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## Orrick: Waivers, Deferrals and Changes to Tax-Exempt Bonds During COVID-19

Given the economic impact of COVID-19 and the ongoing uncertainty of how long it will last, borrowers of tax-exempt bond proceeds may find themselves in the position of requesting their lenders to temporarily waive certain financial covenants contained in tax-exempt financing documents or to defer debt service payments on the related tax-exempt bonds.

Tax-exempt borrowers and banks need to be aware that the deferral or other modifications of debt service payments on tax-exempt bonds could have an adverse impact on the tax-exempt status of such bonds. Certain waivers, deferrals and changes to bonds or bond documents need to be reviewed by bond counsel to determine whether such actions will result in a “tax reissuance” of the related bonds. A tax reissuance is treated as a new debt issuance for tax purposes and a refinancing of the original bond issue. In the event a tax reissuance occurs, the tax exemption on the bonds will be lost absent appropriate legal steps. In addition, the waiver of financial covenants by a lender may not adversely affect the tax-exempt status of the related bonds, however, certain obligations may be triggered, such as notice or other provisions under the bond documents. Certain waivers, deferrals and changes to bonds or bond documents (including continuing disclosure agreements) need to be reviewed by bond counsel to determine whether such actions will result in a “tax reissuance” of the related bonds.

Please note, this does not mean that such waivers, deferrals and/or changes cannot be undertaken. However, such waivers, deferrals and changes should be reviewed by bond counsel prior to taking such actions.

**Public Finance Alert | April.02.2020**

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