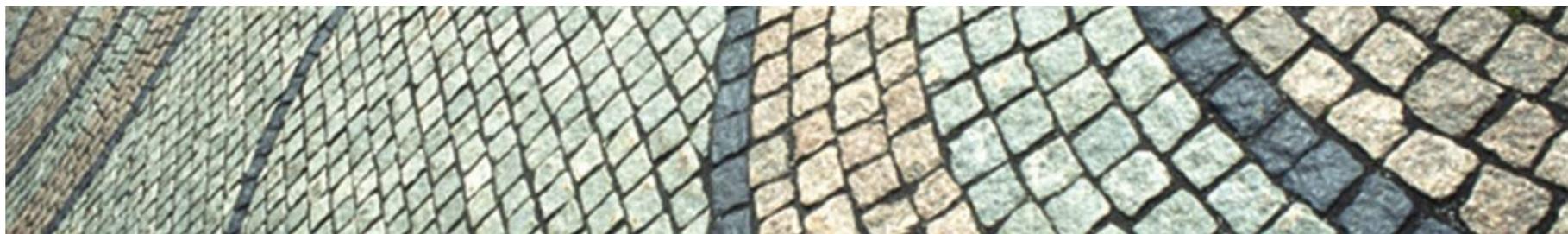




THE BANK OF NEW YORK MELLON



## **Corporate Trust Services**

March 15, 2012

## **Municipal Debt Essentials**

Presented by:

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The Bank of New York Mellon Trust Company, N.A.





# 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
- Arbitrage Compliance Services – perform arbitrage requirements for borrowers who need to comply with the Tax Reform Act of 1986

# Administrative Duties of a Trustee or 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: Construction Fund, 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



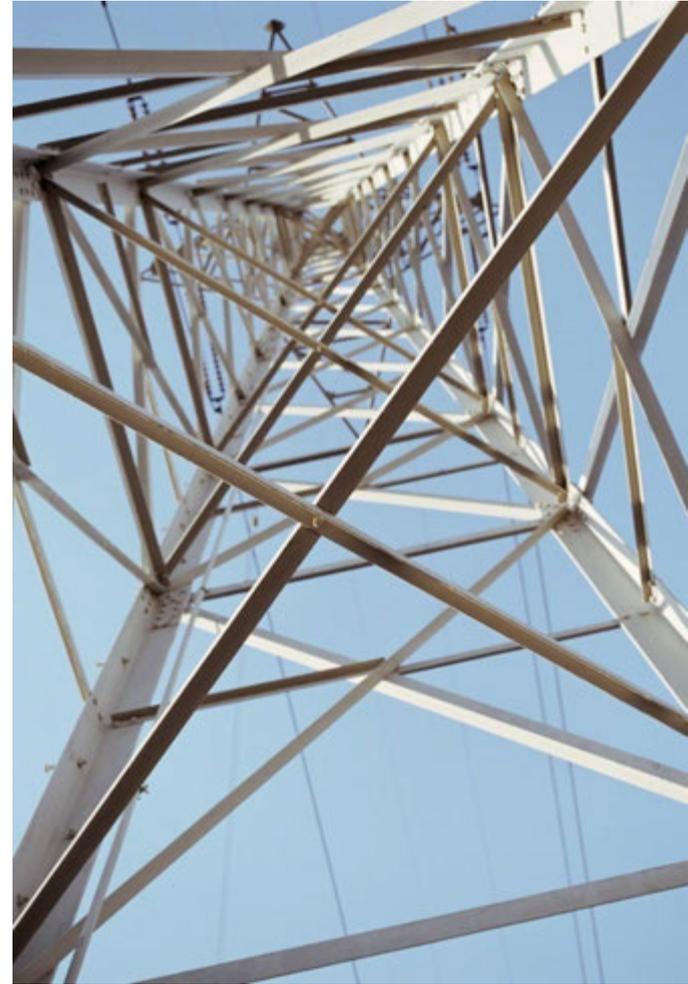
All dictated by the governing document(s).

- 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



**SAMPLE**

**CONSTRUCTION FUND REQUISITION**

**REQUISITION FOR MONEY FROM THE CONSTRUCTION FUND**

To: The Bank of New York Mellon Trust Company, N.A., as Trustee

Re: City of Anytown Build America Bonds

Requisition No. 1

The undersigned, on behalf of City of Anytown, hereby requests payment, from the Construction Fund for the Bonds identified above. Please pay the total amount shown below to the order of the payee or payees named below. The payee(s), the purpose and the amount of the disbursement requested, are as follows:

Payee	Purpose	Amount
City of Anytown	Reimbursement for project costs	\$XXX.XX
Total		\$XXX.XX

All capitalized terms used herein have the meanings given such terms in the Indenture of Trust, between The Bank of New York Mellon Trust Company, N.A. and the City of Anytown and relating to the above-captioned Bonds. The undersigned hereby certifies as follows:

1. Each of the items for which payment is requested is a proper charge against the Construction Fund, and is or was necessary in connection with the Project.
2. None of the items for which payment is requested has been reimbursed previously from the Construction Fund.

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3. All of the amount requisitioned will be used in a manner consistent with the Agreement.

Dated:

City of Anytown

By: \_\_\_\_\_  
Authorized Borrower Representative

By: \_\_\_\_\_

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# 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)



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# Bond Issuer Downgrade

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

# Trustee Responsibilities During a Counterparty 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

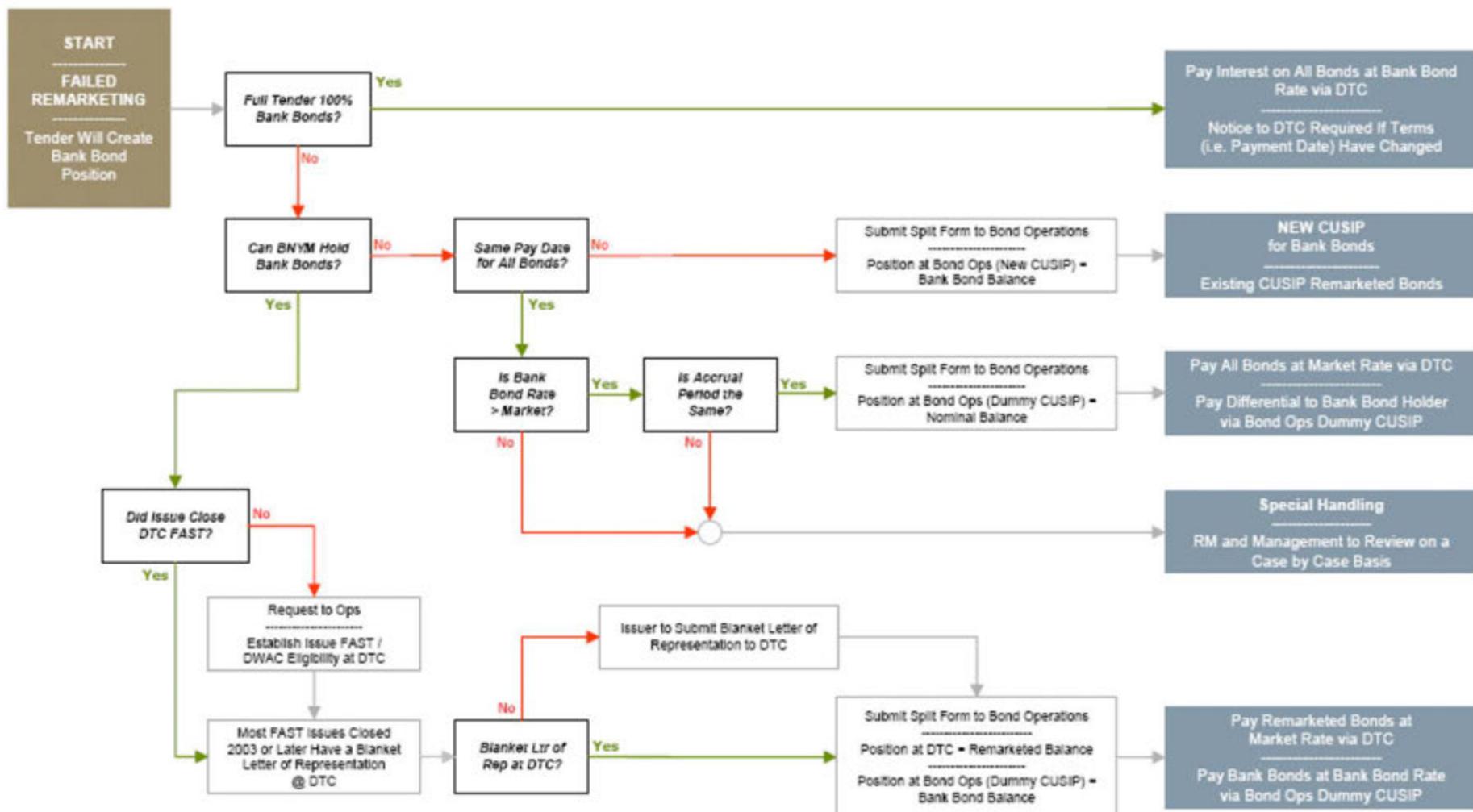
## **Surety Bonds**

- 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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## Direct Pay Bonds (ARRA)

- Trustee or Paying Agent
- Build America Bonds discontinued on 12/31/2010
- School Districts still issuing Direct Pay Bonds
- Calculate Principal & Interest
- Issuer or Trustee/Paying Agent file form 8039 CP
- Post Issuance Compliance may be necessary



# Redevelopment Successor Agencies

- Sent notice to make sure debt service and Trustee fees are in ROPS list
- Working closely with Successor Agencies and counties to ensure receipt of debt service funds
- Evolving



# 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?



# Questions?

**Now,**

**Or anytime in the future:**

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