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INFRASTRUCTURE INVESTMENT
A bridge to good returns

Both developing nations and their more industrial counterparts need bridges and dams, railways and roads, power stations, pipelines, and ports. With governments strapped for cash, the opportunity exists for private investors to get involved in financing infrastructure construction and repair.

The Chicago Skyway toll road, which links the city with nearby Indiana, is a successful example of creative infrastructure financing. By selling a lease on the toll road, Chicago was able to generate dollars that could then be invested in further infrastructure development.

The appeal to investors

On the investor side of the equation, infrastructure funds may offer a safer, more dependable income stream than some other investment options. In light of the real estate downturn and mortgage-banking debacle, the steady cash flow afforded through tolls, airport landing fees and similar charges seems even more attractive.

The lack of competition enjoyed by many infrastructure-type assets is another point that makes them attractive as an investment option. The large monetary investment required to develop most infrastructure assets makes it unlikely that competing assets would be built.

The distinct opportunities presented by infrastructure investing can also be accompanied by unique challenges. Rapidly developing markets are subject to seismic shifts that can alter the infrastructure landscape quickly. Industry growth and consolidation, new investment products, and government intervention and/or regulatory changes could all affect infrastructure investors in years to come.

ETFs offer options

In light of the related risk and high capital requirements for infrastructure investing, investors may want to consider accessing this asset class through index-based investments such as Exchange Traded Funds (ETFs). ETFs — which trade like stocks and are listed on an exchange — combine some of the benefits of common stocks and mutual funds while usually representing a major stock index, industry group, international country index or commodity.

Two infrastructure ETFs, the iShares S&P Global Infrastructure Fund and the SPDR FTSE/Macquarie Global Infrastructure 100 ETF, are already trading, and there are more options on the horizon.

High-quality benchmarks related to infrastructure investing are also being rolled out. For example, Dow Jones Indexes partnered with Brookfield Asset Management to launch a family of indexes focused on global infrastructure. The Macquarie Global Infrastructure 100 Index is another index in this sector. These indexes are designed to help investors track infrastructure companies, monitor fund performance, and facilitate investment in ETFs.

With their many attributes, infrastructure ETFs may warrant attention from investors interested in defensive, high-yielding securities. Infrastructure investing isn't without risk, however. Rates of return vary vastly from project to project, and, even though infrastructure is somewhat insulated, it isn't immune to the ebb and flow of economic tides. The market chill of last September also filtered into ETFs, where Citigroup Global Markets found that the average ETF was down 9.3%.

Proceed with caution

When testing out new investment waters, proceed with a degree of caution. Do your homework, check out the indexes and ETF funds, and, if you have any questions, contact your financial advisor.

EPA DEVELOPS NEW TOOLS FOR CHECKING ENERGY USE

The U.S. Environmental Protection Agency (EPA) has developed a tandem of online tools to help assess a building's energy use. Both tools rely on the EPA energy performance rating to benchmark performance, and both provide a way for property investors and developers to understand the financial and environmental impact of energy-saving strategies.

The first tool, Portfolio Manager, tracks and assesses energy and water consumption within individual buildings as well as across entire portfolios. By analyzing 12 months of actual cost and consumption, this browser-driven interface can benchmark energy performance for existing buildings, assess energy management goals over time, and help to identify strategic opportunities for savings.

Portfolio Manager compares a building's energy performance to that of similar buildings within the specified segment. The building is then scored on a scale of 1 to 100. A ranking of 95 means the building is performing better than 95% of similar buildings nationwide, while a ranking of 20 would indicate that the building's energy use had significant room for improvement.

The second tool, Target Finder, compares design simulations for new construction to data from similar, existing buildings in the EPA database. Developed as a resource to help building designers rate the estimated energy use of various design options, Target Finder can also be used to set energy targets.

Users should be aware that although the EPA ratings used in their calculations benchmark eight common types of buildings, 50% of commercial structures in the United States fall outside those classifications. Also while Portfolio Manager and Target Finder can capably provide target ratings without a full simulation, they were never intended to replace the more in-depth analysis of energy simulations, calculations and audits.

These online tools offer a quick and relatively easy way to determine energy ratings and targets for properties that fall within the classifications benchmarked by EPA ratings.

HELP FROM HERA

Housing act could give industry a boost

The Housing and Economic Recovery Act of 2008 (HERA) was intended to energize the real estate market. It also includes tax-related perks — and pitfalls — for strategy-minded investors.

LIHTC aid

HERA makes several changes to the low-income housing tax credit (LIHTC). By raising the state-by-state volume limitations on allowable tax credits, the act effectively increases the program size for 2008 and 2009. LIHTC technical regulations have been streamlined, and rules on the use of state tax-exempt multifamily bonds to finance tax credit projects have been simplified.

The act also allows real estate developers a full year (instead of six months) after the awarding of credits to begin construction of low-income housing. Rules for development in rural areas and technical barriers to rehabilitating such projects also have been relaxed. As a result, now may be a good time to explore low-income housing development.

AMT offsets

Through HERA, low-income housing and rehabilitation tax credits will now be allowed to offset the alternative minimum tax (AMT). AMT-related relief is likely to expand the marketplace for LIHTCs by attracting investors who previously have stayed away due to AMT concerns. These provisions are generally effective after Dec. 31, 2007.

As an added benefit, the HERA provision excluding interest from tax-exempt housing bonds should lower the cost of capital on bond-financed transactions. If you've considered low-income housing investments before but held back due to the AMT or other mitigating factors, now may be a good time to re-evaluate involvement in this market.

The LIHTC and tax-exempt bond opportunities aren't as rosy as they may seem, however. Keep in mind that recent events in the financial markets have affected access to debt resources for competitive credit transactions. Plus, significant adjustments to the pricing per tax credit dollar have occurred over the last year. These changes have had a major impact on the structure of transactions that achieved allocations in 2008 and will require careful structuring for transactions going forward. If you're considering LIHTC competitive or bond-financed transactions, consult with an advisor in the industry first.

REIT reform

Under prior law, real estate investment trusts (REITs) were subject to complex rules that limited their ability to manage risk and adjust to changing market conditions. HERA liberalizes the REIT rules by, among other things, clarifying that the trusts can earn foreign currency income associated with taxable subsidiaries and modifying the safe harbor for dealer sales.

HERA also has streamlined the tax rules affecting REITs, which will likely motivate investors. That's important because stockholder-owned REITs represent one of the most efficient ways for small investors — and big institutions — to put money into commercial and residential real estate, as well as mortgages.

In general, the REIT-related HERA provisions are effective for tax years beginning after July 30, 2008. Provisions regarding treatment of foreign currency gains, hedging transactions and the prohibited transactions safe harbor apply to transactions after July 30, 2008, without regard to the taxpayer's taxable year.

Reduced home sale exclusion

HERA does have a downside for vacation or rental homeowners who subsequently convert a property to their principal residence. Prior law excluded gains of up to $250,000 ($500,000 for married couples) for personal residences owned at least five years and that served as the owners' principal residence for at least two of those years. Real estate investors often used this provision to avoid tax liability on the sale of second homes.

Under the new home exclusion rules, which took effect Jan. 1, 2009, the prorated portion of the gain related to "nonqualified use" (when the home isn't owner-occupied) will be subject to capital gains tax. There are a few exceptions, such as military service or other unavoidable vacancies of the home.

As a result, the practice of converting a vacation home to a personal residence during two of the last five years of ownership may no longer be a viable option. Investors who plan to sell a vacation home anyway may want to sell sooner rather than later to avoid a growing capital gains tax liability under the new law.

Other provisions

HERA relaxes the rules regarding rehabilitation of government-leased buildings, allowing investors to qualify for the full amount of the rehabilitation tax credit if less than 50% of the building is leased to governmental or other tax-exempt entities.

Additional incentives for Gulf Opportunity Zone (GO Zone) development in the hurricane-damaged areas of Alabama, Mississippi, and Louisiana are also included. HERA changes waive the start-construction deadline for certain properties eligible for bonus depreciation in the GO Zone, and allows property investors and developers to amend federal tax returns to take into account their receipt of hurricane-related recovery grants. In addition, the list of counties that qualify to issue tax-exempt GO Zone bonds was expanded.

Opportunities and options

HERA brings an unusual number of investing opportunities and pitfalls in its wake. The real estate advisors at MP&S can help evaluate your development plans or investment strategies in light of the new tax law.

What about Freddie and Fannie?
The Housing and Economic Recovery Act of 2008 (HERA) involved massive loans, regulatory reform and a takeover option for Freddie Mac and Fannie Mae, the two largest U.S. mortgage buyers.

In September 2008, the federal government exercised the HERA takeover option, placing Freddie and Fannie in a federally controlled conservatorship. The move, which will likely cost taxpayers billions of dollars, was also costly for stockholders in the two entities, who had already seen share values plummet in the year prior to the takeover.

While the jury is still out on how the takeover will affect the real estate market, stronger government backing may translate into less risk for loan package buyers, resulting in reduced interest rates for home buyers and real estate investors.

WAY COOL: GREEN ROOFS ARE GROWING

Green roofs are popping up in just about every U.S. city, as Americans are seeing the potential in sustainable building trends. But green roofs aren't just a fad; they're proving to have tremendous insulating effects on buildings and thus can provide significant energy savings — as well as other benefits.

Out with the old, in with the new

Traditional construction methods for skyscrapers and flat-roofed buildings have always called for black tar roofs, which tend to trap sunlight and heat. The result is an "urban heat island" effect that can make an average city as much as 10 degrees hotter than their suburbs. The temperature difference alone translates into millions of dollars in additional energy costs each year.

As a result, there's a growing movement to replace black tar rooftops with something that is literally cooler. One alternative involves applying a coating of light-colored water sealant to each roof. These "white roofs" are easier to install and cost much less than green roofing. The benefits, however, are also much less.

Rooftop gardens offer benefits

A truly green rooftop features plants, and even trees, atop a layer of soil. The greenery on these roofs acts as a layer of insulation, reducing heat loss in the winter and cooling loss in the summer. On hot summer days, the plants absorb the heat from the sun. They also cool the air as water in their leaves evaporates.

Because of this cooling effect, temperatures in buildings with green roofs can be up to 30% lower in the summer than under conventional roofing. Moreover, total energy savings resulting from reduced heating and cooling costs can be as high as 50% to 60%. The added insulation provided by drainage materials and plants also absorbs noise, making for a quieter building.

Additionally, green roofing soaks up storm water runoff that would otherwise have to be handled by city sewage systems. The savings in reduced sewage bills can be truly significant: One of the largest green roofs on record, a 10.4-acre installation at Ford Motor Company's River Rouge truck factory, is expected to cut that facility's storm water runoff — and the resulting sewer bill — in half. Another attractive feature of green roofs is their ability to produce oxygen while filtering pollutants and carbon dioxide out of the air.

With a little imagination, green roofs can also be transformed into building amenities, offering park-like settings and wildlife habitats in metropolitan areas. Although planning for pollination may not rank high on a building owner's landscaping list, green roofs do perform the important function of attracting much-needed pollinators such as bees, which can be scarce in urban areas.

Savings may outweigh the price

The price tag for green roofs is higher than for conventional roofs — $7 to $15 *more* per square foot is common, with costs as high as $30 per foot in New York City. However, the increased cost may be offset

not only by future energy savings, but also by the fact that green roofs last two to three times longer than conventional roofing materials.

In addition, some localities are now offering tax incentives for green roofing, with more likely to become available in the years to come. New York City, for example, offers a one-year tax abatement on buildings that boast green roofs, which could save building owners thousands of dollars in taxes.

High profile green

Despite the higher cost, green roofing is gaining in popularity around the country. This trend is likely to continue, as an increasing number of developers, property owners, governmental entities and tenants recognize the cost-saving and environmental benefits of green roofs.

ASK THE ADVISOR

Can social networking help me, as a real estate professional?

One of the hottest online trends in real estate today involves social networking. If monitoring your teenager's Facebook page is as close as you've gotten to this phenomenon, it's time to rethink your agenda. Social networking isn't just for kids anymore. Real estate deals are really about connections — and, increasingly, those connections are being made online.

What's available?

Several social networking Internet sites have sprung up that focus on the real estate market. Activerain.com and realtown.com provide online forums where real estate professionals can blog, interact, gain valuable knowledge and forge relationships that may later translate into deals. Realtor.com allows you to share information and collaborate online. In addition, some real estate professionals may find profitable connections through Linkedin.com. And many are even using Facebook.com for business purposes.

Developing a presence in social media is an effective way to keep in touch with business contacts. It can also enlarge your network and drive traffic to your Web site or blog. If you don't have one of those, social networking sites can provide a way to develop an online marketing presence without them.

What else?

Social networking sites aren't the only technology advances you should be taking advantage of as a real estate professional. Also consider:

Virtual tours. Creating virtual tours has become easier. For example, Photosynth, a new tool recently launched by Microsoft, provides a free, online "photo-stitching" service. All you need is a digital camera, a rotating tripod and a bit of patience. Upload your property pictures to photosynth.com, and the software will electronically "stitch" them together to create a rotating view.

If you've enjoyed webcam technology, you might want to try "dashcam." The CarCam Voyager, for instance, can allow you to show off that winding mountain road or gorgeous oceanfront drive as a preview to the virtual tour of your property.

E-cards. E-cards are an innovative way to let business associates, potential tenants or buyers know of your latest real estate investments. Coupled with music, a slide show and graphics, real estate e-cards can be easily posted to realtor.com, craigslist.com or other online sites. Check out zingding.com, one of the leaders in this venue, to get a taste of what others are doing.

Texting. As the "echo boomers" (baby boomer offspring) continue to mature, text messaging is becoming increasingly mainstream as a mode of business communication. If you like the idea but can't bring yourself to type on a cell phone keypad, consider a service that allows you to send text messages from your computer (such as joopz.com or ipipi.com).

Are you ready?

While it may seem overwhelming to continually learn new technologies, the return on investment can make it worthwhile. The best strategy is to pick the one you think will have the most positive impact on your business, and get started!

SPOTLIGHT ON MP&S

Tax Partner Michael Bekas has authored a white paper entitled "Charitable Remainder Unitrusts: A Must-Consider Wealth Maximization Vehicle for Owners of Hard Assets." In light of a favorable estate planning environment due to current low rates and values, the paper explores how — when structured properly — Charitable Remainder Unitrusts (CRUTs) can create wealth optimization for high-net-worth individuals, their heirs and charities.

Mike Bekas was invited to participate in various media interviews on the subject of charitable remainder unitrusts. Most recently, his commentary was published in the February 6, 2009 issue of *Investment Advisor* magazine in an article that explored how high-net-worth individuals can leverage a down economy to make strategic moves that help reduce taxes and more efficiently transfer assets to heirs.

The Marks Paneth & Shron Litigation and Corporate Financial Advisory Services group has also recently made media headlines. In the February 2009 issue of *Financier Worldwide*, Steven L. Henning, partner-in-charge of the Litigation and Corporate Financial Advisory Services group was quoted extensively on the topic of International Financial Reporting Standards (IFRS) and the current financial crisis in an article entitled The Future of Accounting Principles.

Partner, Kurt S. Kiess was also recently quoted in the media on the financial crisis. On January 12, 2009, he was cited in a *Long Island Business News* story that explored steps local businesses are taking to hold onto cash.

On other news fronts, as tax season kicks into gear, MP&S is tapped for media commentary on related issues. Erica Rubin, senior manager in the Marks Paneth & Shron Tax Group, was profiled for her feedback in a January 19, 2009 *Daily News* Q&A column that responded to a reader's question on rules for avoiding capital gains taxes.

Finally, MP&S commentary on new accounting legislation, as well as the professional memberships at MP&S continue to be recognized by the media. In December 2008 and January 2009, *WebCPA.com* published news items on the appointment of Sharon Sabba Fierstein to the Public Company Accounting Oversight Board's 2009-2010 Standing Advisory Group and on her commentary regarding a recent bill passed by the New York State Senate and Assembly that will expand the scope of the CPA profession to include tighter regulation of management advisory, financial advisory and tax preparation services, including CPAs in industry, government and academia. Sharon, who is a partner in the MP&S Litigation and Corporate Financial Advisory Services group was also profiled in January 2009 by *Treasury & Risk* magazine for her commentary in an article that explored how the Public Company Accounting Oversight Board (PCAOB) is helping auditors gauge which companies will survive the financial crisis.

FOR FURTHER INFORMATION

If you have any questions, please contact **Harry Moehringer, CPA, Partner-in-Charge** of the Marks Paneth & Shron LLP Real Estate Group at 212-503-8904 or hmoehringer@markspaneth.com.

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