

Ongoing Debt Administration: Issuer Roles & Responsibilities

California Debt and Investment Advisory Commission
May 14, 2009

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Overview

- Pre-closing
- Revenue tracking and collection
- Investments and expenditures
- Managing debt service payments
- Bond calls
- Continuing disclosure and investor relations
- Records retention
- Administration

Prepare for closing

- This is your bond issue – you are responsible
- Bond counsel will take the lead – but, issuer must manage process
- Certificates, resolutions, representations are issuer's responsibility
- Review drafts before closing date
- Government seals, notarized signatures, etc.
- Do not wait to last minute

Know Your Documents:

30 years is a long time

- Documents dictate future actions – Official Statement, Trust Agreement
- Understand the structure
 - Fixed rate
 - Variable rate
- Make sure the documents work for you
 - Payment dates
 - Cash flow
 - Permitted investments
- After closing – you are responsible for payment, use of funds, accounting, etc.



“Would you please elaborate on ‘then something bad happened’?”

Bond Documents Can Hurt:

Be sure to read them before closing

- Events of default
- Additional Bonds Test
- Call provisions
- Redemption notices
- Continuing disclosure
- Trustee actions and responsibilities
- Assignment
- Rating provisions

Account Structure is Your Job:

Ensure it works for you

- Construction fund
- Cost of issuance fund
- Capitalized interest (if any)
- Reserve fund
- Debt service funds
 - Parity debt
 - Separate funds for each series?
- Rebate fund

The Trustee:

Your partner for the life of the bonds

- Selecting a trustee
 - Service levels (accuracy, responsiveness, communications)
 - Systems – ease of use
 - Fees
- Do you need an outside trustee?
 - Fixed vs. Variable Rate Debt
 - Treasury systems and capabilities

Systems in Place?

- Review transaction with accounting staff
- Ensure treasury staff is prepared
- Where will the money go? Trustee? Issuer?
- One of many debt issues?
- Monitor fund balances and payments
- Communication with Trustee – who is responsible?

Revenues

Revenues and Security:

What is the Pledge?

- Full faith and credit
- Net operating revenues
- Tax allocation
- Assessments
- Certificates of participation (lease)

Flow of Funds

- Documents dictate how revenues will be used
- For example:
 - Revenue fund
 - Operating fund
 - Debt service fund
 - Excess earnings fund (i.e., rebate fund)
 - Revenue remainder fund

Revenues and Budget:

How Will You Pay the Debt?

- Water revenues – forecast and monthly results
 - Additional bonds test
 - Rate covenant
 - Coverage ratios
 - Cash vs. accrual
- Tax revenues
- Assessment Districts
- Tax allocations
- COPS -- appropriations

Investments:

What do you do with all that money?

Investment of Bond Proceeds: Basic Investment Guidelines

- “Prudent person” standard
 - Safety
 - Liquidity
 - Yield
- Actively monitor projects and spending patterns
- Mark to market requirements
- Interest earnings

Investment of Bond Proceeds

- Indenture and resolution should be consistent with investment policy – for example:
 - “...any investments in which the District may legally invest sums subject to its control pursuant to Sections 53601 and 53635 of the California Government Code, as further restricted by the Administrative Code of the District....”
- Cash flow from project managers
- Establish accounts within investment pool
- Develop process to monitor balances and expenditures
- Monitor spend-down requirements

Investment of Bond Proceeds:

- Local Agency Investment Fund (LAIF)
- Guaranteed Investment Contracts (GICs)
 - Fair and transparent bid process
 - Mark-to-market
 - Monitor ratings for providers
 - Work with project managers and trustee to make payments and investments
 - Check trustee calculations – earnings, remaining balance

Use of Bond Proceeds:

Where does the money go?

- Cost of issuance – pays the finance team
 - Consultants, lawyers, travel, document preparation, etc.
 - Estimate ahead of time
 - Liquid – short-term fund
 - Review and approve all payments
 - Close fund when everyone has been paid

Use of Bond Proceeds: Where does the money go?

- Construction
 - Work closely with project teams
 - Watch project schedules and expenditures
 - Encumbrances and retention
 - Certificate of completion
 - Understand eligible expenditures
 - Private activity limits

Use of Bond Proceeds:

Where does the money go?

- Capitalized interest – fund interest during construction
- Reserves
 - Monitor reserves – refunding or paid down?
- Escrows
 - Refunding transactions

Construction Funding and Administration

- Requisition process
 - Detailed descriptions – qualified expenditures
 - Accuracy of requisitions
 - Authorized approvers
- Trustee direct pay or reimburse issuer?
- Watch liquidity of investments in Construction Fund
- Record retention -- document expenditures
- Accounting system – payments, interest earnings (net funding)

Tax Regulations:

Not just another administrative task

- Tax certificate defines commitment regarding:
 - Expected use of funds
 - Private use restrictions
 - Spend down of construction proceeds
 - No working capital
 - Yield restrictions
 - Rebate requirements
- Annual calculations – set aside money in rebate fund
- Paying rebate is not bad – monitor and make timely payment
 - Consider outside firm to calculate rebate

Debt Service:

Make sure you pay it back

**“If you think nobody cares if you’re
alive, try missing a few car payments”**

Earl Wilson

Budget for Debt Service

- Budget for all payments
- Accrual vs. cash
- Fixed rate vs. variable rate debt
- Rate covenant – set rates to recover all costs, including debt service
- What to do with interest earnings:
 - Do not let funds accumulate
 - Use interest to offset transfers to debt service fund
 - Monthly and annual valuations

Debt Service Monitoring

- Identify responsible party for ensuring debt service payments (e.g., treasurer)
- Require trustee to send invoice
 - Always verify amounts – maintain internal spreadsheet or other program
 - Verify earnings
- Set up process to ensure timely payment – be aware of internal accounts payable timeframes (including necessary approvals)

Bond Redemptions/Sinking Funds

- Mandatory redemptions/sinking funds on Term Bonds
- Optional redemption (e.g., advance or current refunding)
- Track source of funds (e.g., water revenues)
- Notice to trustee
 - Notice timeline impacts all other actions
 - Conditional or irrevocable notice
- Principal reduction has impacts on reserve funds, fees (e.g., remarketing, liquidity)

Assessment Districts and Prepayment Options

- Prepayment options – follow your documents
- Maturity selection
- Tender offers

Variable Rate Debt: A different ballgame

- Self-liquidity vs. bank credit
 - Term of bank facility (364 days to 3 years)
 - Credit Ratings of bank – bonds trade based on bank ratings, not issuer
- Remarketing fees
- Interest set daily, weekly, etc.
- Review all trustee invoices
 - Interest due
 - Bank Bonds
- What to do if “failed” remarketing

Continuing Disclosure

Staying in touch with the investors

Continuing Disclosure: It's the law - and a good idea

- Continuing disclosure undertaking
 - Annual financial information
 - Material event notices (e.g., credit rating changes, substitution of credit or liquidity provider, etc.)
- Communications with investors, rating agencies, community
- Electronic distribution:
 - DAC or other private party
 - Electronic Municipal Market Access (EMMA) – beginning July 1, 2009

Rating Agency and Investor Relations – Stay in Touch

- Tell your story – be ahead of the curve
- Develop relationships with rating agencies
 - Phone calls/Inspection trips (tour of facilities)
 - Updated financial information
- Investor relations
 - Consistent financial reporting
 - Quarterly financials – cash balances, ratios, etc.
 - Access to audited statements
 - Investor tours, phone calls
 - Internet “road shows”

Records Retention and Administration

Be prepared

Record Retention Requirements

- Establish and distribute record retention policies and procedures
- Assign a coordinator – who will you ask for records when the IRS shows up?
- IRS record retention requirements
 - Term of bond + 3 years
 - Types of records (e.g., basic bond docs, investments, payments, expenditures)
 - Updated financial information
- IRS website: www.irs.gov/taxexemptbond/index.html

Other Administrative and Financial Reports

- Certificates
 - Insurance
 - Annual appropriations
 - Adequate insurance reserves (e.g., workers comp)
- Consistent financial reports and records
- Annual audit and CAFR – electronic format
- Build America Bonds (BABs)
 - Credits
 - Monitoring
 - Arbitrage calculations

Land Based Financing

A Special Case

Land Based Deals

- Special tax or assessment formulas
- Look at covenants – what is the pledge?
- Set up accounts and flow of funds
- Forecast construction expenditures and reimbursements
- Prepayment triggers and notifications
- Reporting due dates
- County timelines regarding assessments, etc.
- Staff, consultants or both

Land Based Deals

(continued)

- Monitor parcels and usage
- Monitor land use changes
- Delinquency management – watch cash receipts
- Understand the foreclosure process – who owns the property when?
- Communication and information flow

**“The trick is to stop thinking
of it as your money”**

IRS Auditor

Conclusions and Summary

- Understand the structure, purpose and terms
- READ THE DOCUMENTS BEFORE CLOSING
- Question your “experts” – you own the deal for thirty years
- Organize for ongoing administration – identify individuals who are responsible
- Establish systems and timelines
- Communication and outreach with market, rating agencies and trustee are critical
- Current and accurate financial information should be readily available

Questions?

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