Empire State Development

FOR CONSIDERATION
August 19, 2009

TO: The Directors

FROM: Dennis M. Mullen

SUBJECT: Investment Report

REQUEST FOR: Approval of Investment Guidelines and Investment Report and Authorization to Take Related Actions

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Background

Section 2925 of the Public Authorities Law (the "Law") requires annual approval by the Corporation of the "investment report" and "investment guidelines."

The New York State Urban Development Corporation d/b/a Empire State Development Corporation ("ESDC" or the "Corporation") Investment Report (the "Report") for Fiscal Year ended March 31, 2009 is attached hereto. It includes (l) ESDC Investment Guidelines ("Guidelines"); (2) Results of the Annual Independent Audit; (3) Investment Performances and Income Records; (4) Statement of Fees, Commissions and Related Service Charges; and (5) the Investment Portfolio as of March 31, 2009 by Fund and Instrument.

Investment Guidelines

The Guidelines were readopted with the Investment Report in September 2008. The Law requires that in addition to annual approval of the Report, the Guidelines must also be annually reviewed and approved by the Corporation. The Guidelines include, but are not limited to, a list of permitted Corporate investments, as well as procedures and provisions to secure the Corporation's financial interest in its investments. We are recommending some amendments to the Guidelines.

Most of the changes are minor and reflect bringing certain information up to date (e.g. a reference to certain funds that are no longer managed by ESDC) or are administrative in nature (e.g. certain positions within the Corporation that are no longer involved in investment management). There are also two items that relate to Article Four of the Guidelines.

Article Four discusses investment alternatives and includes language that refers to various government instruments as a group. For clarification purposes, we have specifically listed individual government agencies (also known as Government-Sponsored Enterprises or "GSE's") in which the Corporation invests.

Secondly we are recommending, as an addition to the list of permissible investments, money-market mutual funds that maintain a Net Asset Value of one dollar per share and that only invest in specific instruments already included in the Guidelines.

Some of the highlights of the Report are summarized below:

Investment Income

Total investment earnings of $39.6 million were generated in fiscal 2008-09. Application of investment income was restricted to corporate requirements, project revenue bonds or specific projects as described below.

During fiscal 2008-09, ESDC's Corporate Funds portfolio generated investment income of $14.5 million. Investment income was applied to debt service on the Corporation's corporate purpose bonds, portfolio maintenance costs, and a portion of ESDC's general and administrative expenses.

Investment income of $12.6 million was generated on Revenue Bond Funds during fiscal 2008-09 and was applied to debt service on bonds for Correctional Facilities, University Facilities, Community Enhancement Assistance Program, and other programs related to State Facilities & Equipment and Economic Development & Housing obligations. Such funds applied to debt service directly offset State payment obligations.

The balance of $12.3 million in investment income was derived from funds available for various economic development projects and programs.

Investment Portfolio

For fiscal 2008-09 the Corporation had average investments of $1.71 billion with an average maturity of 144 days and a portfolio yield of 2.27%. The portfolio design reflects the need for relatively liquid balances, which are used to accommodate:

- Construction Drawdown Schedules
- Debt Service Payment Schedules
- Requirements under Bond Indentures
- Project Closing and Disbursement Schedules
- Corporate Operating Expenses

Investments are summarized as follows:

	As of 3/31/09 Par amount in millions of $'s
ESDC Corporate, E.D., Bond & Related Funds	
Corporate Operations, Reserves/Escrow & Other Restricted Funds (a)	262.1
Restricted Econ. Dev. Programs, Projects & Related Funds	623.8
Corporate Purpose Bond Funds – Funds related to Debt Service Reserves, Bond Service, and Housing	291.7
Total	1,177.6
Revenue Bond Project, Reserve, & Related Funds:	
Correctional & Youth Facilities Programs	247.7
University Facilities	34.4
Community Enhancement Facilities Assistance Program	29.0
State Facilities & Equipment (excluding Correctional & Youth)	144.5
Economic Development & Housing (excluding Univ. & CEFAP)	364.9
Total	820.5
Grand Total	1,998.1

(a) Not shown here are funds that were held only temporarily in this account and were transferred out of the account in April 2009 (approximately $19 million in State appropriations for April 1, 2009 debt service).

Requested Action

The Directors are asked to adopt the attached Investment Guidelines and Investment Report, and to authorize the taking of related actions.

Attachments

Resolution
Annual Investment Report

August 19, 2009

NEW YORK STATE URBAN DEVELOPMENT CORPORATION d/b/a EMPIRE STATE DEVELOPMENT CORPORATION – (the "Corporation") Approval of the Investment Guidelines and Investment Report and Authorization to Take Related Actions

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WHEREAS, the Corporation wishes to comply with Section 2925 of the Public Authorities Law ("Law") which mandates that public benefit corporations annually prepare and approve an investment report which includes, among other things, the Corporation's investment guidelines and

WHEREAS, said Law also requires the annual review and approval of its investment guidelines; and

WHEREAS, the Corporation has prepared an investment report for the fiscal year ended March 31, 2009 ("Report"); and

WHEREAS, the Corporation adopted investment guidelines in 1984 which have been amended and were most recently readopted by the Corporation on September 18, 2008 ("Guidelines"); and

WHEREAS, the Corporation has reviewed said Report and said Guidelines and found them to be satisfactory;

NOW, THEREFORE, IT IS HEREBY RESOLVED that the Guidelines are hereby approved and it is further

RESOLVED, that the Report is hereby adopted; and it is further

RESOLVED, that the Chairman and Chief Executive Officer – Designate, the Chief Financial Officer, the Treasurer or their designees be, and each of them hereby is, authorized and empowered to submit said Report, as required by law, and to take such action and execute such agreements and instruments as he or she may consider necessary or desirable or appropriate in connection with the implementation of the Guidelines, and the Report and to take related actions.

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NEW YORK STATE URBAN DEVELOPMENT CORPORATION
D/B/A EMPIRE STATE DEVELOPMENT CORPORATION

ANNUAL INVESTMENT REPORT FOR FISCAL
YEAR ENDED MARCH 31, 2009

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NEW YORK STATE URBAN DEVELOPMENT CORPORATION
D/B/A Empire State Development Corporation
INVESTMENT GUIDELINES, as amended

Introduction

On January 19, 1984, the New York State Urban Development Corporation adopted comprehensive corporate investment guidelines as required by Section 2925 of the New York Public Authorities Law. The following comprehensive corporate investment guidelines amend and restate the guidelines previously adopted in compliance with the requirement for periodic review and updating of investment guidelines set forth in Section 2925 and in the Investment Guidelines for Public Authorities adopted by the Comptroller of the State of New York in July 1987.

ARTICLE ONE

Definitions

As used herein the terms set forth below are defined as follows:

1.1 "Comptroller" means the State Comptroller.

1.2 "Corporation" means the New York State Urban Development Corporation d/b/a/ Empire State Development Corporation, as corporate governmental agency of the State of New York, constituting a public benefit corporation and a political subdivision, established pursuant to Chapter 174 of the Laws of 1968 of the State of New York.

1.3 "Investment Funds" means all monies and financial resources available for investment by the Corporation, other than proceeds of bonds issued by the Corporation.

1.4 "Repurchase Agreement" means a repurchase agreement satisfying the requirements set forth in Article Four herein.

1.5 "Securities" means any or all of the investment obligations of the categories described in Section 4.1 of Article Four herein.

1.6 "State" means the State of New York.

ARTICLE TWO

Scope

These guidelines shall govern the investment and reinvestment of Investment Funds and the sale and liquidation of investments, as well as the monitoring, maintenance, accounting, reporting and internal controls by and of the Corporation with respect to such investment, sale, reinvestment and liquidation.

ARTICLE THREE

Investment Objectives

The Corporation's investment activities shall have as their first and foremost objective the safeguarding of the principal amount of the Investment Funds. Additional considerations regarding the Corporation's investment activities shall be liquidity of investments, realization of a reasonable return on investments and diversification of investments.

ARTICLE FOUR

Permissible Investments

4.1 The Corporation may invest its Investment Funds in any and all of the following, if and to the extent permitted by statutes, regulations and bond resolutions applicable at the time of investment of such Investment Funds:

1) Any bonds and other obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed by the United States of America;

2) Any bonds and other obligations which as to principal and interest constitute direct obligations of the State or the Corporation or which are unconditionally guaranteed by the State as to payment of principal and interest;

3) Bonds and other obligations of governmental authorities, political subdivisions, Federal Agencies, Government Sponsored Enterprises (GSE's) or public authorities of the State or of the United States of America, which are securities in which the Corporation lawfully may invest pursuant to applicable statutes, regulations and bond

resolutions including but not limited to Federal National Mortgage Association (FNMA), Federal Farm Credit Bank (FFCB), Federal Home Loan Bank (FHLB), Federal Home Loan Mortgage Corporation (FHLMC-"Freddie Mac"), and Student Loan Marketing Association (SLMA-"Sallie Mae");

4) Prime Commercial Paper issued by domestic banks, corporations and financial companies rated "A-1" or "P-1" by Standard & Poor's Corporation or Moody's Investors Service, Inc.;

5) Certificates of Deposit of banks or trust companies authorized to do business in this State, including commercial banks who participates in New York State Excelsior Linked Deposit programs and are authorized program depositories, which certificates of deposit are fully insured by the Federal Deposit Insurance Corporation or fully secured, as required by Section 4.3.1 below, by securities of the character described in clauses (1), (2) or (3) of this paragraph;

6) Subject to the requirements of Section 4.2 below, any repurchase agreement with any bank or trust company authorized to do business in the State of New York or with any broker-dealers included in the Federal Reserve Bank of New York's list of primary government security dealers, which agreement is secured by securities of the character described in clauses (1), (2) or (3) of this paragraph; and

7) Real property

8) Units, shares or interest in a mutual fund or money market fund of regulated investment companies which seek to maintain a constant net asset value per share of $1.00 and have been rated in one of the two highest categories by at least one nationally recognized ratings organization and invests in instruments described in clauses (1), (2) or (3) of this paragraph.

4.2 Specific Requirements Governing Repurchase Agreements

4.2.1 Eligible Sellers. The Corporation shall enter into Repurchase Agreements only with banks or trust companies authorized to do business in the State or from broker-dealers on the Federal Reserve Bank of New York's list of

primary government securities dealers and only after the Corporation's Chief Financial Officer or Treasurer has reviewed such firm's capitalization and the Corporation's Chief Financial Officer and Chief Executive Officer have set a limit on the amount of monies that the Corporation may invest with such firm at any one time. The placement of Repurchase Agreements shall be distributed among several authorized firms to reduce the level of risk. The investment limit set for each such firm shall not be exceeded unless the Chief Financial Officer, the Chief Executive Officer or the Controller of the Corporation makes a written finding that sufficient Securities are not available from other eligible firms. Not less frequently than once each year, the Corporation's Chief Financial Officer or Treasurer shall review and, if appropriate, recommend adjustment of the investment limit for each eligible seller in light of such firm's current capitalization. All investment limit adjustments shall require the approval of the Chief Financial Officer and Chief Executive Officer.

4.2.2 Eligible Custodian Banks. To be eligible to hold the Securities which are the subject of a Repurchase Agreement, a custodial bank should be a member of the Federal Reserve Bank or maintain accounts with member banks to accomplish book-entry transfer of Securities to the credit of the Corporation. Transfer of Securities, whether by book entry or physical delivery, should be confirmed in writing to the Corporation by the custodial bank. The custodian should not be the same party that is selling the Securities. The Corporation's Directors must affirmatively find that a proposed custodial bank is financially sound before such bank may be eligible to perform custodial services for the Corporation.

4.2.3 Maximum Maturity of Repurchase Agreements. There shall be no "open repurchase" agreements. Repurchase Agreements shall be limited to a maturity not to exceed ten (10) working days. Collateral shall have maturities not exceeding thirty (30) years.

4.2.4 Standard Terms for Repurchase Agreements. The Corporation shall execute a master Repurchase Agreement with each broker-dealer which outlines the basic rights of both buyer and seller including:

(a) The events of default which would permit the Corporation to liquidate or purchase the underlying Securities;

(b) The relationship between parties to the agreement, which should ordinarily be purchaser and seller;

(c) A requirement that there be a written contract with the custodial bank outlining the responsibilities of the bank and the parties to the agreement. Such an agreement must provide, among other things, that the custodial bank will not make payment for the Securities until the bank actually receives them and that the custodial bank takes possession of the Securities exclusively for the Corporation and that any claims of the custodial bank are subordinate to those of the Corporation;

(d) Procedures which ensure that the Corporation obtains a perfected security interest in the underlying Securities. The Corporation or its custodian must take possession of the Securities being purchased by physical delivery or book entry. Furthermore, the written agreement shall contain a provision that, in the event a court of final jurisdiction construes the specific Repurchase Agreement to be a loan, the seller shall be deemed to have granted the Corporation a perfected security interest in the purchased Securities;

(e) The market value of the Securities purchased under a repurchase transaction must be at least equal to the purchase price. The value of the Securities must be monitored and marked to market on a daily basis. Additional Securities shall be required if market fluctuations cause the market value of the purchased Securities to become less than the purchase price. The Corporation's Chief Financial Officer or Treasurer shall establish the method of computing margin maintenance requirements and providing for timely correction of margin deficiencies or excesses, taking into consideration:

(i) the size and terms of the transaction;
(ii) the type of underlying Security;
(iii) the maturity of the underlying Security;