

BUCKEYE TOBACCO SETTLEMENT FINANCING AUTHORITY

Minutes of August 16, 2007 Meeting

The Buckeye Tobacco Settlement Financing Authority (the Authority) held a meeting commencing at 2:00 p.m. on Thursday, August 16, 2007, in the 35th Floor Conference Room, Office of Budget and Management, James A. Rhodes State Office Tower, 30 East Broad Street, Columbus, Ohio, pursuant to notice of meeting given by the Secretary of the Authority pursuant to section 4.2 of Bylaws.

[Copies of the items marked \* are attached hereto and made a part of these minutes.]

The Chairman called the meeting to order.

Mr. Kauffman reported for the secretary that no new designations, pursuant to Section 183.52 of the Revised Code, were filed since the last meeting of the Authority.

Pursuant to Section 3.1 of the Bylaws, Mr. Markus presided as Chair of the meeting. Upon roll call, the Chairman declared a quorum to be present. The following members and designee of the member of the Authority, eligible to vote at the meeting, were present during the meeting:

Kent Markus, Office of the Governor  
Richard Cordray, Treasurer of State  
J. Pari Sabety, Director of Budget and Management

Also present were Hope Sharett (assistant Attorney General to the Authority), Kurt Kauffman (Assistant Secretary), Jake Wozniak (Assistant Treasurer), Jeanne Vanda, Ted Ricci and Dan Kozloff (Public Financial Management), Louis Capobianco, Kathleen Madden, Paula Hicks-Hudson, Larry Scurlock and Liberty Ziegahn (Office of Budget and Management); Chris Glaros, Todd Dieffenderfer, Leesa Brown and Rodney Nespeca (Office of the Treasurer of State); Brian Perera (Ohio Senate), Mike Roth and Laura Takeshta (Bank of New York), Herb Hedden, Albert Lia, and John Kulewitz (Vorys, Sater, Seymour & Pease), Greg Stype (Squire Sanders & Dempsey), John Lee and Eric Rockhold (J.P. Morgan); Kathleen Clark (Fifth Third Securities), Bob Selak (Thompson, Hine & Flory), Tom Coady (Porter, Wright, Morris & Arthur), Kip Wahlers (Calfee, Halter & Griswold), Daniel Cohen (Citigroup Global Markets), Rich Ryffel (Bank of America Securities), Stan Harris (National City Bank), Dennis Wilcox (Climaco, Lefkowitz, Peca, Wilcox & Garofoli), Shams Lawson (Merrill Lynch), Rita Merry (Huntington Investment Co.), Aida Chinloy (Goldman Sachs), Matt McCauliffe (PNC Capital Markets), Brad Kastan (Bear Stearns), Mary Duffy (Peck, Shaffer and Williams), Richard Boylan (RLB Group Inc), Michael Dockman (U.S. Bank), Ken Lumpkin (Lumpkin McCrary), Chris Moore, and Marakah Mancini (Service Employees International Union) and various news and media organizations.

The Assistant Secretary filed the certificate\* of compliance with the public meeting notice provisions of Section 121.22 of the Revised Code.

The Chairman then requested the presentation of the staff report and recommendations\* with respect to the statements received in response to the Authority's RFP for Transaction and Co-Transaction Counsel. Mr. Kauffman began by reviewing the first four sections of the report, noting

among other things, that four firms responded to the Transaction Counsel RFP with fee proposals ranging from \$95,000 to \$440,000 and eight proposals were received in response to the Co-Transaction Counsel RFP with fees ranging from \$75,000 to \$500,000. The Chairman inquired why only four transaction proposals were submitted to which Mr. Kauffman responded that the required minimum qualifications set forth in the RFP limited the pool of respondents to those with direct experience as counsel for tobacco securitizations.

Ms. Vanda continued the presentation by reviewing the transaction counsel matrix used to evaluate each proposal. Ms. Vanda added that although all four firms who responded met the minimum requirements for submission, there was a gradation to the responses. The staff found that three firms -- Orrick, Herrington, and Sutcliffe; Hawkins, Delafield and Wood; and Nixon Peabody offered superior responses in terms of depth and demonstration of their ability to provide the scope of services compared to other proposal.

The Secretary asked about the different responses to the Residual Asset Value Test. Ms. Vanda replied that Sidley Austin offered the lowest benchmark, but that the test relates to tax issues that would be the focus of co-transaction counsel, who works on tax issues, while the transaction counsel focuses on tobacco specific issues.

Ms. Vanda concluded her review by highlighting the excellent credentials of the top ranked firms and added that the differences among them were not significant enough to establish a ranking. For this reason the staff chose to focus on the fee proposals of the top three firms. Ms. Vanda explained that in light of the negligible differences between firms, the staff recommended appointing Hawkins, Delafield and Wood as transaction counsel because they offered the most aggressive bid of \$95,000. The Chairman then asked whether this was too good to be true and did it give her pause. Ms. Vanda replied that the tobacco market is highly competitive with only a small number of players all vying for the next big deal. Therefore, she expressed her opinion that Hawkins, Delafield and Wood made a strategic decision in hopes of getting the business. Mr. Ricci added that he had personal experience working with these firms and could attest to their superior abilities and noted that with national presence and a deal this size no firm would jeopardize their reputation by providing anything less than the best service. The Treasurer proposed that the aggressive bid was a reflection of the firm's desire to gain exposure from a high profile transaction and not indicative of an inferior quality of service. The Secretary asked for further comments regarding fees for similar transactions. Mr. Wozniak replied that Hawkins, Delafield and Wood has offered lower bids than competing firms for certain other transactions, most recently on a \$411 M issue in Alaska.

The Treasurer then commented on the importance of transferring risk from the State to the bondholders and all of the firms should have experience dealing with this issue. Ms. Vanda agreed that this is an essential aspect of the deal and confirmed that Hawkins, Delafield and Wood had all the necessary experience. The Chairman remarked that the fees seemed insignificant given the size of the transaction and questioned if the staff closely considered the fees because there were no discernable differences between the firms. Ms. Vanda replied that there were small nuances but that Hawkins, Delafield and Wood was a prominent and distinguished firm in this arena. Mr. Ricci noted that the market acceptance of opinions would be the same among each of the national firms.

Treasurer Cordray then moved, seconded by the Secretary, to appoint Hawkins, Delafield and Wood as transaction counsel to the Authority. The motion was approved upon roll call as follows: Ayes – Sabety; Cordray, Markus; Nays - None. The Chair declared the motion passed.

Mr. Ricci then presented the staff matrix and recommendation for co-transaction counsel. Mr. Ricci first reviewed the co-transaction counsel matrix used to evaluate the proposals and noted that that of the nine proposals received, eight met the minimum requirements for submission. The staff ranked the top three firms as: Squire Sanders and Dempsey, Peck Shaffer and Williams and Calfee Halter and Griswold, but mentioned that there were some critical distinctions between the firms. The Secretary requested clarification as to the nature of those distinctions. Mr. Ricci offered five criteria used to rank the firms, including securitization experience with a range of asset types and classes, knowledge of tobacco securitizations, understanding of the Authority's statutory framework, the depth and expertise of tax counsel, the range of legal services and practice areas related to securitizations. When staff applied these criteria, Squire Sanders and Dempsey further distinguished themselves from the other two firms and, therefore, recommended that that Authority appoint Squire, Sanders and Dempsey as co-transaction counsel for their proposed fee of \$385,000.

The Chairman asked why a comprehensive analysis of references was not included for co-transaction counsel. Mr. Kauffman replied that members of the staff had personal experience working with each of the responding firms and that they considered each reference the fundamental equivalent of excellent. The Secretary asked why the authority stressed the wide array of asset types and classes. Ms. Vanda explained that next to tobacco securitizations, experience with various types of deals would best prepare a firm for the transaction. The Treasurer expressed his concern that if Squire Sanders was selected, transaction counsel's fee would be lower than co-transaction counsel. Mr. Ricci and Ms. Vanda responded by saying the range of fees were reasonable and in-line with other transactions. Ms. Vanda further commented that all fee proposals were anticipated to be in \$300,000 to \$400,000 range.

The Secretary then moved to appoint Squire, Sanders and Dempsey as co-transaction counsel to the Authority, the Treasurer seconded with further discussion. The Treasurer asked staff to confirm there were distinctions between the top three firms. Mr. Ricci agreed there was and Squire Sanders was the superior firm. Ms. Vanda added that on a transaction of this size with a low investment grade credit, there is real value in getting an opinion from Squire Sanders because of their national reputation and stature. Mr. Kauffman also noted that differences in investor perception of the tax opinion could have pricing implications. The Secretary concluded by emphasizing the importance of putting to rest tax and legal issues necessary to market the Authority's obligations. Following this discussion, the motion was approved upon roll call as follows: Ayes – Sabety; Cordray, Markus; Nays - None. The Chair declared the motion passed.

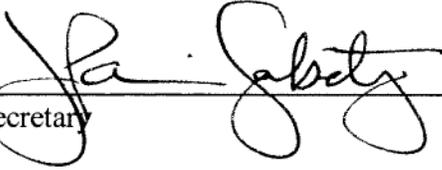
The Chairman addressed two additional items of business in regards to the Ohio Public Records Law. The Chairman requested that a step be removed from the process initiated when a proposal contains confidential information, so that if a firm was to include confidential material they would automatically include an explanation as to why they felt that information could not be shared publicly. Secondly, the Chairman moved, seconded by the Secretary, to grant to the Attorney General, in consultation with the Chairman, the power to determine whether information marked confidential is in compliance with Ohio Public Records Law. The motion was approved upon roll call as follows: Ayes – Sabety, Cordray, Markus; Nays - None. The Chair declared the motion passed.

The Chairman asked Chris Moore, representing the Service Employees International Union, to make a presentation that was requested prior to the meeting. Mr. Moore urged the Authority to consider the bidders' commitment to local communities when selecting vendors.

He also requested the Authority select a responsible financial institution, which supports good-paying jobs, healthcare and fair banking practices with access to credit.

Mr. Kauffman reported that the next meeting of the Authority would take place on either August 28<sup>th</sup> or 29<sup>th</sup>. The purpose of that meeting would be to select an underwriting team.

There being no further business, the meeting was adjourned.

  
Secretary



**THE BUCKEYE TOBACCO SETTLEMENT FINANCING AUTHORITY**

**RICHARD CORDRAY, Treasurer**  
Treasurer of State

**TED STRICKLAND, Chairman**  
Governor

**J. PARI SABETY, Secretary**  
Director of Budget and Management

**CERTIFICATION REGARDING NOTIFICATION OF MEETING  
TO THE PUBLIC AND NEWS MEDIA**

The undersigned, Assistant Secretary of the Buckeye Tobacco Settlement Financing Authority, hereby certifies that the notice of the time, place and purposes of the meeting of the Authority of August 16, 2007 at 2:00 p.m. was posted on August 7, 2007 in the State House press room, the Office of Budget and Management (34<sup>th</sup> Floor, 30 East Broad Street), and the Office of the Treasurer of State (9<sup>th</sup> Floor, 30 East Broad Street), all in accordance Section 121.22 of the Revised Code and the Open Meetings Rule for notification of meetings to the public and news media adopted by the Authority July 2, 2007.

Dated: August 16, 2007

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Kurt Kauffman  
Assistant Secretary of the  
Buckeye Tobacco Settlement Financing Authority

# ***The Buckeye Tobacco Settlement Financing Authority***

## ***Transaction Counsel and Co-Transaction Counsel RFP***

### **STAFF AND FINANCIAL ADVISOR REPORT AND RECOMMENDATION**

#### **I. Process Review**

- At its August 2<sup>nd</sup> meeting, the Authority authorized the release of a Request for Proposals (RFP) for transaction counsel and co-transaction counsel services.
- An advertisement was placed in the Bond Buyer, a nationally recognized municipal finance publication, and ran on August 3<sup>rd</sup>, 6<sup>th</sup> and 7<sup>th</sup>.
- The RFP was available for download on the OBM website under the Buckeye Tobacco Settlement Financing Authority link or by request from Authority staff.
- Firms were given six days to respond. The deadline for submission was 1:00 p.m., Wednesday, August 8<sup>th</sup>. The proposals were distributed later that day to authority members, their designees and staff.
- During the response window, no direct communication on the RFP was allowed between Authority members/staff and potential respondents.
- Questions regarding the RFP were submitted and responded to via the Authority's e-mail address. Those questions and responses are provided as Exhibit A.

#### **II. Role of Transaction Counsel(s) and Scope of Services**

Transaction counsel, in concert with the other legal counsels, provides the legal analyses, documents, and opinions necessary to effectuate the securitization. Counsel ensure compliance with federal and state tax, securities, and bankruptcy law and provide all necessary certifications and opinions for investors, credit rating agencies, and other parties to the transaction. The RFP set forth the following tasks within the scope of services for transaction counsel and co-transaction counsel.

##### Transaction Counsel

- Primary drafting responsibilities for the trust indenture and related opinions.
- Render necessary legal opinions, including opinions on the enforceability of the MSA and whether it would be considered an executory contract, the enforceability of the Model Statute, the true sale of the TSRs, and the residual asset value of the sale.
- Manage the legal aspects associated with securing structured investment products for the liquidity reserve, debt service and capitalized interest funds, including review of the contracts and bid forms.
- Provide legal advice on federal tax matters.
- Assist in the preparation and review of documents drafted by co-transaction counsel and underwriter's counsel, including the offering circular.
- Participate in meetings with the Authority, the issuer's counsel, the financing team, credit rating agencies, investors, and other parties.
- Coordinate with co-transaction counsel and issuer's counsel on all appropriate matters related to the Authority's issuance.
- Perform other services as requested by the Authority.

##### Co-Transaction Counsel

- Primary drafting responsibilities for the purchase and sale agreement, the tax compliance certificate, and the continuing disclosure certificate.
- Render an unqualified approving opinion and a supplemental opinion.
- Render legal opinions regarding the due authorization by the State of the MSA, the Ohio model statute and complementary legislation, and the bankruptcy of the Authority.
- Provide legal advice on federal tax matters.

# ***The Buckeye Tobacco Settlement Financing Authority***

## ***Transaction Counsel and Co-Transaction Counsel RFP***

### STAFF AND FINANCIAL ADVISOR REPORT AND RECOMMENDATION

- Assist in the preparation and review of documents drafted by transaction counsel and underwriter's counsel, including the offering circular.
- Participate in meetings with the Authority, issuer's counsel, the financing team, credit rating agencies, and investors.
- Coordinate with transaction counsel and issuer's counsel on all appropriate matters related to the Authority's issuance.
- Perform other services as requested by the Authority.

### **III. Proposals Received**

- Four firms submitted proposals to serve as transaction counsel:
  - Hawkins, Delafield & Woods (Hawkins).
  - Nixon Peabody.
  - Orrick, Herrington, and Sutcliffe (Orrick).
  - Sidley Austin.
- Nine firms submitted proposals to serve as co-transaction counsel:
  - Bricker and Eckler.
  - Calfee, Halter & Griswold (Calfee).
  - Gonzalez, Saggio & Harlan (Gonzalez).
  - McDonald Hopkins.
  - Peck, Shaffer & Williams (Peck Shaffer).
  - Squire, Sanders & Dempsey (Squire Sanders).
  - Thompson Hine.
  - Tucker, Ellis & West (Tucker Ellis).
  - Vorys, Sater, Seymour & Pease (Vorys).
- Each proposal was checked to confirm that it met both the minimum qualifications and the submission requirements as set forth in sections III. and V. of the RFP, respectively.
  - Gonzalez did not meet the minimum qualifications for co-transaction counsel having served as lead counsel on just two State of Ohio bond issuances in the past five years.
  - All other proposals met both requirements as evidenced by Exhibit B.
- Proposed fees for transaction counsel services ranged from \$95,000 to \$440,000. Proposed fees for co-transaction counsel ranged from \$175,000 to \$500,000.

### **IV. Evaluation Process and Criteria**

- Authority members, staff, and its financial advisor independently evaluated the proposals based on the evaluation criteria listed below as set forth in the RFP.
- Staff met separately with each of the Authority members to discuss the substance of the proposals and to solicit input from each member regarding the substance and format of the staff report.

# ***The Buckeye Tobacco Settlement Financing Authority***

## ***Transaction Counsel and Co-Transaction Counsel RFP***

### STAFF AND FINANCIAL ADVISOR REPORT AND RECOMMENDATION

#### **Evaluation Criteria**

- Capability of the firm to perform the required scope of services.
- Meaningful transaction experience in tobacco securitizations and other securitizations including drafting of key legal documents and rendering of the full range of legal opinions customary to those transactions.
- Knowledge of the State's constitutional and statutory provisions relating to the proposed tobacco bonds and to the Authority.
- Qualifications, education and experience of the personnel that would be assigned, particularly the lead bond attorney(s) with day-to-day responsibility for the transaction and the lead tax attorney(s).
- Commitment to Ohio:
  - Experience serving as legal counsel for Ohio bond issuances;
  - Physical presence within the State.
- Proposed fees (considered in light of the other evaluation criteria, not determinative).

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# ***The Buckeye Tobacco Settlement Financing Authority***

## ***Transaction Counsel and Co-Transaction Counsel RFP***

### **STAFF AND FINANCIAL ADVISOR REPORT AND RECOMMENDATION**

#### **VI. Transaction Counsel Evaluation Results**

Based on our evaluation of the proposals, the following three transaction counsel firms distinguished themselves from the fourth firm: i) Hawkins; ii) Orrick; and iii) Nixon Peabody. While Sidley Austin is a very capable firm, their proposal lacked the level of detail and focus of the other firms, particularly with respect to addressing each scope of service and applying their securitization experience and knowledge of the Ohio statute to the proposed transaction. Each of the top three firms was evaluated as very good to excellent in each evaluation criteria, with the exception of the response to the NPM withheld receipts for which Hawkins and Orrick responses were “good” but did not identify market-tested approaches for excluding those receipts from the pledged receipts.

#### **VII. Transaction Counsel Recommendation**

The Authority was fortunate to receive proposals from multiple qualified firms. Three of the proposals were ranked higher than the fourth, but essentially equivalent relative to each other. As a result, we do not believe there is a meaningful relative ranking among the top three firms. Taking into consideration the fees proposed by the top three ranked firms (Hawkins - \$95,000; Orrick - \$325,000; and Nixon Peabody - \$440,000), we recommend offering the transaction counsel position to Hawkins, Delafield and Wood for their proposed fee of \$95,000. Authority staff has confirmed with Hawkins that this fee reflects all of the services anticipated to be provided through the closing of the proposed transaction. Based on that understanding, the Hawkins proposal presents the best value to the Authority.

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## II. Evaluation Results – Co-Transaction

Evaluation Criteria
General Firm Info Areas of Practice (Q: 1,2, 3a,3b)
Scope of Services & Tobacco Securitization Experience (Q: 4, 8a)
Securitization Experience > \$250 million & Knowledge of Ohio Statute (Q: 5, 8b)
Key Tax Issues Residual Asset Value Test (Q: 6)
NPM Adjustments & Pledged Receipts (Q: 7)
Qualifications and Duties of Assigned Personnel (Q: 9)
Commitment to Ohio – Footprint & Experience (3c, 8c, 8d)
References (Q: 10)
Other (Q: 11)
CoI & Regulatory (Q: 12-14)
Proposed Fees Per Bond & Maximum

# ***The Buckeye Tobacco Settlement Financing Authority***

## ***Transaction Counsel and Co-Transaction Counsel RFP***

### STAFF AND FINANCIAL ADVISOR REPORT AND RECOMMENDATION

#### **IX. Co-Transaction Counsel Evaluation Results**

Based on our evaluation of the proposals, we believe the selection of co-transaction counsel should be made from the following firms: i) Squire Sanders, and ii) Peck Shaffer. These firms were distinguished by strong proposals in virtually all areas, deep resources in and highly experienced public finance tax expertise, extensive experience in asset securitization transactions, and degree of national presence. The evaluations revealed a significant gap in the relative rankings between these top two firms and the other responding firms. The other responding firms were ranked lower for a variety of reasons including their degree of securitization experience, the level of substantive knowledge reflected in responses regarding key tobacco securitization issues, understanding of the Authority's enabling legislation, and the relative depth and experience of dedicated tax law expertise. Moreover, as two of the nation's consistently top-ranked public finance practices, Squire Sanders and Peck Shaffer possess a degree of national presence and market stature attractive to potential investors. Note, the co-transaction counsel evaluation table (Section VI. above) includes the third highest ranking firm (Calfee) to illustrate how the evaluation criteria differ among the responding firms.

#### **X. Co-Transaction Counsel Recommendation**

Of the two recommended firms, Squire Sanders and Peck Shaffer, we believe that Squire Sanders is further distinguished in its qualifications by the following factors: i) the depth of expertise as tax counsel with respect to both public finance and securitization – having proposed staffing including both senior public finance and securitization tax partners, ii) the relative depth and breadth of securitization experience having served as lead counsel for greater number of issuances with a wider array of asset types and classes, iii) the most extensive knowledge of the Authority's legislative framework, and iv) the range of legal services and practice areas made available to the Authority. Taking into consideration the maximum fees proposed by the top two ranked firms (Squire Sanders - \$385,000; Peck Shaffer - \$490,000), we recommend offering the co-transaction counsel position to Squire Sanders for their proposed fee of \$385,000.

# *The Buckeye Tobacco Settlement Financing Authority*

## Questions on the RFP for Transaction Counsel Services



### Staff Report and Recommendations – Exhibit A

Q1: Clarification needed on the section indicating that the responses to the RFP are "... required to include a complete copy of the proposal on a standard disk or CD-ROM in both MSWord and PDF format...." Does this mean that each copy of the response must be accompanied by a standard disk or CD-ROM, resulting in 12 for the Columbus location and 4 for the Cleveland location, or is one per location sufficient?

*A1: Submission of one disk or CD-ROM per location is sufficient.*

Q2: Could you please confirm that you, as do we, view the Authority as a separate legal entity from the State and its departments and other agencies and instrumentalities for conflict of interest purposes?

*A2: Ohio Revised Code Section 183.52 states that the Authority is:*

*a body, both corporate and politic, constituting a public body, agency, and instrumentality of this state and performing essential functions of the state, to be known as the buckeye tobacco settlement financing authority, which in that name may contract and be contracted with, sue and be sued, and exercise all other authority vested in that authority by this section and section 183.51 of the Revised Code.*

*Hence, the Authority (like many issuing bodies) is a distinct body created by statute. However, the applicable statute does not specifically address the issue of conflict of interest with respect to legal representation. Therefore, potential bidders should analyze their unique circumstances in light of the Ohio Code of Professional Conduct, particularly Rules 1.7 and 1.8. In conducting that analysis, potential bidders should also consider what, if any, prior notices and written waivers should be prepared in anticipation of their potential representation.*

Q3: Does a bidder's Fee Proposal and required Article IX Certifications count against the 10-page limit?

*A3: The bidder's fee proposal is included within the 10-page limitation. The certifications page does not count against the 10-page limit.*

The Buckeye Tobacco Settlement Financing Authority  
 STAFF REPORT AND RECOMMENDATION  
 Exhibit B

	Minimum Qualifications	Trade Secret Claim	Certification & Info Sheet	Submission of Proposal	Applied for Transaction Counsel	Applied for Co-Transaction Counsel	Turned in by 1:00 PM	10 pages or less	12 Copies	Completed Certifications	Completed Info Sheet	Included Trade Secret Claim	2 Tobacco securitizations in the past 5 years with one having a par in excess of \$400M	5 transactions for state-level Ohio issuing authorities within the past 5 years with one having a par in excess \$100M	10 years experience serving as counsel for municipal bond issuances
					X	X	X	X	X	X	X	None	13 Transactions Par amt. \$27B	N/A	X
					X	X	X	X	X	X	X	None	11 Transactions Par amt. \$11.8B	N/A	X
					X	X	X	X	X	X	X	None	16 Transactions Par amt. \$18.8B	N/A	X
					X	X	X	X	X	X	X	X	10 Transactions Par amt. \$15.2B	N/A	X
					X	X	X	X	X	X	X	None	N/A	6 Issues Par amt. \$1.3B	X
					X	X	X	X	X	X	X	None	N/A	18 Issues Par amt. \$3.1B	X
					X	X	X	X	X	X	X	None	N/A	Did not meet	X

