provisions of the TSR Purchase Agreement. Copies of the TSR Purchase Agreement may be obtained upon written request to* TSASC.

### Conveyance of Tobacco Assets

In consideration of TSASC's delivery to or upon the order of the City of the Ownership Interest and the net proceeds (after Financing Costs and capitalized interest) of the Series 1999-1 Bonds, the City will sell, transfer, assign, set over and otherwise convey to TSASC, without recourse (subject to the obligations in the TSR Purchase Agreement), all future right, title and interest of the City on the Closing Date in and to the Tobacco Assets. (Section 2.01)

### Representations of City

The City will make the following representations on which TSASC is deemed to have relied in acquiring the Tobacco Assets. The representations speak as of the Closing Date, and will survive the sale of the Tobacco Assets to TSASC and the pledge thereof to the Indenture Trustee pursuant to the Indenture.

*Power and Authority.* The City is validly existing as a municipal corporation under the laws of the State, including the Constitution of the State, with full power and authority to execute and deliver the TSR Purchase Agreement and to carry out its terms; the City has full power, authority and legal right to sell and assign the Tobacco Assets to TSASC and has authorized such sale and assignment to TSASC by all necessary action; and the execution, delivery and performance of the TSR Purchase Agreement have been duly authorized by the City.

*Binding Obligation.* The TSR Purchase Agreement has been duly executed and delivered by the City and, assuming the due authorization, execution and delivery of the TSR Purchase Agreement by TSASC, constitutes a legal, valid and binding obligation of the City enforceable in accordance with its terms.

*No Consents.* No consent, approval, authorization, order, registration or qualification of or with any court or governmental agency or body is required for the consummation of the transactions contemplated by the TSR Purchase Agreement, except for those which have been obtained and are in full force and effect.

*No Violation.* The consummation by the City of the transactions contemplated by the Transaction Documents and the fulfillment of the terms thereof do not, to the City's knowledge, in any material way conflict with, result in any material breach of any of the material terms and provisions of, nor constitute (with or without notice or lapse of time) a material default under any indenture, the TSR Purchase Agreement or other instrument to which the City is a party or by which it shall be bound; nor violate any law or, to the City's knowledge, any order, rule or regulation applicable to the City of any court or of any federal or state regulatory body, administrative agency or other governmental instrumentality having jurisdiction over the City.

*No Proceedings.* To the City's knowledge, except as disclosed herein or in a schedule delivered to TSASC, there are no material proceedings or investigations pending against the City, before any court, regulatory body, administrative agency or other governmental instrumentality having jurisdiction over the City: (i) asserting the invalidity of any of the Transaction Documents or the Bonds, (ii) seeking to prevent the issuance of the Bonds or the consummation of any of the transactions contemplated by any of the Transaction Documents, or (iii) seeking any determination or ruling that would materially and adversely affect the validity or enforceability of any of the Transaction Documents or the Bonds.

*Title to Tobacco Assets.* The City is the sole owner of the Tobacco Assets.

*Absence of Liens on Tobacco Assets.* The City is selling the Tobacco Assets free and clear of any and all liens, pledges, charges, security interests or any other statutory impediments to transfer of any nature encumbering the Tobacco Assets.

The City acknowledges that TSASC will assign to the Indenture Trustee for the benefit of the Bondholders all of its rights and remedies with respect to the breach of any representations and warranties of the City under the TSR Purchase Agreement.

Upon discovery by the City, TSASC or a Responsible Officer of the Indenture Trustee of a breach of any of the foregoing representations and warranties that materially and adversely affects the value of the Tobacco Assets, the party discovering such breach will give prompt written notice to the other parties. The City will not be liable to the Indenture Trustee or the Bondholders for any loss, cost or expense resulting solely from the failure of the Indenture Trustee to promptly notify the City upon the discovery by a Responsible Officer of the Indenture Trustee of a breach of any such representation or warranty. (Section 3.01)

**Limitation on Liability**

The City and any officer or employee or agent of the City may rely in good faith on the advice of counsel or on any document of any kind, *prima facie* properly executed and submitted by any Person respecting any matters arising hereunder. The City will not be under any obligation to appear in, prosecute or defend any legal action that will not be related to its obligations under the TSR Purchase Agreement, and that in its opinion may involve it in any expense or liability. Neither the City nor any of the officers or employees or agents of the City will be under any liability to TSASC, except as provided under the TSR Purchase Agreement, for any action taken or for refraining from the taking of any action pursuant to the TSR Purchase Agreement or for errors in judgment; but this sentence will not protect the City or any such person against any liability that would otherwise be imposed by reason of willful misfeasance, bad faith or negligence in the performance of duties or by reason of reckless disregard of obligations and duties under the TSR Purchase Agreement. (Section 3.03)

**Protection of Title; Non-Impairment Covenant**

The City will take all actions as may be required by law fully to preserve, maintain, defend, protect and confirm the interest of TSASC and the interests of the Indenture Trustee on behalf of the Bondholders in the Tobacco Assets and in the proceeds thereof. The City will not take any action that will adversely affect TSASC's ability to receive payments made under the MSA and the Decree. Under the TSR Purchase Agreement, the City will pledge and agree with TSASC, and the holders of the Bonds, that the City will not limit or alter the rights of TSASC to fulfill the terms of its agreements with such holders, or in any way impair the rights and remedies of such holders or the security for Bonds until the Bonds, together with the interest thereon and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully paid and discharged. (Section 4.01)

**Protection of Decree and MSA**

The City will not take any action and will use its best reasonable efforts not to permit any action to be taken by others that would release any person from any of such person's covenants or obligations under the Decree and the MSA or that would result in the amendment, hypothecation, subordination, termination or discharge of, or impair the validity or effectiveness of, the Decree or the MSA, nor, without the prior written consent of TSASC and the Indenture Trustee on behalf of the Bondholders, amend, modify, terminate, waive or surrender, or agree to any amendment, modification, termination, waiver or surrender of, the terms of the Decree or the TSR Purchase Agreement, or waive timely performance or observance under such documents, in each case if the effect thereof would be materially adverse to the Bondholders. (Section 4.02)

**Further Actions**

Upon request of TSASC or the Indenture Trustee, the City will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of the TSR Purchase Agreement. The City will promptly pay over to the Trustee the proceeds of any Tobacco Assets received by the City in error. (Section 4.03)

**Tax Covenant**

The City will at all times do and perform all acts and things permitted by law and necessary or desirable to assure that interest paid by TSASC on Tax-Exempt Bonds will be excludable from gross income for Federal income tax purposes pursuant to Section 103(a) of the Code; and no funds of the City will at any time be used directly or indirectly to acquire securities or obligations the acquisition or holding of which would cause any Tax-

Exempt Bond to be an arbitrage bond as defined in the Code and any applicable regulations thereunder. (Section 4.04)

**Amendment**

The TSR Purchase Agreement may be amended by the City and TSASC, with the consent of the Indenture Trustee, but without the consent of any of the Bondholders: (a) to cure any ambiguity; (b) to correct or supplement any provisions in the TSR Purchase Agreement; (c) to correct or amplify the description of the Tobacco Assets; (d) to add additional covenants for the benefit of TSASC; or (e) for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions in the TSR Purchase Agreement that shall not, as evidenced by Rating Confirmation or an Opinion of Counsel delivered to the Trustee and the Indenture Trustee, adversely affect in any material respect the Senior Bonds.

Except as otherwise provided in the preceding paragraph, the TSR Purchase Agreement may also be amended from time to time by the City and TSASC with the consent of the Indenture Trustee and Rating Confirmation or the consent of a Majority in Interest of the Senior Bonds for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the TSR Purchase Agreement or of modifying in any manner the rights of the Bondholders; but no such amendment shall reduce the aforesaid portion of the outstanding amount of the Senior Bonds, the Holders of which are required to consent to any such amendment, without the consent of the Holders of all the outstanding Senior Bonds. (Section 5.01)

**Use of the Purchase Price; No Payments to the Purchaser**

The portion of the purchase price payable to the City pursuant to the TSR Purchase Agreement corresponding directly or indirectly to the net proceeds (after Financing Costs and capitalized interest) of the Tobacco Bonds shall be used by the City to finance a portion of the City's capital budget as adopted by the council of the City pursuant to the charter of the City. The City will not make payments of any money to TSASC except pursuant to appropriation. (Section 5.02)

**Assignment by TSASC**

The City will acknowledge and consent to any pledge, assignment and grant of a security interest by TSASC to the Indenture Trustee pursuant to the Indenture for the benefit of the Bondholders of any or all right, title and interest of TSASC in, to and under the Tobacco Assets or the assignment of any or all of TSASC's rights and obligations thereunder to the Indenture Trustee. (Section 5.10)

**Nonpetition Covenants**

The City shall not, prior to the date which is one year and one day after the termination of the TSR Purchase Agreement, acquiesce, petition or otherwise invoke or cause TSASC or the Residual Trust to invoke the process of any court or government authority for the purpose of commencing or sustaining a case against TSASC or the Residual Trust under any Federal or state bankruptcy, insolvency or similar law or appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official of TSASC or the Residual Trust or any substantial part of its property, or ordering the winding up or liquidation of the affairs of TSASC or the Residual Trust. (Section 5.11)

**Limitation of Liability of the City**

Notwithstanding anything in the TSR Purchase Agreement to the contrary, no officer or employee of the City will have any liability for the representations, warranties, covenants, TSR Purchase Agreements or other obligations of the City in the TSR Purchase Agreement or in any of the certificates, notices or TSR Purchase Agreements delivered pursuant to the TSR Purchase Agreement, as to all of which recourse will be had solely to the assets of the City. (Section 5.12)

**Definitions**

In addition to terms defined elsewhere herein, the following terms have the following meanings in this summary, unless the context otherwise requires:

"**Financing Costs**" means all costs, fees, reserves and credit and liquidity enhancements as TSASC determines to be desirable in issuing, securing and marketing the Tobacco Bonds.

"**Lien**" means a security interest, lien, charge, pledge, equity or encumbrance of any kind, attaching to the interests of the City in and to the Tobacco Assets, whether or not as a result of any act or omission by the City.

"**Opinion of Counsel**" means one or more written opinions of counsel who may be an employee of or counsel to the City, which counsel is acceptable to the Indenture Trustee.

"**Ownership Interest**" means the undivided beneficial interest in the Trust created by the Trust Agreement.

"**Residual Trust**" or "**Trust**" means TSASC Tobacco Settlement Trust, the trust established by TSASC pursuant to the Trust Agreement and which, as a result of its ownership of the Residual Certificate, is entitled to receive (i) the net proceeds of the Bonds other then the Series 1999-1 Tobacco Bonds and (ii) the revenues of TSASC that are in excess of TSASC's expenses, debt service and contractual obligations pursuant to the Indenture.

"**Tobacco Assets**" means all future right, title and interest of the City under the MSA and the Decree, including the rights of the City to receive, and to enforce the payment of, the money due to it under the Decree.

"**Tobacco Bonds**" means the bonds, notes and other obligations issued by TSASC under the Indenture (exclusive of bonds that TSASC may issue to refund bonds of TSASC), the net proceeds (after Financing Costs and capitalized interest) of which shall be used by TSASC to pay (directly or indirectly) a portion of the purchase price to the City for the Tobacco Assets.

"**Transaction Documents**" means the TSR Purchase Agreement, the Indenture, the Trust Agreement and the underwriting agreement for the sale of the Series 1999-1 Bonds.

"**Trust Agreement**" means the Declaration and Agreement of Trust relating to the Residual Trust by and between the Trustee and TSASC, dated as of November 1, 1999, as such TSR Purchase Agreement may be amended and restated pursuant to the provisions thereof. (Section 1.01)

## CONTINUING DISCLOSURE UNDERTAKING

To the extent that Rule 15c2-12 (the "**Rule**") of the Securities and Exchange Commission ("**SEC**") promulgated under the Securities Exchange Act of 1934, as amended (the "**1934 Act**"), requires the Underwriters to determine, as a condition to purchasing the Series 1999-1 Bonds, that TSASC will make such covenants, TSASC will covenant for the sole benefit of the Bondholders as follows:

TSASC shall provide (a) within 350 days after the end of each fiscal year, to each nationally recognized municipal securities information repository and to any State information depository, core financial information and operating data for the prior fiscal year, including (i) TSASC's audited financial statements, prepared in accordance with generally accepted accounting principles in effect from time to time, and (ii) material historical quantitative data on TSASC's revenues, expenditures, financial operations and indebtedness generally of the types discussed in "SUMMARY OF BOND STRUCTURING ASSUMPTIONS AND AMORTIZATION" under (A) the last four columns (headed "Total Payments") in the table captioned "Projection of Initial Payments to be Received by TSASC", (B) the last four columns (headed "Total Payments") in the table captioned "Projection of Annual and Total Payments to be Received by TSASC"; and also the debt service coverage for the most recent full Fiscal Year for all Series of Outstanding Senior Bonds based on Rated Maturities and Planned Principal Payments.

(b) in a timely manner, to each nationally recognized municipal securities information repository or to the Municipal Securities Rulemaking Board, and to any New York State information depository, notice of any of the following events with respect to the Bonds, if material:

(1) principal and interest payment delinquencies;

(2) non-payment related defaults;

(3) unscheduled draws on debt service reserves reflecting financial difficulties;

(4) unscheduled draws on credit enhancements reflecting financial difficulties;

(5) substitution of credit or liquidity providers, or their failure to perform;

(6) adverse tax opinions or events affecting the tax-exempt status of the Bonds;

(7) modifications to rights of Bondholders;

(8) bond calls;

(9) defeasances;

(10) release, substitution, or sale of property securing repayment of the Bonds;

(11) rating changes; and

(12) failure of TSASC to comply with clause (a) above.

TSASC will not undertake to provide any notice with respect to (i) credit enhancement if the credit enhancement is added after the primary offering of the Series 1999-1 Bonds, TSASC does not apply for or participate in obtaining the enhancement and the enhancement is not described in this Offering Circular or (ii) tax exemption other than pursuant to Section 103 of the Code.

TSASC will not undertake to provide the above-described event notice of a mandatory scheduled redemption, not otherwise contingent upon the occurrence of an event, if (i) the terms, dates and amounts of redemption are set forth in detail herein (ii) the only open issue is which Series 1999-1 Bonds will be redeemed in the case of a partial redemption, (iii) notice of redemption is given to the Bondholders as required under the terms of the Series 1999-1 Bonds and (iv) public notice of the redemption is given pursuant to 1934 Act Release No. 23856 of the SEC, even if the originally scheduled amounts are reduced by prior optional redemptions or Series 1999-1 Bond purchases.

No Bondholder may institute any suit, action or proceeding at law or in equity ("**Proceeding**") for the enforcement of the continuing disclosure undertaking (the "**Undertaking**") or for any remedy for breach thereof, unless such Bondholder shall have filed with TSASC evidence of ownership and a written notice of and

request to cure such breach, and TSASC shall have refused to comply within a reasonable time. All Proceedings shall be instituted only as specified herein, in the federal or state courts located in the Borough of Manhattan, State and City of New York, and for the equal benefit of all holders of the outstanding bonds benefited by the same or a substantially similar covenant, and no remedy shall be sought or granted other than specific performance of the covenant at issue.

TSASC will not undertake to provide updates or revisions to any forward-looking statements contained in this Offering Circular, including but not limited to, those that include the words "expects," "forecasts," "projects," "intends," "anticipates," "estimates," "assumes" or analogous expressions.

An amendment to the Undertaking may only take effect if:

(a) the amendment is made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature, or status of TSASC, or type of business conducted; the Undertaking, as amended, would have complied with the requirements of the Rule at the time of sale of a series of Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and the amendment does not materially impair the interests of Bondholders, as determined by parties unaffiliated with TSASC (such as, but without limitation, TSASC's financial advisor or bond counsel) and the annual financial information containing (if applicable) the amended operating data or financial information will explain, in narrative form, the reasons for the amendment and the "impact" (as that word is used in the letter from the SEC staff to the National Association of Bond Lawyers dated June 23, 1995) of the change in the type of operating data or financial information being provided; or

(b) all or any part of the Rule, as interpreted by the staff of the SEC at the date of the Series 1999-1 Bonds, ceases to be in effect for any reason, and TSASC elects that the Undertaking shall be deemed terminated or amended (as the case may be) accordingly.

For purposes of the Undertaking, a beneficial owner of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares investment power which includes the power to dispose, or to direct the disposition of, such security, subject to certain exceptions as set forth in the Undertaking. Any assertion of beneficial ownership must be filed, with full documentary support, as part of the written request described above.

## TAX EXEMPTION AND OTHER TAX MATTERS

In the opinion of Brown & Wood LLP, New York, New York, as Transaction Counsel, except as provided in the following sentence, interest on the Series 1999-1 Bonds will not be includable in the gross income of the owners of the Series 1999-1 Bonds for purposes of federal, New York State or New York City income taxation under existing law. Interest on the Series 1999-1 Bonds will be includable in the gross income of the owners thereof retroactive to the date of issue of the Series 1999-1 Bonds in the event of a failure by TSASC or the City to comply with applicable requirements of the Code, and their respective covenants regarding use, expenditure and investment of bond proceeds and the timely payment of certain investment earnings to the United States Treasury, and no opinion is rendered by Brown & Wood LLP as to the exclusion from gross income of the interest on the Series 1999-1 Bonds on or after the date on which any action is taken under the Bond proceedings upon the approval of counsel other than such firm.

Interest on the Series 1999-1 Bonds will not be a specific preference item for purposes of the federal individual or corporate alternative minimum tax. The Code contains other provisions that could result in tax consequences, upon which Brown & Wood LLP renders no opinion, as a result of ownership of the Series 1999-1 Bonds or the inclusion in certain computations (including, without limitation, those related to the corporate alternative minimum tax) of interest that is excluded from gross income. Interest on the Series 1999-1 Bonds owned by a corporation will be included in the calculation of the corporation's federal alternative minimum tax liability.

Ownership of tax-exempt obligations may result in collateral tax consequences to certain taxpayers, including, without limitation, financial institutions, property and casualty insurance companies, certain foreign corporations doing business in the United States, certain S Corporations with excess passive income, individual recipients of Social Security or railroad retirement benefits, taxpayers eligible for the earned income tax credit and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry tax-exempt obligations. Prospective purchasers of the Series 1999-1 Bonds should consult their tax advisors as to the applicability of any such collateral consequences.

The excess, if any, of the amount payable at maturity of any maturity of the Series 1999-1 Bonds over the initial public offering price to the public (excluding bond houses, brokers or similar brokers acting in the capacity of underwriters or wholesalers) at which price a substantial amount of such maturity is sold constitutes original issue discount, which will be excludable from gross income to the same extent as interest on the Series 1999-1 Bonds for federal, New York State and New York City income tax purposes. The Code provides that the amount of original issue discount accrues in accordance with a constant interest method based on the compounding of interest, and that a holder's adjusted basis for purposes of determining a holder's gain or loss on disposition of the Series 1999-1 Bonds with original issue discount (the "**OID Bonds**") will be increased by such amount. A portion of the original issue discount that accrues in each year to an owner of an OID Bond which is a corporation will be included in the calculation of the corporation's federal alternative minimum tax liability. In addition, original issue discount that accrues in each year to an owner of an OID Bond is included in the calculation of the distribution requirements of certain regulated investment companies and may result in some of the collateral federal income tax consequences discussed above. Consequently, owners of any OID Bond should be aware that the accrual of original issue discount in each year may result in an alternative minimum tax liability, additional distribution requirements or other collateral federal income tax consequences although the owner of such OID Bond has not received cash attributable to such original issue discount in such year.

Owners of OID Bonds should consult their personal tax advisors with respect to the determination for federal income tax purposes of the amount of original issue discount or interest properly accruable with respect to such OID Bonds, other tax consequences of owning OID Bonds and other state and local tax consequences of holding such OID Bonds.

The excess, if any, of the tax basis of the Series 1999-1 Bonds to a purchaser (other than a purchaser who holds such Series 1999-1 Bonds as inventory, stock in trade or for sale to customers in the ordinary course of business) over the amount payable at maturity is "bond premium." Bond premium is amortized over the term of such Series 1999-1 Bonds for federal income tax purposes. Owners of such Series 1999-1 Bonds are required to decrease their adjusted basis in such Series 1999-1 Bonds by the amount of amortizable bond premium attributable to each taxable year such Series 1999-1 Bonds are held. The amortizable bond premium on such

Series 1999-1 Bonds attributable to a taxable year is not deductible for federal income tax purposes. Owners of such Series 1999-1 Bonds should consult their tax advisors with respect to the determination for federal income tax purposes of the treatment of bond premiums upon sale or other disposition of such Series 1999-1 Bonds and with respect to the state and local tax consequences of owning and disposing of such Series 1999-1 Bonds.

Legislation affecting municipal securities is constantly being considered by the United States Congress. There can be no assurance that legislation enacted after the date of issuance of the Series 1999-1 Bonds will not have an adverse effect on the tax-exempt status of the Series 1999-1 Bonds. Legislative or regulatory actions and proposals may also affect the economic value of tax exemption or the market price of the Series 1999-1 Bonds.

## LITIGATION

There is no litigation pending in any court (either State or federal) to restrain or enjoin the issuance or delivery of the Series 1999-1 Bonds or questioning the creation, organization or existence of TSASC, the validity or enforceability of the Indenture, the sale of the TSRs by the City to TSASC, the proceedings for the authorization, execution, authentication and delivery of the Series 1999-1 Bonds or the validity of the Series 1999-1 Bonds.

## RATINGS

It is a condition to the obligation of the Underwriters to purchase the Series 1999-1 Bonds that, at the date of delivery thereof to the Underwriters, the Series 1999-1 Bonds be assigned ratings by at least three of Duff & Phelps Credit Rating Company ("**DCR**"), Fitch IBCA, Inc. ("**Fitch**"), Moody's Investors Service, Inc. ("**Moody's**") and Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. ("**S&P**") (collectively, the "**Rating Agencies**") as set forth in the table below.

**The ratings address each Rating Agency's assessment of the ability of TSASC to pay interest when due and to make cumulative principal payments on the Series 1999-1 Bonds in accordance with the Rated Maturities. The ratings will not address the likelihood of payments of principal in accordance with the Planned Principal Payments or the ability of TSASC to make Extraordinary Prepayments, if any.**

The respective ratings by DCR, Fitch, Moody's and S&P of the Series 1999-1 Bonds reflect only the views of such organizations and any desired explanation of the significance of such ratings and any outlooks or other statements given by such Rating Agencies with respect thereto should be obtained from the Rating Agency furnishing the same, at the following addresses: Duff & Phelps Credit Rating Company, 17 State Street, New York, New York 10004, Fitch IBCA, Inc., One State Street Plaza, New York, New York 10004; Moody's Investors Service, Inc., 99 Church Street, New York, New York 10007; and Standard & Poor's Ratings Services, 25 Broadway, New York, New York 10004.

There is no assurance that the initial ratings assigned to the Series 1999-1 Bonds will continue for any given period of time or that any of such ratings will not be revised downward or withdrawn entirely by any of the Rating Agencies. Any such downward revision or withdrawal of such ratings may have an adverse effect on the market price of the Series 1999-1 Bonds.

| Principal Amount | Rated Maturity Date July 15 | Planned Principal Payment Date July 15 | DCR | Fitch | Moody's | S&P |
|---|---|---|---|---|---|---|
| $ 5,620,000 | 2003 | 2000 | AA | A+ | Aa1 | AA– |
| 3,015,000 | 2003 | 2001 | AA | A+ | Aa1 | AA– |
| 2,875,000 | 2004 | 2001 | AA | A+ | Aa1 | AA– |
| 3,485,000 | 2005 | 2001 | AA | A+ | Aa1 | AA– |
| 55,000 | 2006 | 2001 | AA | A+ | Aa1 | A+ |
| 3,915,000 | 2006 | 2002 | AA | A+ | Aa1 | A+ |
| 4,425,000 | 2007 | 2002 | AA | A+ | Aa1 | A+ |
| 575,000 | 2008 | 2002 | AA | A+ | Aa1 | A+ |
| 5,435,000 | 2008 | 2003 | AA | A+ | Aa1 | A+ |
| 3,080,000 | 2009 | 2003 | AA | A+ | Aa1 | A+ |
| 3,610,000 | 2009 | 2004 | AA | A+ | Aa1 | A+ |
| 2,910,000 | 2010 | 2004 | AA | A+ | Aa1 | A+ |
| 4,670,000 | 2010 | 2005 | AA | A+ | Aa1 | A |
| 2,675,000 | 2011 | 2005 | AA | A+ | Aa1 | A |
| 5,600,000 | 2011 | 2006 | AA | A+ | Aa1 | A |
| 2,460,000 | 2012 | 2006 | AA | A+ | Aa1 | A |
| 5,945,000 | 2012 | 2007 | AA | A+ | Aa1 | A |
| 2,825,000 | 2013 | 2007 | AA | A+ | Aa1 | A |
| 6,390,000 | 2013 | 2008 | AA | A+ | Aa1 | A |
| 4,155,000 | 2014 | 2008 | AA | A+ | Aa1 | A |
| 5,890,000 | 2014 | 2009 | AA | A+ | Aa1 | A |
| 5,795,000 | 2015 | 2009 | AA | A+ | Aa1 | A |
| 1,595,000 | 2015 | 2010 | AA | A+ | Aa1 | A |
| 8,060,000 | 2016 | 2010 | AA | A+ | Aa1 | A |
| 3,395,000 | 2017 | 2010 | AA | A+ | Aa1 | A |
| 5,650,000 | 2017 | 2011 | AA | A+ | Aa1 | A |
| 8,315,000 | 2018 | 2011 | AA | A+ | Aa1 | A |
| 7,325,000 | 2018 | 2012 | AA | A+ | Aa1 | A |
| 7,705,000 | 2019 | 2012 | AA | A+ | Aa1 | A |
| 9,455,000 | 2019 | 2013 | AA | A+ | Aa1 | A |
| 6,850,000 | 2020 | 2013 | AA | A+ | Aa1 | A |
| 10,075,000 | 2020 | 2014 | AA | A+ | Aa1 | A |
| 7,540,000 | 2021 | 2014 | AA | A+ | Aa1 | A |

† $125,980,000 Term Bonds with Rated Maturity Date of July 15, 2027 and Planned Principal Payment Date of July 15, 2019: DCR-AA; Fitch - A+; Moody's - Aa1; S&P - A

†† $195,995,000 Term Bonds with Rated Maturity Date of July 15, 2034 and Planned Principal Payment Date of July 15, 2024: DCR-AA; Fitch - A+; Moody's - Aa2; S&P - A

††† $225,935,000 Term Bonds with Rated Maturity Date of July 15, 2039 and Planned Principal Payment Date of July 15, 2029: DCR-AA; Fitch - A+; Moody's - Aa3; S&P - A

## UNDERWRITING

The underwriters listed on the cover page hereof (the "**Underwriters**") have jointly and severally agreed, subject to certain conditions, to purchase all, but not less than all, of the Series 1999-1 Bonds from TSASC at an underwriters' discount of $4,998,987 (which number does not include structuring fees totalling approximately $6,400,000 and expenses related to counsel fees). The Underwriters will be obligated to purchase all of the Series 1999-1 Bonds if any are purchased. The initial public offering prices of the Series 1999-1 Bonds may be changed from time to time by the Underwriters.

The Series 1999-1 Bonds may be offered and sold to certain dealers (including the Underwriters and other dealers depositing Series 1999-1 Bonds into investment trusts) at prices lower than such public offering prices.

## LEGAL MATTERS

Brown & Wood LLP, New York, New York, Transaction Counsel, will render opinions with respect to the validity of the Series 1999-1 Bonds in substantially the form set forth in Appendix D hereto. Such firm currently acts as counsel for and against the City in certain other unrelated matters.

Certain legal matters with respect to the City will be passed upon by its Corporation Counsel and Brown & Wood LLP, New York, New York, as Transaction Counsel.

Certain legal matters will be passed upon for the Underwriters by Orrick, Herrington & Sutcliffe LLP, New York, New York, as Underwriters' Counsel.

## RELATIONSHIPS AMONG THE PARTIES

Citibank, N.A., the MSA Escrow Agent, is a wholly-owned subsidiary of Citigroup, Inc. Salomon Smith Barney Inc., one of the senior managing Underwriters, is also a wholly-owned subsidiary of Citigroup, Inc. Salomon Smith Barney Inc. is also the investment advisor to the MSA Escrow Agent.

## OTHER PARTIES

### Financial Advisor

Public Resources Advisory Group, New York, New York ("**PRAG**") has been retained to act as financial advisor for TSASC in connection with the issuance of the Series 1999-1 Bonds.

Although PRAG has assisted in the preparation of this Offering Circular, PRAG is not obligated to undertake, and has not undertaken to make, an independent verification or to assume responsibility for the accuracy, completeness, or fairness of the information contained in this Offering Circular.

### WEFA

WEFA has been retained as an independent econometric consultant. The WEFA Report attached as Appendix A hereto is included herein in reliance on WEFA as experts in such matters. WEFA's fees for acting as TSASC's independent economic consultant are not contingent upon the issuance of the Series 1999-1 Bonds. The WEFA Report should be read in its entirety.

TSASC, INC.

By: /s/ MARK PAGE
*President*

## INDEX OF DEFINED TERMS

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APPENDIX A

# A Forecast of U.S. Cigarette Consumption (1999-2042)

Submitted to:

**Public Resources Advisory Group**

Prepared by:

**WEFA, Inc.**

**October 25, 1999**


**Jim Diffley**
Vice President

**Arun Raha**
Director

**Phoebe Papageorgiou**
Economic Analyst

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## Executive Summary

WEFA has developed a cigarette consumption model based on historical U.S. data between 1965 and 1998. This econometric model, coupled with our long term forecast of the U.S. economy, has been used to project total U.S. cigarette consumption from 1999 through 2042. Our Base Case Forecast indicates that total consumption in 2042 will be 196 billion cigarettes (approximately 10 billion packs), a 58% decline from the 1998 level. We also present alternative forecasts that project higher and lower paths of cigarette consumption. Under these, less likely, forecasts, we project that by 2042 US cigarette consumption will be at least 172 billion and at most 217 billion cigarettes. In addition, we also present scenarios with more extreme variations in assumptions for the purposes of stress tests.

Our model was constructed from economic principles and WEFA's long experience in building econometric forecasting models. A review of the economic research literature indicates that our model is consistent with the prevalent consensus among economists concerning cigarette demand. We considered the impact of cigarette prices, disposable income, industry advertising expenditures, the future effect of the incidence of smoking amongst underage youth, and qualitative variables that captured the impact of some of the anti-smoking regulations and legislation. The projections and forecasts are based on reasonable assumptions regarding the future paths of these factors.

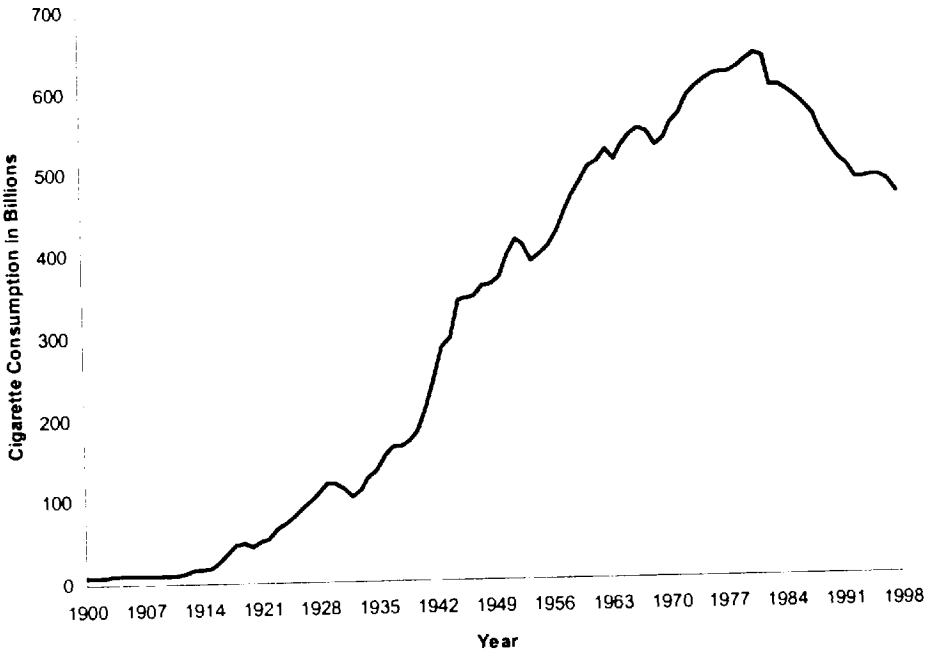
### Disclaimer

The projections and forecasts regarding future cigarette consumption included in this Report are estimates which have been prepared on the basis of certain assumptions and hypotheses. No representation or warranty of any kind is or can be made with respect to the accuracy or completeness of, and no representation or warranty should be inferred from, these projections and forecasts. The projections and forecasts contained in this Report are based upon assumptions as to future events and, accordingly, are subject to varying degrees of uncertainty. Some assumptions inevitably will not materialize and, accordingly, unanticipated events and circumstances may occur. Therefore, actual cigarette consumption inevitably will vary from the projections and forecasts included in this Report and the variations may be material and adverse.

## Historical Cigarette Consumption

People have used tobacco products for centuries. Tobacco was first brought to Europe from America in the late 15th century and became America's major cash crop in the 17th and 18th centuries.[1] Prior to 1900, tobacco was most frequently used in pipes, cigars and snuff. With the widespread production of manufactured cigarettes (as opposed to hand-rolled cigarettes) in the United States in the early 20th century, cigarette consumption expanded dramatically. Consumption is defined as taxable United States consumer sales, plus shipments to overseas armed forces, ship stores, Puerto Rico and other United States possessions, and small tax-exempt categories as reported by the Bureau of Alcohol Tobacco and Firearms. The United States Department of Agriculture, which has compiled data on cigarette consumption since 1900, reports that consumption grew from 2.5 billion in 1900 to a peak of 640 billion in 1981[2]. Consumption declined in the 1980's and 1990's, reaching a level of 465 billion cigarettes in 1998.[3] The following chart depicts United States domestic cigarette consumption from 1900 to 1998.[4]

**Cigarette Consumption (1900 to 1998)**




[1] *Source*: "Tobacco Timeline," Gene Borio (1998).
[2] *Source*: "Tobacco Situation and Outlook", U.S. Department of Agriculture-Economic Research Service, September 1999 (USDA-ERS).
[3] *Source*: USDA-ERS.
[4] *Source*: USDA-ERS.

While the historical trend in consumption prior to 1981 was up, there was a decline in cigarette consumption of 9.82% during the Great Depression between 1931 and 1932. Notwithstanding this steep decline, consumption rapidly increased after 1932, exceeding previous levels by 1934. Following the release of the Surgeon General's Report in 1964, cigarette consumption continued to increase 1.20% annually between 1965 and 1981. Between 1981 and 1990, however, cigarette consumption declined 2.18% annually. From 1990 to 1998, the annual rate of decline in cigarette consumption was 1.51%.

Adult per capita cigarette consumption (total consumption divided by the number of people 18 years and older) began to decline following the Surgeon General's Report in 1964. Population growth offset this decline until 1981. The adult population grew 1.86% annually for the period 1965 through 1981, 1.17% from 1981 to 1990 and 0.99% from 1990 to 1998.[5] Adult per capita cigarette consumption declined 0.65% annually for the period 1965 to 1981, 3.31% for the period 1981 to 1990 and 2.47% for the period 1990 to 1998. All percentages are based upon compound annual growth rates.

The following table sets forth United States domestic cigarette consumption for the five years ended December 31, 1998. The data in this table varies from statistics on cigarette shipments in the United States. While our Report is based on consumption, payments made under the Master Settlement Agreement dated November 23, 1998 (MSA) between certain cigarette manufacturers and certain settling states are computed based in part on shipments in or to the fifty United States, the District of Columbia and Puerto Rico. The quantities of cigarettes shipped and cigarettes consumed may not match at any given point in time as a result of various factors such as inventory adjustments, but are substantially the same when compared over a period of time.

| Years Ended December 31, | Consumption[6] (Billions of Cigarettes) |
|---|---|
| 1998 | 465 |
| 1997 | 480 |
| 1996 | 487 |
| 1995 | 487 |
| 1994 | 486 |

A number of organizations have conducted studies on United States cigarette consumption. These studies have utilized a variety of methods to estimate levels of smoking, including interviews and/or written questionnaires. Although these studies have tended to produce varying estimates of consumption levels due to a number of factors, including different survey methods and different definitions of smoking, taken together such studies provide a general approximation of consumption levels and trends. Set forth below is a brief summary of some of the more recent studies on cigarette consumption levels.

[5] *Source*: USDA-ERS.
[6] *Source*: USDA-ERS.

Approximately 47 million American adults were current smokers in 1995, representing approximately 24.7% of the population age 18 and older, according to the National Health Interview Survey Year 2000 Objectives Supplement, a survey that was conducted by the Bureau of the Census for the National Center for Health Statistics, Centers for Disease Control and Prevention (CDC).[7] This survey defines "current smokers" as those persons who have smoked at least 100 cigarettes in their lifetime and who smoked every day or some days at the time of the survey. Although the percentage of adults who smoke (incidence) declined from 42.4% in 1965 to 25.5% in 1990,[8] adult incidence has remained relatively constant at approximately 25% from 1990 to 1998, according to the Tobacco Merchants Association.

Certain studies have focused in whole or in part on youth cigarette consumption. Surveys of youth typically define a "current smoker" as a person who has smoked a cigarette on one or more of the 30 days preceding the survey. The CDC's Youth Risk Behavior Survey estimated that from 1991 to 1997 incidence among high school students (grades 9 through 12) rose from 27.5% to 36.4%, representing an increase of 32.4%.[9] According to the Monitoring the Future Study, a school-based study of cigarette consumption and drug use conducted by the Institute for Social Research at the University of Michigan, smoking incidence among eighth, tenth and twelfth graders in June 1998 was 19.1%, 27.6% and 35.1%, respectively, representing increases of 24.0% to 33.6% since 1991.[10] However, the 1998 figures represent a decrease from the 1997 figures of 19.4% for eighth graders, 29.8% for tenth graders and 36.5% for twelfth graders.

The 1998 Household Survey on Drug Abuse conducted by the Substance Abuse and Mental Health Services Administration of the United States Department of Health and Human Services estimated that approximately 60 million Americans age 12 and older were current cigarette smokers (defined by this survey to mean they had smoked cigarettes at least once during the 30 days prior to the interview). This estimate represents an incidence rate of 27.7%, which is a decrease from the 1997 level of 29.6%. The same survey found that an estimated 18.2% of youths age 12 to 17 were current cigarette smokers in 1998 (with no statistically significant changes in this rate between 1994 and 1998) and that the rate for this group had remained relatively stable since 1988. On the other hand, the survey found that smoking among young adults age 18 to 25 followed an upward trend from 34.6% in 1994 to 40.6% in 1997 to 41.6% in 1998.

[7] *Source*: CDC, Morbidity and Mortality Weekly Report, "Cigarette Smoking Among Adults – United States, 1995," December 26, 1997.
[8] *Source*: CDC, Office on Smoking and Health.
[9] *Source*: CDC, Morbidity and Mortality Weekly Report, "Tobacco Use Among High School Students," April 3, 1998.
[10] *Source*: Monitoring the Future Study.

## Factors Affecting Cigarette Consumption

Most empirical studies have found a common set of variables that are relevant in building a model of cigarette demand. These conventional analyses usually evaluate one or more of the following factors: (i) general population growth, (ii) price increases, (iii) changes in disposable income, (iv) advertising restrictions, (v) youth consumption, (vi) health warnings, (vii) smoking bans in public places, (viii) nicotine dependence and (ix) trend over time. While some of these factors were not found to have a measurable impact on changes in demand for cigarettes, all of these factors are thought to affect smoking in some manner and to be incorporated into current levels of consumption.

***General Population Growth.*** WEFA forecasts that the United States population will increase from approximately 270 million in 1998 to approximately 347 million in 2030 and 380 million in 2042. This forecast is consistent with the Bureau of the Census forecast. Youth population (10-19 years old) has grown from 13.2% of the population in 1990 to 14.6% in 1998 and is expected to reach 17.7% by 2030.

***Price Increases.*** Considerable effort has been devoted to empirically measuring the price elasticity of demand for cigarettes. The price elasticity of demand reflects the impact of changes in price on the demand for the product. Cigarette price elasticities from recent conventional research studies have generally fallen between an interval of -0.3 to -0.5.[11] (In other words, as the price of cigarettes increases by 1.0% the quantity demanded decreases by 0.3% to 0.5%.) Estimates range from increases of 0.14% to decreases of 1.23%. Some research has found decreases among youths of as much as 1.41%. Based on our multivariate regression analysis using data from 1965 to 1998, the price elasticity of consumption is -0.31; a 1.0% increase in the price of cigarettes decreases consumption by 0.31%.

In 1997 the average price of a pack of cigarettes in nominal terms was $1.98. This increased to $2.20 per pack in 1998, representing a nominal growth in the price of cigarettes of 11.1% from 1997. During 1998 consumption declined 3.13%. This decline in consumption may not fully take into account the effect of price increases in 1998 as a result of promotions and discounts. In addition, the consumption decline is based on a full year and such price increases were not in place for the full year.

Data for the first nine months of 1999 indicate that prices have risen to an average, across the U.S., of $2.84 per pack, representing a nominal growth in the price of cigarettes of 29.1% from 1998. This was primarily due to a $0.45 per pack increase in November 1998 intended to offset the costs of the MSA. On August 31, 1999 an additional increase of $0.18 per pack at the wholesale level was announced. This increase was in part in anticipation of a $0.10 per pack increase in the federal excise tax in 2000. Prices are expected to continue to increase after 2000 due to costs related to the MSA and an

[11] Chalpouka FJ, Warner KE: P.5.

increase in the federal excise tax of $0.05 per pack scheduled for 2002, among other reasons. Premium brands are typically $0.50 to $1.00 more expensive per pack than discount brands, allowing a margin for consumers to switch to less costly discount brands in the event of price increases. Under the MSA, payments are based on the quantity (and not the price or type) of cigarettes shipped.

***Changes in Disposable Income***. Analyses from many conventional models also include the effect of real personal disposable income. Most studies have found cigarette consumption in the United States increases as disposable income increases.[12] However, a few studies found cigarette consumption decreases as disposable income increases.[13] Based on our multivariate regression analysis using data from 1965 to 1998, the income elasticity of consumption is 0.51; a 1.0% increase in real disposable income per capita increases per capita cigarette consumption by 0.51%.

***Advertising Restrictions.*** In 1971, Congress amended the Federal Cigarette Labeling and Advertising Act so that cigarette advertisements were effectively banned from television and radio.[14] However, empirical research has found little correlation between tobacco advertising and overall smoking, although advertising may have an effect on market share.[15] Based on our multivariate regression analysis, the elasticity of consumption with respect to advertising is 0.017; a 1.0% increase in real advertising expenditures increases consumption by 0.017%.

***Youth Consumption.*** The number of teenagers who smoke is another likely determinant of future adult consumption. While this variable has been largely ignored in empirical studies of cigarette consumption, [16] almost all adult smokers first used cigarettes by high school and very little first use occurs after age 20.[17] Based on our regression analysis, an increase in incidence among youth is associated with increased adult use of cigarettes in later years.

***Health Warnings.*** Categorical variables also have been used to capture the effect of different time periods on cigarette consumption. For example, some researchers have identified the United States Surgeon General's Report in 1964 and subsequent mandatory health warnings on cigarette packages in 1966 as turning points in public attitudes and knowledge of the health effects of smoking. The dangers of cigarette smoking have been generally known to the public for years. Part of the negative trend in smoking identified in our model may represent the cumulative impact of various health warnings since 1966.

***Smoking Bans in Public Places.*** Increasingly since the 1970s numerous states have passed laws banning smoking in public places as well as private workplaces. As of 1995, 46 states and the District of Columbia required smoke-free indoor air to some degree or

[12] Ippolito, et al.; Fuji.
[13] Wasserman, et al.; Townsend et al
[14] Bishop, Yoo.
[15] Roemer.
[16] Except for those, such as Wasserman, et al, that studied the price elasticity for different age groups.
[17] *Source*: Surgeon General's 1994 Report, "Preventing Tobacco Use Among Young People."

in some public places.[18] Based on the regression analysis using data from 1965 to 1998, the restrictions on public smoking would appear to have no independent effect on per capita cigarette consumption; there is no statistical evidence that a reduction in smoking could be identified as resulting from the imposition of various restrictions. However, the timing of the restrictions within and across states makes such statistical identification problematic. Our econometric analysis included a trend variable in order to account for the effects of such variables which are difficult to quantify. Part of the negative trend in smoking identified in our model may represent the cumulative impact of the various smoking bans and restrictions.

***Nicotine Dependence.*** Nicotine is widely believed to be an addictive substance. The Surgeon General[19] and the American Medical Association[20] (AMA) both conclude that nicotine is an addictive drug which produces dependence. The American Psychiatric Association has determined that cigarette smoking causes nicotine dependence in smokers and nicotine withdrawal in those who stop smoking. The American Medical Association Council on Scientific Affairs found that one third to one half of all people who experiment with smoking become smokers.

***Trend Over Time.*** Since 1964 there has been a significant decline in U.S. adult per capita cigarette consumption. The Surgeon General's health warning (1964) and numerous subsequent health warnings, together with the increased health awareness of the population over the past thirty years, may have contributed to decreases in cigarette consumption levels. As the awareness of the adult population continues to change in this way, overall consumption of cigarettes will decline gradually over time. Our analysis includes a time trend variable in order to capture the impact of these changing health trends.

In August, 1999 the CDC published Best Practices for Comprehensive Tobacco Control Programs. Citing the success of programs in California and Massachusetts, it recommends comprehensive tobacco control programs to the states. Our research has indicated, and our model incorporates, a negative impact on cigarette consumption of tobacco tax increases, and a negative trend decline in levels of smoking since the Surgeon General's warning and subsequent anti-smoking initiatives. Our forecast already assumes that such anti-smoking efforts will continue at their past pace and will be consistent with funding available under the MSA.

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[18] *Source*: CDC, Morbidity and Mortality Weekly Report, "State Laws on Tobacco Control-United States, 1995," November 3, 1995.

[19] *Source*: Surgeon General's 1988 Report, "The Health Consequences of Smoking – Nicotine Addiction".

[20] *Source*: Council on Scientific Affairs, "Reducing the Addictiveness of Cigarettes, "Report to the AMA House of Delegates, June 1998.

## An Empirical Model of Cigarette Consumption

We considered the effects of the following variables in building an empirical model of cigarette consumption for the United States:

1) U.S. adult population
2) the real price of cigarettes
3) the level of per capita real disposable income
4) per capita real advertisement expenditures by tobacco companies
5) the incidence of smoking in the 12 –17 age group
6) the impact of qualitative variables, specifically
    a) the ban on TV ads (1971 onward)
    b) the restrictions on smoking in public places (1985 onward)

We used the tools of standard multivariate regression analysis to determine the nature of the economic relationship between these variables and adult per capita cigarette consumption in the U.S. Then, using that relationship, along with WEFA's standard adult population growth, and adjustment for non-adult smoking, we projected actual cigarette consumption (in billions of cigarettes) out to 2042. In building our model, we also measured the observed trend decline in cigarette consumption due to shifting tastes and preferences, and accounted for it in our forecast. It should also be noted that since our entire dataset incorporates the effect of the Surgeon General's health warning (1964), the impact of that variable too is accounted for in the forecast. Similarly the effect of nicotine dependence is incorporated into our entire dataset and influences the trend decline.

Using U.S. data from 1965 through 1998 on the variables described above, we developed the following regression equation. All of the data sources are detailed in Appendix 1 of this Report.

| | | | | |
|---|---|---|---|---|
| log (cpc) | = | 61.6115 | - | 0.02775 * trend |
| | - | 0.31303 * log (cigprice) | + | 0.51208 * log (ydp92pc) |
| | + | 0.01666 * log (radvpc) | + | 0.27332 * teenper (-1) |
| | + | 0.32515 * teenper (-2) | + | 0.37698 * teenper (-3) |
| | + | 0.42881 * teenper (-4) | + | 0.48064 * teenper (-5) |
| | + | 0.04573 * tvban | + | 0.00938 * smokeban |

The model is estimated in logarithmic form, since that allows an easy computation of the responsiveness (or elasticity) of the dependent variable (adult per capita cigarette consumption) to changes in the various explanatory (or the right hand side variables).

This model has an R-square of 0.99, meaning that it explains 99 per cent of the variation in US adult per capita cigarette consumption over the 1965 to 1998 period. In terms of predictive ability this indicates a very strong model with a high level of statistical significance.

Our model is closed with a second equation:

Total adult cigarette consumption = cpc * U.S. adult population.

The forecast of adult cigarette consumption based on this model is then adjusted to reflect total consumption levels for the entire population. This adjustment is made by a factor determined by the difference between total and adult consumption seen in the last observation of the historical sample period. Thus, we are able to predict the aggregate consumption of cigarettes from the more fundamental analysis of individual behavior.

## Explanatory Variables

### Adult Per Capita Cigarette Consumption (CPC)

CPC measures the average annual cigarette consumption of the American adult. It is calculated by dividing total adult cigarette consumption by the size of the population 18 and above. Of the different measures of cigarette consumption available, this is considered to be the most reliable. It also directly reflects the changing behavior of individual smokers over the historical period. Data were obtained from the U.S. Department of Agriculture's (USDA) Economic Research Service.

### The Real Price of Cigarettes (CIGPRICE)

Reliable data on retail cigarette prices from the consumer price index (CPI) are only available since 1997, an inadequate time frame to build our model. However, tobacco CPI, which is available for the entire period of analysis, closely follows cigarette prices, since cigarettes constitute over 95 per cent of tobacco products. We have, therefore, used tobacco prices in our model, as is standard. Further, we have deflated this price of cigarettes (tobacco) by the overall price level to ensure that any changes in cigarette consumption is correctly attributed to a change in the price of cigarettes relative to other goods, rather than an overall change in the price level. The overall, as well as tobacco CPI, were obtained from the Bureau of Labor Statistics (BLS).

The coefficient on CIGPRICE, -0.31, in the regression equation measures the elasticity of cigarette consumption with respect to price. Thus, according to the data, a one per cent

increase in price decreases cigarette consumption by 0.31 per cent. The low value of the elasticity indicates that cigarette consumption is price inelastic, or relatively unresponsive to changes in price. This coefficient is estimated such that a statistical confidence interval of 95% for its value is from -0.25 to -0.37. This implies that there is a probability of 5% that the price elasticity is outside this range.

**Real Disposable Income Per Capita (YDP92PC)**

Real disposable income per capita measures the average income per person after tax in constant 1992 dollars. Data used were collected by the Bureau of Economic Analysis (BEA). For goods considered "normal", consumption increases as incomes rise. Hence the coefficient is positive. On the other hand if the coefficient is negative, it indicates that the good is "inferior" and less is purchased as incomes rise.

Our analysis indicates that the income elasticity of cigarettes, given by the regression coefficient on YDP92PC, is 0.51. The positive sign on the coefficient indicates that cigarettes are a normal good. Specifically, every percent increase in real disposable income per capita has raised adult per capita cigarette consumption by 0.51 percent. However, the low value of the elasticity indicates that the demand for cigarettes is income inelastic, or relatively unresponsive to changes in income. This coefficient is estimated such that a statistical confidence interval of 95% for its value is from 0.20 to 0.82.

**Real Advertisement Expenditures Per Capita (RADVPC)**

Real advertisement expenditures per capita are measured by deflating total advertisement expenditures of cigarette companies by the CPI and then by population. By using this measure we remove the bias due to increased advertising expenditures that arise from inflation or an increase in the general population, and do not represent an effective increase in advertising effort. Data were collected from the Federal Trade Commission Report to Congress for 1990, 1991, 1992, 1993, 1996. The elasticity of cigarette consumption with respect to advertising, as evident from the value of the regression coefficient, is a very low 0.017. Thus a one percent increase in real advertising dollars has raised adult per capita cigarette consumption by only 0.017% This indicates that while advertising expenditures do raise cigarette consumption, they do so only marginally. This coefficient is estimated such that a statistical confidence interval of 95% for its value is from -0.019 to +0.055.

**The Incidence of Smoking in the 12-17 Age Group (TEENPER)**

TEENPER measures the incidence of smoking in the 12-17 age group and is the percentage of the population in this age category that first become daily smokers. Data are obtained from the CDC. Smoking amongst underage youth impacts adult per capita consumption with a time lag, as these youth enter the adult population.

Our model explicitly incorporates the impact of teen smokers in understanding adult cigarette consumption patterns. By including 5 lags of TEENPER in our regression model we have accounted for the impact of this variable, particularly during periods (such as the 1970s and 1990s) when there have been rapid rises in the incidence of smoking amongst youth.

Increases in the percentage of teen smokers increases the potential pool of adult smokers in the future. Our regression results do confirm that an increase in the incidence of smoking amongst youth increases adult per capita cigarette consumption in the future.

**Qualitative variables**

Qualitative variables that we have explicitly included in our model are the ban on TV advertisements for cigarettes enacted in 1971 (TVBAN), and the restrictions on public smoking since the 1980s (SMOKEBAN). Although the positive coefficients on both variables appear to be contrary to intuitive expectations (since they imply that smoking increased as a result of the bans), they are not so. The coefficient on SMOKEBAN is statistically insignificant, so the only conclusion that can be legitimately derived is that there is no evidence of any effect of smoking bans on adult per capita cigarette consumption. The coefficient on TVBAN is significant, but the increase in smoking was more likely due to the sharp increases in real per capita advertising expenditures (via alternative media) undertaken by cigarette companies during the mid 1970s than of advertising bans.

**The constant term and trend**

According to the regression equation specified above, adult cigarette consumption per capita (CPC) displays a trend decline of 2.78 per cent per year. The trend reflects the impact of a systematic change in the underlying process generating the data that is **not** accounted for by the included explanatory variables (e.g., public attitudes toward smoking). It may also reflect the cumulative impact of health warnings, advertising restrictions, and restrictions on smoking in public places which are statistically insignificant when viewed in isolation. This trend, primarily due to an increase in the health-conscious proportion of the population averse to smoking, would by itself account for 90.3% of the variation in consumption. This coefficient is estimated such that a statistical confidence interval of 95% for its value is from 0.0271 to .0283 (2.71% to 2.83%). There is a very high degree of precision to this estimate.

The constant term (61.6115) also reflects the impact of excluded variables, those that stay fixed over time (e.g., the health warnings on cigarette packs). It should be noted that the actual decline in CPC in any given year could be above or below the trend, depending on the values of the other explanatory variables.

## Forecast Assumptions

Our forecast is based on assumptions regarding the future path of the explanatory variables in the regression equation. Projections of U.S. population and real personal income are standard WEFA forecasts. Annual population growth is projected to average 0.8%, and real per capita personal income is projected to increase over the long term at just under 1.5% per year.

The projection of the real price of cigarettes is based upon its past behavior with an adjustment for the shock to prices due to the tobacco settlement. Cigarette prices increased dramatically in November 1998, as manufacturers raised prices by $0.45 per pack. On August 31, 1999, a further $0.18 per pack increase in the wholesale price was announced. We estimate that this increase will bring the average 1999 price to $2.89 per pack and in 2000 will result in an average price per pack of $3.03. We note that part of the August 31 increase is in anticipation of a $0.10 increase in the federal excise tax scheduled for January 2000. We also note that, because some consumers switch purchases from premium to discount brands in response to higher prices, the resulting weighted average price may rise by less than $0.18.

Our model, intended for long-term forecasting, uses annual data to describe changes in prices and other variables. When viewed over long intervals of time, the changes will appear to be gradual. The purpose of the model is to capture these broad changes and their influence on consumption. Because cigarette manufacture is dominated by a few firms, price changes will typically be discrete events, with jumps such as occurred on August 31, followed by plateaus, rather than small and continuous changes. The exact timing during the year of price changes influences only the short-term path of consumption.

Our forecast assumptions have incorporated price increases in excess of general inflation in order to meet the requirements of the MSA and offset excise and other taxes. Based upon our general inflation and cost assumptions, we anticipate that the price per pack of cigarettes will rise to $16 by 2042. Relative to other goods, cigarette prices will rise by an average of 2.25% per year over the long term. The average real increase over the past 30 years has been less than 1.5% per year.

Projections of real advertising expenditures are based only their recent trend growth rate. We project a real per capita growth of around –1%, which roughly implies constant real, inflation-adjusted, expenditures.

Our Base Case Forecast assumes that the incidence of teen smoking will not taper off until 2003, despite recent administrative initiatives to curb underage smoking. This is due to the momentum provided by current teen smokers. We then assume that teenage smoking declines following the longer term trend of the 1970's and 1980's.

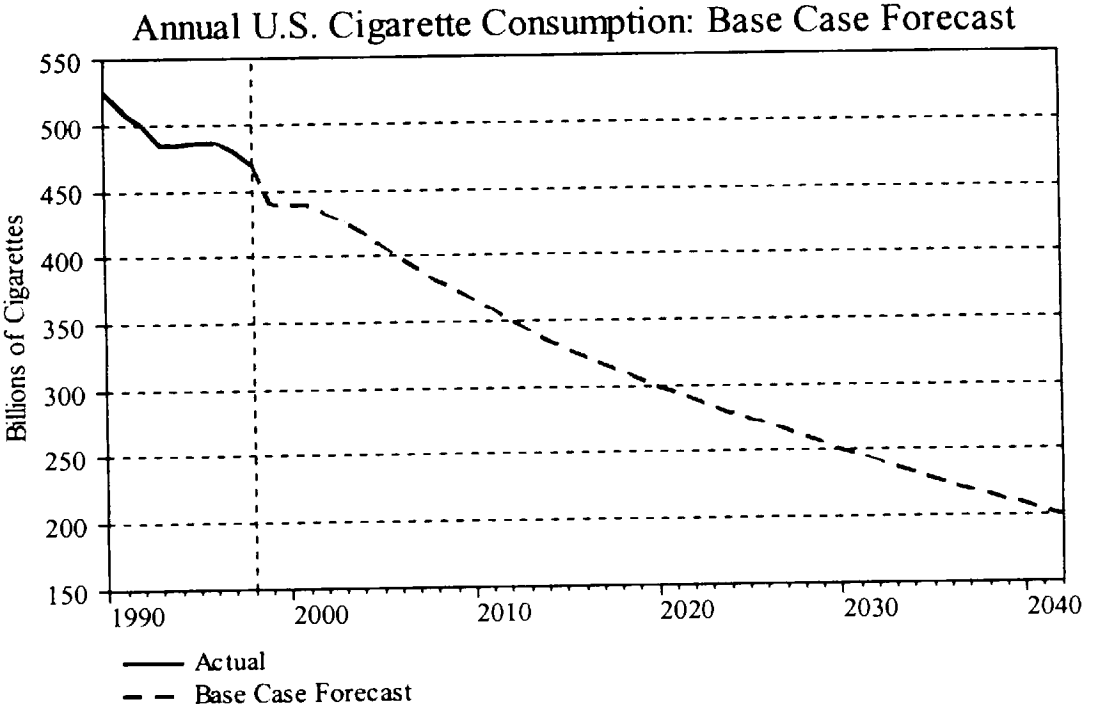
We believe the assumptions on which the Base Case Forecast are based to be reasonable.

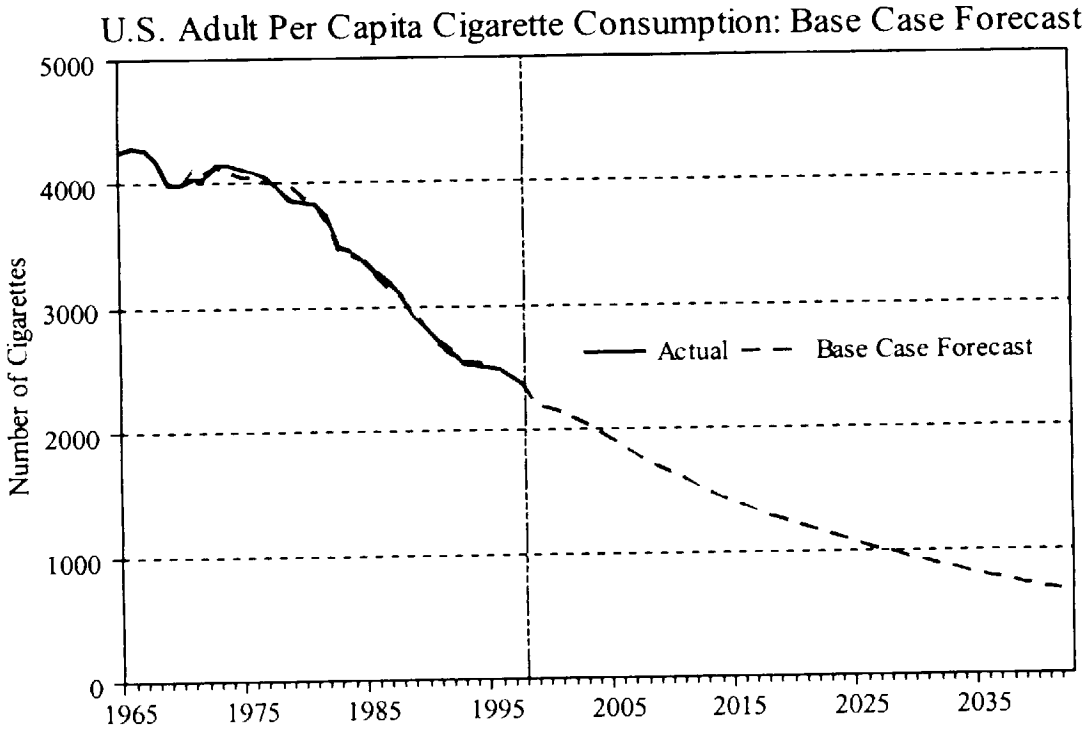
## Forecast of Cigarette Consumption

After developing the regression equation specified above, we used it to project CPC for the period 1999 through 2042. Then using the standard adult population projections of WEFA's Macroeconomic Service, we converted per capita consumption to aggregate adult consumption. This was further transformed into total consumption by applying an adjustment based on the difference between adult and total consumption seen in the last historical sample observation.

In using regression equations developed on the basis of historical data to project future values of the dependent variable, we must also assume that the underlying economic structure captured in the equation will remain essentially the same. While past performance is no guarantee of future patterns, it is still the best tool we have to make such projections.

The graphs below display the projected time trend of U.S. cigarette consumption. The second graph illustrates actual and projected CPC in the United States. For the period 1965 through 1998 the "projected" line on the graph indicates the value of CPC our model would have projected for those years.


Annual U.S. Cigarette Consumption: Base Case Forecast
Billions of Cigarettes
550
500
450
400
350
300
250
200
150
1990
2000
2010
2020
2030
2040
Actual
Base Case Forecast


U.S. Adult Per Capita Cigarette Consumption: Base Case Forecast
Number of Cigarettes
5000
4000
3000
2000
1000
0
1965
1975
1985
1995
2005
2015
2025
2035
Actual
Base Case Forecast

The sharp upward shock to cigarette prices in late 1998 and 1999 are expected to result in reduced consumption. We project that 1999 consumption will decline by 7.1%. This is a one-time decline due to the rapid one-time price escalation. Through the first six months of 1999 shipments of cigarettes were 10% less than the first six months of 1998. This decline in shipments is larger than our projected 1999 decline in consumption. However, reports from the industry indicate considerable inventory building occurred in late 1998 as wholesalers ordered ahead of the November 1998 price increase. This increase in inventories would naturally be followed by a fall in shipments in early 1999 as the stockpiled cigarettes were distributed to retail outlets.

In the future, the rate of decline in total cigarette consumption is projected to moderate and average just less than 2% per year. Total consumption of cigarettes in the U.S. is projected to fall from an estimated 465 billion in 1998 to under 400 billion by 2006, under 300 billion by 2019, and under 200 billion in 2042.

## Statistical Confidence

The estimation and development of an econometric model is a statistical exercise. Thus, our parameters are estimated with some degree of error. We have provided confidence intervals for the coefficient (elasticity) estimates. For instance, there is a 2.5% probability (5%/2) that the price elasticity exceeds 0.37. There is similarly a 2.5% chance that the income elasticity is less than 0.20. But these events are independent; the probability of both is .025 x .025 = .000625, or .0625%, less than one tenth of one percent.

Our Base Case Forecast should be interpreted as follows. The predicted value of cigarette consumption at any future time is described by a probability distribution of possible values, the mean of which is the point forecast given by our model equations. The regression standard error (.0135) characterizes its variance. In this case, we have 95% confidence that the value of cigarette consumption will be within 2.8% of our point forecast. For 2042 this implies there is a 2.5% probability that consumption will be less than 191 billion and a 2.5% chance that consumption will exceed 201 billion cigarettes.

## Alternative Forecasts

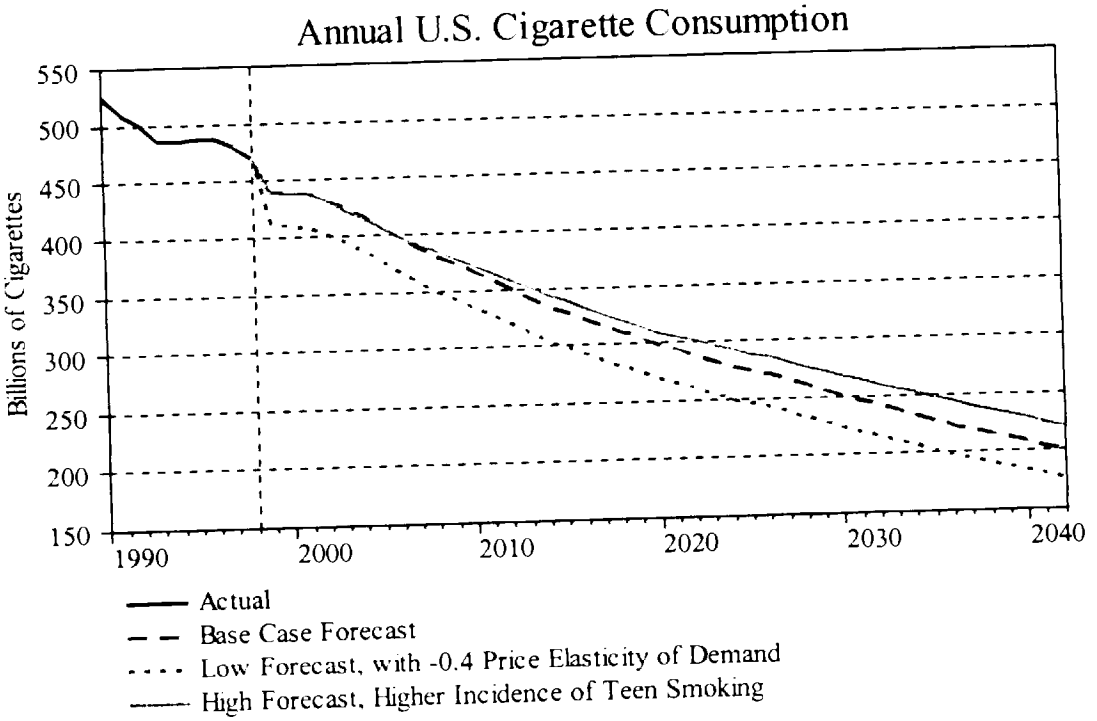
Two sources of variance may appear in the forecast derived by our model. First, as detailed in the preceding section, there is some degree of forecast error in the parameters of the model. Second, the time paths of the explanatory variables may differ from our Base Case Forecast assumptions. Alternative forecasts are included in order to provide an interval forecast that, in our opinion, encompasses all of the likely potential realizations over time.

The high and low alternative forecasts are derived as follows. In the high forecast, the proportion of teens who begin to smoke, which has increased in the 1990's, is projected to remain at a peak level of 9%, rather than declining gradually in a reversion to rates of

the 1980's; in every year going forward, 9% of those aged 12-17 will begin to smoke daily. Under this scenario, the rate of decline is moderated slightly, from an average rate of 1.94% to 1.72%, resulting in consumption of more than 217 billion in 2042.

In the low forecast, we posit a sharper price elasticity of demand. Our estimate of the price elasticity, -0.31, is slightly lower than that of other economic researchers. Recent economic research has forged a consensus that the elasticity lies between –0.3 and –0.5. We have, therefore, used a higher elasticity of –0.4, to generate the lowest consumption forecast which might be reasonably anticipated by our model. This increases the average rate of decline to 2.23% and results in cigarette consumption of 172 billion in 2042.

In both cases the forecast lies outside the 95% confidence bands of our Base Case Forecast, meaning that these outcomes are unlikely.

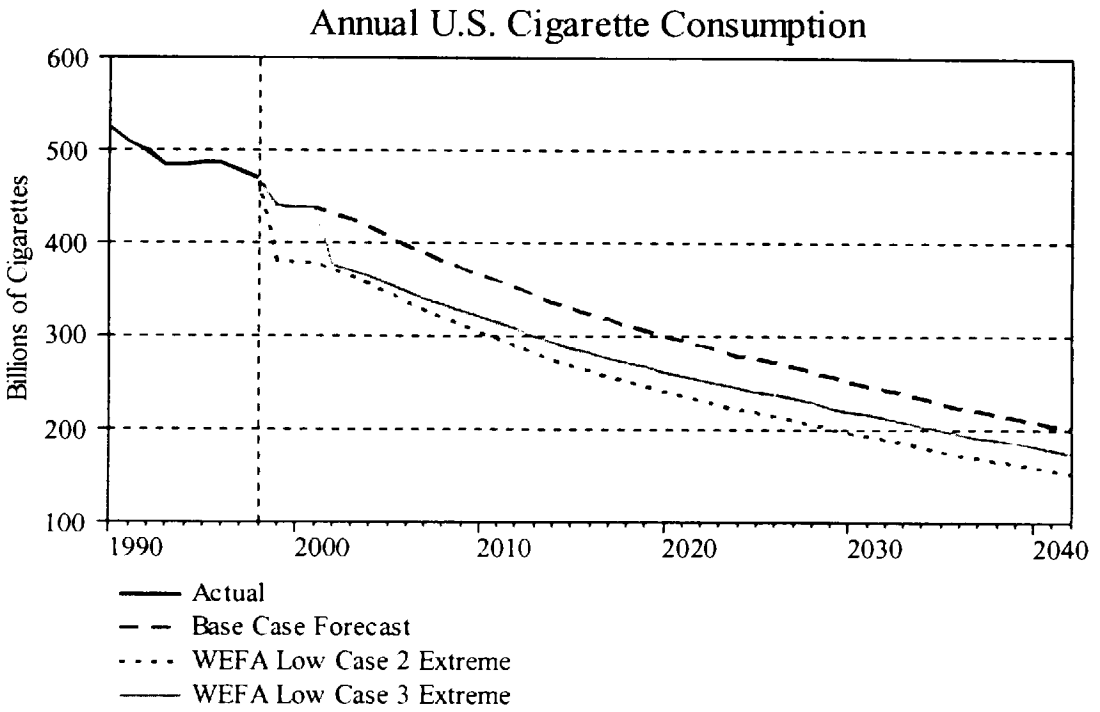


## Stress Test Scenarios

The model was also stress-tested under more extreme, and concurrently less likely, conditions. These exercises do not represent informed anticipation of possible future conditions. Rather, they are meant only to test the model under extreme conditions. First, we increased the negative response of consumer demand to recent price increases by assuming a much larger, -0.5, elasticity. This sharpens the fall in total consumption to an average annual rate of 2.56%, and results in demand of 148 billion cigarettes in 2042 (WEFA Low Case 2 Extreme).

A second large negative stress is placed by postulating, in 2002, an adverse Federal Government settlement and tort claims of three times the size of this MSA. This would result in a real price increase of 57%, and a large decline, -14%, in consumption. By 2042, consumption will have fallen to 171 billion cigarettes, an average annual rate of decline of 2.24% (WEFA Low Case 3 Extreme). The estimated price elasticity of –0.31 is used in this case. This results in higher consumption than in WEFA Low Case 2 Extreme, despite the higher prices.

Finally, for illustrative purposes we have calculated the volume of total cigarette consumption under two alternative annual rates of decline, 3.5% and 4%. At 3.5% per year consumption falls to 97 billion by 2042 and at 4% it falls to 77 billion.



## Base Case Forecast: Assumptions for Explanatory Variables

| Year | Real Per Capita Personal Income | Real Price of Cigarettes | Real Per Capita Advertising Expenditures | U.S. Adult Population | Incidence of Smoking in 12-17 Age Group | Average Nominal Price Per Pack |
|---|---|---|---|---|---|---|
| | *Growth Rate (%)* | *Growth Rate (%)* | *Growth Rate (%)* | *Growth Rate (%)* | *%* | *$ (Current)* |
| **1965** | 4.91 | 3.96 | -2.22 | 1.94 | 0.04 | |
| **1966** | 4.17 | 0.95 | 8.62 | 1.28 | 0.04 | |
| **1967** | 3.17 | 0.00 | 0.86 | 1.39 | 0.05 | |
| **1968** | 3.52 | 1.89 | -5.32 | 1.56 | 0.05 | |
| **1969** | 2.27 | 0.00 | -7.64 | 1.69 | 0.06 | |
| **1970** | 2.64 | 2.78 | -3.89 | 2.00 | 0.05 | |
| **1971** | 2.74 | 0.00 | -24.30 | 2.27 | 0.06 | |
| **1972** | 3.48 | 1.80 | -1.67 | 2.85 | 0.06 | |
| **1973** | 6.02 | -2.65 | -10.54 | 2.03 | 0.07 | |
| **1974** | -1.62 | -5.45 | 10.65 | 2.05 | 0.07 | |
| **1975** | 0.67 | -1.92 | 45.36 | 2.12 | 0.05 | |
| **1976** | 2.98 | -1.96 | 21.75 | 2.07 | 0.05 | |
| **1977** | 2.24 | -1.00 | 13.40 | 1.91 | 0.07 | |
| **1978** | 4.03 | -2.02 | 3.25 | 1.91 | 0.06 | |
| **1979** | 1.56 | -5.15 | 9.95 | 2.00 | 0.05 | |
| **1980** | -0.54 | -5.43 | -0.15 | 1.96 | 0.05 | |
| **1981** | 1.34 | -1.15 | 11.78 | 1.72 | 0.06 | |
| **1982** | -0.20 | 4.65 | 8.51 | 1.65 | 0.05 | |
| **1983** | 1.66 | 15.56 | 1.49 | 1.45 | 0.04 | |
| **1984** | 6.54 | 1.92 | 4.66 | 1.48 | 0.05 | |
| **1985** | 1.96 | 1.89 | 13.13 | 1.16 | 0.05 | |
| **1986** | 1.99 | 5.56 | -6.42 | 1.37 | 0.06 | |
| **1987** | 1.00 | 3.51 | 3.54 | 1.23 | 0.05 | |
| **1988** | 3.16 | 4.24 | 20.75 | 1.26 | 0.05 | |
| **1989** | 1.08 | 8.13 | 4.43 | 1.35 | 0.05 | |
| **1990** | 0.67 | 4.51 | 3.65 | 0.89 | 0.06 | |
| **1991** | -1.17 | 7.19 | 10.56 | 0.96 | 0.06 | |
| **1992** | 1.58 | 5.37 | 7.99 | 0.99 | 0.06 | |
| **1993** | 0.28 | 0.64 | 10.83 | 1.03 | 0.06 | |
| **1994** | 1.27 | -6.33 | -22.70 | 0.95 | 0.07 | |
| **1995** | 1.80 | 0.00 | -2.40 | 0.85 | 0.07 | |
| **1996** | 1.98 | 0.00 | 0.57 | 0.89 | 0.08 | |
| **1997** | 1.89 | 2.70 | -6.85 | 1.27 | 0.08 | |
| **1998** | 2.32 | 10.53 | 0.96 | 1.15 | 0.08 | **2.20** |
| **1999** | 3.28 | 29.18 | 0.87 | 1.12 | 0.08 | 2.89 |
| **2000** | 2.93 | 1.89 | 0.60 | 1.14 | 0.09 | 3.03 |
| **2001** | 2.18 | 1.44 | 0.00 | 1.09 | 0.09 | 3.13 |
| **2002** | 1.86 | 3.15 | -0.09 | 1.02 | 0.09 | 3.30 |
| **2003** | 1.73 | 3.04 | -0.09 | 0.95 | 0.08 | 3.47 |
| **2004** | 1.48 | 2.96 | -0.26 | 0.87 | 0.08 | 3.66 |
| **2005** | 0.18 | 2.39 | -0.43 | 0.98 | 0.08 | 3.84 |
| **2006** | 1.37 | 2.80 | -0.43 | 0.89 | 0.08 | 4.04 |
| **2007** | 1.39 | 2.73 | -0.52 | 1.02 | 0.08 | 4.25 |
| **2008** | 1.46 | 2.21 | -0.61 | 1.01 | 0.08 | 4.45 |
| **2009** | 1.44 | 2.60 | -0.79 | 1.02 | 0.07 | 4.67 |

| Year | Real Per Capita Personal Income | Real Price of Cigarettes | Real Per Capita Advertising Expenditures | U.S. Adult Population | Incidence of Smoking in 12-17 Age Group | Average Price Per Pack of Cigarettes |
|---|---|---|---|---|---|---|
| | *Growth Rate (%)* | *Growth Rate (%)* | *Growth Rate (%)* | *Growth Rate (%)* | *%* | *$ (Current)* |
| **2010** | 1.38 | 2.11 | -0.79 | 1.00 | 0.07 | 4.89 |
| **2011** | 1.40 | 2.07 | -0.80 | 0.93 | 0.07 | 5.11 |
| **2012** | 1.30 | 2.02 | -0.90 | 0.87 | 0.07 | 5.35 |
| **2013** | 1.28 | 1.98 | -0.99 | 0.82 | 0.07 | 5.58 |
| **2014** | 1.30 | 2.33 | -1.00 | 0.82 | 0.07 | 5.85 |
| **2015** | 1.29 | 1.52 | -1.11 | 0.84 | 0.07 | 6.08 |
| **2016** | 1.31 | 1.88 | -1.12 | 0.82 | 0.07 | 6.35 |
| **2017** | 1.33 | 1.84 | -1.13 | 0.78 | 0.07 | 6.62 |
| **2018** | 1.35 | 1.81 | -1.15 | 0.77 | 0.07 | 6.91 |
| **2019** | 1.37 | 1.77 | -1.25 | 0.74 | 0.06 | 7.21 |
| **2020** | 1.39 | 1.40 | -1.27 | 0.76 | 0.06 | 7.49 |
| **2021** | 1.98 | 1.72 | -0.69 | 1.02 | 0.06 | 7.80 |
| **2022** | 1.48 | 1.35 | -1.30 | 1.02 | 0.06 | 8.11 |
| **2023** | 1.46 | 1.67 | -1.31 | 1.03 | 0.06 | 8.44 |
| **2024** | 1.48 | 1.31 | -1.33 | 1.05 | 0.06 | 8.77 |
| **2025** | 1.49 | 1.30 | -1.35 | 1.07 | 0.05 | 9.10 |
| **2026** | 1.43 | 1.28 | -0.74 | 1.44 | 0.05 | 9.38 |
| **2027** | 1.44 | 1.26 | -1.27 | 0.86 | 0.05 | 9.73 |
| **2028** | 1.46 | 1.25 | -1.29 | 0.85 | 0.05 | 10.07 |
| **2029** | 1.47 | 1.23 | -1.20 | 0.84 | 0.05 | 10.43 |
| **2030** | 1.45 | 1.52 | -1.32 | 0.83 | 0.05 | 10.83 |
| **2031** | 1.46 | 1.19 | -1.34 | 0.83 | 0.04 | 11.21 |
| **2032** | 1.47 | 1.18 | -1.24 | 0.82 | 0.04 | 11.59 |
| **2033** | 1.48 | 1.17 | -1.37 | 0.82 | 0.04 | 11.99 |
| **2034** | 1.48 | 1.16 | -1.28 | 0.81 | 0.04 | 12.40 |
| **2035** | 1.05 | 2.00 | -1.41 | 0.97 | 0.04 | 12.89 |
| **2036** | 1.30 | 1.12 | -1.43 | 0.85 | 0.04 | 13.30 |
| **2037** | 1.31 | 1.38 | -1.33 | 0.84 | 0.04 | 13.75 |
| **2038** | 1.27 | 1.09 | -1.47 | 0.84 | 0.04 | 14.18 |
| **2039** | 1.25 | 1.35 | -1.37 | 0.83 | 0.03 | 14.64 |
| **2040** | 1.24 | 1.06 | -1.51 | 0.83 | 0.03 | 15.07 |
| **2041** | 1.25 | 1.06 | -1.41 | 0.82 | 0.03 | 15.52 |
| **2042** | 1.21 | 1.31 | -1.56 | 0.81 | 0.03 | 16.00 |

**Historical / Base Case Forecast U.S. Adult Per Capita and Total Consumption of Cigarettes (1965 – 2042)**

| | Per Capita Consumption | Growth Rate (%) | Total Consumption (billions) | Total Consumption (billions of packs) | Growth Rate (%) |
|---|---|---|---|---|---|
| **1965** | 4259 | 1.53 | 528.70 | 26.44 | 3.42 |
| **1966** | 4287 | 0.66 | 541.20 | 27.06 | 2.36 |
| **1967** | 4280 | -0.16 | 549.20 | 27.46 | 1.48 |
| **1968** | 4186 | -2.20 | 545.70 | 27.29 | -0.64 |
| **1969** | 3993 | -4.61 | 528.90 | 26.45 | -3.08 |
| **1970** | 3985 | -0.20 | 536.40 | 26.82 | 1.42 |
| **1971** | 4037 | 1.30 | 555.10 | 27.76 | 3.49 |
| **1972** | 4043 | 0.15 | 566.80 | 28.34 | 2.11 |
| **1973** | 4148 | 2.60 | 589.70 | 29.49 | 4.04 |
| **1974** | 4141 | -0.17 | 599.00 | 29.95 | 1.58 |
| **1975** | 4123 | -0.43 | 607.20 | 30.36 | 1.37 |
| **1976** | 4092 | -0.75 | 613.50 | 30.68 | 1.04 |
| **1977** | 4051 | -1.00 | 617.00 | 30.85 | 0.57 |
| **1978** | 3967 | -2.07 | 616.00 | 30.80 | -0.16 |
| **1979** | 3861 | -2.67 | 621.50 | 31.08 | 0.89 |
| **1980** | 3849 | -0.31 | 631.50 | 31.58 | 1.61 |
| **1981** | 3836 | -0.34 | 640.00 | 32.00 | 1.35 |
| **1982** | 3739 | -2.53 | 634.00 | 31.70 | -0.94 |
| **1983** | 3488 | -6.71 | 600.00 | 30.00 | -5.36 |
| **1984** | 3446 | -1.20 | 600.40 | 30.02 | 0.07 |
| **1985** | 3370 | -2.21 | 594.00 | 29.70 | -1.07 |
| **1986** | 3274 | -2.85 | 583.80 | 29.19 | -1.72 |
| **1987** | 3197 | -2.35 | 575.00 | 28.75 | -1.51 |
| **1988** | 3096 | -3.16 | 562.50 | 28.13 | -2.17 |
| **1989** | 2926 | -5.49 | 540.00 | 27.00 | -4.00 |
| **1990** | 2826 | -3.42 | 525.00 | 26.25 | -2.78 |
| **1991** | 2720 | -3.75 | 510.00 | 25.50 | -2.86 |
| **1992** | 2641 | -2.90 | 500.00 | 25.00 | -1.96 |
| **1993** | 2538 | -3.90 | 485.00 | 24.25 | -3.00 |
| **1994** | 2524 | -0.55 | 486.00 | 24.30 | 0.21 |
| **1995** | 2505 | -0.87 | 487.00 | 24.35 | 0.21 |
| **1996** | 2482 | -0.92 | 487.00 | 24.35 | 0.00 |
| **1997** | 2423 | -2.38 | 480.00 | 24.00 | -1.44 |
| **1998** | 2320 | -4.25 | 465.00 | 23.25 | -3.13 |
| **FORECAST** | | | | | |
| **1999** | 2122 | -8.53 | 432.05 | 21.60 | -7.09 |
| **2000** | 2091 | -1.46 | 430.74 | 21.54 | -0.30 |
| **2001** | 2063 | -1.34 | 429.57 | 21.48 | -0.27 |
| **2002** | 2012 | -2.45 | 423.38 | 21.17 | -1.44 |
| **2003** | 1964 | -2.43 | 417.12 | 20.86 | -1.48 |
| **2004** | 1910 | -2.75 | 409.29 | 20.46 | -1.88 |

| | Per Capita Consumption | Growth Rate (%) | Total Consumption (billions) | Total Consumption (billions of packs) | Growth Rate (%) |
|---|---|---|---|---|---|
| **2005** | 1848 | -3.22 | 400.12 | 20.01 | -2.24 |
| **2006** | 1787 | -3.27 | 390.60 | 19.53 | -2.38 |
| **2007** | 1728 | -3.29 | 381.73 | 19.09 | -2.27 |
| **2008** | 1674 | -3.16 | 373.53 | 18.68 | -2.15 |
| **2009** | 1627 | -2.82 | 366.82 | 18.34 | -1.80 |
| **2010** | 1578 | -2.97 | 359.60 | 17.98 | -1.97 |
| **2011** | 1531 | -3.00 | 352.17 | 17.61 | -2.07 |
| **2012** | 1484 | -3.08 | 344.37 | 17.22 | -2.21 |
| **2013** | 1438 | -3.13 | 336.44 | 16.82 | -2.30 |
| **2014** | 1391 | -3.28 | 328.21 | 16.41 | -2.45 |
| **2015** | 1354 | -2.58 | 322.52 | 16.13 | -1.73 |
| **2016** | 1318 | -2.67 | 316.58 | 15.83 | -1.84 |
| **2017** | 1284 | -2.65 | 310.68 | 15.53 | -1.86 |
| **2018** | 1249 | -2.63 | 304.91 | 15.25 | -1.86 |
| **2019** | 1217 | -2.61 | 299.24 | 14.96 | -1.86 |
| **2020** | 1184 | -2.76 | 293.30 | 14.67 | -1.98 |
| **2021** | 1152 | -2.61 | 288.65 | 14.43 | -1.59 |
| **2022** | 1120 | -2.80 | 283.54 | 14.18 | -1.77 |
| **2023** | 1088 | -2.96 | 278.10 | 13.91 | -1.92 |
| **2024** | 1056 | -2.89 | 272.98 | 13.65 | -1.84 |
| **2025** | 1031 | -2.42 | 269.30 | 13.46 | -1.35 |
| **2026** | 1002 | -2.69 | 265.90 | 13.30 | -1.26 |
| **2027** | 975 | -2.74 | 260.92 | 13.05 | -1.87 |
| **2028** | 948 | -2.78 | 255.92 | 12.80 | -1.92 |
| **2029** | 922 | -2.82 | 250.90 | 12.55 | -1.96 |
| **2030** | 894 | -2.97 | 245.59 | 12.28 | -2.12 |
| **2031** | 873 | -2.40 | 241.77 | 12.09 | -1.56 |
| **2032** | 849 | -2.66 | 237.37 | 11.87 | -1.82 |
| **2033** | 826 | -2.70 | 232.94 | 11.65 | -1.86 |
| **2034** | 804 | -2.74 | 228.49 | 11.42 | -1.91 |
| **2035** | 777 | -3.26 | 223.30 | 11.17 | -2.27 |
| **2036** | 755 | -2.92 | 218.73 | 10.94 | -2.05 |
| **2037** | 735 | -2.53 | 215.09 | 10.75 | -1.66 |
| **2038** | 717 | -2.46 | 211.63 | 10.58 | -1.60 |
| **2039** | 699 | -2.55 | 208.04 | 10.40 | -1.70 |
| **2040** | 680 | -2.74 | 204.11 | 10.21 | -1.89 |
| **2041** | 662 | -2.78 | 200.17 | 10.01 | -1.94 |
| **2042** | 642 | -2.93 | 195.99 | 9.80 | -2.09 |

## Base Case and Alternative Forecasts of Total U.S. Cigarette Consumption

| Year | Base Case Forecast | | | Low Forecast: -0.4 Price Elasticity of Demand | | | High Forecast: Higher Incidence of Teen Smoking | | |
|---|---|---|---|---|---|---|---|---|---|
| | *Cigarettes (billions)* | *Packs (billions)* | *Growth Rate (%)* | *Cigarettes (billions)* | *Packs (billions)* | *Growth Rate (%)* | *Cigarettes (billions)* | *Packs (billions)* | *Growth Rate (%)* |
| **1998 A** | 465 | 23.25 | | | | | | | |
| **1999** | 432.05 | 21.60 | -7.09 | 403.29 | 20.16 | -13.27 | 432.05 | 21.60 | -7.09 |
| **2000** | 430.74 | 21.54 | -0.30 | 401.42 | 20.07 | -0.46 | 430.74 | 21.54 | -0.30 |
| **2001** | 429.57 | 21.48 | -0.27 | 399.84 | 19.99 | -0.39 | 429.57 | 21.48 | -0.27 |
| **2002** | 423.38 | 21.17 | -1.44 | 393.05 | 19.65 | -1.70 | 423.38 | 21.17 | -1.44 |
| **2003** | 417.12 | 20.86 | -1.48 | 386.24 | 19.31 | -1.73 | 417.12 | 20.86 | -1.48 |
| **2004** | 409.29 | 20.46 | -1.88 | 378.05 | 18.90 | -2.12 | 409.29 | 20.46 | -1.88 |
| **2005** | 400.12 | 20.01 | -2.24 | 368.83 | 18.44 | -2.44 | 400.12 | 20.01 | -2.24 |
| **2006** | 390.60 | 19.53 | -2.38 | 359.23 | 17.96 | -2.60 | 392.08 | 19.60 | -2.01 |
| **2007** | 381.73 | 19.09 | -2.27 | 350.27 | 17.51 | -2.49 | 384.83 | 19.24 | -1.85 |
| **2008** | 373.53 | 18.68 | -2.15 | 342.11 | 17.11 | -2.33 | 378.39 | 18.92 | -1.67 |
| **2009** | 366.82 | 18.34 | -1.80 | 335.23 | 16.76 | -2.01 | 371.63 | 18.58 | -1.79 |
| **2010** | 359.60 | 17.98 | -1.97 | 328.06 | 16.40 | -2.14 | 365.35 | 18.27 | -1.69 |
| **2011** | 352.17 | 17.61 | -2.07 | 320.72 | 16.04 | -2.24 | 358.99 | 17.95 | -1.74 |
| **2012** | 344.37 | 17.22 | -2.21 | 313.10 | 15.66 | -2.38 | 352.40 | 17.62 | -1.83 |
| **2013** | 336.44 | 16.82 | -2.30 | 305.39 | 15.27 | -2.46 | 345.80 | 17.29 | -1.87 |
| **2014** | 328.21 | 16.41 | -2.45 | 297.34 | 14.87 | -2.64 | 338.98 | 16.95 | -1.97 |
| **2015** | 322.52 | 16.13 | -1.73 | 291.82 | 14.59 | -1.86 | 333.17 | 16.66 | -1.71 |
| **2016** | 316.58 | 15.83 | -1.84 | 285.99 | 14.30 | -2.00 | 327.08 | 16.35 | -1.83 |
| **2017** | 310.68 | 15.53 | -1.86 | 280.23 | 14.01 | -2.01 | 321.04 | 16.05 | -1.85 |
| **2018** | 304.91 | 15.25 | -1.86 | 274.63 | 13.73 | -2.00 | 315.13 | 15.76 | -1.84 |
| **2019** | 299.24 | 14.96 | -1.86 | 269.13 | 13.46 | -2.00 | 309.34 | 15.47 | -1.84 |
| **2020** | 293.30 | 14.67 | -1.98 | 263.49 | 13.17 | -2.10 | 304.08 | 15.20 | -1.70 |
| **2021** | 288.65 | 14.43 | -1.59 | 258.94 | 12.95 | -1.73 | 300.24 | 15.01 | -1.26 |
| **2022** | 283.54 | 14.18 | -1.77 | 254.07 | 12.70 | -1.88 | 296.07 | 14.80 | -1.39 |
| **2023** | 278.10 | 13.91 | -1.92 | 248.86 | 12.44 | -2.05 | 291.67 | 14.58 | -1.49 |
| **2024** | 272.98 | 13.65 | -1.84 | 244.01 | 12.20 | -1.95 | 287.72 | 14.39 | -1.36 |
| **2025** | 269.30 | 13.46 | -1.35 | 240.47 | 12.02 | -1.45 | 283.90 | 14.20 | -1.33 |
| **2026** | 265.90 | 13.30 | -1.26 | 237.19 | 11.86 | -1.37 | 281.10 | 14.06 | -0.99 |
| **2027** | 260.92 | 13.05 | -1.87 | 232.50 | 11.63 | -1.98 | 276.78 | 13.84 | -1.54 |
| **2028** | 255.92 | 12.80 | -1.92 | 227.82 | 11.39 | -2.01 | 272.52 | 13.63 | -1.54 |
| **2029** | 250.90 | 12.55 | -1.96 | 223.12 | 11.16 | -2.06 | 268.34 | 13.42 | -1.53 |
| **2030** | 245.59 | 12.28 | -2.12 | 218.13 | 10.91 | -2.24 | 263.96 | 13.20 | -1.63 |
| **2031** | 241.77 | 12.09 | -1.56 | 214.53 | 10.73 | -1.65 | 259.89 | 12.99 | -1.54 |
| **2032** | 237.37 | 11.87 | -1.82 | 210.43 | 10.52 | -1.91 | 255.90 | 12.79 | -1.54 |
| **2033** | 232.94 | 11.65 | -1.86 | 206.32 | 10.32 | -1.95 | 251.97 | 12.60 | -1.53 |
| **2034** | 228.49 | 11.42 | -1.91 | 202.18 | 10.11 | -2.01 | 248.11 | 12.41 | -1.53 |
| **2035** | 223.30 | 11.17 | -2.27 | 197.27 | 9.86 | -2.43 | 243.54 | 12.18 | -1.84 |
| **2036** | 218.73 | 10.94 | -2.05 | 193.07 | 9.65 | -2.13 | 239.72 | 11.99 | -1.57 |
| **2037** | 215.09 | 10.75 | -1.66 | 189.64 | 9.48 | -1.77 | 235.78 | 11.79 | -1.65 |
| **2038** | 211.63 | 10.58 | -1.61 | 186.44 | 9.32 | -1.69 | 232.05 | 11.60 | -1.58 |
| **2039** | 208.04 | 10.40 | -1.70 | 183.07 | 9.15 | -1.80 | 228.14 | 11.41 | -1.68 |
| **2040** | 204.11 | 10.21 | -1.89 | 179.47 | 8.97 | -1.97 | 224.49 | 11.22 | -1.60 |
| **2041** | 200.17 | 10.01 | -1.93 | 175.85 | 8.79 | -2.02 | 220.88 | 11.04 | -1.61 |
| **2042** | 195.99 | 9.80 | -2.09 | 172.01 | 8.60 | -2.19 | 217.11 | 10.86 | -1.71 |

## Base Case Forecast and Low Case Extreme Projections

| Year | Base Case Forecast | | | Low Case 2 Extreme: -0.5 Price Elasticity of Demand | | | Low Case 3 Extreme: Large MSA in 2002 | | |
|---|---|---|---|---|---|---|---|---|---|
| | *Cigarettes (billions)* | *Packs (billions)* | *Growth Rate (%)* | *Cigarettes (billions)* | *Packs (billions)* | *Growth Rate (%)* | *Cigarettes (billions)* | *Packs (billions)* | *Growth Rate (%)* |
| **1998 A** | 465 | 23.25 | | | | | | | |
| **1999** | 432.05 | 21.60 | -7.09 | 372.46 | 18.62 | -19.90 | 432.05 | 21.60 | -7.09 |
| **2000** | 430.74 | 21.54 | -0.30 | 370.05 | 18.50 | -0.65 | 430.74 | 21.54 | -0.30 |
| **2001** | 429.57 | 21.48 | -0.27 | 368.98 | 18.45 | -0.29 | 429.57 | 21.48 | -0.27 |
| **2002** | 423.38 | 21.17 | -1.44 | 361.73 | 18.09 | -1.97 | 369.71 | 18.49 | -13.93 |
| **2003** | 417.12 | 20.86 | -1.48 | 354.61 | 17.73 | -1.97 | 364.26 | 18.21 | -1.48 |
| **2004** | 409.29 | 20.46 | -1.88 | 346.21 | 17.31 | -2.37 | 357.43 | 17.87 | -1.88 |
| **2005** | 400.12 | 20.01 | -2.24 | 336.65 | 16.83 | -2.76 | 349.43 | 17.47 | -2.24 |
| **2006** | 390.60 | 19.53 | -2.38 | 327.25 | 16.36 | -2.79 | 341.13 | 17.06 | -2.37 |
| **2007** | 381.73 | 19.09 | -2.27 | 317.99 | 15.90 | -2.83 | 333.40 | 16.67 | -2.27 |
| **2008** | 373.53 | 18.68 | -2.15 | 310.05 | 15.50 | -2.50 | 326.25 | 16.31 | -2.14 |
| **2009** | 366.82 | 18.34 | -1.80 | 303.02 | 15.15 | -2.27 | 320.39 | 16.02 | -1.80 |
| **2010** | 359.60 | 17.98 | -1.97 | 295.90 | 14.79 | -2.35 | 314.11 | 15.71 | -1.96 |
| **2011** | 352.17 | 17.61 | -2.07 | 288.89 | 14.44 | -2.37 | 307.62 | 15.38 | -2.07 |
| **2012** | 344.37 | 17.22 | -2.21 | 281.28 | 14.06 | -2.63 | 300.83 | 15.04 | -2.21 |
| **2013** | 336.44 | 16.82 | -2.30 | 273.87 | 13.69 | -2.63 | 293.92 | 14.70 | -2.30 |
| **2014** | 328.21 | 16.41 | -2.45 | 266.06 | 13.30 | -2.85 | 286.74 | 14.34 | -2.44 |
| **2015** | 322.52 | 16.13 | -1.73 | 260.90 | 13.05 | -1.94 | 281.78 | 14.09 | -1.73 |
| **2016** | 316.58 | 15.83 | -1.84 | 255.15 | 12.76 | -2.21 | 276.60 | 13.83 | -1.84 |
| **2017** | 310.68 | 15.53 | -1.86 | 249.67 | 12.48 | -2.15 | 271.46 | 13.57 | -1.86 |
| **2018** | 304.91 | 15.25 | -1.86 | 244.14 | 12.21 | -2.22 | 266.43 | 13.32 | -1.85 |
| **2019** | 299.24 | 14.96 | -1.86 | 238.91 | 11.95 | -2.14 | 261.49 | 13.07 | -1.85 |
| **2020** | 293.30 | 14.67 | -1.98 | 233.58 | 11.68 | -2.23 | 256.32 | 12.82 | -1.98 |
| **2021** | 288.65 | 14.43 | -1.59 | 229.22 | 11.46 | -1.87 | 252.26 | 12.61 | -1.59 |
| **2022** | 283.54 | 14.18 | -1.77 | 224.58 | 11.23 | -2.02 | 247.80 | 12.39 | -1.77 |
| **2023** | 278.10 | 13.91 | -1.92 | 219.68 | 10.98 | -2.19 | 243.06 | 12.15 | -1.91 |
| **2024** | 272.98 | 13.65 | -1.84 | 215.10 | 10.76 | -2.08 | 238.59 | 11.93 | -1.84 |
| **2025** | 269.30 | 13.46 | -1.35 | 211.70 | 10.59 | -1.58 | 235.39 | 11.77 | -1.35 |
| **2026** | 265.90 | 13.30 | -1.26 | 208.61 | 10.43 | -1.46 | 232.42 | 11.62 | -1.26 |
| **2027** | 260.92 | 13.05 | -1.87 | 204.17 | 10.21 | -2.13 | 228.08 | 11.40 | -1.87 |
| **2028** | 255.92 | 12.80 | -1.92 | 199.84 | 9.99 | -2.12 | 223.72 | 11.19 | -1.91 |
| **2029** | 250.90 | 12.55 | -1.96 | 195.51 | 9.78 | -2.17 | 219.35 | 10.97 | -1.96 |
| **2030** | 245.59 | 12.28 | -2.12 | 190.86 | 9.54 | -2.38 | 214.71 | 10.74 | -2.11 |
| **2031** | 241.77 | 12.09 | -1.56 | 187.49 | 9.37 | -1.77 | 211.38 | 10.57 | -1.55 |
| **2032** | 237.37 | 11.87 | -1.82 | 183.78 | 9.19 | -1.98 | 207.55 | 10.38 | -1.81 |
| **2033** | 232.94 | 11.65 | -1.86 | 179.97 | 9.00 | -2.07 | 203.69 | 10.18 | -1.86 |
| **2034** | 228.49 | 11.42 | -1.91 | 176.15 | 8.81 | -2.12 | 199.81 | 9.99 | -1.91 |
| **2035** | 223.30 | 11.17 | -2.27 | 171.61 | 8.58 | -2.58 | 195.29 | 9.76 | -2.26 |
| **2036** | 218.73 | 10.94 | -2.05 | 167.77 | 8.39 | -2.24 | 191.31 | 9.57 | -2.04 |
| **2037** | 215.09 | 10.75 | -1.66 | 164.57 | 8.23 | -1.90 | 188.13 | 9.41 | -1.66 |
| **2038** | 211.63 | 10.58 | -1.61 | 161.62 | 8.08 | -1.79 | 185.12 | 9.26 | -1.60 |
| **2039** | 208.04 | 10.40 | -1.70 | 158.53 | 7.93 | -1.92 | 181.99 | 9.10 | -1.69 |
| **2040** | 204.11 | 10.21 | -1.89 | 155.26 | 7.76 | -2.06 | 178.57 | 8.93 | -1.88 |
| **2041** | 200.17 | 10.01 | -1.93 | 151.98 | 7.60 | -2.11 | 175.12 | 8.76 | -1.93 |
| **2042** | 195.99 | 9.80 | -2.09 | 148.48 | 7.42 | -2.30 | 171.49 | 8.57 | -2.07 |

**Alternative Constant Rate Decline Projections of Total U.S. Cigarette Consumption**

| Year | 3.5% Decline Per Year | | | 4.0% Decline Per Year | | |
|---|---|---|---|---|---|---|
| | *Cigarettes (billions)* | *Packs (billions)* | *Growth Rate (%)* | *Cigarettes (billions)* | *Packs (billions)* | *Growth Rate (%)* |
| **1998 A** | 465 | 23.25 | | | | |
| **1999** | 448.73 | 22.44 | -3.50 | 446.40 | 22.32 | -4.00 |
| **2000** | 433.02 | 21.65 | -3.50 | 428.54 | 21.43 | -4.00 |
| **2001** | 417.86 | 20.89 | -3.50 | 411.40 | 20.57 | -4.00 |
| **2002** | 403.24 | 20.16 | -3.50 | 394.95 | 19.75 | -4.00 |
| **2003** | 389.13 | 19.46 | -3.50 | 379.15 | 18.96 | -4.00 |
| **2004** | 375.51 | 18.78 | -3.50 | 363.98 | 18.20 | -4.00 |
| **2005** | 362.36 | 18.12 | -3.50 | 349.42 | 17.47 | -4.00 |
| **2006** | 349.68 | 17.48 | -3.50 | 335.45 | 16.77 | -4.00 |
| **2007** | 337.44 | 16.87 | -3.50 | 322.03 | 16.10 | -4.00 |
| **2008** | 325.63 | 16.28 | -3.50 | 309.15 | 15.46 | -4.00 |
| **2009** | 314.23 | 15.71 | -3.50 | 296.78 | 14.84 | -4.00 |
| **2010** | 303.24 | 15.16 | -3.50 | 284.91 | 14.25 | -4.00 |
| **2011** | 292.62 | 14.63 | -3.50 | 273.51 | 13.68 | -4.00 |
| **2012** | 282.38 | 14.12 | -3.50 | 262.57 | 13.13 | -4.00 |
| **2013** | 272.50 | 13.62 | -3.50 | 252.07 | 12.60 | -4.00 |
| **2014** | 262.96 | 13.15 | -3.50 | 241.99 | 12.10 | -4.00 |
| **2015** | 253.76 | 12.69 | -3.50 | 232.31 | 11.62 | -4.00 |
| **2016** | 244.88 | 12.24 | -3.50 | 223.02 | 11.15 | -4.00 |
| **2017** | 236.30 | 11.82 | -3.50 | 214.09 | 10.70 | -4.00 |
| **2018** | 228.03 | 11.40 | -3.50 | 205.53 | 10.28 | -4.00 |
| **2019** | 220.05 | 11.00 | -3.50 | 197.31 | 9.87 | -4.00 |
| **2020** | 212.35 | 10.62 | -3.50 | 189.42 | 9.47 | -4.00 |
| **2021** | 204.92 | 10.25 | -3.50 | 181.84 | 9.09 | -4.00 |
| **2022** | 197.75 | 9.89 | -3.50 | 174.57 | 8.73 | -4.00 |
| **2023** | 190.83 | 9.54 | -3.50 | 167.58 | 8.38 | -4.00 |
| **2024** | 184.15 | 9.21 | -3.50 | 160.88 | 8.04 | -4.00 |
| **2025** | 177.70 | 8.89 | -3.50 | 154.45 | 7.72 | -4.00 |
| **2026** | 171.48 | 8.57 | -3.50 | 148.27 | 7.41 | -4.00 |
| **2027** | 165.48 | 8.27 | -3.50 | 142.34 | 7.12 | -4.00 |
| **2028** | 159.69 | 7.98 | -3.50 | 136.64 | 6.83 | -4.00 |
| **2029** | 154.10 | 7.70 | -3.50 | 131.18 | 6.56 | -4.00 |
| **2030** | 148.71 | 7.44 | -3.50 | 125.93 | 6.30 | -4.00 |
| **2031** | 143.50 | 7.18 | -3.50 | 120.89 | 6.04 | -4.00 |
| **2032** | 138.48 | 6.92 | -3.50 | 116.06 | 5.80 | -4.00 |
| **2033** | 133.63 | 6.68 | -3.50 | 111.42 | 5.57 | -4.00 |
| **2034** | 128.95 | 6.45 | -3.50 | 106.96 | 5.35 | -4.00 |
| **2035** | 124.44 | 6.22 | -3.50 | 102.68 | 5.13 | -4.00 |
| **2036** | 120.09 | 6.00 | -3.50 | 98.57 | 4.93 | -4.00 |
| **2037** | 115.88 | 5.79 | -3.50 | 94.63 | 4.73 | -4.00 |
| **2038** | 111.83 | 5.59 | -3.50 | 90.85 | 4.54 | -4.00 |
| **2039** | 107.91 | 5.40 | -3.50 | 87.21 | 4.36 | -4.00 |
| **2040** | 104.14 | 5.21 | -3.50 | 83.72 | 4.19 | -4.00 |
| **2041** | 100.49 | 5.02 | -3.50 | 80.37 | 4.02 | -4.00 |
| **2042** | 96.97 | 4.85 | -3.50 | 77.16 | 3.86 | -4.00 |

## Appendix 1: Raw Data Reference

| Mnemonic | Label | Time Frame | Source |
|---|---|---|---|
| **ADV** | Advertising and Promotional Expenditures, Millions of Dollars | 1963-1996 | Federal Trade Commission Report to Congress for '90, '91, '92, '93, '96 |
| **CIGPRICE** | Real Tobacco Consumer Price Index | 1947-1999 March | WEFA Calculation: CPITOB/CPIU = CIGPRICE |
| **CPC** | Adult Per Capita Consumption, Cigarettes | 1945-1998 | Tobacco Situation and Outlook Report, USDA's Economic Research Service, various issues |
| **CPITOB** | Consumer Price Index, Tobacco 1982/1984 = 100 | 1947-1999 March | Bureau of Labor Statistics |
| **CPIU** | Consumer Price Index, All Items | 1947-1999 March | Bureau of Labor Statistics |
| **NP** | Total Population, Millions | 1946-1998 | BEA, NIPA |
| **NPT0004** | Total Population, Below 5, Millions | 1946-1998 | BUREAU OF THE CENSUS |
| **NPT0509** | Total Population, 5-9, Millions | 1946-1998 | BUREAU OF THE CENSUS |
| **NPT1014** | Total Population, 10-14, Millions | 1946-1998 | BUREAU OF THE CENSUS |
| **NP1217** | Total Population, 12-17, Millions | 1946-1998 | WEFA Calculation: NP18B - (NPT0004 + NPT0509 + NPT1014x2/5) = NP1217 |
| **NP18A** | Total Population, 18 and Above, Millions | 1946-1998 | BUREAU OF THE CENSUS |
| **NP18B** | Total Population, Below 18, Millions | 1946-1998 | BUREAU OF THE CENSUS |
| **SMOKEBAN** | Dummy Variable that Captures the Effect of the Bans on Smoking in Public Places from the 1980's to the 1990's | 1965-1998 | WEFA |
| **RADVPC** | Real Per Capita Advertising Expenditures | 1960-1999Q1 | WEFA Calculation: [(YDP92 x 100) / CPIU] / NP = RADVPC |
| **TEENPER** | Incidence of First Daily Use of Cigarettes, Ages 12-17, Percentage | 1965-1996 | Center for Disease Control and Prevention, Substance Abuse and Mental Health Services Admin., National Household Survey on Drug Abuse for 1994-1997 |
| **TVBAN** | Dummy Variable that Captures the Effect of the 1971 Television Advertising Ban | 1965-1998 | WEFA |
| **USCON** | Total Consumption, Billions of Cigarettes | 1945-1998 | Publications and reports of the U.S. Department of Treasury's Bureau of Alcohol, Tobacco, and Firearms, and the Internal Revenue |

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**APPENDIX B**

# MASTER SETTLEMENT AGREEMENT

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MASTER SETTLEMENT AGREEMENT

(AS AMENDED BY THE ADDENDUM OF CLARIFICATIONS)

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## MASTER SETTLEMENT AGREEMENT

This Master Settlement Agreement is made by the undersigned Settling State officials (on behalf of their respective Settling States) and the undersigned Participating Manufacturers to settle and resolve with finality all Released Claims against the Participating Manufacturers and related entities as set forth herein. This Agreement constitutes the documentation effecting this settlement with respect to each Settling State, and is intended to and shall be binding upon each Settling State and each Participating Manufacturer in accordance with the terms hereof.

### I. RECITALS

WHEREAS, more than 40 States have commenced litigation asserting various claims for monetary, equitable and injunctive relief against certain tobacco product manufacturers and others as defendants, and the States that have not filed suit can potentially assert similar claims;

WHEREAS, the Settling States that have commenced litigation have sought to obtain equitable relief and damages under state laws, including consumer protection and/or antitrust laws, in order to further the Settling States' policies regarding public health, including policies adopted to achieve a significant reduction in smoking by Youth;

WHEREAS, defendants have denied each and every one of the Settling States' allegations of unlawful conduct or wrongdoing and have asserted a number of defenses to the Settling States' claims, which defenses have been contested by the Settling States;

WHEREAS, the Settling States and the Participating Manufacturers are committed to reducing underage tobacco use by discouraging such use and by preventing Youth access to Tobacco Products;

WHEREAS, the Participating Manufacturers recognize the concern of the tobacco grower community that it may be adversely affected by the potential reduction in tobacco consumption resulting from this settlement, reaffirm their commitment to work cooperatively to address concerns about the potential adverse economic impact on such community, and will, within 30 days after the MSA Execution Date, meet with the political leadership of States with grower communities to address these economic concerns;

WHEREAS, the undersigned Settling State officials believe that entry into this Agreement and uniform consent decrees with the tobacco industry is necessary in order to further the Settling States' policies designed to reduce Youth smoking, to promote the public health and to secure monetary payments to the Settling States; and

WHEREAS, the Settling States and the Participating Manufacturers wish to avoid the further expense, delay, inconvenience, burden and uncertainty of continued litigation (including appeals from any verdicts), and, therefore, have agreed to settle their respective lawsuits and potential claims pursuant to terms which will achieve for the Settling States and their citizens significant funding for the advancement of public health, the implementation of important tobacco-related public health measures, including the enforcement of the mandates and restrictions related to such measures, as well as funding for a national Foundation dedicated to significantly reducing the use of Tobacco Products by Youth;

NOW, THEREFORE, BE IT KNOWN THAT, in consideration of the implementation of tobacco-related health measures and the payments to be made by the Participating Manufacturers, the release and discharge of all claims by the Settling States, and such other consideration as described herein, the sufficiency of which is hereby acknowledged, the Settling States and the Participating Manufacturers, acting by and through their authorized agents, memorialize and agree as follows:

### II. DEFINITIONS

(a) "Account" has the meaning given in the Escrow Agreement.

(b) "Adult" means any person or persons who are not Underage.

(c) "Adult-Only Facility" means a facility or restricted area (whether open-air or enclosed) where the operator ensures or has a reasonable basis to believe (such as by checking identification as required under state law, or by checking the identification of any person appearing to be under the age of 27) that no Underage person is present. A facility or restricted area need not be permanently restricted to Adults in order to constitute an Adult-Only Facility, provided that the operator ensures or has a reasonable basis to believe that no Underage person is present during the event or time period in question.

(d) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of 10 percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(e) "Agreement" means this Master Settlement Agreement, together with the exhibits hereto, as it may be amended pursuant to subsection XVIII(j).

(f) "Allocable Share" means the percentage set forth for the State in question as listed in Exhibit A hereto, without regard to any subsequent alteration or modification of such State's percentage share agreed to by or among any States; or, solely for the purpose of calculating payments under subsection IX(c)(2) (and corresponding payments under subsection

IX(i)), the percentage disclosed for the State in question pursuant to subsection IX(c)(2)(A) prior to June 30, 1999, without regard to any subsequent alteration or modification of such State's percentage share agreed to by or among any States.

(g) "Allocated Payment" means a particular Settling State's Allocable Share of the sum of all of the payments to be made by the Original Participating Manufacturers in the year in question pursuant to subsections IX(c)(1) and IX(c)(2), as such payments have been adjusted, reduced and allocated pursuant to clause "First" through the first sentence of clause "Fifth" of subsection IX(j), but before application of the other offsets and adjustments described in clauses "Sixth" through "Thirteenth" of subsection IX(j).

(h) "Bankruptcy" means, with respect to any entity, the commencement of a case or other proceeding (whether voluntary or involuntary) seeking any of (1) liquidation, reorganization, rehabilitation, receivership, conservatorship, or other relief with respect to such entity or its debts under any bankruptcy, insolvency or similar law now or hereafter in effect; (2) the appointment of a trustee, receiver, liquidator, custodian or similar official of such entity or any substantial part of its business or property; (3) the consent of such entity to any of the relief described in (1) above or to the appointment of any official described in (2) above in any such case or other proceeding involuntarily commenced against such entity; or (4) the entry of an order for relief as to such entity under the federal bankruptcy laws as now or hereafter in effect. Provided, however, that an involuntary case or proceeding otherwise within the foregoing definition shall not be a "Bankruptcy" if it is or was dismissed within 60 days of its commencement.

(i) "Brand Name" means a brand name (alone or in conjunction with any other word), trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, those used for any domestic brand of Tobacco Products. Provided, however, that the term "Brand Name" shall not include the corporate name of any Tobacco Product Manufacturer that does not after the MSA Execution Date sell a brand of Tobacco Products in the States that includes such corporate name.

(j) "Brand Name Sponsorship" means an athletic, musical, artistic, or other social or cultural event as to which payment is made (or other consideration is provided) in exchange for use of a Brand Name or Names (1) as part of the name of the event or (2) to identify, advertise, or promote such event or an entrant, participant or team in such event in any other way. Sponsorship of a single national or multi-state series or tour (for example, NASCAR (including any number of NASCAR races)), or of one or more events within a single national or multi-state series or tour, or of an entrant, participant, or team taking part in events sanctioned by a single approving organization (e.g., NASCAR or CART), constitutes one Brand Name Sponsorship. Sponsorship of an entrant, participant, or team by a Participating Manufacturer using a Brand Name or Names in an event that is part of a series or tour that is sponsored by such Participating Manufacturer or that is part of a series or tour in which any one or more events are sponsored by such Participating Manufacturer does not constitute a separate Brand Name Sponsorship. Sponsorship of an entrant, participant, or team by a Participating Manufacturer using a Brand Name or Names in any event (or series of events) not sponsored by such Participating Manufacturer constitutes a Brand Name Sponsorship. The term "Brand Name Sponsorship" shall not include an event in an Adult-Only Facility.

(k) "Business Day" means a day which is not a Saturday or Sunday or legal holiday on which banks are authorized or required to close in New York, New York.

(l) "Cartoon" means any drawing or other depiction of an object, person, animal, creature or any similar caricature that satisfies any of the following criteria:

(1) the use of comically exaggerated features;

(2) the attribution of human characteristics to animals, plants or other objects, or the similar use of anthropomorphic technique; or

(3) the attribution of unnatural or extrahuman abilities, such as imperviousness to pain or injury, X-ray vision, tunneling at very high speeds or transformation.

The term "Cartoon" includes "Joe Camel," but does not include any drawing or other depiction that on July 1, 1998, was in use in any State in any Participating Manufacturer's corporate logo or in any Participating Manufacturer's Tobacco Product packaging.

(m) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (1) of this definition. The term "Cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). Except as provided in subsections II(z) and II(mm), 0.0325 ounces of "roll-your-own" tobacco shall constitute one individual "Cigarette."

(n) "Claims" means any and all manner of civil (i.e., non-criminal) claims, demands, actions, suits, causes of action, damages (whenever incurred), liabilities of any nature including civil penalties and punitive damages, as well as costs, expenses and attorneys' fees (except as to the Original Participating Manufacturers' obligations under section XVII), known or unknown, suspected or unsuspected, accrued or unaccrued, whether legal, equitable, or statutory.



(o) "Consent Decree" means a state-specific consent decree as described in subsection XII(b)(1)(B) of this Agreement.

(p) "Court" means the respective court in each Settling State to which this Agreement and the Consent Decree are presented for approval and/or entry as to that Settling State.

(q) "Escrow" has the meaning given in the Escrow Agreement.

(r) "Escrow Agent" means the escrow agent under the Escrow Agreement.

(s) "Escrow Agreement" means an escrow agreement substantially in the form of Exhibit B.

(t) "Federal Tobacco Legislation Offset" means the offset described in section X.

(u) "Final Approval" means the earlier of:

(1) the date by which State-Specific Finality in a sufficient number of Settling States has occurred; or

(2) June 30, 2000.

For the purposes of this subsection (u), "State-Specific Finality in a sufficient number of Settling States" means that State-Specific Finality has occurred in both:

(A) a number of Settling States equal to at least 80% of the total number of Settling States; and

(B) Settling States having aggregate Allocable Shares equal to at least 80% of the total aggregate Allocable Shares assigned to all Settling States.

Notwithstanding the foregoing, the Original Participating Manufacturers may, by unanimous written agreement, waive any requirement for Final Approval set forth in subsections (A) or (B) hereof.

(v) "Foundation" means the foundation described in section VI.

(w) "Independent Auditor" means the firm described in subsection XI(b).

(x) "Inflation Adjustment" means an adjustment in accordance with the formulas for inflation adjustments set forth in Exhibit C.

(y) "Litigating Releasing Parties Offset" means the offset described in subsection XII(b).

(z) "Market Share" means a Tobacco Product Manufacturer's respective share (expressed as a percentage) of the total number of individual Cigarettes sold in the fifty United States, the District of Columbia and Puerto Rico during the applicable calendar year, as measured by excise taxes collected by the federal government and, in the case of sales in Puerto Rico, arbitrios de cigarillos collected by the Puerto Rico taxing authority. For purposes of the definition and determination of "Market Share" with respect to calculations under subsection IX(i), 0.09 ounces of "roll your own" tobacco shall constitute one individual Cigarette; for purposes of the definition and determination of "Market Share" with respect to all other calculations, 0.0325 ounces of "roll your own" tobacco shall constitute one individual Cigarette.

(aa) "MSA Execution Date" means November 23, 1998.

(bb) "NAAG" means the National Association of Attorneys General, or its successor organization that is directed by the Attorneys General to perform certain functions under this Agreement.

(cc) "Non-Participating Manufacturer" means any Tobacco Product Manufacturer that is not a Participating Manufacturer.

(dd) "Non-Settling States Reduction" means a reduction determined by multiplying the amount to which such reduction applies by the aggregate Allocable Shares of those States that are not Settling States on the date 15 days before such payment is due.

(ee) "Notice Parties" means each Participating Manufacturer, each Settling State, the Escrow Agent, the Independent Auditor and NAAG.

(ff) "NPM Adjustment" means the adjustment specified in subsection IX(d).

(gg) "NPM Adjustment Percentage" means the percentage determined pursuant to subsection IX(d).

(hh) "Original Participating Manufacturers" means the following: Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, Philip Morris Incorporated and R.J. Reynolds Tobacco Company, and the respective successors of each of the foregoing. Except as expressly provided in this Agreement, once an entity becomes an Original Participating Manufacturer, such entity shall permanently retain the status of Original Participating Manufacturer.

(ii) "Outdoor Advertising" means (1) billboards, (2) signs and placards in arenas, stadiums, shopping malls and Video Game Arcades (whether any of the foregoing are open air or enclosed) (but not including any such sign or placard located in an Adult-Only Facility), and (3) any other advertisements placed (A) outdoors, or (B) on the inside surface of a window facing outward. Provided, however, that the term "Outdoor Advertising" does not mean (1) an advertisement on the outside of a Tobacco Product manufacturing facility; (2) an individual advertisement that does not occupy an area larger than 14 square feet (and that neither is placed in such proximity to any other such advertisement so as to create a single "mosaic"-type advertisement larger than 14 square feet, nor functions solely as a segment of a larger advertising unit or series), and that is placed (A) on the outside of any retail establishment that sells Tobacco Products (other than solely through a vending machine), (B) outside (but on the property of) any such establishment, or (C) on the inside surface of a window facing

outward in any such establishment; (3) an advertisement inside a retail establishment that sells Tobacco Products (other than solely through a vending machine) that is not placed on the inside surface of a window facing outward; or (4) an outdoor advertisement at the site of an event to be held at an Adult-Only Facility that is placed at such site during the period the facility or enclosed area constitutes an Adult-Only Facility, but in no event more than 14 days before the event, and that does not advertise any Tobacco Product (other than by using a Brand Name to identify the event).

(jj) "Participating Manufacturer" means a Tobacco Product Manufacturer that is or becomes a signatory to this Agreement, provided that (1) in the case of a Tobacco Product Manufacturer that is not an Original Participating Manufacturer, such Tobacco Product Manufacturer is bound by this Agreement and the Consent Decree (or, in any Settling State that does not permit amendment of the Consent Decree, a consent decree containing terms identical to those set forth in the Consent Decree) in all Settling States in which this Agreement and the Consent Decree binds Original Participating Manufacturers (provided, however, that such Tobacco Product Manufacturer need only become bound by the Consent Decree in those Settling States in which the Settling State has filed a Released Claim against it), and (2) in the case of a Tobacco Product Manufacturer that signs this Agreement after the MSA Execution Date, such Tobacco Product Manufacturer, within a reasonable period of time after signing this Agreement, makes any payments (including interest thereon at the Prime Rate) that it would have been obligated to make in the intervening period had it been a signatory as of the MSA Execution Date. "Participating Manufacturer" shall also include the successor of a Participating Manufacturer. Except as expressly provided in this Agreement, once an entity becomes a Participating Manufacturer such entity shall permanently retain the status of Participating Manufacturer. Each Participating Manufacturer shall regularly report its shipments of Cigarettes in or to the fifty United States, the District of Columbia and Puerto Rico to Management Science Associates, Inc. (or a successor entity as set forth in subsection (mm)). Solely for purposes of calculations pursuant to subsection IX(d), a Tobacco Product Manufacturer that is not a signatory to this Agreement shall be deemed to be a "Participating Manufacturer" if the Original Participating Manufacturers unanimously consent in writing.

(kk) "Previously Settled States Reduction" means a reduction determined by multiplying the amount to which such reduction applies by 12.4500000%, in the case of payments due in or prior to 2007; 12.2373756%, in the case of payments due after 2007 but before 2018; and 11.0666667%, in the case of payments due in or after 2018.

(ll) "Prime Rate" shall mean the prime rate as published from time to time by the Wall Street Journal or, in the event the Wall Street Journal is no longer published or no longer publishes such rate, an equivalent successor reference rate determined by the Independent Auditor.

(mm) "Relative Market Share" means an Original Participating Manufacturer's respective share (expressed as a percentage) of the total number of individual Cigarettes shipped in or to the fifty United States, the District of Columbia and Puerto Rico by all the Original Participating Manufacturers during the calendar year immediately preceding the year in which the payment at issue is due (regardless of when such payment is made), as measured by the Original Participating Manufacturers' reports of shipments of Cigarettes to Management Science Associates, Inc. (or a successor entity acceptable to both the Original Participating Manufacturers and a majority of those Attorneys General who are both the Attorney General of a Settling State and a member of the NAAG executive committee at the time in question). A Cigarette shipped by more than one Participating Manufacturer shall be deemed to have been shipped solely by the first Participating Manufacturer to do so. For purposes of the definition and determination of "Relative Market Share," 0.09 ounces of "roll your own" tobacco shall constitute one individual Cigarette.

(nn) "Released Claims" means:

(1) for past conduct, acts or omissions (including any damages incurred in the future arising from such past conduct, acts or omissions), those Claims directly or indirectly based on, arising out of or in any way related, in whole or in part, to (A) the use, sale, distribution, manufacture, development, advertising, marketing or health effects of, (B) the exposure to, or (C) research, statements, or warnings regarding, Tobacco Products (including, but not limited to, the Claims asserted in the actions identified in Exhibit D, or any comparable Claims that were, could be or could have been asserted now or in the future in those actions or in any comparable action in federal, state or local court brought by a Settling State or a Releasing Party (whether or not such Settling State or Releasing Party has brought such action)), except for claims not asserted in the actions identified in Exhibit D for outstanding liability under existing licensing (or similar) fee laws or existing tax laws (but not excepting claims for any tax liability of the Tobacco-Related Organizations or of any Released Party with respect to such Tobacco-Related Organizations, which claims are covered by the release and covenants set forth in this Agreement);

(2) for future conduct, acts or omissions, only those monetary Claims directly or indirectly based on, arising out of or in any way related to, in whole or in part, the use of or exposure to Tobacco Products manufactured in the ordinary course of business, including without limitation any future Claims for reimbursement of health care costs allegedly associated with the use of or exposure to Tobacco Products.

(oo) "Released Parties" means all Participating Manufacturers, their past, present and future Affiliates, and the respective divisions, officers, directors, employees, representatives, insurers, lenders, underwriters, Tobacco-Related Organizations, trade associations, suppliers, agents, auditors, advertising agencies, public relations entities, attorneys, retailers and distributors of any Participating Manufacturer or of any such Affiliate (and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing). Provided, however, that "Released Parties" does not include any person or entity (including, but not limited to, an Affiliate) that is itself a Non-Participating Manufacturer at any time after the MSA Execution Date, unless such person or entity becomes a Participating Manufacturer.



(pp) "Releasing Parties" means each Settling State and any of its past, present and future agents, officials acting in their official capacities, legal representatives, agencies, departments, commissions and divisions; and also means, to the full extent of the power of the signatories hereto to release past, present and future claims, the following: (1) any Settling State's subdivisions (political or otherwise, including, but not limited to, municipalities, counties, parishes, villages, unincorporated districts and hospital districts), public entities, public instrumentalities and public educational institutions; and (2) persons or entities acting in a parens patriae, sovereign, quasi-sovereign, private attorney general, qui tam, taxpayer, or any other capacity, whether or not any of them participate in this settlement, (A) to the extent that any such person or entity is seeking relief on behalf of or generally applicable to the general public in such Settling State or the people of the State, as opposed solely to private or individual relief for separate and distinct injuries, or (B) to the extent that any such entity (as opposed to an individual) is seeking recovery of health-care expenses (other than premium or capitation payments for the benefit of present or retired state employees) paid or reimbursed, directly or indirectly, by a Settling State.

(qq) "Settling State" means any State that signs this Agreement on or before the MSA Execution Date. Provided, however, that the term "Settling State" shall not include (1) the States of Mississippi, Florida, Texas and Minnesota; and (2) any State as to which this Agreement has been terminated.

(rr) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Marianas.

(ss) "State-Specific Finality" means, with respect to the Settling State in question:

(1) this Agreement and the Consent Decree have been approved and entered by the Court as to all Original Participating Manufacturers, or, in the event of an appeal from or review of a decision of the Court to withhold its approval and entry of this Agreement and the Consent Decree, by the court hearing such appeal or conducting such review;

(2) entry by the Court has been made of an order dismissing with prejudice all claims against Released Parties in the action as provided herein; and

(3) the time for appeal or to seek review of or permission to appeal ("Appeal") from the approval and entry as described in subsection (1) hereof and entry of such order described in subsection (2) hereof has expired; or, in the event of an Appeal from such approval and entry, the Appeal has been dismissed, or the approval and entry described in (1) hereof and the order described in subsection (2) hereof have been affirmed in all material respects by the court of last resort to which such Appeal has been taken and such dismissal or affirmance has become no longer subject to further Appeal (including, without limitation, review by the United States Supreme Court).

(tt) "Subsequent Participating Manufacturer" means a Tobacco Product Manufacturer (other than an Original Participating Manufacturer) that: (1) is a Participating Manufacturer, and (2) is a signatory to this Agreement, regardless of when such Tobacco Product Manufacturer became a signatory to this Agreement. "Subsequent Participating Manufacturer" shall also include the successors of a Subsequent Participating Manufacturer. Except as expressly provided in this Agreement, once an entity becomes a Subsequent Participating Manufacturer such entity shall permanently retain the status of Subsequent Participating Manufacturer, unless it agrees to assume the obligations of an Original Participating Manufacturer as provided in subsection XVIII(c).

(uu) "Tobacco Product Manufacturer" means an entity that after the MSA Execution Date directly (and not exclusively through any Affiliate):

(1) manufactures Cigarettes anywhere that such manufacturer intends to be sold in the States, including Cigarettes intended to be sold in the States through an importer (except where such importer is an Original Participating Manufacturer that will be responsible for the payments under this Agreement with respect to such Cigarettes as a result of the provisions of subsections II(mm) and that pays the taxes specified in subsection II(z) on such Cigarettes, and provided that the manufacturer of such Cigarettes does not market or advertise such Cigarettes in the States);

(2) is the first purchaser anywhere for resale in the States of Cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the States; or

(3) becomes a successor of an entity described in subsection (1) or (2) above.

The term "Tobacco Product Manufacturer" shall not include an Affiliate of a Tobacco Product Manufacturer unless such Affiliate itself falls within any of subsections (1) - (3) above.

(vv) "Tobacco Products" means Cigarettes and smokeless tobacco products.

(ww) "Tobacco-Related Organizations" means the Council for Tobacco Research-U.S.A., Inc., The Tobacco Institute, Inc. ("TI"), and the Center for Indoor Air Research, Inc. ("CIAR") and the successors, if any, of TI or CIAR.

(xx) "Transit Advertisements" means advertising on or within private or public vehicles and all advertisements placed at, on or within any bus stop, taxi stand, transportation waiting area, train station, airport or any similar location. Notwithstanding the foregoing, the term "Transit Advertisements" does not include (1) any advertisement placed in, on or outside the premises of any retail establishment that sells Tobacco Products (other than solely through a vending machine) (except if such individual advertisement (A) occupies an area larger than 14 square feet; (B) is placed in such proximity to any other such advertisement so as to create a single "mosaic"-type advertisement larger than 14 square feet; or (C) functions solely as a segment of a larger advertising unit or series); or (2) advertising at the site of an event to be held at an Adult-Only Facility that is placed at such site during the period the facility or enclosed area constitutes an Adult-Only Facility, but in no

event more than 14 days before the event, and that does not advertise any Tobacco Product (other than by using a Brand Name to identify the event)

(yy) "Underage" means younger than the minimum age at which it is legal to purchase or possess (whichever minimum age is older) Cigarettes in the applicable Settling State.

(zz) "Video Game Arcade" means an entertainment establishment primarily consisting of video games (other than video games intended primarily for use by persons 18 years of age or older) and/or pinball machines.

(aaa) "Volume Adjustment" means an upward or downward adjustment in accordance with the formula for volume adjustments set forth in Exhibit E.

(bbb) "Youth" means any person or persons under 18 years of age.

## III. PERMANENT RELIEF

(a) Prohibition on Youth Targeting. No Participating Manufacturer may take any action, directly or indirectly, to target Youth within any Settling State in the advertising, promotion or marketing of Tobacco Products, or take any action the primary purpose of which is to initiate, maintain or increase the incidence of Youth smoking within any Settling State.

(b) Ban on Use of Cartoons. Beginning 180 days after the MSA Execution Date, no Participating Manufacturer may use or cause to be used any Cartoon in the advertising, promoting, packaging or labeling of Tobacco Products.

(c) Limitation of Tobacco Brand Name Sponsorships

(1) Prohibited Sponsorships. After the MSA Execution Date, no Participating Manufacturer may engage in any Brand Name Sponsorship in any State consisting of:

(A) concerts; or

(B) events in which the intended audience is comprised of a significant percentage of Youth; or

(C) events in which any paid participants or contestants are Youth; or

(D) any athletic event between opposing teams in any football, basketball, baseball, soccer or hockey league.

(2) Limited Sponsorships.

(A) No Participating Manufacturer may engage in more than one Brand Name Sponsorship in the States in any twelve-month period (such period measured from the date of the initial sponsored event).

(B) Provided, however, that

(i) nothing contained in subsection (2)(A) above shall require a Participating Manufacturer to breach or terminate any sponsorship contract in existence as of August 1, 1998 (until the earlier of (x) the current term of any existing contract, without regard to any renewal or option that may be exercised by such Participating Manufacturer or (y) three years after the MSA Execution Date); and

(ii) notwithstanding subsection (1)(A) above, Brown & Williamson Tobacco Corporation may sponsor either the GPC country music festival or the Kool jazz festival as its one annual Brand Name Sponsorship permitted pursuant to subsection (2)(A) as well as one Brand Name Sponsorship permitted pursuant to subsection (2)(B)(i).

(3) Related Sponsorship Restrictions. With respect to any Brand Name Sponsorship permitted under this subsection (c):

(A) advertising of the Brand Name Sponsorship event shall not advertise any Tobacco Product (other than by using the Brand Name to identify such Brand Name Sponsorship event);

(B) no Participating Manufacturer may refer to a Brand Name Sponsorship event or to a celebrity or other person in such an event in its advertising of a Tobacco Product;

(C) nothing contained in the provisions of subsection III(e) of this Agreement shall apply to actions taken by any Participating Manufacturer in connection with a Brand Name Sponsorship permitted pursuant to the provisions of subsections (2)(A) and (2)(B)(i); the Brand Name Sponsorship permitted by subsection (2)(B)(ii) shall be subject to the restrictions of subsection III(e) except that such restrictions shall not prohibit use of the Brand Name to identify the Brand Name Sponsorship;

(D) nothing contained in the provisions of subsections III(f) and III(i) shall apply to apparel or other merchandise: (i) marketed, distributed, offered, sold, or licensed at the site of a Brand Name Sponsorship permitted pursuant to subsections (2)(A) or (2)(B)(i) by the person to which the relevant Participating Manufacturer has provided payment in exchange for the use of the relevant Brand Name in the Brand Name Sponsorship or a third-party that does not receive payment from the relevant Participating Manufacturer (or any Affiliate of such Participating Manufacturer) in connection with the marketing, distribution, offer, sale or license of such apparel or other merchandise; or (ii) used at the site of a Brand Name Sponsorship permitted pursuant to subsection (2)(A) or (2)(B)(i) (during such event) that are not distributed (by sale or otherwise) to any member of the general public; and

(E) nothing contained in the provisions of subsection III(d) shall: (i) apply to the use of a Brand Name on a vehicle used in a Brand Name Sponsorship; or (ii) apply to Outdoor Advertising advertising the Brand Name



Sponsorship, to the extent that such Outdoor Advertising is placed at the site of a Brand Name Sponsorship no more than 90 days before the start of the initial sponsored event, is removed within 10 days after the end of the last sponsored event, and is not prohibited by subsection (3)(A) above.

(4) Corporate Name Sponsorships. Nothing in this subsection (c) shall prevent a Participating Manufacturer from sponsoring or causing to be sponsored any athletic, musical, artistic, or other social or cultural event, or any entrant, participant or team in such event (or series of events) in the name of the corporation which manufactures Tobacco Products, provided that the corporate name does not include any Brand Name of domestic Tobacco Products.

(5) Naming Rights Prohibition. No Participating Manufacturer may enter into any agreement for the naming rights of any stadium or arena located within a Settling State using a Brand Name, and shall not otherwise cause a stadium or arena located within a Settling State to be named with a Brand Name.

(6) Prohibition on Sponsoring Teams and Leagues. No Participating Manufacturer may enter into any agreement pursuant to which payment is made (or other consideration is provided) by such Participating Manufacturer to any football, basketball, baseball, soccer or hockey league (or any team involved in any such league) in exchange for use of a Brand Name.

(d) Elimination of Outdoor Advertising and Transit Advertisements. Each Participating Manufacturer shall discontinue Outdoor Advertising and Transit Advertisements advertising Tobacco Products within the Settling States as set forth herein.

(1) Removal. Except as otherwise provided in this section, each Participating Manufacturer shall remove from within the Settling States within 150 days after the MSA Execution Date all of its (A) billboards (to the extent that such billboards constitute Outdoor Advertising) advertising Tobacco Products; (B) signs and placards (to the extent that such signs and placards constitute Outdoor Advertising) advertising Tobacco Products in arenas, stadiums, shopping malls and Video Game Arcades; and (C) Transit Advertisements advertising Tobacco Products.

(2) Prohibition on New Outdoor Advertising and Transit Advertisements. No Participating Manufacturer may, after the MSA Execution Date, place or cause to be placed any new Outdoor Advertising advertising Tobacco Products or new Transit Advertisements advertising Tobacco Products within any Settling State.

(3) Alternative Advertising. With respect to those billboards required to be removed under subsection (1) that are leased (as opposed to owned) by any Participating Manufacturer, the Participating Manufacturer will allow the Attorney General of the Settling State within which such billboards are located to substitute, at the Settling State's option, alternative advertising intended to discourage the use of Tobacco Products by Youth and their exposure to second-hand smoke for the remaining term of the applicable contract (without regard to any renewal or option term that may be exercised by such Participating Manufacturer). The Participating Manufacturer will bear the cost of the lease through the end of such remaining term. Any other costs associated with such alternative advertising will be borne by the Settling State.

(4) Ban on Agreements Inhibiting Anti-Tobacco Advertising. Each Participating Manufacturer agrees that it will not enter into any agreement that prohibits a third party from selling, purchasing or displaying advertising discouraging the use of Tobacco Products or exposure to second-hand smoke. In the event and to the extent that any Participating Manufacturer has entered into an agreement containing any such prohibition, such Participating Manufacturer agrees to waive such prohibition in such agreement.

(5) Designation of Contact Person. Each Participating Manufacturer that has Outdoor Advertising or Transit Advertisements advertising Tobacco Products within a Settling State shall, within 10 days after the MSA Execution Date, provide the Attorney General of such Settling State with the name of a contact person to whom the Settling State may direct inquiries during the time such Outdoor Advertising and Transit Advertisements are being eliminated, and from whom the Settling State may obtain periodic reports as to the progress of their elimination.

(6) Adult-Only Facilities. To the extent that any advertisement advertising Tobacco Products located within an Adult-Only Facility constitutes Outdoor Advertising or a Transit Advertisement, this subsection (d) shall not apply to such advertisement, provided such advertisement is not visible to persons outside such Adult-Only Facility.

(e) Prohibition on Payments Related to Tobacco Products and Media. No Participating Manufacturer may, beginning 30 days after the MSA Execution Date, make, or cause to be made, any payment or other consideration to any other person or entity to use, display, make reference to or use as a prop any Tobacco Product, Tobacco Product package, advertisement for a Tobacco Product, or any other item bearing a Brand Name in any motion picture, television show, theatrical production or other live performance, live or recorded performance of music, commercial film or video, or video game ("Media"); provided, however, that the foregoing prohibition shall not apply to (1) Media where the audience or viewers are within an Adult-Only Facility (provided such Media are not visible to persons outside such Adult-Only Facility); (2) Media not intended for distribution or display to the public; or (3) instructional Media concerning non-conventional cigarettes viewed only by or provided only to smokers who are Adults.

(f) Ban on Tobacco Brand Name Merchandise. Beginning July 1, 1999, no Participating Manufacturer may, within any Settling State, market, distribute, offer, sell, license or cause to be marketed, distributed, offered, sold or licensed (including, without limitation, by catalogue or direct mail), any apparel or other merchandise (other than Tobacco Products, items the sole function of which is to advertise Tobacco Products, or written or electronic publications) which bears a Brand Name. Provided, however, that nothing in this subsection shall (1) require any Participating Manufacturer to breach or

terminate any licensing agreement or other contract in existence as of June 20, 1997 (this exception shall not apply beyond the current term of any existing contract, without regard to any renewal or option term that may be exercised by such Participating Manufacturer); (2) prohibit the distribution to any Participating Manufacturer's employee who is not Underage of any item described above that is intended for the personal use of such an employee; (3) require any Participating Manufacturer to retrieve, collect or otherwise recover any item that prior to the MSA Execution Date was marketed, distributed, offered, sold, licensed, or caused to be marketed, distributed, offered, sold or licensed by such Participating Manufacturer; (4) apply to coupons or other items used by Adults solely in connection with the purchase of Tobacco Products; or (5) apply to apparel or other merchandise used within an Adult-Only Facility that is not distributed (by sale or otherwise) to any member of the general public.

(g) Ban on Youth Access to Free Samples. After the MSA Execution Date, no Participating Manufacturer may, within any Settling State, distribute or cause to be distributed any free samples of Tobacco Products except in an Adult-Only Facility. For purposes of this Agreement, a "free sample" does not include a Tobacco Product that is provided to an Adult in connection with (1) the purchase, exchange or redemption for proof of purchase of any Tobacco Products (including, but not limited to, a free offer in connection with the purchase of Tobacco Products, such as a "two-for-one" offer), or (2) the conducting of consumer testing or evaluation of Tobacco Products with persons who certify that they are Adults.

(h) Ban on Gifts to Underage Persons Based on Proofs of Purchase. Beginning one year after the MSA Execution Date, no Participating Manufacturer may provide or cause to be provided to any person without sufficient proof that such person is an Adult any item in exchange for the purchase of Tobacco Products, or the furnishing of credits, proofs-of-purchase, or coupons with respect to such a purchase. For purposes of the preceding sentence only, (1) a driver's license or other government-issued identification (or legible photocopy thereof), the validity of which is certified by the person to whom the item is provided, shall by itself be deemed to be a sufficient form of proof of age; and (2) in the case of items provided (or to be redeemed) at retail establishments, a Participating Manufacturer shall be entitled to rely on verification of proof of age by the retailer, where such retailer is required to obtain verification under applicable federal, state or local law.

(i) Limitation on Third-Party Use of Brand Names. After the MSA Execution Date, no Participating Manufacturer may license or otherwise expressly authorize any third party to use or advertise within any Settling State any Brand Name in a manner prohibited by this Agreement if done by such Participating Manufacturer itself. Each Participating Manufacturer shall, within 10 days after the MSA Execution Date, designate a person (and provide written notice to NAAG of such designation) to whom the Attorney General of any Settling State may provide written notice of any such third-party activity that would be prohibited by this Agreement if done by such Participating Manufacturer itself. Following such written notice, the Participating Manufacturer will promptly take commercially reasonable steps against any such non-de minimis third-party activity. Provided, however, that nothing in this subsection shall require any Participating Manufacturer to (1) breach or terminate any licensing agreement or other contract in existence as of July 1, 1998 (this exception shall not apply beyond the current term of any existing contract, without regard to any renewal or option term that may be exercised by such Participating Manufacturer); or (2) retrieve, collect or otherwise recover any item that prior to the MSA Execution Date was marketed, distributed, offered, sold, licensed or caused to be marketed, distributed, offered, sold or licensed by such Participating Manufacturer.

(j) Ban on Non-Tobacco Brand Names. No Participating Manufacturer may, pursuant to any agreement requiring the payment of money or other valuable consideration, use or cause to be used as a brand name of any Tobacco Product any nationally recognized or nationally established brand name or trade name of any non-tobacco item or service or any nationally recognized or nationally established sports team, entertainment group or individual celebrity. Provided, however, that the preceding sentence shall not apply to any Tobacco Product brand name in existence as of July 1, 1998. For the purposes of this subsection, the term "other valuable consideration" shall not include an agreement between two entities who enter into such agreement for the sole purpose of avoiding infringement claims.

(k) Minimum Pack Size of Twenty Cigarettes. No Participating Manufacturer may, beginning 60 days after the MSA Execution Date and through and including December 31, 2001, manufacture or cause to be manufactured for sale in any Settling State any pack or other container of Cigarettes containing fewer than 20 Cigarettes (or, in the case of roll-your-own tobacco, any package of roll-your-own tobacco containing less than 0.60 ounces of tobacco). No Participating Manufacturer may, beginning 150 days after the MSA Execution Date and through and including December 31, 2001, sell or distribute in any Settling State any pack or other container of Cigarettes containing fewer than 20 Cigarettes (or, in the case of roll-your-own tobacco, any package of roll-your-own tobacco containing less than 0.60 ounces of tobacco). Each Participating Manufacturer further agrees that following the MSA Execution Date it shall not oppose, or cause to be opposed (including through any third party or Affiliate), the passage by any Settling State of any legislative proposal or administrative rule applicable to all Tobacco Product Manufacturers and all retailers of Tobacco Products prohibiting the manufacture and sale of any pack or other container of Cigarettes containing fewer than 20 Cigarettes (or, in the case of roll-your-own tobacco, any package of roll-your-own tobacco containing less than 0.60 ounces of tobacco).

(l) Corporate Culture Commitments Related to Youth Access and Consumption. Beginning 180 days after the MSA Execution Date each Participating Manufacturer shall:

promulgate or reaffirm corporate principles that express and explain its commitment to comply with the provisions of this Agreement and the reduction of use of Tobacco Products by Youth, and clearly and regularly communicate to its employees and customers its commitment to assist in the reduction of Youth use of Tobacco Products;



designate an executive level manager (and provide written notice to NAAG of such designation) to identify methods to reduce Youth access to, and the incidence of Youth consumption of, Tobacco Products; and

encourage its employees to identify additional methods to reduce Youth access to, and the incidence of Youth consumption of, Tobacco Products.

(m) Limitations on Lobbying. Following State-Specific Finality in a Settling State:

(1) No Participating Manufacturer may oppose, or cause to be opposed (including through any third party or Affiliate), the passage by such Settling State (or any political subdivision thereof) of those state or local legislative proposals or administrative rules described in Exhibit F hereto intended by their terms to reduce Youth access to, and the incidence of Youth consumption of, Tobacco Products. Provided, however, that the foregoing does not prohibit any Participating Manufacturer from (A) challenging enforcement of, or suing for declaratory or injunctive relief with respect to, any such legislation or rule on any grounds; (B) continuing, after State-Specific Finality in such Settling State, to oppose or cause to be opposed, the passage during the legislative session in which State-Specific Finality in such Settling State occurs of any specific state or local legislative proposals or administrative rules introduced prior to the time of State-Specific Finality in such Settling State; (C) opposing, or causing to be opposed, any excise tax or income tax provision or user fee or other payments relating to Tobacco Products or Tobacco Product Manufacturers; or (D) opposing, or causing to be opposed, any state or local legislative proposal or administrative rule that also includes measures other than those described in Exhibit F.

(2) Each Participating Manufacturer shall require all of its officers and employees engaged in lobbying activities in such Settling State after State-Specific Finality, contract lobbyists engaged in lobbying activities in such Settling State after State-Specific Finality, and any other third parties who engage in lobbying activities in such Settling State after State-Specific Finality on behalf of such Participating Manufacturer ("lobbyist" and "lobbying activities" having the meaning such terms have under the law of the Settling State in question) to certify in writing to the Participating Manufacturer that they:

(A) will not support or oppose any state, local or federal legislation, or seek or oppose any governmental action, on behalf of the Participating Manufacturer without the Participating Manufacturer's express authorization (except where such advance express authorization is not reasonably practicable);

(B) are aware of and will fully comply with this Agreement and all laws and regulations applicable to their lobbying activities, including, without limitation, those related to disclosure of financial contributions. Provided, however, that if the Settling State in question has in existence no laws or regulations relating to disclosure of financial contributions regarding lobbying activities, then each Participating Manufacturer shall, upon request of the Attorney General of such Settling State, disclose to such Attorney General any payment to a lobbyist that the Participating Manufacturer knows or has reason to know will be used to influence legislative or administrative actions of the state or local government relating to Tobacco Products or their use. Disclosures made pursuant to the preceding sentence shall be filed in writing with the Office of the Attorney General on the first day of February and the first day of August of each year for any and all payments made during the six month period ending on the last day of the preceding December and June, respectively, with the following information: (1) the name, address, telephone number and e-mail address (if any) of the recipient; (2) the amount of each payment; and (3) the aggregate amount of all payments described in this subsection (2)(B) to the recipient in the calendar year; and

(C) have reviewed and will fully abide by the Participating Manufacturer's corporate principles promulgated pursuant to this Agreement when acting on behalf of the Participating Manufacturer.

(3) No Participating Manufacturer may support or cause to be supported (including through any third party or Affiliate) in Congress or any other forum legislation or rules that would preempt, override, abrogate or diminish such Settling State's rights or recoveries under this Agreement. Except as specifically provided in this Agreement, nothing herein shall be deemed to restrain any Settling State or Participating Manufacturer from advocating terms of any national settlement or taking any other positions on issues relating to tobacco.

(n) Restriction on Advocacy Concerning Settlement Proceeds. After the MSA Execution Date, no Participating Manufacturer may support or cause to be supported (including through any third party or Affiliate) the diversion of any proceeds of this settlement to any program or use that is neither tobacco-related nor health-related in connection with the approval of this Agreement or in any subsequent legislative appropriation of settlement proceeds.

(o) Dissolution of The Tobacco Institute, Inc., the Council for Tobacco Research-U.S.A., Inc. and the Center for Indoor Air Research, Inc.

(1) The Council for Tobacco Research-U.S.A., Inc. ("CTR") (a not-for-profit corporation formed under the laws of the State of New York) shall, pursuant to the plan of dissolution previously negotiated and agreed to between the Attorney General of the State of New York and CTR, cease all operations and be dissolved in accordance with the laws of the State of New York (and with the preservation of all applicable privileges held by any member company of CTR).

(2) The Tobacco Institute, Inc. ("TI") (a not-for-profit corporation formed under the laws of the State of New York) shall, pursuant to a plan of dissolution to be negotiated by the Attorney General of the State of New York and the Original Participating Manufacturers in accordance with Exhibit G hereto, cease all operations and be dissolved in

accordance with the laws of the State of New York and under the authority of the Attorney General of the State of New York (and with the preservation of all applicable privileges held by any member company of TI).

(3) Within 45 days after Final Approval, the Center for Indoor Air Research, Inc. ("CIAR") shall cease all operations and be dissolved in a manner consistent with applicable law and with the preservation of all applicable privileges (including, without limitation, privileges held by any member company of CIAR).

(4) The Participating Manufacturers shall direct the Tobacco-Related Organizations to preserve all records that relate in any way to issues raised in smoking-related health litigation.

(5) The Participating Manufacturers may not reconstitute CTR or its function in any form.

(6) The Participating Manufacturers represent that they have the authority to and will effectuate subsections (1) through (5) hereof.

(p) Regulation and Oversight of New Tobacco-Related Trade Associations.

(1) A Participating Manufacturer may form or participate in new tobacco-related trade associations (subject to all applicable laws), provided such associations agree in writing not to act in any manner contrary to any provision of this Agreement. Each Participating Manufacturer agrees that if any new tobacco-related trade association fails to so agree, such Participating Manufacturer will not participate in or support such association.

(2) Any tobacco-related trade association that is formed or controlled by one or more of the Participating Manufacturers after the MSA Execution Date shall adopt by-laws governing the association's procedures and the activities of its members, board, employees, agents and other representatives with respect to the tobacco-related trade association. Such by-laws shall include, among other things, provisions that:

(A) each officer of the association shall be appointed by the board of the association, shall be an employee of such association, and during such officer's term shall not be a director of or employed by any member of the association or by an Affiliate of any member of the association;

(B) legal counsel for the association shall be independent, and neither counsel nor any member or employee of counsel's law firm shall serve as legal counsel to any member of the association or to a manufacturer of Tobacco Products that is an Affiliate of any member of the association during the time that it is serving as legal counsel to the association; and

(C) minutes describing the substance of the meetings of the board of directors of the association shall be prepared and shall be maintained by the association for a period of at least five years following their preparation.

(3) Without limitation on whatever other rights to access they may be permitted by law, for a period of seven years from the date any new tobacco-related trade association is formed by any of the Participating Manufacturers after the MSA Execution Date the antitrust authorities of any Settling State may, for the purpose of enforcing this Agreement, upon reasonable cause to believe that a violation of this Agreement has occurred, and upon reasonable prior written notice (but in no event less than 10 Business Days):

(A) have access during regular office hours to inspect and copy all relevant non-privileged, non-work-product books, records, meeting agenda and minutes, and other documents (whether in hard copy form or stored electronically) of such association insofar as they pertain to such believed violation; and

(B) interview the association's directors, officers and employees (who shall be entitled to have counsel present) with respect to relevant, non-privileged, non-work-product matters pertaining to such believed violation.

Documents and information provided to Settling State antitrust authorities shall be kept confidential by and among such authorities, and shall be utilized only by the Settling States and only for the purpose of enforcing this Agreement or the criminal law. The inspection and discovery rights provided to the Settling States pursuant to this subsection shall be coordinated so as to avoid repetitive and excessive inspection and discovery.

(q) Prohibition on Agreements to Suppress Research. No Participating Manufacturer may enter into any contract, combination or conspiracy with any other Tobacco Product Manufacturer that has the purpose or effect of: (1) limiting competition in the production or distribution of information about health hazards or other consequences of the use of their products; (2) limiting or suppressing research into smoking and health; or (3) limiting or suppressing research into the marketing or development of new products. Provided, however, that nothing in this subsection shall be deemed to (1) require any Participating Manufacturer to produce, distribute or otherwise disclose any information that is subject to any privilege or protection; (2) preclude any Participating Manufacturer from entering into any joint defense or joint legal interest agreement or arrangement (whether or not in writing), or from asserting any privilege pursuant thereto; or (3) impose any affirmative obligation on any Participating Manufacturer to conduct any research.

(r) Prohibition on Material Misrepresentations. No Participating Manufacturer may make any material misrepresentation of fact regarding the health consequences of using any Tobacco Product, including any tobacco additives, filters, paper or other ingredients. Nothing in this subsection shall limit the exercise of any First Amendment right or the assertion of any defense or position in any judicial, legislative or regulatory forum.



## IV. PUBLIC ACCESS TO DOCUMENTS

(a) After the MSA Execution Date, the Original Participating Manufacturers and the Tobacco-Related Organizations will support an application for the dissolution of any protective orders entered in each Settling State's lawsuit identified in Exhibit D with respect only to those documents, indices and privilege logs that have been produced as of the MSA Execution Date to such Settling State and (1) as to which defendants have made no claim, or have withdrawn any claim, of attorney-client privilege, attorney work-product protection, common interest/joint defense privilege (collectively, "privilege"), trade-secret protection, or confidential or proprietary business information; and (2) that are not inappropriate for public disclosure because of personal privacy interests or contractual rights of third parties that may not be abrogated by the Original Participating Manufacturers or the Tobacco-Related Organizations.

(b) Notwithstanding State-Specific Finality, if any order, ruling or recommendation was issued prior to September 17, 1998 rejecting a claim of privilege or trade-secret protection with respect to any document or documents in a lawsuit identified in Exhibit D, the Settling State in which such order, ruling or recommendation was made may, no later than 45 days after the occurrence of State-Specific Finality in such Settling State, seek public disclosure of such document or documents by application to the court that issued such order, ruling or recommendation and the court shall retain jurisdiction for such purposes. The Original Participating Manufacturers and Tobacco-Related Organizations do not consent to, and may object to, appeal from or otherwise oppose any such application for disclosure. The Original Participating Manufacturers and Tobacco-Related Organizations will not assert that the settlement of such lawsuit has divested the court of jurisdiction or that such Settling State lacks standing to seek public disclosure on any applicable ground.

(c) The Original Participating Manufacturers will maintain at their expense their Internet document websites accessible through "TobaccoResolution.com" or a similar website until June 30, 2010. The Original Participating Manufacturers will maintain the documents that currently appear on their respective websites and will add additional documents to their websites as provided in this section IV.

(d) Within 180 days after the MSA Execution Date, each Original Participating Manufacturer and Tobacco-Related Organization will place on its website copies of the following documents, except as provided in subsections IV(e) and IV(f) below:

(1) all documents produced by such Original Participating Manufacturer or Tobacco-Related Organization as of the MSA Execution Date in any action identified in Exhibit D or any action identified in section 2 of Exhibit H that was filed by an Attorney General. Among these documents, each Original Participating Manufacturer and Tobacco-Related Organization will give the highest priority to (A) the documents that were listed by the State of Washington as trial exhibits in the State of Washington v. American Tobacco Co., et al., No. 96-2-15056-8 SEA (Wash. Super. Ct., County of King); and (B) the documents as to which such Original Participating Manufacturer or Tobacco-Related Organization withdrew any claim of privilege as a result of the re-examination of privilege claims pursuant to court order in State of Oklahoma v. R.J. Reynolds Tobacco Company, et al., CJ-96-2499-L (Dist. Ct., Cleveland County);

(2) all documents that can be identified as having been produced by, and copies of transcripts of depositions given by, such Original Participating Manufacturer or Tobacco-Related Organization as of the MSA Execution Date in the litigation matters specified in section 1 of Exhibit H; and

(3) all documents produced by such Original Participating Manufacturer or Tobacco-Related Organization as of the MSA Execution Date and listed by the plaintiffs as trial exhibits in the litigation matters specified in section 2 of Exhibit H.

(e) Unless copies of such documents are already on its website, each Original Participating Manufacturer and Tobacco-Related Organization will place on its website copies of documents produced in any production of documents that takes place on or after the date 30 days before the MSA Execution Date in any federal or state court civil action concerning smoking and health. Copies of any documents required to be placed on a website pursuant to this subsection will be placed on such website within the later of 45 days after the MSA Execution Date or within 45 days after the production of such documents in any federal or state court action concerning smoking and health. This obligation will continue until June 30, 2010. In placing such newly produced documents on its website, each Original Participating Manufacturer or Tobacco-Related Organization will identify, as part of its index to be created pursuant to subsection IV(h), the action in which it produced such documents and the date on which such documents were added to its website.

(f) Nothing in this section IV shall require any Original Participating Manufacturer or Tobacco-Related Organization to place on its website or otherwise disclose documents that: (1) it continues to claim to be privileged, a trade secret, confidential or proprietary business information, or that contain other information not appropriate for public disclosure because of personal privacy interests or contractual rights of third parties; or (2) continue to be subject to any protective order, sealing order or other order or ruling that prevents or limits a litigant from disclosing such documents.

(g) Oversized or multimedia records will not be required to be placed on the Website, but each Original Participating Manufacturers and Tobacco-Related Organizations will make any such records available to the public by placing copies of them in the document depository established in The State of Minnesota, et al. v. Philip Morris Incorporated, et al., C1-94-8565 (County of Ramsey, District Court, 2d Judicial Cir.).

(h) Each Original Participating Manufacturer will establish an index and other features to improve searchable access to the document images on its website, as set forth in Exhibit I.

(i) Within 90 days after the MSA Execution Date, the Original Participating Manufacturers will furnish NAAG with a project plan for completing the Original Participating Manufacturers' obligations under subsection IV(h) with respect to documents currently on their websites and documents being placed on their websites pursuant to subsection IV(d). NAAG may engage a computer consultant at the Original Participating Manufacturers' expense for a period not to exceed two years and at a cost not to exceed $100,000. NAAG's computer consultant may review such plan and make recommendations consistent with this Agreement. In addition, within 120 days after the completion of the Original Participating Manufacturers' obligations under subsection IV(d), NAAG's computer consultant may make final recommendations with respect to the websites consistent with this Agreement. In preparing these recommendations, NAAG's computer consultant may seek input from Settling State officials, public health organizations and other users of the websites.

(j) The expenses incurred pursuant to subsection IV(i), and the expenses related to documents of the Tobacco-Related Organizations, will be severally shared among the Original Participating Manufacturers (allocated among them according to their Relative Market Shares). All other expenses incurred under this section will be borne by the Original Participating Manufacturer that incurs such expense.

## V. TOBACCO CONTROL AND UNDERAGE USE LAWS

Each Participating Manufacturer agrees that following State-Specific Finality in a Settling State it will not initiate, or cause to be initiated, a facial challenge against the enforceability or constitutionality of such Settling State's (or such Settling State's political subdivisions') statutes, ordinances and administrative rules relating to tobacco control enacted prior to June 1, 1998 (other than a statute, ordinance or rule challenged in any lawsuit listed in Exhibit M).

## VI. ESTABLISHMENT OF A NATIONAL FOUNDATION

(a) Foundation Purposes. The Settling States believe that a comprehensive, coordinated program of public education and study is important to further the remedial goals of this Agreement. Accordingly, as part of the settlement of claims described herein, the payments specified in subsections VI(b), VI(c), and IX(e) shall be made to a charitable foundation, trust or similar organization (the "Foundation") and/or to a program to be operated within the Foundation (the "National Public Education Fund"). The purposes of the Foundation will be to support (1) the study of and programs to reduce Youth Tobacco Product usage and Youth substance abuse in the States, and (2) the study of and educational programs to prevent diseases associated with the use of Tobacco Products in the States.

(b) Base Foundation Payments. On March 31, 1999, and on March 31 of each subsequent year for a period of nine years thereafter, each Original Participating Manufacturer shall severally pay its Relative Market Share of $25,000,000 to fund the Foundation. The payments to be made by each of the Original Participating Manufacturers pursuant to this subsection (b) shall be subject to no adjustments, reductions, or offsets, and shall be paid to the Escrow Agent (to be credited to the Subsection VI(b) Account), who shall disburse such payments to the Foundation only upon the occurrence of State-Specific Finality in at least one Settling State.

(c) National Public Education Fund Payments.

(1) Each Original Participating Manufacturer shall severally pay its Relative Market Share of the following base amounts on the following dates to the Escrow Agent for the benefit of the Foundation's National Public Education Fund to be used for the purposes and as described in subsections VI(f)(1), VI(g) and VI(h) below: $250,000,000 on March 31, 1999; $300,000,000 on March 31, 2000; $300,000,000 on March 31, 2001; $300,000,000 on March 31, 2002; and $300,000,000 on March 31, 2003, as such amounts are modified in accordance with this subsection (c). The payment due on March 31, 1999 pursuant to this subsection (c)(1) is to be credited to the Subsection VI(c) Account (First). The payments due on or after March 31, 2000 pursuant to this subsection VI(c)(1) are to be credited to the Subsection VI(c) Account (Subsequent).

(2) The payments to be made by the Original Participating Manufacturers pursuant to this subsection (c), other than the payment due on March 31, 1999, shall be subject to the Inflation Adjustment, the Volume Adjustment and the offset for miscalculated or disputed payments described in subsection XI(i).

(3) The payment made pursuant to this subsection (c) on March 31, 1999 shall be disbursed by the Escrow Agent to the Foundation only upon the occurrence of State-Specific Finality in at least one Settling State. Each remaining payment pursuant to this subsection (c) shall be disbursed by the Escrow Agent to the Foundation only when State-Specific Finality has occurred in Settling States having aggregate Allocable Shares equal to at least 80% of the total aggregate Allocable Shares assigned to all States that were Settling States as of the MSA Execution Date.

(4) In addition to the payments made pursuant to this subsection (c), the National Public Education Fund will be funded (A) in accordance with subsection IX(e), and (B) through monies contributed by other entities directly to the Foundation and designated for the National Public Education Fund ("National Public Education Fund Contributions").

(5) The payments made by the Original Participating Manufacturers pursuant to this subsection (c) and/or subsection IX(e) and monies received from all National Public Education Fund Contributions will be deposited and invested in accordance with the laws of the state of incorporation of the Foundation.



(d) Creation and Organization of the Foundation. NAAG, through its executive committee, will provide for the creation of the Foundation. The Foundation shall be organized exclusively for charitable, scientific, and educational purposes within the meaning of Internal Revenue Code section 501(c)(3). The organizational documents of the Foundation shall specifically incorporate the provisions of this Agreement relating to the Foundation, and will provide for payment of the Foundation's administrative expenses from the funds paid pursuant to subsection VI(b) or VI(c). The Foundation shall be governed by a board of directors. The board of directors shall be comprised of eleven directors. NAAG, the National Governors' Association ("NGA"), and the National Conference of State Legislatures ("NCSL") shall each select from its membership two directors. These six directors shall select the five additional directors. One of these five additional directors shall have expertise in public health issues. Four of these five additional directors shall have expertise in medical, child psychology, or public health disciplines. The board of directors shall be nationally geographically diverse.

(e) Foundation Affiliation. The Foundation shall be formally affiliated with an educational or medical institution selected by the board of directors.

(f) Foundation Functions. The functions of the Foundation shall be:

(1) carrying out a nationwide sustained advertising and education program to (A) counter the use by Youth of Tobacco Products, and (B) educate consumers about the cause and prevention of diseases associated with the use of Tobacco Products;

(2) developing and disseminating model advertising and education programs to counter the use by Youth of substances that are unlawful for use or purchase by Youth, with an emphasis on reducing Youth smoking; monitoring and testing the effectiveness of such model programs; and, based on the information received from such monitoring and testing, continuing to develop and disseminate revised versions of such model programs, as appropriate;

(3) developing and disseminating model classroom education programs and curriculum ideas about smoking and substance abuse in the K-12 school system, including specific target programs for special at-risk populations; monitoring and testing the effectiveness of such model programs and ideas; and, based on the information received from such monitoring and testing, continuing to develop and disseminate revised versions of such model programs or ideas, as appropriate;

(4) developing and disseminating criteria for effective cessation programs; monitoring and testing the effectiveness of such criteria; and continuing to develop and disseminate revised versions of such criteria, as appropriate;

(5) commissioning studies, funding research, and publishing reports on factors that influence Youth smoking and substance abuse and developing strategies to address the conclusions of such studies and research;

(6) developing other innovative Youth smoking and substance abuse prevention programs;

(7) providing targeted training and information for parents;

(8) maintaining a library open to the public of Foundation-funded studies, reports and other publications related to the cause and prevention of Youth smoking and substance abuse;

(9) tracking and monitoring Youth smoking and substance abuse, with a focus on the reasons for any increases or failures to decrease Youth smoking and substance abuse and what actions can be taken to reduce Youth smoking and substance abuse;

(10) receiving, controlling, and managing contributions from other entities to further the purposes described in this Agreement; and

(11) receiving, controlling, and managing such funds paid by the Participating Manufacturers pursuant to subsections VI(b) and VI(c) above.

(g) Foundation Grant-Making. The Foundation is authorized to make grants from the National Public Education Fund to Settling States and their political subdivisions to carry out sustained advertising and education programs to (1) counter the use by Youth of Tobacco Products, and (2) educate consumers about the cause and prevention of diseases associated with the use of Tobacco Products. In making such grants, the Foundation shall consider whether the Settling State or political subdivision applying for such grant:

(1) demonstrates the extent of the problem regarding Youth smoking in such Settling State or political subdivision;

(2) either seeks the grant to implement a model program developed by the Foundation or provides the Foundation with a specific plan for such applicant's intended use of the grant monies, including demonstrating such applicant's ability to develop an effective advertising/education campaign and to assess the effectiveness of such advertising/education campaign;

(3) has other funds readily available to carry out a sustained advertising and education program to (A) counter the use by Youth of Tobacco Products, and (B) educate consumers about the cause and prevention of diseases associated with the use of Tobacco Products; and

(4) is a Settling State that has not severed this section VI from its settlement with the Participating Manufacturers pursuant to subsection VI(i) below, or is a political subdivision in such a Settling State.

(h) Foundation Activities. The Foundation shall not engage in, nor shall any of the Foundation's money be used to engage in, any political activities or lobbying, including, but not limited to, support of or opposition to candidates, ballot initiatives, referenda or other similar activities. The National Public Education Fund shall be used only for public education and advertising regarding the addictiveness, health effects, and social costs related to the use of tobacco products and shall not be used for any personal attack on, or vilification of, any person (whether by name or business affiliation), company, or governmental agency, whether individually or collectively. The Foundation shall work to ensure that its activities are carried out in a culturally and linguistically appropriate manner. The Foundation's activities (including the National Public Education Fund) shall be carried out solely within the States. The payments described in subsections VI(b) and VI(c) above are made at the direction and on behalf of Settling States. By making such payments in such manner, the Participating Manufacturers do not undertake and expressly disclaim any responsibility with respect to the creation, operation, liabilities, or tax status of the Foundation or the National Public Education Fund.

(i) Severance of this Section. If the Attorney General of a Settling State determines that such Settling State may not lawfully enter into this section VI as a matter of applicable state law, such Attorney General may sever this section VI from its settlement with the Participating Manufacturers by giving written notice of such severance to each Participating Manufacturer and NAAG pursuant to subsection XVIII(k) hereof. If any Settling State exercises its right to sever this section VI, this section VI shall not be considered a part of the specific settlement between such Settling State and the Participating Manufacturers, and this section VI shall not be enforceable by or in such Settling State. The payment obligation of subsections VI(b) and VI(c) hereof shall apply regardless of a determination by one or more Settling States to sever section VI hereof, provided, however, that if all Settling States sever section VI hereof, the payment obligations of subsections (b) and (c) hereof shall be null and void. If the Attorney General of a Settling State that severed this section VI subsequently determines that such Settling State may lawfully enter into this section VI as a matter of applicable state law, such Attorney General may rescind such Settling State's previous severance of this section VI by giving written notice of such rescission to each Participating Manufacturer and NAAG pursuant to subsection XVIII(k). If any Settling State rescinds such severance, this section VI shall be considered a part of the specific settlement between such Settling State and the Participating Manufacturers (including for purposes of subsection (g)(4)), and this section VI shall be enforceable by and in such Settling State.

## VII. ENFORCEMENT

(a) Jurisdiction. Each Participating Manufacturer and each Settling State acknowledge that the Court: (1) has jurisdiction over the subject matter of the action identified in Exhibit D in such Settling State and over each Participating Manufacturer; (2) shall retain exclusive jurisdiction for the purposes of implementing and enforcing this Agreement and the Consent Decree as to such Settling State; and (3) except as provided in subsections IX(d), XI(c) and XVII(d) and Exhibit O, shall be the only court to which disputes under this Agreement or the Consent Decree are presented as to such Settling State. Provided, however, that notwithstanding the foregoing, the Escrow Court (as defined in the Escrow Agreement) shall have exclusive jurisdiction, as provided in section 15 of the Escrow Agreement, over any suit, action or proceeding seeking to interpret or enforce any provision of, or based on any right arising out of, the Escrow Agreement.

(b) Enforcement of Consent Decree. Except as expressly provided in the Consent Decree, any Settling State or Released Party may apply to the Court to enforce the terms of the Consent Decree (or for a declaration construing any such term) with respect to alleged violations within such Settling State. A Settling State may not seek to enforce the Consent Decree of another Settling State; provided, however, that nothing contained herein shall affect the ability of any Settling State to (1) coordinate state enforcement actions or proceedings, or (2) file or join any amicus brief. In the event that the Court determines that any Participating Manufacturer or Settling State has violated the Consent Decree within such Settling State, the party that initiated the proceedings may request any and all relief available within such Settling State pursuant to the Consent Decree.

(c) Enforcement of this Agreement.

(1) Except as provided in subsections IX(d), XI(c), XVII(d) and Exhibit O, any Settling State or Participating Manufacturer may bring an action in the Court to enforce the terms of this Agreement (or for a declaration construing any such term ("Declaratory Order")) with respect to disputes, alleged violations or alleged breaches within such Settling State.

(2) Before initiating such proceedings, a party shall provide 30 days' written notice to the Attorney General of each Settling State, to NAAG, and to each Participating Manufacturer of its intent to initiate proceedings pursuant to this subsection. The 30-day notice period may be shortened in the event that the relevant Attorney General reasonably determines that a compelling time-sensitive public health and safety concern requires more immediate action.

(3) In the event that the Court determines that any Participating Manufacturer or Settling State has violated or breached this Agreement, the party that initiated the proceedings may request an order restraining such violation or breach, and/or ordering compliance within such Settling State (an "Enforcement Order").

(4) If an issue arises as to whether a Participating Manufacturer has failed to comply with an Enforcement Order, the Attorney General for the Settling State in question may seek an order for interpretation or for monetary, civil contempt or criminal sanctions to enforce compliance with such Enforcement Order.

(5) If the Court finds that a good-faith dispute exists as to the meaning of the terms of this Agreement or a Declaratory Order, the Court may in its discretion determine to enter a Declaratory Order rather than an Enforcement Order.



(6) Whenever possible, the parties shall seek to resolve an alleged violation of this Agreement by discussion pursuant to subsection XVIII(m) of this Agreement. In addition, in determining whether to seek an Enforcement Order, or in determining whether to seek an order for monetary, civil contempt or criminal sanctions for any claimed violation of an Enforcement Order, the Attorney General shall give good-faith consideration to whether the Participating Manufacturer that is claimed to have violated this Agreement has taken appropriate and reasonable steps to cause the claimed violation to be cured, unless such party has been guilty of a pattern of violations of like nature.

(d) Right of Review. All orders and other judicial determinations made by any court in connection with this Agreement or any Consent Decree shall be subject to all available appellate review, and nothing in this Agreement or any Consent Decree shall be deemed to constitute a waiver of any right to any such review.

(e) Applicability. This Agreement and the Consent Decree apply only to the Participating Manufacturers in their corporate capacity acting through their respective successors and assigns, directors, officers, employees, agents, subsidiaries, divisions, or other internal organizational units of any kind or any other entities acting in concert or participation with them. The remedies, penalties and sanctions that may be imposed or assessed in connection with a breach or violation of this Agreement or the Consent Decree (or any Declaratory Order or Enforcement Order issued in connection with this Agreement or the Consent Decree) shall only apply to the Participating Manufacturers, and shall not be imposed or assessed against any employee, officer or director of any Participating Manufacturer, or against any other person or entity as a consequence of such breach or violation, and the Court shall have no jurisdiction to do so.

(f) Coordination of Enforcement. The Attorneys General of the Settling States (through NAAG) shall monitor potential conflicting interpretations by courts of different States of this Agreement and the Consent Decrees. The Settling States shall use their best efforts, in cooperation with the Participating Manufacturers, to coordinate and resolve the effects of such conflicting interpretations as to matters that are not exclusively local in nature.

(g) Inspection and Discovery Rights. Without limitation on whatever other rights to access they may be permitted by law, following State-Specific Finality in a Settling State and for seven years thereafter, representatives of the Attorney General of such Settling State may, for the purpose of enforcing this Agreement and the Consent Decree, upon reasonable cause to believe that a violation of this Agreement or the Consent Decree has occurred, and upon reasonable prior written notice (but in no event less than 10 Business Days): (1) have access during regular office hours to inspect and copy all relevant non-privileged, non-work-product books, records, meeting agenda and minutes, and other documents (whether in hard copy form or stored electronically) of each Participating Manufacturer insofar as they pertain to such believed violation; and (2) interview each Participating Manufacturer's directors, officers and employees (who shall be entitled to have counsel present) with respect to relevant, non-privileged, non-work-product matters pertaining to such believed violation. Documents and information provided to representatives of the Attorney General of such Settling State pursuant to this section VII shall be kept confidential by the Settling States, and shall be utilized only by the Settling States and only for purposes of enforcing this Agreement, the Consent Decree and the criminal law. The inspection and discovery rights provided to such Settling State pursuant to this subsection shall be coordinated through NAAG so as to avoid repetitive and excessive inspection and discovery.

## VIII. CERTAIN ONGOING RESPONSIBILITIES OF THE SETTLING STATES

(a) Upon approval of the NAAG executive committee, NAAG will provide coordination and facilitation for the implementation and enforcement of this Agreement on behalf of the Attorneys General of the Settling States, including the following:

(1) NAAG will assist in coordinating the inspection and discovery activities referred to in subsections III(p)(3) and VII(g) regarding compliance with this Agreement by the Participating Manufacturers and any new tobacco-related trade associations.

(2) NAAG will convene at least two meetings per year and one major national conference every three years for the Attorneys General of the Settling States, the directors of the Foundation and three persons designated by each Participating Manufacturer. The purpose of the meetings and conference is to evaluate the success of this Agreement and coordinate efforts by the Attorneys General and the Participating Manufacturers to continue to reduce Youth smoking.

(3) NAAG will periodically inform NGA, NCSL, the National Association of Counties and the National League of Cities of the results of the meetings and conferences referred to in subsection (a)(2) above.

(4) NAAG will support and coordinate the efforts of the Attorneys General of the Settling States in carrying out their responsibilities under this Agreement.

(5) NAAG will perform the other functions specified for it in this Agreement, including the functions specified in section IV.

(b) Upon approval by the NAAG executive committee to assume the responsibilities outlined in subsection VIII(a) hereof, each Original Participating Manufacturer shall cause to be paid, beginning on December 31, 1998, and on December 31 of each year thereafter through and including December 31, 2007, its Relative Market Share of $150,000 per year to the Escrow Agent (to be credited to the Subsection VIII(b) Account), who shall disburse such monies to NAAG within 10 Business Days, to fund the activities described in subsection VIII(a).

(c) The Attorneys General of the Settling States, acting through NAAG, shall establish a fund ("The States' Antitrust/Consumer Protection Tobacco Enforcement Fund") in the form attached as Exhibit J, which will be maintained by

such Attorneys General to supplement the Settling States' (1) enforcement and implementation of the terms of this Agreement and the Consent Decrees, and (2) investigation and litigation of potential violations of laws with respect to Tobacco Products, as set forth in Exhibit J. Each Original Participating Manufacturer shall on March 31, 1999, severally pay its Relative Market Share of $50,000,000 to the Escrow Agent (to be credited to the Subsection VIII(c) Account), who shall disburse such monies to NAAG upon the occurrence of State-Specific Finality in at least one Settling State. Such funds will be used in accordance with the provisions of Exhibit J.

## IX. PAYMENTS

(a) All Payments Into Escrow. All payments made pursuant to this Agreement (except those payments made pursuant to section XVII) shall be made into escrow pursuant to the Escrow Agreement, and shall be credited to the appropriate Account established pursuant to the Escrow Agreement. Such payments shall be disbursed to the beneficiaries or returned to the Participating Manufacturers only as provided in section XI and the Escrow Agreement. No payment obligation under this Agreement shall arise (1) unless and until the Escrow Court has approved and retained jurisdiction over the Escrow Agreement or (2) if such approval is reversed (unless and until such reversal is itself reversed). The parties agree to proceed as expeditiously as possible to resolve any issues that prevent approval of the Escrow Agreement. If any payment (other than the first initial payment under subsection IX(b)) is delayed because the Escrow Agreement has not been approved, such payment shall be due and payable (together with interest at the Prime Rate) within 10 Business Days after approval of the Escrow Agreement by the Escrow Court.

(b) Initial Payments. On the second Business Day after the Escrow Court approves and retains jurisdiction over the Escrow Agreement, each Original Participating Manufacturer shall severally pay to the Escrow Agent (to be credited to the Subsection IX(b) Account (First)) its Market Capitalization Percentage (as set forth in Exhibit K) of the base amount of $2,400,000,000. On January 10, 2000, each Original Participating Manufacturer shall severally pay to the Escrow Agent its Relative Market Share of the base amount of $2,472,000,000. On January 10, 2001, each Original Participating Manufacturer shall severally pay to the Escrow Agent its Relative Market Share of the base amount of $2,546,160,000. On January 10, 2002, each Original Participating Manufacturer shall severally pay to the Escrow Agent its Relative Market Share of the base amount of $2,622,544,800. On January 10, 2003, each Original Participating Manufacturer shall severally pay to the Escrow Agent its Relative Market Share of the base amount of $2,701,221,144. The payments pursuant to this subsection (b) due on or after January 10, 2000 shall be credited to the Subsection IX(b) Account (Subsequent). The foregoing payments shall be modified in accordance with this subsection (b). The payments made by the Original Participating Manufacturers pursuant to this subsection (b) (other than the first such payment) shall be subject to the Volume Adjustment, the Non-Settling States Reduction and the offset for miscalculated or disputed payments described in subsection XI(i). The first payment due under this subsection (b) shall be subject to the Non-Settling States Reduction, but such reduction shall be determined as of the date one day before such payment is due (rather than the date 15 days before).

(c) Annual Payments and Strategic Contribution Payments.

(1) On April 15, 2000 and on April 15 of each year thereafter in perpetuity, each Original Participating Manufacturer shall severally pay to the Escrow Agent (to be credited to the Subsection IX(c)(1) Account) its Relative Market Share of the base amounts specified below, as such payments are modified in accordance with this subsection (c)(1):

| Year | Base Amount |
|---|---|
| 2000 | $4,500,000,000 |
| 2001 | $5,000,000,000 |
| 2002 | $6,500,000,000 |
| 2003 | $6,500,000,000 |
| 2004 | $8,000,000,000 |
| 2005 | $8,000,000,000 |
| 2006 | $8,000,000,000 |
| 2007 | $8,000,000,000 |
| 2008 | $8,139,000,000 |
| 2009 | $8,139,000,000 |
| 2010 | $8,139,000,000 |
| 2011 | $8,139,000,000 |
| 2012 | $8,139,000,000 |
| 2013 | $8,139,000,000 |
| 2014 | $8,139,000,000 |
| 2015 | $8,139,000,000 |
| 2016 | $8,139,000,000 |
| 2017 | $8,139,000,000 |
| 2018 and each year thereafter | $9,000,000,000 |

The payments made by the Original Participating Manufacturers pursuant to this subsection (c)(1) shall be subject to the Inflation Adjustment, the Volume Adjustment, the Previously Settled States Reduction, the Non-Settling States Reduction, the NPM Adjustment, the offset for miscalculated or disputed payments described in subsection XI(i), the Federal



Tobacco Legislation Offset, the Litigating Releasing Parties Offset, and the offsets for claims over described in subsections XII(a)(4)(B) and XII(a)(8).

(2) On April 15, 2008 and on April 15 of each year thereafter through 2017, each Original Participating Manufacturer shall severally pay to the Escrow Agent (to be credited to the Subsection IX(c)(2) Account) its Relative Market Share of the base amount of $861,000,000, as such payments are modified in accordance with this subsection (c)(2). The payments made by the Original Participating Manufacturers pursuant to this subsection (c)(2) shall be subject to the Inflation Adjustment, the Volume Adjustment, the NPM Adjustment, the offset for miscalculated or disputed payments described in subsection XI(i), the Federal Tobacco Legislation Offset, the Litigating Releasing Parties Offset, and the offsets for claims over described in subsections XII(a)(4)(B) and XII(a)(8). Such payments shall also be subject to the Non-Settling States Reduction; provided, however, that for purposes of payments due pursuant to this subsection (c)(2) (and corresponding payments by Subsequent Participating Manufacturers under subsection IX(i)), the Non-Settling States Reduction shall be derived as follows: (A) the payments made by the Original Participating Manufacturers pursuant to this subsection (c)(2) shall be allocated among the Settling States on a percentage basis to be determined by the Settling States pursuant to the procedures set forth in Exhibit U, and the resulting allocation percentages disclosed to the Escrow Agent, the Independent Auditor and the Original Participating Manufacturers not later than June 30, 1999; and (B) the Non-Settling States Reduction shall be based on the sum of the Allocable Shares so established pursuant to subsection (c)(2)(A) for those States that were Settling States as of the MSA Execution Date and as to which this Agreement has terminated as of the date 15 days before the payment in question is due.

(d) Non-Participating Manufacturer Adjustment.

(1) Calculation of NPM Adjustment for Original Participating Manufacturers. To protect the public health gains achieved by this Agreement, certain payments made pursuant to this Agreement shall be subject to an NPM Adjustment. Payments by the Original Participating Manufacturers to which the NPM Adjustment applies shall be adjusted as provided below:

(A) Subject to the provisions of subsections (d)(1)(C), (d)(1)(D) and (d)(2) below, each Allocated Payment shall be adjusted by subtracting from such Allocated Payment the product of such Allocated Payment amount multiplied by the NPM Adjustment Percentage. The "NPM Adjustment Percentage" shall be calculated as follows:

(i) If the Market Share Loss for the year immediately preceding the year in which the payment in question is due is less than or equal to 0 (zero), then the NPM Adjustment Percentage shall equal zero.

(ii) If the Market Share Loss for the year immediately preceding the year in which the payment in question is due is greater than 0 (zero) and less than or equal to 16 2/3 percentage points, then the NPM Adjustment Percentage shall be equal to the product of (x) such Market Share Loss and (y) 3 (three).

(iii) If the Market Share Loss for the year immediately preceding the year in which the payment in question is due is greater than 16 2/3 percentage points, then the NPM Adjustment Percentage shall be equal to the sum of (x) 50 percentage points and (y) the product of (1) the Variable Multiplier and (2) the result of such Market Share Loss minus 16 2/3 percentage points.

(B) Definitions:

(i) "Base Aggregate Participating Manufacturer Market Share" means the result of (x) the sum of the applicable Market Shares (the applicable Market Share to be that for 1997) of all present and former Tobacco Product Manufacturers that were Participating Manufacturers during the entire calendar year immediately preceding the year in which the payment in question is due minus (y) 2 (two) percentage points.

(ii) "Actual Aggregate Participating Manufacturer Market Share" means the sum of the applicable Market Shares of all present and former Tobacco Product Manufacturers that were Participating Manufacturers during the entire calendar year immediately preceding the year in which the payment in question is due (the applicable Market Share to be that for the calendar year immediately preceding the year in which the payment in question is due).

(iii) "Market Share Loss" means the result of (x) the Base Aggregate Participating Manufacturer Market Share minus (y) the Actual Aggregate Participating Manufacturer Market Share.

(iv) "Variable Multiplier" equals 50 percentage points divided by the result of (x) the Base Aggregate Participating Manufacturer Market Share minus (y) 16 2/3 percentage points.

(C) On or before February 2 of each year following a year in which there was a Market Share Loss greater than zero, a nationally recognized firm of economic consultants (the "Firm") shall determine whether the disadvantages experienced as a result of the provisions of this Agreement were a significant factor contributing to the Market Share Loss for the year in question. If the Firm determines that the disadvantages experienced as a result of the provisions of this Agreement were a significant factor contributing to the Market Share Loss for the year in question, the NPM Adjustment described in subsection IX(d)(1) shall apply. If the Firm determines that the disadvantages experienced as a result of the provisions of this Agreement were not a significant factor contributing to the Market Share Loss for the year in question, the NPM Adjustment described in subsection IX(d)(1) shall not apply. The Original Participating Manufacturers, the Settling States, and the Attorneys General for the Settling States shall cooperate to ensure that the determination described in this subsection (1)(C) is timely made. The Firm shall be acceptable to (and the principals responsible for this assignment shall be acceptable to) both the Original Participating Manufacturers and a majority of those Attorneys General who are both the

Attorney General of a Settling State and a member of the NAAG executive committee at the time in question (or in the event no such firm or no such principals shall be acceptable to such parties, National Economic Research Associates, Inc., or its successors by merger, acquisition or otherwise ("NERA"), acting through a principal or principals acceptable to such parties, if such a person can be identified and, if not, acting through a principal or principals identified by NERA, or a successor firm selected by the CPR Institute for Dispute Resolution). As soon as practicable after the MSA Execution Date, the Firm shall be jointly retained by the Settling States and the Original Participating Manufacturers for the purpose of making the foregoing determination, and the Firm shall provide written notice to each Settling State, to NAAG, to the Independent Auditor and to each Participating Manufacturer of such determination. The determination of the Firm with respect to this issue shall be conclusive and binding upon all parties, and shall be final and non-appealable. The reasonable fees and expenses of the Firm shall be paid by the Original Participating Manufacturers according to their Relative Market Shares. Only the Participating Manufacturers and the Settling States, and their respective counsel, shall be entitled to communicate with the Firm with respect to the Firm's activities pursuant to this subsection (1)(C).

(D) No NPM Adjustment shall be made with respect to a payment if the aggregate number of Cigarettes shipped in or to the fifty United States, the District of Columbia and Puerto Rico in the year immediately preceding the year in which the payment in question is due by those Participating Manufacturers that had become Participating Manufacturers prior to 14 days after the MSA Execution Date is greater than the aggregate number of Cigarettes shipped in or to the fifty United States, the District of Columbia, and Puerto Rico in 1997 by such Participating Manufacturers (and any of their Affiliates that made such shipments in 1997, as demonstrated by certified audited statements of such Affiliates' shipments, and that do not continue to make such shipments after the MSA Execution Date because the responsibility for such shipments has been transferred to one of such Participating Manufacturers). Measurements of shipments for purposes of this subsection (D) shall be made in the manner prescribed in subsection II(mm); in the event that such shipment data is unavailable for any Participating Manufacturer for 1997, such Participating Manufacturer's shipment volume for such year shall be measured in the manner prescribed in subsection II(z).

(2) Allocation among Settling States of NPM Adjustment for Original Participating Manufacturers.

(A) The NPM Adjustment set forth in subsection (d)(1) shall apply to the Allocated Payments of all Settling States, except as set forth below.

(B) A Settling State's Allocated Payment shall not be subject to an NPM Adjustment: (i) if such Settling State continuously had a Qualifying Statute (as defined in subsection (2)(E) below) in full force and effect during the entire calendar year immediately preceding the year in which the payment in question is due, and diligently enforced the provisions of such statute during such entire calendar year; or (ii) if such Settling State enacted the Model Statute (as defined in subsection (2)(E) below) for the first time during the calendar year immediately preceding the year in which the payment in question is due, continuously had the Model Statute in full force and effect during the last six months of such calendar year, and diligently enforced the provisions of such statute during the period in which it was in full force and effect.

(C) The aggregate amount of the NPM Adjustments that would have applied to the Allocated Payments of those Settling States that are not subject to an NPM Adjustment pursuant to subsection (2)(B) shall be reallocated among all other Settling States pro rata in proportion to their respective Allocable Shares (the applicable Allocable Shares being those listed in Exhibit A), and such other Settling States' Allocated Payments shall be further reduced accordingly.

(D) This subsection (2)(D) shall apply if the amount of the NPM Adjustment applied pursuant to subsection (2)(A) to any Settling State plus the amount of the NPM Adjustments reallocated to such Settling State pursuant to subsection (2)(C) in any individual year would either (i) exceed such Settling State's Allocated Payment in that year, or (ii) if subsection (2)(F) applies to the Settling State in question, exceed 65% of such Settling State's Allocated Payment in that year. For each Settling State that has an excess as described in the preceding sentence, the excess amount of NPM Adjustment shall be further reallocated among all other Settling States whose Allocated Payments are subject to an NPM Adjustment and that do not have such an excess, pro rata in proportion to their respective Allocable Shares, and such other Settling States' Allocated Payments shall be further reduced accordingly. The provisions of this subsection (2)(D) shall be repeatedly applied in any individual year until either (i) the aggregate amount of NPM Adjustments has been fully reallocated or (ii) the full amount of the NPM Adjustments subject to reallocation under subsection (2)(C) or (2)(D) cannot be fully reallocated in any individual year as described in those subsections because (x) the Allocated Payment in that year of each Settling State that is subject to an NPM Adjustment and to which subsection (2)(F) does not apply has been reduced to zero, and (y) the Allocated Payment in that year of each Settling State to which subsection (2)(F) applies has been reduced to 35% of such Allocated Payment.

(E) A "Qualifying Statute" means a Settling State's statute, regulation, law and/or rule (applicable everywhere the Settling State has authority to legislate) that effectively and fully neutralizes the cost disadvantages that the Participating Manufacturers experience vis-à-vis Non-Participating Manufacturers within such Settling State as a result of the provisions of this Agreement. Each Participating Manufacturer and each Settling State agree that the model statute in the form set forth in Exhibit T (the "Model Statute"), if enacted without modification or addition (except for particularized state procedural or technical requirements) and not in conjunction with any other legislative or regulatory proposal, shall constitute a Qualifying Statute. Each Participating Manufacturer agrees to support the enactment of such Model Statute if such Model



Statute is introduced or proposed (i) without modification or addition (except for particularized procedural or technical requirements), and (ii) not in conjunction with any other legislative proposal.

(F) If a Settling State (i) enacts the Model Statute without any modification or addition (except for particularized state procedural or technical requirements) and not in conjunction with any other legislative or regulatory proposal, (ii) uses its best efforts to keep the Model Statute in full force and effect by, among other things, defending the Model Statute fully in any litigation brought in state or federal court within such Settling State (including litigating all available appeals that may affect the effectiveness of the Model Statute), and (iii) otherwise complies with subsection (2)(B), but a court of competent jurisdiction nevertheless invalidates or renders unenforceable the Model Statute with respect to such Settling State, and but for such ruling the Settling State would have been exempt from an NPM Adjustment under subsection (2)(B), then the NPM Adjustment (including reallocations pursuant to subsections (2)(C) and (2)(D)) shall still apply to such Settling State's Allocated Payments but in any individual year shall not exceed 65% of the amount of such Allocated Payments.

(G) In the event a Settling State proposes and/or enacts a statute, regulation, law and/or rule (applicable everywhere the Settling State has authority to legislate) that is not the Model Statute and asserts that such statute, regulation, law and/or rule is a Qualifying Statute, the Firm shall be jointly retained by the Settling States and the Original Participating Manufacturers for the purpose of determining whether or not such statute, regulation, law and/or rule constitutes a Qualifying Statute. The Firm shall make the foregoing determination within 90 days of a written request to it from the relevant Settling State (copies of which request the Settling State shall also provide to all Participating Manufacturers and the Independent Auditor), and the Firm shall promptly thereafter provide written notice of such determination to the relevant Settling State, NAAG, all Participating Manufacturers and the Independent Auditor. The determination of the Firm with respect to this issue shall be conclusive and binding upon all parties, and shall be final and non-appealable; provided, however, (i) that such determination shall be of no force and effect with respect to a proposed statute, regulation, law and/or rule that is thereafter enacted with any modification or addition; and (ii) that the Settling State in which the Qualifying Statute was enacted and any Participating Manufacturer may at any time request that the Firm reconsider its determination as to this issue in light of subsequent events (including, without limitation, subsequent judicial review, interpretation, modification and/or disapproval of a Settling State's Qualifying Statute, and the manner and/or the effect of enforcement of such Qualifying Statute). The Original Participating Manufacturers shall severally pay their Relative Market Shares of the reasonable fees and expenses of the Firm. Only the Participating Manufacturers and Settling States, and their respective counsel, shall be entitled to communicate with the Firm with respect to the Firm's activities pursuant to this subsection (2)(G).

(H) Except as provided in subsection (2)(F), in the event a Qualifying Statute is enacted within a Settling State and is thereafter invalidated or declared unenforceable by a court of competent jurisdiction, otherwise rendered not in full force and effect, or, upon reconsideration by the Firm pursuant to subsection (2)(G) determined not to constitute a Qualifying Statute, then such Settling State's Allocated Payments shall be fully subject to an NPM Adjustment unless and until the requirements of subsection (2)(B) have been once again satisfied.

(3) Allocation of NPM Adjustment among Original Participating Manufacturers. The portion of the total amount of the NPM Adjustment to which the Original Participating Manufacturers are entitled in any year that can be applied in such year consistent with subsection IX(d)(2) (the "Available NPM Adjustment") shall be allocated among them as provided in this subsection IX(d)(3).

(A) The "Base NPM Adjustment" shall be determined for each Original Participating Manufacturer in such year as follows:

(i) For those Original Participating Manufacturers whose Relative Market Shares in the year immediately preceding the year in which the NPM Adjustment in question is applied exceed or are equal to their respective 1997 Relative Market Shares, the Base NPM Adjustment shall equal 0 (zero).

(ii) For those Original Participating Manufacturers whose Relative Market Shares in the year immediately preceding the year in which the NPM Adjustment in question is applied are less than their respective 1997 Relative Market Shares, the Base NPM Adjustment shall equal the result of (x) the difference between such Original Participating Manufacturer's Relative Market Share in such preceding year and its 1997 Relative Market Share multiplied by both (y) the number of individual Cigarettes (expressed in thousands of units) shipped in or to the United States, the District of Columbia and Puerto Rico by all the Original Participating Manufacturers in such preceding year (determined in accordance with subsection II(mm)) and (z) $20 per each thousand units of Cigarettes (as this number is adjusted pursuant to subsection IX(d)(3)(C) below).

(iii) For those Original Participating Manufacturers whose Base NPM Adjustment, if calculated pursuant to subsection (ii) above, would exceed $300 million (as this number is adjusted pursuant to subsection IX(d)(3)(C) below), the Base NPM Adjustment shall equal $300 million (or such adjusted number, as provided in subsection IX(d)(3)(C) below).

(B) The share of the Available NPM Adjustment each Original Participating Manufacturer is entitled to shall be calculated as follows:

(i) If the Available NPM Adjustment the Original Participating Manufacturers are entitled to in any year is less than or equal to the sum of the Base NPM Adjustments of all Original Participating

Manufacturers in such year, then such Available NPM Adjustment shall be allocated among those Original Participating Manufacturers whose Base NPM Adjustment is not equal to 0 (zero) pro rata in proportion to their respective Base NPM Adjustments.

(ii) If the Available NPM Adjustment the Original Participating Manufacturers are entitled to in any year exceeds the sum of the Base NPM Adjustments of all Original Participating Manufacturers in such year, then (x) the difference between such Available NPM Adjustment and such sum of the Base NPM Adjustments shall be allocated among the Original Participating Manufacturers pro rata in proportion to their Relative Market Shares (the applicable Relative Market Shares to be those in the year immediately preceding such year), and (y) each Original Participating Manufacturer's share of such Available NPM Adjustment shall equal the sum of *(1)* its Base NPM Adjustment for such year, and *(2)* the amount allocated to such Original Participating Manufacturer pursuant to clause (x).

(iii) If an Original Participating Manufacturer's share of the Available NPM Adjustment calculated pursuant to subsection IX(d)(3)(B)(i) or IX(d)(3)(B)(ii) exceeds such Original Participating Manufacturer's payment amount to which such NPM Adjustment applies (as such payment amount has been determined pursuant to step B of clause "Seventh" of subsection IX(j)), then *(1)* such Original Participating Manufacturer's share of the Available NPM Adjustment shall equal such payment amount, and *(2)* such excess shall be reallocated among the other Original Participating Manufacturers pro rata in proportion to their Relative Market Shares.

(C) Adjustments:

(i) For calculations made pursuant to this subsection IX(d)(3) (if any) with respect to payments due in the year 2000, the number used in subsection IX(d)(3)(A)(ii)(z) shall be $20 and the number used in subsection IX(d)(3)(A)(iii) shall be $300 million. Each year thereafter, both these numbers shall be adjusted upward or downward by multiplying each of them by the quotient produced by dividing (x) the average revenue per Cigarette of all the Original Participating Manufacturers in the year immediately preceding such year, by (y) the average revenue per Cigarette of all the Original Participating Manufacturers in the year immediately preceding such immediately preceding year.

(ii) For purposes of this subsection, the average revenue per Cigarette of all the Original Participating Manufacturers in any year shall equal (x) the aggregate revenues of all the Original Participating Manufacturers from sales of Cigarettes in the fifty United States, the District of Columbia and Puerto Rico after Federal excise taxes and after payments pursuant to this Agreement and the tobacco litigation Settlement Agreements with the States of Florida, Mississippi, Minnesota and Texas (as such revenues are reported to the United States Securities and Exchange Commission ("SEC") for such year (either independently by the Original Participating Manufacturer or as part of consolidated financial statements reported to the SEC by an Affiliate of the Original Participating Manufacturers) or, in the case of an Original Participating Manufacturer that does not report income to the SEC, as reported in financial statements prepared in accordance with United States generally accepted accounting principles and audited by a nationally recognized accounting firm), divided by (y) the aggregate number of the individual Cigarettes shipped in or to the United States, the District of Columbia and Puerto Rico by all the Original Participating Manufacturers in such year (determined in accordance with subsection II(mm)).

(D) In the event that in the year immediately preceding the year in which the NPM Adjustment in question is applied both (x) the Relative Market Share of Lorillard Tobacco Company (or of its successor) ("Lorillard") was less than or equal to 20.0000000%, and (y) the number of individual Cigarettes shipped in or to the United States, the District of Columbia and Puerto Rico by Lorillard (determined in accordance with subsection II(mm)) (for purposes of this subsection (D), "Volume") was less than or equal to 70 billion, Lorillard's and Philip Morris Incorporated's (or its successor's) ("Philip Morris") shares of the Available NPM Adjustment calculated pursuant to subsections (3)(A)-(C) above shall be further reallocated between Lorillard and Philip Morris as follows (this subsection (3)(D) shall not apply in the year in which either of the two conditions specified in this sentence is not satisfied):

(i) Notwithstanding subsections (A)-(C) of this subsection (d)(3), but subject to further adjustment pursuant to subsections (D)(ii) and (D)(iii) below, Lorillard's share of the Available NPM Adjustment shall equal its Relative Market Share of such Available NPM Adjustment (the applicable Relative Market Share to be that in the year immediately preceding the year in which such NPM Adjustment is applied). The dollar amount of the difference between the share of the Available NPM Adjustment Lorillard is entitled to pursuant to the preceding sentence and the share of the Available NPM Adjustment it would be entitled to in the same year pursuant to subsections (d)(3)(A)-(C) shall be reallocated to Philip Morris and used to decrease or increase, as the case may be, Philip Morris's share of the Available NPM Adjustment in such year calculated pursuant to subsections (d)(3)(A)-(C).

(ii) In the event that in the year immediately preceding the year in which the NPM Adjustment in question is applied either (x) Lorillard's Relative Market Share was greater than 15.0000000% (but did not exceed 20.0000000%), or (y) Lorillard's Volume was greater than 50 billion (but did not exceed 70 billion), or both, Lorillard's share of the Available NPM Adjustment calculated pursuant to subsection (d)(3)(D)(i) shall be reduced by a percentage equal to the greater of *(1)* 10.0000000% for each percentage point (or fraction thereof) of excess of such Relative Market Share over 15.0000000% (if any), or *(2)* 2.5000000% for each billion (or fraction thereof) of excess of such Volume over 50 billion (if any). The dollar amount by which Lorillard's share of the Available NPM Adjustment is reduced in any year pursuant to this subsection (D)(ii) shall be reallocated to Philip Morris and used to increase Philip Morris's share of the Available NPM Adjustment in such year.



In the event that in any year a reallocation of the shares of the Available NPM Adjustment between Lorillard and Philip Morris pursuant to this subsection (d)(3)(D) results in Philip Morris's share of the Available NPM Adjustment in such year exceeding the greater of (x) Philip Morris's Relative Market Share of such Available NPM Adjustment (the applicable Relative Market Share to be that in the year immediately preceding such year), or (y) Philip Morris's share of the Available NPM Adjustment in such year calculated pursuant to subsections (d)(3)(A)-(C), Philip Morris's share of the Available NPM Adjustment in such year shall be reduced to equal the greater of (x) or (y) above. In such instance, the dollar amount by which Philip Morris's share of the Available NPM Adjustment is reduced pursuant to the preceding sentence shall be reallocated to Lorillard and used to increase Lorillard's share of the Available NPM Adjustment in such year.

(iv) In the event that either Philip Morris or Lorillard is treated as a Non-Participating Manufacturer for purposes of this subsection IX(d)(3) pursuant to subsection XVIII(w)(2)(A), this subsection (3)(D) shall not be applied, and the Original Participating Manufacturers' shares of the Available NPM Adjustment shall be determined solely as described in subsections (3)(A)-(C).

(4) NPM Adjustment for Subsequent Participating Manufacturers. Subject to the provisions of subsection IX(i)(3), a Subsequent Participating Manufacturer shall be entitled to an NPM Adjustment with respect to payments due from such Subsequent Participating Manufacturer in any year during which an NPM Adjustment is applicable under subsection (d)(1) above to payments due from the Original Participating Manufacturers. The amount of such NPM Adjustment shall equal the product of (A) the NPM Adjustment Percentage for such year multiplied by (B) the sum of the payments due in the year in question from such Subsequent Participating Manufacturer that correspond to payments due from Original Participating Manufacturers pursuant to subsection IX(c) (as such payment amounts due from such Subsequent Participating Manufacturer have been adjusted and allocated pursuant to clauses "First" through "Fifth" of subsection IX(j)). The NPM Adjustment to payments by each Subsequent Participating Manufacturer shall be allocated and reallocated among the Settling States in a manner consistent with subsection (d)(2) above.

(e) Supplemental Payments. Beginning on April 15, 2004, and on April 15 of each year thereafter in perpetuity, in the event that the sum of the Market Shares of the Participating Manufacturers that were Participating Manufacturers during the entire calendar year immediately preceding the year in which the payment in question would be due (the applicable Market Share to be that for the calendar year immediately preceding the year in which the payment in question would be due) equals or exceeds 99.0500000%, each Original Participating Manufacturer shall severally pay to the Escrow Agent (to be credited to the Subsection IX(e) Account) for the benefit of the Foundation its Relative Market Share of the base amount of $300,000,000, as such payments are modified in accordance with this subsection (e). Such payments shall be utilized by the Foundation to fund the national public education functions of the Foundation described in subsection VI(f)(1), in the manner described in and subject to the provisions of subsections VI(g) and VI(h). The payments made by the Original Participating Manufacturers pursuant to this subsection shall be subject to the Inflation Adjustment, the Volume Adjustment, the Non-Settling States Reduction, and the offset for miscalculated or disputed payments described in subsection XI(i).

(f) Payment Responsibility. The payment obligations of each Participating Manufacturer pursuant to this Agreement shall be the several responsibility only of that Participating Manufacturer. The payment obligations of a Participating Manufacturer shall not be the obligation or responsibility of any Affiliate of such Participating Manufacturer. The payment obligations of a Participating Manufacturer shall not be the obligation or responsibility of any other Participating Manufacturer. Provided, however, that no provision of this Agreement shall waive or excuse liability under any state or federal fraudulent conveyance or fraudulent transfer law. Any Participating Manufacturer whose Market Share (or Relative Market Share) in any given year equals zero shall have no payment obligations under this Agreement in the succeeding year.

(g) Corporate Structures. Due to the particular corporate structures of R.J. Reynolds Tobacco Company ("Reynolds") and Brown & Williamson Tobacco Corporation ("B&W") with respect to their non-domestic tobacco operations, Reynolds and B&W shall be severally liable for their respective shares of each payment due pursuant to this Agreement up to (and their liability hereunder shall not exceed) the full extent of their assets used in and earnings derived from, the manufacture and/or sale in the States of Tobacco Products intended for domestic consumption, and no recourse shall be had against any of their other assets or earnings to satisfy such obligations.

(h) Accrual of Interest. Except as expressly provided otherwise in this Agreement, any payment due hereunder and not paid when due (or payments requiring the accrual of interest under subsection XI(d)) shall accrue interest from and including the date such payment is due until (but not including) the date paid at the Prime Rate plus three percentage points.

(i) Payments by Subsequent Participating Manufacturers.

(1) A Subsequent Participating Manufacturer shall have payment obligations under this Agreement only in the event that its Market Share in any calendar year exceeds the greater of *(1)* its 1998 Market Share or *(2)* 125 percent of its 1997 Market Share (subject to the provisions of subsection (i)(4)). In the year following any such calendar year, such Subsequent Participating Manufacturer shall make payments corresponding to those due in that same following year from the Original Participating Manufacturers pursuant to subsections VI(c) (except for the payment due on March 31, 1999), IX(c)(1), IX(c)(2) and IX(e). The amounts of such corresponding payments by a Subsequent Participating Manufacturer are in addition to the corresponding payments that are due from the Original Participating Manufacturers and shall be determined as described in subsections (2) and (3) below. Such payments by a Subsequent Participating Manufacturer shall (A) be due on the same dates as the corresponding payments are due from Original Participating Manufacturers; (B) be for the same

purpose as such corresponding payments; and (C) be paid, allocated and distributed in the same manner as such corresponding payments.

(2) The base amount due from a Subsequent Participating Manufacturer on any given date shall be determined by multiplying (A) the corresponding base amount due on the same date from all of the Original Participating Manufacturers (as such base amount is specified in the corresponding subsection of this Agreement and is adjusted by the Volume Adjustment (except for the provisions of subsection (B)(ii) of Exhibit E), but before such base amount is modified by any other adjustments, reductions or offsets) by (B) the quotient produced by dividing (i) the result of (x) such Subsequent Participating Manufacturer's applicable Market Share (the applicable Market Share being that for the calendar year immediately preceding the year in which the payment in question is due) minus (y) the greater of *(1)* its 1998 Market Share or *(2)* 125 percent of its 1997 Market Share, by (ii) the aggregate Market Shares of the Original Participating Manufacturers (the applicable Market Shares being those for the calendar year immediately preceding the year in which the payment in question is due).

(3) Any payment due from a Subsequent Participating Manufacturer under subsections (1) and (2) above shall be subject (up to the full amount of such payment) to the Inflation Adjustment, the Non-Settling States Reduction, the NPM Adjustment, the offset for miscalculated or disputed payments described in subsection XI(i), the Federal Tobacco Legislation Offset, the Litigating Releasing Parties Offset and the offsets for claims over described in subsections XII(a)(4)(B) and XII(a)(8), to the extent that such adjustments, reductions or offsets would apply to the corresponding payment due from the Original Participating Manufacturers. Provided, however, that all adjustments and offsets to which a Subsequent Participating Manufacturer is entitled may only be applied against payments by such Subsequent Participating Manufacturer, if any, that are due within 12 months after the date on which the Subsequent Participating Manufacturer becomes entitled to such adjustment or makes the payment that entitles it to such offset, and shall not be carried forward beyond that time even if not fully used.

(4) For purposes of this subsection (i), the 1997 (or 1998, as applicable) Market Share (and 125 percent thereof) of those Subsequent Participating Manufacturers that either (A) became a signatory to this Agreement more than 60 days after the MSA Execution Date or (B) had no Market Share in 1997 (or 1998, as applicable), shall equal zero.

(j) Order of Application of Allocations, Offsets, Reductions and Adjustments. The payments due under this Agreement shall be calculated as set forth below. The "base amount" referred to in clause "First" below shall mean (1) in the case of payments due from Original Participating Manufacturers, the base amount referred to in the subsection establishing the payment obligation in question; and (2) in the case of payments due from a Subsequent Participating Manufacturer, the base amount referred to in subsection (i)(2) for such Subsequent Participating Manufacturer. In the event that a particular adjustment, reduction or offset referred to in a clause below does not apply to the payment being calculated, the result of the clause in question shall be deemed to be equal to the result of the immediately preceding clause. (If clause "First" is inapplicable, the result of clause "First" will be the base amount of the payment in question prior to any offsets, reductions or adjustments.)

First: the Inflation Adjustment shall be applied to the base amount of the payment being calculated;

Second: the Volume Adjustment (other than the provisions of subsection (B)(iii) of Exhibit E) shall be applied to the result of clause "First";

Third: the result of clause "Second" shall be reduced by the Previously Settled States Reduction;

Fourth: the result of clause "Third" shall be reduced by the Non-Settling States Reduction;

Fifth: in the case of payments due under subsections IX(c)(1) and IX(c)(2), the results of clause "Fourth" for each such payment due in the calendar year in question shall be apportioned among the Settling States pro rata in proportion to their respective Allocable Shares, and the resulting amounts for each particular Settling State shall then be added together to form such Settling State's Allocated Payment. In the case of payments due under subsection IX(i) that correspond to payments due under subsections IX(c)(1) or IX(c)(2), the results of clause "Fourth" for all such payments due from a particular Subsequent Participating Manufacturer in the calendar year in question shall be apportioned among the Settling States pro rata in proportion to their respective Allocable Shares, and the resulting amounts for each particular Settling State shall then be added together. (In the case of all other payments made pursuant to this Agreement, this clause "Fifth" is inapplicable.);

Sixth: the NPM Adjustment shall be applied to the results of clause "Fifth" pursuant to subsections IX(d)(1) and (d)(2) (or, in the case of payments due from the Subsequent Participating Manufacturers, pursuant to subsection IX(d)(4));

Seventh: in the case of payments due from the Original Participating Manufacturers to which clause "Fifth" (and therefore clause "Sixth") does not apply, the result of clause "Fourth" shall be allocated among the Original Participating Manufacturers according to their Relative Market Shares. In the case of payments due from the Original Participating Manufacturers to which clause "Fifth" applies: (A) the Allocated Payments of all Settling States determined pursuant to clause "Fifth" (prior to reduction pursuant to clause "Sixth") shall be added together; (B) the resulting sum shall be allocated among the Original Participating Manufacturers according to their Relative Market Shares and subsection (B)(iii) of Exhibit E hereto (if such subsection is applicable); (C) the Available NPM Adjustment (as determined pursuant to clause "Sixth") shall be allocated among the Original Participating Manufacturers pursuant to subsection IX(d)(3); (D) the respective result of step (C) above for each Original Participating Manufacturer shall be subtracted from the respective result of step (B) above



for such Original Participating Manufacturer; and (E) the resulting payment amount due from each Original Participating Manufacturer shall then be allocated among the Settling States in proportion to the respective results of clause "Sixth" for each Settling State. The offsets described in clauses "Eighth" through "Twelfth" shall then be applied separately against each Original Participating Manufacturer's resulting payment shares (on a Settling State by Settling State basis) according to each Original Participating Manufacturer's separate entitlement to such offsets, if any, in the calendar year in question. (In the case of payments due from Subsequent Participating Manufacturers, this clause "Seventh" is inapplicable.)

Eighth: the offset for miscalculated or disputed payments described in subsection XI(i) (and any carry-forwards arising from such offset) shall be applied to the results of clause "Seventh" (in the case of payments due from the Original Participating Manufacturers) or to the results of clause "Sixth" (in the case of payments due from Subsequent Participating Manufacturers);

Ninth: the Federal Tobacco Legislation Offset (including any carry-forwards arising from such offset) shall be applied to the results of clause "Eighth";

Tenth: the Litigating Releasing Parties Offset (including any carry-forwards arising from such offset) shall be applied to the results of clause "Ninth";

Eleventh: the offset for claims over pursuant to subsection XII(a)(4)(B) (including any carry-forwards arising from such offset) shall be applied to the results of clause "Tenth";

Twelfth: the offset for claims over pursuant to subsection XII(a)(8) (including any carry-forwards arising from such offset) shall be applied to the results of clause "Eleventh"; and

Thirteenth: in the case of payments to which clause "Fifth" applies, the Settling States' allocated shares of the payments due from each Participating Manufacturer (as such shares have been determined in step (E) of clause "Seventh" in the case of payments from the Original Participating Manufacturers or in clause "Sixth" in the case of payments from the Subsequent Participating Manufacturers, and have been reduced by clauses "Eighth" through "Twelfth") shall be added together to state the aggregate payment obligation of each Participating Manufacturer with respect to the payments in question. (In the case of a payment to which clause "Fifth" does not apply, the aggregate payment obligation of each Participating Manufacturer with respect to the payment in question shall be stated by the results of clause "Eighth.")

## X. EFFECT OF FEDERAL TOBACCO-RELATED LEGISLATION

(a) If federal tobacco related legislation is enacted after the MSA Execution Date and on or before November 30, 2002, and if such legislation provides for payment(s) by any Original Participating Manufacturer (whether by settlement payment, tax or any other means), all or part of which are actually made available to a Settling State ("Federal Funds"), each Original Participating Manufacturer shall receive a continuing dollar-for-dollar offset for any and all amounts that are paid by such Original Participating Manufacturer pursuant to such legislation and actually made available to such Settling State (except as described in subsections (b) and (c) below). Such offset shall be applied against the applicable Original Participating Manufacturer's share (determined as described in step E of clause "Seventh" of subsection IX(j)) of such Settling State's Allocated Payment, up to the full amount of such Original Participating Manufacturer's share of such Allocated Payment (as such share had been reduced by adjustment, if any, pursuant to the NPM Adjustment and has been reduced by offset, if any, pursuant to the offset for miscalculated or disputed payments). Such offset shall be made against such Original Participating Manufacturer's share of the first Allocated Payment due after such Federal Funds are first available for receipt by such Settling State. In the event that such offset would in any given year exceed such Original Participating Manufacturer's share of such Allocated Payment: (1)the offset to which such Original Participating Manufacturer is entitled under this section in such year shall be the full amount of such Original Participating Manufacturer's share of such Allocated Payment, and (2) all amounts not offset by reason of subsection (1) shall carry forward and be offset in the following year(s) until all such amounts have been offset.

(b) The offset described in subsection (a) shall apply only to that portion of Federal Funds, if any, that are either unrestricted as to their use, or restricted to any form of health care or to any use related to tobacco (including, but not limited to, tobacco education, cessation, control or enforcement) (other than that portion of Federal Funds, if any, that is specifically applicable to tobacco growers or communities dependent on the production of tobacco or Tobacco Products). Provided, however, that the offset described in subsection (a) shall not apply to that portion of Federal Funds, if any, whose receipt by such Settling State is conditioned upon or appropriately allocable to:

(1) the relinquishment of rights or benefits under this Agreement (including the Consent Decree); or

(2) actions or expenditures by such Settling State, unless:

(A) such Settling State chooses to undertake such action or expenditure;

(B) such actions or expenditures do not impose significant constraints on public policy choices; or

(C) such actions or expenditures are both: (i) related to health care or tobacco (including, but not limited to, tobacco education, cessation, control or enforcement) and (ii) do not require such Settling State to expend state matching funds in an amount that is significant in relation to the amount of the Federal Funds made available to such Settling State.

(c) Subject to the provisions of subsection IX(i)(3), Subsequent Participating Manufacturers shall be entitled to the offset described in this section X to the extent that they are required to pay Federal Funds that would give rise to an offset under subsections (a) and (b) if paid by an Original Participating Manufacturer.

(d) Nothing in this section X shall (1) reduce the payments to be made to the Settling States under this Agreement other than those described in subsection IX(c) (or corresponding payments under subsection IX(i)) of this Agreement; or (2) alter the Allocable Share used to determine each Settling State's share of the payments described in subsection IX(c) (or corresponding payments under subsection IX(i)) of this Agreement. Nothing in this section X is intended to or shall reduce the total amounts payable by the Participating Manufacturers to the Settling States under this Agreement by an amount greater than the amount of Federal Funds that the Settling States could elect to receive.

## XI. CALCULATION AND DISBURSEMENT OF PAYMENTS

(a) Independent Auditor to Make All Calculations.

(1) Beginning with payments due in the year 2000, an Independent Auditor shall calculate and determine the amount of all payments owed pursuant to this Agreement, the adjustments, reductions and offsets thereto (and all resulting carry-forwards, if any), the allocation of such payments, adjustments, reductions, offsets and carry-forwards among the Participating Manufacturers and among the Settling States, and shall perform all other calculations in connection with the foregoing (including, but not limited to, determining Market Share, Relative Market Share, Base Aggregate Participating Manufacturer Market Share and Actual Aggregate Participating Manufacturer Market Share). The Independent Auditor shall promptly collect all information necessary to make such calculations and determinations. Each Participating Manufacturer and each Settling State shall provide the Independent Auditor, as promptly as practicable, with information in its possession or readily available to it necessary for the Independent Auditor to perform such calculations. The Independent Auditor shall agree to maintain the confidentiality of all such information, except that the Independent Auditor may provide such information to Participating Manufacturers and the Settling States as set forth in this Agreement. The Participating Manufacturers and the Settling States agree to maintain the confidentiality of such information.

(2) Payments due from the Original Participating Manufacturers prior to January 1, 2000 (other than the first payment due pursuant to subsection IX(b)) shall be based on the 1998 Relative Market Shares of the Original Participating Manufacturers or, if the Original Participating Manufacturers are unable to agree on such Relative Market Shares, on their 1997 Relative Market Shares specified in Exhibit Q.

(b) Identity of Independent Auditor. The Independent Auditor shall be a major, nationally recognized, certified public accounting firm jointly selected by agreement of the Original Participating Manufacturers and those Attorneys General of the Settling States who are members of the NAAG executive committee, who shall jointly retain the power to replace the Independent Auditor and appoint its successor. Fifty percent of the costs and fees of the Independent Auditor (but in no event more than $500,000 per annum), shall be paid by the Fund described in Exhibit J hereto, and the balance of such costs and fees shall be paid by the Original Participating Manufacturers, allocated among them according to their Relative Market Shares. The agreement retaining the Independent Auditor shall provide that the Independent Auditor shall perform the functions specified for it in this Agreement, and that it shall do so in the manner specified in this Agreement.

(c) Resolution of Disputes. Any dispute, controversy or claim arising out of or relating to calculations performed by, or any determinations made by, the Independent Auditor (including, without limitation, any dispute concerning the operation or application of any of the adjustments, reductions, offsets, carry-forwards and allocations described in subsection IX(j) or subsection XI(i)) shall be submitted to binding arbitration before a panel of three neutral arbitrators, each of whom shall be a former Article III federal judge. Each of the two sides to the dispute shall select one arbitrator. The two arbitrators so selected shall select the third arbitrator. The arbitration shall be governed by the United States Federal Arbitration Act.

(d) General Provisions as to Calculation of Payments.

(1) Not less than 90 days prior to the scheduled due date of any payment due pursuant to this Agreement ("Payment Due Date"), the Independent Auditor shall deliver to each other Notice Party a detailed itemization of all information required by the Independent Auditor to complete its calculation of (A) the amount due from each Participating Manufacturer with respect to such payment, and (B) the portion of such amount allocable to each entity for whose benefit such payment is to be made. To the extent practicable, the Independent Auditor shall specify in such itemization which Notice Party is requested to produce which information. Each Participating Manufacturer and each Settling State shall use its best efforts to promptly supply all of the required information that is within its possession or is readily available to it to the Independent Auditor, and in any event not less than 50 days prior to such Payment Due Date. Such best efforts obligation shall be continuing in the case of information that comes within the possession of, or becomes readily available to, any Settling State or Participating Manufacturer after the date 50 days prior to such Payment Due Date.

(2) Not less than 40 days prior to the Payment Due Date, the Independent Auditor shall deliver to each other Notice Party (A)detailed preliminary calculations ("Preliminary Calculations") of the amount due from each Participating Manufacturer and of the amount allocable to each entity for whose benefit such payment is to be made, showing all applicable offsets, adjustments, reductions and carry-forwards and setting forth all the information on which the Independent Auditor relied in preparing such Preliminary Calculations, and (B)a statement of any information still required by the Independent Auditor to complete its calculations.



(3) Not less than 30 days prior to the Payment Due Date, any Participating Manufacturer or any Settling State that disputes any aspect of the Preliminary Calculations (including, but not limited to, disputing the methodology that the Independent Auditor employed, or the information on which the Independent Auditor relied, in preparing such calculations) shall notify each other Notice Party of such dispute, including the reasons and basis therefor.

(4) Not less than 15 days prior to the Payment Due Date, the Independent Auditor shall deliver to each other Notice Party a detailed recalculation (a "Final Calculation") of the amount due from each Participating Manufacturer, the amount allocable to each entity for whose benefit such payment is to be made, and the Account to which such payment is to be credited, explaining any changes from the Preliminary Calculation. The Final Calculation may include estimates of amounts in the circumstances described in subsection (d)(5).

(5) The following provisions shall govern in the event that the information required by the Independent Auditor to complete its calculations is not in its possession by the date as of which the Independent Auditor is required to provide either a Preliminary Calculation or a Final Calculation.

(A) If the information in question is not readily available to any Settling State, any Original Participating Manufacturer or any Subsequent Participating Manufacturer, the Independent Auditor shall employ an assumption as to the missing information producing the minimum amount that is likely to be due with respect to the payment in question, and shall set forth its assumption as to the missing information in its Preliminary Calculation or Final Calculation, whichever is at issue. Any Original Participating Manufacturer, Subsequent Participating Manufacturer or Settling State may dispute any such assumption employed by the Independent Auditor in its Preliminary Calculation in the manner prescribed in subsection (d)(3) or any such assumption employed by the Independent Auditor in its Final Calculation in the manner prescribed in subsection (d)(6). If the missing information becomes available to the Independent Auditor prior to the Payment Due Date, the Independent Auditor shall promptly revise its Preliminary Calculation or Final Calculation (whichever is applicable) and shall promptly provide the revised calculation to each Notice Party, showing the newly available information. If the missing information does not become available to the Independent Auditor prior to the Payment Due Date, the minimum amount calculated by the Independent Auditor pursuant to this subsection (A) shall be paid on the Payment Due Date, subject to disputes pursuant to subsections (d)(6) and (d)(8) and without prejudice to a later final determination of the correct amount. If the missing information becomes available to the Independent Auditor after the Payment Due Date, the Independent Auditor shall calculate the correct amount of the payment in question and shall apply any overpayment or underpayment as an offset or additional payment in the manner described in subsection (i).

(B) If the information in question is readily available to a Settling State, Original Participating Manufacturer or Subsequent Participating Manufacturer, but such Settling State, Original Participating Manufacturer or Subsequent Participating Manufacturer does not supply such information to the Independent Auditor, the Independent Auditor shall base the calculation in question on its best estimate of such information, and shall show such estimate in its Preliminary Calculation or Final Calculation, whichever is applicable. Any Original Participating Manufacturer, Subsequent Participating Manufacturer or Settling State (except the entity that withheld the information) may dispute such estimate employed by the Independent Auditor in its Preliminary Calculation in the manner prescribed in subsection (d)(3) or such estimate employed by the Independent Auditor in its Final Calculation in the manner prescribed in subsection (d)(6). If the withheld information is not made available to the Independent Auditor more than 30 days prior to the Payment Due Date, the estimate employed by the Independent Auditor (as revised by the Independent Auditor in light of any dispute filed pursuant to the preceding sentence) shall govern the amounts to be paid on the Payment Due Date, subject to disputes pursuant to subsection (d)(6) and without prejudice to a later final determination of the correct amount. In the event that the withheld information subsequently becomes available, the Independent Auditor shall calculate the correct amount and shall apply any overpayment or underpayment as an offset or additional payment in the manner described in subsection (i).

(6) Not less than five days prior to the Payment Due Date, each Participating Manufacturer and each Settling State shall deliver to each Notice Party a statement indicating whether it disputes the Independent Auditor's Final Calculation and, if so, the disputed and undisputed amounts and the basis for the dispute. Except to the extent a Participating Manufacturer or a Settling State delivers a statement indicating the existence of a dispute by such date, the amounts set forth in the Independent Auditor's Final Calculation shall be paid on the Payment Due Date. Provided, however, that (A) in the event that the Independent Auditor revises its Final Calculation within five days of the Payment Due Date as provided in subsection (5)(A) due to receipt of previously missing information, a Participating Manufacturer or Settling State may dispute such revision pursuant to the procedure set forth in this subsection (6) at any time prior to the Payment Due Date; and (B) prior to the date four years after the Payment Due Date, neither failure to dispute a calculation made by the Independent Auditor nor actual agreement with any calculation or payment to the Escrow Agent or to another payee shall waive any Participating Manufacturer's or Settling State's rights to dispute any payment (or the Independent Auditor's calculations with respect to any payment) after the Payment Due Date. No Participating Manufacturer and no Settling State shall have a right to raise any dispute with respect to any payment or calculation after the date four years after such payment's Payment Due Date.

(7) Each Participating Manufacturer shall be obligated to pay by the Payment Due Date the undisputed portion of the total amount calculated as due from it by the Independent Auditor's Final Calculation. Failure to pay such portion shall render the Participating Manufacturer liable for interest thereon as provided in subsection IX(h) of this Agreement, in addition to any other remedy available under this Agreement.

(8) As to any disputed portion of the total amount calculated to be due pursuant to the Final Calculation, any Participating Manufacturer that by the Payment Due Date pays such disputed portion into the Disputed Payments Account (as defined in the Escrow Agreement) shall not be liable for interest thereon even if the amount disputed was in fact properly due and owing. Any Participating Manufacturer that by the Payment Due Date does not pay such disputed portion into the Disputed Payments Account shall be liable for interest as provided in subsection IX(h) if the amount disputed was in fact properly due and owing.

(9) On the same date that it makes any payment pursuant to this Agreement, each Participating Manufacturer shall deliver a notice to each other Notice Party showing the amount of such payment and the Account to which such payment is to be credited.

(10) On the first Business Day after the Payment Due Date, the Escrow Agent shall deliver to each other Notice Party a statement showing the amounts received by it from each Participating Manufacturer and the Accounts credited with such amounts.

(e) General Treatment of Payments. The Escrow Agent may disburse amounts from an Account only if permitted, and only at such time as permitted, by this Agreement and the Escrow Agreement. No amounts may be disbursed to a Settling State other than funds credited to such Settling State's State-Specific Account (as defined in the Escrow Agreement). The Independent Auditor, in delivering payment instructions to the Escrow Agent, shall specify: the amount to be paid; the Account or Accounts from which such payment is to be disbursed; the payee of such payment (which may be an Account); and the Business Day on which such payment is to be made by the Escrow Agent. Except as expressly provided in subsection (f) below, in no event may any amount be disbursed from any Account prior to Final Approval.

(f) Disbursements and Charges Not Contingent on Final Approval. Funds may be disbursed from Accounts without regard to the occurrence of Final Approval in the following circumstances and in the following manner:

(1) Payments of Federal and State Taxes. Federal, state, local or other taxes imposed with respect to the amounts credited to the Accounts shall be paid from such amounts. The Independent Auditor shall prepare and file any tax returns required to be filed with respect to the escrow. All taxes required to be paid shall be allocated to and charged against the Accounts on a reasonable basis to be determined by the Independent Auditor. Upon receipt of written instructions from the Independent Auditor, the Escrow Agent shall pay such taxes and charge such payments against the Account or Accounts specified in those instructions.

(2) Payments to and from Disputed Payments Account. The Independent Auditor shall instruct the Escrow Agent to credit funds from an Account to the Disputed Payments Account when a dispute arises as to such funds, and shall instruct the Escrow Agent to credit funds from the Disputed Payments Account to the appropriate payee when such dispute is resolved with finality. The Independent Auditor shall provide the Notice Parties not less than 10 Business Days prior notice before instructing the Escrow Agent to disburse funds from the Disputed Payments Account.

(3) Payments to a State-Specific Account. Promptly following the occurrence of State-Specific Finality in any Settling State, such Settling State and the Original Participating Manufacturers shall notify the Independent Auditor of such occurrence. The Independent Auditor shall promptly thereafter notify each Notice Party of such State-Specific Finality and of the portions of the amounts in the Subsection IX(b) Account (First), Subsection IX(b) Account (Subsequent), Subsection IX(c)(1) Account and Subsection IX(c)(2) Account, respectively (as such Accounts are defined in the Escrow Agreement), that are at such time held in such Accounts for the benefit of such Settling State, and which are to be transferred to the appropriate State-Specific Account for such Settling State. If neither the Settling State in question nor any Participating Manufacturer disputes such amounts or the occurrence of such State-Specific Finality by notice delivered to each other Notice Party not later than 10 Business Days after delivery by the Independent Auditor of the notice described in the preceding sentence, the Independent Auditor shall promptly instruct the Escrow Agent to make such transfer. If the Settling State in question or any Participating Manufacturer disputes such amounts or the occurrence of such State-Specific Finality by notice delivered to each other Notice Party not later than 10 Business Days after delivery by the Independent Auditor of the notice described in the second sentence of this subsection (f)(3), the Independent Auditor shall promptly instruct the Escrow Agent to credit the amount disputed to the Disputed Payments Account and the undisputed portion to the appropriate State-Specific Account. No amounts may be transferred or credited to a State-Specific Account for the benefit of any State as to which State-Specific Finality has not occurred or as to which this Agreement has terminated.

(4) Payments to Parties other than Particular Settling States.

(A) Promptly following the occurrence of State-Specific Finality in one Settling State, such Settling State and the Original Participating Manufacturers shall notify the Independent Auditor of such occurrence. The Independent Auditor shall promptly thereafter notify each Notice Party of the occurrence of State-Specific Finality in at least one Settling State and of the amounts held in the Subsection VI(b) Account, Subsection VI(c) Account (First), and Subsection VIII(c) Account (as such Accounts are defined in the Escrow Agreement), if any. If neither any of the Settling States nor any of the Participating Manufacturers disputes such amounts or disputes the occurrence of State-Specific Finality in one Settling State, by notice delivered to each Notice Party not later than ten Business Days after delivery by the Independent Auditor of the notice described in the preceding sentence, the Independent Auditor shall promptly instruct the Escrow Agent to disburse the funds held in such Accounts to the Foundation or to the Fund specified in subsection VIII(c), as appropriate. If any Settling State or Participating Manufacturer disputes such amounts or the occurrence of such State-Specific Finality by notice delivered to each other Notice Party not later than 10 Business Days after delivery by the



Independent Auditor of the notice described in the second sentence of this subsection (4)(A), the Independent Auditor shall promptly instruct the Escrow Agent to credit the amounts disputed to the Disputed Payments Account and to disburse the undisputed portion to the Foundation or to the Fund specified in subsection VIII(c), as appropriate.

(B) The Independent Auditor shall instruct the Escrow Agent to disburse funds on deposit in the Subsection VIII(b) Account and Subsection IX(c) Account (as such Accounts are defined in the Escrow Agreement) to NAAG or to the Foundation, as appropriate, within 10 Business Days after the date on which such amounts were credited to such Accounts.

(C) Promptly following the occurrence of State-Specific Finality in Settling States having aggregate Allocable Shares equal to at least 80% of the total aggregate Allocable Shares assigned to all States that were Settling States as of the MSA Execution Date, the Settling States and the Original Participating Manufacturers shall notify the Independent Auditor of such occurrence. The Independent Auditor shall promptly thereafter notify each Notice Party of the occurrence of such State-Specific Finality and of the amounts held in the Subsection VI(c) Account (Subsequent) (as such Account is defined in the Escrow Agreement), if any. If neither any of the Settling States nor any of the Participating Manufacturers disputes such amounts or disputes the occurrence of such State-Specific Finality, by notice delivered to each Notice Party not later than 10 Business Days after delivery by the Independent Auditor of the notice described in the preceding sentence, the Independent Auditor shall promptly instruct the Escrow Agent to disburse the funds held in such Account to the Foundation. If any Settling State or Participating Manufacturer disputes such amounts or the occurrence of such State-Specific Finality by notice delivered to each other Notice Party not later than 10 Business Days after delivery by the Independent Auditor of the notice described in the second sentence of this subsection (4)(C), the Independent Auditor shall promptly instruct the Escrow Agent to credit the amounts disputed to the Disputed Payments Account and to disburse the undisputed portion to the Foundation.

(5) Treatment of Payments Following Termination.

(A) As to amounts held for Settling States. Promptly upon the termination of this Agreement with respect to any Settling State (whether or not as part of the termination of this Agreement as to all Settling States) such State or any Participating Manufacturer shall notify the Independent Auditor of such occurrence. The Independent Auditor shall promptly thereafter notify each Notice Party of such termination and of the amounts held in the Subsection IX(b) Account (First), the Subsection IX(b) Account (Subsequent), the Subsection IX(c)(1) Account, the Subsection IX(c)(2) Account, and the State-Specific Account for the benefit of such Settling State. If neither the State in question nor any Participating Manufacturer disputes such amounts or the occurrence of such termination by notice delivered to each other Notice Party not later than 10 Business Days after delivery by the Independent Auditor of the notice described in the preceding sentence, the Independent Auditor shall promptly instruct the Escrow Agent to transfer such amounts to the Participating Manufacturers (on the basis of their respective contributions of such funds). If the State in question or any Participating Manufacturer disputes the amounts held in the Accounts or the occurrence of such termination by notice delivered to each other Notice Party not later than 10 Business Days after delivery by the Independent Auditor of the notice described in the second sentence of this subsection (5)(A), the Independent Auditor shall promptly instruct the Escrow Agent to transfer the amount disputed to the Disputed Payments Account and the undisputed portion to the Participating Manufacturers (on the basis of their respective contributions of such funds).

(B) As to amounts held for others. If this Agreement is terminated with respect to all of the Settling States, the Original Participating Manufacturers shall promptly notify the Independent Auditor of such occurrence. The Independent Auditor shall promptly thereafter notify each Notice Party of such termination and of the amounts held in the Subsection VI(b) Account, the Subsection VI(c) Account (First), the Subsection VIII(b) Account, the Subsection VIII(c) Account and the Subsection IX(e) Account. If neither any such State nor any Participating Manufacturer disputes such amounts or the occurrence of such termination by notice delivered to each other Notice Party not later than 10 Business Days after delivery by the Independent Auditor of the notice described in the preceding sentence, the Independent Auditor shall promptly instruct the Escrow Agent to transfer such amounts to the Participating Manufacturers (on the basis of their respective contributions of such funds). If any such State or any Participating Manufacturer disputes the amounts held in the Accounts or the occurrence of such termination by notice delivered to each other Notice Party not later than 10 Business Days after delivery by the Independent Auditor of the notice described in the second sentence of this subsection (5)(B), the Independent Auditor shall promptly instruct the Escrow Agent to credit the amount disputed to the Disputed Payments Account and transfer the undisputed portion to the Participating Manufacturers (on the basis of their respective contribution of such funds).

(C) As to amounts held in the Subsection VI(c) Account (Subsequent). If this Agreement is terminated with respect to Settling States having aggregate Allocable Shares equal to more than 20% of the total aggregate Allocable Shares assigned to those States that were Settling States as of the MSA Execution Date, the Original Participating Manufacturers shall promptly notify the Independent Auditor of such occurrence. The Independent Auditor shall promptly thereafter notify each Notice Party of such termination and of the amounts held in the Subsection VI(c) Account (Subsequent) (as defined in the Escrow Agreement). If neither any such State with respect to which this Agreement has terminated nor any Participating Manufacturer disputes such amounts or the occurrence of such termination by notice delivered to each other Notice Party not later than 10 Business Days after delivery by the Independent Auditor of the notice described in the preceding sentence, the Independent Auditor shall promptly instruct the Escrow Agent to transfer such amounts to the Participating Manufacturers (on the basis of their respective contributions of such funds). If any such State or

any Participating Manufacturer disputes the amounts held in the Account or the occurrence of such termination by notice delivered to each other Notice Party not later than 10 Business Days after delivery by the Independent Auditor of the notice described in the second sentence of this subsection (5)(C), the Independent Auditor shall promptly instruct the Escrow Agent to credit the amount disputed to the Disputed Payments Account and transfer the undisputed portion to the Participating Manufacturers (on the basis of their respective contribution of such funds)

(6) Determination of amounts paid or held for the benefit of each individual Settling State. For purposes of subsections (f)(3), (f)(5)(A) and (i)(2), the portion of a payment that is made or held for the benefit of each individual Settling State shall be determined: (A) in the case of a payment credited to the Subsection IX(b) Account (First) or the Subsection IX(b) Account (Subsequent), by allocating the results of clause "Eighth" of subsection IX(j) among those Settling States who were Settling States at the time that the amount of such payment was calculated, pro rata in proportion to their respective Allocable Shares; and (B) in the case of a payment credited to the Subsection IX(c)(1) Account or the Subsection IX(c)(2) Account, by the results of clause "Twelfth" of subsection IX(j) for each individual Settling State. Provided, however, that, solely for purposes of subsection (f)(3), the Settling States may by unanimous agreement agree on a different method of allocation of amounts held in the Accounts identified in this subsection (f)(6).

(g) Payments to be Made Only After Final Approval. Promptly following the occurrence of Final Approval, the Settling States and the Original Participating Manufacturers shall notify the Independent Auditor of such occurrence. The Independent Auditor shall promptly thereafter notify each Notice Party of the occurrence of Final Approval and of the amounts held in the State-Specific Accounts. If neither any of the Settling States nor any of the Participating Manufacturers disputes such amounts, disputes the occurrence of Final Approval or claims that this Agreement has terminated as to any Settling State for whose benefit the funds are held in a State-Specific Account, by notice delivered to each Notice Party not later than 10 Business Days after delivery by the Independent Auditor of such notice of Final Approval, the Independent Auditor shall promptly instruct the Escrow Agent to disburse the funds held in the State-Specific Accounts to (or as directed by) the respective Settling States. If any Notice Party disputes such amounts or the occurrence of Final Approval, or claims that this Agreement has terminated as to any Settling State for whose benefit the funds are held in a State-Specific Account, by notice delivered to each other Notice Party not later than 10 Business Days after delivery by the Independent Auditor of such notice of Final Approval, the Independent Auditor shall promptly instruct the Escrow Agent to credit the amounts disputed to the Disputed Payments Account and to disburse the undisputed portion to (or as directed by) the respective Settling States.

(h) Applicability to Section XVII Payments. This section XI shall not be applicable to payments made pursuant to section XVII; provided, however, that the Independent Auditor shall be responsible for calculating Relative Market Shares in connection with such payments, and the Independent Auditor shall promptly provide the results of such calculation to any Original Participating Manufacturer or Settling State that requests it do so.

(i) Miscalculated or Disputed Payments.

(1) Underpayments.

(A) If information becomes available to the Independent Auditor not later than four years after a Payment Due Date, and such information shows that any Participating Manufacturer was instructed to make an insufficient payment on such date ("original payment"), the Independent Auditor shall promptly determine the additional payment owed by such Participating Manufacturer and the allocation of such additional payment among the applicable payees. The Independent Auditor shall then reduce such additional payment (up to the full amount of such additional payment) by any adjustments or offsets that were available to the Participating Manufacturer in question against the original payment at the time it was made (and have not since been used) but which such Participating Manufacturer was unable to use against such original payment because such adjustments or offsets were in excess of such original payment (provided that any adjustments or offsets used against such additional payment shall reduce on a dollar-for-dollar basis any remaining carry-forward held by such Participating Manufacturer with respect to such adjustment or offset). The Independent Auditor shall then add interest at the Prime Rate (calculated from the Payment Due Date in question) to the additional payment (as reduced pursuant to the preceding sentence), except that where the additional payment owed by a Participating Manufacturer is the result of an underpayment by such Participating Manufacturer caused by such Participating Manufacturer's withholding of information as described in subsection (d)(5)(B), the applicable interest rate shall be that described in subsection IX(h). The Independent Auditor shall promptly give notice of the additional payment owed by the Participating Manufacturer in question (as reduced and/or increased as described above) to all Notice Parties, showing the new information and all calculations. Upon receipt of such notice, any Participating Manufacturer or Settling State may dispute the Independent Auditor's calculations in the manner described in subsection (d)(3), and the Independent Auditor shall promptly notify each Notice Party of any subsequent revisions to its calculations. Not more than 15 days after receipt of such notice (or, if the Independent Auditor revises its calculations, not more than 15 days after receipt of the revisions), any Participating Manufacturer and any Settling State may dispute the Independent Auditor's calculations in the manner prescribed in subsection (d)(6). Failure to dispute the Independent Auditor's calculations in this manner shall constitute agreement with the Independent Auditor's calculations, subject to the limitations set forth in subsection (d)(6). Payment of the undisputed portion of an additional payment shall be made to the Escrow Agent not more than 20 days after receipt of the notice described in this subsection (A) (or, if the Independent Auditor revises its calculations, not more than 20 days after receipt of the revisions). Failure to pay such portion shall render the Participating Manufacturer liable for interest thereon as provided in subsection IX(h). Payment of the disputed portion shall be governed by subsection (d)(8).



(B) To the extent a dispute as to a prior payment is resolved with finality against a Participating Manufacturer: (i) in the case where the disputed amount has been paid into the Disputed Payments Account pursuant to subsection (d)(8), the Independent Auditor shall instruct the Escrow Agent to transfer such amount to the applicable payee Account(s); (ii) in the case where the disputed amount has not been paid into the Disputed Payments Account and the dispute was identified prior to the Payment Due Date in question by delivery of a statement pursuant to subsection (d)(6) identifying such dispute, the Independent Auditor shall calculate interest on the disputed amount from the Payment Due Date in question (the applicable interest rate to be that provided in subsection IX(h)) and the allocation of such amount and interest among the applicable payees, and shall provide notice of the amount owed (and the identity of the payor and payees) to all Notice Parties; and (iii) in all other cases, the procedure described in subsection (ii) shall apply, except that the applicable interest rate shall be the Prime Rate.

(2) Overpayments.

(A) If a dispute as to a prior payment is resolved with finality in favor of a Participating Manufacturer where the disputed amount has been paid into the Disputed Payments Account pursuant to subsection (d)(8), the Independent Auditor shall instruct the Escrow Agent to transfer such amount to such Participating Manufacturer.

(B) If information becomes available to the Independent Auditor not later than four years after a Payment Due Date showing that a Participating Manufacturer made an overpayment on such date, or if a dispute as to a prior payment is resolved with finality in favor of a Participating Manufacturer where the disputed amount has been paid but not into the Disputed Payments Account, such Participating Manufacturer shall be entitled to a continuing dollar-for-dollar offset as follows:

(i) offsets under this subsection (B) shall be applied only against eligible payments to be made by such Participating Manufacturer after the entitlement to the offset arises. The eligible payments shall be: in the case of offsets arising from payments under subsection IX(b) or IX(c)(1), subsequent payments under any of such subsections; in the case of offsets arising from payments under subsection IX(c)(2), subsequent payments under such subsection or, if no subsequent payments are to be made under such subsection, subsequent payments under subsection IX(c)(1); in the case of offsets arising from payments under subsection IX(e), subsequent payments under such subsection or subsection IX(c); in the case of offsets arising from payments under subsection VI(c), subsequent payments under such subsection or, if no subsequent payments are to be made under such subsection, subsequent payments under any of subsection IX(c)(1), IX(c)(2) or IX(e); in the case of offsets arising from payments under subsection VIII(b), subsequent payments under such subsection or, if no subsequent payments are to be made under such subsection, subsequent payments under either subsection IX(c)(1) or IX(c)(2); in the case of offsets arising from payments under subsection VIII(c), subsequent payments under either subsection IX(c)(1) or IX(c)(2); and, in the case of offsets arising from payments under subsection IX(i), subsequent payments under such subsection (consistent with the provisions of this subsection (B)(i)).

(ii) in the case of offsets to be applied against payments under subsection IX(c), the offset to be applied shall be apportioned among the Settling States pro rata in proportion to their respective shares of such payments, as such respective shares are determined pursuant to step E of clause "Seventh" (in the case of payments due from the Original Participating Manufacturers) or clause "Sixth" (in the case of payments due from the Subsequent Participating Manufacturers) of subsection IX(j) (except where the offset arises from an overpayment applicable solely to a particular Settling State).

(iii) the total amount of the offset to which a Participating Manufacturer shall be entitled shall be the full amount of the overpayment it made, together with interest calculated from the time of the overpayment to the Payment Due Date of the first eligible payment against which the offset may be applied. The applicable interest rate shall be the Prime Rate (except that, where the overpayment is the result of a Settling State's withholding of information as described in subsection (d)(5)(B), the applicable interest rate shall be that described in subsection IX(h)).

(iv) an offset under this subsection (B) shall be applied up to the full amount of the Participating Manufacturer's share (in the case of payments due from Original Participating Manufacturers, determined as described in the first sentence of clause "Seventh" of subsection IX(j) (or, in the case of payments pursuant to subsection IX(c), step D of such clause)) of the eligible payment in question, as such payment has been adjusted and reduced pursuant to clauses "First" through "Sixth" of subsection IX(j), to the extent each such clause is applicable to the payment in question. In the event that the offset to which a Participating Manufacturer is entitled under this subsection (B) would exceed such Participating Manufacturer's share of the eligible payment against which it is being applied (or, in the case where such offset arises from an overpayment applicable solely to a particular Settling State, the portion of such payment that is made for the benefit of such Settling State), the offset shall be the full amount of such Participating Manufacturer's share of such payment and all amounts not offset shall carry forward and be offset against subsequent eligible payments until all such amounts have been offset.

(j) Payments After Applicable Condition. To the extent that a payment is made after the occurrence of all applicable conditions for the disbursement of such payment to the payee(s) in question, the Independent Auditor shall instruct the Escrow Agent to disburse such payment promptly following its deposit.

## XII. SETTLING STATES' RELEASE, DISCHARGE AND COVENANT

(a) Release.

(1) Upon the occurrence of State-Specific Finality in a Settling State, such Settling State shall absolutely and unconditionally release and forever discharge all Released Parties from all Released Claims that the Releasing Parties directly, indirectly, derivatively or in any other capacity ever had, now have, or hereafter can, shall or may have.

(2) Notwithstanding the foregoing, this release and discharge shall not apply to any defendant in a lawsuit settled pursuant to this Agreement (other than a Participating Manufacturer) unless and until such defendant releases the Releasing Parties (and delivers to the Attorney General of the applicable Settling State a copy of such release) from any and all Claims of such defendant relating to the prosecution of such lawsuit.

(3) Each Settling State (for itself and for the Releasing Parties) further covenants and agrees that it (and the Releasing Parties) shall not after the occurrence of State-Specific Finality sue or seek to establish civil liability against any Released Party based, in whole or in part, upon any of the Released Claims, and further agrees that such covenant and agreement shall be a complete defense to any such civil action or proceeding.

(4) (A) Each Settling State (for itself and for the Releasing Parties) further agrees that, if a Released Claim by a Releasing Party against any person or entity that is not a Released Party (a "non-Released Party") results in or in any way gives rise to a claim-over (on any theory whatever other than a claim based on an express written indemnity agreement) by such non-Released Party against any Released Party (and such Released Party gives notice to the applicable Settling State within 30 days of the service of such claim-over (or within 30 days after the MSA Execution Date, whichever is later) and prior to entry into any settlement of such claim-over), the Releasing Party: (i) shall reduce or credit against any judgment or settlement such Releasing Party may obtain against such non-Released Party the full amount of any judgment or settlement such non-Released Party may obtain against the Released Party on such claim-over; and (ii) shall, as part of any settlement with such non-Released Party, obtain from such non-Released Party for the benefit of such Released Party a satisfaction in full of such non-Released Party's judgment or settlement against the Released Party.

(B) Each Settling State further agrees that in the event that the provisions of subsection (4)(A) do not fully eliminate any and all liability of any Original Participating Manufacturer (or of any person or entity that is a Released Party by virtue of its relation to any Original Participating Manufacturer) with respect to claims-over (on any theory whatever other than a claim based on an express written indemnity agreement) by any non-Released Party to recover in whole or in part any liability (whether direct or indirect, or whether by way of settlement (to the extent that such Released Party has given notice to the applicable Settling State within 30 days of the service of such claim-over (or within 30 days after the MSA Execution Date, whichever is later) and prior to entry into any settlement of such claim-over), judgment or otherwise) of such non-Released Party to any Releasing Party arising out of any Released Claim, such Original Participating Manufacturer shall receive a continuing dollar-for-dollar offset for any amounts paid by such Original Participating Manufacturer (or by any person or entity that is a Released Party by virtue of its relation to such Original Participating Manufacturer) on any such liability against such Original Participating Manufacturer's share (determined as described in step E of clause "Seventh" of subsection IX(j)) of the applicable Settling State's Allocated Payment, up to the full amount of such Original Participating Manufacturer's share of such Allocated Payment each year, until all such amounts paid on such liability have been offset. In the event that the offset under this subsection (4) with respect to a particular Settling State would in any given year exceed such Original Participating Manufacturer's share of such Settling State's Allocated Payment (as such share had been reduced by adjustment, if any, pursuant to the NPM Adjustment, and has been reduced by offsets, if any, pursuant to the offset for miscalculated or disputed payments, the Federal Tobacco Legislation Offset and the Litigating Releasing Parties Offset): (i) the offset to which such Original Participating Manufacturer is entitled under this subsection in such year shall be the full amount of such Original Participating Manufacturer's share of such Allocated Payment; and (ii) all amounts not offset by reason of subsection (i) shall carry forward and be offset in the following year(s) until all such amounts have been offset.

(C) Each Settling State further agrees that, subject to the provisions of section IX(i)(3), each Subsequent Participating Manufacturer shall be entitled to the offset described in subsection (B) above to the extent that it (or any person or entity that is a Released Party by virtue of its relationship with such Subsequent Participating Manufacturer) has paid on liability that would give rise to an offset under such subsection if paid by an Original Participating Manufacturer.

(5) This release and covenant shall not operate to interfere with a Settling State's ability to enforce as against any Participating Manufacturer the provisions of this Agreement, or with the Court's ability to enter the Consent Decree or to maintain continuing jurisdiction to enforce such Consent Decree pursuant to the terms thereof. Provided, however, that neither subsection III(a) or III(r) of this Agreement nor subsection V(A) or V(I) of the Consent Decree shall create a right to challenge the continuation, after the MSA Execution Date, of any advertising content, claim or slogan (other than use of a Cartoon) that was not unlawful prior to the MSA Execution Date.

(6) The Settling States do not purport to waive or release any claims on behalf of Indian tribes.

(7) The Settling States do not waive or release any criminal liability based on federal, state or local law.



(8) Notwithstanding the foregoing (and the definition of Released Parties), this release and covenant shall not apply to retailers, suppliers or distributors to the extent of any liability arising from the sale or distribution of Tobacco Products of, or the supply of component parts of Tobacco Products to, any non-Released Party.

(A) Each Settling State (for itself and for the Releasing Parties) agrees that, if a claim by a Releasing Party against a retailer, supplier or distributor that would be a Released Claim but for the operation of the preceding sentence results in or in any way gives rise to a claim-over (on any theory whatever) by such retailer, supplier or distributor against any Released Party (and such Released Party gives notice to the applicable Settling State within 30 days of the service of such claim-over (or within 30 days after the MSA Execution Date, whichever is later) and prior to entry into any settlement of such claim-over), the Releasing Party: (i) shall reduce or credit against any judgment or settlement such Releasing Party may obtain against such retailer, supplier or distributor the full amount of any judgment or settlement such retailer, supplier or distributor may obtain against the Released Party on such claim-over; and (ii) shall, as part of any settlement with such retailer, supplier or distributor, obtain from such retailer, supplier or distributor for the benefit of such Released Party a satisfaction in full of such retailer's, supplier's or distributor's judgment or settlement against the Released Party.

(B) Each Settling State further agrees that in the event that the provisions of subsection (8)(A) above do not fully eliminate any and all liability of any Original Participating Manufacturer (or any person or entity that is a Released Party by virtue of its relationship to an Original Participating Manufacturer) with respect to claims-over (on any theory whatever) by any such retailer, supplier or distributor to recover in whole or in part any liability (whether direct or indirect, or whether by way of settlement (to the extent that such Released Party has given notice to the applicable Settling State within 30 days of the service of such claim-over (or within 30 days after the MSA Execution Date, whichever is later) and prior to entry into any settlement of such claim-over), judgment or otherwise) of such retailer, supplier or distributor to any Releasing Party arising out of any claim that would be a Released Claim but for the operation of the first sentence of this subsection (8), such Original Participating Manufacturer shall receive a continuing dollar-for-dollar offset for any amounts paid by such Original Participating Manufacturer (or by any person or entity that is a Released Party by virtue of its relation to such Original Participating Manufacturer) on any such liability against such Original Participating Manufacturer's share (determined as described in step E of clause "Seventh" of subsection IX(j)) of the applicable Settling State's Allocated Payment, up to the full amount of such Original Participating Manufacturer's share of such Allocated Payment each year, until all such amounts paid on such liability have been offset. In the event that the offset under this subsection (8) with respect to a particular Settling State would in any given year exceed such Original Participating Manufacturer's share of such Settling State's Allocated Payment (as such share had been reduced by adjustment, if any, pursuant to the NPM Adjustment, and has been reduced by offsets, if any, pursuant to the offset for miscalculated or disputed payments, the Federal Tobacco Legislation Offset, the Litigating Releasing Parties Offset and the offset for claims-over under subsection XII(a)(4)(B)): (i) the offset to which such Original Participating Manufacturer is entitled under this subsection in such year shall be the full amount of such Original Participating Manufacturer's share of such Allocated Payment; and (ii) all amounts not offset by reason of clause (i) shall carry forward and be offset in the following year(s) until all such amounts have been offset.

(C) Each Settling State further agrees that, subject to the provisions of subsection IX(i)(3), each Subsequent Participating Manufacturer shall be entitled to the offset described in subsection (B) above to the extent that it (or any person or entity that is a Released Party by virtue of its relationship with such Subsequent Participating Manufacturer) has paid on liability that would give rise to an offset under such subsection if paid by an Original Participating Manufacturer.

(9) Notwithstanding any provision of law, statutory or otherwise, which provides that a general release does not extend to claims which the creditor does not know or suspect to exist in its favor at the time of executing the release, which if known by it must have materially affected its settlement with the debtor, the releases set forth in this section XII release all Released Claims against the Released Parties, whether known or unknown, foreseen or unforeseen, suspected or unsuspected, that the Releasing Parties may have against the Released Parties, and the Releasing Parties understand and acknowledge the significance and consequences of waiver of any such provision and hereby assume full responsibility for any injuries, damages or losses that the Releasing Parties may incur.

(b) Released Claims Against Released Parties. If a Releasing Party (or any person or entity enumerated in subsection II(pp), without regard to the power of the Attorney General to release claims of such person or entity) nonetheless attempts to maintain a Released Claim against a Released Party, such Released Party shall give written notice of such potential claim to the Attorney General of the applicable Settling State within 30 days of receiving notice of such potential claim (or within 30 days after the MSA Execution Date, whichever is later) (unless such potential claim is being maintained by such Settling State). The Released Party may offer the release and covenant as a complete defense. If it is determined at any point in such action that the release of such claim is unenforceable or invalid for any reason (including, but not limited to, lack of authority to release such claim), the following provisions shall apply:

(1) The Released Party shall take all ordinary and reasonable measures to defend the action fully. The Released Party may settle or enter into a stipulated judgment with respect to the action at any time in its sole discretion, but in such event the offset described in subsection (b)(2) or (b)(3) below shall apply only if the Released Party obtains the relevant Attorney General's consent to such settlement or stipulated judgment, which consent shall not be unreasonably withheld. The Released Party shall not be entitled to the offset described in subsection (b)(2) or (b)(3) below if such Released Party failed to take ordinary and reasonable measures to defend the action fully.

(2) The following provisions shall apply where the Released Party is an Original Participating Manufacturer (or any person or entity that is a Released Party by virtue of its relationship with an Original Participating Manufacturer):

(A) In the event of a settlement or stipulated judgment, the settlement or stipulated amount shall give rise to a continuing offset as such amount is actually paid against the full amount of such Original Participating Manufacturer's share (determined as described in step E of clause "Seventh" of subsection IX(j)) of the applicable Settling State's Allocated Payment until such time as the settlement or stipulated amount is fully credited on a dollar-for-dollar basis.

(B) Judgments (other than a default judgment) against a Released Party in such an action shall, upon payment of such judgment, give rise to an immediate and continuing offset against the full amount of such Original Participating Manufacturer's share (determined as described in subsection (A)) of the applicable Settling State's Allocated Payment, until such time as the judgment is fully credited on a dollar-for-dollar basis.

(C) Each Settling State reserves the right to intervene in such an action (unless such action was brought by the Settling State) to the extent authorized by applicable law in order to protect the Settling State's interest under this Agreement. Each Participating Manufacturer agrees not to oppose any such intervention.

(D) In the event that the offset under this subsection (b)(2) with respect to a particular Settling State would in any given year exceed such Original Participating Manufacturer's share of such Settling State's Allocated Payment (as such share had been reduced by adjustment, if any, pursuant to the NPM Adjustment, and has been reduced by offsets, if any, pursuant to the Federal Tobacco Legislatinn Offset and the offset for miscalculated or disputed payments): (i) the offset to which such Original Participating Manufacturer is entitled under this subsection (2) in such year shall be the full amount of such Original Participating Manufacturer's share of such Allocated Payment; and (ii) all amounts not offset by reason of clause (i) shall carry forward and be offset in the following year(s) until all such amounts have been offset.

(3) The following provisions shall apply where the Released Party is a Subsequent Participating Manufacturer (or any person or entity that is a Released Party by virtue of its relationship with a Subsequent Participating Manufacturer): Subject to the provisions of subsection IX(i)(3), each Subsequent Participating Manufacturer shall be entitled to the offset as described in subsections (2)(A)-(C) above against payments it otherwise would owe under section IX(i) to the extent that it (or any person or entity that is a Released Party by virtue of its relationship with such Subsequent Participating Manufacturer) has paid on a settlement, stipulated judgment or judgment that would give rise to an offset under such subsections if paid by an Original Participating Manufacturer.

## XIII. CONSENT DECREES AND DISMISSAL OF CLAIMS

(a) Within 10 days after the MSA Execution Date (or, as to any Settling State identified in the Additional States provision of Exhibit D, concurrently with the filing of its lawsuit), each Settling State and each Participating Manufacturer that is a party in any of the lawsuits identified in Exhibit D shall jointly move for a stay of all proceedings in such Settling State's lawsuit with respect to the Participating Manufacturers and all other Released Parties (except any proceeding seeking public disclosure of documents pursuant to subsection IV(b)). Such stay of a Settling State's lawsuit shall be dissolved upon the earlier of the occurrence of State-Specific Finality or termination of this Agreement with respect to such Settling State pursuant to subsection XVIII(u)(1).

(b) Not later than December 11, 1998 (or, as to any Settling State identified in the Additional States provision of Exhibit D, concurrently with the filing of its lawsuit):

(1) each Settling State that is a party to a lawsuit identified in Exhibit D and each Participating Manufacturer will:

(A) tender this Agreement to the Court in such Settling State for its approval; and

(B) tender to the Court in such Settling State for entry a consent decree conforming to the model consent decree attached hereto as Exhibit L (revisions or changes to such model consent decree shall be limited to the extent required by state procedural requirements to reflect accurately the factual setting of the case in question, but shall not include any substantive revision to the duties or obligations of any Settling State or Participating Manufacturer, except by agreement of all Original Participating Manufacturers); and

(2) each Settling State shall seek entry of an order of dismissal of claims dismissing with prejudice all claims against the Participating Manufacturers and any other Released Party in such Settling State's action identified in Exhibit D. Provided, however, that the Settling State is not required to seek entry of such an order in such Settling State's action against such a Released Party (other than a Participating Manufacturer) unless and until such Released Party has released the Releasing Parties (and delivered to the Attorney General of such Settling State a copy of such release) (which release shall be effective upon the occurrence of State-Specific Finality in such Settling State, and shall recite that in the event this Agreement is terminated with respect to such Settling State pursuant to subsection XVIII(u)(1) the Released Party agrees that the order of dismissal shall be null and void and of no effect) from any and all Claims of such Released Party relating to the prosecution of such action as provided in subsection XII(a)(2).



## XIV. PARTICIPATING MANUFACTURERS' DISMISSAL OF RELATED LAWSUITS

(a) Upon State-Specific Finality in a Settling State, each Participating Manufacturer will dismiss without prejudice (and without costs and fees) the lawsuit(s) listed in Exhibit M pending in such Settling State in which the Participating Manufacturer is a plaintiff. Within 10 days after the MSA Execution Date, each Participating Manufacturer and each Settling State that is a party in any of the lawsuits listed in Exhibit M shall jointly move for a stay of all proceedings in such lawsuit. Such stay of a lawsuit against a Settling State shall be dissolved upon the earlier of the occurrence of State-Specific Finality in such Settling State or termination of this Agreement with respect to such Settling State pursuant to subsection XVIII(u)(1).

(b) Upon State-Specific Finality in a Settling State, each Participating Manufacturer will release and discharge any and all monetary Claims against such Settling State and any of such Settling State's officers, employees, agents, administrators, representatives, officials acting in their official capacity, agencies, departments, commissions, divisions and counsel relating to or in connection with the lawsuit(s) commenced by the Attorney General of such Settling State identified in Exhibit D.

(c) Upon State-Specific Finality in a Settling State, each Participating Manufacturer will release and discharge any and all monetary Claims against all subdivisions (political or otherwise, including, but not limited to, municipalities, counties, parishes, villages, unincorporated districts and hospital districts) of such Settling State, and any of their officers, employees, agents, administrators, representatives, officials acting in their official capacity, agencies, departments, commissions, divisions and counsel arising out of Claims that have been waived and released with continuing full force and effect pursuant to section XII of this Agreement.

## XV. VOLUNTARY ACT OF THE PARTIES

The Settling States and the Participating Manufacturers acknowledge and agree that this Agreement is voluntarily entered into by each Settling State and each Participating Manufacturer as the result of arm's-length negotiations, and each Settling State and each Participating Manufacturer was represented by counsel in deciding to enter into this Agreement. Each Participating Manufacturer further acknowledges that it understands that certain provisions of this Agreement may require it to act or refrain from acting in a manner that could otherwise give rise to state or federal constitutional challenges and that, by voluntarily consenting to this Agreement, it (and the Tobacco-Related Organizations (or any trade associations formed or controlled by any Participating Manufacturer)) waives for purposes of performance of this Agreement any and all claims that the provisions of this Agreement violate the state or federal constitutions. Provided, however, that nothing in the foregoing shall constitute a waiver as to the entry of any court order (or any interpretation thereof) that would operate to limit the exercise of any constitutional right except to the extent of the restrictions, limitations or obligations expressly agreed to in this Agreement or the Consent Decree.

## XVI. CONSTRUCTION

(a) No Settling State or Participating Manufacturer shall be considered the drafter of this Agreement or any Consent Decree, or any provision of either, for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter.

(b) Nothing in this Agreement shall be construed as approval by the Settling States of any Participating Manufacturer's business organizations, operations, acts or practices, and no Participating Manufacturer may make any representation to the contrary.

## XVII. RECOVERY OF COSTS AND ATTORNEYS' FEES

(a) The Original Participating Manufacturers agree that, with respect to any Settling State in which the Court has approved this Agreement and the Consent Decree, they shall severally reimburse the following "Governmental Entities": (1) the office of the Attorney General of such Settling State; (2) the office of the governmental prosecuting authority for any political subdivision of such Settling State with a lawsuit pending against any Participating Manufacturer as of July 1, 1998 (as identified in Exhibit N) that has released such Settling State and such Participating Manufacturer(s) from any and all Released Claims (a "Litigating Political Subdivision"); and (3) other appropriate agencies of such Settling State and such Litigating Political Subdivision, for reasonable costs and expenses incurred in connection with the litigation or resolution of claims asserted by or against the Participating Manufacturers in the actions set forth in Exhibits D, M and N; provided that such costs and expenses are of the same nature as costs and expenses for which the Original Participating Manufacturers would reimburse their own counsel or agents (but not including costs and expenses relating to lobbying activities).

(b) The Original Participating Manufacturers further agree severally to pay the Governmental Entities in any Settling State in which State-Specific Finality has occurred an amount sufficient to compensate such Governmental Entities for time reasonably expended by attorneys and paralegals employed in such offices in connection with the litigation or resolution of claims asserted against or by the Participating Manufacturers in the actions identified in Exhibits D, M and N (but not including time relating to lobbying activities), such amount to be calculated based upon hourly rates equal to the market rate in such Settling State for private attorneys and paralegals of equivalent experience and seniority.

(c) Such Governmental Entities seeking payment pursuant to subsection (a) and/or (b) shall provide the Original Participating Manufacturers with an appropriately documented statement of all costs, expenses and attorney and paralegal time for which payment is sought, and, solely with respect to payments sought pursuant to subsection (b), shall do so no earlier than the date on which State-Specific Finality occurs in such Settling State. All amounts to be paid pursuant to

subsections (a) and (b) shall be subject to reasonable verification if requested by any Original Participating Manufacturer; provided, however, that nothing contained in this subsection (c) shall constitute, cause, or require the performance of any act that would constitute any waiver (in whole or in part) of any attorney-client privilege, work product protection or common interest/joint prosecution privilege. All such amounts to be paid pursuant to subsections (a) and (b) shall be subject to an aggregate cap of $150 million for all Settling States, shall be paid promptly following submission of the appropriate documentation (and the completion of any verification process), shall be paid separately and apart from any other amounts due pursuant to this Agreement, and shall be paid severally by each Original Participating Manufacturer according to its Relative Market Share. All amounts to be paid pursuant to subsection (b) shall be paid to such Governmental Entities in the order in which State-Specific Finality has occurred in such Settling States (subject to the $150 million aggregate cap).

(d) The Original Participating Manufacturers agree that, upon the occurrence of State-Specific Finality in a Settling State, they will severally pay reasonable attorneys' fees to the private outside counsel, if any, retained by such Settling State (and each Litigating Political Subdivision, if any, within such Settling State) in connection with the respective actions identified in Exhibits D, M and N and who are designated in Exhibit S for each Settling State by the relevant Attorney General (and for each Litigating Political Subdivision, as later certified in writing to the Original Participating Manufacturers by the relevant governmental prosecuting authority of each Litigating Political Subdivision) as having been retained by and having represented such Settling State (or such Litigating Political Subdivision), in accordance with the terms described in the Model Fee Payment Agreement attached as Exhibit O.

## XVIII. MISCELLANEOUS

(a) Effect of Current or Future Law. If any current or future law includes obligations or prohibitions applying to Tobacco Product Manufacturers related to any of the provisions of this Agreement, each Participating Manufacturer shall comply with this Agreement unless compliance with this Agreement would violate such law.

(b) Limited Most-Favored Nation Provision.

(1) If any Participating Manufacturer enters into any future settlement agreement of other litigation comparable to any of the actions identified in Exhibit D brought by a non-foreign governmental plaintiff other than the federal government ("Future Settlement Agreement"):

(A) before October 1, 2000, on overall terms more favorable to such governmental plaintiff than the overall terms of this Agreement (after due consideration of relevant differences in population or other appropriate factors), then, unless a majority of the Settling States determines that the overall terms of the Future Settlement Agreement are not more favorable than the overall terms of this Agreement, the overall terms of this Agreement will be revised so that the Settling States will obtain treatment with respect to such Participating Manufacturer at least as relatively favorable as the overall terms provided to any such governmental plaintiff; provided, however, that as to economic terms this Agreement shall not be revised based on any such Future Settlement Agreement if such Future Settlement Agreement is entered into after: (i) the impaneling of the jury (or, in the event of a non-jury trial, the commencement of trial) in such litigation or any severed or bifurcated portion thereof; or (ii) any court order or judicial determination relating to such litigation that (x) grants judgment (in whole or in part) against such Participating Manufacturer; or (y) grants injunctive or other relief that affects the assets or on-going business activities of such Participating Manufacturer in a manner other than as expressly provided for in this Agreement; or

(B) on or after October 1, 2000, on non-economic terms more favorable to such governmental plaintiff than the non-economic terms of this Agreement, and such Future Settlement Agreement includes terms that provide for the implementation of non-economic tobacco-related public health measures different from those contained in this Agreement, then this Agreement shall be revised with respect to such Participating Manufacturer to include terms comparable to such non-economic terms, unless a majority of the Settling States elects against such revision.

(2) If any Settling State resolves by settlement Claims against any Non-Participating Manufacturer after the MSA Execution Date comparable to any Released Claim, and such resolution includes overall terms that are more favorable to such Non-Participating Manufacturer than the terms of this Agreement (including, without limitation, any terms that relate to the marketing or distribution of Tobacco Products and any term that provides for a lower settlement cost on a per pack sold basis), then the overall terms of this Agreement will be revised so that the Original Participating Manufacturers will obtain, with respect to that Settling State, overall terms at least as relatively favorable (taking into account, among other things, all payments previously made by the Original Participating Manufacturers and the timing of any payments) as those obtained by such Non-Participating Manufacturer pursuant to such resolution of Claims. The foregoing shall include but not be limited: (a) to the treatment by any Settling State of a Future Affiliate, as that term is defined in agreements between any of the Settling States and Brooke Group Ltd., Liggett & Myers Inc. and/or Liggett Group, Inc. ("Liggett"), whether or not such Future Affiliate is merged with, or its operations combined with, Liggett or any Affiliate thereof; and (b) to any application of the terms of any such agreement (including any terms subsequently negotiated pursuant to any such agreement) to a brand of Cigarettes (or tobacco-related assets) as a result of the purchase by or sale to Liggett of such brand or assets or as a result of any combination of ownership among Liggett and any entity that manufactures Tobacco Products. Provided, however, that revision of this Agreement pursuant to this subsection (2) shall not be required by virtue of the subsequent entry into this Agreement by a Tobacco Product Manufacturer that has not become a Participating Manufacturer as of the MSA Execution Date. Notwithstanding the provisions of subsection XVIII(j), the provisions of this subsection XVIII(b)(2) may be waived by (and only by) unanimous agreement of the Original Participating Manufacturers.



(3) The parties agree that if any term of this Agreement is revised pursuant to subsection (b)(1) or (b)(2) above and the substance of such term before it was revised was also a term of the Consent Decree, each affected Settling State and each affected Participating Manufacturer shall jointly move the Court to amend the Consent Decree to conform the terms of the Consent Decree to the revised terms of the Agreement.

(4) If at any time any Settling State agrees to relieve, in any respect, any Participating Manufacturer's obligation to make the payments as provided in this Agreement, then, with respect to that Settling State, the terms of this Agreement shall be revised so that the other Participating Manufacturers receive terms as relatively favorable.

(c) Transfer of Tobacco Brands. No Original Participating Manufacturer may sell or otherwise transfer or permit the sale or transfer of any of its Cigarette brands, Brand Names, Cigarette product formulas or Cigarette businesses (other than a sale or transfer of Cigarette brands or Brand Names to be sold, product formulas to be used, or Cigarette businesses to be conducted, by the acquiror or transferee exclusively outside of the States) to any person or entity unless such person or entity is an Original Participating Manufacturer or prior to the sale or acquisition agrees to assume the obligations of an Original Participating Manufacturer with respect to such Cigarette brands, Brand Names, Cigarette product formulas or businesses. No Participating Manufacturer may sell or otherwise transfer any of its Cigarette brands, Brand Names, Cigarette product formulas or Cigarette businesses (other than a sale or transfer of Cigarette brands or Brand Names to be sold, Cigarette product formulas to be used, or businesses to be conducted, by the acquiror or transferee exclusively outside of the States) to any person or entity unless such person or entity is or becomes prior to the sale or acquisition a Participating Manufacturer. In the event of any such sale or transfer of a Cigarette brand, Brand Name, Cigarette product formula or Cigarette business by a Participating Manufacturer to a person or entity that within 180 days prior to such sale or transfer was a Non-Participating Manufacturer, the Participating Manufacturer shall certify to the Settling States that it has determined that such person or entity has the capability to perform the obligations under this Agreement. Such certification shall not survive beyond one year following the date of any such transfer. Each Original Participating Manufacturer certifies and represents that, except as provided in Exhibit R, it (or a wholly owned Affiliate) exclusively owns and controls in the States the Brand Names of those Cigarettes that it currently manufactures for sale (or sells) in the States and that it has the capacity to enter into an effective agreement concerning the sale or transfer of such Brand Names pursuant to this subsection XVIII(c). Nothing in this Agreement is intended to create any right for a State to obtain any Cigarette product formula that it would not otherwise have under applicable law.

(d) Payments in Settlement. All payments to be made by the Participating Manufacturers pursuant to this Agreement are in settlement of all of the Settling States' antitrust, consumer protection, common law negligence, statutory, common law and equitable claims for monetary, restitutionary, equitable and injunctive relief alleged by the Settling States with respect to the year of payment or earlier years, except that no part of any payment under this Agreement is made in settlement of an actual or potential liability for a fine, penalty (civil or criminal) or enhanced damages or is the cost of a tangible or intangible asset or other future benefit.

(e) No Determination or Admission. This Agreement is not intended to be and shall not in any event be construed or deemed to be, or represented or caused to be represented as, an admission or concession or evidence of (1) any liability or any wrongdoing whatsoever on the part of any Released Party or that any Released Party has engaged in any of the activities barred by this Agreement; or (2) personal jurisdiction over any person or entity other than the Participating Manufacturers. Each Participating Manufacturer specifically disclaims and denies any liability or wrongdoing whatsoever with respect to the claims and allegations asserted against it by the Attorneys General of the Settling States and the Litigating Political Subdivisions. Each Participating Manufacturer has entered into this Agreement solely to avoid the further expense, inconvenience, burden and risk of litigation.

(f) Non-Admissibility. The settlement negotiations resulting in this Agreement have been undertaken by the Settling States and the Participating Manufacturers in good faith and for settlement purposes only, and no evidence of negotiations or discussions underlying this Agreement shall be offered or received in evidence in any action or proceeding for any purpose. Neither this Agreement nor any public discussions, public statements or public comments with respect to this Agreement by any Settling State or Participating Manufacturer or its agents shall be offered or received in evidence in any action or proceeding for any purpose other than in an action or proceeding arising under or relating to this Agreement.

(g) Representations of Parties. Each Settling State and each Participating Manufacturer hereby represents that this Agreement has been duly authorized and, upon execution, will constitute a valid and binding contractual obligation, enforceable in accordance with its terms, of each of them. The signatories hereto on behalf of their respective Settling States expressly represent and warrant that they have the authority to settle and release all Released Claims of their respective Settling States and any of their respective Settling States' past, present and future agents, officials acting in their official capacities, legal representatives, agencies, departments, commissions and divisions, and that such signatories are aware of no authority to the contrary. It is recognized that the Original Participating Manufacturers are relying on the foregoing representation and warranty in making the payments required by and in otherwise performing under this Agreement. The Original Participating Manufacturers shall have the right to terminate this Agreement pursuant to subsection XVIII(u) as to any Settling State as to which the foregoing representation and warranty is breached or not effectively given.

(h) Obligations Several, Not Joint. All obligations of the Participating Manufacturers pursuant to this Agreement (including, but not limited to, all payment obligations) are intended to be, and shall remain, several and not joint.

(i) Headings. The headings of the sections and subsections of this Agreement are not binding and are for reference only and do not limit, expand or otherwise affect the contents or meaning of this Agreement.

(j) Amendment and Waiver. This Agreement may be amended by a written instrument executed by all Participating Manufacturers affected by the amendment and by all Settling States affected by the amendment. The terms of any such amendment shall not be enforceable in any Settling State that is not a signatory to such amendment. The waiver of any rights conferred hereunder shall be effective only if made by written instrument executed by the waiving party or parties. The waiver by any party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, nor shall such waiver be deemed to be or construed as a waiver by any other party.

(k) Notices. All notices or other communications to any party to this Agreement shall be in writing (including, but not limited to, facsimile, telex, telecopy or similar writing) and shall be given at the addresses specified in Exhibit P (as it may be amended to reflect any additional Participating Manufacturer that becomes a party to this Agreement after the MSA Execution Date). Any Settling State or Participating Manufacturer may change or add the name and address of the persons designated to receive notice on its behalf by notice given (effective upon the giving of such notice) as provided in this subsection.

(l) Cooperation. Each Settling State and each Participating Manufacturer agrees to use its best efforts and to cooperate with each other to cause this Agreement and the Consent Decrees to become effective, to obtain all necessary approvals, consents and authorizations, if any, and to execute all documents and to take such other action as may be appropriate in connection herewith. Consistent with the foregoing, each Settling State and each Participating Manufacturer agrees that it will not directly or indirectly assist or encourage any challenge to this Agreement or any Consent Decree by any other person, and will support the integrity and enforcement of the terms of this Agreement and the Consent Decrees. Each Settling State shall use its best efforts to cause State-Specific Finality to occur as to such Settling State.

(m) Designees to Discuss Disputes. Within 14 days after the MSA Execution Date, each Settling State's Attorney General and each Participating Manufacturer shall provide written notice of its designation of a senior representative to discuss with the other signatories to this Agreement any disputes and/or other issues that may arise with respect to this Agreement. Each Settling State's Attorney General shall provide such notice of the name, address and telephone number of the person it has so designated to each Participating Manufacturer and to NAAG. Each Participating Manufacturer shall provide such notice of the name, address and telephone number of the person it has so designated to each Settling State's Attorney General, to NAAG and to each other Participating Manufacturer.

(n) Governing Law. This Agreement (other than the Escrow Agreement) shall be governed by the laws of the relevant Settling State, without regard to the conflict of law rules of such Settling State. The Escrow Agreement shall be governed by the laws of the State in which the Escrow Court is located, without regard to the conflict of law rules of such State.

(o) Severability.

(1) Sections VI, VII, IX, X, XI, XII, XIII, XIV, XVI, XVIII(b), (c), (d), (e), (f), (g), (h), (o), (p), (r), (s), (u), (w), (z), (bb), (dd), and Exhibits A, B, and E hereof ("Nonseverable Provisions") are not severable, except to the extent that severance of section VI is permitted by Settling States pursuant to subsection VI(i) hereof. The remaining terms of this Agreement are severable, as set forth herein.

(2) If a court materially modifies, renders unenforceable, or finds to be unlawful any of the Nonseverable Provisions, the NAAG executive committee shall select a team of Attorneys General (the "Negotiating Team") to attempt to negotiate an equivalent or comparable substitute term or other appropriate credit or adjustment (a "Substitute Term") with the Original Participating Manufacturers. In the event that the court referred to in the preceding sentence is located in a Settling State, the Negotiating Team shall include the Attorney General of such Settling State. The Original Participating Manufacturers shall have no obligation to agree to any Substitute Term. If any Original Participating Manufacturer does not agree to a Substitute Term, this Agreement shall be terminated in all Settling States affected by the court's ruling. The Negotiating Team shall submit any proposed Substitute Term negotiated by the Negotiating Team and agreed to by all of the Original Participating Manufacturers to the Attorneys General of all of the affected Settling States for their approval. If any affected Settling State does not approve the proposed Substitute Term, this Agreement in such Settling State shall be terminated.

(3) If a court materially modifies, renders unenforceable, or finds to be unlawful any term of this Agreement other than a Nonseverable Provision:

(A) The remaining terms of this Agreement shall remain in full force and effect.

(B) Each Settling State whose rights or obligations under this Agreement are affected by the court's decision in question (the "Affected Settling State") and the Participating Manufacturers agree to negotiate in good faith a Substitute Term. Any agreement on a Substitute Term reached between the Participating Manufacturers and the Affected Settling State shall not modify or amend the terms of this Agreement with regard to any other Settling State.



(C) If the Affected Settling State and the Participating Manufacturers are unable to agree on a Substitute Term, then they will submit the issue to non-binding mediation. If mediation fails to produce agreement to a Substitute Term, then that term shall be severed and the remainder of this Agreement shall remain in full force and effect.

(4) If a court materially modifies, renders unenforceable, or finds to be unlawful any portion of any provision of this Agreement, the remaining portions of such provision shall be unenforceable with respect to the Affected Settling State unless a Substitute Term is arrived at pursuant to subsection (o)(2) or (o)(3) hereof, whichever is applicable.

(p) Intended Beneficiaries. No portion of this Agreement shall provide any rights to, or be enforceable by, any person or entity that is not a Settling State or a Released Party. No Settling State may assign or otherwise convey any right to enforce any provision of this Agreement.

(q) Counterparts. This Agreement may be executed in counterparts. Facsimile or photocopied signatures shall be considered as valid signatures as of the date affixed, although the original signature pages shall thereafter be appended.

(r) Applicability. The obligations and duties of each Participating Manufacturer set forth herein are applicable only to actions taken (or omitted to be taken) within the States. This subsection (r) shall not be construed as extending the territorial scope of any obligation or duty set forth herein whose scope is otherwise limited by the terms hereof.

(s) Preservation of Privilege. Nothing contained in this Agreement or any Consent Decree, and no act required to be performed pursuant to this Agreement or any Consent Decree, is intended to constitute, cause or effect any waiver (in whole or in part) of any attorney-client privilege, work product protection or common interest/joint defense privilege, and each Settling State and each Participating Manufacturer agrees that it shall not make or cause to be made in any forum any assertion to the contrary.

(t) Non-Release. Except as otherwise specifically provided in this Agreement, nothing in this Agreement shall limit, prejudice or otherwise interfere with the rights of any Settling State or any Participating Manufacturer to pursue any and all rights and remedies it may have against any Non-Participating Manufacturer or other non-Released Party.

(u) Termination.

(1) Unless otherwise agreed to by each of the Original Participating Manufacturers and the Settling State in question, in the event that (A) State-Specific Finality in a Settling State does not occur in such Settling State on or before December 31, 2001; or (B) this Agreement or the Consent Decree has been disapproved by the Court (or, in the event of an appeal from or review of a decision of the Court to approve this Agreement and the Consent Decree, by the court hearing such appeal or conducting such review), and the time to Appeal from such disapproval has expired, or, in the event of an Appeal from such disapproval, the Appeal has been dismissed or the disapproval has been affirmed by the court of last resort to which such Appeal has been taken and such dismissal or disapproval has become no longer subject to further Appeal (including, without limitation, review by the United States Supreme Court); or (C) this Agreement is terminated in a Settling State for whatever reason (including, but not limited to, pursuant to subsection XVIII(o) of this Agreement), then this Agreement and all of its terms (except for the non-admissibility provisions hereof, which shall continue in full force and effect) shall be canceled and terminated with respect to such Settling State, and it and all orders issued by the courts in such Settling State pursuant hereto shall become null and void and of no effect.

(2) If this Agreement is terminated with respect to a Settling State for whatever reason, then (A) the applicable statute of limitation or any similar time requirement shall be tolled from the date such Settling State signed this Agreement until the later of the time permitted by applicable law or for one year from the date of such termination, with the effect that the parties shall be in the same position with respect to the statute of limitation as they were at the time such Settling State filed its action, and (B) the parties shall jointly move the Court for an order reinstating the actions and claims dismissed pursuant to sections XIII and XIV hereof, with the effect that the parties shall be in the same position with respect to those actions and claims as they were at the time the action or claim was stayed or dismissed.

(v) Freedom of Information Requests. Upon the occurrence of State-Specific Finality in a Settling State, each Participating Manufacturer will withdraw in writing any and all requests for information, administrative applications, and proceedings brought or caused to be brought by such Participating Manufacturer pursuant to such Settling State's freedom of information law relating to the subject matter of the lawsuits identified in Exhibit D.

(w) Bankruptcy. The following provisions shall apply if a Participating Manufacturer both enters Bankruptcy and at any time thereafter is not timely performing its financial obligations as required under this Agreement:

(1) In the event that both a number of Settling States equal to at least 75% of the total number of Settling States and Settling States having aggregate Allocable Shares equal to at least 75% of the total aggregate Allocable Shares assigned to all Settling States deem (by written notice to the Participating Manufacturers other than the bankrupt Participating Manufacturer) that the financial obligations of this Agreement have been terminated and rendered null and void as to such bankrupt Participating Manufacturer (except as provided in subsection (A) below) due to a material breach by such Participating Manufacturer, whereupon, with respect to all Settling States:

(A) all agreements, all concessions, all reductions of Releasing Parties' Claims, and all releases and covenants not to sue, contained in this Agreement shall be null and void as to such Participating Manufacturer. Provided, however, that (i) all reductions of Releasing Parties' Claims, and all releases and covenants not to sue, contained in this Agreement shall remain in full force and effect as to all persons or entities (other than the bankrupt Participating Manufacturer itself or any person or entity that, as a result of the Bankruptcy, obtains domestic tobacco assets of such

Participating Manufacturer (unless such person or entity is itself a Participating Manufacturer)) who (but for the first sentence of this subsection (A)) would otherwise be Released Parties by virtue of their relationship with the bankrupt Participating Manufacturer, and (ii) in the event a Settling State asserts any Released Claim against a bankrupt Participating Manufacturer after the termination of this Agreement with respect to such Participating Manufacturer as described in this subsection (1) and receives a judgment, settlement or distribution arising from such Released Claim, then the amount of any payments such Settling State has previously received from such Participating Manufacturer under this Agreement shall be applied against the amount of any such judgment, settlement or distribution (provided that in no event shall such Settling State be required to refund any payments previously received from such Participating Manufacturer pursuant to this Agreement);

(B) the Settling States shall have the right to assert any and all claims against such Participating Manufacturer in the Bankruptcy or otherwise without regard to any limits otherwise provided in this Agreement (subject to any and all defenses against such claims);

(C) the Settling States may exercise all rights provided under the federal Bankruptcy Code (or other applicable bankruptcy law) with respect to their Claims against such Participating Manufacturer, including the right to initiate and complete police and regulatory actions against such Participating Manufacturer pursuant to the exceptions to the automatic stay set forth in section 362(h) of the Bankruptcy Code (provided, however, that such Participating Manufacturer may contest whether the Settling State's action constitutes a police and regulatory action); and

(D) to the extent that any Settling State is pursuing a police and regulatory action against such Participating Manufacturer as described in subsection (1)(C), such Participating Manufacturer shall not request or support a request that the Bankruptcy court utilize the authority provided under section 105 of the Bankruptcy Code to impose a discretionary stay on the Settling State's action. The Participating Manufacturers further agree that they will not request, seek or support relief from the terms of this Agreement in any proceeding before any court of law (including the federal bankruptcy courts) or an administrative agency or through legislative action, including (without limitation) by way of joinder in or consent to or acquiescence in any such pleading or instrument filed by another

(2) Whether or not the Settling States exercise the option set forth in subsection (1) (and whether or not such option, if exercised, is valid and enforceable):

(A) In the event that the bankrupt Participating Manufacturer is an Original Participating Manufacturer, such Participating Manufacturer shall continue to be treated as an Original Participating Manufacturer for all purposes under this Agreement except (i) such Participating Manufacturer shall be treated as a Non-Participating Manufacturer (and not as an Original Participating Manufacturer or Participating Manufacturer) for all purposes with respect to subsections IX(d)(1), IX(d)(2) and IX(d)(3) (including, but not limited to, that the Market Share of such Participating Manufacturer shall not be included in Base Aggregate Participating Manufacturer Market Share or Actual Aggregate Participating Manufacturer Market Share, and that such Participating Manufacturer's volume shall not be included for any purpose under subsection IX(d)(1)(D)); (ii) such Participating Manufacturer's Market Share shall not be included as that of a Participating Manufacturer for the purpose of determining whether the trigger percentage specified in subsection IX(e) has been achieved (provided that such Participating Manufacturer shall be treated as an Original Participating Manufacturer for all other purposes with respect to such subsection); (iii) for purposes of subsection (B)(iii) of Exhibit E, such Participating Manufacturer shall continue to be treated as an Original Participating Manufacturer, but its operating income shall be recalculated by the Independent Auditor to reflect what such income would have been had such Participating Manufacturer made the payments that would have been due under this Agreement but for the Bankruptcy; (iv) for purposes of subsection XVIII(c), such Participating Manufacturer shall not be treated as an Original Participating Manufacturer or as a Participating Manufacturer to the extent that after entry into Bankruptcy it becomes the acquiror or transferee of Cigarette brands, Brand Names, Cigarette product formulas or Cigarette businesses of any Participating Manufacturer (provided that such Participating Manufacturer shall continue to be treated as an Original Participating Manufacturer and Participating Manufacturer for all other purposes under such subsection); and (v) as to any action that by the express terms of this Agreement requires the unanimous agreement of all Original Participating Manufacturers.

(B) In the event that the bankrupt Participating Manufacturer is a Subsequent Participating Manufacturer, such Participating Manufacturer shall continue to be treated as a Subsequent Participating Manufacturer for all purposes under this Agreement except (i) such Participating Manufacturer shall be treated as a Non-Participating Manufacturer (and not as a Subsequent Participating Manufacturer or Participating Manufacturer) for all purposes with respect to subsections IX(d)(1), (d)(2) and (d)(4) (including, but not limited to, that the Market Share of such Participating Manufacturer shall not be included in Base Aggregate Participating Manufacturer Market Share or Actual Aggregate Participating Manufacturer Market Share, and that such Participating Manufacturer's volume shall not be included for any purpose under subsection IX(d)(1)(D)); (ii) such Participating Manufacturer's Market Share shall not be included as that of a Participating Manufacturer for the purpose of determining whether the trigger percentage specified in subsection IX(e) has been achieved (provided that such Participating Manufacturer shall be treated as a Subsequent Participating Manufacturer for all other purposes with respect to such subsection); and (iii) for purposes of subsection XVIII(c), such Participating Manufacturer shall not be treated as a Subsequent Participating Manufacturer or as a Participating Manufacturer to the extent that after entry into Bankruptcy it becomes the acquiror or transferee of Cigarette brands, Brand Names, Cigarette product formulas or Cigarette businesses of any Participating Manufacturer (provided that such Participating Manufacturer shall



continue to be treated as a Subsequent Participating Manufacturer and Participating Manufacturer for all other purposes under such subsection).

(C) Revision of this Agreement pursuant to subsection XVIII(b)(2) shall not be required by virtue of any resolution on an involuntary basis in the Bankruptcy of Claims against the bankrupt Participating Manufacturer.

(x) Notice of Material Transfers. Each Participating Manufacturer shall provide notice to each Settling State at least 20 days before consummating a sale, transfer of title or other disposition, in one transaction or series of related transactions, of assets having a fair market value equal to five percent or more (determined in accordance with United States generally accepted accounting principles) of the consolidated assets of such Participating Manufacturer.

(y) Entire Agreement. This Agreement (together with any agreements expressly contemplated hereby and any other contemporaneous written agreements) embodies the entire agreement and understanding between and among the Settling States and the Participating Manufacturers relating to the subject matter hereof and supersedes (1) all prior agreements and understandings relating to such subject matter, whether written or oral, and (2) all purportedly contemporaneous oral agreements and understandings relating to such subject matter.

(z) Business Days. Any obligation hereunder that, under the terms of this Agreement, is to be performed on a day that is not a Business Day shall be performed on the first Business Day thereafter.

(aa) Subsequent Signatories. With respect to a Tobacco Product Manufacturer that signs this Agreement after the MSA Execution Date, the timing of obligations under this Agreement (other than payment obligations, which shall be governed by subsection II(jj)) shall be negotiated to provide for the institution of such obligations on a schedule not more favorable to such subsequent signatory than that applicable to the Original Participating Manufacturers.

(bb) Decimal Places. Any figure or percentage referred to in this Agreement shall be carried to seven decimal places.

(cc) Regulatory Authority. Nothing in section III of this Agreement is intended to affect the legislative or regulatory authority of any local or State government.

(dd) Successors. In the event that a Participating Manufacturer ceases selling a brand of Tobacco Products in the States that such Participating Manufacturer owned in the States prior to July 1, 1998, and an Affiliate of such Participating Manufacturer thereafter and after the MSA Execution Date intentionally sells such brand in the States, such Affiliate shall be considered to be the successor of such Participating Manufacturer with respect to such brand. Performance by any such successor of the obligations under this Agreement with respect to the sales of such brand shall be subject to court-ordered specific performance.

(ee) Export Packaging. Each Participating Manufacturer shall place a visible indication on each pack of Cigarettes it manufactures for sale outside of the fifty United States and the District of Columbia that distinguishes such pack from packs of Cigarettes it manufactures for sale in the fifty United States and the District of Columbia.

(ff) Actions Within Geographic Boundaries of Settling States. To the extent that any provision of this Agreement expressly prohibits, restricts, or requires any action to be taken "within" any Settling State or the Settling States, the relevant prohibition, restriction, or requirement applies within the geographic boundaries of the applicable Settling State or Settling States, including, but not limited to, Indian country or Indian trust land within such geographic boundaries.

(gg) Notice to Affiliates. Each Participating Manufacturer shall give notice of this Agreement to each of its Affiliates.

IN WITNESS WHEREOF, each Settling State and each Participating Manufacturer, through their fully authorized representatives, have agreed to this Agreement.

[Signatures Intentionally Omitted]

**EXHIBIT A**
**STATE ALLOCATION PERCENTAGES**

| State | Percentage |
|---|---|
| Alabama | 1.6161308% |
| Alaska | 0.3414187% |
| Arizona | 1.4738845% |
| Arkansas | 0.8280661% |
| California | 12.7639554% |
| Colorado | 1.3708614% |
| Connecticut | 1.8565373% |
| Delaware | 0.3954695% |
| DC | 0.6071183% |
| Florida | 0.0000000% |
| Georgia | 2.4544575% |
| Hawaii | 0.6018650% |
| Idaho | 0.3632632% |
| Illinois | 4.6542472% |
| Indiana | 2.0398033% |
| Iowa | 0.8696670% |
| Kansas | 0.8336712% |
| Kentucky | 1.7611586% |
| Louisiana | 2.2553531% |
| Maine | 0.7693505% |
| Maryland | 2.2604570% |
| Massachusetts | 4.0389790% |
| Michigan | 4.3519476% |
| Minnesota | 0.0000000% |
| Mississippi | 0.0000000% |
| Missouri | 2.2746011% |
| Montana | 0.4247591% |
| Nebraska | 0.5949833% |
| Nevada | 0.6099351% |
| New Hampshire | 0.6659340% |
| New Jersey | 3.8669963% |
| New Mexico | 0.5963897% |
| New York | 12.7620310% |
| North Carolina | 2.3322850% |
| North Dakota | 0.3660138% |
| Ohio | 5.0375098% |
| Oklahoma | 1.0361370% |
| Oregon | 1.1476582% |
| Pennsylvania | 5.7468588% |
| Rhode Island | 0.7189054% |
| South Carolina | 1.1763519% |
| South Dakota | 0.3489458% |
| Tennessee | 2.4408945% |
| Texas | 0.0000000% |
| Utah | 0.4488869% |
| Vermont | 0.4111851% |
| Virginia | 2.0447451% |
| Washington | 2.0532582% |
| West Virginia | 0.8864604% |
| Wisconsin | 2.0720390% |
| Wyoming | 0.2483449% |
| | |
| American Samoa | 0.0152170% |
| N. Mariana Isld. | 0.0084376% |
| Guam | 0.0219371% |
| U.S. Virgin Isld. | 0.0173593% |
| Puerto Rico | 1.1212774% |
| | |
| Total | 100.0000000% |



**EXHIBIT B**
**FORM OF ESCROW AGREEMENT**

This Escrow Agreement is entered into as of _____ _____, 1998 by the undersigned State officials (on behalf of their respective Settling States), the undersigned Participating Manufacturers and _____ as escrow agent (the "Escrow Agent").

WITNESSETH:

WHEREAS, the Settling States and the Participating Manufacturers have entered into a settlement agreement entitled the "Master Settlement Agreement" (the "Agreement"); and

WHEREAS, the Agreement requires the Settling States and the Participating Manufacturers to enter into this Escrow Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1. *Appointment of Escrow Agent.*

The Settling States and the Participating Manufacturers hereby appoint _____ to serve as Escrow Agent under this Agreement on the terms and conditions set forth herein, and the Escrow Agent, by its execution hereof, hereby accepts such appointment and agrees to perform the duties and obligations of the Escrow Agent set forth herein. The Settling States and the Participating Manufacturers agree that the Escrow Agent appointed under the terms of this Escrow Agreement shall be the Escrow Agent as defined in, and for all purposes of, the Agreement.

SECTION 2. *Definitions.*

(a) Capitalized terms used in this Escrow Agreement and not otherwise defined herein shall have the meaning given to such terms in the Agreement.

(b) "Escrow Court" means the court of the State of New York to which the Agreement is presented for approval, or such other court as agreed to by the Original Participating Manufacturers and a majority of those Attorneys General who are both the Attorney General of a Settling State and a member of the NAAG executive committee at the time in question.

SECTION 3. *Escrow and Accounts.*

(a) All funds received by the Escrow Agent pursuant to the terms of the Agreement shall be held and disbursed in accordance with the terms of this Escrow Agreement. Such funds and any earnings thereon shall constitute the "Escrow" and shall be held by the Escrow Agent separate and apart from all other funds and accounts of the Escrow Agent, the Settling States and the Participating Manufacturers.

(b) The Escrow Agent shall allocate the Escrow among the following separate accounts (each an "Account" and collectively the "Accounts"):

SUBSECTION VI(B) ACCOUNT
SUBSECTION VI(C) ACCOUNT (FIRST)
SUBSECTION VI(C) ACCOUNT (SUBSEQUENT)
SUBSECTION VIII(B) ACCOUNT
SUBSECTION VIII(C) ACCOUNT
SUBSECTION IX(B) ACCOUNT (FIRST)
SUBSECTION IX(B) ACCOUNT (SUBSEQUENT)
SUBSECTION IX(C)(1) ACCOUNT
SUBSECTION IX(C)(2) ACCOUNT
SUBSECTION IX(E) ACCOUNT
DISPUTED PAYMENTS ACCOUNT
STATE-SPECIFIC ACCOUNTS WITH RESPECT TO EACH SETTLING STATE IN WHICH STATE-SPECIFIC FINALITY OCCURS

(c) All amounts credited to an Account shall be retained in such Account until disbursed therefrom in accordance with the provisions of this Escrow Agreement pursuant to (i) written instructions from the Independent Auditor; or (ii) written instructions from all of the following: all of the Original Participating Manufacturers; all of the Subsequent Participating Manufacturers that contributed to such amounts in such Account; and all of the Settling States (collectively, the "Escrow Parties"). In the event of a conflict, instructions pursuant to clause (ii) shall govern over instructions pursuant to clause (i).

(d) On the first Business Day after the date any payment is due under the Agreement, the Escrow Agent shall deliver to each other Notice Party a written statement showing the amount of such payment (or indicating that no payment was made, if such is the case), the source of such payment, the Account or Accounts to which such payment has been

credited, and the payment instructions received by the Escrow Agent from the Independent Auditor with respect to such payment.

(e) The Escrow Agent shall comply with all payment instructions received from the Independent Auditor unless before 11:00 a.m. (New York City time) on the scheduled date of payment it receives written instructions to the contrary from all of the Escrow Parties, in which event it shall comply with such instructions.

(f) On the first Business Day after disbursing any funds from an Account, the Escrow Agent shall deliver to each other Notice Party a written statement showing the amount disbursed, the date of such disbursement and the payee of the disbursed funds.

SECTION 4. *Failure of Escrow Agent to Receive Instructions.*

In the event that the Escrow Agent fails to receive any written instructions contemplated by this Escrow Agreement, the Escrow Agent shall be fully protected in refraining from taking any action required under any section of this Escrow Agreement other than Section 5 until such written instructions are received by the Escrow Agent.

SECTION 5. *Investment of Funds by Escrow Agent.*

The Escrow Agent shall invest and reinvest all amounts from time to time credited to the Accounts in either (i) direct obligations of, or obligations the principal and interest on which are unconditionally guaranteed by, the United States of America, (ii) repurchase agreements fully collateralized by securities described in clause (i) above; (iii) money market accounts maturing within 30 days of the acquisition thereof and issued by a bank or trust company organized under the laws of the United States of America or of any of the 50 States thereof (a "United States Bank") and having combined capital, surplus and undistributed profits in excess of $500,000,000; or (iv) demand deposits with any United States Bank having combined capital, surplus and undistributed profits in excess of $500,000,000. To the extent practicable, monies credited to any Account shall be invested in such a manner so as to be available for use at the times when monies are expected to be disbursed by the Escrow Agent and charged to such Account. Obligations purchased as an investment of monies credited to any Account shall be deemed at all times to be a part of such Account and the income or interest earned, profits realized or losses suffered with respect to such investments (including, without limitation, any penalty for any liquidation of an investment required to fund a disbursement to be charged to such Account), shall be credited or charged, as the case may be, to such Account and shall be for the benefit of, or be borne by, the person or entity entitled to payment from such Account. In choosing among the investment options described in clauses (i) through (iv) above, the Escrow Agent shall comply with any instructions received from time to time from all of the Escrow Parties. In the absence of such instructions, the Escrow Agent shall invest such sums in accordance with clause (i) above. With respect to any amounts credited to a State-Specific Account, the Escrow Agent shall invest and reinvest all amounts credited to such Account in accordance with the law of the applicable Settling State to the extent such law is inconsistent with this Section 5.

SECTION 6. *Substitute Form W-9; Qualified Settlement Fund.*

Each signatory to this Escrow Agreement shall provide the Escrow Agent with a correct taxpayer identification number on a substitute Form W-9 or if it does not have such a number, a statement evidencing its status as an entity exempt from back-up withholding, within 30 days of the date hereof (and, if it supplies a Form W-9, indicate thereon that it is not subject to backup withholding). The escrow established pursuant to this Escrow Agreement is intended to be treated as a Qualified Settlement Fund for federal tax purposes pursuant to Treas. Reg. § 1.468B-1. The Escrow Agent shall comply with all applicable tax filing, payment and reporting requirements, including, without limitation, those imposed under Treas. Reg. § 1.468B, and if requested to do so shall join in the making of the relation-back election under such regulation.

SECTION 7. *Duties and Liabilities of Escrow Agent.*

The Escrow Agent shall have no duty or obligation hereunder other than to take such specific actions as are required of it from time to time under the provisions of this Escrow Agreement, and it shall incur no liability hereunder or in connection herewith for anything whatsoever other than any liability resulting from its own gross negligence or willful misconduct. The Escrow Agent shall not be bound in any way by any agreement or contract between the Participating Manufacturers and the Settling States (whether or not the Escrow Agent has knowledge thereof) other than this Escrow Agreement, and the only duties and responsibilities of the Escrow Agent shall be the duties and obligations specifically set forth in this Escrow Agreement.

SECTION 8. *Indemnification of Escrow Agent.*

The Participating Manufacturers shall indemnify, hold harmless and defend the Escrow Agent from and against any and all losses, claims, liabilities and reasonable expenses, including the reasonable fees of its counsel, which it may suffer or incur in connection with the performance of its duties and obligations under this Escrow Agreement, except for those losses, claims, liabilities and expenses resulting solely and directly from its own gross negligence or willful misconduct.

SECTION 9. *Resignation of Escrow Agent.*

The Escrow Agent may resign at any time by giving written notice thereof to the other parties hereto, but such resignation shall not become effective until a successor Escrow Agent, selected by the Original Participating Manufacturers and the Settling States, shall have been appointed and shall have accepted such appointment in writing. If an instrument of acceptance by a successor Escrow Agent shall not have been delivered to the resigning Escrow Agent within 90 days after the giving of such notice of resignation, the resigning Escrow Agent may, at the expense of the Participating Manufacturers (to



be shared according to their pro rata Market Shares), petition the Escrow Court for the appointment of a successor Escrow Agent.

SECTION 10. *Escrow Agent Fees and Expenses.*

The Participating Manufacturers shall pay to the Escrow Agent its fees as set forth in Appendix A hereto as amended from time to time by agreement of the Original Participating Manufacturers and the Escrow Agent. The Participating Manufacturers shall pay to the Escrow Agent its reasonable fees and expenses, including all reasonable expenses, charges, counsel fees, and other disbursements incurred by it or by its attorneys, agents and employees in the performance of its duties and obligations under this Escrow Agreement. Such fees and expenses shall be shared by the Participating Manufacturers according to their pro rata Market Shares.

SECTION 11. *Notices.*

All notices, written instructions or other communications to any party or other person hereunder shall be given in the same manner as, shall be given to the same person as, and shall be effective at the same time as provided in subsection XVIII(k) of the Agreement.

SECTION 12. *Setoff, Reimbursement.*

The Escrow Agent acknowledges that it shall not be entitled to set off against any funds in, or payable from, any Account to satisfy any liability of any Participating Manufacturer. Each Participating Manufacturer that pays more than its pro rata Market Share of any payment that is made by the Participating Manufacturers to the Escrow Agent pursuant to Section 8, 9 or 10 hereof shall be entitled to reimbursement of such excess from the other Participating Manufacturers according to their pro rata Market Shares of such excess.

SECTION 13. *Intended Beneficiaries, Successors.*

No persons or entities other than the Settling States, the Participating Manufacturers and the Escrow Agent are intended beneficiaries of this Escrow Agreement, and only the Settling States, the Participating Manufacturers and the Escrow Agent shall be entitled to enforce the terms of this Escrow Agreement. Pursuant to the Agreement, the Settling States have designated NAAG and the Foundation as recipients of certain payments; for all purposes of this Escrow Agreement, the Settling States shall be the beneficiaries of such payments entitled to enforce payment thereof. The provisions of this Escrow Agreement shall be binding upon and inure to the benefit of the parties hereto and, in the case of the Escrow Agent and Participating Manufacturers, their respective successors. Each reference herein to the Escrow Agent or to a Participating Manufacturer shall be construed as a reference to its successor, where applicable.

SECTION 14. *Governing Law.*

This Escrow Agreement shall be construed in accordance with and governed by the laws of the State in which the Escrow Court is located, without regard to the conflicts of law rules of such state.

SECTION 15. *Jurisdiction and Venue.*

The parties hereto irrevocably and unconditionally submit to the continuing exclusive jurisdiction of the Escrow Court for purposes of any suit, action or proceeding seeking to interpret or enforce any provision of, or based on any right arising out of, this Escrow Agreement, and the parties hereto agree not to commence any such suit, action or proceeding except in the Escrow Court. The parties hereto hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding in the Escrow Court and hereby further irrevocably waive and agree not to plead or claim in the Escrow Court that any such suit, action or proceeding has been brought in an inconvenient forum.

SECTION 16. *Amendments.*

This Escrow Agreement may be amended only by written instrument executed by all of the parties hereto that would be affected by the amendment. The waiver of any rights conferred hereunder shall be effective only if made in a written instrument executed by the waiving party. The waiver by any party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Escrow Agreement, nor shall such waiver be deemed to be or construed as a waiver by any other party.

SECTION 17. *Counterparts.*

This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Delivery by facsimile of a signed counterpart shall be deemed delivery for purposes of acknowledging acceptance hereof; however, an original executed Escrow Agreement must promptly thereafter be delivered to each party.

SECTION 18. *Captions.*

The captions herein are included for convenience of reference only and shall be ignored in the construction and interpretation hereof.

SECTION 19. *Conditions to Effectiveness.*

This Escrow Agreement shall become effective when each party hereto shall have signed a counterpart hereof. The parties hereto agree to use their best efforts to seek an order of the Escrow Court approving, and retaining continuing jurisdiction over, the Escrow Agreement as soon as possible, and agree that such order shall relate back to, and be deemed effective as of, the date this Escrow Agreement became effective.

SECTION 20. *Address for Payments.*

Whenever funds are under the terms of this Escrow Agreement required to be disbursed to a Settling State, a Participating Manufacturer, NAAG or the Foundation, the Escrow Agent shall disburse such funds by wire transfer to the account specified by such payee by written notice delivered to all Notice Parties in accordance with Section 11 hereof at least five Business Days prior to the date of payment. Whenever funds are under the terms of this Escrow Agreement required to be disbursed to any other person or entity, the Escrow Agent shall disburse such funds to such account as shall have been specified in writing by the Independent Auditor for such payment at least five Business Days prior to the date of payment.

SECTION 21. *Reporting.*

The Escrow Agent shall provide such information and reporting with respect to the escrow as the Independent Auditor may from time to time request.

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement as of the day and year first hereinabove written.

[Signature Blocks]



**Appendix A**

**Schedule Of Fees And Expenses**

**EXHIBIT C**

**FORMULA FOR CALCULATING INFLATION ADJUSTMENTS**

(1) Any amount that, in any given year, is to be adjustedfor inflation pursuant to this Exhibit (the "Base Amount") shall be adjusted upward by adding to such Base Amount the Inflation Adjustment.

(2) The Inflation Adjustment shall be calculated by multiplying the Base Amount by the Inflation Adjustment Percentage applicable in that year.

(3) The Inflation Adjustment Percentage applicable to payments due in the year 2000 shall be equal to the greater of 3% or the CPI%. For example, if the Consumer Price Index for December 1999 (as released in January 2000) is 2% higher than the Consumer Price Index for December 1998 (as released in January 1999), then the CPI% with respect to a payment due in 2000 would be 2%. The Inflation Adjustment Percentage applicable in the year 2000 would thus be 3%.

(4) The Inflation Adjustment Percentage applicable to payments due in any year after 2000 shall be calculated by applying each year the greater of 3% or the CPI% on the Inflation Adjustment Percentage applicable to payments due in the prior year. Continuing the example in subsection (3) above, if the CPI% with respect to a payment due in 2001 is 6%, then the Inflation Adjustment Percentage applicable in 2001 would be 9.1800000% (an additional 6% applied on the 3% Inflation Adjustment Percentage applicable in 2000), and if the CPI% with respect to a payment due in 2002 is 4%, then the Inflation Adjustment Percentage applicable in 2002 would be 13.5472000% (an additional 4% applied on the 9.1800000% Inflation Adjustment Percentage applicable in 2001).

(5) "Consumer Price Index" means the Consumer Price Index for All Urban Consumers as published by the Bureau of Labor Statistics of the U.S. Department of Labor (or other similar measures agreed to by the Settling States and the Participating Manufacturers).

(6) The "CPI%" means the actual total percent change in the Consumer Price Index during the calendar year immediately preceding the year in which the payment in question is due.

(7) Additional Examples.

(A) Calculating the Inflation Adjustment Percentages:

| Payment Year | Hypothetical CPI% | Percentage to be applied on the Inflation Adjustment Percentage for the prior year (i.e., the greater of 3% or the CPI%) | Inflation Adjustment Percentage |
|---|---|---|---|
| 2000 | 2.4% | 3.0% | 3.0000000% |
| 2001 | 2.1% | 3.0% | 6.0900000% |
| 2002 | 3.5% | 3.5% | 9.8031500% |
| 2003 | 3.5% | 3.5% | 13.6462603% |
| 2004 | 4.0% | 4.0% | 18.1921107% |
| 2005 | 2.2% | 3.0% | 21.7378740% |
| 2006 | 1.6% | 3.0% | 25.3900102% |

(B) Applying the Inflation Adjustment.

Using the hypothetical Inflation Adjustment Percentages set forth in section (7)(A):

-- the subsection IX(c)(1) base payment amount for 2002 of $6,500,000,000 as adjusted for inflation would equal $7,137,204,750;

-- the subsection IX(c)(1) base payment amount for 2004 of $8,000,000,000 as adjusted for inflation would equal $9,455,368,856;

-- the subsection IX(c)(1) base payment amount for 2006 of $8,000,000,000 as adjusted for inflation would equal $10,031,200,816.



**EXHIBIT D**

**LIST OF LAWSUITS**

1. Alabama
*Blaylock et al. v. American Tobacco Co. et al.*,
Circuit Court, Montgomery County, No. CV-96-1508-PR

2. Alaska
*State of Alaska v. Philip Morris, Inc., et al.*, Superior Court, First Judicial District of Juneau, No. IJU-97915 CI (Alaska)

3. Arizona
*State of Arizona v. American Tobacco Co., Inc., et al.*, Superior Court, Maricopa County, No. CV-96-14769 (Ariz.)

4. Arkansas
*State of Arkansas v. The American Tobacco Co., Inc., et al.*, Chancery Court, 6th Division, Pulaski County, No. IJ 97-2982 (Ark.)

5. California
*People of the State of California et al. v. Philip Morris, Inc., et al.*, Superior Court, Sacramento County, No. 97-AS-30301

6. Colorado
*State of Colorado et al., v. R.J. Reynolds Tobacco Co., et al.*, District Court, City and County of Denver, No. 97CV3432 (Colo.)

7. Connecticut
*State of Connecticut v. Philip Morris, et al.*, Superior Court, Judicial District of Waterbury No. X02 CV96-0148414S (Conn.)

8. Georgia
*State of Georgia et al. v. Philip Morris, Inc., et al.*, Superior Court, Fulton County, No. CA E-61692 (Ga.)

9. Hawaii
*State of Hawaii v. Brown & Williamson Tobacco Corp., et al.*, Circuit Court, First Circuit, No. 97-0441-01 (Haw.)

10. Idaho
*State of Idaho v. Philip Morris, Inc., et al.*, Fourth Judicial District, Ada County, No. CVOC 9703239D (Idaho)

11. Illinois
*People of the State of Illinois v. Philip Morris et al.*, Circuit Court of Cook County, No. 96-L13146 (Ill.)

12. Indiana
*State of Indiana v. Philip Morris, Inc., et al.*, Marion County Superior Court, No. 49D 07-9702-CT-000236 (Ind.)

13. Iowa
*State of Iowa v. R.J. Reynolds Tobacco Company et al.*, Iowa District Court, Fifth Judicial District, Polk County, No. CL71048 (Iowa)

14. Kansas
*State of Kansas v. R.J. Reynolds Tobacco Company, et al.*, District Court of Shawnee County, Division 2, No. 96-CV-919 (Kan.)

15. Louisiana
*Ieyoub v. The American Tobacco Company, et al.*, 14th Judicial District Court, Calcasieu Parish, No. 96-1209 (La.)

16. Maine
*State of Maine v. Philip Morris, Inc., et al.*, Superior Court, Kennebec County, No. CV 97-134 (Me.)

17. Maryland
*Maryland v. Philip Morris Incorporated, et al.*, Baltimore City Circuit Court, No. 96-122017-CL211487 (Md.)

18. Massachusetts
*Commonwealth of Massachusetts v. Philip Morris Inc., et al.*, Middlesex Superior Court, No. 95-7378 (Mass.)

19. Michigan
*Kelley v. Philip Morris Incorporated, et al.*, Ingham County Circuit Court, 30th Judicial Circuit, No. 96-84281-CZ (Mich.)

20. Missouri
*State of Missouri v. American Tobacco Co., Inc., et al.*, Circuit Court, City of St. Louis, No. 972-1465 (Mo.)

21. Montana
*State of Montana v. Philip Morris, Inc., et al.*, First Judicial Court, Lewis and Clark County, No. CDV 9700306-14 (Mont.)

22. Nebraska
*State of Nebraska v. R.J. Reynolds Tobacco Co., et al.*, District Court, Lancaster County, No. 571277 (Neb.)

23. Nevada
*Nevada v. Philip Morris, Incorporated, et al.*, Second Judicial Court, Washoe County, No. CV97-03279 (Nev.)

24. New Hampshire
*New Hampshire v. R.J. Reynolds, Tobacco Co., et al.*, New Hampshire Superior Court, Merrimack County, No. 97-E-165 (N.H.)

25. New Jersey
*State of New Jersey v. R.J. Reynolds Tobacco Company, et al.*, Superior Court, Chancery Division, Middlesex County, No. C-254-96 (N.J.)

26. New Mexico
*State of New Mexico, v. The American Tobacco Co., et al.*, First Judicial District Court, County of Santa Fe, No. SF-1235 c (N.M.)

27. New York State
*State of New York et al. v. Philip Morris, Inc., et al.*, Supreme Court of the State of New York, County of New York, No. 400361/97 (N.Y.)

28. Ohio
*State of Ohio v. Philip Morris, Inc., et al.*, Court of Common Pleas, Franklin County, No. 97CVH055114 (Ohio)

29. Oklahoma
*State of Oklahoma, et al. v. R.J. Reynolds Tobacco Company, et al.*, District Court, Cleveland County, No. CJ-96-1499-L (Okla.)

30. Oregon
*State of Oregon v. The American Tobacco Co., et al.*, Circuit Court, Multnomah County, No. 9706-04457 (Or.)

31. Pennsylvania
*Commonwealth of Pennsylvania v. Philip Morris, Inc., et al.*, Court of Common Pleas, Philadelphia County, April Term 1997, No. 2443

32. Puerto Rico
*Rossello, et al. v. Brown & Williamson Tobacco Corporation, et al.*, U.S. District Court, Puerto Rico, No. 97-1910JAF

33. Rhode Island
*State of Rhode Island v. American Tobacco Co., et al.*, Rhode Island Superior Court, Providence, No. 97-3058 (R.I.)

34. South Carolina
*State of South Carolina v. Brown & Williamson Tobacco Corporation, et al.*, Court of Common Pleas, Fifth Judicial Circuit, Richland County, No. 97-CP-40-1686 (S.C.)

35. South Dakota
*State of South Dakota, et al. v. Philip Morris, Inc., et al.*, Circuit Court, Hughes County, Sixth Judicial Circuit, No. 98-65 (S.D.)

36. Utah
*State of Utah v. R.J. Reynolds Tobacco Company, et al.*, U.S. District Court, Central Division, No. 96 CV 0829W (Utah)

37. Vermont
*State of Vermont v. Philip Morris, Inc., et al.*, Chittenden Superior Court, Chittenden County, No. 744-97 (Vt.) and 5816-98 (Vt.)

38. Washington
*State of Washington v. American Tobacco Co. Inc., et al.*, Superior Court of Washington, King County, No. 96-2-15056085EA (Wash.)

39. West Virginia
*McGraw, et al. v. The American Tobacco Company, et al.*, Kanawha County Circuit Court, No. 94-1707 (W.Va.)

40. Wisconsin
*State of Wisconsin v. Philip Morris Inc., et al.*, Circuit Court, Branch 11, Dane County, No. 97-CV-328 (Wis.)

Additional States

For each Settling State not listed above, the lawsuit or other legal action filed by the Attorney General or Governor of such Settling State against *Participating* Manufacturers in the Court in such Settling State prior to 30 days after the MSA Execution Date asserting Released Claims.



## EXHIBIT E
## FORMULA FOR CALCULATING VOLUME ADJUSTMENTS

Any amount that by the terms of the Master Settlement Agreement is to be adjusted pursuant to this Exhibit E (the "Applicable Base Payment") shall be adjusted in the following manner:

(A) In the event the aggregate number of Cigarettes shipped in or to the fifty United States, the District of Columbia, and Puerto Rico by the Original Participating Manufacturers in the Applicable Year (as defined hereinbelow) (the "Actual Volume") is greater than 475,656,000,000 Cigarettes (the "Base Volume"), the Applicable Base Payment shall be multiplied by the ratio of the Actual Volume to the Base Volume.

(B) In the event the Actual Volume is less than the Base Volume,

i. The Applicable Base Payment shall be reduced by subtracting from it the amount equal to such Applicable Base Payment multiplied both by 0.98 and by the result of (i) 1(one) minus (ii) the ratio of the Actual Volume to the Base Volume.

ii. Solely for purposes of calculating volume adjustments to the payments required under subsection IX(c)(1), if a reduction of the Base Payment due under such subsection results from the application of subparagraph (B)(i) of this Exhibit E, but the Original Participating Manufacturers' aggregate operating income from sales of Cigarettes for the Applicable Year in the fifty United States, the District of Columbia, and Puerto Rico (the "Actual Operating Income") is greater than $7,195,340,000 (the "Base Operating Income") (such Base Operating Income being adjusted upward in accordance with the formula for inflation adjustments set forth in Exhibit C hereto beginning December 31, 1996 to be applied for each year after 1996) then the amount by which such Base Payment is reduced by the application of subsection (B)(i) shall be reduced (but not below zero) by the amount calculated by multiplying (i) a percentage equal to the aggregate Allocable Shares of the Settling States in which State-Specific Finality has occurred by (ii) 25% of such increase in such operating income. For purposes of this Exhibit E, "operating income from sales of Cigarettes" shall mean operating income from sales of Cigarettes in the fifty United States, the District of Columbia, and Puerto Rico: (a)before goodwill amortization, trademark amortization, restructuring charges and restructuring related charges, minority interest, net interest expense, non-operating income and expense, general corporate expenses and income taxes; and (b)excluding extraordinary items, cumulative effect of changes in method of accounting and discontinued operations -- all as such income is reported to the United States Securities and Exchange Commission ("SEC") for the Applicable Year (either independently by the Participating Manufacturer or as part of consolidated financial statements reported to the SEC by an Affiliate of such Participating Manufacturer) or, in the case of an Original Participating Manufacturer that does not report income to the SEC, as reported in financial statements prepared in accordance with U.S. generally accepted accounting principles and audited by a nationally recognized accounting firm. For years subsequent to 1998, the determination of the Original Participating Manufacturers' aggregate operating income from sales of Cigarettes shall not exclude any charges or expenses incurred or accrued in connection with this Agreement or any prior settlement of a tobacco and health case and shall otherwise be derived using the same principles as were employed in deriving such Original Participating Manufacturers' aggregate operating income from sales of Cigarettes in 1996.

iii. Any increase in a Base Payment pursuant to subsection (B)(ii) above shall be allocated among the Original Participating Manufacturers in the following manner:

(1) only to those Original Participating Manufacturers whose operating income from sales of Cigarettes in the fifty United States, the District of Columbia and Puerto Rico for the year for which the Base Payment is being adjusted is greater than their respective operating income from such sales of Cigarettes (including operating income from such sales of any of their Affiliates that do not continue to have such sales after the MSA Execution Date) in 1996 (as increased for inflation as provided in Exhibit C hereto beginning December 31, 1996 to be applied for each year after 1996); and

(2) among the Original Participating Manufacturers described in paragraph (1) above in proportion to the ratio of (x) the increase in the operating income from sales of Cigarettes (as described in paragraph (1)) of the Original Participating Manufacturer in question, to (y) the aggregate increase in the operating income from sales of Cigarettes (as described in paragraph (1)) of those Original Participating Manufacturers described in paragraph (1) above.

(C) "Applicable Year" means the calendar year immediately preceding the year in which the payment at issue is due, regardless of when such payment is made.

(D) For purposes of this Exhibit, shipments shall be measured as provided in subsection II(mm).

## EXHIBIT F
## POTENTIAL LEGISLATION NOT TO BE OPPOSED

1. Limitations on Youth access to vending machines.
2. Inclusion of cigars within the definition of tobacco products.
3. Enhancement of enforcement efforts to identify and prosecute violations of laws prohibiting retail sales to Youth.
4. Encouraging or supporting use of technology to increase effectiveness of age-of-purchase laws, such as, without limitation, the use of programmable scanners, scanners to read drivers' licenses, or use of other age/ID data banks.
5. Limitations on promotional programs for non-tobacco goods using tobacco products as prizes or give-aways.
6. Enforcement of access restrictions through penalties on Youth for possession or use.
7. Limitations on tobacco product advertising in or on school facilities, or wearing of tobacco logo merchandise in or on school property.
8. Limitations on non-tobacco products which are designed to look like tobacco products, such as bubble gum cigars, candy cigarettes, etc.



## EXHIBIT G
## OBLIGATIONS OF THE TOBACCO INSTITUTE UNDER THE MASTER SETTLEMENT AGREEMENT

(a) Upon court approval of a plan of dissolution The Tobacco Institute ("TI") will

(1) Employees. Promptly notify and arrange for the termination of the employment of all employees; provided, however, that TI may continue to engage any employee who is (A) essential to the wind-down function as set forth in section (g) herein; (B) reasonably needed for the sole purpose of directing and supporting TI's defense of ongoing litigation; or (C) reasonably needed for the sole purpose of performing the Tobacco Institute Testing Laboratory's (the "TITL") industry-wide cigarette testing pursuant to the Federal Trade Commission (the "FTC") method or any other testing prescribed by state or federal law as set forth in section (h) herein.

(2) Employee Benefits. Fund all employee benefit and pension programs; provided, however, that unless ERISA or other federal or state law prohibits it, such funding will be accomplished through periodic contributions by the Original Participating Manufacturers, according to their Relative Market Shares, into a trust or a like mechanism, which trust or like mechanism will be established within 90 days of court approval of the plan of dissolution. An opinion letter will be appended to the dissolution plan to certify that the trust plan is not inconsistent with ERISA or employee benefit pension contracts.

(3) Leases. Terminate all leaseholds at the earliest possible date pursuant to the leases; provided, however, that TI may retain or lease anew such space (or lease other space) as needed for its wind-down activities, for TITL testing as described herein, and for subsequent litigation defense activities. Immediately upon execution of this Agreement, TI will provide notice to each of its landlords of its desire to terminate its lease with such landlord, and will request that the landlord take all steps to re-lease the premises at the earliest possible date consistent with TI's performance of its obligations hereunder. TI will vacate such leasehold premises as soon as they are re-leased or on the last day of wind-down, whichever occurs first.

(b) Assets/Debts. Within 60 days after court approval of a plan of dissolution, TI will provide to the Attorney General of New York and append to the dissolution plan a description of all of its assets, its debts, tax claims against it, claims of state and federal governments against it, creditor claims against it, pending litigation in which it is a party and notices of claims against it.

(c) Documents. Subject to the privacy protections provided by New York Public Officers Law §§ 91-99, TI will provide a copy of or otherwise make available to the State of New York all documents in its possession, excluding those that TI continues to claim to be subject to any attorney-client privilege, attorney work product protection, common interest/joint defense privilege or any other applicable privilege (collectively, "privilege") after the re-examination of privilege claims pursuant to court order in State of Oklahoma v. R.J. Reynolds Tobacco Company, et al., CJ-96-2499-L (Dist. Ct., Cleveland County) (the "Oklahoma action").

(1) TI will deliver to the Attorney General of the State of New York a copy of the privilege log served by it in the Oklahoma action. Upon a written request by the Attorney General, TI will deliver an updated version of its privilege log, if any such updated version exists.

(2) The disclosure of any document or documents claimed to be privileged will be governed by section IV of this Agreement.

(3) At the conclusion of the document production and privilege logging process, TI will provide a sworn affidavit that all documents in its possession have been made available to the Attorney General of New York except for documents claimed to be privileged, and that any privilege logs that already exist have been made available to the Attorney General.

(d) Remaining Assets. On mutual agreement between TI and the Attorney General of New York, a not-for-profit health or child welfare organization will be named as the beneficiary of any TI assets that remain after lawful transfers of assets and satisfaction of TI's employee benefit obligations and any other debts, liabilities or claims.

(e) Defense of Litigation. Pursuant to Section 1006 of the New York Not-for-Profit Corporations Law, TI will have the right to continue to defend its litigation interests with respect to any claims against it that are pending or threatened now or that are brought or threatened in the future. TI will retain sole discretion over all litigation decisions, including, without limitation, decisions with respect to asserting any privileges or defenses, having privileged communications and creating privileged documents, filing pleadings, responding to discovery requests, making motions, filing affidavits and briefs, conducting party and non-party discovery, retaining expert witnesses and consultants, preparing for and defending itself at trial, settling any claims asserted against it, intervening or otherwise participating in litigation to protect interests that it deems significant to its defense, and otherwise directing or conducting its defense. Pursuant to existing joint defense agreements, TI may continue to assist its current or former members in defense of any litigation brought or threatened against them. TI also may enter into any new joint defense agreement or agreements that it deems significant to its defense of pending or threatened claims. TI may continue to engage such employees as reasonably needed for the sole purpose of directing and supporting its defense of ongoing litigation. As soon as TI has no litigation pending against it, it will dissolve completely and will cease all functions consistent with the requirements of law.

(f) No public statement. Except as necessary in the course of litigation defense as set forth in section (e) above, upon court approval of a plan of dissolution, neither TI nor any of its employees or agents acting in their official capacity on behalf of TI will issue any statements, press releases, or other public statement concerning tobacco.

(g) Wind-down. After court approval of a plan of dissolution, TI will effectuate wind-down of all activities (other than its defense of litigation as described in section (e) above) expeditiously, and in no event later than 180 days after the date of court approval of the plan of dissolution. TI will provide monthly status reports to the Attorney General of New York regarding the progress of wind-down efforts and work remaining to be done with respect to such efforts.

(h) TITI. Notwithstanding any other provision of this Exhibit G or the dissolution plan, TI may perform TITI industry-wide cigarette testing pursuant to the FTC method or any other testing prescribed by state or federal law until such function is transferred to another entity, which transfer will be accomplished as soon as practicable but in no event more than 180 days after court approval of the dissolution plan.

(i) Jurisdiction. After the filing of a Certificate of Dissolution, pursuant to Section 1004 of the New York Not-for-Profit Corporation Law, the Supreme Court for the State of New York will have continuing jurisdiction over the dissolution of TI and the winding-down of TI's activities, including any litigation-related activities described in subsection (e) herein.

(j) No Determination or Admission. The dissolution of TI and any proceedings taken hereunder are not intended to be and shall not in any event be construed as, deemed to be, or represented or caused to be represented by any Settling State as, an admission or concession or evidence of any liability or any wrongdoing whatsoever on the part of TI, any of its current or former members or anyone acting on their behalf. TI specifically disclaims and denies any liability or wrongdoing whatsoever with respect to the claims and allegations asserted against it by the Attorneys General of the Settling States.

(k) Court Approval. The Attorney General of the State of New York and the Original Participating Manufacturers will prepare a joint plan of dissolution for submission to the Supreme Court of the State of New York, all of the terms of which will be agreed on and consented to by the Attorney General and the Original Participating Manufacturers consistent with this schedule. The Original Participating Manufacturers and their employees, as officers and directors of TI, will take whatever steps are necessary to execute all documents needed to develop such a plan of dissolution and to submit it to the court for approval. If any court makes any material change to any term or provision of the plan of dissolution agreed upon and consented to by the Attorney General and the Original Participating Manufacturers, then:

(1) the Original Participating Manufacturers may, at their election, nevertheless proceed with the dissolution plan as modified by the court; or

(2) if the Original Participating Manufacturers elect not to proceed with the court-modified dissolution plan, the Original Participating Manufacturers will be released from any obligations or undertakings under this Agreement or this schedule with respect to TI; provided, however, that the Original Participating Manufacturers will engage in good faith negotiations with the New York Attorney General to agree upon the term or terms of the dissolution plan that the court may have modified in an effort to agree upon a dissolution plan that may be resubmitted for the court's consideration.



## EXHIBIT H
## DOCUMENT PRODUCTION

Section 1.

(a) Philip Morris Companies, Inc., et al., v. American Broadcasting Companies, Inc., et al., At Law No. 760CL94X00816-00 (Cir. Ct., City of Richmond)

(b) Harley-Davidson v. Lorillard Tobacco Co., No. 93-947 (S.D.N.Y.)

(c) Lorillard Tobacco Co. v. Harley-Davidson, No. 93-6098 (E.D. Wis.)

(d) Brown & Williamson v. Jacobson and CBS, Inc., No. 82-648 (N.D. Ill.)

(e) The FTC investigations of tobacco industry advertising and promotion as embodied in the following cites:

46 FTC 706
48 FTC 82
46 FTC 735
47 FTC 1393
108 F. Supp. 573
55 FTC 354
56 FTC 96
79 FTC 255
80 FTC 455
Investigation #8023069
Investigation #8323222

Each Original Participating Manufacturer and Tobacco-Related Organization will conduct its own reasonable inquiry to determine what documents or deposition testimony, if any, it produced or provided in the above-listed matters.

Section 2.

(a) State of Washington v. American Tobacco Co., et al., No. 96-2-15056-8 SEA (Wash. Super. Ct., County of King)

(b) In re Mike Moore, Attorney General, ex rel. State of Mississippi Tobacco Litigation, No. 94-1429 (Chancery Ct., Jackson, Miss.)

(c) State of Florida v. American Tobacco Co., et al., No. CL 95-1466 AH (Fla. Cir. Ct., 15th Judicial Cir., Palm Beach Co.)

(d) State of Texas v. American Tobacco Co., et al., No. 5-96CV-91 (E.D. Tex.)

(e) Minnesota v. Philip Morris et al., No. C-94-8565 (Minn. Dist. Ct., County of Ramsey)

(f) Broin v. R.J. Reynolds, No. 91-49738 CA (22) (11th Judicial Ct., Dade County, Florida)

## EXHIBIT J

## INDEX AND SEARCH FEATURES FOR DOCUMENT WEBSITE

(a) Each Original Participating Manufacturer and Tobacco-Related Organization will create and maintain on its website, at its expense, an enhanced, searchable index, as described below, using Alta-Vista or functionally comparable software, for all of the documents currently on its website and all documents being placed on its website pursuant to section IV of this Agreement.

(b) The searchable indices of documents on these websites will include:

(1) all of the information contained in the 4(b) indices produced to the State Attorneys General (excluding fields specific only to the Minnesota action other than "request number");

(2) the following additional fields of information (or their substantial equivalent) to the extent such information already exists in an electronic format that can be incorporated into such an index:

| | |
|---|---|
| Document ID | Master ID |
| Other Number | Document Date |
| Primary Type | Other Type |
| Person Attending | Person Noted |
| Person Author | Person Recipient |
| Person Copied | Person Mentioned |
| Organization Author | Organization Recipient |
| Organization Copied | Organization Mentioned |
| Organization Attending | Organization Noted |
| Physical Attachment 1 | Physical Attachment 2 |
| Characteristics | File Name |
| Site | Area |
| Verbatim Title | Old Brand |
| Primary Brand | Mentioned Brand |
| Page Count | |

(c) Each Original Participating Manufacturer and Tobacco-Related Organization will add, if not already available, a user friendly document retrieval feature on the Website consisting of a "view all pages" function with enhanced image viewer capability that will enable users to choose to view and/or print either "all pages" for a specific document or "page-by-page".

(d) Each Original Participating Manufacturer and Tobacco-Related Organizations will provide at its own expense to NAAG a copy set in electronic form of its website document images and its accompanying subsection IV(b) index in ASCII-delimited form for all of the documents currently on its website and all of the documents described in subsection IV(d) of this Agreement. The Original Participating Manufacturers and Tobacco-Related Organizations will not object to any subsequent distribution and/or reproduction of these copy sets.



## EXHIBIT J

## TOBACCO ENFORCEMENT FUND PROTOCOL

The States' Antitrust/Consumer Protection Tobacco Enforcement Fund ("Fund") is established by the Attorneys General of the Settling States, acting through NAAG, pursuant to section VIII(c) of the Agreement. The following shall be the primary and mandatory protocol for the administration of the Fund.

### Section A
### Fund Purpose

Section 1

The monies to be paid pursuant to section VIII(c) of the Agreement shall be placed by NAAG in a new and separate interest bearing account, denominated the States' Antitrust/ Consumer Protection Tobacco Enforcement Fund, which shall not then or thereafter be commingled with any other funds or accounts. However, nothing herein shall prevent deposits into the account so long as monies so deposited are then lawfully committed for the purpose of the Fund as set forth herein.

Section 2

A committee of three Attorneys General ("Special Committee") shall be established to determine disbursements from the account, using the process described herein. The three shall be the Attorney General of the State of Washington, the Chair of NAAG's antitrust committee, and the Chair of NAAG's consumer protection committee. In the event that an Attorney General shall hold either two or three of the above stated positions, that Attorney General may serve only in a single capacity, and shall be replaced in the remaining positions by first, the President of NAAG, next by the President-Elect of NAAG and if necessary the Vice-President of NAAG.

Section 3

The purpose of the Fund is: (1) to enforce and implement the terms of the Agreement, in particular, by partial payment of the monetary costs of the Independent Auditor as contemplated by the Agreement; and (2) to provide monetary assistance to the various states' attorneys general: (A) to investigate and/or litigate suspected violations of the Agreement and/or Consent Decree; (B) to investigate and/or litigate suspected violations of state and/or federal antitrust or consumer protection laws with respect to the manufacture, use, marketing and sales of tobacco products; and (C) to enforce the Qualifying Statute ("Qualifying Actions"). The Special Committee shall entertain requests only from Settling States for disbursement from the fund associated with a Qualifying Action ("Grant Application").

### Section B
### Administration Standards Relative to Grant Applications

Section 1

The Special Committee shall not entertain any Grant Application to pay salaries or ordinary expenses of regular employees of any Attorney General's office.

Section 2

The affirmative vote of two or more of the members of the Special Committee shall be required to approve any Grant Application.

Section 3

The decision of the Special Committee shall be final and non-appealable.

Section 4

The Attorney General of the State of Washington shall be chair of the Special Committee and shall annually report to the Attorneys General on the requests for funds from the Fund and the actions of the Special Committee upon the requests.

Section 5

When a Grant Application to the Fund is made by an Attorney General who is then a member of the Special Committee, such member will be temporarily replaced on the Committee, but only for the determination of such Grant Application. The remaining members of the Special Committee shall designate an Attorney General to replace the Attorney General so disqualified, in order to consider the application.

Section 6

The Fund shall be maintained in a federally insured depository institution located in Washington, D.C. Funds may be invested in federal government-backed vehicles. The Fund shall be regularly reported on NAAG financial statements and subject to annual audit.

Section 7

Withdrawals from and checks drawn on the Fund will require at least two of three authorized signatures. The three persons so authorized shall be the executive director, the deputy director, and controller of NAAG.

Section 8

The Special Committee shall meet in person or telephonically as necessary to determine whether a grant is sought for assistance with a Qualifying Action and whether and to what extent the Grant Application is accepted. The chair of the

Special Committee shall designate the times for such meetings, so that a response is made to the Grant Application as expeditiously as practicable.

Section 9

The Special Committee may issue a grant from the Fund only when an Attorney General certifies that the monies will be used in connection with a Qualifying Action, to wit: (A) to investigate and/or litigate suspected violations of the Agreement and/or Consent Decree; (B) to investigate and/or litigate suspected violations of state and/or federal antitrust or consumer protection laws with respect to the manufacture, use, marketing and sales of tobacco products; and (C) to enforce the Qualifying Statute. The Attorney General submitting such application shall further certify that the entire grant of monies from the Fund will be used to pay for such investigation and/or litigation. The Grant Application shall describe the nature and scope of the intended action and use of the funds which may be granted.

Section 10

To the extent permitted by law, each Attorney General whose Grant Application is favorably acted upon shall promise to pay back to the Fund all of the amounts received from the Fund in the event the state is successful in litigation or settlement of a Qualifying Action. In the event that the monetary recovery, if any, obtained is not sufficient to pay back the entire amount of the grant, the Attorney General shall pay back as much as is permitted by the recovery. In all instances where monies are granted, the Attorney General(s) receiving monies shall provide an accounting to NAAG of all disbursements received from the Fund no later than the 30th of June next following such disbursement.

Section 11

In addition to the repayments to the Fund contemplated in the preceding section, the Special Committee may deposit in the Fund any other monies lawfully committed for the precise purpose of the Fund as set forth in section A(3) above. For example, the Special Committee may at its discretion accept for deposit in the Fund a foundation grant or court-ordered award for state antitrust and/or consumer protection enforcement as long as the monies so deposited become part of and subject to the same rules, purposes and limitations of the Fund.

Section 12

The Special Committee shall be the sole and final arbiter of all Grant Applications and of the amount awarded for each such application, if any.

Section 13

The Special Committee shall endeavor to maintain the Fund for as long a term as is consistent with the purpose of the Fund. The Special Committee will limit the total amount of grants made to a single state to no more than $500,000.00. The Special Committee will not award a single grant in excess of $200,000.00, unless the grant involves more than one state, in which case, a single grant so made may not total more than $300,000.00. The Special Committee may, in its discretion and by unanimous vote, decide to waive these limitations if it determines that special circumstances exist. Such decision, however, shall not be effective unless ratified by a two-thirds majority vote of the NAAG executive committee.

**Section C**

**Grant Application Procedures**

Section 1

This Protocol shall be transmitted to the Attorneys General within 90 days after the MSA Execution Date. It may not be amended unless by recommendation of the NAAG executive committee and majority vote of the Settling States. NAAG will notify the Settling States of any amendments promptly and will transmit yearly to the attorneys general a statement of the Fund balance and a summary of deposits to and withdrawals from the Fund in the previous calendar or fiscal year.

Section 2

Grant Applications must be in writing and must be signed by the Attorney General submitting the application.

Section 3

Grant Applications must include the following:

(A) A description of the contemplated/pending action, including the scope of the alleged violation and the area (state/regional/multi-state) likely to be affected by the suspected offending conduct.

(B) A statement whether the action is actively and currently pursued by any other Attorney General or other prosecuting authority.

(C) A description of the purposes for which the monies sought will be used.

(D) The amount requested.

(E) A directive as to how disbursements from the Fund should be made, e.g., either directly to a supplier of services (consultants, experts, witnesses, and the like), to the Attorney General's office directly, or in the case of multi-state action, to one or more Attorneys General's offices designated as a recipient of the monies.



(F) A statement that the applicant Attorney(s) General will, to the extent permitted by law, pay back to the Fund all, or as much as is possible, of the monies received, upon receipt of any monetary recovery obtained in the contemplated/pending litigation or settlement of the action.

(G) A certification that no part of the grant monies will be used to pay the salaries or ordinary expenses of any regular employee of the office of the applicant(s) and that the grant will be used solely to pay for the stated purpose.

(H) A certification that an accounting will be provided to NAAG of all monies received by the applicant(s) by no later than the 30th of June next following any receipt of such monies.

Section 4

All Grant Applications shall be submitted to the NAAG office at the following address: National Association of Attorneys General, 750 1st Street, NE, Suite 1100, Washington D.C. 20002.

Section 5

The Special Committee will endeavor to act upon all complete and properly submitted Grant Applications within 30 days of receipt of said applications.

**Section D**

**Other Disbursements from the Fund**

Section 1

To enforce and implement the terms of the Agreement, the Special Committee shall direct disbursements from the Fund to comply with the partial payment obligations set forth in section XI of the Agreement relative to costs of the Independent Auditor. A report of such disbursements shall be included in the accounting given pursuant to section C(1) above.

**Section E**

**Administrative Costs**

Section 1

NAAG shall receive from the Fund on July 1, 1999 and on July 1 of each year thereafter an administrative fee of $100,000 for its administrative costs in performing its duties under the Protocol and this Agreement. The NAAG executive committee may adjust the amount of the administrative fee in extraordinary circumstances.

## EXHIBIT K
## MARKET CAPITALIZATION PERCENTAGES

| | |
|---|---|
| Philip Morris Incorporated | 68.0000000% |
| Brown & Williamson Tobacco Corporation | 17.9000000% |
| Lorillard Tobacco Company | 7.1000000% |
| R.J. Reynolds Tobacco Company | 6.8000000% |
| Total | 100.0000000% |



## EXHIBIT L
## MODEL CONSENT DECREE

IN THE [XXXXXX] COURT OF THE STATE OF [XXXXXX]
IN AND FOR THE COUNTY OF [XXXXX]

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - x

CAUSE NO. XXXXXX

STATE OF [XXXXXXXXXXX],

Plaintiff,

v.

[XXXXXX XXXXX XXXX], et al.,

Defendants.

CONSENT DECREE AND FINAL JUDGMENT

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - x

WHEREAS, Plaintiff, the State of [name of Settling State], commenced this action on [date], [by and through its Attorney General [name]], pursuant to [her/his/its] common law powers and the provisions of [state and/or federal law];

WHEREAS, the State of [name of Settling State] asserted various claims for monetary, equitable and injunctive relief on behalf of the State of [name of Settling State] against certain tobacco product manufacturers and other defendants;

WHEREAS, Defendants have contested the claims in the State's complaint [and amended complaints, if any] and denied the State's allegations [and asserted affirmative defenses];

WHEREAS, the parties desire to resolve this action in a manner which appropriately addresses the State's public health concerns, while conserving the parties' resources, as well as those of the Court, which would otherwise be expended in litigating a matter of this magnitude; and

WHEREAS, the Court has made no determination of any violation of law, this Consent Decree and Final Judgment being entered prior to the taking of any testimony and without trial or final adjudication of any issue of fact or law;

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, AS FOLLOWS:**

**I. JURISDICTION AND VENUE**

This Court has jurisdiction over the subject matter of this action and over each of the Participating Manufacturers. Venue is proper in this [county/district].

**II. DEFINITIONS**

The definitions set forth in the Agreement (a copy of which is attached hereto) are incorporated herein by reference.

**III. APPLICABILITY**

A. This Consent Decree and Final Judgment applies only to the Participating Manufacturers in their corporate capacity acting through their respective successors and assigns, directors, officers, employees, agents, subsidiaries, divisions, or other internal organizational units of any kind or any other entities acting in concert or participation with them. The remedies, penalties and sanctions that may be imposed or assessed in connection with a violation of this Consent Decree and Final Judgment (or any order issued in connection herewith) shall only apply to the Participating Manufacturers, and shall not be imposed or assessed against any employee, officer or director of any Participating Manufacturer, or against any other person or entity as a consequence of such violation, and there shall be no jurisdiction under this Consent Decree and Final Judgment to do so.

B. This Consent Decree and Final Judgment is not intended to and does not vest standing in any third party with respect to the terms hereof. No portion of this Consent Decree and Final Judgment shall provide any rights to, or be enforceable by, any person or entity other than the State of [name of Settling State] or a Released Party. The State of [name of Settling State] may not assign or otherwise convey any right to enforce any provision of this Consent Decree and Final Judgment.

**IV. VOLUNTARY ACT OF THE PARTIES**

The parties hereto expressly acknowledge and agree that this Consent Decree and Final Judgment is voluntarily entered into as the result of arm's-length negotiation, and all parties hereto were represented by counsel in deciding to enter into this Consent Decree and Final Judgment.

**V. INJUNCTIVE AND OTHER EQUITABLE RELIEF**

Each Participating Manufacturer is permanently enjoined from:

A. Taking any action, directly or indirectly, to target Youth within the State of [name of Settling State] in the advertising, promotion or marketing of Tobacco Products, or taking any action the primary purpose of which is to initiate, maintain or increase the incidence of Youth smoking within the State of [name of Settling State]

B. After 180 days after the MSA Execution Date, using or causing to be used within the State of [name of Settling State] any Cartoon in the advertising, promoting, packaging or labeling of Tobacco Products.

C. After 30 days after the MSA Execution Date, making or causing to be made any payment or other consideration to any other person or entity to use, display, make reference to or use as a prop within the State of [name of Settling State] any Tobacco Product, Tobacco Product package, advertisement for a Tobacco Product, or any other item bearing a Brand Name in any Media; provided, however, that the foregoing prohibition shall not apply to (1) Media where the audience or viewers are within an Adult-Only Facility (provided such Media are not visible to persons outside such Adult-Only Facility); (2) Media not intended for distribution or display to the public; (3) instructional Media concerning non-conventional cigarettes viewed only by or provided only to smokers who are Adults; and (4) actions taken by any Participating Manufacturer in connection with a Brand Name Sponsorship permitted pursuant to subsections III(c)(2)(A) and III(c)(2)(B)(i) of the Agreement, and use of a Brand Name to identify a Brand Name Sponsorship permitted by subsection III(c)(2)(B)(ii).

D. Beginning July 1, 1999, marketing, distributing, offering, selling, licensing or causing to be marketed, distributed, offered, sold, or licensed (including, without limitation, by catalogue or direct mail), within the State of [name of Settling State], any apparel or other merchandise (other than Tobacco Products, items the sole function of which is to advertise Tobacco Products, or written or electronic publications) which bears a Brand Name. Provided, however, that nothing in this section shall (1) require any Participating Manufacturer to breach or terminate any licensing agreement or other contract in existence as of June 20, 1997 (this exception shall not apply beyond the current term of any existing contract, without regard to any renewal or option term that may be exercised by such Participating Manufacturer); (2) prohibit the distribution to any Participating Manufacturer's employee who is not Underage of any item described above that is intended for the personal use of such an employee; (3) require any Participating Manufacturer to retrieve, collect or otherwise recover any item that prior to the MSA Execution Date was marketed, distributed, offered, sold, licensed or caused to be marketed, distributed, offered, sold or licensed by such Participating Manufacturer; (4) apply to coupons or other items used by Adults solely in connection with the purchase of Tobacco Products; (5) apply to apparel or other merchandise used within an Adult-Only Facility that is not distributed (by sale or otherwise) to any member of the general public; or (6) apply to apparel or other merchandise (a) marketed, distributed, offered, sold, or licensed at the site of a Brand Name Sponsorship permitted pursuant to subsection III(c)(7)(A) or III(c)(2)(B)(i) of the Agreement by the person to which the relevant Participating Manufacturer has provided payment in exchange for the use of the relevant Brand Name in the Brand Name Sponsorship or a third-party that does not receive payment from the relevant Participating Manufacturer (or any Affiliate of such Participating Manufacturer) in connection with the marketing, distribution, offer, sale or license of such apparel or other merchandise, or (b) used at the site of a Brand Name Sponsorship permitted pursuant to subsections III(c)(2)(A) or III(c)(2)(B)(i) of the Agreement (during such event) that are not distributed (by sale or otherwise) to any member of the general public.

E. After the MSA Execution Date, distributing or causing to be distributed within the State of [name of Settling State] any free samples of Tobacco Products except in an Adult-Only Facility. For purposes of this Consent Decree and Final Judgment, a "free sample" does not include a Tobacco Product that is provided to an Adult in connection with (1) the purchase, exchange or redemption for proof of purchase of any Tobacco Products (including, but not limited to, a free offer in connection with the purchase of Tobacco Products, such as a "two-for-one" offer), or (2) the conducting of consumer testing or evaluation of Tobacco Products with persons who certify that they are Adults.

F. Using or causing to be used as a brand name of any Tobacco Product pursuant to any agreement requiring the payment of money or other valuable consideration, any nationally recognized or nationally established brand name or trade name of any non-tobacco item or service or any nationally recognized or nationally established sports team, entertainment group or individual celebrity. Provided, however, that the preceding sentence shall not apply to any Tobacco Product brand name in existence as of July 1, 1998. For the purposes of this provision, the term "other valuable consideration" shall not include an agreement between two entities who enter into such agreement for the sole purpose of avoiding infringement claims.

G. After 60 days after the MSA Execution Date and through and including December 31, 2001, manufacturing or causing to be manufactured for sale within the State of [name of Settling State] any pack or other container of Cigarettes containing fewer than 20 Cigarettes (or, in the case of roll-your-own tobacco, any package of roll-your-own tobacco containing less than 0.60 ounces of tobacco); and, after 150 days after the MSA Execution Date and through and including December 31, 2001, selling or distributing within the State of [name of Settling State] any pack or other container of Cigarettes containing fewer than 20 Cigarettes (or, in the case of roll-your-own tobacco, any package of roll-your-own tobacco containing less than 0.60 ounces of tobacco).

H. Entering into any contract, combination or conspiracy with any other Tobacco Product Manufacturer that has the purpose or effect of: (1) limiting competition in the production or distribution of information about health hazards or other consequences of the use of their products; (2) limiting or suppressing research into smoking and health; or (3) limiting or suppressing research into the marketing or development of new products. Provided, however, that nothing in the preceding



sentence shall be deemed to (1) require any Participating Manufacturer to produce, distribute or otherwise disclose any information that is subject to any privilege or protection; (2) preclude any Participating Manufacturer from entering into any joint defense or joint legal interest agreement or arrangement (whether or not in writing), or from asserting any privilege pursuant thereto; or (3) impose any affirmative obligation on any Participating Manufacturer to conduct any research.

I. Making any material misrepresentation of fact regarding the health consequences of using any Tobacco Product, including any tobacco additives, filters, paper or other ingredients. Provided, however, that nothing in the preceding sentence shall limit the exercise of any First Amendment right or the assertion of any defense or position in any judicial, legislative or regulatory forum.

## VI. MISCELLANEOUS PROVISIONS

A. Jurisdiction of this case is retained by the Court for the purposes of implementing and enforcing the Agreement and this Consent Decree and Final Judgment and enabling the continuing proceedings contemplated herein. Whenever possible, the State of [name of Settling State] and the Participating Manufacturers shall seek to resolve any issue that may exist as to compliance with this Consent Decree and Final Judgment by discussion among the appropriate designees named pursuant to subsection XVIII(m) of the Agreement. The State of [name of Settling State] and/or any Participating Manufacturer may apply to the Court at any time for further orders and directions as may be necessary or appropriate for the implementation and enforcement of this Consent Decree and Final Judgment. Provided, however, that with regard to subsections V(A) and V(I) of this Consent Decree and Final Judgment, the Attorney General shall issue a cease and desist demand to the Participating Manufacturer that the Attorney General believes is in violation of either of such sections at least ten Business Days before the Attorney General applies to the Court for an order to enforce such subsections, unless the Attorney General reasonably determines that either a compelling time-sensitive public health and safety concern requires more immediate action or the Court has previously issued an Enforcement Order to the Participating Manufacturer in question for the same or a substantially similar action or activity. For any claimed violation of this Consent Decree and Final Judgment, in determining whether to seek an order for monetary, civil contempt or criminal sanctions for any claimed violation, the Attorney General shall give good-faith consideration to whether: (1) the Participating Manufacturer that is claimed to have committed the violation has taken appropriate and reasonable steps to cause the claimed violation to be cured, unless that party has been guilty of a pattern of violations of like nature; and (2) a legitimate, good-faith dispute exists as to the meaning of the terms in question of this Consent Decree and Final Judgment. The Court in any case in its discretion may determine not to enter an order for monetary, civil contempt or criminal sanctions.

B. This Consent Decree and Final Judgment is not intended to be, and shall not in any event be construed as, or deemed to be, an admission or concession or evidence of (1) any liability or any wrongdoing whatsoever on the part of any Released Party or that any Released Party has engaged in any of the activities barred by this Consent Decree and Final Judgment; or (2) personal jurisdiction over any person or entity other than the Participating Manufacturers. Each Participating Manufacturer specifically disclaims and denies any liability or wrongdoing whatsoever with respect to the claims and allegations asserted against it in this action, and has stipulated to the entry of this Consent Decree and Final Judgment solely to avoid the further expense, inconvenience, burden and risk of litigation.

C. Except as expressly provided otherwise in the Agreement, this Consent Decree and Final Judgment shall not be modified (by this Court, by any other court or by any other means) unless the party seeking modification demonstrates, by clear and convincing evidence, that it will suffer irreparable harm from new and unforeseen conditions. Provided, however, that the provisions of sections III, V, VI and VII of this Consent Decree and Final Judgment shall in no event be subject to modification without the consent of the State of [name of Settling State] and all affected Participating Manufacturers. In the event that any of the sections of this Consent Decree and Final Judgment enumerated in the preceding sentence are modified by this Court, by any other court or by any other means without the consent of the State of [name of Settling State] and all affected Participating Manufacturers, then this Consent Decree and Final Judgment shall be void and of no further effect. Changes in the economic conditions of the parties shall not be grounds for modification. It is intended that the Participating Manufacturers will comply with this Consent Decree and Final Judgment as originally entered, even if the Participating Manufacturers' obligations hereunder are greater than those imposed under current or future law (unless compliance with this Consent Decree and Final Judgment would violate such law). A change in law that results, directly or indirectly, in more favorable or beneficial treatment of any one or more of the Participating Manufacturers shall not support modification of this Consent Decree and Final Judgment.

D. In any proceeding which results in a finding that a Participating Manufacturer violated this Consent Decree and Final Judgment, the Participating Manufacturer or Participating Manufacturers found to be in violation shall pay the State's costs and attorneys' fees incurred by the State of [name of Settling State] in such proceeding.

E. The remedies in this Consent Decree and Final Judgment are cumulative and in addition to any other remedies the State of [name of Settling State] may have at law or equity, including but not limited to its rights under the Agreement. Nothing herein shall be construed to prevent the State from bringing an action with respect to conduct not released pursuant to the Agreement, even though that conduct may also violate this Consent Decree and Final Judgment. Nothing in this Consent Decree and Final Judgment is intended to create any right for [name of Settling State] to obtain any Cigarette product formula that it would not otherwise have under applicable law.

F. No party shall be considered the drafter of this Consent Decree and Final Judgment for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter. Nothing in this Consent Decree and Final Judgment shall be construed as approval by the State of [name of Settling State] of the Participating Manufacturers' business organizations, operations, acts or practices, and the Participating Manufacturers shall make no representation to the contrary.

G. The settlement negotiations resulting in this Consent Decree and Final Judgment have been undertaken in good faith and for settlement purposes only, and no evidence of negotiations or discussions underlying this Consent Decree and Final Judgment shall be offered or received in evidence in any action or proceeding for any purpose. Neither this Consent Decree and Final Judgment nor any public discussions, public statements or public comments with respect to this Consent Decree and Final Judgment by the State of [name of Settling State] or any Participating Manufacturer or its agents shall be offered or received in evidence in any action or proceeding for any purpose other than in an action or proceeding arising under or relating to this Consent Decree and Final Judgment.

H. All obligations of the Participating Manufacturers pursuant to this Consent Decree and Final Judgment (including, but not limited to, all payment obligations) are, and shall remain, several and not joint.

I. The provisions of this Consent Decree and Final Judgment are applicable only to actions taken (or omitted to be taken) within the States. Provided, however, that the preceding sentence shall not be construed as extending the territorial scope of any provision of this Consent Decree and Final Judgment whose scope is otherwise limited by the terms thereof.

J. Nothing in subsection V(A) or V(I) of this Consent Decree shall create a right to challenge the continuation, after the MSA Execution Date, of any advertising content, claim or slogan (other than use of a Cartoon) that was not unlawful prior to the MSA Execution Date.

K. If the Agreement terminates in this State for any reason, then this Consent Decree and Final Judgment shall be void and of no further effect.

## VII. FINAL DISPOSITION

A. The Agreement, the settlement set forth therein, and the establishment of the escrow provided for therein are hereby approved in all respects, and all claims are hereby dismissed with prejudice as provided therein.

B. The Court finds that the person[s] signing the Agreement have full and complete authority to enter into the binding and fully effective settlement of this action as set forth in the Agreement. The Court further finds that entering into this settlement is in the best interests of the State of [name of Settling State].

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED this __ day of _____, 1998.



## EXHIBIT M
## LIST OF PARTICIPATING MANUFACTURERS' LAWSUITS AGAINST THE SETTLING STATES

1. Philip Morris, Inc., et al. v. Margery Bronster, Attorney General of the State of Hawaii, In Her Official Capacity, Civ. No. 96-00722HG, United States District Court for the District of Hawaii.

2. Philip Morris, Inc., et al. v. Bruce Botelho, Attorney General of the State of Alaska, In His Official Capacity, Civ. No. A97-0003CV, United States District Court for the District of Alaska.

3. Philip Morris, Inc., et al. v. Scott Harshbarger, Attorney General of the Commonwealth of Massachusetts, In His Official Capacity, Civ. No. 95-12574-GAO, United States District Court for the District of Massachusetts.

4. Philip Morris, Inc., et al. v. Richard Blumenthal, Attorney General of the State of Connecticut, In His Official Capacity, Civ. No. 396CV01221 (PCD), United States District Court for the District of Connecticut.

5. Philip Morris, et al. v. William H. Sorrell, et al., No. 1:98-cv-132, United States District Court for the District of Vermont.

## EXHIBIT N
## LITIGATING POLITICAL SUBDIVISIONS

1. City of New York, et al. v. The Tobacco Institute, Inc. et al., Supreme Court of the State of New York, County of New York, Index No. 406225/96
2. County of Erie v. The Tobacco Institute, Inc. et al., Supreme Court of the State of New York, County of Erie, Index No. I 1997/359
3. County of Los Angeles v. R.J. Reynolds Tobacco Co. et al., San Diego Superior Court, No. 707651
4. The People v. Philip Morris, Inc. et al., San Francisco Superior Court, No. 980864
5. County of Cook v. Philip Morris, Inc. et al., Circuit Court of Cook County, Ill., No. 97-L-4550



## EXHIBIT O
## MODEL STATE FEE PAYMENT AGREEMENT

This STATE Fee Payment Agreement (the "STATE Fee Payment Agreement") is entered into as of _____, _____ between and among the Original Participating Manufacturers and STATE Outside Counsel (as defined herein), to provide for payment of attorneys' fees pursuant to Section XVII of the Master Settlement Agreement (the "Agreement").

WITNESSETH:

WHEREAS, the State of STATE and the Original Participating Manufacturers have entered into the Agreement to settle and resolve with finality all Released Claims against the Released Parties, including the Original Participating Manufacturers, as set forth in the Agreement; and

WHEREAS, Section XVII of the Agreement provides that the Original Participating Manufacturers shall pay reasonable attorneys' fees to those private outside counsel identified in Exhibit S to the Agreement, pursuant to the terms hereof;

NOW, THEREFORE, BE IT KNOWN THAT, in consideration of the mutual agreement of the State of STATE and the Original Participating Manufacturers to the terms of the Agreement and of the mutual agreement of STATE Outside Counsel and the Original Participating Manufacturers to the terms of this STATE Fee Payment Agreement, and such other consideration described herein, the Original Participating Manufacturers and STATE Outside Counsel agree as follows:

SECTION 1. *Definitions.*

All definitions contained in the Agreement are incorporated by reference herein, except as to terms specifically defined herein.

(a) "*Action*" means the lawsuit identified in Exhibit D, M or N to the Agreement that has been brought by or against the State of STATE [or Litigating Political Subdivision].

(b) "*Allocated Amount*" means the amount of any Applicable Quarterly Payment allocated to any Private Counsel (including STATE Outside Counsel) pursuant to section 17 hereof.

(c) "*Allocable Liquidated Share*" means, in the event that the sum of all Payable Liquidated Fees of Private Counsel as of any date specified in section 8 hereof exceeds the Applicable Liquidation Amount for any payment described therein, a percentage share of the Applicable Liquidation Amount equal to the proportion of (i) the amount of the Payable Liquidated Fee of STATE Outside Counsel to (ii) the sum of Payable Liquidated Fees of all Private Counsel.

(d) "*Applicable Liquidation Amount*" means, for purposes of the payments described in section 8 hereof —

(i) for the payment described in subsection (a) thereof, $125 million;

(ii) for the payment described in subsection (b) thereof, the difference between (A) $250 million and (B) the sum of all amounts paid in satisfaction of all Payable Liquidated Fees of Outside Counsel pursuant to subsection (a) thereof;

(iii) for the payment described in subsection (c) thereof, the difference between (A) $250 million and (B) the sum of all amounts paid in satisfaction of all Payable Liquidated Fees of Outside Counsel pursuant to subsections (a) and (b) thereof;

(iv) for the payment described in subsection (d) thereof, the difference between (A) $250 million and (B) the sum of all amounts paid in satisfaction of all Payable Liquidated Fees of Outside Counsel pursuant to subsections (a), (b) and (c) thereof;

(v) for the payment described in subsection (e) thereof, the difference between (A) $250 million and (B) the sum of all amounts paid in satisfaction of all Payable Liquidated Fees of Outside Counsel pursuant to subsections (a), (b), (c) and (d) thereof;

(vi) for each of the first, second and third quarterly payments for any calendar year described in subsection (f) thereof, $62.5 million; and

(vii) for each of the fourth calendar quarterly payments for any calendar year described in subsection (f) thereof, the difference between (A) $250 million and (B) the sum of all amounts paid in satisfaction of all Payable Liquidated Fees of Outside Counsel with respect to the preceding calendar quarters of the calendar year.

(e) "*Application*" means a written application for a Fee Award submitted to the Panel, as well as all supporting materials (which may include video recordings of interviews).

(f) "*Approved Cost Statement*" means both (i) a Cost Statement that has been accepted by the Original Participating Manufacturers; and (ii) in the event that a Cost Statement submitted by STATE Outside Counsel is disputed, the determination by arbitration pursuant to subsection (b) of section 19 hereof as to the amount of the reasonable costs and expenses of STATE Outside Counsel.

(g) "*Cost Statement*" means a signed and attested statement of reasonable costs and expenses of Outside Counsel for any action identified on Exhibit D, M or N to the Agreement that has been brought by or against a Settling State or Litigating Political Subdivision.

(h) "*Designated Representative*" means the person designated in writing, by each person or entity identified in Exhibit S to the Agreement [by the Attorney General of the State of STATE or as later certified in writing by the governmental prosecuting authority of the Litigating Political Subdivision], to act as their agent in receiving payments from the Original Participating Manufacturers for the benefit of STATE Outside Counsel pursuant to sections 8, 16 and 19 hereof, as applicable.

(i) "*Director*" means the Director of the Private Adjudication Center of the Duke University School of Law or such other person or entity as may be chosen by agreement of the Original Participating Manufacturers and the Committee described in the second sentence of paragraph (b)(ii) of section 11 hereof.

(j) "*Eligible Counsel*" means Private Counsel eligible to be allocated a part of a Quarterly Fee Amount pursuant to section 17 hereof.

(k) "*Federal Legislation*" means federal legislation that imposes an enforceable obligation on Participating Defendants to pay attorneys' fees with respect to Private Counsel.

(l) "*Fee Award*" means any award of attorneys' fees by the Panel in connection with a Tobacco Case.

(m) "*Liquidated Fee*" means an attorneys' fee for Outside Counsel for any action identified on Exhibit D, M or N to the Agreement that has been brought by or against a Settling State or Litigating Political Subdivision, in an amount agreed upon by the Original Participating Manufacturers and such Outside Counsel.

(n) "*Outside Counsel*" means all those Private Counsel identified in Exhibit S to the Agreement.

(o) "*Panel*" means the three-member arbitration panel described in section 11 hereof.

(p) "*Party*" means (i) STATE Outside Counsel and (ii) an Original Participating Manufacturer.

(q) "*Payable Cost Statement*" means the unpaid amount of a Cost Statement as to which all conditions precedent to payment have been satisfied.

(r) "*Payable Liquidated Fee*" means the unpaid amount of a Liquidated Fee as to which all conditions precedent to payment have been satisfied.

(s) "*Previously Settled States*" means the States of Mississippi, Florida and Texas.

(t) "*Private Counsel*" means all private counsel for all plaintiffs in a Tobacco Case (including STATE Outside Counsel).

(u) "*Quarterly Fee Amount*" means, for purposes of the quarterly payments described in sections 16, 17 and 18 hereof –

(i) for each of the first, second and third calendar quarters of any calendar year beginning with the first calendar quarter of 1999 and ending with the third calendar quarter of 2008, $125 million;

(ii) for each fourth calendar quarter of any calendar year beginning with the fourth calendar quarter of 1999 and ending with the fourth calendar quarter of 2003, the sum of (A) $125 million and (B) the difference, if any, between (*1*) $375 million and (*2*) the sum of all amounts paid in satisfaction of all Fee Awards of Private Counsel during such calendar year, if any;

(iii) for each fourth calendar quarter of any calendar year beginning with the fourth calendar quarter of 2004 and ending with the fourth calendar quarter of 2008, the sum of (A) $125 million, (B) the difference between (*1*) $375 million; and (*2*) the sum of all amounts paid in satisfaction of all Fee Awards of Private Counsel during such calendar year, if any; and (C) the difference, if any, between (*1*) $250 million and (*2*) the product of (*a*) .2 (two tenths) and (*b*) the sum of all amounts paid in satisfaction of all Liquidated Fees of Outside Counsel pursuant to section 8 hereof, if any;

(iv) for each of the first, second and third calendar quarters of any calendar year beginning with the first calendar quarter of 2009, $125 million; and

(v) for each fourth calendar quarter of any calendar year beginning with the fourth calendar quarter of 2009, the sum of (A) $125 million and (B) the difference, if any, between (*1*) $375 million and (*2*) the sum of all amounts paid in satisfaction of all Fee Awards of Private Counsel during such calendar year, if any.

(v) "*Related Persons*" means each Original Participating Manufacturer's past, present and future Affiliates, divisions, officers, directors, employees, representatives, insurers, lenders, underwriters, Tobacco-Related Organizations, trade associations, suppliers, agents, auditors, advertising agencies, public relations entities, attorneys, retailers and distributors (and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing).

(w) "*State of STATE*" means the [applicable Settling State or the Litigating Political Subdivision], any of its past, present and future agents, officials acting in their official capacities, legal representatives, agencies, departments, commissions and subdivisions.

(x) "*STATE Outside Counsel*" means all persons or entities identified in Exhibit S to the Agreement by the Attorney General of State of STATE [or as later certified by the office of the governmental prosecuting authority for the Litigating Political Subdivision] as having been retained by and having represented the STATE in connection with the Action, acting collectively by unanimous decision of all such persons or entities.



(y) "*Tobacco Case*" means any tobacco and health case (other than a non-class action personal injury case brought directly by or on behalf of a single natural person or the survivor of such person or for wrongful death, or any non-class action consolidation of two or more such cases).

(z) "*Unpaid Fee*" means the unpaid portion of a Fee Award.

SECTION 2. *Agreement to Pay Fees.*

The Original Participating Manufacturers will pay reasonable attorneys' fees to STATE Outside Counsel for their representation of the State of STATE in connection with the Action, as provided herein and subject to the *Code of Professional Responsibility* of the American Bar Association. Nothing herein shall be construed to require the Original Participating Manufacturers to pay any attorneys' fees other than (i) a Liquidated Fee or a Fee Award and (ii) a Cost Statement, as provided herein, nor shall anything herein require the Original Participating Manufacturers to pay any Liquidated Fee, Fee Award or Cost Statement in connection with any litigation other than the Action.

SECTION 3. *Exclusive Obligation of the Original Participating Manufacturers.*

The provisions set forth herein constitute the entire obligation of the Original Participating Manufacturers with respect to payment of attorneys' fees of STATE Outside Counsel (including costs and expenses) in connection with the Action and the exclusive means by which STATE Outside Counsel or any other person or entity may seek payment of fees by the Original Participating Manufacturers or Related Persons in connection with the Action. The Original Participating Manufacturers shall have no obligation pursuant to Section XVII of the Agreement to pay attorneys' fees in connection with the Action to any counsel other than STATE Outside Counsel, and they shall have no other obligation to pay attorneys' fees to or otherwise to compensate STATE Outside Counsel, any other counsel or representative of the State of STATE or the State of STATE itself with respect to attorneys' fees in connection with the Action.

SECTION 4. *Release.*

(a) Each person or entity identified in Exhibit S to the Agreement by the Attorney General of the State of STATE [or as certified by the office of the governmental prosecuting authority for the Litigating Political Subdivision] hereby irrevocably releases the Original Participating Manufacturers and all Related Persons from any and all claims that such person or entity ever had, now has or hereafter can, shall or may have in any way related to the Action (including but not limited to any negotiations related to the settlement of the Action). Such release shall not be construed as a release of any person or entity as to any of the obligations undertaken herein in connection with a breach thereof.

(b) In the event that STATE Outside Counsel and the Original Participating Manufacturers agree upon a Liquidated Fee pursuant to section 7 hereof, it shall be a precondition to any payment by the Original Participating Manufacturers to the Designated Representative pursuant to section 8 hereof that each person or entity identified in Exhibit S to the Agreement by the Attorney General of the State of STATE [or as certified by the office of the governmental prosecuting authority for the Litigating Political Subdivision] shall have irrevocably released all entities represented by STATE Outside Counsel in the Action, as well as all persons acting by or on behalf of such entities (including the Attorney General [or the office of the governmental prosecuting authority] and each other person or entity identified on Exhibit S to the Agreement by the Attorney General [or the office of the governmental prosecuting authority]) from any and all claims that such person or entity ever had, now has or hereafter can, shall or may have in any way related to the Action (including but not limited to any negotiations related to the settlement of the Action). Such release shall not be construed as a release of any person or entity as to any of the obligations undertaken herein in connection with a breach thereof.

SECTION 5. *No Effect on STATE Outside Counsel's Fee Contract.*

The rights and obligations, if any, of the respective parties to any contract between the State of STATE and STATE Outside Counsel shall be unaffected by this STATE Fee Payment Agreement except (a) insofar as STATE Outside Counsel grant the release described in subsection (b) of section 4 hereof; and (b) to the extent that STATE Outside Counsel receive any payments in satisfaction of a Fee Award pursuant to section 16 hereof, any amounts so received shall be credited, on a dollar-for-dollar basis, against any amount payable to STATE Outside Counsel by the State of STATE [or the Litigating Political Subdivision] under any such contract.

SECTION 6. *Liquidated Fees.*

(a) In the event that the Original Participating Manufacturers and STATE Outside Counsel agree upon the amount of a Liquidated Fee, the Original Participating Manufacturers shall pay such Liquidated Fee, pursuant to the terms hereof.

(b) The Original Participating Manufacturers' payment of any Liquidated Fee pursuant to this STATE Fee Payment Agreement shall be subject to (i) satisfaction of the conditions precedent stated in section 4 and paragraph (c)(ii) of section 7 hereof; and (ii) the payment schedule and the annual and quarterly aggregate national caps specified in sections 8 and 9 hereof, which shall apply to all payments made with respect to Liquidated Fees of all Outside Counsel.

SECTION 7. *Negotiation of Liquidated Fees.*

(a) If STATE Outside Counsel seek to be paid a Liquidated Fee, the Designated Representative shall so notify the Original Participating Manufacturers. The Original Participating Manufacturers may at any time make an offer of a Liquidated Fee to the Designated Representative in an amount set by the unanimous agreement, and at the sole discretion, of the Original Participating Manufacturers and, in any event, shall collectively make such an offer to the Designated Representative no more than 60 Business Days after receipt of notice by the Designated Representative that STATE Outside

Counsel seek to be paid a Liquidated Fee. The Original Participating Manufacturers shall not be obligated to make an offer of a Liquidated Fee in any particular amount. Within ten Business Days after receiving such an offer, STATE Outside Counsel shall either accept the offer, reject the offer or make a counteroffer.

(b) The national aggregate of all Liquidated Fees to be agreed to by the Original Participating Manufacturers in connection with the settlement of those actions indicated on Exhibits D, M and N to the Agreement shall not exceed one billion two hundred fifty million dollars ($1,250,000,000).

(c) If the Original Participating Manufacturers and STATE Outside Counsel agree in writing upon a Liquidated Fee:

(i) STATE Outside Counsel shall not be eligible for a Fee Award;

(ii) such Liquidated Fee shall not become a Payable Liquidated Fee until such time as (A) State-Specific Finality has occurred in the State of STATE; (B) each person or entity identified in Exhibit S to the Agreement by the Attorney General of the State of STATE [or as certified by the office of the governmental prosecuting authority of the Litigating Political Subdivision] has granted the release described in subsection (b) of section 4 hereof; and (C) notice of the events described in subparagraphs (A) and (B) of this paragraph has been provided to the Original Participating Manufacturers.

(iii) payment of such Liquidated Fee pursuant to sections 8 and 9 hereof (together with payment of costs and expenses pursuant to section 19 hereof), shall be STATE Outside Counsel's total and sole compensation by the Original Participating Manufacturers in connection with the Action.

(d) If the Original Participating Manufacturers and STATE Outside Counsel do not agree in writing upon a Liquidated Fee, STATE Outside Counsel may submit an Application to the Panel for a Fee Award to be paid as provided in sections 16, 17 and 18 hereof.

SECTION 8. *Payment of Liquidated Fee.*

In the event that the Original Participating Manufacturers and STATE Outside Counsel agree in writing upon a Liquidated Fee, and until such time as the Designated Representative has received payments in full satisfaction of such Liquidated Fee --

(a) On February 1, 1999, if the Liquidated Fee of STATE Outside Counsel became a Payable Liquidated Fee before January 15, 1999, each Original Participating Manufacturer shall severally pay to the Designated Representative its Relative Market Share of the lesser of (i) the Payable Liquidated Fee of STATE Outside Counsel, (ii) $5 million or (iii) in the event that the sum of all Payable Liquidated Fees of all Outside Counsel as of January 15, 1999 exceeds the Applicable Liquidation Amount, the Allocable Liquidated Share of STATE Outside Counsel.

(b) On August 1, 1999, if the Liquidated Fee of STATE Outside Counsel became a Payable Liquidated Fee on or after January 15, 1999 and before July 15, 1999, each Original Participating Manufacturer shall severally pay to the Designated Representative its Relative Market Share of the lesser of (i) the Payable Liquidated Fee of STATE Outside Counsel, (ii) $5 million or (iii) in the event that the sum of all Payable Liquidated Fees of all Outside Counsel that became Payable Liquidated Fees on or after January 15, 1999 and before July 15, 1999 exceeds the Applicable Liquidation Amount, the Allocable Liquidated Share of STATE Outside Counsel.

(c) On December 15, 1999, if the Liquidated Fee of STATE Outside Counsel became a Payable Liquidated Fee on or after July 15, 1999 and before December 1, 1999, each Original Participating Manufacturer shall severally pay to the Designated Representative its Relative Market Share of the lesser of (i) the Payable Liquidated Fee of STATE Outside Counsel, (ii) $5 million or (iii) in the event that the sum of all Payable Liquidated Fees of all Outside Counsel that became Payable Liquidated Fees on or after July 15, 1999 and before December 1, 1999 exceeds the Applicable Liquidation Amount, the Allocable Liquidated Share of STATE Outside Counsel.

(d) On December 15, 1999, if the Liquidated Fee of STATE Outside Counsel became a Payable Liquidated Fee before December 1, 1999, each Original Participating Manufacturer shall severally pay to the Designated Representative its Relative Market Share of the lesser of (i) the Payable Liquidated Fee of STATE Outside Counsel, or (ii) $5 million or (iii) in the event that the sum of all Payable Liquidated Fees of all Outside Counsel that become Payable Liquidated Fees before December 1, 1999 exceeds the Applicable Liquidation Amount, the Allocable Liquidated Share of STATE Outside Counsel.

(e) On December 15, 1999, if the Liquidated Fee of STATE Outside Counsel became a Payable Liquidated Fee before December 1, 1999, each Original Participating Manufacturer shall severally pay to the Designated Representative its Relative Market Share of the lesser of (i) the Payable Liquidated Fee of STATE Outside Counsel or (ii) in the event that the sum of all Payable Liquidated Fees of all Outside Counsel that became Payable Liquidated Fees before December 1, 1999 exceeds the Applicable Liquidation Amount, the Allocable Liquidated Share of STATE Outside Counsel.

(f) On the last day of each calendar quarter, beginning with the first calendar quarter of 2000 and ending with the fourth calendar quarter of 2003, if the Liquidated Fee of STATE Outside Counsel became a Payable Liquidated Fee at least 15 Business Days prior to the last day of each such calendar quarter, each Original Participating Manufacturer shall severally pay to the Designated Representative its Relative Market Share of the lesser of (i) the Payable Liquidated Fee of STATE Outside Counsel or (ii) in the event that the sum of all Payable Liquidated Fees of all Outside Counsel as of the date 15 Business Days prior to the date of the payment in question exceeds the Applicable Liquidation Amount, the Allocable Liquidated Share of STATE Outside Counsel.



SECTION 9. *Limitations on Payments of Liquidated Fees.*

Notwithstanding any other provision hereof, all payments by the Original Participating Manufacturers with respect to Liquidated Fees shall be subject to the following:

(a) Under no circumstances shall the Original Participating Manufacturers be required to make any payment that would result in aggregate national payments of Liquidated Fees:

(i) during 1999, totaling more than $250 million;

(ii) with respect to any calendar quarter beginning with the first calendar quarter of 2000 and ending with the fourth calendar quarter of 2003, totaling more than $62.5 million, except to the extent that a payment with respect to any prior calendar quarter of any calendar year did not total $62.5 million; or

(iii) with respect to any calendar quarter after the fourth calendar quarter of 2003, totaling more than zero.

(b) The Original Participating Manufacturers' obligations with respect to the Liquidated Fee of STATE Outside Counsel, if any, shall be exclusively as provided in this STATE Fee Payment Agreement, and notwithstanding any other provision of law, such Liquidated Fee shall not be entered as or reduced to a judgment against the Original Participating Manufacturers or considered as a basis for requiring a bond or imposing a lien or any other encumbrance.

SECTION 10. *Fee Awards.*

(a) In the event that the Original Participating Manufacturers and STATE Outside Counsel do not agree in writing upon a Liquidated Fee as described in section 7 hereof, the Original Participating Manufacturers shall pay, pursuant to the terms hereof, the Fee Award awarded by the Panel to STATE Outside Counsel.

(b) The Original Participating Manufacturers' payment of any Fee Award pursuant to this STATE Fee Payment Agreement shall be subject to the payment schedule and the annual and quarterly aggregate national caps specified in sections 17 and 18 hereof, which shall apply to:

(i) all payments of Fee Awards in connection with an agreement to pay fees as part of the settlement of any Tobacco Case on terms that provide for payment by the Original Participating Manufacturers or other defendants acting in agreement with the Original Participating Manufacturers (collectively, "Participating Defendants") of fees with respect to any Private Counsel, subject to an annual cap on payment of all such fees; and

(ii) all payments of attorneys' fees (other than fees for attorneys of Participating Defendants) pursuant to Fee Awards for activities in connection with any Tobacco Case resolved by operation of Federal Legislation.

SECTION 11. *Composition of the Panel.*

(a) The first and the second members of the Panel shall both be permanent members of the Panel and, as such, will participate in the determination of all Fee Awards. The third Panel member shall not be a permanent Panel member, but instead shall be a state-specific member selected to determine Fee Awards on behalf of Private Counsel retained in connection with litigation within a single state. Accordingly, the third, state-specific member of the Panel for purposes of determining Fee Awards with respect to litigation in the State of STATE shall not participate in any determination as to any Fee Award with respect to litigation in any other state (unless selected to participate in such determinations by such persons as may be authorized to make such selections under other agreements).

(b) The members of the Panel shall be selected as follows:

(i) The first member shall be the natural person selected by Participating Defendants.

(ii) The second member shall be the person jointly selected by the agreement of Participating Defendants and a majority of the committee described in the fee payment agreements entered in connection with the settlements of the Tobacco Cases brought by the Previously Settled States. In the event that the person so selected is unable or unwilling to continue to serve, a replacement for such member shall be selected by agreement of the Original Participating Manufacturers and a majority of the members of a committee composed of the following members: Joseph F. Rice, Richard F. Scruggs, Steven W. Berman, Walter Umphrey, one additional representative, to be selected in the sole discretion of NAAG, and two representatives of Private Counsel in Tobacco Cases, to be selected at the sole discretion of the Original Participating Manufacturers.

(iii) The third, state-specific member for purposes of determining Fee Awards with respect to litigation in the State of STATE shall be a natural person selected by STATE Outside Counsel, who shall notify the Director and the Original Participating Manufacturers of the name of the person selected.

SECTION 12. *Application of STATE Outside Counsel.*

(a) STATE Outside Counsel shall make a collective Application for a single Fee Award, which shall be submitted to the Director. Within five Business Days after receipt of the Application by STATE Outside Counsel, the Director shall serve the Application upon the Original Participating Manufacturers and the STATE. The Original Participating Manufacturers shall submit all materials in response to the Application to the Director by the later of (i) 60 Business Days after service of the Application upon the Original Participating Manufacturers by the Director, (ii) five Business Days after the date of State-Specific Finality in the State of STATE or (iii) five Business Days after the date on which notice of the name of the third, state-specific panel member described in paragraph (b)(iii) of section 11 hereof has been provided to the Director and the Original Participating Manufacturers.

(b) The Original Participating Manufacturers may submit to the Director any materials that they wish and, notwithstanding any restrictions or representations made in any other agreements, the Original Participating Manufacturers shall be in no way constrained from contesting the amount of the Fee Award requested by STATE Outside Counsel. The Director, the Panel, the State of STATE, the Original Participating Manufacturers and STATE Outside Counsel shall preserve the confidentiality of any attorney work-product materials or other similar confidential information that may be submitted.

(c) The Director shall forward the Application of STATE Outside Counsel, as well as all written materials relating to such Application that have been submitted by the Original Participating Manufacturers pursuant to subsection (b) of this section, to the Panel within five Business Days after the later of (i) the expiration of the period for the Original Participating Manufacturers to submit such materials or (ii) the earlier of (A) the date on which the Panel issues a Fee Award with respect to any Application of other Private Counsel previously forwarded to the Panel by the Director or (B) 30 Business Days after the forwarding to the Panel of the Application of other Private Counsel most recently forwarded to the Panel by the Director. The Director shall notify the Parties upon forwarding the Application (and all written materials relating thereto) to the Panel.

(d) In the event that either Party seeks a hearing before the Panel, such Party may submit a request to the Director in writing within five Business Days after the forwarding of the Application of STATE Outside Counsel to the Panel by the Director, and the Director shall promptly forward the request to the Panel. If the Panel grants the request, it shall promptly set a date for hearing, such date to fall within 30 Business Days after the date of the Panel's receipt of the Application.

SECTION 13. *Panel Proceedings.*

The proceedings of the Panel shall be conducted subject to the terms of this Agreement and of the Protocol of Panel Procedures attached as an Appendix hereto.

SECTION 14. *Award of Fees to STATE Outside Counsel.*

The members of the Panel will consider all relevant information submitted to them in reaching a decision as to a Fee Award that fairly provides for full reasonable compensation of STATE Outside Counsel. In considering the amount of the Fee Award, the Panel shall not consider any Liquidated Fee agreed to by any other Outside Counsel, any offer of or negotiations relating to any proposed liquidated fee for STATE Outside Counsel or any Fee Award that already has been or yet may be awarded in connection with any other Tobacco Case. The Panel shall not be limited to an hourly-rate or lodestar analysis in determining the amount of the Fee Award of STATE Outside Counsel, but shall take into account the totality of the circumstances. The Panel's decisions as to the Fee Award of STATE Outside Counsel shall be in writing and shall report the amount of the fee awarded (with or without explanation or opinion, at the Panel's discretion). The Panel shall determine the amount of the Fee Award to he paid to STATE Outside Counsel within the later of 30 calendar days after receiving the Application (and all related materials) from the Director or 15 Business Days after the last date of any hearing held pursuant to subsection (d) of section 12 hereof. The Panel's decision as to the Fee Award of STATE Outside Counsel shall be final, binding and non-appealable.

SECTION 15. *Costs of Arbitration.*

All costs and expenses of the arbitration proceedings held by the Panel, including costs, expenses and compensation of the Director and of the Panel members (but not including any costs, expenses or compensation of counsel making applications to the Panel), shall be borne by the Original Participating Manufacturers in proportion to their Relative Market Shares.

SECTION 16. *Payment of Fee Award of STATE Outside Counsel.*

On or before the tenth Business Day after the last day of each calendar quarter beginning with the first calendar quarter of 1999, each Original Participating Manufacturer shall severally pay to the Designated Representative its Relative Market Share of the Allocated Amount for STATE Outside Counsel for the calendar quarter with respect to which such quarterly payment is being made (the "Applicable Quarter").

SECTION 17. *Allocated Amounts of Fee Awards.*

The Allocated Amount for each Private Counsel with respect to any payment to be made for any particular Applicable Quarter shall be determined as follows:

(a) The Quarterly Fee Amount shall be allocated equally among each of the three months of the Applicable Quarter. The amount for each such month shall be allocated among those Private Counsel retained in connection with Tobacco Cases settled before or during such month (each such Private Counsel being an "Eligible Counsel" with respect to such monthly amount), each of which shall be allocated a portion of each such monthly amount up to (or, in the event that the sum of all Eligible Counsel's respective Unpaid Fees exceeds such monthly amount, in proportion to) the amount of such Eligible Counsel's Unpaid Fees. The monthly amount for each month of the calendar quarter shall be allocated among those Eligible Counsel having Unpaid Fees, without regard to whether there may be Eligible Counsel that have not yet been granted or denied a Fee Award as of the last day of the Applicable Quarter. The allocation of subsequent Quarterly Fee Amounts for the calendar year, if any, shall be adjusted, as necessary, to account for any Eligible Counsel that are granted Fee Awards in a subsequent quarter of such calendar year, as provided in paragraph (h)(ii) of this section.

(b) In the event that the amount for a given month is less than the sum of the Unpaid Fees of all Eligible Counsel



(i) in the case of the first quarterly allocation for any calendar year, such monthly amount shall be allocated among all Eligible Counsel for such month in proportion to the amounts of their respective Unpaid Fees.

(ii) in the case of a quarterly allocation after the first quarterly allocation, the Quarterly Fee Amount shall be allocated among only those Private Counsel, if any, that were Eligible Counsel with respect to any monthly amount for any prior quarter of the calendar year but were not allocated a proportionate share of such monthly amount (either because such Private Counsel's applications for Fee Awards were still under consideration as of the last day of the calendar quarter containing the month in question or for any other reason), until each such Eligible Counsel has been allocated a proportionate share of all such prior monthly payments for the calendar year (each such share of each such Eligible Counsel being a "Payable Proportionate Share"). In the event that the sum of all Payable Proportionate Shares exceeds the Quarterly Fee Amount, the Quarterly Fee Amount shall be allocated among such Eligible Counsel on a monthly basis in proportion to the amounts of their respective Unpaid Fees (without regard to whether there may be other Eligible Counsel with respect to such prior monthly amounts that have not yet been granted or denied a Fee Award as of the last day of the Applicable Quarter). In the event that the sum of all Payable Proportionate Shares is less than the Quarterly Fee Amount, the amount by which the Quarterly Fee Amount exceeds the sum of all such Payable Proportionate Shares shall be allocated among each month of the calendar quarter, each such monthly amount to be allocated among those Eligible Counsel having Unpaid Fees in proportion to the amounts of their respective Unpaid Fees (without regard to whether there may be Eligible Counsel that have not yet been granted or denied a Fee Award as of the last day of the Applicable Quarter).

(c) Adjustments pursuant to subsection (b)(ii) of this section 17 shall be made separately for each calendar year. No amounts paid in any calendar year shall be subject to refund, nor shall any payment in any given calendar year affect the allocation of payments to be made in any subsequent calendar year.

SECTION 18. *Credits to and Limitations on Payment of Fee Awards.*

Notwithstanding any other provision hereof, all payments by the Original Participating Manufacturers with respect to Fee Awards shall be subject to the following:

(a) Under no circumstances shall the Original Participating Manufacturers be required to make payments that would result in aggregate national payments and credits by Participating Defendants with respect to all Fee Awards of Private Counsel:

(i) during any year beginning with 1999, totaling more than the sum of the Quarterly Fee Amounts for each calendar quarter of the calendar year, excluding certain payments with respect to any Private Counsel for 1998 that are paid in 1999; and

(ii) during any calendar quarter beginning with the first calendar quarter of 1999, totaling more than the Quarterly Fee Amount for such quarter, excluding certain payments with respect to any Private Counsel for 1998 that are paid in 1999.

(b) The Original Participating Manufacturers' obligations with respect to the Fee Award of STATE Outside Counsel, if any, shall be exclusively as provided in this STATE Fee Payment Agreement, and notwithstanding any other provision of law, such Fee Award shall not be entered as or reduced to a judgment against the Original Participating Manufacturers or considered as a basis for requiring a bond or imposing a lien or any other encumbrance.

SECTION 19. *Reimbursement of Outside Counsel's Costs.*

(a) The Original Participating Manufacturers shall reimburse STATE Outside Counsel for reasonable costs and expenses incurred in connection with the Action, provided that such costs and expenses are of the same nature as costs and expenses for which the Original Participating Manufacturers ordinarily reimburse their own counsel or agents. Payment of any Approved Cost Statement pursuant to this STATE Fee Payment Agreement shall be subject to (i) the condition precedent of approval of the Agreement by the Court for the State of STATE and (ii) the payment schedule and the aggregate national caps specified in subsection (c) of this section, which shall apply to all payments made with respect to Cost Statements of all Outside Counsel.

(b) In the event that STATE Outside Counsel seek to be reimbursed for reasonable costs and expenses incurred in connection with the Action, the Designated Representative shall submit a Cost Statement to the Original Participating Manufacturers. Within 30 Business Days after receipt of any such Cost Statement, the Original Participating Manufacturers shall either accept the Cost Statement or dispute the Cost Statement, in which event the Cost Statement shall be subject to a full audit by examiners to be appointed by the Original Participating Manufacturers (in their sole discretion). Any such audit will be completed within 120 Business Days after the date the Cost Statement is received by the Original Participating Manufacturers. Upon completion of such audit, if the Original Participating Manufacturers and STATE Outside Counsel cannot agree as to the appropriate amount of STATE Outside Counsel's reasonable costs and expenses, the Cost Statement and the examiner's audit report shall be submitted to the Director for arbitration before the Panel or, in the event that STATE Outside Counsel and the Original Participating Manufacturers have agreed upon a Liquidated Fee pursuant to section 7 hereof, before a separate three member panel of independent arbitrators, to be selected in a manner to be agreed to by STATE Outside Counsel and the Original Participating Manufacturers, which shall determine the amount of STATE Outside Counsel's reasonable costs and expenses for the Action. In determining such reasonable costs and expenses, the members of the arbitration panel shall be governed by the Protocol of Panel Procedures attached as an Appendix hereto. The amount of

STATE Outside Counsel's reasonable costs and expenses determined pursuant to arbitration as provided in the preceding sentence shall be final, binding and non-appealable.

(c) Any Approved Cost Statement of STATE Outside Counsel shall not become a Payable Cost Statement until approval of the Agreement by the Court for the State of STATE. Within five Business Days after receipt of notification thereof by the Designated Representative, each Original Participating Manufacturer shall severally pay to the Designated Representative its Relative Market Share of the Payable Cost Statement of STATE Outside Counsel, subject to the following:

(i) All Payable Cost Statements of Outside Counsel shall be paid in the order in which such Payable Cost Statements became Payable Cost Statements.

(ii) Under no circumstances shall the Original Participating Manufacturers be required to make payments that would result in aggregate national payments by Participating Defendants of all Payable Cost Statements of Private Counsel in connection with all of the actions identified in Exhibits D, M and N to the Agreement, totaling more than $75 million for any given year.

(iii) Any Payable Cost Statement of Outside Counsel not paid during the year in which it became a Payable Cost Statement as a result of paragraph (ii) of this subsection shall become payable in subsequent years, subject to paragraphs (i) and (ii), until paid in full.

(d) The Original Participating Manufacturers' obligations with respect to reasonable costs and expenses incurred by STATE Outside Counsel in connection with the Action shall be exclusively as provided in this STATE Fee Payment Agreement, and notwithstanding any other provision of law, any Approved Cost Statement determined pursuant to subsection (b) of this section (including any Approved Cost Statement determined pursuant to arbitration before the Panel or the separate three-member panel of independent arbitrators described therein) shall not be entered as or reduced to a judgment against the Original Participating Manufacturers or considered as a basis for requiring a bond or imposing a lien or any other incumbrance.

SECTION 20. *Distribution of Payments among STATE Outside Counsel.*

(a) All payments made to the Designated Representative pursuant to this STATE Fee Payment Agreement shall be for the benefit of each person or entity identified in Exhibit S to the Agreement by the Attorney General of the State of STATE [or as certified by the governmental prosecuting authority of the Litigating Political Subdivision], each of which shall receive from the Designated Representative a percentage of each such payment in accordance with the fee sharing agreement, if any, among STATE Outside Counsel (or any written amendment thereto).

(b) The Original Participating Manufacturers shall have no obligation, responsibility or liability with respect to the allocation among those persons or entities identified in Exhibit S to the Agreement by the Attorney General of the State of STATE [or as certified by the governmental prosecuting authority of the Litigating Political Subdivision], or with respect to any claim of misallocation, of any amounts paid to the Designated Representative pursuant to this STATE Fee Payment Agreement.

SECTION 21. *Calculations of Amounts.*

All calculations that may be required hereunder shall be performed by the Original Participating Manufacturers, with notice of the results thereof to be given promptly to the Designated Representative. Any disputes as to the correctness of calculations made by the Original Participating Manufacturers shall be resolved pursuant to the procedures described in Section XI(c) of the Agreement for resolving disputes as to calculations by the Independent Auditor.

SECTION 22. *Payment Responsibility.*

(a) Each Original Participating Manufacturer shall be severally liable for its share of all payments pursuant to this STATE Fee Payment Agreement. Under no circumstances shall any payment due hereunder or any portion thereof become the joint obligation of the Original Participating Manufacturers or the obligation of any person other than the Original Participating Manufacturer from which such payment is originally due, nor shall any Original Participating Manufacturer be required to pay a portion of any such payment greater than its Relative Market Share.

(b) Due to the particular corporate structures of R. J. Reynolds Tobacco Company ("Reynolds") and Brown & Williamson Tobacco Corporation ("Brown & Williamson") with respect to their non-domestic tobacco operations, Reynolds and Brown & Williamson shall each be severally liable for its respective share of each payment due pursuant to this STATE Fee Payment Agreement up to (and its liability hereunder shall not exceed) the full extent of its assets used in, and earnings and revenues derived from, its manufacture and sale in the United States of Tobacco Products intended for domestic consumption, and no recourse shall be had against any of its other assets or earnings to satisfy such obligations.

SECTION 23. *Termination.*

In the event that the Agreement is terminated with respect to the State of STATE pursuant to Section XVIII(u) of the Agreement (or for any other reason) the Designated Representative and each person or entity identified in Exhibit S to the Agreement by the Attorney General of the State of STATE [or as certified by the governmental prosecuting authority of the Litigating Political Subdivision] shall immediately refund to the Original Participating Manufacturers all amounts received under this STATE Fee Payment Agreement.



SECTION 24. *Intended Beneficiaries.*

No provision hereof creates any rights on the part of, or is enforceable by, any person or entity that is not a Party or a person covered by either of the releases described in section 4 hereof, except that sections 5 and 20 hereof create rights on the part of, and shall be enforceable by, the State of STATE. Nor shall any provision hereof bind any non-signatory or determine, limit or prejudice the rights of any such person or entity.

SECTION 25. *Representations of Parties.*

The Parties hereto hereby represent that this STATE Fee Payment Agreement has been duly authorized and, upon execution, will constitute a valid and binding contractual obligation, enforceable in accordance with its terms, of each of the Parties hereto.

SECTION 26. *No Admission.*

This STATE Fee Payment Agreement is not intended to be and shall not in any event be construed as, or deemed to be, an admission or concession or evidence of any liability or wrongdoing whatsoever on the part of any signatory hereto or any person covered by either of the releases provided under section 4 hereof. The Original Participating Manufacturers specifically disclaim and deny any liability or wrongdoing whatsoever with respect to the claims released under section 4 hereof and enter into this STATE Fee Payment Agreement for the sole purposes of memorializing the Original Participating Manufacturers' rights and obligations with respect to payment of attorneys' fees pursuant to the Agreement and avoiding the further expense, inconvenience, burden and uncertainty of potential litigation.

SECTION 27. *Non-admissibility.*

This STATE Fee Payment Agreement having been undertaken by the Parties hereto in good faith and for settlement purposes only, neither this STATE Fee Payment Agreement nor any evidence of negotiations relating hereto shall be offered or received in evidence in any action or proceeding other than an action or proceeding arising under this STATE Fee Payment Agreement.

SECTION 28. *Amendment and Waiver.*

This STATE Fee Payment Agreement may be amended only by a written instrument executed by the Parties. The waiver of any rights conferred hereunder shall be effective only if made by written instrument executed by the waiving Party. The waiver by any Party of any breach hereof shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this STATE Fee Payment Agreement.

SECTION 29. *Notices.*

All notices or other communications to any party hereto shall be in writing (including but not limited to telex, facsimile or similar writing) and shall be given to the notice parties listed on Schedule A hereto at the addresses therein indicated. Any Party hereto may change the name and address of the person designated to receive notice on behalf of such Party by notice given as provided in this section including an updated list conformed to Schedule A hereto.

SECTION 30. *Governing Law.*

This STATE Fee Payment Agreement shall be governed by the laws of the State of STATE without regard to the conflict of law rules of such State.

SECTION 31. *Construction.*

None of the Parties hereto shall be considered to be the drafter hereof or of any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

SECTION 32. *Captions.*

The captions of the sections hereof are included for convenience of reference only and shall be ignored in the construction and interpretation hereof.

SECTION 33. *Execution of STATE Fee Payment Agreement.*

This STATE Fee Payment Agreement may be executed in counterparts. Facsimile or photocopied signatures shall be considered valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this STATE Fee Payment Agreement.

SECTION 34. *Entire Agreement of Parties.*

This STATE Fee Payment Agreement contains an entire, complete and integrated statement of each and every term and provision agreed to by and among the Parties with respect to payment of attorneys' fees by the Original Participating Manufacturers in connection with the Action and is not subject to any condition or covenant, express or implied, not provided for herein.

IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have agreed to this STATE Fee Payment Agreement as of this __th day of _____, 1998.

[SIGNATURE BLOCK]

APPENDIX
to MODEL FEE PAYMENT AGREEMENT

## PROTOCOL OF PANEL PROCEEDINGS

This Protocol of procedures has been agreed to between the respective parties to the STATE Fee Payment Agreement, and shall govern the arbitration proceedings provided for therein.

SECTION 1. *Definitions*.

All definitions contained in the STATE Fee Payment Agreement are incorporated by reference herein.

SECTION 2. *Chairman*.

The person selected to serve as the permanent, neutral member of the Panel as described in paragraph (b)(ii) of section 11 of the STATE Fee Payment Agreement shall serve as the Chairman of the Panel.

SECTION 3. *Arbitration Pursuant to Agreement*.

The members of the Panel shall determine those matters committed to the decision of the Panel under the STATE Fee Payment Agreement, which shall govern as to all matters discussed therein.

SECTION 4. *ABA Code of Ethics*.

Each of the members of the Panel shall be governed by the *Code of Ethics for Arbitrators in Commercial Disputes* prepared by the American Arbitration Association and the American Bar Association (the "*Code of Ethics*") in conducting the arbitration proceedings pursuant to the STATE Fee Payment Agreement, subject to the terms of the STATE Fee Payment Agreement and this Protocol. Each of the party-appointed members of the Panel shall be governed by Canon VII of the *Code of Ethics*. No person may engage in any *ex parte* communications with the permanent, neutral member of the Panel selected pursuant to paragraph (b)(ii) of section 11, in keeping with Canons I, II and III of the *Code of Ethics*.

SECTION 5. *Additional Rules and Procedures*.

The Panel may adopt such rules and procedures as it deems necessary and appropriate for the discharge of its duties under the STATE Fee Payment Agreement and this Protocol, subject to the terms of the STATE Fee Payment Agreement and this Protocol.

SECTION 6. *Majority Rule*.

In the event that the members of the Panel are not unanimous in their views as to any matter to be determined by them pursuant to the STATE Fee Payment Agreement or this Protocol, the determination shall be decided by a vote of a majority of the three members of the Panel.

SECTION 7. *Application for Fee Award and Other Materials*.

(a) The Application of STATE Outside Counsel and any materials submitted to the Director relating thereto (collectively, "submissions") shall be forwarded by the Director to each of the members of the Panel in the manner and on the dates specified in the STATE Fee Payment Agreement.

(b) All materials submitted to the Director by either Party (or any other person) shall be served upon all Parties. All submissions required to be served on any Party shall be deemed to have been served as of the date on which such materials have been sent by either (i) hand delivery or (ii) facsimile and overnight courier for priority next-day delivery.

(c) To the extent that the Panel believes that information not submitted to the Panel may be relevant for purposes of determining those matters committed to the decision of the Panel under the terms of the STATE Fee Payment Agreement, the Panel shall request such information from the Parties.

SECTION 8. *Hearing*.

Any hearing held pursuant to section 12 of the STATE Fee Payment Agreement shall not take place other than in the presence of all three members of the Panel upon notice and an opportunity for the respective representatives of the Parties to attend.

SECTION 9. *Miscellaneous*.

(a) Each member of the Panel shall be compensated for his services by the Original Participating Manufacturers on a basis to be agreed to between such member and the Original Participating Manufacturers.

(b) The members of the Panel shall refer all media inquiries regarding the arbitration proceeding to the respective Parties to the STATE Fee Payment Agreement and shall refrain from any comment as to the arbitration proceedings to be conducted pursuant to the STATE Fee Payment Agreement during the pendency of such arbitration proceedings, in keeping with Canon IV(B) of the *Code of Ethics*.



## EXHIBIT P
## NOTICES

[Intentionally Omitted]

## EXHIBIT Q
## 1996 AND 1997 DATA

(1) 1996 Operating Income

| Original Participating Manufacturer | Operating Income |
|---|---|
| Brown & Williamson Tobacco Corp. | $801,640,000 |
| Lorillard Tobacco Co. | $719,100,000 |
| Philip Morris Inc. | $4,206,600,000 |
| R.J. Reynolds Tobacco Co. | $1,468,000,000 |
| Total (Base Operating Income) | $7,195,340,000 |

(2) 1997 volume (as measured by shipments of Cigarettes)

| Original Participating Manufacturer | Number of Cigarettes |
|---|---|
| Brown & Williamson Tobacco Corp.* | 78,911,000,000 |
| Lorillard Tobacco Co. | 42,288,000,000 |
| Philip Morris Inc. | 236,203,000,000 |
| R.J. Reynolds Tobacco Co. | 118,254,000,000 |
| Total (Base Volume) | 475,656,000,000 |

(3) 1997 volume (as measured by excise taxes)

| Original Participating Manufacturer | Number of Cigarettes |
|---|---|
| Brown & Williamson Tobacco Corp.* | 78,758,000,000 |
| Lorillard Tobacco Co. | 42,315,000,000 |
| Philip Morris Inc. | 236,326,000,000 |
| R.J. Reynolds Tobacco Co. | 119,099,000,000 |

* The volume includes 2,847,595 pounds of "roll your own" tobacco converted into the number of Cigarettes using 0.0325 ounces per Cigarette conversion factor.



## EXHIBIT R
## EXCLUSION OF CERTAIN BRAND NAMES

Brown & Williamson Tobacco Corporation
GPC
State Express 555
Riviera

Philip Morris Incorporated
Players
B&H
Belmont
Mark Ten
Viscount
Accord
L&M
Lark
Rothman's
Best Buy
Bronson
F&L
Genco
GPA
Gridlock
Money
No Frills
Generals
Premium Buy
Shenandoah
Top Choice

Lorillard Tobacco Company
None

R.J. Reynolds Tobacco Company
Best Choice
Cardinal
Director's Choice
Jacks
Rainbow
Scotch Buy
Slim Price
Smoker Friendly
Valu Time
Worth

## EXHIBIT S
## DESIGNATION OF OUTSIDE COUNSEL

[Intentionally Omitted]



## EXHIBIT T
## MODEL STATUTE

Section ___. Findings and Purpose.[1]

(a) Cigarette smoking presents serious public health concerns to the State and to the citizens of the State. The Surgeon General has determined that smoking causes lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(b) Cigarette smoking also presents serious financial concerns for the State. Under certain health-care programs, the State may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

(c) Under these programs, the State pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking.

(d) It is the policy of the State that financial burdens imposed on the State by cigarette smoking be borne by tobacco product manufacturers rather than by the State to the extent that such manufacturers either determine to enter into a settlement with the State or are found culpable by the courts.

(e) On _____, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "Master Settlement Agreement," with the State. The Master Settlement Agreement obligates these manufacturers, in return for a release of past, present and certain future claims against them as described therein, to pay substantial sums to the State (tied in part to their volume of sales); to fund a national foundation devoted to the interests of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(f) It would be contrary to the policy of the State if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the State will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the State to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

Section ___. Definitions.

(a) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

(b) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(c) "Allocable share" means Allocable Share as that term is defined in the Master Settlement Agreement.

(d) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (1) of this definition. The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

(e) "Master Settlement Agreement" means the settlement agreement (and related documents) entered into on _____, 1998 by the State and leading United States tobacco product manufacturers.

(f) "Qualified escrow fund" means an escrow arrangement with a federally or State chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least $1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with section ___(b)-(c) of this Act.

(g) "Released claims" means Released Claims as that term is defined in the Master Settlement Agreement.

(h) "Releasing parties" means Releasing Parties as that term is defined in the Master Settlement Agreement.

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[1] [A State may elect to delete the "findings and purposes" section in its entirety. Other changes or substitutions with respect to the "findings and purposes" section (except for particularized state procedural or technical requirements) will mean that the statute will no longer conform to this model.]

(i) "Tobacco Product Manufacturer" means an entity that after the date of enactment of this Act directly (and not exclusively through any affiliate):

(1) manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsections II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(2) is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States, or

(3) becomes a successor of an entity described in paragraph (1) or (2).

The term "Tobacco Product Manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of (1) - (3) above.

(j) "Units sold" means the number of individual cigarettes sold in the State by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the State on packs (or "roll-your-own" tobacco containers) bearing the excise tax stamp of the State. The [fill in name of responsible state agency] shall promulgate such regulations as are necessary to ascertain the amount of State excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

**Section __. Requirements.**

Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the date of enactment of this Act shall do one of the following:

(a) become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(b) (1) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation) --

1999: $.0094241 per unit sold after the date of enactment of this Act;[2]

2000: $.0104712 per unit sold after the date of enactment of this Act;[3]

for each of 2001 and 2002: $.0136125 per unit sold after the date of enactment of this Act;

for each of 2003 through 2006: $.0167539 per unit sold after the date of enactment of this Act;

for each of 2007 and each year thereafter: $.0188482 per unit sold after the date of enactment of this Act.

(2) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (1) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances --

(A) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State. Funds shall be released from escrow under this subparagraph (i) in the order in which they were placed into escrow and (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(B) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(C) to the extent not released from escrow under subparagraphs (A) or (B), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General [or other State official] that it is in compliance with this subsection. The Attorney General [or other State official] may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall --

(A) be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty [to be paid to the general fund of the state] in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(B) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty [to be paid to the general fund of the state] in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(C) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years.

Each failure to make an annual deposit required under this section shall constitute a separate violation.[4]

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[2] [All per unit numbers subject to verification]

[3] [The phrase "after the date of enactment of this Act" would need to be included only in the calendar year in which the Act is enacted.]

[4] [A State may elect to include a requirement that the violator also pay the State's costs and attorney's fees incurred during a successful prosecution under this paragraph (3).]

## EXHIBIT U
## STRATEGIC CONTRIBUTION FUND PROTOCOL

The payments made by the Participating Manufacturers pursuant to section IX(c)(2) of the Agreement ("Strategic Contribution Fund") shall be allocated among the Settling States pursuant to the process set forth in this Exhibit U.

Section 1

A panel committee of three former Attorneys General or former Article III judges ("Allocation Committee") shall be established to determine allocations of the Strategic Contribution Fund, using the process described herein. Two of the three members of the Allocation Committee shall be selected by the NAAG executive committee. Those two members shall choose the third Allocation Committee member. The Allocation Committee shall be geographically and politically diverse.

Section 2

Within 60 days after the MSA Execution Date, each Settling State will submit an itemized request for funds from the Strategic Contribution Fund, based on the criteria set forth in Section 4 of this Exhibit U.

Section 3

The Allocation Committee will determine the appropriate allocation for each Settling State based on the criteria set forth in Section 4 below. The Allocation Committee shall make its determination based upon written documentation.

Section 4

The criteria to be considered by the Allocation Committee in its allocation decision include each Settling State's contribution to the litigation or resolution of state tobacco litigation, including, but not limited to, litigation and/or settlement with tobacco product manufacturers, including Liggett and Myers and its affiliated entities.

Section 5

Within 45 days after receiving the itemized requests for funds from the Settling States, the Allocation Committee will prepare a preliminary decision allocating the Strategic Contribution Fund payments among the Settling States who submitted itemized requests for funds. All Allocation Committee decisions must be by majority vote. Each Settling State will have 30 days to submit comments on or objections to the draft decision. The Allocation Committee will issue a final decision allocating the Strategic Contribution Fund payments within 45 days.

Section 6

The decision of the Allocation Committee shall be final and non-appealable.

Section 7

The expenses of the Allocation Committee, in an amount not to exceed $100,000, will be paid from disbursements from the Subsection VIII(c) Account.

**APPENDIX C**

**CONSENT DECREE**

At IAS Part 56 of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse located at 60 Centre Street, New York, New York, on the 23rd day of December, 1998

PRESENT:

HON. STEPHEN G. CRANE, Justice

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE STATE OF NEW YORK and DENNIS C. VACCO, Attorney General of the State of New York, for and on behalf of the PEOPLE OF THE STATE OF NEW YORK,

Plaintiffs,

-against-

PHILIP MORRIS INCORPORATED; PHILIP MORRIS COMPANIES, INC.; RJR NABISCO, INC.; RJR NABISCO HOLDINGS CORP.; R.J. REYNOLDS TOBACCO CO.; THE AMERICAN TOBACCO CO., INC.; AMERICAN BRANDS, INC.; BROWN & WILLIAMSON TOBACCO CORP.; LORILLARD TOBACCO COMPANY; LORILLARD INCORPORATED; LOEWS CORPORATION; UNITED STATES TOBACCO COMPANY; UST, INC.; B.A.T. INDUSTRIES, P.L.C.; BRITISH AMERICAN TOBACCO COMPANY, LTD.; BATUS HOLDINGS, INC.; THE COUNCIL FOR TOBACCO RESEARCH - U.S.A., INC.; and TOBACCO INSTITUTE, INC.,

Defendants.

CONSENT DECREE AND FINAL JUDGMENT

Index No.: 400361/97
Hon. Stephen G. Crane, Justice.

WHEREAS, Plaintiffs, the State of New York and Attorney General Dennis C. Vacco, commenced this action on January 27, 1997, pursuant to their common law powers and the provisions of N.Y. Executive Law, Public Health Law, General Business Law, Business Corporations Law, Penal Law, Social Services Law, Not-for-Profit Corporations Law, Unconsolidated Law, the Civil Practice Law and Rules, and the State Constitution;

WHEREAS, Plaintiffs asserted various claims for monetary, equitable and injunctive relief, on behalf of the State of New York, including its Counties under GBL §342-b, against certain tobacco product manufacturers and other defendants;

WHEREAS, Defendants have contested the claims in the State's complaint and amended complaint and denied the State's allegations;

WHEREAS, the parties desire to resolve this action in a manner which appropriately addresses the State's public health concerns, while conserving the parties' resources, as well as those of the Court, which would otherwise be expended in litigating a matter of this magnitude; and

WHEREAS, the Court has made no determination of any violation of law, this Consent Decree and Final Judgment being entered prior to the taking of any testimony and without trial or final adjudication of any issue of fact or law;

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, AS FOLLOWS:**

## I. JURISDICTION AND VENUE

This Court has jurisdiction over the subject matter of this action and over each of the Participating Manufacturers. Venue is proper in this county.

## II. DEFINITIONS

The definitions set forth in the Master Settlement Agreement ("MSA" or "Agreement") (a copy of which is attached hereto as Exhibit 1) are incorporated herein by reference. "County" means a county of the State of New York, including New York City, with New York City to be treated as a single county and none of its constituent counties to be treated separately; "Counties" means the counties of the State of New York, including New York City, with New York City to be treated as a single county and none of its constituent counties to be treated separately; provided, however, that any county that properly excludes itself from the class provisionally certified for settlement purposes only by this Court's Order of November 24, 1998 (the "Class") is not included in the definitions of "County" or "Counties."

## III. APPLICABILITY

A. This Consent Decree and Final Judgment applies only to the Participating Manufacturers in their corporate capacity acting through their respective successors and assigns, directors, officers, employees, agents, subsidiaries, divisions, or other internal organizational units of any kind or any other entities acting in concert or participation with them. The remedies, penalties and sanctions that may be imposed or assessed in connection with a violation of this Consent Decree and Final Judgment (or any order issued in connection herewith) shall only apply to the Participating Manufacturers, and shall not be imposed or assessed against any employee, officer or director of any Participating Manufacturer, or against any other person or entity as a consequence of such violation, and there shall be no jurisdiction under this Consent Decree and Final Judgment to do so.

B. This Consent Decree and Final Judgment is not intended to and does not vest standing in any third party with respect to the terms hereof. No portion of this Consent Decree and Final Judgment shall provide any rights to, or be enforceable by, any person or entity other than the State of New York or a Released Party. The State of New York may not assign or otherwise convey any right to enforce any provision of this Consent Decree and Final Judgment. Provided, however, that a County or Counties may enforce the payment rights provided in Article V of this Consent Decree and Final Judgment, but only against other Counties or the State. Only the State may enforce the provisions of Article V against the Participating Manufacturers.

## IV. VOLUNTARY ACT OF THE PARTIES

The parties hereto expressly acknowledge and agree that this Consent Decree and Final Judgment is voluntarily entered into as the result of arm's-length negotiation, and all parties hereto were represented by counsel in deciding to enter into this Consent Decree and Final Judgment.

## V. MONETARY RELIEF

A. Under subsections II(r), (s), IX, and XI of the MSA, payments from the Participating Manufacturers will be made to the Escrow Agent for further disbursement, pursuant to an Escrow Agreement executed by the parties and approved by a Court of competent jurisdiction. The State shall instruct the Independent Auditor and the Escrow Agent to disburse funds from the New York State-Specific Account directly to the State of New York and directly to the Counties individually according to the payment schedule annexed hereto as Exhibit 2.

B. The payment schedule set forth in Exhibit 2 shall remain in effect for as long as payments are made from the Participating Manufacturers under the MSA. The portion of those payments credited to the New York State-Specific Account, if any, shall be allocable to the State of New York and the individual Counties as set forth in Exhibit 2.

C. Effective upon the occurrence of State-Specific Finality in the State of New York, and to the extent that such claims may not otherwise be released by operation of the MSA, the Counties (as defined in this Consent Decree and Final Judgment) hereby absolutely and unconditionally release and forever discharge all Released Parties from all Released Claims that the Counties directly, indirectly, derivatively or in any other capacity ever had, now have, or hereafter can, shall, or may have, to the same extent that the Settling States are releasing Released Claims against Released Parties under the MSA.

D. Each County (as defined in this Consent Decree and Final Judgment) further covenants and agrees that it shall not after the occurrence of State-Specific Finality in the State of New York sue or seek to establish civil liability against any Released Party based, in whole or in part, upon any of the Released Claims, and further agrees that such covenant and agreement shall be a complete defense to any such civil action or proceeding.

E. Upon the occurrence of State-Specific Finality in the State of New York, the City of New York (unless it has properly excluded itself from the Class) will move forthwith for a dismissal with prejudice of the action entitled *City of New York et al. v. The Tobacco Institute, Inc. et al.,* Supreme Court of the State of New York, County of New York, Index No. 406225/96, and the County of Erie (unless it has properly excluded itself from the Class) will move forthwith for a dismissal with prejudice of its action entitled *County of Erie v. The Tobacco Institute, Inc. et al.,* Supreme Court of the State of New York, County of Erie, Index No. 1997/359.

F. If a County or Counties properly excludes itself from the Class, such County or Counties shall not receive any funds under the MSA, and the State may, in its sole discretion, place the funds allocated to such County or Counties under Exhibit 2 to this Consent Decree And Final Judgment in escrow.

G. If any funds are recouped from the State of New York by the Federal Government, pursuant to an Act of Congress or otherwise, from monies received or to be received by the State (including its political subdivisions) from the New York State-Specific Account, then the State shall recoup from the Counties the Counties' share of such funds, through offsets or any other mechanisms selected by the State, according to the allocation percentages of the settlement funds in the year or years in question assigned to the respective Counties pursuant to the allocation schedule set forth in Exhibit 2. Nothing herein acknowledges a right of the Federal Government to recoup any such funds.

## VI. INJUNCTIVE AND OTHER EQUITABLE RELIEF

Each Participating Manufacturer is permanently enjoined from:

A. Taking any action, directly or indirectly, to target Youth within the State of New York in the advertising, promotion or marketing of Tobacco Products, or taking any action the primary purpose of which is to initiate, maintain or increase the incidence of Youth smoking within the State of New York.

B. After 180 days after the MSA Execution Date, using or causing to be used within the State of New York any Cartoon in the advertising, promoting, packaging or labeling of Tobacco Products.

C. After 30 days after the MSA Execution Date, making or causing to be made any payment or other consideration to any other person or entity to use, display, make reference to or use as a prop within the State of New York any Tobacco Product, Tobacco Product package, advertisement for a Tobacco Product, or any other item bearing a Brand Name in any Media; provided, however, that the foregoing prohibition shall not apply to (1) Media where the audience or viewers are within an Adult-Only Facility (provided such Media are not visible to persons outside such Adult-Only Facility); (2) Media not intended for distribution or display to the public; (3) instructional Media concerning non-conventional cigarettes viewed only by or provided only to smokers who are Adults; and (4) actions taken by any Participating Manufacturer in connection with a Brand Name Sponsorship permitted pursuant to subsections III(c)(2)(A) and III(c)(2)(B)(i) of the Agreement, and use of a Brand Name to identify a Brand Name Sponsorship permitted by subsection III(c)(2)(B)(ii).

D. Beginning July 1, 1999, marketing, distributing, offering, selling, licensing or causing to be marketed, distributed, offered, sold, or licensed (including, without limitation, by catalogue or direct mail), within the State of New York, any apparel or other merchandise (other than Tobacco Products, items the sole function of which is to advertise Tobacco Products, or written or electronic publications) which bears a Brand Name. Provided, however, that nothing in this section shall (1) require any Participating Manufacturer to breach or terminate any licensing agreement or other contract in existence as of June 20, 1997 (this exception shall not apply beyond the current term of any existing contract, without regard to any renewal or option term that may be exercised by such Participating Manufacturer); (2) prohibit the distribution to any Participating Manufacturer's employee who is not Underage of any item described above that is intended for the personal use of such an employee; (3) require any Participating Manufacturer to retrieve, collect or otherwise recover any item that prior to the MSA Execution Date was marketed, distributed, offered, sold, licensed or caused to be marketed, distributed, offered, sold or licensed by such Participating Manufacturer; (4) apply to coupons or other items used by Adults solely in connection with the purchase of Tobacco Products; (5) apply to apparel or other merchandise used within an Adult-Only Facility that is not distributed (by sale or otherwise) to any member of the general public; or (6) apply to apparel or other merchandise (a) marketed, distributed, offered, sold, or licensed at the site of a Brand Name Sponsorship permitted pursuant to subsection III(c)(2)(A) or III(c)(2)(B)(i) of the Agreement by the person to which the relevant Participating Manufacturer has provided payment in exchange for the use of the relevant Brand Name in the Brand Name Sponsorship or a third-party that does not receive payment from the relevant Participating Manufacturer (or any Affiliate of such Participating Manufacturer) in connection with the marketing, distribution, offer, sale or license of such apparel or other merchandise, or (b) used at the site of a Brand Name Sponsorship permitted pursuant to subsections III(c)(2)(A) or III(c)(2)(B)(i) of the Agreement (during such event) that are not distributed (by sale or otherwise) to any member of the general public.

E. After the MSA Execution Date, distributing or causing to be distributed within the State of New York any free samples of Tobacco Products except in an Adult-Only Facility. For purposes of this Consent Decree and Final Judgment, a "free sample" does not include a Tobacco Product that is provided to an Adult in connection with (1) the purchase, exchange or redemption for proof of purchase of any Tobacco Products (including, but not limited to, a free offer in connection with the purchase of Tobacco Products, such as a "two-for-one" offer), or (2) the conducting of consumer testing or evaluation of Tobacco Products with persons who certify that they are Adults.

F. Using or causing to be used as a brand name of any Tobacco Product pursuant to any agreement requiring the payment of money or other valuable consideration, any nationally recognized or nationally established brand name or trade name of any non-tobacco item or service or any nationally recognized or nationally established sports team, entertainment group or individual celebrity. Provided, however, that the preceding sentence shall not apply to any Tobacco Product brand name in existence as of July 1, 1998. For the purposes of this provision, the term "other valuable consideration" shall not include an agreement between two entities who enter into such agreement for the sole purpose of avoiding infringement claims.

G. After 60 days after the MSA Execution Date and through and including December 31, 2001, manufacturing or causing to be manufactured for sale within the State of New York any pack or other container of Cigarettes containing fewer than 20 Cigarettes (or, in the case of roll-your-own tobacco, any

package of roll-your-own tobacco containing less than 0.60 ounces of tobacco); and, after 150 days after the MSA Execution Date and through and including December 31, 2001, selling or distributing within the State of New York any pack or other container of Cigarettes containing fewer than 20 Cigarettes (or, in the case of roll-your-own tobacco, any package of roll-your-own tobacco containing less than 0.60 ounces of tobacco).

H. Entering into any contract, combination or conspiracy with any other Tobacco Product Manufacturer that has the purpose or effect of: (1) limiting competition in the production or distribution of information about health hazards or other consequences of the use of their products; (2) limiting or suppressing research into smoking and health; or (3) limiting or suppressing research into the marketing or development of new products. Provided, however, that nothing in the preceding sentence shall be deemed to (1) require any Participating Manufacturer to produce, distribute or otherwise disclose any information that is subject to any privilege or protection; (2) preclude any Participating Manufacturer from entering into any joint defense or joint legal interest agreement or arrangement (whether or not in writing), or from asserting any privilege pursuant thereto; or (3) impose any affirmative obligation on any Participating Manufacturer to conduct any research.

I. Making any material misrepresentation of fact regarding the health consequences of using any Tobacco Product, including any tobacco additives, filters, paper or other ingredients. Provided, however, that nothing in the preceding sentence shall limit the exercise of any First Amendment right or the assertion of any defense or position in any judicial, legislative or regulatory forum.

## VII. MISCELLANEOUS PROVISIONS

A. Jurisdiction of this case is retained by the Court for the purposes of implementing and enforcing the Agreement and this Consent Decree and Final Judgment and enabling the continuing proceedings contemplated herein. Whenever possible, the State of New York and the Participating Manufacturers shall seek to resolve any issue that may exist as to compliance with this Consent Decree and Final Judgment by discussion among the appropriate designees named pursuant to subsection XVIII(m) of the Agreement. The State of New York and/or any Participating Manufacturer may apply to the Court at any time for further orders and directions as may be necessary or appropriate for the implementation and enforcement of this Consent Decree and Final Judgment. A County may apply for further orders and directions as may be necessary or appropriate for the implementation or enforcement of the fourth sentence of Article III(B) of this Consent Decree and Final Judgment. Provided, however, that with regard to subsections VI(A) and VI(I) of this Consent Decree and Final Judgment, the Attorney General shall issue a cease and desist demand to the Participating Manufacturer that the Attorney General believes is in violation of either of such sections at least ten Business Days before the Attorney General applies to the Court for an order to enforce such subsections, unless the Attorney General reasonably determines that either a compelling time-sensitive public health and safety concern requires more immediate action or the Court has previously issued an Enforcement Order to the Participating Manufacturer in question for the same or a substantially similar action or activity. For any claimed violation of this Consent Decree and Final Judgment, in determining whether to seek an order for monetary, civil contempt or criminal sanctions for any claimed violation, the Attorney General shall give good-faith consideration to whether: (1) the Participating Manufacturer that is claimed to have committed the violation has taken appropriate and reasonable steps to cause the claimed violation to be cured, unless that party has been guilty of a pattern of violations of like nature; and (2) a legitimate, good-faith dispute exists as to the meaning of the terms in question of this Consent Decree and Final Judgment. The Court in any case in its discretion may determine not to enter an order for monetary, civil contempt or criminal sanctions.

B. This Consent Decree and Final Judgment is not intended to be, and shall not in any event be construed as, or deemed to be, an admission or concession or evidence of (1) any liability or any wrongdoing whatsoever on the part of any Released Party or that any Released Party has engaged in any of the activities barred by this Consent Decree and Final Judgment; or (2) personal jurisdiction over any person or entity other than the Participating Manufacturers. Each Participating Manufacturer specifically disclaims and denies any liability or wrongdoing whatsoever with respect to the claims and allegations

asserted against it in this action, and has stipulated to the entry of this Consent Decree and Final Judgment solely to avoid the further expense, inconvenience, burden and risk of litigation.

C. Except as expressly provided otherwise in the Agreement, this Consent Decree and Final Judgment shall not be modified (by this Court, by any other court or by any other means) unless the party seeking modification demonstrates, by clear and convincing evidence, that it will suffer irreparable harm from new and unforeseen conditions. Provided, however, that the provisions of sections III, V, VI, VII and VIII of this Consent Decree and Final Judgment shall in no event be subject to modification without the consent of the State of New York and all affected Participating Manufacturers. In the event that any of the sections of this Consent Decree and Final Judgment enumerated in the preceding sentence are modified by this Court, by any other court or by any other means without the consent of the State of New York and all affected Participating Manufacturers, then this Consent Decree and Final Judgment shall be void and of no further effect. Changes in the economic conditions of the parties shall not be grounds for modification. It is intended that the Participating Manufacturers will comply with this Consent Decree and Final Judgment as originally entered, even if the Participating Manufacturers' obligations hereunder are greater than those imposed under current or future law (unless compliance with this Consent Decree and Final Judgment would violate such law). A change in law that results, directly or indirectly, in more favorable or beneficial treatment of any one or more of the Participating Manufacturers shall not support modification of this Consent Decree and Final Judgment.

D. In any proceeding which results in a finding that a Participating Manufacturer violated this Consent Decree and Final Judgment, the Participating Manufacturer or Participating Manufacturers found to be in violation shall pay the State's costs and attorneys' fees incurred only by the State of New York in such proceeding.

E. The remedies in this Consent Decree and Final Judgment are cumulative and in addition to any other remedies the State of New York may have at law or equity, including but not limited to its rights under the Agreement. Nothing herein shall be construed to prevent the State from bringing an action with respect to conduct not released pursuant to the Agreement, even though that conduct may also violate this Consent Decree and Final Judgment. Nothing in this Consent Decree and Final Judgment is intended to create any right for New York to obtain any Cigarette product formula that it would not otherwise have under applicable law.

F. No party shall be considered the drafter of this Consent Decree and Final Judgment for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter. Nothing in this Consent Decree and Final Judgment shall be construed as approval by the State of New York of the Participating Manufacturers' business organizations, operations, acts or practices, and the Participating Manufacturers shall make no representation to the contrary.

G. The settlement negotiations resulting in this Consent Decree and Final Judgment have been undertaken in good faith and for settlement purposes only, and no evidence of negotiations or discussions underlying this Consent Decree and Final Judgment shall be offered or received in evidence in any action or proceeding for any purpose. Neither this Consent Decree and Final Judgment nor any public discussions, public statements or public comments with respect to this Consent Decree and Final Judgment by the State of New York or any Participating Manufacturer or its agents shall be offered or received in evidence in any action or proceeding for any purpose other than in an action or proceeding arising under or relating to this Consent Decree and Final Judgment.

H. All obligations of the Participating Manufacturers pursuant to this Consent Decree and Final Judgment (including, but not limited to, all payment obligations) are, and shall remain, several and not joint.

I. The provisions of this Consent Decree and Final Judgment are applicable only to actions taken (or omitted to be taken) within the States. Provided, however, that the preceding sentence shall not be construed as extending the territorial scope of any provision of this Consent Decree and Final Judgment whose scope is otherwise limited by the terms thereof.

J. Nothing in subsection VI(A) or VI(I) of this Consent Decree shall create a right to challenge the continuation, after the MSA Execution Date, of any advertising content, claim or slogan (other than use of a Cartoon) that was not unlawful prior to the MSA Execution Date.

K. If the Agreement terminates in this State for any reason, then this Consent Decree and Final Judgment shall be void and of no further effect.

## VIII. FINAL DISPOSITION

A. The Agreement, the settlement set forth therein, and the establishment of the escrow provided for therein are hereby approved in all respects, and all claims are hereby dismissed with prejudice as provided therein.

B. The Court finds that the persons signing the Agreement have full and complete authority to enter into the binding and fully effective settlement of this action as set forth in the Agreement. The Court further finds that entering into this settlement is in the best interests of the State of New York and the Counties.

LET JUDGMENT BE ENTERED ACCORDINGLY

DATED this 23rd day of December, 1998

FILED
DEC 23, 1998

COUNTY CLERK'S OFFICE
NEW YORK

/s/ SGC
J.S.C.

STEPHEN G. CRANE
/s/ Norman Goodman
Clerk

## EXHIBIT 2

At all times and under all circumstances specified in Section XI of the Master Settlement Agreement that require the Independent Auditor to instruct the Escrow Agent to disburse amounts to the State of New York pursuant to the terms of the Master Settlement Agreement ("New York Disbursal Share"), the Independent Auditor shall allocate all such New York Disbursal Share among the State of New York, the City of New York[1], and the individual counties of New York according to the schedule set forth below and instruct the Escrow Agent to disburse such allocated amounts directly to the State of New York, the City of New York and the specified counties.

(1) With respect to the New York Disbursal Share of all amounts paid by the Participating Manufacturers pursuant to Section IX(b) of the Master Settlement Agreement, the Independent Auditor shall allocate and instruct the Escrow Agent to disburse such amounts as follows:

| Entity | Percentage of Payment |
|---|---|
| New York State | 51.176% |
| New York City | 26.670% |
| Albany | 0.593% |
| Allegheny | 0.107% |
| Broome | 0.446% |
| Cattaraugus | 0.179% |
| Cayuga | 0.166% |
| Chautauqua | 0.308% |
| Chemung | 0.212% |
| Chenango | 0.104% |
| Clinton | 0.170% |
| Columbia | 0.126% |
| Cortland | 0.100% |
| Delaware | 0.101% |
| Dutchess | 0.500% |
| Erie | 2.194% |
| Essex | 0.075% |
| Franklin | 0.098% |
| Fulton | 0.121% |
| Genessee | 0.118% |
| Greene | 0.085% |
| Hamilton | 0.013% |
| Herkimer | 0.142% |
| Jefferson | 0.190% |
| Lewis | 0.054% |
| Livingston | 0.112% |
| Madison | 0.131% |
| Monroe | 1.536% |
| Montgomery | 0.114% |
| Nassau | 2.739% |
| Niagara | 0.467% |

[1]The City of New York includes the five individual boroughs of Manhattan, Bronx, Brooklyn, Queens and Staten Island, and the New York City Health and Hospitals Corporation.

| Entity | Percentage of Payment |
|---|---|
| Oneida | 0.544% |
| Onondaga | 0.972% |
| Ontario | 0.181% |
| Orange | 0.564% |
| Orleans | 0.078% |
| Oswego | 0.239% |
| Otsego | 0.122% |
| Putnam | 0.152% |
| Rensselaer | 0.317% |
| Rockland | 0.560% |
| St. Lawrence | 0.239% |
| Saratoga | 0.304% |
| Schenectady | 0.319% |
| Schoharie | 0.063% |
| Schuyler | 0.038% |
| Seneca | 0.069% |
| Steuben | 0.211% |
| Suffolk | 2.673% |
| Sullivan | 0.155% |
| Tioga | 0.100% |
| Tompkins | 0.170% |
| Ulster | 0.334% |
| Warren | 0.113% |
| Washington | 0.113% |
| Wayne | 0.172% |
| Westchester | 1.926% |
| Wyoming | 0.081% |
| Yates | 0.044% |

(2) With respect to amounts paid by the Participating Manufacturers pursuant to Section IX(c)(2) of the Master Settlement Agreement, the Independent Auditor shall allocate and instruct the Escrow Agent to disburse the entire proceeds to the State of New York.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. STEPHEN G. CRANE Part 56
*Justice*

THE STATE OF NEW YORK, et al.,

*Plaintiff,*

- v -

PHILIP MORRIS, INC., et al.,

*Defendants.*

INDEX NO.: 400361/97
MOTION DATE: 4/13/99
MOTION SEQ. NO.: 019
MOTION CAL. NO.: 139

The following papers, numbered 1 to ____ were read on this motion to/for _____

| | PAPERS NUMBERED |
|---|---|
| Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | _____ |
| Answering Affidavits — Exhibits _____ | _____ |
| Replying Affidavits _____ | _____ |

Cross-Motion: [ ] Yes [X] No

The State of New York and defendants Brown & Williamson Tobacco Corporation, Philip Morris Incorporated, R.J. Reynolds Tobacco Company, and Lorillard Tobacco Company, jointly move for an order, pursuant to CPLR 5019(a), correcting Exhibit 2 to the "Consent Decree and Final Judgment" relating to the Master Settlement Agreement, entered on December 23, 1998, so that the "Consent Decree and Final Judgment" accurately reflects the original intention of the parties and the terms of the Master Settlement Agreement with respect to the intra-State allocation of annual payments by the Participating Manufacturers pursuant to Section IX(c)(1) of the Master Settlement Agreement. The motion is granted on default.

Accordingly, it is

ORDERED that the motion is granted on default; and it is further

ORDERED that Paragraph (1) of "Exhibit 2" to the "Consent Decree and Final Judgment" relating to the Master Settlement Agreement, entered on December 23, 1998, shall be amended to read as follows:

(1) With respect to the New York Disbursal Share of all amounts paid by the Participating Manufacturers pursuant to Sections IX(b) or IX(c)(1) of the Master Settlement Agreement, the Independent Auditor shall allocate and instruct the Escrow Agent to disburse such amounts as follows: . . . .

The foregoing constitutes the decision and order of the court.

Dated: April 14, 1999

/s/ SGC
STEPHEN G. CRANE J.S.C.

Check One: [ ] FINAL DISPOSITION [X] NON-FINAL DISPOSITION
/s/ MDAR

BROWN & WOOD LLP

ONE WORLD TRADE CENTER
NEW YORK, N.Y. 10048-0557

TELEPHONE: 212-839-5300
FACSIMILE: 212-839-5599

## PROPOSED OPINION OF TRANSACTION COUNSEL

November 18, 1999

TSASC, INC.

We have acted as transaction counsel to TSASC, INC. (the "Corporation"), a corporation organized under the laws of the State of New York (the "State"), in the Corporation's issuance of its Tobacco Flexible Amortization Bonds, Series 1999-1 (the "Bonds"). The Bonds are being issued as Senior Bonds pursuant to an Indenture dated as of November 1, 1999, as supplemented (the "Indenture"), between the Corporation and United States Trust Company of New York, as Trustee.

The Bonds are dated, bear interest, mature, are subject to redemption and are secured as set forth in the Indenture. The Corporation is authorized to issue additional Senior Bonds (together with the Bonds, the "Senior Bonds") only on the terms and conditions set forth in the Indenture and all such Senior Bonds shall with the Bonds be entitled to the equal benefit, protection and security of the provisions, covenants and agreements in the Indenture. We assume the parties will perform in all material respects their respective covenants in the Indenture and the Purchase and Sale Agreement dated November 18, 1999 (the "Agreement"), between the Corporation and The City of New York (the "City").

Based on the foregoing and our examination of existing constitutional, statutory and decisional law, and such legal proceedings and such other documents as we deem necessary to render this opinion, we are of the opinion that:

1. The Corporation is duly organized and existing under the laws of the State, and is authorized under the laws of the State to enter into the Indenture and the Agreement and to issue the Bonds.

2. The Indenture (a) has been duly and lawfully authorized, executed and delivered by the Corporation, (b) creates the valid pledge of and security interest in the revenues and other collateral (collectively, the "Trust Estate") that it purports to create and (c) is a valid and binding agreement of the Corporation, enforceable in accordance with its terms. All action has been taken as is necessary to perfect such pledge and security interest in the Trust Estate as it exists on the date hereof and such perfected pledge and security interest constitutes a first priority pledge and security interest.

3. The Bonds have been duly authorized, executed, and delivered by the Corporation and are valid and binding obligations of the Corporation payable from the sources and in the order of priority specified in the Indenture. The Bonds do not constitute a debt of the State or the City, and neither the State nor the City shall be liable thereon, nor shall the Bonds be payable out of any funds other than those of the Corporation.

4. The Agreement has been duly and lawfully authorized, executed and delivered by the Corporation and the City and is a valid and binding agreement of each of them, enforceable in accordance with its terms.

5. Except as provided in the following sentence, interest on the Bonds is not includable in the gross income of the owners of the Bonds for purposes of Federal, New York State or New York City income taxation under existing law. Interest on the Bonds will be includable in the gross income of the owners thereof retroactive to the date of issue of the Bonds in the event of a failure by the Corporation or the City to comply with the applicable requirements of the Internal Revenue Code of 1986, as amended (the "Tax Code"), and their respective covenants regarding use, expenditure and investment of bond proceeds and the timely payment of certain investment earnings to the United States Treasury; and we render no opinion as to the exclusion from gross income of interest on the Bonds for Federal income tax purposes on or after the date on which any action is taken under the Indenture or related proceedings upon the approval of counsel other than ourselves.

6. Interest on the Bonds is not a specific preference item for purposes of the Federal individual or corporate alternative minimum tax. The Tax Code contains other provisions that could result in tax consequences, upon which we render no opinion, as a result of ownership of such Bonds or the inclusion in certain computations (including without limitation those related to the corporate alternative minimum tax) of interest that is excluded from gross income.

7. The excess, if any, of the amount payable at maturity of a maturity of the Bonds over the initial offering price of such Bonds to the public at which price a substantial amount of such maturity is sold represents original issue discount that is excluded from gross income for Federal, State and City income tax purposes to the same extent as interest on the Bonds. The Tax Code further provides that such original issue discount excluded as interest accrues in accordance with a constant interest method based on the compounding of interest, and that a holder's adjusted basis for purposes of determining a holder's gain or loss on disposition of the Bonds with original issue discount will be increased by the amount of such accrued interest.

The rights of the holders of the Bonds and the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted, and to general principles of equity.

Our opinion in paragraph 2 is subject to the following assumptions, limitations, qualifications and exceptions:

a. We have assumed that there are no claims or liens on the Trust Estate in favor of any governmental entity or any agency or instrumentality thereof (including federal tax liens and liens arising under Title IV of the Employee Retirement Income Security Act of 1974, as amended);

b. We call to your attention that Section 552 of the Bankruptcy Code limits the extent to which property acquired by a debtor after the commencement of a case under the Bankruptcy Code may be subject to a security interest arising from a security agreement entered into by the debtor before the commencement of such case; and

c. We call to your attention that the security interests of the Trustee in collateral consisting of proceeds is limited to the extent set forth in Section 9-306 in the Uniform Commercial Code of the State.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions. Such opinions may be adversely affected by actions taken or events occurring, including a change in law, regulation or ruling (or in the application or official interpretation of any law, regulation or ruling) after the date hereof. We have not undertaken to determine, or to inform any person, whether such actions are taken or such events occur and we have no obligation to update this opinion in light of such actions or events.

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# TSASC

## TABLE OF CONTENTS

**DO NOT STAPLE THIS FORM**

108502

**MSRB** **FORM G-36 (OS) – FOR OFFICIAL STATEMENTS**

## SECTION I - MATERIALS SUBMITTED

A. THIS FORM IS SUBMITTED IN CONNECTION WITH (check one)

1. ☒ A FINAL OFFICIAL STATEMENT RELATING TO A PRIMARY OFFERING OF MUNCIPAL SECURITIES (enclose two (2) copies):
   (a) DATE RECEIVED FROM ISSUER: 11/10/1999 (b) DATE SENT TO MSRB: 11/10/1999
2. ☐ AN AMENDED OFFICIAL STATEMENT WITHIN THE MEANING OF RULE G-36(d) (enclose two (2) copies):
   (a) DATE RECEIVED FROM ISSUER: _____ (b) DATE SENT TO MSRB: _____

B. IF MATERIALS SUBMITTED WITH THIS FORM CONSIST OF MORE THAN ONE DOCUMENT (e.g., preliminary official statement and wrap, even if physically attached), PLEASE CHECK HERE: ☐

C. IF THIS FORM AMENDS PREVIOUSLY SUBMITTED FORM WITHOUT CHANGING MATERIALS SUBMITTED, CHECK HERE (include copy of original Form G-36(ARD)): ☐

## SECTION II – IDENTIFICATION OF ISSUE(S)

**Each must be listed separately. If more space is needed to list additional issues, please include on separate sheet and check here: ☐**

A. NAME OF ISSUER: TSASC, INC. STATE: NY
DESCRIPTION OF ISSUE: TOBACCO FLEXIBLE AMORTIZATION BONDS (TFABs), SER. 1999-1 DATED DATE: 11/18/1999

B. NAME OF ISSUER: _____ STATE: _____
DESCRIPTION OF ISSUE: _____ DATED DATE: _____

C. NAME OF ISSUER: _____ STATE: _____
DESCRIPTION OF ISSUE: _____ DATED DATE: _____

## SECTION III - TRANSACTION INFORMATION

A. LATEST FINAL MATURITITY DATE OF ALL SECURITIES IN OFFERING: 07/15/2039

B. DATE OF FINAL AGREEMENT TO PURCHASE, OFFER OR SELL SECURITIES (Date of Sale): 11/05/1999

C. ACTUAL OR EXPECTED DATE OF DELIVERY OF SECURITIES TO UNDERWRITER(S) (Bond Closing): 11/18/1999

D. IF THESE SECURITIES ADVANCE REFUND ALL OR A PORTION OF ANOTHER ISSUE, PLEASE CHECK HERE: ☐
**A separate Form G-36 (ARD) and copies of the advance refunding document must be submitted for each issue advance refunded.**

## SECTION IV – UNDERWRITING ASSESSMENT INFORMATION

**This information will be used by the MSRB to compute any rule A-13 underwriting assessment that may be due on this offering. The managing underwriter will be sent an invoice if a rule A-13 assessment is due on the offering.**

A. MANAGING UNDERWRITER: SALOMONSMITHBARNEY SEC REG. NUMBER: 8-08177

B. TOTAL PAR VALUE OF ALL SECURITIES IN OFFERING $ 709,280,000

C. PAR AMOUNT OF SECURITIES UNDERWRITTEN (if different from amount shown in item B above): $ _____

D. CHECK ALL THAT APPLY:

☐ 1. At the option of the holder thereof, all securities in this offering may be tendered to the issuer of such securities or its designated agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by the issuer or its designated agent.

☐ 2. At the option of the holder thereof, all securities in this offering may be tendered to the issuer of such securities or its designated agent for redemption or purchase at par value or more at least as frequently as every two years until maturity, earlier redemption, or purchase by the issuer or its designated agent.

☐ 3. This offering is exempt from SEC Rule 15c2-12 under section (d)(1)(i) of that rule. Section (d)(1)(i) of SEC rule 15c2-12 states that an offering is exempt from the requirements of the rule if the securities offered have authorized denominations of $100,000 or more and are sold to no more than 35 persons each of whom the participating underwriter believes: (1) has the knowledge and expertise necessary to evaluate the merits and risks of the investment, and (21) is not purchasing for more than one account, or with a view toward distributing the securities.

CONTINUED ON OTHER SIDE

## SECTION V – CUSIP INFORMATION

**MSRB rule G-34 requires that CUSIP numbers be assigned to each issue of municipal securities unless the issue is ineligible for CUSIP number assignment under the eligibility criteria of the CUSIP Service Bureau.**

A. CUSIP-9 NUMBERS OF ISSUE(S)

| Maturity Date | CUSIP Number | Maturity Date | CUSIP Number | Maturity Date | CUSIP Number |
|---|---|---|---|---|---|
| 07/15/03 | 898526 AA6 | 07/15/11 | 898526 AP3 | 07/15/18 | 898526 BC1 |
| 07/15/03 | AB4 | 07/15/11 | AQ1 | 07/15/18 | BD9 |
| 07/15/04 | AC2 | 07/15/12 | AR9 | 07/15/19 | BE7 |
| 07/15/05 | AD0 | 07/15/12 | AS7 | 07/15/19 | BF4 |
| 07/15/06 | AE8 | 07/15/13 | AT5 | 07/15/20 | BG2 |
| 07/15/06 | AF5 | 07/15/13 | AU2 | 07/15/20 | BH0 |
| 07/15/07 | AG3 | 07/15/14 | AV0 | 07/15/21 | BJ6 |
| 07/15/08 | AH1 | 07/15/14 | AW8 | 07/15/27 | BK3 |
| 07/15/08 | AJ7 | 07/15/15 | AX6 | 07/15/34 | BL1 |
| 07/15/09 | AK4 | 07/15/15 | AY4 | 07/15/39 | BM9 |
| 07/15/09 | AL2 | 07/15/16 | AZ1 | | |
| 07/15/10 | AM0 | 07/15/17 | BA5 | | |
| 07/15/10 | AN8 | 07/15/17 | BB3 | | |

B. IF ANY OF THE ABOVE SECURITIES HAS A CUSIP-6 BUT NO CUSIP-9, CHECK HERE AND LIST THEM BELOW ☐
**(Please see instructions in Form G-36 Manual)**

LIST ALL CUSIP-6 NUMBERS ASSIGNED _____

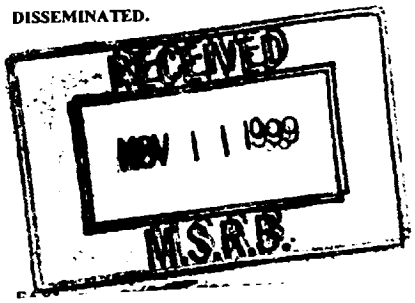
State the reason why securities have not be assigned a "Cusip-9" _____

C. IF ANY OF THESE SECURITIES IS INELIGIBLE FOR CUSIP NUMBER ASSIGNMENT, PLEASE CHECK HERE ☐

State the reason why securities have not be assigned a "Cusip-9" _____

## SECTION VI – MANAGING UNDERWRITER'S CERTIFICATION AND SIGNATURE

**THE UNDERSIGNED CERTIFIES THAT THE MATERIALS ACCOMPANYING THIS FORM ARE AS DESCRIBED IN SECTION I ABOVE AND THAT ALL OTHER INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT. THE UNDERSIGNED ACKNOWLEDGES THAT SAID MATERIALS WILL BE PUBLICLY DISSEMINATED.**

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