

BUCKEYE TOBACCO SETTLEMENT FINANCING AUTHORITY

Minutes of June 17, 2016 Meeting

The Buckeye Tobacco Settlement Financing Authority (the Authority) held a meeting commencing at 3:00 p.m. on Friday, June 17, 2016, 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 its 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, as Assistant Secretary, reported that one new designation had been filed by the Treasurer of State designating Seth Metcalf and Jonathan Azoff, in the alternative, since the last meeting of the Authority.

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

Michael Grodhaus, Office of the Governor

Tim Keen, Office of Budget and Management

Jonathan Azoff, Office of the Treasurer of State

Among others present were Larry Scurlock and Catie Hookway (Office of Budget and Management); Greg Stype (Squire Patton Boggs); and James Wakley and Carol Mosholder (Attorney General's Office).

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

Mr. Grodhaus then moved, seconded by Mr. Keen, to approve the minutes of the June 23, 2015 Authority meeting. There being no discussion, the motion was approved upon roll call as follows: Ayes – Grodhaus, Keen, Azoff; Nays – None. The Chair declared the motion passed and those minutes approved.

Mr. Kauffman provided an overview of the Fiscal Year (FY) 2015 financial statement preparation and audit process and presented a brief summary of the audit results.\* Mr. Kauffman noted that the FY 2015 financial statements were found to fairly present, in all material aspects, the financial position of the Authority in accordance with Generally Accepted Accounting Principles (GAAP). He also noted that the audit opinion was 'unqualified' with no material weaknesses or deficiencies in internal controls or any instances of noncompliance with material laws or regulations.

Mr. Kauffman then presented an update on the tobacco settlement receipts (TSRs) received in calendar year (CY) 2016.\* He explained that preliminary CY 2016 receipts were higher than CY 2015 receipts by \$14.1 million or 4.9%, and that the reasons for the increase included a very modest 0.1% decline in domestic cigarette consumption in CY 2015 which was more than offset by the inflation component of the Tobacco Master Settlement Agreement (MSA) formula. Mr. Kauffman noted that the TSRs, together with estimated interest earnings on the Senior Liquidity Reserve Fund (Reserve Fund) and other pledged accounts, are insufficient to fully pay the annual debt service for 2015 and that, barring the receipt of additional revenue in the near-term (e.g., a release from the

Disputed Payments Account), there will be a draw on the Reserve Fund estimated at \$29 million for the December 1, 2016 debt service payment on the Authority's bonds. This would lower the Reserve Fund balance to approximately \$279 million at that time. A voluntary disclosure notifying bondholders of this anticipated December 1, 2016 draw on the Reserve Fund has already been filed on EMMA (the Electronic Municipal Market Access system maintained by the MSRB).

Ms. Mosholder then gave a presentation regarding the status of arbitration relating to tobacco settlement payments that were disputed by tobacco manufacturers and deposited into the Disputed Payments Account provided for under the MSA. She explained that with respect to the arbitration process for the 2003 Non-Participating Manufacturer (NPM) adjustment, Ohio was successful based on the finding of the arbitration panel in September 2013 that the State diligently enforced its model statutes. Ms. Mosholder then addressed the 2004 NPM adjustment arbitration noting that 19 states including Ohio that have not yet settled have begun discussions with the tobacco manufacturers and a three-member arbitration panel has been established. The order of the state-specific cases has not yet been set and arbitration is not expected to begin until 2017. In response to questions from Mr. Azoff, Ms. Mosholder explained that about half of the states have fully settled their disputed tobacco settlement payments and that before the 2005 NPM adjustment can be addressed by states the 2004 NPM adjustment must be concluded.

Mr. Scurlock then presented the Authority's operating budget for FY 2016 and its proposed operating budget for FY 2017.\* He reviewed the FY 2016 year-to-date expenses, noting that underspending relative to the budgeted amount is primarily due to (i) an amendment to the quantitative consultant agreement which changed the scope of work and reduced the fee, and (ii) lower-than-budgeted expenses for legal services including mediation of the Reserve Fund claim. Mr. Scurlock then reviewed the proposed FY 2017 budget explaining that it is comparable in size and scope to the FY 2016 budget. He also noted that additional monies in the amount of \$800,000 constituting Priority Payments under the Trust Indenture are being transferred to the Operating Account to pay costs and expenses in connection with enforcement of the Authority's rights under the Reserve Fund claim in FY2017. Mr. Scurlock also noted that approximately \$330,000 in unspent balances from FY 2016 and prior fiscal years is also available in the current and future fiscal years to pay costs and expenses associated with the Authority's Reserve Fund claim.

Mr. Grodhaus then moved, seconded by Mr. Azoff, to appoint Seth Metcalf as the Assistant Treasurer of the Authority to assist with the duties of the Treasurer. There being no discussion, the motion was approved upon roll call as follows: Ayes – Grodhaus, Keen, Azoff; Nays – None. The Chair declared the motion passed.

Mr. Azoff then presented an update on the status of the court-ordered mediation with respect to the Authority's claim against the provider of the Forward Delivery Agreement for investment of the Reserve Fund that was terminated in September 2008 due to that provider's default. Mr. Azoff explained that mediation was nearing its conclusion, that there was a strong possibility the dispute would not be resolved in the mediation process, and that litigation could be imminent.

It was then moved by Mr. Azoff, with the motion seconded by Mr. Grodhaus, to enter into Executive Session pursuant to section 121.22(G)(3) of the Revised Code, to confer with legal counsel regarding the Authority's claim that is the subject of pending and imminent court action. The motion was approved upon roll call as follows: Ayes – Grodhaus, Keen, Azoff; Nays – None. The Chair declared the motion passed and members of the general public were asked to leave to permit the Authority to continuing in Executive Session.

The Authority reconvened from Executive Session shortly thereafter, at which time members of the general public were invited back into the meeting. Mr. Grodhaus then moved, seconded by Mr. Keen, that the Authority, pursuant to section 183.51(E) of the Revised Code and in consultation with the Attorney General, retain Squire Patton Boggs (SPB) as its legal counsel, and to direct SPB to continue to prosecute the Authority's Reserve Fund claim against the provider of the Forward Delivery Agreement and defend against any lawsuit filed by that provide, all subject to terms and conditions agreed upon by the Attorney General and Treasurer of State as the Authority's designee for this matter. Mr. Keen noted that the Authority needed to be fully prepared if this case moves to litigation. There being no further discussion, the motion was approved upon roll call as follows: Ayes – Grodhaus, Kauffman, Azoff; Nays – None. The Chair declared the motion passed.

There being no further business, the meeting was adjourned.

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Timothy S. Keen, Secretary  
Buckeye Tobacco Settlement Financing Authority



**BUCKEYE TOBACCO SETTLEMENT FINANCING AUTHORITY**  
**STAFF PRESENTATION**  
**June 17, 2016**

FY2015 Audit Process

- U.S. Bank (bond trustee) and BTSFA staff provided the account statements, reports, and other information to Rea & Associates (REA) for compilation of the FY 2015 financial statements.
- Once the financial statements were compiled, Secretary Keen, TOS and OBM met with REA to review the report, confirm the cash balances, and examine all line-items that experienced a variance of 5% or more from its prior fiscal year value.
- Financial Statements were turned over to the Auditor of State in late August and the audit work was completed by early October.
- The FY2015 Audit Opinion was 'unqualified' and the financial statements were found to fairly present, in all material aspects, the financial position of the Authority in accordance with Generally Accepted Accounting Principles.
- The Audit did not identify any significant deficiencies or material weaknesses in internal controls nor any instances of noncompliance with material laws and regulations.
- The Audit did not include a management letter.

Financial Matters Update

CY 2016 Tobacco Settlement Receipts versus Debt Service Requirements (*\$ in Millions*)

Calendar Year (CY)	Pledged MSA Tobacco Settlement Receipts	Interest Earnings*	Total Pledged Funds	Less Operating Expenses	Less Debt Service Payments	Shortfall
2008	\$333.1	\$22.3	\$355.5	(\$2.6)	(\$352.7)	--
2009	\$364.9	\$5.3	\$370.2	(\$2.6)	(\$367.8)	--
2010	\$305.6	\$1.7	\$307.3	(\$1.3)	(\$306.0)	--
2011	\$289.3	\$1.4	\$290.7	(\$0.3)	(\$297.7)	(\$7.4)
2012	\$294.6	\$1.2	\$295.8	(\$0.1)	(\$294.7)	--
2013	\$294.9	\$1.1	\$296.0	(\$0.2)	(\$309.4)	(\$13.6)
2014	\$292.5	\$1.0	\$293.5	(\$0.3)	(\$320.3)	(\$27.9)
2015	\$285.8	\$1.2	\$287.0	(\$0.3)	(\$321.7)	(\$35.0)
2016 Est.	\$299.9	\$1.1	\$301.0	(\$1.1)	(\$328.5)	(\$28.6)

\* Includes SLRA interest earnings which are retained by the SLRA and thus not applied against the SLRA draw. Thus, the SLRA draw will be slightly higher than the estimated shortfall amount.



- Pledged Tobacco Settlement Receipts (TSRs) for CY 2016 totaled \$299.9 million, an increase of 4.9% from CY 2015 TSRs.
  - The CY2016 TSRs reflect a very modest decline of an estimated 0.1% in domestic cigarette consumption in CY 2015 (based on OPM data) which was more than offset by the minimum 3.0% inflation adjustment component of the MSA formula and a true-up of a prior-year underpayment.
  - Domestic cigarette consumption moderated relative to recent year declines of 3.5% in CY 2014, 4.9% in CY 2013, and 2.0% in CY 2012.
- The three largest participating tobacco manufacturers (Philip Morris, RJ Reynolds/Lorillard) again paid a portion of their 2016 payment to disputed accounts.
- The 2016 TSRs along with interest earnings on those receipts are not sufficient to cover principal and interest payments required to be paid in 2016.
  - Assuming the status quo, a draw on the liquidity reserve fund in the amount of about \$29 million will be necessary to cover the December 1, 2016 debt service payment.
  - Following that expected December 1, 2016 draw, the reserve fund balance is estimated to be \$279 million.
- Amounts potentially due and payable to Ohio (and pledged to the BTSFA bond holders) currently on deposit in disputed accounts or withheld is approximately \$300 million.
  - This amount currently on deposit in disputed accounts and pledged to bondholders relates to sales years 2005 through 2013 due to the 3-year lag. Disputed amounts relating to the 2003 sales year and paid in 2006 were released to the States in April 2014.
  - Resolution of disputed amounts continues to be the subject of ongoing arbitration related to the Non-Participating Manufacturer (NPM) adjustment included in the MSA payment formula.
  - The NPM adjustment is disallowed if States can demonstrate 'diligent enforcement' of their qualifying statutes that require NPMs to make escrow deposits analogous to the MSA required payments.
  - The Attorney General's office will be providing an update on this arbitration process later in today's meeting.



**Buckeye Tobacco Settlement Financing Authority  
FY 2016 Operating Budget**

Service or Activity	FY 2016 Budget	FY 2016 Year-to-Date	Variance	Approved & Submitted For Payment	Notes
Rating Agency Annual Surveillance Fees:					
-- Moody's	35,000	35,000	0	10/29/15	annual surveillance
-- Fitch	10,000	10,000		9/24/15	annual surveillance
-- S&P	10,000	10,000		10/29/15	annual surveillance
U.S. Bank Annual Trustee Fee	15,000	15,000			
-- Annual Trustee Fee	550	550	0	11/18/15	annual trustee fee
Financial Statement Preparation	5,000	5,000	0	12/2/15	financial statement preparation
-- REA & Associates		4,000		12/2/15	financial statement preparation
		1,000			
Financial Statement Audit	40,000	38,936	1,064		
-- Auditor of State		3,325		10/19/15	FY15 financial statement audit
		33,982		11/2/15	FY15 financial statement audit
		1,629		6/1/16	FY16 financial statement outsourcing
		0			
Financial Advisor / Claim Consultant	75,000	0	75,000		
-- Public Financial Management		0			
		0			
		0			
Continuing Legal, Disclosure & Reporting (incl. reserve fund litigation)	156,050	61,334	94,717	11/2/15	Authority annual meeting; SDRS claim
-- Squire Patton Boggs		21,092		12/8/15	SDRS claim
		16,416		6/2/16	SDRS claim
		23,826			
Contingency/Other	5,000	2,340	2,660	7/2/15	Bond Buyer RFP Advertisement
<b>FY 2016 Total:</b>	<b>316,600</b>	<b>143,159</b>	<b>173,441</b>		



**Buckeye Tobacco Settlement Financing Authority  
FY 2017 Operating Budget**

Service or Activity	FY 2017 Budget	FY 2017 Year-to-Date	Variance	Approved & Submitted For Payment	Notes
Rating Agency Annual Surveillance Fees:					
-- Moody's	35,000	0	35,000		
-- Fitch	10,000				
-- S&P	10,000				
	15,000				
U.S. Bank Annual Trustee Fee	550	0	550		
-- Annual Trustee Fee					
Financial Statement Preparation	5,150	0	5,150		
-- REA & Associates					
Financial Statement Audit	29,970	0	29,970		
-- KCR on behalf of AOS					
Financial Advisor / Claim Consultant	25,000	0	25,000		
-- Public Financial Management					
Continuing Legal, Disclosure & Reporting (incl. reserve fund litigation)	226,000	0	226,000		
-- Squire Patton Boggs					
Contingency/Other	4,430	0	4,430		
<b>FY 2017 Total:</b>	<b>326,100</b>	<b>0</b>	<b>326,100</b>		

\* \$800,000 in Priority Payments was also requested to cover costs and expenses in connection with the enforcement of the Authority's rights under the Senior Liquidity Reserve Account Forward Delivery Agreement, including litigation expenses (if necessary).