



September 14, 2009

Mr. Jeffrey Tannenbaum
Fir Tree Partners
505 Fifth Avenue
23rd Floor
New York, NY 10017

Re: Lien Priority of PACE/ELTAP Programs

Dear Mr. Tannenbaum:

We have been asked to comment on the potential market implications suggested by the Federal Housing Finance Agency ("FHFA"), et al that PACE bond liens should be pari passu or subordinate to the lien of a first mortgage lender. After careful analysis of the municipal bond market and the ratings industry, we conclude that there would be little to no meaningful bond buyer interest in pari passu or subordinated PACE liens and therefore the PACE bond market would be highly unlikely to develop.

To summarize our opinion, based on our understanding of key rating agency criteria and recent bondholder investment trends, we strongly believe that the seniority of the PACE loan lien to that of a first mortgage lender is crucial to structuring a capital markets financing acceptable to both the rating agencies and to investors and to growing the relatively new market.

We have come to this conclusion for the following reasons:

- 1) Rating Agencies View Seniority of Special Assessment Bonds as Requirement for PACE Bond Marketability: Standard & Poor's US Public Finance has published a criteria framework for its ratings of bonds backed by special tax assessments (*Criteria for Special Purpose Districts*, dated June 14, 2007). Based on our understanding of the PACE structure, we believe that this framework would most likely apply to the rating of PACE special assessments bonds. In this criteria paper, S&P states that potentially speculative elements in Special Assessment backed bonds can be mitigated through (among other factors): "A lien on parity with or ahead of ad valorem taxes". Furthermore, the Criteria states that "Special assessments collected at the same time and with the same foreclosure methods of ad valorem taxes are preferred". A further statement on lien position in the criteria is: "A lien on parity or with or ahead of ad valorem taxes is desirable. Preferably, the general property tax bill should be combined on the same statement as the special assessment tax bill to help collection rates." At this point Standard & Poor's rates Special Assessment Bonds with these factors in the single A to BBB rating categories (give that most of these bond issues are generally quite small). Given the rating agency stated opinions, it is highly likely that subordinated/pari passu PACE Special Assessment Bonds will be rated as non-investment grade and therefore will have limited buyer appeal while also demanding high interest rates.

- 2) Bond Administration: There is no practical or cost-effective way for County tax collectors, administrators, fiscal agents, or bond trustees to manage a pari passu/subordinate PACE lien. PACE assessments are billed on ad valorem property tax bills and collected by local municipalities at the same time as ad valorem or other special assessment taxes. There is no existing mechanism or procedure for managing the tax collections and delinquency enforcement for tax liens that are pari passu or subordinate to mortgage collections or foreclosures. Most counties will be unwilling or unable to develop a complicated new system. The costs of any such new set of procedures and mechanisms for this unique new process would be expensive and would make any such bonds prohibitively expensive to administer, even if the capital markets had interest.
- a. Requiring special treatment of routine collections of PACE assessments from other property tax related payments will be prohibitively burdensome to municipalities and special assessment districts. For example, how will a PACE assessment property tax collector know that a mortgage is delinquent or not?
 - b. Tax collectors will become entangled in the current mortgage adjustment and foreclosure process. If a PACE assessment collector is required to wait until a mortgage lender forecloses on a delinquent mortgage before being paid, PACE assessments will be held hostage to administrative problems that many mortgage lenders are suffering with no ability to control the timeline or outcome. The PACE assessment collection and delinquency remedy process is now and must remain separate from the mortgage collection and delinquency remedy process. Delinquent PACE assessments will always be much smaller amounts than delinquent mortgage payments or accelerated mortgage loans. Mortgage lenders always have the right to advance funds to keep property taxes current so as to avoid tax foreclosures or tax lien sales.

In conclusion, we believe that any government action taken that would result in PACE liens being pari passu or subordinated to first mortgage debt will result in a bond market that will not materialize due primarily to issues for the buyers, rating agencies as well as material bond administration problems.

Sincerely,



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