The Dormitory Authority of the State of New York Finance Committee Video Conference Meeting was held at DASNY's Albany Office, 515 Broadway, Albany, New York and New York City Office, One Penn Plaza, 52nd Floor, New York, New York at 4:00 p.m. on Tuesday, July 17, 2018.

The Meeting was called to order by the Finance Committee Chair. Roll call was taken and a quorum was present. Those Finance Committee Members present and absent were as follows:

Members Present- New York City

Gerard Romski, Esq., Finance Committee Chair
Alfonso L. Carney, Jr., Board Chair, Committee Member

Members Present- Albany

Charles Abel, Designated Representative of the Commissioner of Health, Member (ex officio), Committee Member

Dormitory Authority Staff Present – New York City

Gerrard P. Bushell, President
Michael T. Corrigan, Vice President
Michael E. Cusack, Esq., General Counsel
Portia Lee, Managing Director, Public Finance and Portfolio Monitoring
Debra Pulenskey Drescher, Esq., Managing General Counsel
Daniel W. Petroff, Chief of Strategy and Business Development

Dormitory Authority Staff Present – Albany

Kimberly J. Nadeau, Chief Financial Officer
Caroline V. Griffin, Chief of Staff
Larry N. Volk, Senior Director, Portfolio Management
Ricardo Salaman, Esq., Managing General Counsel
David Perritano, Public Information Officer

Others

Jeffrey M. Pohl, Esq. Squire Patton Boggs, LLP

PUBLIC SESSION

The Committee Chair called the Committee Meeting to order. The Minutes of the May 9, 2018 and June 20, 2018 Finance Committee Meetings were reviewed and approved with one minor correction to the title of the updated Montefiore Obligated Group transaction as set forth in the June 20, 2018 Minutes.

Financing Guidelines for Independent Institutions – Proposed Amendment

At the request of Finance Committee Chair Romski, Ms. Lee gave a presentation to the Committee Members on the proposed revisions to the Financing Guidelines for Independent Institutions. She directed the Committee Members to the materials in the Board book, including a Memorandum from President Bushell describing the changes to the Guidelines and both clean and blacklined copies of the proposed Guidelines, as well as an updated draft of the blacklined Guidelines in the handouts which included a technical drafting change highlighted in yellow.

Ms. Lee stated that the current Financing Guidelines address the entire credit spectrum of borrowers, including investment grade, below investment grade and non-rated. She noted that borrowers rated below investment grade and non-rated pursue private placement transactions. Ms. Lee stated that the changes to the Guidelines before the Committee today pertain only to Independent Institutions in the investment grade category, and reflect an approach that is based upon market conditions and practices. Ms. Lee explained that the current Financing Guidelines require various security features by sector such as health care or higher education and by rating category. She stated that that over time, changes have been made to the Guidelines based upon work by staff in consultation with external advisors, taking into account market conditions that would inform proposed changes to the Financing Guidelines.

Ms. Lee stated that the proposed amendments seek to build on this approach for health care, higher education and other not-for-profit transactions in the investment grade category only. She noted that the changes make clear for all financings subject to the Guidelines including multiple borrowers and structured financings that the Loan Agreement is a general obligation of the institution; the bonds are limited obligations of DASNY; and that the financing documents will contain certain standard provisions. She further stated that the financing documents may also include additional security provisions including a pledge of revenue, financial covenants, a mortgage, or a debt serve reserve fund. Ms. Lee emphasized that the security provisions utilized will be based upon market conditions and practices, rather than imposing prescriptive security provisions based upon the borrower's sector and rating category. She informed the Committee Members that DASNY would request information regarding market conditions and investor demand from the underwriters and borrowers. Ms. Lee noted that this approach is not unlike the process DASNY undertook in the past, when it sought to make changes to the Guidelines based upon a periodic review of the market. Ms. Lee explained that the new approach will enable DASNY to provide greater certainty to its borrowers, as well as the flexibility to structure financing transactions to conform to present market conditions.

In response to questions from Mr. Romski and the Board Chair, Ms. Lee informed the Committee Members that in the event that security provisions change due to market conditions or investor requirements, and the security package is less than that which was previously presented to the Board, further Board approval would be required for the change. She explained that if additional security provisions are required, the Board would be updated for informational purposes.

Ms. Lee stated that an example would be the Montefiore transaction, which staff and bond counsel reported would include a mortgage if required by investors. She reported that while the underwriter initially did not believe a mortgage would be required, the underwriter informed staff that a mortgage would be required. Accordingly, a mortgage will be included in the financing moving forward. Under the proposed amendments, staff would come back to the Board and advise of this change for informational purposes. Conversely, however, Ms. Lee confirmed that if the security were lessened, staff would bring the proposed changes back to the Board for approval.

The Board Chair inquired about how a change to the component parts of the security package would be addressed, if the overall the value of the security package was similar. Ms. Lee stated that with respect to value, there are discrete elements of security, such as a mortgage, pledge of revenue, and other elements, that will continue to be disclosed to the Board in the Staff Report and bond counsel letter. She further stated that there would either be more security or less security.

Ms. Lee explained that market-based financing structures will be determined utilizing many of the same factors currently considered when the Board is asked to approve a security package different from what is prescribed in the existing Financing Guidelines. She further explained that when an exception from the Financing Guidelines is requested, the underwriter and institution provide examples of security packages utilized in financing by institutions with a similar rating. Ms. Lee stated that an example would be the numerous occasions when staff presented to the Board requests by borrowers to proceed without a debt service reserve fund, which was required by the Financing Guidelines in effect at the time. The proposal would be brought before the Board, staff would note that it was an exception from the Guidelines, staff would provide examples of other financings that were acceptable to the market without a debt service reserve fund, and the issue would be discussed. Ms. Lee stated that a similar approach is expected under the revised Guidelines. Ms. Lee noted that the Board had historically acted upon all financings that were undertaken as exceptions to the Guidelines using this type of approach.

Ms. Lee stated that in accordance with the existing Guidelines, higher education institutions in the A category and higher typically access the market with a general obligation pledge, whereas institutions rated in the BBB category are subject to a number of specific security requirements. Ms. Lee further stated that she would expect to see the market based information regarding examples of similar transactions for higher education financings in the BBB category, because that is where the Financing Guidelines had been prescriptive and the revised Guidelines would instead focus on an assessment of market conditions and practices. Conversely, Ms. Lee indicated that this approach would not apply to financings in the A category (or higher) for higher education, as the Financing Guidelines as currently written already provide the flexibility for these institutions to go to market with a general obligation pledge. Accordingly, Ms. Lee concluded that the proposed changes would impact higher education institutions rated in the BBB category as well as health care financings, as the current Guidelines state that a mortgage is generally required.

In response to a question from the Board Chair on whether DASNY obtains financial information from the rating agencies, Ms. Lee stated that DASNY does not participate in the rating process. She explained that the borrower and banker provide information to the rating agencies and that when the rating is assigned, a report is published. Ms. Lee noted that the rating can come either before or after the transaction is brought to the Board for approval, and that staff works to keep informed of the process.

In response to a further question from the Board Chair, Ms. Lee indicated that staff would inform the Board of a rating decline, where the rating is still in the investment grade category and the security package is unchanged.

Mr. Abel asked for information regarding the decision-making process in structuring the security package. Ms. Lee explained that the borrower and the underwriter work together to identify transactions that accessed the capital markets recently and which are similar in nature. She stated that DASNY then reviews the security features for the comparable transactions. Ms. Lee further stated that there is no comprehensive survey of the entire marketplace, and acknowledged that there is a range of security features among similar institutions and transactions.

Mr. Abel then asked for information on how we assess the perspectives of the borrowers in this process. Ms. Lee responded that the borrowers and the underwriters are working together, engaging in ongoing discussions as to the nature of the financing and the various security provisions. She stated that if the borrowers are interested in moving forward with certain terms that vary from the Guidelines, that is included in the discussion. She noted that it is incumbent on the underwriter who is most familiar with the market to demonstrate that there are similarly situated institutions that have accessed the market successfully with the security package that is being sought.

The Board Chair observed that the underwriters have an incentive to bring comparable transactions, since their reputation is dependent upon structuring transactions that maximize the benefits for all parties involved. Noting that DASNY is comfortable it can rely on the underwriter's assessment of market conditions and practices, the Board Chair inquired as to whether DASNY is also performing its own review of this information so that there is a check and balance in place.

The President concurred that the process provides a system of checks and balances, particularly as to buyers and sellers, and pointed out that the purchasers also do their own review. In response to a question from Mr. Romski, the President stated that purchasers utilize information from rating agencies as well as their own buy-side infrastructure to analyze the security features and the price for the investment, and then make a determination of how much they are willing to pay. The President further stated that this process is the foundation of the market-based approach. Ms. Lee further confirmed that rating agencies undertake a fundamental analysis of institutional strength, rather than analyze the elements of a particular security package. She explained that the investors review both the strength of the institution and the security features, and noted that feedback from investors can ultimately lead to additional security features. Mr. Romski pointed out that DASNY is a conduit issuer that is diligent about making all necessary disclosures.

Ms. Lee stated that a sample Staff Report has been provided in the Board Book. She noted that the proposed changes are modest in nature. Ms. Lee explained that the revisions remove language that is specifically credit-oriented or opinion-based. Mr. Romski stated that he is pleased to see that financial information has been retained. The Board Chair noted that Members may contact DASNY staff to request additional information if desired. In response to a question from Mr. Romski, Ms. Lee confirmed that the Staff Report would continue to include any local community information, if applicable.

Mr. Romski requested an overview of the effect of the changes that have been made to the Financing Guidelines over time. Ms. Lee stated that the Financing Guidelines have changed over time, and have been subject to regular review. Ms. Lee pointed out that in response to the financial crisis, the Financing Guidelines were amended in 2009 to allow a broader range of borrowers to access DASNY financing. She stated that in 2009, the Guidelines changed to authorize DASNY to issue bonds on behalf of borrowers with ratings in the BBB category and to authorize private placement transactions which resulted in new business opportunities for DASNY. Ms. Lee also noted that the Guidelines were amended in 2015 to address debt service reserve funds, among other changes.

The President stated that it is important for DASNY to continue to cultivate and market to clients. He noted that the proposed Guidelines will provide DASNY with the flexibility to issue on behalf of former DASNY clients and new clients who may previously have required an exception to the Guidelines. The President stated that this will make tax-exempt DASNY financing accessible to many more borrowers without the need for obtaining an exception to the Financing Guidelines. The President emphasized that DASNY provides a range of services to help clients accomplish their goals.

After further discussion, Mr. Romski asked Mr. Pohl to confirm that DASNY is authorized to implement the proposed amendments to the Financing Guidelines. Mr. Pohl responded in the affirmative, and indicated no legal concerns with the proposed amendments. The President informed the Committee Members that Counsel's Office worked with the law firm of Squire Patton Boggs LLP to undertake a comprehensive review of DASNY's financing authorization over time, and confirm the legal ability to make the proposed changes. Mr. Romski thanked Mr. Pohl for his historical legal perspective, which was very helpful to this review. The Board Chair concurred, and recognized Mr. Pohl and the legal team for helping the Board to distinguish between the desire of the Board to receive financial information to make informed decisions, and the Board as a conduit issuer having no involvement in creditworthiness decisions made by others. Mr. Romski and the Board Chair thanked the Public Finance team, Counsel's Office and DASNY staff for their work on this important initiative.

The Finance Committee Members decided unanimously to recommend the revised Guidelines to DASNY's full Board for approval.

Mr. Romski stated that this is Mr. Abel's last meeting as the Department of Health designated representative to the DASNY Board. He noted that Mr. Abel is retiring from State service in the near future, and thanked Mr. Abel for his insight, participation and guidance over the years. Mr. Abel thanked the Committee Members for the opportunity to serve on the Committee and the Board, and stated that it had been his honor to do so.

The Board Chair thanked Mr. Abel for his valuable contributions to the deliberative process over the years. He stated that Mr. Abel has the ability to present information in a way that enabled the Board to make informed decisions on various healthcare-related issues in the State of New York. The Board Chair stated that Mr. Abel positively impacted health care policy to the benefit of many institutions and individuals in New York State.

Mr. Abel thanked the Board Chair for his kind words and expressed his appreciation to the Committee Members for their support.

Mr. Abel moved that the Meeting adjourn, the Board Chair seconded the motion and the Meeting was adjourned at approximately 5:00 p.m.

Respectfully submitted,

Michael E. Cusack
Assistant Secretary