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U.S. Department of The Treasury Solicitations for Asset Managers and Custodial Services

Understanding the Opportunities and Knowing the Risks

In order to implement the Emergency Economic Stabilization Act of 2008 (the "Act"), the U.S. Department of the Treasury (the "Treasury") issued three major solicitations on Monday, October 6, 2008 seeking financial institution applicants for the following roles: (i) Whole Loan Asset Manager; (ii) Securities Asset Manager; and (iii) Custodian, Accounting, Auction Manager And Other Infrastructure Services. Although the Treasury requires submission of a response by potential Managers no later than 5:00 p.m. EST on Wednesday, October 8, 2008, opportunities exist for subcontracting work from those institutions selected as Managers, as well as for small and minority and women-owned businesses as specifically highlighted in the Solicitations. While the Solicitations offer opportunities to a variety of financial institutions, those interested in pursuing these opportunities and a relationship with the Treasury should understand fully the risks that arise in forging a working relationship with the Treasury. The attorneys of Locke Lord Bissell & Liddell LLP and the government relations specialists of Locke Lord Strategies are positioned to assess these opportunities and risks and advise our clients in this rapidly changing economic and regulatory environment.

Each of the Solicitations contains: (i) a general description of the services sought by the Treasury for each specific type of Manager; (ii) the rules for submission of a response to the Solicitation; and (iii) the factors the Treasury will consider in selecting the applicable Managers.

With regard to a potential Whole Loan Asset Manager, the Treasury sets forth the following requirements:

Eligibility Requirements Include, But Are Not Limited To:

A. Must be a "Financial Institution," meaning any institution, including, but not limited to,

any bank, savings association, credit union, security broker or dealer, or insurance company, established and regulated under the laws of the United States, or its territories, and having significant operations in the United States, but excluding any central bank of, or institution owned by, a foreign government ("Financial Institution");

- B. Must not be subject to any pending or current enforcement actions or regulatory investigations; and
- C. If currently doing business with the Treasury or another Federal agency, must not be in any kind of probationary status, and must be addressing and resolving any identified deficiencies in performance, if any.

Minimum Qualifications Include, But Are Not Limited To:

- A. The Financial Institution must currently manage a portfolio of at least \$25 billion in mortgage loans, or provide clear and credible evidence that the Financial Institution can scale its capacity to manage a portfolio of at least this size;
- B. The Financial Institution must covenant to disclose all potential conflicts of interest, and to avoid, mitigate, or neutralize to the extent feasible and to the Treasury's satisfaction any personal or organizational conflicts of interest that may be identified by the Treasury of the Financial Institution; and
- C. The Financial Institution must be able and willing to partner with other Financial Institutions selected to be sub-managers of the portfolio, as directed by the Treasury, and to work in good faith with small and minority and women-owned businesses hired as direct contractors.

Further, a potential Whole Loan Asset Manager must provide information on how such Manager plans to ensure that smaller Financial Institutions, including, but not limited to community banks and credit unions, have access to the

Manager's infrastructure to proffer loans for sale to the Treasury.

With regard to a potential Securities Asset Manager, the Treasury sets forth the following requirements:

Eligibility Requirements Include, But Are Not Limited To:

- A. Must be a Financial Institution;
- B. Must be a registered investment advisor under the Investment Advisers Act of 1940, as amended; and
- C. Must not be subject to any pending or current enforcement actions or regulatory investigations.

Minimum Qualifications Include, But Are Not Limited To:

- A. The Financial Institution must have at least \$100 billion in dollar-denominated fixed income assets under management;
- B. The Financial Institution must covenant to disclose all potential conflicts of interest, and to avoid, mitigate, or neutralize to the extent feasible and to the Treasury's satisfaction any personal or organizational conflicts of interest that may be identified by the Treasury of the Financial Institution; and
- C. The Financial Institution must be able and willing to partner with other Financial Institutions selected to be sub-managers and sub-contractors, as directed by the Treasury.

With regard to a potential Custodian, Accounting, Auction Manager (and other infrastructure services) the Treasury sets forth the following requirements:

Eligibility Requirements Include, But Are Not Limited To:

- A. Must be a Financial Institution;
- B. Must not be subject to any pending or current enforcement actions or regulatory investigations; and
- C. If currently doing business with the

Treasury or another Federal agency, must not be in any kind of probationary status, and must be addressing and resolving any identified deficiencies in performance, if any.

Minimum Qualifications Include, But Are Not Limited To:

- A. The Financial Institution must have at least \$500 billion in domestic assets under custody;
- B. The Financial Institution must covenant to disclose all potential conflicts of interest, and to avoid, mitigate, or neutralize to the extent feasible and to the Treasury's satisfaction any personal or organizational conflicts of interest that may be identified by the Treasury of the Financial Institution; and
- C. As central infrastructure provider for the portfolio, the Financial Institution must be able and willing to work with and coordinate other Financial Institutions, Federal Reserve Banks, Federal agencies, governmental entities and other organizations when the Treasury determines it to be in the best interest of the Government.

The following links connect directly to these Solicitations:

- Whole Loan Asset Management Services:
http://www.treas.gov/initiatives/eesa/docs/notice_whole-loan-asset-mgr.pdf
- Securities Asset Management Services:
http://www.treas.gov/initiatives/eesa/docs/notice_securities-asset-mgr.pdf
- Custodian, Accounting, Auction Management and Other Infrastructure Services:
http://www.treas.gov/initiatives/eesa/docs/notice_custodian-services.pdf

It appears that opportunities to provide such services exist, even after the deadline. The Whole Loan Asset Management Services Solicitation specifically acknowledges that the Manager chosen may subcontract with third parties to provide required

services, and notes that the Treasury reserves the right to hire additional contractors as necessary. Further, each Solicitation contains a reservation of rights clause allowing the Treasury to modify the requirements of the Solicitations at any time.

Each Solicitation contains a section specifically requiring the applicant to "identify an approach to provide meaningful opportunities to small and minority and women-owned businesses as subcontractors" with respect to its work as a Manager. In addition, the Treasury also reserves the right, at a future date, to issue solicitations for contractors or subcontractors specifically targeted to small and minority and women-owned businesses or smaller financial institutions that may not meet the minimum assets required by the Solicitations in order to qualify as a Manager.

Financial institutions should understand that although the Solicitations create a wide range of opportunities for business with the Treasury, they also create certain risks and issues to consider before an entity agrees to serve as a Manager, or a contractor or subcontractor. The following areas of risk in particular should be considered. First, the Act and the Solicitations state that any Manager will be a "financial agent of the United States" thus causing potential conflict of interest issues for existing and future business opportunities. Second, a financial institution selected as Manager must sign a "Financial Agency Agreement" ("Agreement") with the Treasury, with limited, or no negotiation, and the Manager's willingness to enter into the Agreement with limited or no negotiation is a factor in the Treasury's determination in selecting a Manager. Note, the Solicitations are silent as to whether a sub-contractor must also sign an Agreement. Third, as a "financial agent" of the United States, each selected financial institution has a fiduciary duty to the United States, incurring the highest obligations and responsibility in a business relationship. With regard to the above, financial institutions potentially eligible for working roles under the Solicitations should know and

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understand how each of the factors briefly described above affects both its current and future business opportunities.

The Act provides business opportunities not only for those financial institutions that submit an application by the Deadline and the Treasury subsequently selects as Managers, but also for sub-contractors thereof. The Solicitations further stress the potential for business opportunities for small and minority and women-owned businesses. However, a financial institution should accept a role or business opportunity under the Act in accordance with the Solicitations with due care, fully aware of the impact to current and potential future business due to designation by the Treasury as a “financial agent” of the United States. The attorneys of Locke Lord Bissell & Liddell LLP and the government relations professionals of Locke Lord Strategies stand ready to assist you in connection with the Act and these the Solicitations and the opportunities and issues they present. Please do not hesitate to contact any of the members listed below:

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