Message

From: Ramchandani, Rima [rramchandani@torys.com]
Sent: 2017-11-29 5:42:15 PM
To: Feldman, Michael [mfeldman@torys.com]; Peter Hamilton [PHamilton@stikeman.com]
CC: Michael Boll [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4811917e15054407b665fe16d12ff415-Michael Bol]; Anthony Martinello [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3fb7d76317b34780b15d96309b995c31-Anthony Mar]; Jeannette Briggs [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=148095610f7242f48a5a9da24b1a8a87-Jeannette B]; Glenn Zacher [GZacher@stikeman.com]; WONG Leslie -LAWDIV [leslie.wong@opg.com]; LEE John -TREASURY [john.s.lee@opg.com]; RYFA Ken -TREASURY [ken.ryfa@opg.com]; Ramchandani, Rima [rramchandani@torys.com]; Saulnier, Brett [bsaulnier@torys.com]
Subject: RE: IESO Indemnity of Indenture Trustee
Attachments: #24543718v5_TorysAtWork_ - _Fair Hydro - IESO Acknowledgement and Indemnity Agreement.DOC; Blackline_24543718v3 - 24543718v5.pdf

Peter, we are still waiting to hear back from the dealers on the proposal below but in the interests of time, we have gone ahead and revised the IESO indemnity of the indenture trustee to reflect the below (clean and blackline versions to prior draft circulated are attached). We have reproduced the Section 3.8 limitations from the MTSA in the attached as you requested. We understand that IESO will still need to get internal approval on this but given the tight timeline, we would like to settle the form of the attached as between the lawyers so we can quickly circulate something to Osler once they confirm they are in agreement with the proposal. Also, just a head's up that we also plan on circulating a revised version of the MTSA this evening to all parties and will be asking for sign off as soon possible.

Thanks,
Rima

Rima Ramchandani

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From: Feldman, Michael
Sent: November-29-17 11:49 AM
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Subject: RE: IESO

Peter,

I had a good call with Rick Fullerton of Oslers this morning about the indemnity issue. We both agreed on a way forward that he will discuss with the dealers and I was to take back to OPG and then to IESO and Stikemans. I have discussed with OPG and they think that the proposal is a good way forward and they hope that it will be acceptable to IESO. Because this proposal follows prevailing market practice, OPG does not feel that it needs to seek confirmation from the Province that it is covered by the indemnity that OPG has from the Province. We do not know yet if it is acceptable to the dealers but we have a call with them at 2:00 and it would be good if we can be ready to accept the proposal by then if they are.

The proposal is as follows:

1. In each of the MTSA and Management Agreement, IESO and OPG, respectively, will just indemnify the Trust.

2. In the Master Trust Indenture, the only indemnity in favour of the Indenture Trustee will be a narrow one indemnifying the Indenture Trustee for its own losses. That is what is currently in the Master Trust Indenture. There is no indemnity by the Trust in favour of the Indenture Trustee on behalf of itself and Specified Creditors.

3. As a result of both 1 and 2, there will be no general indemnification by IESO, OPG or the Trust in favour of Specified Creditors. This is consistent with general market practice for term ABS deals in Canada. (The only exceptions that I could find to this is in the RMBS and CMBS market but the structure of those deals is different than the typical SPE note structure. Rick Fullerton agreed with me.)

4. There is a prevalent market practice in Canada where private ABCP conduit deals acquire variable funding notes (as with our senior warehouse facility) for the noteholders to have the benefit of direct indemnities from the Trust or other SPV, which indemnities are backed up by indemnities from the seller/servicer. Therefore we propose that the Warehouse Supplemental Indenture contain an indemnity by the Issuer in favour of the Indenture Trustee and the Noteholders (which is already in the current draft of that supplemental indenture). I am attaching for your information the most recent draft of that supplemental indenture (see section 3.8).

5. In addition to the indemnity in 4 from the Issuer, each of IESO and OPG will give standalone indemnities in favour of the Indenture Trustee on behalf of the Senior Warehouse Noteholders only. These standalone indemnities would be made conditions precedent to closing. This would give the banks and their ABCP conduits the kind of indemnification that they commonly receive in this market. The terms of those indemnities would be in the form of the most recent draft of the IESO standalone indemnity.

From the perspective of IESO, this proposal is not perfect, as there still is the possibility of liability to the warehouse senior noteholders exceeding the liability that would otherwise be owed only to the Trust; however, (i) this result follows current market practice, (ii) as a practical matter, the likelihood of a warehouse noteholder suffering trading losses is only a theoretical possibility as these notes do not trade (even though they are freely assignable after an Event of Default happens), and (iii) the amount of the exposure is limited (the senior warehouse facility is currently being capped at $800 million).

Please let me know if you would like me to arrange a call with IESO and OPG, preferably before 2:00 this afternoon.

Michael K. Feldman

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From: Peter Hamilton [mailto:PHamilton@stikeman.com]
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Subject: IESO

Any update?

Peter Hamilton

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