



THE BANK OF NEW YORK MELLON



## **Corporate Trust Services**

May 14, 2009

**Trustee and Issuer ... A long term relationship**

**Living With an Issue: On-Going Debt Administration Seminar**

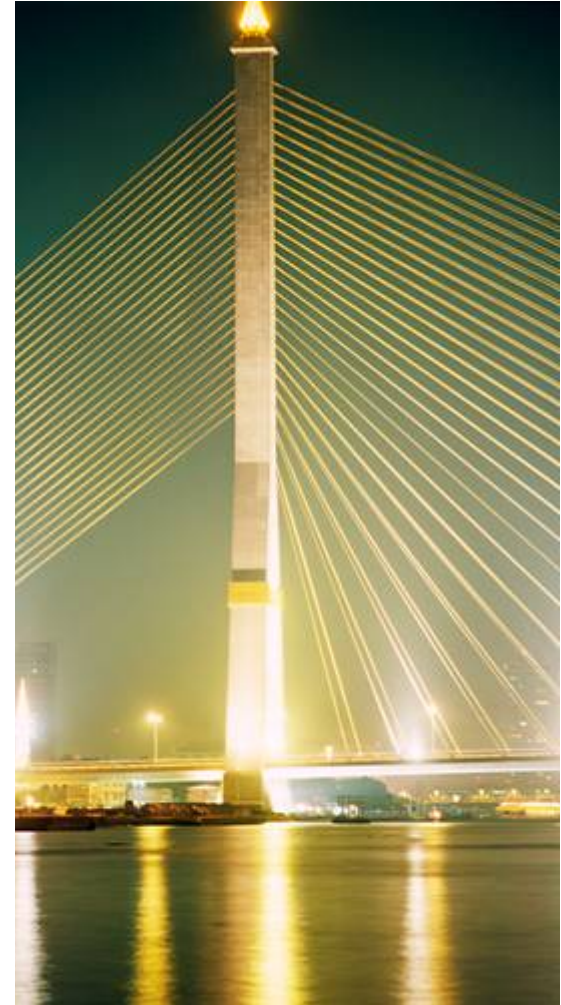
Presented by:

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# Session Agenda

- Trustee or Agent defined
- Trustee's role and Administrative duties
- Evolving Corporate Trust roles.
- Covenants
- Defaults
- Pre-Closing ... Before it's too late
- Your relationship with your Trustee
- Professionals representing your trustee
- Identifying Your Trustee or Agent ... What to think about and what to expect



# Trustee or Agent...what's the difference

- Simple to complex roles — levels of involvement depend on type of financing and security your holders require
- Paying Agent — payment of principal and interest to your bondholders
- Fiscal Agent — in addition to paying agent duties, perform certain administrative duties on Issuer's behalf
  - Primary recordkeeping/tracking of bond proceeds. Custodian of investments representing bond proceeds. Maintenance of reserve, project, and debt service funds.
  - Monitor and collect compliance documentation or covenants required under the financing documents
- Trustee — in addition to Paying & Fiscal Agent duties, act as fiduciary for bondholders upon event of default

## Other Functions



- Registrar – maintain registered security holder records (bond holdings) and register transfers from one holder to another
- Dissemination Agent (appointed under separate agreement) – receive obligated party's ongoing required disclosure information from obligated party and forward it to the secondary marketplace

# Administrative Duties of a Trustee of Fiscal Agent

- Interaction with the Trustee...What does the trustee do for you...?
  - Custodian/safekeeping of bond proceeds; administration and investment of funds established under the indenture; maintenance of accounting records
  - Construction fund accounting; payment of requisitions as you build your project.
  - Debt service billing and collection of revenues or payments for eventual payment to bondholders
  - Monitoring of covenants and collection of compliance items
  - Holding and monitoring the security and/or collateral supporting the bond issue

## Establishment of Trust Funds & Accounts

Who holds what?

- All driven by the governing documents
- Some funds & accounts may be held by the Issuer
- Many are held by the Trustee
  - Typically: Bond Fund, Principal and Interest Accounts, Reserve Fund, Rebate Fund, Redemption Fund,...

# Investment of Trust Funds

- The investment of bond proceeds
- Permitted investments - compliance with indenture
- Settlement procedures and timing requirements of various investment types
- Tracking market value of investments, such as County investment pool, GIC's, or LAIF vs. standard investments
- Arbitrage Rebate Requirements
- A trustee is not an investment advisor ... but may have resources within its organization

# Administration of Trust Funds



All dictated by the governing document(s).

- Accounting processes...project fund, maintenance of Reserve, etc
- Tracking and transfer of interest earnings – project period vs. post completion
- Tracking of revenues, lease payments, etc. - the re-payment process ...waterfall through funds (transfers between accounts)
- Disbursements - Project/Construction Payments, Costs of Issuance, Principal and Interest, Fees
- Receipts - Revenues (project revenues, taxes), Issuer/Obligor payments
- How often do you need your statements; what about other departments and auditors? Internet or online access to view your activity and assets held in trust



# The Construction or Project Fund Phase

- Payment of requisitions as you build your project
- Requisition disbursement requirements as dictated under the indenture or contract
  - Authorized disbursements and signatures required
- Vendor payments and timing requirements
  - cash on hand vs. investments held
- Payments to vendors vs. reimbursement to issuer
- Completion certificates required under the indenture



# Debt Service Process

- Courtesy billing, collection of tax revenue, lease payments, etc. for eventual payment to bondholders...
- Credits via interest earnings or capitalized interest
- Fixed vs. variable rate bonds
- Debt service schedules
- Sinking fund requirements
- Issuer/Obligor's responsibility for timely payments, consequences of non-timely payments
- DTC Book-entry

# Security/Collateral

- The Trustee typically holds and monitors the security and/or collateral supporting the bond issue
  - UCC financing statements, insurance, credit facilities, property liens, etc
- Courtesy reminders of expirations
- May draw on credit facilities upon non-renewal
- May collect insurance proceeds in event of property damage
- May exercises liens and/or foreclose per security holders direction in event of default



# Compliance Monitoring

- Trustee tracks certain covenant requirements under the Indenture
  - Trustee's role: follow document requirements, receive items from issuers/obligors, send courtesy reminders to issuers/obligors
- Tickler system to track what continuing documentation, reports and certificates you need to provide the trustee (they are built in protections for your bondholders, agreed upon prior to bond issuance)
  - Insurance certificates vs. Statements of Compliance
  - Budgets and preliminary budgets
  - Rebate requirements
  - Change in authorized signatories
  - Copy of Annual disclosure reports
  - Disclosure dissemination (if appointed as Dissemination Agent)

# Bond Issuer Downgrade

- **MBIA**
- **FGIC**
- **FSA**
- **Assured Guaranty**
- **AMBAC**
- **ACA**
- **XL**
- **CIFG**
- **Radian**
- **Berkshire Assurance (New)**

# Trustee Responsibilities During a Bond Insurer Downgrade

## **Bond Downgrade**

- Review all documents (Indenture, Reimbursement Agreement, Bond Purchase Agreement) immediately for all bond issues affected by downgrade.
- Downgrade may not trigger any actions
- Gather information and relay to Issuer
- Continuing Disclosure- Bond Rating

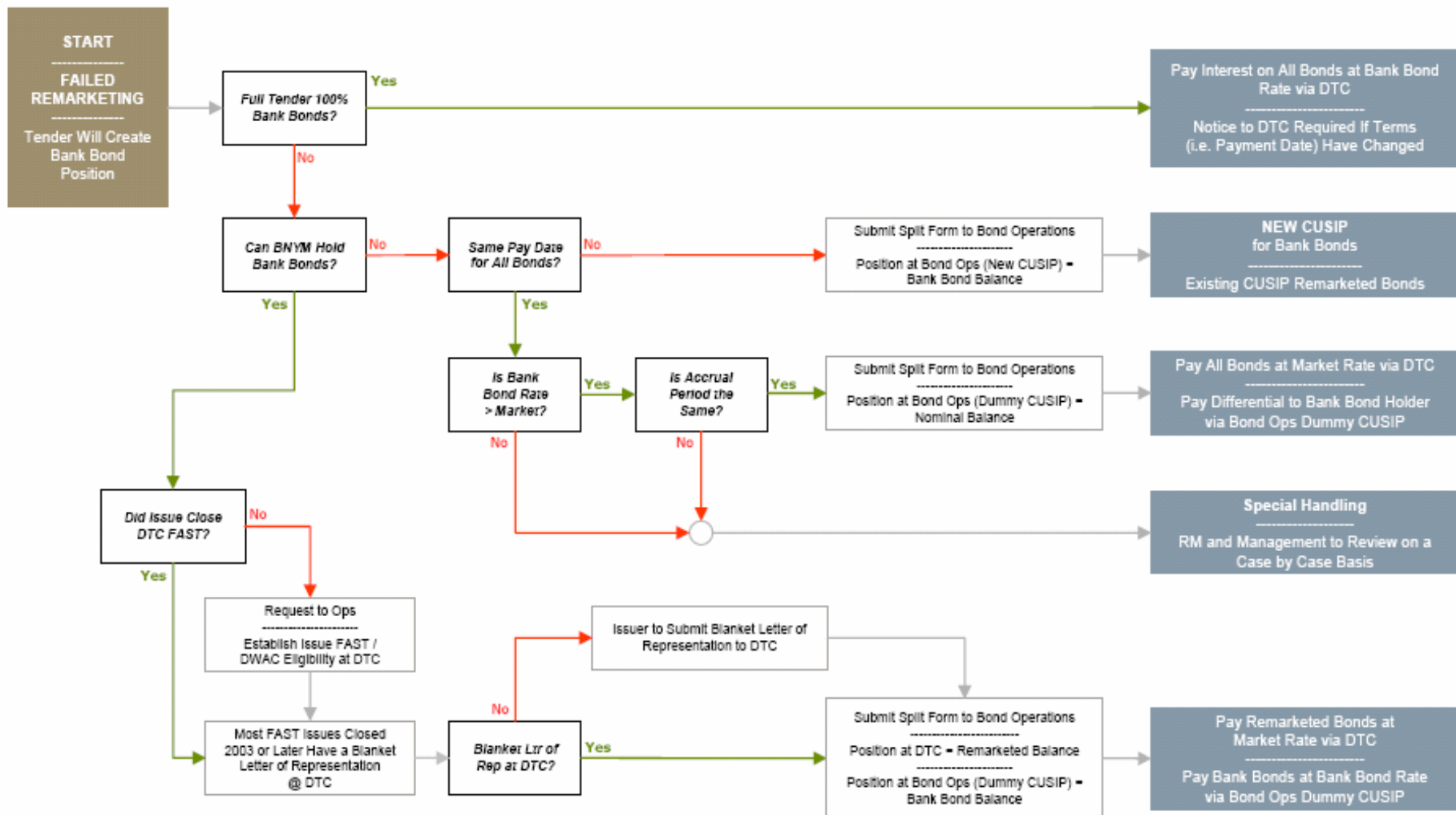
## **Surety Bonds**

- Is it a permitted Investment

## **•Investment Agreements**

- Tight Window Period
- Put up collateral
- Liquidate GIC

# Failed Remarketing / Bank Bonds Decision Tree



This chart is for illustrative purposes only and does not constitute legal or business advice by The Bank of New York Trust Company, N.A.  
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## ARRA Responsibilities (Tax Credits)

- Paying Agent & Registrar
- Physical Bonds (Bondholder & Tax Credit)
- Registrar of Tax Credit Holders
- Track Tax Credit holder as it relates to each expiration date
- Tax Reporting



# Covenants

## **Positive & Negative Covenants**

- **Positive** – requires some definite action on the part of the obligor
- **Negative** – restrict activities of obligor for the purpose of protecting the interests of the investor or lender
- **Issuer/Obligor** is responsible for complying with all covenants
- **Trustee** only monitors covenants that governing document directs trustee to monitor
- **Failure to observe covenants**

# Defaults- Protecting the interest of your bondholders

- Defaults
  - Payment Defaults, Covenant Defaults
  - Cure Period
  - Pursue remedial provisions under the indenture
- Event of Default
  - Notices of default and bondholder communications
  - Holder Direction
  - Creditors' committee
- Potential Remedies
  - Acceleration of bonds
  - Exercise of ownership on collateral held

## Pre-closing... Before It's Too Late

- Pre-closing . . . The issuer and trustee will have to work within this Indenture for the next 30 years, make certain the contract reads the way you want it to read. Things to consider . . .
  - maintenance of security interest(s)
  - establishment of sub accounts
  - waterfall of revenue or lease payments
  - document and invoice requirements surrounding disbursements for construction funds
  - permitted investment language
  - compliance requirements and documentation required
  - covenant restrictions

Is all of the above realistic? If not, speak up before the bond sale date

## Your relationship with your trustee...

- Many parties move on after the closing. The Issuer and the Trustee are actively involved for the life of the bonds.
- The trustee performs administrative functions on my behalf, which will directly reflect on me, the City/Agency and our bond holders. How am I selecting my trustee (my 30 year partner)?
- This long-term relationship should begin prior to the closing and early on in the document review process.
- I now have a five-inch thick closing transcript binder, with no pictures. How do I organize what is important for the next 20 to 30 years?
- What tools or resources or expertise does my trustee have which might assist me with what I need?

# Beyond the Trust Company or Bank... the Professionals

- Professional trust administrators are part of your team. Select your trustee based upon experience, professionalism and resources, not just price.
- What skills do they/should they possess?
  - Legal knowledge and document review skills
  - Understanding of investments and settlement process
  - Accounting skills
  - Systems knowledge
  - Communication skills
  - Organizational skills
- In general, they should possess a wealth of information related to your bond issue. Get them to share this knowledge with you. It can make your job easier.

# Identify the Right Trustee or Agent...

## Your Financing Partner for the Life of the Bonds

### **What to look for in the Institution and the Individual professionals**

- Trustee Services — specialized, not all banks do it anymore
- Commitment Level of the bank or trust company
  - Systems and resources utilized by the front and back office
  - Ability to attract talented professionals
- You pay them an annual fee. What to ask for. What to expect.
  - Perform your job and take care of debt holders
  - Make my life easier and assist me through this process
  - Share your specific timing requirements and needs
  - Share your knowledge related to document requirements
  - Ensure correct timing of statements, electronic or hard copy

Questions?

**Now,**

**Or anytime in the future:**

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