



NEW YORK CITY  
HOUSING DEVELOPMENT  
CORPORATION

## MEMORANDUM

**To:** The Chairperson and Members

**From:** Eric Enderlin *EE*  
President

**Date:** November 19, 2019

**Re:** Approval of the Corporation's Counsel for Housing Impact Bond Resolution

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In September 2018, the Corporation issued a Request for Proposals for recommendations from law firms for the creation of a parity bond indenture for the NYCHA Permanent Affordability Commitment Together initiative (the "PACT Initiative"). Upon receipt of three responses, the Corporation assembled a review committee comprised of the Corporation's Chief Operating Officer, General Counsel, Senior Vice President for Debt Issuance, Vice President - Capital Markets and an Assistant General Counsel (the "Committee"), which reviewed and analyzed the written responses and selected two firms to recommend to the Members for approval to alternate as Bond Counsel and Disclosure Counsel to the Corporation in connection with the Corporation's financings under the NYCHA Housing Impact Bond Resolution.

Hawkins Delafield & Wood LLP ("Hawkins") has been the Corporation's bond counsel for decades. Hawkins has provided invaluable advice and expertise with respect to stand-alone transactions and the creation and ongoing operations of the Corporation's highly successful parity indenture (the "Open Resolution"). As part of the enormous undertaking of determining how to finance the PACT initiative in the most cost-effective way, the Corporation decided to cast out to a larger group of bond counsel to solicit innovative ideas for structuring financings for the NYCHA program.

Following is a summary of the Committee's evaluation criteria and selection considerations.

### The Criteria

The Committee evaluated all written material and are making recommendations to the Members for selection of Bond Counsel and Disclosure Counsel based on the following criteria:

- A. Depth of experience with parity indentures
- B. Knowledge of financing alternatives to new money and recycled volume cap bonds
- C. Familiarity with HUD and RAD Programs

- D. Tax expertise
- E. Written response's strength, clarity and effectiveness

### **Recommendations**

In October 2018, the Committee reviewed and discussed the merits of three proposals submitted by Hawkins Delafield & Wood LLP ("Hawkins"), Orrick, Herrington & Sutcliffe LLP ("Orrick") and Katten Muchin Rosenman LLP ("Katten"). All three firms wrote quality proposals and had experience and ideas consistent with the criteria listed above. However, proposals from Hawkins and Orrick tailored the firms' technical knowledge and experience to the Corporation and its goals in a way that Katten did not. Further, Katten attorneys are frequently hired by HDC borrowers and those attorneys serve as borrower's counsel in the Corporation's transactions. The Committee determined these engagements could present conflicts of interest if Katten were to represent the Corporation as well.

Both Hawkins and Orrick (Orrick, as underwriter's counsel) were instrumental in structuring the Corporation's Open Resolution and both firms made insightful suggestions for the NYCHA indenture based on their years of experience working with the Open Resolution. Hawkins also drew on its role as Bond Counsel to the Corporation through its first series of HUD public housing capital fund financings to accurately describe challenges facing NYCHA and critical constraints and risk factors for the Corporation to consider.

Orrick's RFP response demonstrated a similar familiarity with the Corporation's financings. Additionally, the firm demonstrated a depth of knowledge in 501(c)(3) and governmental purpose bond financings that the Committee found useful for financing NYCHA PACT over time. Staff are concerned with the limited availability of new money and recycled volume cap capacity necessary for private activity transactions that may be contemplated for PACT transactions.

Ultimately, the Committee recommended the choice of both Orrick and Hawkins to serve as Bond Counsel and Disclosure Counsel in a rotating manner. On the first NYCHA PACT transaction it is expected that Hawkins will serve as Bond Counsel and Orrick will serve as Disclosure Counsel. A disclosure counsel represents the bond issuer in drafting the offering document that is distributed to bond investors. Historically, underwriter's counsel has drafted the Corporation's offering documents. The Committee felt the Corporation would be well-served using the model of alternating bond counsel and disclosure counsel to launch and sustain this new, large-scale endeavor. This structure will ensure that the Open Resolution can continue to receive expert focus and attention. Both Hawkins and Orrick have previously served the Corporation well with agility and appetite for innovation as the Corporation has explored and continues to explore new ways to meet the ever-present needs of affordable housing in New York City.

### **Action by the Members**

The Members are requested to approve the recommendation of the Committee to select Hawkins Delafield & Wood LLP and Orrick, Herrington & Sutcliffe LLP as alternating Bond Counsel and Disclosure Counsel with such alternation to be determined by Staff to represent the Corporation in bond issuances under the NYCHA Housing Impact Bond Resolution.