

## **Delegation of Final Approval of Energy Savings Performance Agreement transactions to the Direct Investment Committee**

**Date:** January 27, 2023  
**To:** Board of Directors of the Toronto Atmospheric Fund  
**From:** Chief Executive Officer

### **REASON FOR CONFIDENTIAL INFORMATION**

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The attachment to this report contains financial information supplied in confidence to the Toronto Atmospheric Fund, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization.

### **SUMMARY**

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The report recommends that approval of financing for individual Energy Savings Performance Agreements (ESPAs), which are drawn from financing lines that have been approved by the TAF Board for Efficiency Capital, be delegated to TAF's Direct Investment Committee (DC). Prior to the creation of the DC the Board had delegated to the Investment Committee (IC) the ability to determine and approve the terms and conditions of additional investments in EPSAs within the established financing lines. The Direct Investment Committee has assumed responsibility for these types of transactions and the Board may delegate to the Direct Investment Committee in accordance with the recently approved new By-laws.

### **RECOMMENDATIONS**

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The Chief Executive Officer recommends that the Board of Directors of the Toronto Atmospheric Fund:

- 1) Delegate to the Direct Investment Committee, in accordance with Articles 4.7 c) of the TAF By-law No. 1-2022, approval of financing for individual Energy Savings

Performance Agreements (ESPAs) using existing Board-approved financing agreements established with Efficiency Capital Corporation, provided that:

- i) No financing of an individual ESPA exceeds \$2 million.
  - ii) Each ESPA is subject to any additional terms and conditions as may be acceptable to the Direct Investment Committee, having considered the appropriate levels of risk and return.
  - iii) The Direct Investment Committee regularly reports to the Board with respect to the approved ESPAs.
- 2) Approve and ratify the following:
- i) The Direct Investment Committee approval on March 31, 2022 of an ESPA investment outlined in Confidential Attachment 1.
  - ii) The Direct Investment Committee approval on January 24, 2023 of a revision to an existing ESPA investment outlined in Confidential Attachment 1.
- 3) Direct that the confidential information contained in Confidential Attachment 1 remain confidential in its entirety as it contains financial information supplied in confidence to the Toronto Atmospheric Fund, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization.

## **FINANCIAL IMPACT**

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None.

## **DECISION HISTORY**

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At its meeting on July 16, 2014, the TAF Board of Directors approved an investment in TEEFCo (now Efficiency Capital) of up to \$7 million “warehouse line” in ESPA transactions, none of which may exceed \$2 million, contingent on a firm takeout and subject to approval of terms and conditions by the Investment Committee ESPA Subcommittee

(<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.TA19.6>)

On February 14, 2022, the TAF Board of Directors approved Terms of Reference and established composition of a Direct Investment Committee.

(<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2022.TA15.7>)

On June 15 and 16, 2022, City Council adopted amendments to TAF’s Governance Documents, including the Relationship Framework, Procedural By-law, and Statement of Investment Objectives and Principles, and delegated authority to create, amend or repeal provisions in its Operating By-law (TAF By-law No. 1) without having to obtain Council approval. (<https://secure.toronto.ca/council/agenda-item.do?item=2022.EX33.8>)

On July 13, 2022, the TAF Board of Directors approved By-law No. 1-2022, which repeals and replaces former Amended and restated By-law Number 1.

(<https://secure.toronto.ca/council/agenda-item.do?item=2022.TA18.10>)

## **COMMENTS**

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Efficiency Capital's use of TAF's Energy Savings Performance Agreement is governed by the terms of a licensing agreement. The TAF Board approved two financing lines (\$7 million warehouse and \$2 million subordinated debt), of which none of the warehouse line is currently being used and \$1.25 million of the Subordinated Debt line has been advanced; note that by definition the former is revolving. These financing lines are referenced in that agreement along with the relevant terms and conditions. When the financing lines were approved, assessment of individual transactions was delegated to the Investment Committee, which had the expertise to evaluate each request for retrofit financing on its merits. Any such approval must be within the financing envelopes, established terms and conditions, and have acceptable risk/return as the projects themselves constitute TAF's security.

As per the Statement of Investment Objectives and Principles (SIOP) Section 4.1 f), Council delegates authority to the TAF Board for approving direct investments. TAF By-law No.1-2022, Section 4.7 c) describes the purpose and responsibilities of the Direct Investment Committee (DC) and provides the Board with the ability to delegate other duties to the DC. As the DC's mandate pertains to direct investments, including retrofit financing, whereas the IC's pertains to overall policy, portfolio construction and marketable securities, responsibility for approving individual advances to Efficiency Capital under the approved retrofit financing lines and other ESPA-financed retrofits is better placed with the DC.

In accordance with the SIOP Section 4.2, the Board delegates to the Investment Committee (IC) and DC certain responsibilities with respect to overseeing ongoing investment. The DC will monitor and report on the specific terms and conditions of the investments, and on the performance and compliance of ESPA-financed retrofits.

While it is proposed that the DC be given authority to approve financing for individual ESPA transactions through this delegation, the Board retains authority to approve any changes to the terms of the licencing agreement or terms of the underlying financing lines with Efficiency Capital. Information about ESPA financing is reported to the Board through the Direct Investment Committee meeting minutes, quarterly performance reports prepared by Hub Proteus, and TAF's audited financial statements.

## **CONTACT**

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## **SIGNATURE**

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Julia Langer  
Chief Executive Officer

## **ATTACHMENTS**

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Confidential Attachment 1 – ESPA Investments