



35th Annual Airport Law Workshop

Session #15

DEBT AND BOND FINANCING OF AIRPORT PROJECTS

Brian J. Gallucci
PFM Financial Advisors

David Y. Bannard
Kaplan Kirsch & Rockwell

OVERVIEW – BRINGING BONDS TO MARKET

1. Bond Basics – The Straight and Skinny about Bonds
2. Legal principles
3. Structuring – how (and why) do we put this together?
4. Disclosure
5. Credit and marketing
6. Private placements vs. public offering



1 BOND BASICS

Everything you wanted to know,
but were afraid to ask...

BOND BASICS

- Bonds are a loan – a promise to pay from identified revenues
 - Pledge of specified funds
 - Single borrower, generally multiple lenders
 - Trustee = lenders' representative
- Airport bonds = revenue bonds
- State law governs bond issuance
- Federal law controls federal tax exemption
- Federal securities laws govern disclosure



WHY BONDS?

- Bonds allow for asset/liability matching
 - Repayment terms matched to the assets' lives
 - Users pay the capital cost as they use them
- With tax exemption provides low cost of capital
- The market – including rating agencies, investors, SEC and IRS – monitors financial management and long-term focus

BOND INDENTURE

- A critical airport agreement – you need to know it!
- Pledge: specified revenues
 - What revenues are pledged or excluded?
 - Using PFCs
 - Interaction with Use and Lease Agreement
- Covenants, e.g.,
 - Coverage tests
 - Additional bond tests
 - Maintenance of assets
- Additional bonds test
- Restrictions on amendment

BOND PURCHASE AGREEMENT

- A “P&S” for bonds
- Conditions precedent to closing
 - “Roadmap” of required documents and conditions
 - Attached forms of opinions
 - “Outs” for underwriters
- Specifies primary terms
- Arm’s length transaction
- Letter of representations in conduit financing

TAX AGREEMENT

- Required for tax opinion
- Memorializes tax analysis
- Sets forth continuing and future obligations
- Finance and legal staff need to understand these requirements
 - Translate from the legalese
 - Template for annual compliance checklist



2

LEGAL PRINCIPLES

The trinity of regulation

AUTHORITY TO ISSUE BONDS

- State law question
- Typically interpreted narrowly
- Must demonstrate compliance with requirements
- Pledge requirements/limits
- Additional UCC requirements, if any
- Every state has its quirks!

FEDERAL SECURITIES LAWS

- What is a “security”?
- SEC’s limited power to regulate municipal bonds
- Rule 10b-5
 - Materiality
 - Responsibilities of issuers and others
 - Applies to all statements to “the Market”
- Rule 15c2-12
 - Primary disclosure – the Official Statement
 - Secondary disclosure
 - Annual filings
 - Event filings

FEDERAL TAX LAW

- Governmental bonds (Non-AMT)
- Private activity bonds (AMT)
 - Airport facilities – what qualifies?
 - TEFRA?
- Taxable bonds
 - Non-exempt facilities
- Ongoing compliance requirements
 - Rebate and spending
 - Private use and changes in use
 - Audits and retaining records





3

STRUCTURING THE DEAL

Addressing the issuer's needs and investor concerns. What are the variables?

THE PLEDGE

- Clear, carefully drafted definition
- Airports typically pledge revenues, not unlimited taxes (“GOs”)
- Does pledge work with your Use and Lease Agreement?
- Revenues pledged
 - General airport revenue bonds (“GARBs”)
 - Exclusions often as important as pledge; e.g., PFCs or CFCs
 - Senior and subordinate liens
 - “Offsets” such as PFCs
 - Special facilities: limited source
 - Well suited for facility financing

INTEREST RATE

- Fixed rate is most prevalent
- Variable rates more flexible, but increase risk
 - Often require additional security
 - Interest rate reset periodically
 - May be tied to external index – beware the death of LIBOR!
 - Can be paired with swaps
- Taxable bonds becoming more popular
 - Less on-going compliance issues
 - Larger world-wide market
 - Higher rates?

OTHER CONSIDERATIONS

- Refunding vs. New Money
- Amortization and call options
- Derivatives
- Reinvestment of bonds proceeds and structured investment products
- Bond insurance



4 DISCLOSURE

Impact of Federal Securities Laws –
Speaking to The Market must be
done with care

OFFICIAL STATEMENT

- Describes the issuer, the bonds, and security
- Issuer's document
- No material misstatement or omission
- “Expertised” portions
 - Audited financial statements
 - Report of the Airport Consultant
 - Market study
- Risk factors

REPORT OF THE AIRPORT CONSULTANT

- Expert's report
- Often required for additional bonds
- “Forward looking disclosure”
- Projects revenues and expenses into the future

CONTINUING DISCLOSURE

- Underwriter's requirement under Rule 15c2-12
- Creates Issuer obligations:
 - Annual filing
 - Financial information
 - Operational data from OS
 - Event notices
 - Disclosure within 10 days
 - Internal reporting critical
 - New reportable events
 - Other material "debt-like" obligations and terms
 - Evidence of "financial difficulties"



5

CREDIT AND MARKETING

Selling your debt to The Market

CREDIT RATINGS AND THE RATING AGENCIES

- Credit ratings of Rating Agencies represent an “expert opinion” on the issuer’s ability to repay its debt
- Investors increasingly form their own credit assessments
- Credit ratings can have a substantial impact on pricing
- Changes in the credit rating can greatly shift investor sentiment



RATING PRESENTATIONS

- During a transaction, issuers generally get “one shot” to present their credit to the rating agencies
- Rating agencies rely upon available information to formulate their opinion, but the rating presentation is a chance for the issuer to tell the story
- A lead analyst and backup analysts are responsible for the review, but the rating is ultimately assigned by a Committee



MARKETING BONDS TO INVESTORS

- Traditionally, most of the communication with investors is through the underwriter and the sales team
- Timing limited by the release of the POS
- Investors now seeking direct access to issuers:
 - Online investor presentations or “Net Road Shows”
 - Investor Luncheons
 - Physical Roadshows
 - One-on-one calls and meetings
 - Advertisements, radio spots

INVESTORS

- Ultimate buyers
- Individuals to large funds and banks
 - Bond (mutual) funds and asset managers
 - Insurance companies
 - Hedge funds and arbitrage investors
- They have the money, and lend it to the issuer
- They want their money back, with interest
 - Greater emphasis on credit quality than returns
 - Rely on ratings but do own credit analysis
- They want to know what's going on – disclosure is key
 - Prompt
 - Accurate



6

PRIVATE PLACEMENT & DIRECT PURCHASES

What changes when you are not
selling to The Market?

PUBLIC OFFERING vs. DIRECT PLACEMENT

- Public offering most typical
 - Requires Official Statement
 - Generally a sale through underwriter
 - Underwriters purchase bonds for resale
- Direct placements very popular after market crash
 - Often a single purchaser
 - No OS or ratings
 - Now regulated by 15c2-12
 - May be a loan or a security
 - Proposed amendment to muni advisor rules

KEY DIFFERENCES FROM PUBLIC OFFERING

- May be different issuance or sale requirements
- No OS; ad hoc disclosure
- Different securities law analysis
- Need for Investor's Letter
- Tax law still applicable
- Flexible, customized structuring
 - Continuing covenants?
 - Draw down structure?
- Often RFP process for bids

WRAP UP & QUESTIONS

Brian Gallucci
galluccib@pfm.com

Dave Bannard
dbannard@kaplankirsch.com

