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MEMORANDUM

TO: Brian Mayhew, Susan Woo, Catherine Cam and Nicholas Mar

FROM: Rudy Salo and Angelica Valencia

RE: ABAG FAN – Successor Agency

DATE: August 12, 2019

You asked us to prepare an update on the Phase I review of documentation as to the possibility of appointing a successor agency for ABAG Finance Authority for Nonprofit Corporations (the "Authority"). Additionally, you also asked us to provide a plan for Phase II of the review. Below please find an update on Phase I and a plan for Phase II.

Phase I

Phase I involved the review of 10 transactions, which included community facilities districts, private placements and public offerings. The transactions reviewed generally fell into 3 categories. The publicly traded bonds issued pursuant to an indenture, privately placed loans issued pursuant to a loan agreement and the privately placed loans evidenced by bonds issued pursuant to an indenture.

Publicly traded bonds issued pursuant to an indenture

The transactions with publicly traded bonds issued pursuant to an indenture generally included a provision in the indenture that addressed the issue of a successor to the Authority. The successor provision provides that references to the Authority in the Indenture (typically Section 9.4) are deemed to include the Authority's successor. Therefore, we believe we can argue that such provision already put bondholders on notice that there may someday be a successor or assign to the Authority. The loan agreements relating to the publicly-traded transactions we reviewed included "successors or assigns" in the definition of Authority. An issue in these transactions, however, is that such language was not consistently used in every single bond document. We would argue that since most of the "primary" documents included "successor or assign" language such language was sufficient to provide notice to the bondholder.

Privately Placed Loans issued pursuant to a Loan Agreement

In private bank deal transactions with a master loan agreement rather than an indenture, the Authority is generally defined to include "successors or assigns". Additionally, the loan agreements contain a "survivability" provision that provides that the limitations of liability, indemnities and waivers shall continue in full force and effect and shall be enforceable by the Authority or its successors or assigns. Several of the other documents in such transactions also included language that the Authority

included any successors and assigns. Therefore, we believe we can argue that such provisions already placed the parties on notice that there may someday be a successor or assign to the Authority. Similar to the issue in publicly traded deals, not all the documents include successor or assign language. However, we would argue once again that since most of the "primary" documents included "successor or assign" language such language was sufficient to provide notice to the bondholder.

Privately Placed Loans evidenced by Bonds issued under an Indenture

During the course of the review, we discovered that two transactions (with the same documentation) restricts assignment. The Loan Agreement in the Drew School transaction (2014 and 2015) prohibits the Authority from assigning its rights under the documents. However, there is a provision in the indenture that permits an amendment to provide for a successor authority without the consent of US Bank as the Bond Purchaser, but we will need to obtain the consent of the borrower. We believe we should be able to amend the documents to provide for a successor authority by working with the Borrower.

Recommendations

For the transactions that are publicly traded (and don't have insurance, credit enhancement or swaps) we recommend providing notice of the appointment of a successor for the Authority based upon Section 9.4 of the applicable indentures. The notice can be general as to the appointment and should be provided after we obtain any necessary consents as described in Phase II. The transactions that have insurance, credit enhancement or swaps would be part of the Phase II review. Those transactions would require additional review (see Phase II) since they might require consents from or notices to other parties. We are also recommending review of all loans with US Bank to confirm which US Bank transactions have similar restrictions as Drew School. Such transactions will likely require amendments to the Indenture similar to the Drew School. We believe that the implementation could be relatively straight forward, but will not know for sure until we begin Phase II.

Phase II

For Phase II, we are proposing reviewing the following additional transactions:

1) All community facilities district transactions and confirm composition of the community facilities district,
2) Insured transactions or transactions that have credit enhancement to confirm whether consent (or notice) is required,
3) All US Bank direct purchase deals to confirm whether other transactions contain a similar provision as Drew School,
4) All transactions containing swaps, along with swap documentation, and
5) Per Brian's suggestion, 15% of the remaining transactions.

The 15% of the remaining transactions will be randomly selected and will include publicly traded transactions and private placement transactions. The expectation is that enough of the transactions will

be reviewed even with the smaller sample that we would able to address any potential issues from the sample reviewed. However, should new issues be discovered while reviewing the 15%, the number of transactions could be expanded.

Additionally, we will have to confer with tax counsel to ensure that there are no tax issues and discuss any potential continuing disclosure issues due to the appointment of a successor. If any issues arise, we will immediately confer with the Authority and will have a suggested approach. While we did some very preliminary and more global legal research into the successor issue, we would have to do further research into appointment of a successor under California law.

Once we complete Phase II, we will work with the Agency to prepare and provide the requisite amendments, notices and obtain consent as necessary based on the review. Once the necessary amendments are executed, notices are provided and consents obtained, the Authority should have a board meeting and formally appoint its successor. At this point, we will have to provide notice to the publicly traded transactions subject to continuing disclosure requirements. Some notices will be mandatory and some will be voluntary.

Cost

For Phase II, we will continue to use a blended rate of $600 per hour. The amount of time spent on reviewing the documents depends on the complexity of each underlying transaction, so we expect that on average the document reviewing will be approximately 4.5 hours per transaction. Also, there are 5 outstanding community facilities district transactions, each of which will need to be reviewed and have more documents than other deals. It is still not known how many transactions include insurers, swaps or US Bank as a bond purchaser. However, we are proposing a cap of $250,000 for Phase II since we will be reviewing a portion of the transactions instead of all the transactions.