



On-Going Debt Administration Before the Closing and After the Sale

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Living with an Issue: On-Going Debt Administration
April 10, 2008
Burlingame, CA

Introduction - Before the Closing, and After the Sale

- Your duties are determined by the documents, the structure, and the terms of your financing.
- What are you undertaking and committing to perform for the next 20-30 years, in order to fund this project through the issuance of Bonds.
- Specific “Pre-Closing” and “Post Closing” responsibilities and duties to monitor in your role as an issuer.
 - Preparation for the Sale and Closing
 - **The Indenture of Trust-**
Discussion of Key Operational Elements Pre & Post Closing
 - Specific ongoing duties post sale only
 - Case studies including Land Based financing

Preparation for the Sale and Closing- “Money & Securities on the move”

- Plan for specific responsibilities as issuer, leading up to the closing day process:
 - Have you designated a closing coordinator to serve as primary contact with counsel & bankers?
 - Where are the Bond Proceeds going- wire to Trustee or Issuer?
 - Is an issuer representative expected at the pre-closing/closing?
 - Final reports/documentation/certificates of issuer required to close?
 - Pre-delivery by Bond Counsel of draft of documents prior to execution for internal review.
 - Ensure your authorized representatives are available to:
 - Execute Documents
 - Schedule meetings to have documents signed
 - Don't wait until the last minute
 - Notary or Government agency official seals

Document Review, Administration & Organization

- ◆ Document Review & Understanding...Before we get to the Pre-Closing date:
 - What are we getting into...understand the type of financing structure & its impact.
 - Process begins from the initial “kick-off” meeting with advisors, bankers, and counsel.
 - Be Proactive; Be Engaged; Be Tenacious
 - Once signed, it’s just you (issuer), trustee & the documents...seek discussion from all parties.
 - Make the documents work for you, not you working for the documents.

The Indenture of Trust and supporting governing documents

A Discussion of Key Operational Elements - Pre & Post Closing

- ◆ Trust Accounts and accounting functions
- ◆ The Investment of Bond Proceeds
- ◆ Flow of Funds
 - Disbursements of Bond Proceeds and monitoring of Project Fund
- ◆ Flow of Funds - Paying it back
 - Debt Service provision Fixed vs. Variable
- ◆ Credit Provisions
- ◆ Covenants and Representations
- ◆ Tax Implications
- ◆ Continuing Disclosure Rating Agencies and your Bondholders

Trust Accounts - It's your accounting process...ensure all appropriate trust accounts are considered & established

- pre-closing activities

- Construction Fund (s)
- Cost of Issuance Fund
- Capitalized Interest Fund
- Reserve Fund
- Rebate Fund
- Debt Service Funds (principal & interest)
 - One fund for Parity debt?
 - Separate Funds per Series?
- Transferred Proceeds (from prior bond issue)

Accounting Functions-

Ensure consistency with practice & documents related to accounting process- Pre-closing

- Once signed...the Indenture rules.
- Establish interactions with internal accounting staff & systems - work with your accounting staff for input prior to closing.
- Establish interface with internal accounting systems, software, or spreadsheets to track activity from trust accounts held with trustee.
 - Internal accounting transfers & entries into accounting systems.
- Establish through your trustee for on-line access to reports.

The Investment of Bond Proceeds-

Pre-closing activities

- Document review-ensure permitted invested language is appropriate & in line with your policy.
- Logistics required to provide investment direction to trustee.
- Obtain projected cash flow & encumbrance schedules from project managers.
- Establish money market sweep accounts, investments agreements or LAIF as needed.
- Develop process to monitor balances & investments held in trust accounts.

Investment of Bond Proceeds- Post-Closing activities

- **Principles of good investment management & an understanding of inherent risks in investing bond proceeds is critical.**
 - Establish good guidelines for permitted investment to reduce credit risk- **SAFETY**.
 - Good cash flow estimates mitigate market risk- **LIQUIDITY**.
 - Integration of knowledge of expected & future market conditions with other cash flows to reduce opportunity risk- **YIELD**.
- **Initial investments- generally the “easier part”**
 - ◆ Project cash flows
 - ◆ Capitalization Interest
 - ◆ Debt Service Reserve Fund
 - ◆ Cost of Issuance
- **Ongoing reinvestment- generally the “really hard part”**
 - ◆ Use the cash flow expectations vs. reality
 - ◆ Active monitoring of construction or project fund activities & schedules.
 - ◆ Develop process to monitor & make reinvestment decisions.

Investment of Bond Proceeds - Continuous Investment Oversight Post-Closing

- On-line access available- use it for all.
- Interest postings, appropriate transfers, & credits to proper accounts by trustee.
- Tracking transactions or trades subject to fees.
- Mark to market requirements of Investment Agreements.
- Investment Agreement Provider credit rating & subsequent collateral requirements.

Flow of Funds - Spending Bond Proceeds & Paying it Back

- **Pre-Closing:** Understand the Flow of Funds & earnings disposition.
 - ◆ Interest earning during & after construction period.
 - ◆ What to do with unspent proceeds.
 - ◆ Reserve Fund excess or earnings.
 - ◆ Valuation dates
- **Post-Closing:** Debt Management Accounting Activities.
 - ◆ Tracking of revenue necessary for debt service.
 - ◆ Review & monitoring of trustee reports & transfer of funds by trustee.
 - ◆ Internal accounting transfers & entries into system.

Disbursement of Bond Proceeds from the Construction or Cost of Issuance Fund-Pre-Closing

- Establish procedures for disbursement of bond proceeds & train staff in process required.
 - ◆ Project Staff
 - ◆ Finance Staff
- Understand eligible expenditures.
 - ◆ Working capital limits
 - ◆ Private activity limits/restrictions
 - ◆ Use of proceeds

Disbursement of Bond Proceeds from the Construction or Cost of Issuance Fund- Post-Closing

- Understand & account for requirements of the trustee to effect disbursements-factor into process for procedure & timing.
- Trustee to pay contractors directly or reimburse the issuer?
 - ◆ If reimbursement, incoming wire to issuer.
- Requisition process requirements
 - ◆ Sufficient detail to show qualified expenditures.
 - ◆ Accuracy of expenditures & requisitions.
 - ◆ Authorized approvers of requisitions per bond documents.
- Liquidity of investments in construction fund
- Monitor security maturities
 - ◆ LAIF – rolling 30 days draw window.
- Accounting activities of payments in financial accounting systems.
- Record retention requirements different from “normal” accounts payable.

Bond Project Monitoring- Post-Closing (approximately first three years)

- Active involvement with project staff
 - ◆ Regular conversations
 - ◆ Ongoing understanding of current & future capital needs
- Review of project encumbrance & expenditure needs
- Understand effect of projects delays
 - ◆ Implications for timely commencement of debt service.
 - ◆ Develop contingency plan if significant project delays.
- Project Completion certification due to trustee & others.

Cost of Issuance Fund- Payment for services to your Bond financing team

*Pre & Post- Closing Activities

- Maintain liquidity of assets for quick spend down
 - ◆ Estimate cost of issuance & approve invoices for financing team.
 - ◆ Monitor & “close out” COI when all funds have been disbursed.

Budgets Actions- You've got to pay it back ! - pre-closing activities

- Coordination of annual budget actions necessary to appropriate debt service & related payments.
- Who in your organization is responsible for debt repayment activities
 - ◆ Verifying debt service payments
- Making debt Service Payments/transfer to trustee
- Timing requirements needs to ensure timely payment in accordance with Indenture.

Budget Actions

Preparation & Monitoring- post-closing activities

- Budget for all costs
- Annual Budgeting for debt service
 - ◆ Budget documents must provide documentation of annual budget & appropriation of debt service payments.
 - ◆ Setting of rates & chargers
- Budgeting for variable rate debt vs. fixed rate debt
- Gross vs. Net Debt Service
- Process for “cleaning out” debt service accounts at issuer level
 - ◆ How are reserve funds earnings treated
 - ◆ Don't let funds accumulate
 - ◆ May become or have tax/rebate ramifications.

Debt Service Payments- key operational requirements- post- closing

- Identify responsible unit (s) for debt service activities
- Require trustee or paying agent to send debt service invoice.
 - ◆ Always verify amounts payable
 - ◆ Verify any earnings credit received
- Ensure sufficient time for internal wire/check processing back to trustee.
- Work with investment/cash management staff, debt service critical component of any cash flow analysis.

Bond Call/Redemption Management- Post-Closing Activities

- Follow required provisions in Indenture- your bondholders expect it.
 - ◆ Mandatory redemptions
 - Sinking Funds on Term Bonds
 - Prepayments triggering mandatory redemptions
 - ◆ Optional redemptions
 - ◆ Extraordinary Redemptions
 - ◆ Bond call Notice requirements
- Track the source of funds used for bond calls.
- Principal reduction ramifications- consider impact on...
 - ◆ Reserve requirement- Reduction?
 - ◆ Principal used as basis for administrative invoices by providers- Fees based upon principal outstanding?

Document Review- Understand the Debt Service Provisions, Structure & Terms - Pre-Closing

- What are Your debt service payable & payment dates?
- What is the direct payment source to the bondholders.
- Variable vs. Fixed Rate...impact on your processes.
 - ◆ When does credit enhancement (LOC) expire?
 - ◆ How & when do you receive invoices for debt service from the trustee, also remarketing agent & LOC fees.
 - Communicate time frame requirements with providers to ensure prompt & proper payment.
 - Review all invoices for accuracy.

Credit & Liquidity Provider Administration- Post- Closing

- Ultimate Credit- determines ratings & cost of borrowing
- Bond insurance premiums
 - ◆ Upfront vs. periodic payments
- Prompt payment of invoices for Liquidity Facilities
- Track expiration dates
 - ◆ LOC expiration 3-5 years typical
 - ◆ Commitment Expiration
 - ◆ Statement Amount expiration dates
- Research extension terms & fees to current market conditions; take into account internal costs.
- Remarketing Agent/Broker Dealer/CP Dealer- all key players
- Plan for contingencies- Mandatory or Optional Tenders or “a failed remarketing.”

Document Review- Covenants & Representations on you as Issuer- Pre-Closing

- Similar Covenants may appear in multiple governing documents - **Be Consistent among documents.**
 - ◆ Issuance of additional debt
 - ◆ Availability of accounting information
 - ◆ Notification of changes in law or regulations
- Pay attention to cure periods for covenant defaults- reasonable & consistent
- Be careful about scope of representation that will be deemed remade & required in the future.
- Speak up; don't agree to reporting deadline or requirement you can't comply with.
 - Is annual reporting date consistent with timeline for completing your CAFR?
 - Are Budget report copies of documents already prepared by your organization?
 - Can you deliver timely insurance policies, or certificates as required under the Loan Agreement?
 - Is debt service budget appropriation readily identifiable in your budget documents?

Covenants & Representations contained in the documents - Ongoing Compliance

*Pre and Post Closing

- Pre- Don't reinvent the wheel with every financing; similar reporting requirements with similar dates are preferred.
- Pre- Keep as simple as possible. Can you use the same compliance reports for multiple parties & requirements?
- Post-Validate all compliance covenants in documents
- Post-Develop internal tickler systems to remind you of requirements.
- Post-Track & verify compliance with covenants

Document Review-

Tax Certificate & Form 8038

Pre-Closing

- Review early in pre-closing process. Ensure consistency.
- Understand the document & ask the questions.
- What is your "Bond Year" & why do you care?
- Do you have annual calculation requirements?
- What representations are being made related to:
 - ◆ Project
 - ◆ Use of Funds
 - ◆ Spend down of proceeds provisions
 - ◆ Yield restrictions

Arbitrage Rebate Compliance Activities - What that Tax Certificate binds you to post-closing

- ◆ Pay attention to requirements agreed to in Tax/Arbitrage Certificate.
- Internal monitoring of rebate compliance & liability
- Recommended annual calculations during construction period
 - Set aside annual rebate liability in rebate fund
 - Allocate out of construction fund
- Paying rebate is not bad, just need to monitor & pay as required.

Document Review- Continuing Disclosure Reporting requirements- Pre-Closing activities

- Designate key contact within organization for disclosure decisions.
- Duties of Obligated Party vs. Dissemination Agent
- Contents of Annual Report
 - ◆ Audits
 - ◆ Updated financial information- make this reasonable & based upon report currently produced in your organization.
- Be aware of stated Material Events Notice requirements contained in the disclosure agreements.
- Prepare to use CPO, or dissemination agent.

On-going Rating Agency and Investor Relations – Post closing

- Develop relationships with ratings analysts and investors
 - ◆ Phone calls
 - ◆ Quarterly newsletters
 - ◆ Investor conferences
 - ◆ Timely dissemination of Material Events
- Make their job easier by providing financials in easy to use formats – coverage calculations and fund balances.

Contract Management Activities – *pre & post closing

- Establish Contract procedures
- Contract tracking
 - ◆ Database of contractors and consultants
- Track payments and Encumbrances
 - ◆ Monitor accuracy of invoices
 - ◆ Professional services vs. reimbursable expenses
 - ◆ Encumbrances for contracts
- Contract payment process related to construction payments
- Internal accounts payable vs. trustee payments from project fund.

Record Retention requirements- post closing

- Establish record retention requirements and procedures
- IRS record retention requirements
 - ◆ Term of Bond + 3 years
 - ◆ Types of records
- IRS website :
www.irs.gov/taxexemptbond/index.html

Annual Audit Activities

post – closing

- Get CAFR in electronic form for Annual Disclosure requirements
 - ◆ Make it a requirement of your auditor
- Work closely with accounting staff
 - ◆ Prepare appropriate notes to financial statements
- Keep data centralized
- Maintain report consistency in all financial and budget reports.
- Keep good records on source of data and calculation methods.

A specific look at differences in financing structures, and the net effect on your approach to pre and post closing activities

- Land based Financing
- Revenue bonds
- Certificates of Participation
- General Obligation Bonds

Land Based Financing characteristics - Pre-closing activities

- Development of appropriate Assessment Formula or Special Tax Formula
- Appropriate Covenants
- Accounts and flow of funds
- Construction reimbursement process
- Identification of roles and responsibilities, and maintaining information
- Do you need to hire staff and/or consultants, and purchase software?

Land Based Financing – Special Items – post closing activities

- Prepare an annual timeline
 - ◆ Trigger dates for CFD tax categories
 - ◆ Reporting due dates (eg. R&T 163, CDIAC, SB 165, Disclosure, Arbitrage, etc...)
 - ◆ Foreclosure covenant
 - ◆ County level submittal due dates
 - ◆ Federal and State Compliance due dates

Land Based Financing – Special Items - post closing

- Monitoring parcels and parcel usage as well as land use changes
- Analyzing and monitoring funds
- Delinquency management (hot current topic)
- Judicial foreclosure process (lawsuit, not regular foreclosure)
- Customer service/information flow to public and property owners

Case Studies

- Land Based Financing – Case study
- Revenue Bond Financing – Case study
- Certificates of Participation Financing – Case study
- General Obligation Bonds Financing – Case study

Summary of Pre-Closing and Post Closing duties and Expectations

- ◆ Understand the deal structure and terms.
- ◆ Read and understand the documents and comment as necessary before they are signed.
- ◆ Governing Documents rule once bonds are issued.
- ◆ Immediate identification and Organization of your duties post closing.
- ◆ Communication with all parties, both internal and external is key to success.