
Session Five: Bond Documents

Jacquelynne Jennings
Partner
Schiff Hardin LLP

Drew Corbett
Finance Director
City of San Mateo

October 27, 2016
Sacramento, California

Financing Team

- Issuer
- Issuer's Counsel
- Bond Counsel
- Disclosure Counsel
- Underwriter / Placement Agent
- Municipal Advisor
- Trustee / Paying Agent / Fiscal Agent
- Trustee's Counsel
- Underwriter's Counsel / Placement Agent's Counsel
- Securities Repository
- Auditor
- Credit Enhancer
- Feasibility Consultant
- Rebate Consultant
- Dissemination Agent
- Borrower and Borrower's Counsel (Conduit Transaction)
- Verification Agent (Refundings)
- Remarketing Agent (Variable Rate Transaction)
- Letter of Credit Bank (Variable Rate Transaction)



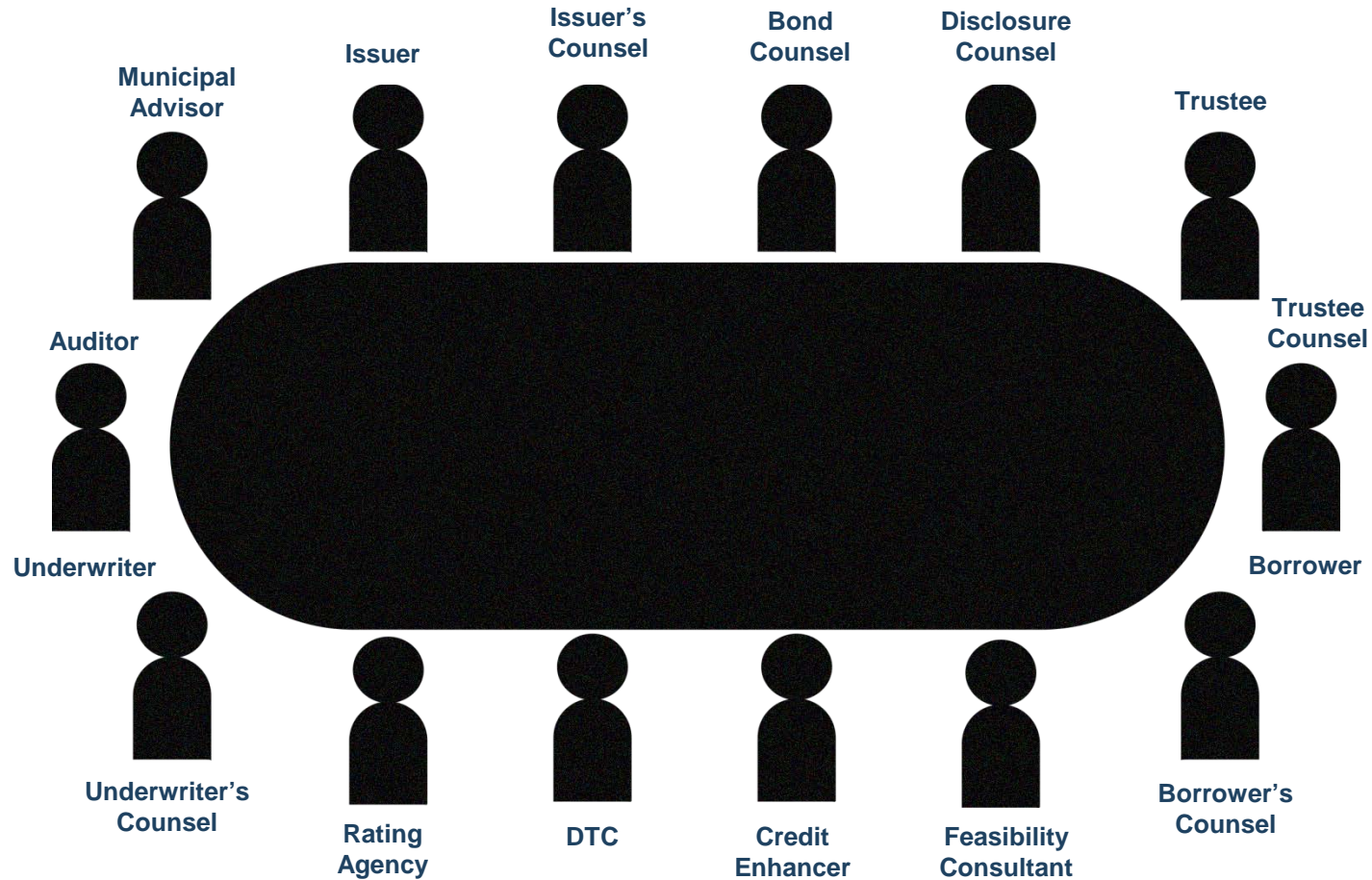
Preliminary Considerations

- What is being financed?
- What law authorizes the borrowing?
- What will be the structure of the financing?
- What is the source of funds for repayment of the borrowing?
- Who at the Issuer will be responsible for the ongoing compliance of the bond issue?

Basic Documents

- Authorizing Resolution(s)
- Trust Agreement
- Loan Agreement
- Preliminary Official Statement / Official Statement
- Bond Purchase Agreement
- Continuing Disclosure Agreement
- Tax Certificate
- Closing Certificates, Documents and Opinions

Negotiated (Private Sale) Bond Transaction



Authorizing Resolution

Purpose:

- Authorizes the sale of the bonds by the Issuer and establishes the parameters for the issuance of the bonds, authorizes the execution and delivery of each of the financing documents, directs staff to take other actions necessary to complete the transactions, delegates officers to approve revisions to financing documents consistent with the parameters

Key Provisions:

- Maximum principal amount of bonds to be issued
- Maximum interest rate
- Maximum Underwriter's discount
- Maximum term
- For refundings, the minimum savings to be achieved
- Delegation of Authority to Officers

Parties:

- Issuer
- Borrower

Indenture of Trust / Trust Agreement / Bond Resolution / Bond Ordinance

Key Provisions:

- **Definitions**
- **Permitted Investments**
- **Pledge of Collateral**
- **Reserve Fund**
- **Flow of Funds**
- **Additional Debt**
- **Interest Rates**
- **Principal and Interest Payment Dates**
- **Maturity Dates**
- **Redemption / Prepayment**
- **Defeasance Provisions**
- **Representations, Warranties and Covenants of the Issuer**
 - ❖ **Maintenance of Rates, Fees & Charges**
 - ❖ **Continuing Disclosure**
- **Rights and Responsibilities of the Trustee**
- **Events of Default and Remedies**
- **Insurance Provisions** (Blue text = Indicates provisions that require critical review)

Parties:

- Issuer
- Trustee
- For Ordinances and Resolutions, only the Issuer

Loan Agreement / Lease Agreement / Project or Facilities Lease / Installment Sale Agreement

Purpose:

- Evidences the loan of bond proceeds by the Issuer to finance the project and for user (borrower) of the project to make payments sufficient in time and amount to repay the bonds
- For Installment Sale Agreements and Leases, the title to the project will transfer at the end of the term and maturity of the bonds

Key Provisions:

- Pledge of Revenues
- Lease Payments
- Additional Payments
- Representations & Warranties
- Covenants
- Prepayment Provisions
- Abatement

Parties:

- Issuer
- Borrower

Preliminary and Final Official Statement

Purpose:

- Provides disclosure to investors and potential investors; terms of the bonds; description of project(s) being financed or bonds being refunded; security and sources for repayment; risk factors; issuer financial and operating information; description of obligated party; outstanding material litigation
- The Issuer is required under securities laws to disclose all information a “reasonable investor” would consider to be important in making an investment decision to purchase the bonds
- The Preliminary Official Statement is complete except for pricing information and is used by the underwriter to presell the bonds
- The Official Statement is dated the date the bonds are sold to the underwriter

Key Provisions:

- Securities and Sources of Payment
- Risk Factors
- Absence of Material Litigation
- Financial and Operating Information
- Continuing Disclosure

Parties:

- Issuer
- Borrower

Bond Purchase Agreement / Bond Purchase Contract

Purpose:

- Provides for the sale of the bonds by the Issuer to the Underwriter
- Specifies (i) the terms of the bonds; (ii) conditions precedent to the obligation of the Underwriter to purchase of the bonds; (iii) the delivery date of the bonds; (iv) the conditions permitting the Underwriter to withdraw from the agreement (the “Underwriter’s Outs”); (v) representations and warranties of the Issuer, including a representation that the Preliminary Official Statement was deemed final by the Issuer as of its date and compliance with past continuing disclosure undertakings; (vi) the documents to be delivered at closing; (vii) the Underwriter's fees; (viii) the expenses to be paid by various parties; and, (ix) certain SEC requirements to be followed by all parties
- This agreement is executed after the bonds have been priced by the Underwriter

Bond Purchase Agreement / Bond Purchase Contract

(Continued)

Key Provisions:

- Pricing Information
 - ❖ Representation & Warranties
 - ❖ Underwriter's Outs
 - ❖ Expenses
 - ❖ Closing Conditions
 - ❖ Closing Documents
 - ❖ Form of Opinion of Issuer's Counsel
 - ❖ Redemption Provisions

Parties:

- Issuer
- Underwriter
- Borrower
- Obligated Party

Continuing Disclosure Undertaking

Purpose:

- Contains the undertakings of the Issuer (and each Obligated Party) to provide annual updates of specified information (Annual Reports) by a specified date certain and notices of the occurrence of significant events, generally within 10 business days following occurrence, pursuant to Rule 15c2-12
- Remains in effect during the lifetime of the bonds

Key Provisions:

- Content of the Annual Report
- Filing Date for the Annual Report
- Listing of Significant Events
- Filing Date for Filing Notices of the Occurrence of Significant Events
- Amendment Procedures

Parties:

- Issuer
- Obligated Party
- Trustee
- Dissemination Agent

Tax Certificate / Tax and Non-Arbitrage Certificate

Purpose:

- Sets forth the certifications and covenants of the Issuer (and the Borrower) necessary to maintain the tax-exempt status of the bonds
- Includes rules for investment of the bond proceeds, compliance with arbitrage and rebate requirements

Key Provisions:

- Sources and Uses of Proceeds
- Investment of Proceeds
- Representations and Warranties
- Tax Compliance Program
- Others – depending upon the purpose of the financing

Parties:

- Issuer
- Borrower (Conduit Transaction)

Closing Certificates, Documents & Opinions

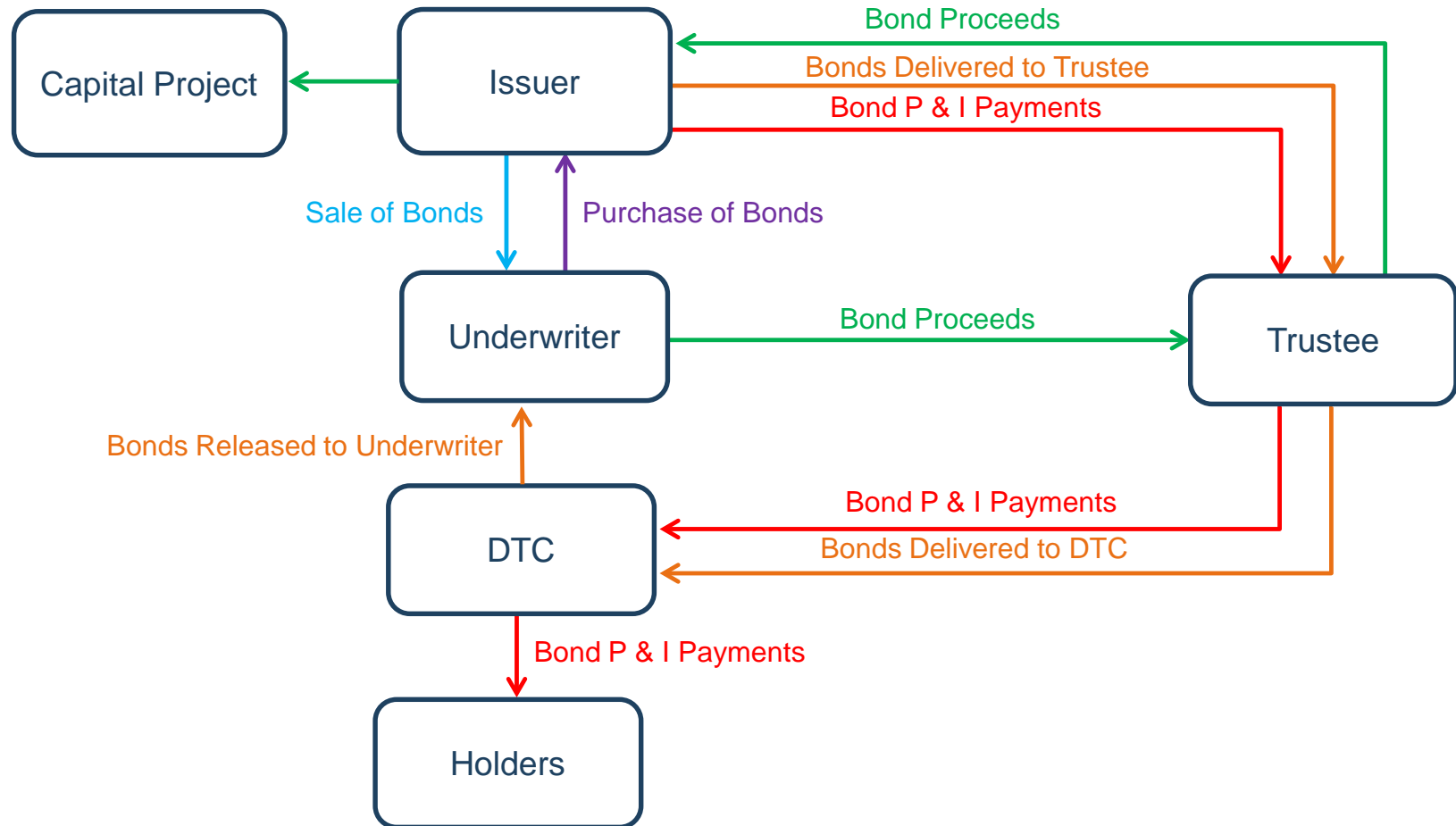
Key Provisions:

- Issuer Certificates
- Receipts
- Requisitions
- Documents for Deposit of Funds
- Opinions

Parties:

- All

Summary of Bond Transaction



Private Placement / Direct Lending

Purpose:

- A direct negotiation by the Issuer with a single or limited number of private financial institutions or investors with a high degree of sophistication; essentially a loan; exempt from registration with the SEC and doesn't require many of the disclosure requirements of a public offering

Documents:

- Master Loan Agreement
 - ❖ Similar to an Indenture
- Private Placement Agreement
 - ❖ Similar to the Bond Purchase Agreement, but is an agreement between the Issuer (and the Borrower) and the placement agent
- Continuing Covenant Agreement
 - ❖ Similar to a Continuing Disclosure Certificate, but is an agreement between the Issuer (and the Borrower) and the financial institution purchasing the Bonds
- Investor Letter
 - ❖ Executed by the investors agreeing to certain restrictions on resale and certifying that they have the degree of sophistication necessary to make an investment in the bonds

Other Types of Financings

Refundings:

- Basic Documents
- Escrow Agreement
- Verification Report

Variable Rate:

- Basic Documents
- Remarketing Agreement
- Paying Agent Agreement
- Letter of Credit or Standby Bond Purchase Agreement
 - ❖ A Letter of Credit is issued by a bank to the Trustee on behalf of the Issuer to provide sufficient money to pay the principal and accrued interest (the "purchase price") on the bonds when tendered by the bondholders
 - ❖ A Standby Bond Purchase Agreement serves essentially the same purpose as the letter of credit, but instead of automatically paying the purchase price of the bonds when tendered by the bondholders, the bank purchases only those bonds that are not successfully remarketed by the remarketing agent to new purchasers; the remarketing agent then remarkets the bank's bonds
- Reimbursement Agreement
 - ❖ An agreement between the Issuer or the Conduit Borrower to reimburse the bank for all draws made on the letter of credit

Other Types of Financings

(Continued)

Competitive Sale:

- Basic Documents, **except** the Bond Purchase Agreement
- Bonds are advertised for sale in an ad published in a financial newspaper (the “Notice Inviting Bids”); the terms for the sale of the bonds, the parameters maturities for the bonds, the procedures for submitting bids; the availability of the Preliminary Official Statement are set forth in the Notice of Sale

Additional Resources

- California Debt and Investment Advisory Commission www.treasurer.ca.gov/cdiac
- Government Finance Officers Association www.gfoa.org
- Municipal Securities Rulemaking Board www.msrb.org
- National Association of State Auditors, Comptrollers and Treasurers www.nasact.org
- National Federation of Municipal Analysts www.nfma.org
- Securities Industry and Financial Markets Association www.sifma.org