

**DELAWARE HEALTH FACILITIES AUTHORITY**  
**MINUTES OF SPECIAL MEETING**

**of**

**April 10, 2013**

A special meeting of the Delaware Health Facilities Authority (the "Authority") was held on April 10, 2013, commencing at 2:00 p.m., at the offices of Potter Anderson & Corroon LLP at 1313 North Market Street, Wilmington, Delaware 19801. The meeting was duly noticed and open to the public.

The following Authority Members attended in person: Rolf F. Eriksen, Chair, Desmond A. Baker, George W. Forbes, III, Lisa More, and Howard A. Palley, Ph.D. Authority Member William J. Riddle joined the discussion by telephone connection but did not vote at the meeting. Also participating in the meeting from Potter Anderson & Corroon LLP were John J. Quinn, III, Esq., the Authority's counsel, and Margaret M. Grillet.

Emily Abrantes, Public Financial Management, Inc. ("PFM"), Financial Advisor to the Authority, was present by telephone at the request of the Authority.

No members from the general public appeared during the course of the meeting.

Mr. Eriksen called the meeting to order at 2:05 p.m. and brought to the consideration of the Members the draft minutes of the March 27, 2013 meeting.

After motion duly made and seconded, the minutes of the March 27, 2013 meeting were unanimously approved by the Members present. At this time, Ms. More was not present at the meeting.

Mr. Eriksen asked Mr. Quinn to update the Members on recent activity. Mr. Quinn reported that he received a call from the Associated Press inquiring as to the purpose of this April 10, 2013 meeting and asking whether any hospital bond applications were being considered for approval. Mr. Quinn advised the caller of the agenda information that was publicly available in the meeting notice, namely that the Members were continuing their recent discussion on Authority policies and procedures, and that no hospital applications for financing were being considered at this meeting.

At this time (2:15 p.m.), Ms. More joined the meeting in person.

At Mr. Quinn's request, Ms. Abrantes presented to the Members a summary of how financing authorities in some other states make determinations regarding applications for financing. (A copy of Ms. Abrantes' presentation materials is attached.) The following state organizations were discussed during the presentation: New Jersey Healthcare Facilities Financing Authority; Idaho Health Facilities Authority; Dormitory Authority of the State of New York; Washington (State) Healthcare Facilities Authority; Illinois Financing Authority;

Maryland Health and Educational Facilities Authority; Missouri Health and Educational Facilities Authority; California Health Facilities Financing Authority; Connecticut Health and Educational Facilities Authority; Massachusetts Development Agency; Rhode Island Health and Higher Educational Building Corporation; and Vermont Educational and Health Buildings Financing Authority. It was these states (and authorities) that the Members considered as the meeting proceeded.

Ms. Abrantes explained that some states have fairly complex policies and that, in some cases, these are readily available on their respective websites. Ms. Abrantes' discussion focused on other states' requirements regarding bond ratings and whether they require investment grade bonds. Ms. Abrantes explained that no states were identified requiring investment grade bonds but that many of the states included in her review have additional policies and procedures that go into effect when noninvestment grade bonds are considered. For example, some states limit the bondholders to accredited investors (as defined by the SEC) when the bonds to be issued have a noninvestment grade rating. Also, in these cases, some states' authorities impose additional levels of review of the bond covenants or even reserve the right to approve, designate, or change the borrower's legal, financial, and/or fiduciary advisors. Some states impose additional security requirements for the bond obligations. Within some states, there are multiple sources of governmental financing and in these states there is some degree of competition among issuers such that borrowers proposing noninvestment grade bonds may shop around.

Ms. Abrantes presented a list of recent bond issuances in other states where the bonds were below investment grade at the time of issuance.

Dr. Palley pointed out that imposing appropriate qualified investor requirements on the bond investors helps to ensure that bondholders are institutional investors or at least investors of significant financial means and not smaller retail investors (for purposes of these minutes, hereinafter being referred to as "retail investors") seeking higher yield on a relatively uninformed basis.

Mr. Quinn asked whether any Authority bonds have ever been available to retail investors. Ms. Abrantes responded that Authority bonds have sometimes been sold in \$5,000 denominations and therefore likely have been available to retail investors.

Dr. Palley observed that most of the states that impose a qualified investor requirement also impose a requirement that the noninvestment grade bonds be sold in larger denominations.

Mr. Quinn indicated that he had spoken with Ms. Stephanie Scola, Director of Bond Finance for the State of Delaware, and learned that generally there is no policy in place in the State of Delaware regarding noninvestment grade bonds. Mr. Quinn was advised that if the Authority should consider a transaction that involved noninvestment grade bonds, then all bond documents, including drafts, should be presented to State's counsel, Saul Ewing LLP. Mr. Quinn pointed out to the Members that this is an additional level of drafts review not customarily done in Authority bond matters. Mr. Quinn went on to say that Ms. Scola relayed to him that

Saul Ewing has asked the Authority to ensure that bond resolutions involving noninvestment grade bonds identify the bond ratings.

Mr. Quinn expressed the opinion that these additional requirements may be for the purpose of ensuring full disclosure to the authorizing officers and to give the State and its advisors extra opportunity to ensure that the State is fully and properly protected. Mr. Eriksen added that the Authority's bonds are the obligations of the borrowing hospital (and only limited obligations of the Authority) and that they are not obligations of the State of Delaware.

The Members then briefly discussed the history of tax-exempt issuances in the State of Delaware and the possibility that for-profit organizations might be able to avail themselves of tax exempt financing. Ms. More stated that a for-profit might be able to use tax-exempt bonds if a certain percentage of the bonds were for a public benefit. The law has evolved since the pre-1986 tax laws. Ms. Abrantes and Ms. More pointed to situations where for-profits use tax-exempt bonds to build public facilities, such as airport parking.

Dr. Palley expressed the opinion that it might be poor public policy to offer noninvestment grade bonds to unsophisticated investors without there being additional controls or limitations in place.

Ms. More agreed and suggested that the notable additional requirements being imposed by the other states were appropriate security, higher denominations, and qualified investors.

Mr. Quinn advised the Members that the Authority already gives consideration to appropriate security and relies on PFM to provide information regarding that.

Ms. Abrantes advised the Members that they should be aware that there are differences between the bond requirements at the time of initial sale and the requirements that might (or might not) pertain to subsequent sales in the secondary market. Ms. Abrantes also indicated that there can be bond document requirements that restrict sales in the secondary market.

Dr. Palley suggested that the Members consider protecting small investors, including in the secondary market, when the issue is noninvestment grade. Ms. More agreed, stating that the Members could restrict the bonds to qualified investors and institutional investors. Ms. More pointed out that such a restriction would not prevent the bonds from being purchased by a bond mutual fund that in turn issues mutual fund shares to investors.

Mr. Quinn asked that the Members, when evaluating their positions on this matter, consider adopting requirements in a form that are ready for disclosure to potential applicants for Authority financing. Mr. Quinn explained that the process for preparing and submitting an application is expensive and that the Authority is anticipating receiving an application from Nanticoke Hospital.

Mr. Forbes suggested that now was an appropriate time to formalize the Authority's position and announce publicly that the Authority would impose certain additional requirements when bonds are to be issued having a noninvestment grade rating. Mr. Quinn stated that thus far the considerations when bonds are to be issued having a noninvestment grade rating appear to be setting requirements for minimum denomination size and qualified investors.

Mr. Quinn informed the Members that, in his opinion, it is possible that an applicant and/or its proposed underwriter may see the new requirements as something that could affect the structure of a bond transaction or could result in higher interest rates or costs and that, if the Authority is comfortable with arriving at a decision today, it would be best to convey this new information as soon as possible.

Upon Mr. Quinn's inquiry regarding how to communicate new requirements to potential applicants, and Member discussion, Dr. Palley suggested that the minutes of the Authority's meetings on the topic could be shared with potential applicants. Mr. Quinn agreed that this would be an effective way to make a timely communication of the Authority's position.

Mr. Quinn asked again for confirmation that the Members were comfortable with arriving at a decision today regarding a position on noninvestment grade bonds and communicating the position to the State and the hospitals. The Members agreed that the intention was to arrive at a decision and issue appropriate communications after the meeting including copies of draft minutes. Potential applicants should be advised that the Authority will consider all applications but that there would be additional requirements imposed on the issuance of noninvestment grade bonds and unrated bonds.

Ms. More pointed out that there is an additional challenge if there is a split rating where one rating agency gives an investment grade rating and another rating agency does not. The Members discussed how these split ratings might arise. Ms. More indicated that it is entirely possible for different rating agencies to assign different ratings for the same issue. If the ratings are near the investment-grade cut-off, one rating might be investment grade and one rating might be below investment grade.

Ms. Abrantes advised the Members that, in general, bonds tend to price closer to the lower rating when there is a split rating.

Ms. More expressed the opinion that noninvestment grade bonds issued by the Authority should be limited to higher denominations, which makes the bonds less readily available to the retail investor. Mr. Forbes asked whether the Authority has an obligation to track the sale of bonds in the secondary market. Ms. More stated that the Authority is not responsible for tracking sales of bonds after the initial sale. Mr. Quinn confirmed this view.

Mr. Forbes inquired whether the Authority has an obligation to set, or at least review, rates being charged for hospital services under Section 9214 of the Health Facilities Act. Mr. Quinn reviewed the statute and stated that Section 9214 is intended to be enabling, that is, to permit the Authority to become actively involved in the setting of rates, fees, and other charges, but that the Authority is not required as a general matter to do this with respect to every bond

issue. Mr. Quinn expressed the opinion that the portions of the statute that state “shall be fixed” and similar obligatory language is intended to explain how the Authority shall do these things if it undertakes the setting of rates, but that the statute is not requiring the Authority to undertake an obligation to set rates. After further discussion, Mr. Quinn agreed to review Section 9214 and similar sections of the Health Facilities Act and report back to the Members.

Mr. Quinn asked Ms. Abrantes if it was fair to say that the Authority is receiving guidance from PFM regarding security underlying the bonds. Ms. Abrantes replied affirmatively that this is part of PFM’s assessment in making its recommendation to the Authority, but that PFM is not doing a life-of-the-transaction credit analysis. After further discussion, the Members agreed that when the Authority approves the issuance of bonds, it gives consideration to PFM’s recommendation but ultimately considers the overall reasonableness of the transaction and the overall financial viability regarding bond repayments, but the Authority does not take on any direct obligation to ensure that bonds are timely paid.

Dr. Palley asked for an explanation of the purpose of the security if it does not effectively guarantee timely repayment of the bonds. Ms. Abrantes explained that the presence of the security, be it a lien against assets in the form of a mortgage, or a debt reserve fund, or security in hospital revenues, effectively gives bond investors, particularly institutional investors, leverage in voicing proposals regarding a workout structure if there is a bond default.

Ms. More suggested that the Authority may require a letter for an accredited investor. Mr. Quinn asked how this would work in practice. Ms. More explained that the underwriter would have an obligation imposed under the bond documents to ensure that the bond buyers are accredited investors and that this would customarily be in the form of accredited investor letters from the bond buyers. The Authority itself would not be responsible for collecting or reviewing such letters.

Mr. Eriksen and Mr. Quinn both asked if the Members are now agreeing that if there be an application for noninvestment grade or unrated bonds, then there would be additional requirements imposed and whether these requirements would be effective immediately with respect to all applications received. Mr. Eriksen advised the Members that if the Authority is adopting such requirements, then the Members should approve a clear statement of the new requirements.

Ms. More suggested that the Authority should consider and approve applications on a case-by-case basis but that applicants should fully understand that the Authority will impose a minimum \$100,000 denomination requirement and an “accredited investor” requirement if the bonds are unrated or below investment grade. These requirements will continue into the secondary market. The Authority should also consider whether there is adequate security.

Mr. Quinn reminded the Members that the Authority already gives consideration to whether there is adequate security in part by engaging PFM to assist with a financial assessment of the proposed bonds. The Members already are in a position to factor appropriate security into their decisions and that this is not a new requirement or consideration for the Authority.

Mr. Quinn inquired whether Nanticoke's plan of finance allows for breaking up denominations. Ms. Abrantes responded that we have not seen a full plan of finance as she would customarily expect but that it appears Nanticoke is planning for \$5,000 denominations. Mr. Quinn advised the Members that the new denomination and accredited investor requirements may result in an applicant changing its plan of finance.

Mr. Eriksen expressed concern that applicants may have come to expect that they can unilaterally change the plan of finance prior to issuance of the bonds and expect immediate Authority consideration and approval. Mr. Eriksen expressed the view that applicants should understand that such changes might not be approved by the Authority's Bond Committee (which is separately appointed for each transaction) and that, in fact, the Bond Committee might not even have the authority to approve certain changes. Mr. Eriksen asked Mr. Quinn to convey to applicants that they should have a well-documented plan of finance at the time of the Authority's consideration of an application and that changes to that plan of finance after the Authority's initial approval may not be immediately approved or even considered.

Mr. Forbes suggested that all of the additional considerations discussed today could be explicitly stated in future Authority application forms. Mr. Quinn agreed to make that change for future applications.

Mr. Quinn asked that the Authority's requirements on noninvestment grade bond applications be stated again and formally approved by the Members. After discussion, Mr. Quinn advised the Members that he will send minutes of the Authority's two meetings on these subjects to the Director of Bond Finance; the Secretary of Finance; and legal counsel to the Governor's Office, Michael Barlow, Esq.

**At which time, Ms. More moved to approve the Authority's position that applications proposing unrated and/or noninvestment grade bonds (based on lowest agency rating) will be considered on a case-by-case basis and that, if approved, will be subject to the additional requirements that the bonds be in \$100,000 denominations or greater; and that the bonds be acquired only by accredited investors (as defined by the SEC); and that both such requirements will continue into the secondary market.**

Dr. Palley seconded the motion. The motion was unanimously approved by the Members present.

There being no further discussion, and upon Mr. Eriksen's request, Mr. Baker moved to adjourn the meeting, Ms. More seconded, and after unanimous approval, Mr. Eriksen adjourned the meeting at 3:10 p.m.

**CERTIFICATION**

I, Desmond A. Baker, hereby certify that the foregoing is a true and correct copy of the Minutes of Special Meeting of the Delaware Health Facilities Authority held on April 10, 2013.

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Desmond A. Baker  
Secretary-Treasurer

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ATTACHMENT

PFM PRESENTATION TO DELAWARE HEALTH FACILITIES AUTHORITY  
April 10, 2013

Including:

Authority Policies on Non-investment Grade Transactions

Recent Transactions