Message

**From**: Victor Buza [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7643C3D5AC26488BAB32D07049F1E089-VICTOR BUZA]
**Sent**: 2017-07-26 1:02:07 PM
**To**: William Tan [William.Tan@ofina.on.ca]
**CC**: Anthony Martinello [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3fb7d76317b34780b15d96309b995c31-Anthony Mar]
**Subject**: RE: FHP Credit Facility Agreement
**Attachments**: FHP credit facility agreement draft June 23 2017 IESO Legal July 26.docx

Hi Will. Attached you will find IESO's mark-up of the FHP Credit Facility Agreement. Most of the changes are self-explanatory, but it may be helpful if I provide a few words of explanation about the more substantive changes:

1. We added paragraph (k) to the definition of "Permitted Liens" to address the possibility that the Clean Energy Adjustment funds collected by IESO might be considered to be subject to a lien, and we did not want to be inadvertently in default. (Please note that, assuming this addition to the definition of "Permitted Liens" is acceptable, the same or similar language should also be added to the definition of Permitted Liens in Amending Agreement #10 to the existing OFA line of credit that we discussed yesterday.)

2. We amended Section 2.2 Use of Proceeds as shown in the draft because: (i) there is a possibility that the funding provided under the FHP Credit Agreement may accumulate and be outstanding for an extended period of time (i.e. in excess of 12 months); and (ii) the use of the terminology "cash flow timing differences" does not seem appropriate given its implication of a shorter-term funding requirement (something on the order of month-to-month), taking into account all of the obligations of IESO under the FHP.

3. We amended the exceptions to the *pari passu* requirement under Section 3.3(5) to avoid a conflict with the different list of exceptions in s.4.6, the negative pledge. An alternative, and arguably cleaner, way of avoiding the conflict between s.3.3(5) and s.4.6 would be to delete the *pari passu* requirement in s.3.3(5) altogether, since the negative pledge in s.4.6 already contains more tailored language that performs essentially the same function.

In addition to the above changes marked-up directly on the document, in general with respect to all revolving lines, it seems that the definition of "Advances" should probably also include Continued Advances where an Election Notice is used (though I didn't make any changes to reflect this). I say this because Advances can become Continued Advances through an initial Election Notice, and then those Continued Advances can be continued again as further Continued Advances, and so on. In other words, the practice and intent of IESO and OFA has been and continues to be that an original Advance can be Continued (rolled-over) many times but, unless I am missing something, the language and definitions do not quite capture that intent. It might be easier if I were to discuss what is essentially a drafting point with your Legal Counsel assigned to this – as I say, it's entirely possible that I am simply missing something here.

I didn't know who would be reviewing this from your Legal group, so did not copy anyone else at OFA – I will rely on you to forward it as required.

Regards,
Victor

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**From:** William Tan [mailto:William.Tan@ofina.on.ca]
**Sent:** July 25, 2017 12:23 PM
**To:** Victor Buza
**Cc:** Anthony Martinello
**Subject:** FHP Credit Facility Agreement

Hello Victor,

I'm checking-in on the status of the FHP Credit Facility Agreement. I understand there was a couple matters you needed to clear up with management before sending us your comments.

Best regards,

**Will Tan** | *Documentation & Analysis Specialist*
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