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Federal Reserve Opens Municipal Liquidity Facility And Releases Transaction Documents.

The Board of Governors of the Federal Reserve System (the "Federal Reserve"), through the Federal Reserve Bank of New York (the "Reserve Bank"), has opened its new CARES Act lending program for state and local governments affected by COVID-19, known as the Municipal Liquidity Facility (the "MLF").[1] The State of Illinois will be the first borrower under the MLF, with a planned issuance on June 5, 2020 of $1.2 billion general obligation bond anticipation notes, maturing in one year and bearing interest at 3.8%.

On May 15th, the Federal Reserve released its form Notice of Interest ("NOI"), which enables Eligible Issuers[2] to express their interest in selling Eligible Notes[3] through the MLF.[4] Municipal Liquidity Facility LLC, the special purpose vehicle established by the Federal Reserve to facilitate the MLF, will serve as the purchaser of the Eligible Notes (the "Purchaser"). The NOI was followed by the release on May 18th of a sample application (the "Application Form"), including an attached Supporting Document Checklist (the "Checklist"), and form documents and certifications (collectively, the "Form Documents") for the MLF. The requirements of the Application Form, Checklist and Form Documents are summarized below.

Recent Updates to Eligible Issuers

Before we review the Form Documents, we note that on June 3, 2020, the Federal Reserve released an updated term sheet (the "Term Sheet") and updated frequently asked questions (the "FAQs") for the MLF.[5] As described in the Term Sheet and the FAQs, the list of Eligible Issuers has been expanded to include "Designated Cities," "Designated Counties" and "Designated RBIs." Designated Cities and Designated Counties are cities and counties designated by a governor for participation in the MLF where the state has less than two cities and counties (on a combined basis) with populations exceeding 250,000 residents and 500,000 residents, respectively (i.e., the population thresholds for participation in the MLF).

Included with the updated FAQs is a table showing the maximum number of Designated Cities and Designated Counties that may be identified by each governor. The numbers in the table were selected to ensure that each state. In situations where a governor is able to designate only one Designated City or Designated County, the governor may choose either (i) the most populous city in the state with 250,000 residents or less, or (ii) the most populous county in the state with 500,000 residents or less. In situations where a governor is able to designate two Designated Cities and Designated Counties (on a combined basis), the governor may choose: (i) the most populous city and most populous county; (ii) the most populous city and second-most populous city; or (iii) the most populous county and second-most populous county.

Designated RBIs consist of up to two Revenue Bond Issuers designated by a governor for participation in the MLF.[6] A "Revenue Bond Issuer" is defined as a state or political subdivision of a state, or a public authority, agency, or instrumentality of such state or political subdivision, that issues bonds payable from revenues of a specified source that is owned by a governmental entity

(i.e., public transit, airport, toll facility and utility revenues).

To participate in the MLF, each Designated City, Designated County and Designated RBI must deliver: (i) with its NOI, evidence that the governor of the applicable state will designate the city or county as a Designated City or a Designated County; and (ii) at closing, a governor's certification reflecting the designation.[7] The ratings criteria for Designated RBIs and the debt limit and type of security required for its Eligible Notes are the same as for Multi-State Entities.[8]

Application Form

As we noted in MLF Blog 4, if an Eligible Issuer's Notice of Interest ("NOI") is approved, the Eligible Issuer will be invited to submit an application for financing through the MLF.[9] The application consists of: (i) the completed Application Form and the Checklist; (ii) a signed Issuer Certification included as Section F to the Application Form (the "Issuer's Application Certification")[10]; and (iii) all attachments requested and referenced in the Application Form and Checklist (collectively, the "Application").

Similar in format to the NOI, the Application Form contains a list of confirmatory and supplemental questions pertaining to the Eligible Issuer and the Eligible Notes which are generally standard for public finance transactions, including: (i) identifying information for the Eligible Issuer and other working group members; (ii) a bring-down confirmation that the information submitted in the NOI remains unchanged; (iii) details of the Eligible Notes (including the applicable series designation, maturity date, principal amount, interest payment date(s) and tax status); (iv) confirmation of the proposed closing date; and (v) a description of the required authorizing actions and approvals obtained and to be obtained by the Eligible Issuer (including any appeal periods).

In addition to these general questions, the Application Form requires Eligible Issuers to provide the following specific information relative to the MLF:

1. For Eligible Notes consisting of TRANs, TANs or similar notes to be repaid from revenues, a description of any statutorily-required or policy-determined revenue set-asides to be used for repaying the Eligible Notes, including the plan for repayment in situations where the set-asides are not required;
2. For Eligible Notes that are BANs, a description of the repayment plan, including the governmental authorizations for the issuance of the bonds that will repay the BANs;
3. A bring-down of the Eligible Issuer's efforts to obtain the required ratings actions from the major nationally-recognized statistical rating organizations ("NRSROs") with respect to the Eligible Issuer and the proposed credit for the Eligible Notes, as described in the NOI;[11]
4. Confirmation of the Eligible Issuer's compliance with its existing continuing disclosure undertakings under Rule 15c2-12 of the Securities Exchange Act of 1934 ("Rule 15c2-12");[12] and
5. For transactions using a Designated Issuer, confirmation that either the Eligible Issuer or the Designated Issuer, or both, will be responsible for providing continuing disclosure to the MLF, and if both, a description of the information to be provided by each entity.Similar to the NOI, Eligible Issuers may attach and cite to other source documents in responding to the Application Form, provided, that they include the name of the document and the relevant pages or sections.

The Checklist

Transaction Documents

The Checklist consists of a list of documents that must be included with the Application Form,

including the following final form documents for the Eligible Notes[13]: (i) authorizing resolution; (ii) form of Eligible Notes; (iii) a form of authorization, incumbency and signature certificate for the Eligible Issuer or Designated Issuer; (iv) other Eligible Note documents (e.g., general/series resolution, indenture or other note agreement; bond ordinance, statute or other authorization documents; documentation evidencing the security for the Eligible Notes; and any other transaction documents); (v) a timeline for any pending authorizing actions or approvals; and (vi) for Eligible Notes that are BANs, documentation providing for the authorization and issuance of the bonds to be issued to repay the BANs. For transactions involving a Designated Issuer, Eligible Issuers must also provide either: (i) the form of agreement whereby the Designated Issuer commits the credit of, or pledge the revenues of, the applicable state, city or county; or (ii) the form of guarantee of the Eligible Notes by the applicable state, city or county (each a "Designated Issuer Document").

Required Opinions

The Checklist also requires Eligible Issuers to provide drafts of the following opinions, each in final form: (i) an opinion of bond counsel as to the validity, enforceability and binding nature of the Eligible Notes; (ii) an opinion as to the exemption of the Eligible Notes from the registration requirements of the federal securities laws; (iii) for a competitive offering, a Rule 10b-5 opinion of bond counsel (the "Rule 10b-5 Opinion")[14]; (iv) a tax opinion of bond counsel or special tax counsel, if the Eligible Notes are to be issued as tax-exempt securities; and (v) an opinion as to the validity, enforceability and binding nature of the applicable Designated Issuer Document, if the Eligible Notes are to be issued by a Designated Issuer.

Diligence Documents – Competitive Offering versus Direct Purchase

Eligible Issuers will also be required to provide specific documents depending on whether the sale of the Eligible Notes is being effectuated through a competitive offering (where the Purchaser is either submitting a bid or serving as the fallback purchaser following the competitive bid process) or a direct purchase to the Purchaser.[15] For competitive offerings, the Eligible Issuer must provide the same level of disclosure normally prepared for a public offering of notes, specifically: (i) the form of notice of sale; (ii) the preliminary official statement;[16] and (iii) the Rule 10b-5 Opinion in final form.

In contrast, for a direct purchase to the Purchaser (where no preliminary official statement or other offering document is prepared), the Eligible Issuer must provide: (i) copies of the Eligible Issuer's financial information and operating data provided to the NRSROs in connection with obtaining the required ratings confirmations;[17] (ii) the Eligible Issuer's most recent audited financial statements for the past two years; (iii) unaudited fiscal year-to-date financial statements presented to the Eligible Issuer's governing body; (iv) the Eligible Issuer's budget for the current and next succeeding fiscal year; (iv) its most recent official statement (or other offering document) for obligations that are secured on a parity basis with the Eligible Notes; and (v) for Eligible Notes that are TANs, TRANs or similar notes, cash-flow statements prepared during the last 60 days (including prior-year actuals and 12-month projections).[18]

Additional Thoughts

For certain documents listed on the Checklist, Eligible Issuers may indicate that they are either not applicable or not available; provided, that it is not clear how the Federal Reserve will respond to such a determination. In any event, Eligible Issuers are encouraged to review the Checklist prior to submitting the Application, to ensure that all of the required information has been included.

Next Steps

Once submitted, Eligible Issuers will receive an email confirming receipt of the Application and, if the Application is approved, a further email: (i) confirming approval of the Application; (ii) providing the anticipated pricing and closing dates (in consultation with the Eligible Issuer); (iii) designating a primary contact at BLX Group LLC, the administrative agent for the MLF ("BLX"), to facilitate pricing and closing; and (iv) setting forth any additional requirements and conditions.

Form Documents

The Form Documents consist of: (i) the Note Purchase Agreement (the "NPA") between the Eligible Issuer or the Designated Issuer, as applicable (the "Issuer") and the Purchaser; (ii) the Note Purchase Commitment (the "NPC") between the Issuer and the Purchaser; (iii) the Continuing Disclosure Undertaking of the Issuer (the "CDU");[19] and (iv) a packet of certificates to be delivered by the Issuer at closing (the "Issuer Certification Packet").

The NPA and NPC

The NPA sets forth the terms and conditions governing the purchase of the Eligible Notes from the Issuer in either: (i) a direct purchase transaction where the Issuer sells the Eligible Notes to the Purchaser; or (ii) a competitive offering where the Purchaser does not submit a bid but rather acts as the fallback purchaser. In contrast, the NPC sets forth the terms and conditions governing the Purchaser's submission of a bid to, and ultimate purchase of the Eligible Notes from, the Issuer in competitive offerings where the Purchaser submits a bid.[20] As a practical matter, this is where the differences between the NPA and NPC end. Both documents: (i) are similar in form and substance to bond or note purchase agreements used in other public finance transactions generally; (ii) memorialize the terms and conditions for the MLF that were described in the Term Sheet and the FAQs; and (iii) contain substantially the same requirements for closing; representations, warranties and covenants of the Issuer; conditions for the Purchaser to submit a bid and/or purchase the Eligible Notes; and termination rights. Nevertheless, Issuers should pay particular attention to the following unique provisions as they review the NPA and NPC.

Pricing and Closing Logistics

The Purchaser will send: (i) a completed and executed NPA to the Issuer on the agreed-upon pricing date for a direct purchase transaction or (ii) a completed and executed NPA (for competitive offerings where the Purchaser is the fallback purchaser) or NPC (for competitive offerings where the Purchaser submits a bid) within three (3) business days after the Purchaser approves the Application. The Issuer must execute and return the NPA or NPC within one (1) business day of its receipt. Schedule I to the NPA and the NPC (in each case, "Schedule I") will set forth certain information regarding the Issuer and the Eligible Notes, including, but not limited to: (i) the principal amount of the Eligible Notes; (ii) purchase price;[21] (iii) closing date;[22] (iv) maturity date; (v) tax status; (vi) ratings information; (vii) use of proceeds; and (vi) interest rate. With respect to the interest rate, for direct purchase transactions, Schedule I will include the actual interest rate for the Eligible Notes. In contrast, for competitive offerings, Schedule I will include a description of the formula for determining the interest rate, as more particularly described in Appendix B to the FAQs. The Purchaser will determine the interest rate on the morning of the competitive offering and communicate it to the Issuer either through its bid submission (for competitive offerings where the Purchaser submits a bid) or directly to the Issuer prior to the competitive bid process (for competitive offerings where the Purchaser is the fallback purchaser).

Required Statements and Other Actions for Competitive Offerings

For competitive offerings, the NPA or the NPC, as applicable, requires the Issuer to: (i) include

language in the notice of sale describing the Purchaser's commitment to purchase or submit a bid to purchase the Eligible Notes, as applicable; and (ii) notify the Purchaser in writing of the results of the competitive bid process immediately following its completion, in the form of Exhibit A to the NPA or the NPC (the "Notice of Results of Competitive Bid"), which notice will be countersigned by the Purchaser. In addition, for competitive offerings where the Purchaser is submitting a bid, the Issuer must deliver to the Purchaser the final notice of sale, in a form acceptable to the Purchaser, not later than three (3) business days prior to the competitive sale date.

Ratings Requirement

The Issuer must provide the Purchaser with evidence of the long-term ratings applicable to the credit for the Eligible Notes and, for competitive offerings, the short-term ratings on the Eligible Notes, on or prior to the pricing date (for direct purchase transactions) or the date the Issuer conducts the competitive bid process (for competitive offerings), followed by ratings confirmation letters from the NRSROs at closing.[23]

Representations and Warranties

For the most part, the Issuer's required representations and warranties included in the NPA and NPC are substantially similar to the ones generally found in other bond or note purchase agreements. However, Issuers should pay particular attention to the following unique representations:

1. In addition to the typical "no materially adverse litigation" representation, Issuers must represent that there is no litigation that would in any other manner adversely affect the source of repayment of the Eligible Notes (regardless of the materiality of such litigation).
2. Except as otherwise disclosed to the Purchaser, Issuers must represent that they are not aware of any material adverse change in their financial position, results of operations or condition, financial or otherwise, from what is set forth in the audited and unaudited financial statements that the Issuers previously provided to the Purchaser.[24]\
3. The Issuers must represent that all information provided to the Purchaser, including the information provided in the Application and NOI (unless revised in the Application), remains true, correct and accurate (no materiality qualifier).

Final Official Statement in Competitive Offerings

Although implied in the FAQs and the Application Form, the NPA and NPC clarify that, for competitive offerings, the Issuer is responsible for producing both a Preliminary Official Statement (the "POS") and a Final Official Statement (the "FOS"), even if the Purchaser ends up as the sole purchaser of the Eligible Notes. The FOS must be delivered to the Purchaser no later than two (2) business days prior to the closing date. To that end, bond counsel will be required to provide not only the opinion as to the exemption of the Eligible Notes from the registration requirements of the federal securities laws, but also the Rule 10b-5 opinion covering both the POS and the FOS.

Closing Documents

The NPA and NPC include as Exhibit B a closing certificate of the Issuer (the "NPA/NPC Closing Certificate"), which functions as a bring-down of certain provisions of the NPA and NPC at closing, specifically that: (i) the Issuer's representations and warranties remain true and correct, (ii) the Issuer has complied with its covenants (specifically including the ratings requirements); (iii) all of the transaction documents are in substantially the final forms previously presented to the Purchaser; and (iv) the Issuer has satisfied each of the other conditions to closing, all as set forth in the NPA

and NPC.

The terms of the NPA and NPC confirm that the Purchaser will not deliver any certifications, receipts, agreements, instruments or other closing documents (including issue price certificates) beyond the NPA and the NPC (and the Notice of Results of Competitive Bid, which is countersigned by the Purchaser). This requirement may be problematic for Issuers, since the NPA and NPC will be executed prior to the closing date for both direct purchase transactions and competitive offerings. At a minimum, underwriters and purchasers typically sign a receipt and an issue price certificate (for tax-exempt issuances) at closing in connection with the issuance of most municipal securities. It appears that Issuers accessing the MLF will have to forego such documents, accepting: (i) the Purchaser's wire transfer of the purchase price of the Eligible Notes and (ii) email correspondence between the parties, as the Issuer delivers the various closing documents, opinions and rating confirmations to the Purchaser, as tangible confirmation that the Purchaser has purchased the Eligible Notes on the closing date.

Termination

The NPA and NPC will terminate and be of no further force and effect if: (i) the Issuer is unable to satisfy the conditions set forth in the NPA and NPC; (ii) the Issuer's general obligation or issuer credit ratings are downgraded below the lowest rating level required for Issuers participating in the MLF or are otherwise withdrawn; or (iii) all of the Eligible Notes are sold to other purchasers through a competitive offering.

Governing Law

The NPA and NPC will be governed by the laws of the State of New York and the Issuer must: (i) submit to the exclusive jurisdiction of the courts of the United States for the Southern District of New York (and the appellate courts thereof) and (ii) consent to any related actions or proceedings being brought only in such courts.

CDU

Consistent with the disclosure obligations described in Rule 15c2-12, the CDU is substantially similar in form and substance to continuing disclosure agreements delivered in connection with the issuance of publicly-sold municipal securities. As such, the requirements of the CDU that Issuers file annual financial reports (the "Annual Report") and notices of certain enumerated events with the Purchaser will be familiar to Issuers that are already a party to existing continuing disclosure agreements.[25] However, Issuers should note the following required filing deadlines and additional disclosure obligations, which are unique to the CDU.

Filing Deadline for Annual Financial Information

Even if the Issuer has a different filing deadline under its existing continuing disclosure agreements, the CDU requires the filing of the Annual Report not later than six months after the end of each fiscal year, commencing with the report for fiscal year 2020.

Additional Financial Disclosure Requirements

Beyond the Annual Report and notices of certain enumerated events, the CDU requires Issuers to provide the following additional disclosures:

1. Not later than forty-five (45) days after the end of each calendar quarter, (a) quarterly reports: (i) of cash flows, showing actual results compared to projections included in the prior report and the

projected results for the succeeding twelve-month period (or to the maturity of the Eligible Notes, if shorter) and (ii) of the implementation status and funding of planned set asides, with an explanation of any negative variances; and (b) quarterly financial reports/information in a format provided to governing bodies or otherwise to the public;
2. Not later than ten (10) business days after the occurrence thereof, any changes in the long-term ratings applicable to the security for the Eligible Notes; and
3. Not less than six months prior to, and again at three months prior to, the maturity of the Eligible Notes, a written report explaining the Issuer's plan to pay the Eligible Notes at maturity; provided, that, in the case of BANs, such report must identify any material credit or other matters relating to the issuance of the Bonds expected to repay the BANs.

The Issuer may satisfy these disclosure obligations by: (i) filing such information with the Municipal Securities Rulemaking Board through its Electronic Municipal Market Access (EMMA) system and notifying the Purchaser of such filing; (ii) with respect to the information described in subsection (1) above, posting the reports on its website, notifying the Purchaser that the information is available and providing a link to the website; or (iii) with respect to the information described in subsections (2) and (3) above, submitting the notice/report directly to the Purchaser.

Additionally, the Purchaser reserves the right: (i) to request and receive other information relating to the Issuer's ability to repay the Eligible Notes and (ii) publicize any information received in connection with its purchase of the Eligible Notes, including the information received under the CDU.

As noted in the NPA and NPC, Issuers should be aware that the CDU is a particular requirement of the Purchaser. As such, and in accordance with Rule 15c2-12, a further continuing disclosure agreement may be necessary or appropriate in competitive offerings where, in addition to the Purchaser, one or more underwriters purchase a portion of the Eligible Notes.

Issuer Certification Packet

In addition to the NPA/NPC Closing Certificate (the form of which is included as Exhibit B to the NPA and NPC), the Form Documents include an Issuer Certification Packet consisting of the following certificates to be delivered by the Issuer at closing: (i) the certificate as to the Issuer's solvency and the lack of adequate credit (the "Solvency and Adequate Credit Certificate"), as required by of Section 13(3) of the Federal Reserve Act ("Section 13(3)") and the Federal Reserve's Regulation A ("Regulation A"); (ii) the certificate regarding the conflict of interest requirements of Section 4019 of the CARES Act (the "Conflict of Interest Certificate"); (iii) the certificate regarding the U.S. business requirement of Section 4003(c)(3)(C) of the CARES Act (the "U.S. Business Certificate"); and (iv) the certificate regarding the forms of the closing documents (the "MLF Closing Certificate").

Solvency and Adequate Credit Certificate

Under Section 13(3) and Regulation A, as a condition to participating in the MLF, the Issuer must certify that: (i) it is not insolvent[26] and (ii) it is unable to secure adequate credit accommodations from other banking institutions.[27]

Conflict of Interest Certificate

Section 4019 of the CARES Act places certain conflict of interest restrictions on entities that issue equity interests.[28] Given the governmental nature of the entities that would qualify as Issuers under the MLF, it is highly unlikely that they would be issuing equity interests. As such, Issuers will

be required to certify that they are not subject to these restrictions because they issue no equity interests.

U.S. Business Certificate

Sections 4003(a) and (b) of the CARES Act authorized the establishment of certain liquidity facilities for eligible businesses, states and municipalities relative to the COVID-19 pandemic including, with respect to Issuers, the MLF. Under Section 4003(c)(3)(C), such facilities may not purchase obligations from a business unless the business is created or organized in the United States or under the laws of the United States and has significant operations in and a majority of its employees based in the United States. Section 4003(c)(3)(C) would not apply to Issuers, as they are not organized as a for-profit business. As such, Issuers will be required to certify that they are not "businesses" for purposes of Section 4003(c)(3)(C).

MLF Closing Certificate

Finally, Issuers must certify that the documents submitted to the Purchaser in connection with the closing of the Eligible Notes are identical to the draft documents submitted with their Application, other than dates, signatures and pricing details. In furtherance of this certification, the Issuer must attach redlined copies of such closing documents to the certificate.

Concluding Thoughts

The Application Form, Checklist and Form Documents can be found on the Reserve Bank's MLF website: https://www.newyorkfed.org/markets/municipal-liquidity-facility/municipal-liquidity-facility-application. If you have any questions regarding the requirements of the MLF, the Application or the Form Documents, please contact Neal Pandozzi at npandozzi@apslaw.com or Jonathan Cabot at jcabot@apslaw.com.

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[1] For a discussion of the MLF in general and earlier guidance from the Federal Reserve, please see our previous blogs entitled "CARES Act Support for State and Local Governments – Municipal Liquidity Facility" ("MLF Blog 1"), "Federal Reserve Releases Updated Guidance on Municipal Liquidity Facility" ("MLF Blog 2"), "Federal Reserve Releases Updated FAQs for Municipal Liquidity Facility" ("MLF Blog 3") and "Federal Reserve Opens Municipal Liquidity Facility with Release of Notice of Interest" ("MLF Blog 4" and collectively with MLF Blog 1, MLF Blog 2 and MLF Blog 3, the "Previous MLF Blogs"), which can be found at: https://www.apslaw.com/its-your-business/. Readers should review the following summary of the Application and Form Documents in conjunction with the Previous MLF Blogs. Capitalized terms not otherwise defined in this blog have the meanings set forth in the Previous MLF Blogs.

[2] Previously, an "Eligible Issuer" included a state, city or county (or, subject to Federal Reserve approval, an entity that issues securities on behalf of such state, city or county), or a multi-state entity created by a Congressionally-approved compact (a "Multi-State Entity"); provided that cities and counties meet a pre-determined population threshold. On June 3, 2020, the Federal Reserve announced a further expansion of this list to include Designated Cities, Designated Counties and Designated RBIs, as further described in this Blog under the heading "Recent Updates to Eligible Issuers."

[3] "Eligible Notes" consist of newly-issued tax anticipation notes ("TANs"), tax and revenue anticipation notes ("TRANs"), bond anticipation notes ("BANs"), and other short-term notes.

[4] We discuss the NOI in detail in MLF Blog 4.

[5] The Term Sheet and FAQs can be found on the Federal Reserve's website: https://www.federalreserve.gov/monetarypolicy/muni.htm,

[6] The mayor of the District of Columbia may designate one Revenue Bond Issuer for participation in the MLF.

[7] In the case of the District of Columbia, the mayor would provide such designation.

[8] Like a Multi-State Entity, (i) a Designated RBI may sell Eligible Notes to the MLF up to an aggregate amount of 20% of its gross revenues, as reported in its audited financial statements for fiscal year 2019; (ii) the Eligible Notes are expected to be parity obligations of existing debt secured by a senior lien on the revenues of the Designated RBI; (iii) the Designated RBI must have been rated at least A-/A3 as of April 8, 2020, by two or more NRSROs; (iv) if the Designated RBI met the foregoing ratings requirement as of April 8, 2020 but was subsequently downgraded, it may still participate in the MLF if it is rated at least BBB-/Baa3 by two or more NRSROs at the time the MLF purchases its Eligible Notes; and (v) if the Designated RBI was rated by only one NRSRO as of April 8, 2020, it may still participate in the MLF if: (1) the rating was at least A-/A3; (2) the Designated RBI is rated by at least two NRSROs at the time the MLF purchases its Eligible Notes; and (3) such ratings are at least BBB-/Baa3.

[9] Similar to the NOI process, only Eligible Issuers, as opposed to Designated Issuers, may submit an Application. Eligible Issuers submit the NOI and Application through BLX Group LLC, the administrative agent for the MLF.

[10] The Issuer's Application Certification includes certifications to the effect that: (i) the information provided in the Application and NOI is true and correct; (ii) the documents submitted with the Application are in substantially final form and include the required authorization documents for the Eligible Notes; (iii) the Eligible Issuer is prepared to execute the Form Documents; (iv) the Eligible Issuer remains eligible to participate in the MLF; and (v) the issuance of the Eligible Notes satisfies the requirements of the MLF.

[11] The NRSROs are currently S&P Global Ratings, Moody's Investors Service, Fitch Ratings and Kroll Bond Rating Agency, Inc. As noted in MLF Blog #4, Eligible Issuers must provide written evidence of their qualifying general obligation or issuer credit ratings as part of the NOI process. Eligible Issuers must also provide evidence of the existing long-term ratings on the applicable credit to be used for the Eligible Notes and, for competitive offerings, the ratings on the Eligible Notes, as of the pricing date or the date of the competitive offering, as applicable.

[12] Under the MLF, Eligible Issuers must enter into a continuing disclosure undertaking at closing consistent with the requirements of Rule 15c2-12, even if the sale of the Eligible Notes would not otherwise be subject to Rule 15c2-12. As such, the answer to this question may provide an indication of the Issuer's likely compliance with the MLF's continuing disclosure obligations.

[13] Although the documents listed in the Checklist itself are referred to as "final form" documents, the opening paragraph of the Checklist and certain of the other Form Documents refer to such documents as "substantially final," allowing for updates such as final dates, signatures, pricing details, or other changes that are satisfactory to the Purchaser.

[14] The Rule 10b-5 opinion is actually a statement of fact that, based on the counsel's due diligence efforts, nothing has come to their attention indicating that the preliminary official statement or the

final official statement contains any misstatements of material facts or any material omissions.

[15] The Purchaser will serve as a fallback purchaser of the Eligible Notes following a competitive offering where: (i) no bids were received; (ii) all bids were rejected by the Issuer; or (iii) the Issuer has awarded only a portion of the Eligible Notes to a winning bidder(s).

[16] If the preliminary official statement is not available at the time of the Application, the Eligible Issuer must provide it as soon as it is released to the public.

[17] For review purposes, Eligible Issuers are also required to provide a direct link to the financial information and operating data posted on the MSRB's EMMA system and on the Eligible Issuer's website.

[18] Although the Checklist is not clear on this point, depending on the relationship between the two entities, documentation relating to the Eligible Issuer and the Designated Issuer may be required in situations where a Designated Issuer is issuing the Eligible Notes.

[19] Rule 15c2-12 requires underwriters in certain municipal securities transactions to confirm that the state or local government issuing the securities has entered into an agreement to provide certain financial information and event notices regarding the securities to the MSRB on an ongoing basis.

[20] As noted in the FAQs, the Purchaser will only submit a bid in cases where the Issuer: (i) is required by law to sell Eligible Notes through a competitive sale process and (ii) is not authorized to sell Eligible Notes directly to the Purchaser, even after a competitive offering where less than all of the Eligible Notes are sold.

[21] The Purchaser will deduct the origination fee (0.10% of the principal amount of the Eligible Notes) from the purchase price of the Eligible Notes.

[22] The closing date will be a date selected by the Issuer and agreed to by BLX that is not less than five (5) nor more than seven (7) business days after the pricing (for a competitive offering) or the date of the NPA (for a direct purchase transaction).

[23] Section 6(a) of the Application Form provides a specific deadline of two (2) business days prior to pricing for Issuers to provide such evidence. Contrast the more general language used in Section 2(a) of the NPA and NPC, which states that the evidence must be received on or prior to the pricing date (for direct purchase transactions) or the date that the Issuer conducts the competitive bid process (for competitive offerings), and Section 2(b), which states that, for competitive offerings, such evidence must be received before the date the competitive bid is conducted.

[24] In light of the impact of the COVID-19 pandemic, Issuers should be mindful of the breadth of this requirement, which extends not only to financial and operational matters, but also to the Issuer's overall condition.

[25] Under the CDU, the Annual Report consists of the Issuer's audited financial statements or, if otherwise unavailable by the filing deadline, unaudited financial statements followed by the audited financial statements when available. The list of enumerated events set forth in the CDU is taken from Section 5(i)(C) of Rule 15c2-12.

[26] As noted in Regulation A, an entity is "insolvent" if the entity: (i) is in bankruptcy or any other Federal or State insolvency proceeding, or (ii) was generally failing to pay undisputed debts as they became due during the 90 days preceding the issuance date of the Eligible Notes.

[27] Consistent with the requirements of Regulation A, the Issuer may consider current economic or market conditions as compared to normal economic or market conditions, in making this certification, including the inability of the Issuer to fully meet its financial needs through the capital markets. To that end, the Issuer is not required to establish that credit is unavailable, but rather that credit may be available, but at such prices or upon such terms that are inconsistent with normal market conditions.

[28] Section 4019 of the CARES Act defines “equity interest” as “(A) a share in an entity, without regard to whether the share is (i) transferable; or (ii) classified as stock or anything similar; (B) a capital or profit interest in a limited liability company or partnership; or (C) a warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share or interest described in subparagraph (A) or (B), respectively.”

Adler Pollock & Sheehan P.C.

June 8, 2020