

CDIAC

**CALIFORNIA
DEBT AND
INVESTMENT
ADVISORY
COMMISSION**

SESSION ONE:

ROLES AND RESPONSIBILITIES OF THE ISSUER AND TRUSTEE

DENNIS COLEMAN
TREASURER AND
FINANCE DIRECTOR
ELK GROVE WATER DISTRICT

JOSEPHINE LIBUNAO
MANAGING DIRECTOR
BANK OF NEW YORK
MELLON TRUST COMPANY

Issuer

DENNIS COLEMAN
TREASURER AND
FINANCE DIRECTOR
ELK GROVE WATER DISTRICT

Issuer

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- The Issuer is a municipal or non-profit entity that sells (or issues) bonds.
- Issuer assembles financing teams to underwrite and sell bonds.
- Financing teams include:
 - Financial Advisor
 - Bond Counsel
 - Disclosure Counsel
 - Underwriters
 - Registrar, Trustee or Fiscal/Paying Agent

Trustee

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- Registrar, Paying Agent and Transfer Agent – Maintains an updated registry of bond holders and collects debt service payments from the Issuer and pays it to the bondholders.
- Trustee – Performs specific financial functions including the acceptance and disbursement of (bond) funds, the maintenance of Reserve Funds, and the custody of investments.

Closing Documents

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- Trust Agreement
- Assignment Agreements
- Escrow Agreement
- Continuing Disclosure Agreement
- Certificate of the Issuer to the Trustee
- Bonds or Certificates

Documents

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- Trust Agreement – Between the Issuer and the Trustee/Paying Agent which deals with the initial deposit of the bond proceeds and the covenants the Issuer agrees to regarding payment of debt service and the maintenance of the security of the pledged revenue source.
- Assignment Agreement – Between the Trustee and the Corporation in which the Corporation assigns the rights under the Installment Sales Agreement to the Trustee

Documents

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- Escrow Deposit and Trust Agreement – Between the Issuer and the Trustee relating to the securities purchased for the defeasance of the refunded bond issues.
- Continuing Disclosure Agreement – Between the Issuer and the Trustee which obligates the Issuer to provide pertinent information annually regarding the status of the pledged revenues and adherence to the bond covenants by the District.

Documents

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- Certificate from the Issuer to the Trustee directs the Trustee in the application of proceeds to the various funds established by the Trust Agreement.
- Bonds or Certificates are the actual debt instruments that are signed and delivered by the Issuer to the Trustee.

Issuer Covenants

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- The Trust Agreement establishes Covenants that the Issuer agrees to adhere to which protects the interests of the bond holders.
 - ▣ Compliance with the enforcement of Sale Agreement
 - ▣ Compliance with the Trust Agreement
 - ▣ Punctual Payment
 - ▣ Discharge Claims
 - ▣ Compliance with the Law
 - ▣ Arbitrage

Issuer Covenants

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- Covenants Continued:
 - ▣ Rebate of Excess Earnings to the U.S. Treasury
 - ▣ Rebate Fund (in the case of Excess Earnings)
 - ▣ Warranty – Preservation of the rights of the Owners
 - ▣ Further Assurances
 - ▣ Operation of the Facilities in an Efficient and Economical Manner
 - ▣ Against Sales of the Assets
 - ▣ Records and Accounts

Issuer Covenants

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- Covenants Continued:
 - ▣ Collection of Charges (Revenue)
 - ▣ Continuing Disclosure

Issuer Responsibilities

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- Use of the bond funds properly
 - ▣ Capital Purposes
 - ▣ Projects listed, or
 - ▣ Like projects allowed
- Coordinating of project payments or bond draws with the Trustee
 - ▣ Use of the proper form
 - ▣ Proper attachments

Issuer Responsibilities

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- Payment of debt service
 - ▣ Include debt service in the budget
 - ▣ Set up schedules and tickler files for payments
 - ▣ Monitor your cash flows to insure adequate funds are on hand for payment
- Record Keeping
 - ▣ Accurate accounting
 - ▣ Financial Statements
 - ▣ Supporting documents (spreadsheets)

Issuer Responsibilities

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- Insurance Coverage
- Annual Certificates
- Continuing Disclosure

What to look for in a Trustee

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- Staffing
- Location of Offices
- Information Systems
- Experiences in Problem Solving



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Bond Trustee and Agent Services

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TRUSTEE OR AGENT.... BASIC TO COMPLEX ROLES

SIMPLE TO COMPLEX ROLES – LEVELS OF INVOLVEMENT DEPEND ON TYPE OF FINANCING AND SECURITY YOUR BONDHOLDERS 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 including:

- 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, performs fiduciary responsibility in ensuring compliance with the contract including pursuit of remedies in the event of default.



ESSENTIAL FUNCTIONS OF A TRUSTEE

- Maintains the “Security” provisions supporting the bonds issued
- UCC financing statements, credit facilities, surety bond, reserve funds, etc.
- Ensures compliance of covenants and provisions of the Indenture are performed by the Issuer
- Maintenance of projects property insurance, collection and payment of principal and interest, sinking fund provisions, maintenance of required financial ratios, etc.
- If needed – Declaring an Event of Default – Protecting the interests of your bondholders
 - Notices of default and bondholder communications
 - Pursuit of remedial provisions under the indenture
 - Exercise of ownership on collateral held
 - Participation in creditors’ committee
 - Acceleration of bonds

THE TRUST INDENTURE

ESTABLISHES THE ROLE OF THE TRUSTEE

The Corporate Trustee

History and Evolution to Municipal Finance

Trust Indenture Act of 1939

The Trust Indenture is a contract signed by the Issuer and the Trustee. The Indenture serve as the governing document, not the Official Statement.

Three separate sets of contractual rights and obligations are created under the terms of the indenture.

1. Relationship between Trustee and Issuer with a focus on maintaining security interest supporting the bonds being issued/sold
2. Debt obligations issued by City/District/Issuer run directly to the bond holders and not to the Trustee
3. The existence of a “trust” creates and defines a specific contractual relationship between the trustee and the bondholders
 - Trustee is to administer the contract in accordance with the terms of the indenture
 - Subject to restrictions, authority and powers granted only through the indenture

EVENTS OF DEFAULT – LITTLE “D” VERSES BIG “D”

ONCE AN “EVENT OF DEFAULT IS DECLARED, IT SERVES AS A GREEN LIGHT FOR THE TRUSTEE TO PURSUE REMEDIAL PROVISIONS AVAILABLE UNDER THE INDENTURE.

As dictated under the Indenture, should certain events or covenants be broken by the Issuer a lower case “default” will ripen into an “Event of Default”, when/if:

1. No grace period to cure the event exists such as;
 - An immediate Default is applicable upon any default in payment of principal and interest of the bonds when due, or via a missed sinking fund installment
 - The filing of Bankruptcy by the Obligor

2. Default turns into an Event of Default if any grace period allowed under the Indenture or through the trustee has in turn expired such as:
 - Failing to timely deposit with the Trustee an installment of principal or interest payments owed.
 - Failure to discharge a prior lien or senior obligations.
 - A breach of any covenant after a stated period as noticed by the Trustee.

ADMINISTRATIVE DUTIES OF A TRUSTEE

YOUR TYPICAL INTERACTION WITH THE TRUSTEE – PRE-DEFAULT - WHAT THE TRUSTEE DOES FOR YOU!

Construction fund accounting; manage cash flows and the payment of requisitions as you build your project

Administer all funds established under the Indenture

Debt Service billing and collection of revenues or payments for eventual payment of principal and interest to bondholders

Custodian/safekeeping agent of bond proceeds and investments

Serves as compliance manager

- Does your Surety Bond still meet the Reserve Requirement?
- Is your Guaranteed Investment Contract (GIC) still a permitted investment?
- Is your project insured – in case of disaster, how will bond holders be paid?



THOUGHTS & QUESTIONS ABOUT YOUR TRUSTEE

Many parties move on after the closing. The Issuer and Trustee are actively involved for the life of the bond

This long term relationship should begin prior to the closing and early 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 or 30 years?

What tools, resources or expertise does my trustee have which might assist me with what I need??

- Investments
- Imaging
- On-line Communication Tools

The Trustee performs administrative functions which will directly reflect on the City/Agency and our bondholders. How am I selecting my trustee (my 30 year partner?)

- Expertise, Commitment, Price

IDENTIFY THE RIGHT TRUSTEE OR AGENT....

BEYOND PRICE – WHAT TO LOOK FOR IN THE INSTITUTION AND THE INDIVIDUAL PROFESSIONALS

TRUSTEE SERVICES ARE SPECIALIZED, NOT ALL BANKS DO THIS ANYMORE:

- A review of conflicts of interest?

COMMITMENT LEVEL OF THE BANK OR TRUST COMPANY

- Systems and resources utilized by the front and back office
- Ability to attract talented trust professionals

YOU PAY THE TRUSTEE 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
- Sharing of knowledge related to covenant requirements
- Ensure correct timing and delivery of statements – electronic or hard copy
- Share your specific timing requirements and needs to help you succeed in timely payment or delivery



KEY QUESTIONS WHEN CONSIDERING A TRUSTEE

- Financial Strength
- Corporate Trust – Core Business
- Experienced, Dedicated Corporate Trust Team



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