

EIC C-PACE Advisory Committee Meeting April 25, 2019 Minutes

Susan Morth/EIC: Good morning everyone. It's Susan Morth here with many of my EIC colleagues. Thank you all for being on the phone today. We want to say it was great seeing so many of you at the PACE Nation Summit in Austin a few weeks ago. We really appreciate everyone's time and input. We had many very productive meetings there and again EIC wants to thank Anna Lee and Patrick Dolan from Norton Rose and Fulbright for their support and work on our program documents.

In preparation for this call, hopefully you have all received, versions 25 and 26 of EIC's local law and municipal agreement. Those are the final versions and those documents are out to all 120 some odd tax-lien authorities in New York State with the exception of New York City. We are working on getting those documents adopted by all of our municipalities, counties, cities, towns, etc. Let us know if you are interested in a particular municipality and we will let you know where we are. We do have local hearings coming up as soon as May 7th to get these things passed.

Today we are focusing on the issue of securitization and we are lucky to have Mr. Seth Messner of Katten Muchin Rosenman on the call this morning and he'll be speaking about our program and securitization on behalf of Morning Star Credit Ratings. We also do have Anna Lee and Patrick Dolan from Norton Rose Fulbright on the call so if there are any questions, hopefully we can answer all of those. With this introduction. Seth if you're on the line, we would love to hear what you think about our documentation? *[silence]* Maybe we don't have Seth on the line yet? Do we have Anna or Patrick on the line?

Anna Lee: Hi we are here with Randy Mayer.

Susan: Oh, Hi Randy, thank you for being on this call as well.

Randy Mayer: Hi, Susan, how are you doing?

Susan: Well, thank you.

Randy: I'm just shooting Seth an email, give me a second.

Susan: Oh, okay no problem at all. In the interim, as we wait for Seth to get on the call—he is probably busy helping someone, hopefully someone we know! If anybody has a particular question they would like to ask in advance about the program or anything we can answer at the moment while we are waiting? *[silence]* I'm going to take this as a good sign that there are no questions, so hopefully we've finished wringing all the questions out.

Anna: Susan we are still trying to get a hold of Seth, but we did have conversations with him. Patrick and I have had conversations with him just generally about our approach and whether there would be any red flags for securitization and basically he said that because our approach is slightly different than typical municipal

enforcements of the PACE lien in other states, he said as long as we could give the opinion that this is all authorized he would not foresee any kind of a problem with securitization.

Seth Messner: Hi I'm on, this is Seth and I had trouble dialing in.

Anna: Hi Seth, thanks for joining.

Seth: Again, apologies. Yes, I think that is an accurate description of our position. Yes, with the points we had raised with respect to the bankruptcy and the statutory authority. As long as the opinions that are provided and Morning Star is comfortable with that. Generally now they'll gain comfort in those areas. And, I think Patrick, you were saying that at the time of securitization you would provide bankruptcy opinion and enforceability opinions with respect to the document.

Anna: Yes, that's correct.

Seth: Those were our two main concerns, other than those points assuming that we can get comfort from the opinions, I think we will be in good shape.

Susan: Great, thank you so much, Seth. This could be quickest advisory committee call we've hosted. I would like to open it up to everyone on the line, I do have over twenty callers. If someone has a question for Anna, Patrick, EIC or of course, Seth, you can just let us know at this time.

Seth: Bill, do you have anything to add, or Jeff?

Jeff from Katten: No, I think I agree with what you said Seth.

Cliff Kellogg: Susan, can you hear me?

Susan: Yes, Cliff we can, go ahead.

Cliff: I have a question which relates to the billing collection and the remittance process and of course it's different within the different municipal structure in different parts of the state, different counties, townships and so forth and I wonder how did you deal with that in the municipal agreement given all the variation and the reason I ask the question is the same issue is arising as Pennsylvania is thinking about rolling out their PACE program and maybe you have some suggestions on how to deal with that kind of variation given the very different billing and collection structures.

Susan: Well, our program is a little different in that we are not relying on the municipality to do billing, we are not relying on them to collect the funds. We are using a subordinate lien, EIC is going to be billing the property owner and directing them to remit the funds directly to the capital provider and at no time will the subordinate lien make it onto the municipal tax bill, Anna can jump in to put some more meat on those bones, but it is a different program here, Cliff.

Cliff: That's helpful.

Anna: We decided not to go through the municipal tax collection and enforcement system just because there are so many municipalities in New York State and they all operate quite differently from one another and we saw that as a more efficient, cleaner approach. We are having EIC, in the local law and the municipal agreement, the municipality appoints EIC as their agent to act on their behalf to collect and to place the lien to record the lien on the land records and any assignments and also when the PACE lien is paid off to release the lien. EIC will be doing all those functions on behalf of the municipality and we have already rolled out the local law and we want to have more uniformity and consistency among the municipalities. We will have the same local law adopted in each jurisdiction as well as the same municipal agreement between EIC and the municipality and then there will be an administration agreement between EIC and the capital provider whereby EIC agreed to perform these services and compensated for such services and indemnified by the capital provider. Basically, we removed the municipality from the equation because we thought they were the weak link actually.

Kevin Moyer/Pace Equity: Can you discuss the enforcement foreclosure process?

Anna: Sure, the enforcement is basically, right now, the statutes in New York State provides for the enforcement of all lien holders of record can enforce the liens. Right now we subordinated the PACE lien to the municipal liens like taxes, water and sewer so the capital provider would have to step in and pay off the senior lien and then be able to get into the senior position and enforce its rights. I realize and recognize that is different from other states but we had considered having the PACE lien put back onto the tax bill like they do in Texas and then having the municipality enforce but because of the issues with municipal enforcement in New York, we have had have issues where they won't remit payments. We decided that it is more efficient if the capital provider steps in and does it itself.

Josh Smith/Petros: I guess this is a probably a question for Seth, from the rating agency perspective, do you anticipate any additional credit stressing based on the fact that the PACE lender is going to need to remit delinquent taxes as the condition of prosecuting a foreclosure?

Seth: To be honest, I would have to check with the rating agency on that particular point, they are aware of it. I think from their perspective and looking at this program, they were trying to in assisting Norton Rose and providing feedback to Norton Rose they were looking more at items that would be kind of deal killers. I don't think they got to the level of figuring out exactly how they are going to stress this model in particular but I don't think any of these items that have arisen under this proposed program and again assuming proper opinion coverage would be deal killers.

Josh: Ok, thanks.

Susan: Okay, anyone else? If not....

Geri Killilea/Banc of America: I just had a quick question about something we had raised before. One question that we have is just how much latitude the capital providers have as to what they can put into the finance agreement with the capital provider and the underlying property owner? I know that under the statute and under the agreement between the capital provider and EIC that there is no acceleration in the event of a default, but one of our questions is if there was something that we had deemed not necessarily a default but something for regulatory reasons might have a requirement from us to have a mandatory prepayment of what was outstanding. Would that be an issue adding that into the finance agreement even though it's not specifically covered and actually seems to be contrary to what's in the municipal law?

Randy Mayer: We think that you could not accelerate the debt and then collect the entire amount against the property because the lien arises annually and it's limited by the amount that would have arisen annually. So you can't accelerate the debt and expect to be fully secured by a lien because the security is supposed to be provided by the property on an annual basis. You could, in the financing agreement, require that the debt is accelerated but in terms of access to the security you only have an annually arising lien. Maybe for regulatory purposes that might be enough because you do have a debt that could be made wholly due it is just that the lien arising against the property remains on its original schedule.

Patrick Dolan: I think that's true of PACE in any state you cannot accelerate the remaining installments.

Anna: PACE, by its nature, is usually as long as the length of the useful life of the improvement and that is in the statute, you can't really get around that.

Gerry Killiea: The lien runs with the land basically. Ok, thank you for the clarification, I appreciate it.

Anna: Just to clarify, the finance agreement is really between the capital provider and the property owner, and EIC would be required to be a third party beneficiary to that agreement so they have privity with the capital provider should anything go wrong, but we are not going to dictate what's inside the finance agreement that is up to the capital providers. EIC will act as a gatekeeper for the program, they will pre-approve the capital providers that are allowed to enter the program, and they will also pre-approve the borrowers just that the project qualifies as a PACEable project.

Patrick Dolan: That's what I'm saying. She can put whatever she wants in the loan agreement and if there's other collateral guarantee she'll have whatever rights, but she can't accelerate.

Susan: Is there anything else?

Aaron Ordower/NYC Mayor's Office: If we are done with EIC, can I make a quick announcement at the end of the discussion?

Susan: Sure, that would be wonderful, go ahead, Aaron.

Aaron: I just wanted to share the good news. If you haven't heard, last week our city council finally, after many years of work, approved our PACE enabling legislation for New York City along with a number of other sort of historical bills related to building energy emissions and sustainability known as our Climate Mobilization Act. The news of PACE might have gotten buried under the other big things that were approved here but we're extremely excited about getting the PACE program up and running. We will be in touch with many of you here on this call as we move toward finalizing our program guideline documents and look at rule-making as we hope to be able to launch our program later this year. Thank you to everyone who has been of assistance to us and we will be in touch soon, I hope. Thanks, Susan.

Susan: Thanks, Aaron. Anything else? Okay, if there is nothing else, thank you to everyone for being on the call and thank you Seth for joining us it's really very helpful. We appreciate everyone's support.