

TOBACCO SETTLEMENT AUTHORITY
Special Meeting

Minutes

November 16, 2021

Board Chair, Ms. Carla DewBerry, called the meeting of the Tobacco Settlement Authority (the “Authority”) to order at 1:02 p.m. via Zoom and conference call.

Board members present on the line were Mr. Tim Kerr, Mr. Wolfgang Opitz, and Mr. James Krejci.

Mr. Ken Vyhmeister joined the meeting at 1:28 p.m. Mr. Krejci left the teleconference at 1:30 p.m.

Authority staff members present were Mr. Steve Walker, Executive Director; Mr. Paul Edwards, Deputy Director; Mr. Bob Cook, Senior Finance Director; Mr. Lucas Loranger, Senior Controller; Ms. Carol Johnson, Affiliates Manager; and Ms. Rona Monillas, Affiliates Program Assistant.

Other participants were Ms. Faith Pettis of Pacifica Law Group; Ms. Christine Ok of U.S. Bank; Mr. Rusty Fallis and Mr. Rene Tomisser from the Washington Attorney General’s Office; Ms. Kym Arnone of Jefferies LLC; and Ms. Amy Sutherland and Ms. Kellie McKenna of Moss Adams LLP.

Ms. DewBerry asked for a motion to approve the minutes of the meeting held on June 28, 2021. Mr. Opitz made the motion, and it was seconded by Mr. Krejci. The minutes were approved unanimously, 4-0.

**Approval of the
June 28, 2021
Special Meeting
Minutes**

Ms. DewBerry introduced Ms. Johnson to present staff recommendations regarding selection of a legal services team.

Ms. Johnson reported that current contracts expire on November 30, 2021.

**Action Item:
Approval of Staff
Recommendations
for Selection of
Legal Services
Team**

Ms. Johnson described the Authority's process for selecting firms to provide legal services via a Request for Proposals (RFP). She said that the Authority received four responses.

Ms. Johnson stated that staff recommends continuing to contract with the current TSA legal team for a two-year initial term with the option to extend for up to five years.

Mr. Opitz moved to approve staff recommendations to continue working with the current TSA legal team. The motion was seconded by Mr. Kerr. The motion was approved unanimously, 4-0.

**Action Item:
Acceptance of
Final Audit
Report**

Mr. Cook introduced Ms. Amy Sutherland and Ms. Kellie McKenna to present a summary of the Audit Report to the Authority.

Ms. Sutherland presented the overall results of the audit. She highlighted that the financial statements were presented fairly and in accordance with accounting principles generally accepted in the United States of America (US GAAP).

Ms. McKenna stated that they reviewed the application of accounting policies and have taken note of any changes in governance. She concluded that no significant accounting policies had changed for the fiscal year ending June 30, 2021. She added that the Authority has selected and applied significant accounting policies appropriately and consistently with those of the prior year.

Ms. McKenna reported that the most sensitive estimates affecting the financial statements were that of Tobacco Settlement Revenues (TSRs) receivable and the contingent amounts related to the non-participating manufacturers (NPM) adjustment because of the recent 2004 arbitration panel decision. She stated that the Authority has determined that the timing of future TSR disruptions cannot be reasonably estimated at this time due to several open questions regarding the application of any related adjustment to future TSRs and they accepted this view in

conjunction with their audit.

Ms. McKenna stated that the financial statement disclosures are clear and consistent. She drew the board's attention to the information in Notes 5, 7, and 8.

Ms. McKenna listed additional communications related to the audit process. She emphasized that auditors had no difficulties or disagreements with Authority staff during the audit.

Mr. Cook commended Moss Adams and Authority staff, especially Mr. Loranger, for a smooth audit process. He encouraged the board to read the notes in the Audit Report. Mr. Cook added information about TSR distribution estimates in relation to the 2004 NPM adjustment arbitration decision.

Ms. DewBerry asked for a motion to accept the final Audit Report. Mr. Kerr made the motion, and it was seconded by Mr. Opitz. The motion was accepted unanimously, 4-0.

**Action Item:
Approval of
Current
Financial
Statement**

Mr. Cook presented the unaudited, current financial statement of the Authority's General Operating Fund. Mr. Cook stated that the financial statements as of September 30, 2021 shows assets of approximately \$144,000 with \$8,000 in liabilities. Expenses exceed revenue year to date resulting in a \$14,000 decrease in net position, resulting in a net asset position of \$136,000. He then referred to the detailed breakdown of the expenses on the last page.

Mr. Cook stated that the invoice from the Housing Finance Commission covering April 2021 through September 2021, totaling over \$16,000, has been approved by Board Treasurer, Mr. Opitz.

Ms. DewBerry asked for a motion to approve the current financial statement. Mr. Opitz made the motion, and it was seconded by Mr. Krejci. The motion was approved unanimously, 4-0.

**Tobacco
Securitization
Market Update**

Ms. DewBerry introduced Ms. Kym Arnone to present the Tobacco Securitization Market update.

Ms. Arnone stated that Altria reported that total domestic cigarette industry volumes fell by an estimated 6.5 percent in the third quarter of 2021, and by an estimated 5.0 percent in the first nine months of 2021.

Ms. Arnone reported that the White House released its revised framework for the Build Back Better Act which excludes any tax increases on tobacco products. She added that the latest version of the bill included a tax on vape products only.

Ms. Arnone wished Mr. Edwards and Mr. Cook a happy retirement. She expressed that she was grateful for the years they have worked together. Board members expressed their appreciation to Mr. Edwards and Mr. Cook.

Trustee Report

Ms. DewBerry introduced Ms. Christine Ok, Bond Trustee from U.S. Bank National Association, to present the Trustee's Report.

Ms. Ok reported that payments for interest due for both the 2013 series and 2018 series were received and will be paid to bond holders in December. Series 2013 bonds are outstanding in the amount of \$48,960,000 and Series 2018 bonds are outstanding in the amount of \$43,630,000, totaling \$92,590,000 in total bonds outstanding.

Ms. Ok said that payments continue to come in from the Lehman bankruptcy. She received a check totaling \$3,590 in December. She also reported that the total reserve was maintained at \$31,997,719.44.

**Summary of
2004 NPM
Adjustment
Arbitration
Decision**

Ms. DewBerry introduced Mr. Rene Tomisser from the Attorney General's Office to give a report on the 2004 Nonparticipating Manufacturer (NPM) adjustment arbitration decision.

Mr. Tomisser stated that the 2004 NPM adjustment arbitration panel decision will result in a potential downward adjustment of the State’s annual Master Settlement Agreement (MSA) payment. The final allocation amount will depend on whether or not the arbitration panel finds other states to have diligently enforced their qualifying statutes. Mr. Tomisser stated that while Washington State was found to have diligently enforced its qualifying statute in the 2003 NPM arbitration, the State was found not to be diligent in enforcing its qualifying statute in the 2004 NPM arbitration. He discussed the potential timing of the distribution of the MSA payments.

Executive Director’s Report

Mr. Walker provided an update on the subpoena issued by JUUL Labs Inc. to the Authority in April. He highlighted that Pacifica successfully collaborated with JUUL to limit the scope of their requests and the TSA was able to respond quickly and appropriately. He added that the discovery cutoff has passed, and no further action is required.

Mr. Walker gave a summary of relevant articles and correspondence in the board meeting packet. He said that if there is no change in the meeting schedule, the next Authority board meeting will be on June 1, 2022.

Public Comment

Ms. DewBerry asked if there were any comments from the public. There were none.

Executive Session

The Board went into Executive Session to discuss potential litigation at 1:35 p.m. and reconvened at 1:50 p.m.

Adjournment

Ms. DewBerry adjourned the meeting at 1:51 p.m.

Ms. Carla DewBerry, Chair