



County of Fresno

Hall of Records, Rm. 301
2281 Tulare Street
Fresno, California
93721-2198

Legislation Text

File #: 16-1619, **Version:** 1

DATE: February 7, 2017

TO: Board of Supervisors

SUBMITTED BY: Daniel C. Cederborg, County Counsel

SUBJECT: Settlement with Piper Jaffray & Co. for Municipal Derivatives Litigation

RECOMMENDED ACTION(S):

Board of Supervisors Sitting as the Board of Directors of the Fresno County Financing Authority (FCFA)

Approve and authorize Chairperson to execute Settlement Agreement with Defendant, Piper Jaffray & Co., in connection with In re Municipal Derivatives Antitrust Litigation, MDL Docket No. 1950, Master Docket No. 08-2516 (VM) (GWG) (the MDL), including Fresno County Financing Authority (FCFA) v. AIG Financial Products Corp. et al., 09 Civ. 119 (VM), United States District Court, Southern District of New York, subject to execution of the Settlement Agreement by Defendant, Piper Jaffray & Co., and approval thereof as to form by FCFA's special co-counsel (\$9,000 gross settlement amount)

The recommended Settlement Agreement is the last of the FCFA's several separate settlements with defendants in the MDL class action. If the FCFA and Defendant, Piper Jaffray & Co (Piper Jaffray), enter into the recommended Settlement Agreement, and perform their respective obligations (e.g., the FCFA dismisses Defendant, Piper Jaffray, from the MDL and receives the \$9,000 gross settlement amount), the FCFA will conclude its involvement in this class action lawsuit.

ALTERNATIVE ACTION(S):

The County and FCFA each "opted out" of (i.e., exclude itself from) the class action MDL settlement with Defendant, Piper Jaffray. Therefore, the Board (as the FCFA Board) may elect not to enter into the recommended Settlement Agreement, and direct special co-counsel to continue pursuing separate litigation against that defendant.

FISCAL IMPACT:

Under the recommended Settlement Agreement, the FCFA would recoup \$9,000 of gross settlement proceeds (i.e., \$7,200 net of special co-counsel's contingency fees and costs).

DISCUSSION:

When the Fresno County Financing Authority (FCFA) issues bonds for the County, the FCFA may temporarily invest the net bond proceeds in bond investment agreements until they are spent. Those bond investment agreements are known in the bond industry as "guaranteed investment contracts" or "municipal derivative transactions." The FCFA invested about \$38.6 million (par amount) in bond investment agreements for the FCFA's tax-exempt bonds.

Nationwide, there are several lawsuits by governmental agencies against providers and brokers of bond

investment agreements for tax-exempt bonds. The majority of them were consolidated into a class action in a New York Southern District federal court, known as the Municipal Derivatives Antitrust Litigation or “MDL.” In 2008, the FCFA joined the MDL. Generally, the FCFA, along with those agencies, allege that they suffered monetary losses sustained from their purchases of bond investment agreements in connection with the defendants’ wrongful conduct, including rigging bids for the sale of their investment products, and other anti-competitive behavior, that reduced those agencies’ returns on their investments.

Piper Jaffray & Co (Piper Jaffray) is a defendant investment provider and broker in the FCFA’s lawsuit.

The County Auditor-Controller/Treasurer’s records indicate that neither the FCFA nor the County invested in Piper Jaffray investment agreements for the last 16 years. However, the FCFA’s lawsuit includes Defendant, Piper Jaffray, because the alleged anticompetitive activities by Piper Jaffray in the litigation include, among other things, claims based on purported conspiracy involving Piper Jaffray arising out of or related to the allegations in the litigation.

The recommended Settlement Agreement is the result of the efforts of the FCFA’s special co-counsel, Lieff, Cabraser, Heimann & Bernstein, LLP, and Scott+Scott, to obtain a monetary settlement from the “Released Parties” referenced below.

The recommended Settlement Agreement is the result of a separate negotiation with Piper Jaffray, outside of the MDL. Therefore, the settlement amount and terms of this recommended Settlement Agreement are different than the settlement amount and terms of other settlement agreements that the FCFA obtained in this litigation.

The “Releasing Parties” (also called the Releasers) generally are defined in the recommended Settlement Agreement as the FCFA, including its affiliates; although the County is not a party to the Settlement Agreement, the County would be bound by it, if the FCFA and Defendant, Piper Jaffray, enter into it.

The “Released Parties” (also called the Releasees) generally are defined in the recommended Settlement Agreement as released Defendant, Piper Jaffray, including its direct and indirect parents, subsidiaries and affiliates, and others (e.g., their successors).

If the recommended Settlement Agreement is approved by the Board, then within seven (7) days of the parties’ execution of the Settlement Agreement (the Execution Date), the FCFA shall file a stipulation of dismissal with prejudice (signed by the settling parties) releasing Defendant, Piper Jaffray, from the litigation. Such filing date shall be the effective date of the Settlement Agreement (the Effective Date). Within the later of twenty (20) days after the Effective Date, and the FCFA’s submission of certain payment information and instructions to Defendant, Piper Jaffray, the gross settlement amount of \$9,000 shall be paid by Defendant, Piper Jaffray, to one of FCFA’s special counsel for the FCFA’s account.

Upon the Effective Date of the recommended Settlement Agreement, the Releasing Parties shall be deemed to have fully, finally, and forever released, relinquished, and discharged all “Released Claims” (defined below) against the Released Parties and shall have covenanted not to sue the Released Parties with respect to all such “Released Claims,” and shall be permanently barred and enjoined from instituting, commencing, or prosecuting any such “Released Claims” against any of the Released Parties.

Generally, “Released Claims” means any and all claims, known or unknown, relating in any way to any conduct prior to the Execution Date and arising out of or related in any way to:

- (i) the purchase or delivery of Municipal Derivative Transactions in the United States or its Territories during the period from January 1, 1992 to the Execution Date; or

(ii) any conduct alleged in the litigation or that could have been alleged by the FCFA in the litigation against the Released Parties.

The definition of "Released Claims" contains some but not all of the limiting language on the scope of the release that was negotiated into other FCFA settlement agreements in the litigation.

FCFA special co-counsel are coordinating the delivery of the pages containing original signatures of Defendant, Piper Jaffray and of special co-counsel.

The County and FCFA each "opted out" of (*i.e.*, exclude itself from) the class action MDL settlement with Defendant, Piper Jaffray. Therefore, outside counsel recommends that your Board approve the recommended Settlement Agreement.

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Piper Jaffray & Co. Settlement Agreement

CAO ANALYST:

Ronald Alexander