BLX Group LLC
51 West 52nd Street
New York, NY 10019
p. 212 506 5200 f. 212 506 5151

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ADVISORS • ASSET MANAGEMENT • COMPLIANCE

$199,375,348.20
New York Counties Tobacco Trust V
Tobacco Settlement Pass-Through Bonds
Series 2005 S1 through Series 2005 S4

Broome Tobacco Asset Securitization Corporation

ADMINISTRATIVE AGENT REPORT

May 31, 2012

TABLE OF CONTENTS

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May 31, 2012

Broome Tobacco Asset Securitization Corporation
Edwin L. Crawford County Office Building
Binghamton, NY 13902

Re: $199,375,348.20
New York Counties Tobacco Trust V
Tobacco Settlement Pass-Through Bonds
Series 2005 S1 through Series 2005 S4

Ladies and Gentlemen:

This report (the "Report") is being delivered to you pursuant to the Administrative Agent Agreement (the "AA Agreement") by and between the Broome Tobacco Asset Securitization Corporation (the "Corporation") and BLX Group LLC. The Report consists of certain calculations and statements made in accordance with Section 4.1(a)(iv) of the AA Agreement and Sections 7.08 and 6.05 of the Series 2005 Supplemental Bond Indenture dated November 1, 2005 (the "Supplemental Indenture") by and between the Corporation and Manufacturers and Traders Trust Company (the "Trustee"). Unless defined herein, all capitalized terms used herein shall have the meanings given such terms in the AA Agreement or Supplemental Indenture as applicable. Specifically, this Report is comprised of the following attachments:

- the Outstanding Bonds as of the next Distribution Date, i.e. June 1, 2012 (the "Next Distribution Date") (see Schedule A hereof);
- the amount of principal to be paid to Bondholders of each Series on the Next Distribution Date, including the amounts of maturing principal, Mandatory Sinking Fund Installments, Turbo Redemption Payments and other redemptions (see Schedule B hereof);
- the amount of interest to be paid to Bondholders of each Series on the Next Distribution Date (see Schedule B hereof);
- the amount on deposit in each Account as of the Next Distribution Date, including the amount on deposit in the Lump Sum Redemption Account (see Schedule C hereof);
- the amounts, and to the extent available, the types of payments constituting TSRs that were received during the preceding 12-month period (see Schedule D hereof);
- whether, to the knowledge of the Corporation, any litigation is pending against the State, the County or the Corporation seeking to invalidate or overturn the MSA, the Local Law, the Agreement or the proceedings pursuant to which the Bonds are issued (see Schedule D hereof).

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This Report is not to be used, circulated, quoted, referred to, or relied upon by any other person without our express written permission.

Very truly yours,

BLX Group LLC

$199,375,348.20
New York Counties Tobacco Trust V
Tobacco Settlement Pass-Through Bonds
Series 2005 S1 through Series 2005 S4

Broome Tobacco Asset Securitization Corporation
Schedule A - Outstanding Bonds as of June 1, 2012

Per Section 7.08(a) of the Supplemental Indenture and Section 4.1(a)(iv)(A) of the AA Agreement, the amount of Bonds Outstanding on June 1, 2012 (after the Turbo Redemption described on Schedule B hereof):

Outstanding Current Interest Bonds:	0.00
Outstanding Capital Appreciation Bonds (accreted value):	25,310,482.87
Total Outstanding Bonds:	$25,310,482.87

$199,375,348.20
New York Counties Tobacco Trust V
Tobacco Settlement Pass-Through Bonds
Series 2005 S1 through Series 2005 S4

Broome Tobacco Asset Securitization Corporation
Schedule B - Principal and Interest Payments

Per Section 4.1(a)(iv)(C) of the AA Agreement, the amount of principal to be paid to Bondholders of each Series on June 1, 2012:

Maturing Principal:	$0.00
Mandatory Sinking Fund Installments:	$0.00
Turbo Redemption Payments (accreted value):	$0.00
Other Redemptions:	$0.00

Per Section 4.1(a)(iv)(B) of the AA Agreement, the amount of interest to be paid to Bondholders of each Series on June 1, 2012: $0.00

$199,375,348.20
New York Counties Tobacco Trust V
Tobacco Settlement Pass-Through Bonds
Series 2005 S1 through Series 2005 S4

Broome Tobacco Asset Securitization Corporation
Schedule C - Account Balances as of June 1, 2012

Per Section 7.08(b) of the Supplemental Indenture and Section 4.1(a)(iv)(D) of the AA Agreement, the amount on deposit in each Account as of June 1, 2012 is expected to be: [1]

Collection Account	0.00
Bond Fund	0.00
Lump Sum Redemption Account	0.00
Extraordinary Payment Account	0.00
Turbo Redemption Account	0.00
Rebate Account	0.00

[1] As set forth in the statements provided by the Trustee.

$199,375,348.20
New York Counties Tobacco Trust V
Tobacco Settlement Pass-Through Bonds
Series 2005 S1 through Series 2005 S4

Broome Tobacco Asset Securitization Corporation
Schedule D - TSR Payments and Pending Litigation

Per Section 6.05(a) of the Supplemental Indenture, the amount, and to the extent available, the types of payments constituting TSRs that were received during the preceding 12-month period, is equal to $3,129,975.32

Per Section 6.05(a) of the Supplemental Indenture, to the knowledge of the Corporation, descriptions of any litigation pending against the State, the County or the Corporation seeking to invalidate or overturn the MSA, the Local Law, the Agreement or the proceedings pursuant to which the Bonds are issued follow:

Please see the Appendix herein, which contains an update as of May 31, 2012 to the "Litigation Challenging the MSA, the Qualifying Statute and Related Litigation" section of the Official Statement dated November 15, 2005 prepared in connection with the Bonds.

LITIGATION UPDATE

Litigation Challenging the MSA, the Qualifying Statutes and Related Legislation

General Overview. Certain smokers, smokers' rights organizations, consumer groups, cigarette importers, cigarette distributors, cigarette manufacturers, Native American tribes, taxpayers, taxpayers' groups and other parties have filed actions against some, and in certain cases all, of the signatories to the MSA alleging, among other things, that the MSA and Complementary Legislation are void or unenforceable under certain provisions of law, such as the U.S. Constitution, state constitutions, federal antitrust laws, state consumer protection laws, bankruptcy laws, federal cigarette advertising and labeling law, and unfair competition laws as described below in this subsection. Certain of the lawsuits further seek, among other things, an injunction against one or more of the Settling States from collecting any moneys under the MSA and barring the PMs from collecting cigarette price increases related to the MSA. In addition, class action lawsuits have been filed in several federal and state courts alleging that under the federal Medicaid law, any amount of tobacco settlement funds that the Settling States receive in excess of what they paid through the Medicaid program to treat tobacco related diseases should be paid directly to Medicaid recipients.

All of the judgments rendered to date on the merits have rejected the MSA, Qualifying Statute, and Complementary Legislation challenges presented in the cases. In the most recent decision, *Grand River*, as discussed more fully below, the Southern District granted summary judgment to defendants on all of plaintiffs' claims that the MSA, the Qualifying Statutes, and Complementary Legislation of the various state defendants violated Section 1 of the Sherman Antitrust Act of 1890 (the "**Sherman Act**") and the Commerce Clause of the U.S. Constitution. Plaintiffs have appealed the Southern District's decision to the Second Circuit, and the appeal is currently stayed.

In another recent decision, *Freedom Holdings IV*, the Second Circuit affirmed the judgment of the Southern District, after a bench trial and findings of fact by the Southern District, that the New York Qualifying Statute as modified by the subsequent legislation and the New York Contraband Statute did not violate the Sherman Act or the Commerce Clause. The U.S. Supreme Court has denied plaintiffs' petition for a writ of certiorari. In the other decisions upholding the MSA or accompanying legislation, the decisions were rendered either on motions to dismiss or motions for summary judgment. Courts rendering those decisions include the U.S. Courts of Appeals for the Fifth Circuit in *S&M Brands Inc. v. Caldwell, and Xcaliber Int'l v. Caldwell*; the Eighth Circuit, in *Grand River Enterprises v. Beebe*; the Tenth Circuit in *KT & G Corp. v. Edmondson*, and *Hise v. Philip Morris Inc.*; the Ninth Circuit in *Sanders v. Brown*; the Third Circuit in *Mariana v. Fisher*, and *A.D. Bedell Wholesale Co. v. Philip Morris Inc*; the Fourth Circuit in *Star Sci., Inc. v. Beales*; the Sixth Circuit in *S&M Brands v. Cooper, S&M Brands, Inc. v. Summers* and *Tritent Inter'l Corp. v. Commonwealth of Kentucky*; and multiple lower courts.

The enforceability of the MSA is also at issue in *VIBO*, in which the district court granted defendants' motion to dismiss plaintiffs' federal antitrust, federal constitutional and common law challenges to the enforceability of the MSA, and plaintiffs appealed that dismissal to the U.S. Court of Appeals for the Sixth Circuit. On February 22, 2012, a three judge panel of the U.S. Court of Appeals for the Sixth Circuit ruled that the MSA does not amount to an unlawful conspiracy or anti-competitive behavior by the government and, accordingly, affirmed the district court's order and

dismissed plaintiffs' appeal in this case. Plaintiffs have fifteen days from entry of judgment with respect to this decision within which to file a petition requesting that the Sixth Circuit panel rehear plaintiffs' appeal in this case or that the entire Sixth Circuit Court rehear the appeal *en banc*. Plaintiffs have ninety days after entry of the judgment within which to file a petition for a writ of certiorari with the United States Supreme Court for review of the Sixth Circuit's decision. Further appellate review of the Sixth Circuit's decision is not a matter of right, and the Sixth Circuit and the Supreme Court have discretion whether to accept any petitions for further appellate review. As of March 20, 2012, plaintiffs had not filed any such petitions.

Certain decisions by the Second Circuit during the course of the litigation in *Grand River* and *Freedom Holdings* had created some uncertainty as a result of the court's interpretation of federal antitrust law immunity doctrines, as applied to the MSA and related statues. That interpretation appeared to conflict with interpretations by several other U.S. Courts of Appeals and other lower courts which have rejected challenges to the MSA and related statutes. Other decisions rejecting such challenges have concluded that the MSA and related statutes are protected from antitrust challenge based on the *Parker or NP* doctrines. The Second Circuit's most recent decision in *Freedom Holdings IV* was favorable to defendants. It is possible, that the Second Circuit in *Grand River* could conclude that the MSA, Qualifying Statute, the Complementary Legislation or any of them violates the federal antitrust laws, the U.S. Constitution, or any other provision of law. Such a decision – or a similar one by the Sixth Circuit in *VIBO* – would be binding on the State and the State would have no appeal as of right of the U.S. Supreme Court. The federal antitrust and commerce clause claims in *Grand River* and *VIBO* are in many respects similar to those claims the dismissal of which the Second Circuit affirmed in the last of its four opinions rendered in *Freedom Holdings*. *Freedom Holdings* and its potential impact on *Grand River* are discussed in more detail below.

The MSA and related state legislation may also be challenged in the future. A determination by a court having jurisdiction over the State and the Corporation that the MSA or related State legislation is void or unenforceable could have a materially adverse effect on the payments by the PMs under the MSA and the amount and/or the timing of Pledged TSRs available to the Corporation. A determination by any court that the MSA or State legislation enacted pursuant to the MSA is void or unenforceable could also lead to a decrease in the market value and/or liquidity of the Bonds.

Qualifying Statute and Related Legislation. Under the MSA's NPM Adjustment, downward adjustments may be made to the Annual Payments payable by a PM if the PM experiences a loss of market share in the United States to NPMs as a result of the PM's participation in the MSA. A Settling State may avoid the effect of this adjustment by adopting and diligently enforcing a Qualifying Statute, as hereinafter described. The State has adopted the Model Statute, which by definition is a Qualifying Statute under the MSA. The Model Statute, in its original form, required an NPM to make escrow deposits approximately in the amount that the NPM would have had to pay to all of the states had it been a PM and further authorized the NPM to obtain from the applicable Settling State the release of the amount by which the escrow deposit in that state exceeded that state's allocable share of the total payments that the NPM would have made as a PM. Allocable Share Release Amendments have been enacted in all but one of the Settling States, including the State, amending the Qualifying Statutes in those states by eliminating the reference to the allocable share and limiting the possible release an NPM may obtain under the statute to the excess above the total payment that the NPM

would have paid had it been a PM.

In addition, at least 45 Settling States (including the State) have passed Complementary Legislation to further ensure that NPMs are making required escrow payments under the states' respective Qualifying Statutes. Pursuant to the State's Complementary Legislation, every tobacco product manufacturer whose cigarettes are sold directly or indirectly in the State is required to certify annually that it is a PM or that it is an NPM and is in full compliance with the State's Qualifying Statute. The Qualifying Statutes and related legislation (including those of the State), like the MSA, have also been the subject of litigation in cases alleging that the Qualifying Statutes and related legislation violate certain provisions of the U.S. Constitution and/or state constitutions and are preempted by federal antitrust laws. The lawsuits seek, among other things, injunctions against the enforcement of the Qualifying Statutes and the related legislation. To date such challenges have not been ultimately successful. Appeals are also possible in certain other cases. The Qualifying Statutes and related legislation may also continue to be challenged in the future. Pending challenges to the Qualifying Statutes and related legislation are described below under "*Grand River*, *Freedom Holdings*, *VIBO* and *Related Cases*" in this subsection.

A determination that a Qualifying Statute is unconstitutional would have no effect on the enforceability of the MSA itself; such a determination could, however, have an adverse effect on payments to be made under the MSA if one or more NPMs were to gain market share. A determination that an Allocable Share Release Amendment is unenforceable would not constitute a breach of the MSA but could permit NPMs to exploit differences among states, target sales in states without Allocable Share Release Amendments, and thereby potentially increase their market share at the expense of the PMs. A determination that the State's Complementary Legislation is unenforceable would not constitute a breach of the MSA or affect the enforceability of the State's Qualifying Statute; such a determination could, however, make enforcement of the State's Qualifying Statute against NPMs more difficult for the State

Grand River, *Freedom Holdings*, *VIBO* and *Related Cases*. In *Grand River*, certain cigarette manufacturers and distributors who were NPMs brought suit against 31 states, including the State[1] and their attorneys generals, alleging, among other things, that the Escrow Statutes contravened the Commerce Clause of the U.S. Constitution, the Sherman Act, and in the case of plaintiff *Grand River*, the Constitution's Indian Commerce Clause. The district court had dismissed all claims against the states other than New York for lack of personal jurisdiction, and dismissed all claims except the antitrust claim against New York. On interlocutory appeal, the Second Circuit reversed the district court's dismissal against the non-New York defendants, reversed the dismissal of the dormant Commerce Clause claim, and affirmed the dismissal of the plaintiffs' other constitutional claims. As to the Commerce Clause claim, the Second Circuit held that the plaintiffs "state a possible claim that the practical effect of the challenged statutes and the MSA is to control prices outside of the

[1] The initial *Grand River* defendant states were: Alabama, Alaska, Arizona, California, Colorado, Delaware, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, New York, North Carolina, Ohio, Oregon, South Carolina, South Dakota, Tennessee, Washington, Wisconsin and Wyoming. By stipulation and order of partial dismissal, plaintiffs and the states of Alabama, Colorado, Delaware, Illinois, Kentucky, Ohio, Oregon, South Dakota and Wyoming agreed to a voluntary dismissal of the complaint as against those defendants. The stipulation of partial dismissal by plaintiffs and the State of Montana, dated March 12, 2012, has not yet been ordered by the Second Circuit.

enacting states by tying both the SPM settlement and NPM escrow payments to national market share, which in turn affects interstate pricing decisions." On remand, the Southern District granted summary judgment to the defendants on all of plaintiffs' Sherman Act and Commerce Clause claims. Plaintiffs have appealed to the Second Circuit. The appeal is currently stayed pending the resolution of certain motions in the district court. As of March 19, 2012, the states of Alabama, Colorado, Delaware, Illinois, Kentucky, Ohio, Oregon, South Dakota and Wyoming had entered into settlements with plaintiffs in *Grand River* and all claims against those states have been dismissed. The stipulation of partial dismissal by plaintiffs and the State of Montana, dated March 12, 2012, has not yet been ordered by the Second Circuit.

In *Freedom Holdings*, two cigarette importers who were NPMs sought to enjoin the enforcement of the State's Qualifying Statute and the State's Contraband Statute, claiming that the MSA and the legislation violated Section 1 of the Sherman Act, and the Commerce Clause of the U.S. Constitution. The Southern District dismissed the plaintiffs' complaint for failure to state a claim. On appeal, a three judge panel of the Second Circuit reversed the district court's dismissal ("***Freedom Holdings I***"). The Court held that, accepting the allegations of the complaint as true, the complaint alleged an "express market-sharing agreement among private tobacco manufacturers", and that the MSA, Escrow Statutes, and complementary legislation allowed the originally settling defendants to "set supracompetitive prices that effectively cause other manufacturers either to charge similar prices or to cease selling". The Court additionally held that, at the pleading stage, the defendants had not established that the legislation was protected by the state action exemption articulated under *Parker v. Brown* ("**Parker**") and its progeny, or as protected petitioning of government under the *Noerr-Pennington* doctrine ("***NP***") doctrine. The Court upheld the dismissal of the plaintiffs' Commerce Cause claim—although reserving the dormant Commerce Clause issue that plaintiffs had not asserted—and permitted the plaintiffs to amend to add allegations in their Fourteenth Amendment Equal Protection claim. The Second Circuit issued a subsequent opinion denying a motion for rehearing ("***Freedom Holdings II***"). The plaintiffs thereafter amended their complaint and brought a motion for a preliminary injunction against the State Qualifying Statute and Contraband Statutes. The district court granted an injunction against the Allocable Share Amendment, but otherwise denied the motion. The plaintiffs appealed and the Second Circuit affirmed the district court's denial of the broader preliminary injunction on the ground that plaintiffs had not established irreparable injury ("***Freedom Holdings III***").

After remand from the Second Circuit, the district court in *Freedom Holdings* conducted an evidentiary hearing and bench trial, and issued judgment for defendants on all of the plaintiffs' claims. The court held that the MSA and its implementing legislation were not illegal per se and not pre-empted by the Sherman Act, that even if it were necessary to reach the issue of state action exemption, that it shielded the defendants' conduct, and that the MSA and the legislation did not contravene the dormant Commerce Clause. On October 18, 2010, the Second Circuit affirmed the dismissal of the plaintiffs' claims ("***Freedom Holdings IV***").

First, with respect to plaintiffs' antitrust claim, in *Freedom Holdings IV* the Second Circuit held that, because the plaintiffs were NPMs, they did not have standing to challenge the MSA alone (as opposed to the Qualifying Statute and Contraband Statute). As competitors of the SPMs, the court held, the plaintiffs would have benefited, and not been harmed, by any increase in their prices

caused by the MSA. Thus, they did not have the requisite injury for such standing. Second, the court held that the plaintiffs did not establish a violation of the antitrust laws. The facts as found by the district court failed to show that the Escrow Statutes and complementary legislation compelled NPMs to join the MSA—indeed, the district court found as a fact that NPMs pay less under the Qualifying Statute than they would had they joined the MSA. Furthermore, the MSA and the legislation did not give private parties "anticompetitive regulatory authority". The NPMs retained pricing authority and gained market share at the expense of the OPMs. Finally, the court held that although it did not need to reach the issue of whether the state action exemption applied, the exemption immunized the legislation at issue. The court noted "we generally agree" with the decisions in other circuits that the MSA and the related legislation are "unilateral state action exempt from the application of the antitrust laws". But even if the defendants were required to establish that any restraints on competition were "clearly articulated and affirmatively expressed as state policy" and "actively supervised by the [s]tate itself" (under *California Retail Liquor Dealers Ass'n v. Midcal Aluminum*), that test was satisfied based on the facts as found by the district court. As to the latter point, the court noted that New York reviews audit reports detailing the competitive effects of the MSA and the challenged statutes, and enacted legislation in response to those reports. And it was the State of New York, not private parties, who determined the amount of payments that NPMs were required to place into escrow. The *Freedom Holdings IV* court also noted that its opinion was "limited in scope" because the plaintiffs lacked standing to assert certain claims about the MSA, including, among others, whether the MSA impermissibly penalizes manufacturers that subsequently join the MSA.

With respect to the plaintiffs' Commerce Clause claims, the Second Circuit in *Freedom Holdings IV* ruled that plaintiffs had failed to prove any of the allegations of their complaint that the challenged statutes are "inconsistent with the legitimate regulatory regimes of the other states, that [they] force out-of-state merchants to seek New York regulatory approval before undertaking an out-of-state transaction, or that any sort of interstate regulatory gridlock would occur if 'many or every state' adopted similar legislation". The Second Circuit concluded that plaintiffs offered no evidence indicating that the practical effect of New York statutes at issue reaches beyond their terms to set minimum or maximum cigarette prices outside of New York and, thus, "plaintiffs have not proved that the challenged statutes have the practical effect of regulating commerce extraterritorially" in violation of the Commerce Clause. The U.S. Supreme Court has denied plaintiffs' petition for a writ of certiorari.

The plaintiffs' claims in Freedom Holdings are similar to those in Grand River. It is possible that the Second Circuit (or, of course, the U.S. Supreme Court if it hears the case) could reach a different result than *Freedom Holdings IV*. In any event, the decision in favor of the MSA and supporting legislation in *Grand River* does not bar other cases challenging the MSA or the State's Qualifying Statute and Complementary Legislation.

In *VIBO*, a tobacco manufacturer who became a party to the MSA in 2004 sued the attorneys general of the Settling States, the OPMs, and other SPMs in the U.S. District Court for Western Kentucky. It alleged that the MSA and the refusal of the PMs to waive the PMs' most-favored nation rights and the Settling States' refusal to settle with the plaintiff on terms that the plaintiff preferred violated the federal antitrust laws and the Equal Protection, Commerce, Due Process, and

Compact Clauses of the U.S. Constitution, and that the settling governmental entities fraudulently induced it to enter into the MSA. The district court granted motions to dismiss on all claims. First, the district court held that the PMs' involvement in the creation of the MSA, and their assertion of influence on the Settling States by refusing to give up any most favored nation protections that they held under the MSA (and thus deterring the Settling States from providing the plaintiff the settlement terms that the plaintiff desired) was protected from antitrust liability by the *NP* doctrine. The judicially created NP doctrine protects certain acts of petitioning government from antitrust liability. Second, the district court held that the attorneys general's involvement in and enforcement of the MSA, and their refusal to grant the plaintiff certain settlement terms, were sovereign acts of the states and immune from antitrust attack under the state action exemption. Third, the district court ruled that plaintiff had waived all of its federal constitutional challenges based on the Equal Protection, Due Process, and Commerce Clauses when it became a party to the MSA because the MSA provides in Section XV that all parties agree to waive "for the purposes of performance of the [MSA] any and all claims that the provisions of [the MSA] violate the state or federal constitutions". The district court further held that plaintiffs' Compact Clause claim should be dismissed because the MSA does not enhance state power to the detriment of the federal government power. In addition, the district court ruled that the defendant attorneys general have sovereign immunity from plaintiffs' fraudulent inducement claim. The district court also denied as moot the non-resident attorneys general's motion to dismiss for lack of personal jurisdiction. Plaintiff appealed the dismissal of its claims to the U.S. Court of Appeals for the Sixth Circuit. On February 22, 2012, a three judge panel of the U.S. Court of Appeals for the Sixth Circuit ruled that the MSA does not amount to an unlawful conspiracy or anti-competitive behavior by the government and, accordingly, affirmed the district court's order and dismissed plaintiffs' appeal in this case. Plaintiffs have fifteen days from entry of judgment with respect to this decision within which to file a petition requesting that the Sixth Circuit panel rehear plaintiffs' appeal in this case or that the entire Sixth Circuit Court rehear the appeal *en banc*. Plaintiffs have ninety days after entry of the judgment within which to file a petition for a writ of certiorari with the United States Supreme Court for review of the Sixth Circuit's decision. Further appellate review of the Sixth Circuit's decision is not a matter of right, and the Sixth Circuit and the Supreme Court have discretion whether to accept any petitions for further appellate review. As of March 20, 2012, plaintiffs had not filed any such petitions.

S&M Brands v. Caldwell was filed in August 2005 in Louisiana federal court to challenge the MSA, Qualifying Statutes, and related legislation. In *S&M Brands*, certain NPMs and cigarette distributors brought an action in a federal district court in Louisiana, seeking, among other relief: (1) a declaration that the MSA and Louisiana's Qualifying Statute and Complementary Legislation are invalid as violations of the U.S. Constitution and the Federal Cigarette Labeling and Advertising Act; and (2) an injunction barring the enforcement of the MSA and Louisiana's Qualifying Statute and Complementary Legislation. On November 2, 2005, the state defendant filed a motion to dismiss the complaint for lack of jurisdiction. On November 9, 2006, the U.S. District Court for the Western District of Louisiana (the "**Western District**") granted in part and denied in part the defendant's motion to dismiss. The court allowed the case to proceed on claims that the MSA and Louisiana's Complementary Legislation are violations of the federal antitrust laws and of the Compact Clause, Commerce Clause, Due Process Clause and First Amendment of the U.S. Constitution, and the Federal Cigarette Labeling and Advertising Act. The court dismissed the

claims that alleged violation of the Tenth Amendment of the U.S. Constitution. On December 12, 2006, the state defendant filed its answer to the complaint. By stipulation filed April 23, 2008, two of the plaintiffs, A.D. Coker Co. and CLP, Inc., were dismissed from the action upon mutual consent of the parties. On September 24, 2009, the Western District granted defendant's motion for summary judgment and dismissed with prejudice all claims by the plaintiffs. On August 10, 2010, the Fifth Circuit affirmed the Western District's order granting summary judgment for the defendants. The Fifth Circuit held that the district court correctly concluded that the MSA did not violate the Compact Clause because the MSA only increases states' power vis-à-vis the PMs and does not result in an accompanying decrease of the power of the federal government. The Fifth Circuit also ruled that neither the Escrow Statute nor the MSA violate the federal antitrust laws for the reasons set forth in its prior decision in *Xcaliber Int'l Ltd. v. Caldwell*. In addition, the Fifth Circuit affirmed the dismissal of plaintiffs' Commerce Clause and Due Process Clause claims because plaintiffs had failed to show that the Louisiana Escrow Statute had the effect of increasing cigarette prices outside of Louisiana. With respect to plaintiffs' First Amendment challenge to the MSA and the Escrow Statute, the Fifth Circuit found that the only statute applicable to plaintiffs as NPMs was the Escrow Statute, which the court determined did not compel or abridge plaintiffs' speech. Similarly, the Fifth Circuit found that the MSA and Escrow Statute did not violate the Federal Cigarette Labeling and Advertising Act because plaintiffs are not compelled to join the MSA and the Escrow Statute does not have any connection with cigarette packaging, advertising, or promotion. The U.S. Supreme Court denied plaintiffs' petition for writ of certiorari.

Neither a decision by the Second Circuit in *Grand River* nor a decision by the Sixth Circuit in *VIBO* would be subject to appeal as of right to the U.S. Supreme Court. No assurance can be given: (i) that the Supreme Court would choose to hear and determine any appeal relating to the validity or enforceability of MSA or related legislation in *Grand River*, *VIBO*, or any other case; or (ii) as to the outcome of any petition of writ of certiorari or any appeal, even if heard by the Supreme Court. A Supreme Court decision to affirm or to decline to review a ruling that is adverse to the State regarding the validity or enforceability of the MSA or related legislation could ultimately result in the complete cessation of the Pledged TSRs available to the Corporation. Moreover, even if ultimately reversed by the Supreme Court, a decision by the Second Circuit or the Sixth Circuit that is adverse to the defendants in *Grand River* or *VIBO* could, unless stayed pending appeal at the discretion of the court, result in the complete cessation of Pledged TSRs available to make payments on the Bonds.

Possibility of Conflict Among Federal Courts. Certain decisions by the Second Circuit had created some uncertainty as a result of the court's interpretation of federal antitrust law immunity doctrines, as applied to the MSA and related statutes. That interpretation appeared to conflict with interpretations by several other U.S. Courts of Appeals and other lower courts which have rejected challenges to the MSA and related statutes. Other decisions rejecting such challenges have concluded that the MSA and related statutes are protected from an antitrust challenge based on the *Parker* or *NP* doctrines. The Second Circuit's most recent decision in *Freedom Holdings IV* was favorable to the State and the MSA and related statutes. It is possible that the Second Circuit in *Grand River* could conclude that the MSA, Qualifying Statute, the Complementary Legislation or any of them violates the federal antitrust laws, the U.S. Constitution, or any other provision of law. Such a decision – or a similar one by the Sixth Circuit in *VIBO* with respect to the MSA – would be

binding on the State and the State would have no appeal as of right to the U.S. Supreme Court. However, such determination could be considered to be in conflict with decisions rendered by other federal courts that have come to different conclusions on these issues. The existence of a conflict as to the rulings of different federal courts on these issues, especially between Circuit Courts of Appeals, is one factor that the U.S. Supreme Court may take into account when deciding whether to exercise its discretion in agreeing to hear an appeal. No assurance can be given that the U.S. Supreme Court would choose to hear and determine any appeal relating to the substantive merits of *Grand River* or *VIBO*. Any final decision by the U.S. Supreme Court on the substantive merits of *Grand River* or *VIBO* would be binding everywhere in the United States, including in the State.

Other Litigation Challenging the MSA, Qualifying Statutes and Related Legislation. In addition to *Freedom Holdings*, *Grand River* and *VIBO*, other cases have been filed in federal courts that challenge the MSA, the Qualifying Statute, the Complementary Legislation and/or the Allocable Share Release Amendment. The issues raised in *Freedom Holdings*, *Grand River* or *VIBO* were also raised in many of those cases. All of those cases have resulted in final orders dismissing challenges to the MSA, the Qualifying Statute, the Complementary Legislation and/or the Allocable Share Release Amendment.