

## Structured Finance

Tully Rinckey PLLC attorneys have extensive experience in representing a wide range of participants in the structured finance industry. In this regard, our attorneys have represented investment banks, merchant banks, commercial banks, investment companies, investment advisors, insurance companies, underwriters, collateral managers, pension funds, securities dealers, offshore investment funds, and offshore and onshore limited partnerships, corporations and limited liability companies. In the structured finance field, Tully Rinckey attorneys have acted as counsel to sponsors, issuers, collateral managers, warehouse lenders, swap counterparties, liquidity providers, underwriters and investors. Tully Rinckey attorneys have advised clients on a wide range of structured finance matters. These matters have included transactions involving the structuring and issuance of: Collateralized debt obligations ("CDOs"). These deals have included CDOs the underlying assets of which have consisted of Residential Mortgage-Backed Securities ("RMBS"), Commercial Mortgage-Backed Securities ("CMBS"), various types of bonds and loans, credit default swaps ("CDS"), interest rate swaps, currency swaps and/or other CDOs.

Asset-Backed Securities ("ABS"). These deals have involved securitizing assets which have consisted of equipment leases, auto loans, worldwide project finance loans, and railroad license agreements.

Asset-backed commercial paper ("ABCP") programs and structured investment vehicles ("SIVs"), some as large as \$20 billion in size, the assets of which have consisted of mortgage loans, bonds and various other debt securities, interest rate swaps, currency swaps, cost of funds swaps and/or market value swaps.

Collateralized loan obligations ("CLOs")

Collateralized bond obligations ("CBOs")

Structured derivatives—both credit and equity

Securitized credit-linked notes ("CLNs")

Obligations issued to syndicates of insurance companies by certified capital companies

In addition, Tully Rinckey attorneys have represented clients in the following structured finance matters: The formation of offshore issuers (including special purpose entities) specifically designed to rely on exemptions from U.S. taxation and from the registration requirements of the Securities Act of 1933 and the Investment Company Act of 1940

Drafting complex Offering Circulars, Offering Memoranda and Private Placement Memoranda

Drafting and negotiation of complex Indentures

Negotiation of investment transactions on behalf of institutional investors, including, but not limited to, purchases and sales of ABS

Drafting and negotiation of complex partnership and limited liability company agreements

Drafting and negotiation of loans secured by ABS

The offering of securities pursuant to Rule 144A, Regulation D, and/or Regulation S

Drafting and negotiation of underwriting and placement agreements

Drafting and negotiation of various other complex agreements and documents related to the transactions referred to above, including investment agreements, loan agreements, and security agreements

Structured Finance Representative Transaction:

An attorney presently at Tully Rinckey represented one of the world's largest financial institutions (the "Bank") in connection with the Bank's sponsorship of a \$2 billion offering of notes issued by a company (the "Issuer" or "CDO Issuer") with limited liability established in the Cayman Islands. This CDO offering was one of the most complex and unique offerings ever done in the field of structured finance. Included in the offering were the following securities issued by the CDO Issuer: \$1.18 billion of Floating Rate (one-month LIBOR plus 0.03% initially; one-month LIBOR plus a market-rate spread with respect to re-issued notes) Notes due in 2007

\$500 million of Floating Rate (one-month LIBOR plus 0.20%) Notes due in 2051

\$100 million of Floating Rate (one-month LIBOR plus 0.20%) Delayed Draw Notes (the "Delayed Draw Notes") due in 2051

\$100 million of Floating Rate (three-month LIBOR plus 0.01% initially; three-month LIBOR plus a market-rate spread on re-issued notes) Notes due in 2008

\$69.5 million of Floating Rate (three-month LIBOR plus 0.42%) Notes due in 2051

\$17 million of Floating Rate (three-month LIBOR plus 0.52%) Notes due in 2051

\$14 million of Floating Rate (three-month LIBOR plus 1.35%) Notes due in 2051

\$11 million of Floating Rate (three-month LIBOR plus 3.10%) Notes due in 2051

\$8.5 million of Income Notes (the "Income Notes") due in 2051

The Notes referred to in paragraphs 1 and 4 above were intended to be money-market notes (the "Money Market Notes") eligible for purchase by money market funds. They were rated "P-1" by Moody's and "A-1+" by Standard and Poor's ("S&P"). The Notes referred to in paragraphs 2, 3 and 5 were rated "Aaa" by Moody's and "AAA" by S&P. The Notes referred to in paragraph 6 were rated "Aa2" by Moody's and "AA" by S&P. The Notes referred to in paragraph 7 were rated "A2" by Moody's and "A" by S&P. The notes referred to in paragraph 8 were rated "Baa2" by Moody's and "BBB" by S&P. The Income Notes were rated "BB+" by S&P. All of the Notes other than the Income Notes are secured, through an Indenture entered into between the Issuer and a major money center bank acting as Trustee, by the assets of the CDO Issuer. These assets consist of: RMBS

CMBS

CDOs

ABS

CDS, the Reference Obligations and Deliverable Obligations (the latter two capitalized terms having standard CDS definitions) with respect to which could be classified in one of the

preceding four categories

Generally, on the stated maturity date of each issuance of the Money Market Notes, the holders of same are to be paid the principal and interest relating to such Notes from the proceeds of newly-issued Money Market Notes. In the event that on any such maturity date not enough new Money Market Notes are sold to pay the existing holders in full, the existing holders are entitled to "put" their Money Market Notes to the Bank pursuant to a Put Agreement. In order to limit the Issuer's exposure to risks created by the Issuer's holding many fixed-rate assets while issuing floating-rate securities and risks relating to the fact that many of the Issuer's assets make distributions on a monthly or semi-annual basis whereas the Issuer is required to make payments, in most cases, on a quarterly basis, the Issuer and the New York Branch of the Bank entered into a complex hedge agreement. In addition to the scheduled times for payment of principal and interest on the Notes, there are many other times at which principal and/or interest could be paid pursuant to the terms of the Notes and the Indenture. Depending on the circumstances, the principal and interest may be paid strictly in the order of the general priority of the Notes or may be paid pursuant to some other formula specified in the Indenture and the Notes. All of the Delayed Draw Notes were issued on the closing date. However, none of these Notes were actually funded on that date (i.e., the purchasers of the Delayed Draw Notes did not pay the full principal amount of the Delayed Draw Notes to the Issuer on the closing date). Instead, on certain designated dates and subject to certain conditions, the holders of the Delayed Draw Notes were required to pay a pro rata part of the funds requested by the Issuer on such dates. On an ongoing basis, if the Issuer fails to meet certain tests relating to its assets, the Issuer will be required to redeem some or all of the Notes. There are also certain other circumstances under which the Issuer can be required to redeem Notes. At the time that the above-described offering was drafted and negotiated, there were no exact precedents. In addition, the Bank continued to change its mind as to how the transaction was to be structured, even up to the closing date. Accordingly, the transaction was extremely difficult to negotiate and document due to the high volume of revisions to numerous documents which were necessary and the tight closing schedule which remained unchanged. Nevertheless, the Tully Rinckey attorney who worked on this transaction was able to accommodate the client's wishes and get the transaction closed on the day selected by the Bank.