



Daniel M. Deaton
Partner
Nixon Peabody LLP

Getting it Right: Bond Documents

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Overview

- Getting a transaction itself right
 - › Rate Covenant
 - › Amendment provisions
 - › Defeasance provisions
 - › Swap Agreements
- Getting a transaction right for future transactions
 - › Rate Covenant
 - › Additional Bonds Test
 - › Amendment Provisions
 - › Credit and Liquidity Facilities
 - › Swap Agreements

Getting the Transaction Itself Right

- Rate Covenant
 - › How is the definition of operating and maintenance expenses drafted?
 - Too narrow?
 - Too broad?
 - › How is debt service defined?
 - Variable rate debt
 - Commercial paper
 - Credit or liquidity expenses
 - Swap Agreements

Getting the Transaction Itself Right

(Continued)

- Amendment Provisions
 - › How easy is it to amend the bond documents?
 - Should be able to make amendments that do not materially adversely impact the bondholders without their consent
 - Can credit provider consent in lieu of bondholders?
 - › Are there procedural difficulties?
 - Legal opinions that are difficult to deliver?
 - Ambiguous standards that would make trustees uncomfortable?

Getting the Transaction Itself Right

(Continued)

- Defeasance Provisions
 - › Is it clear how to defease the bonds?
 - Although usually pretty technical, it is really important for refundings
 - What to look for?
 - What are the permitted defeasance investments?
 - What are the procedural requirements for defeasance?

Getting the Transaction Itself Right

(Continued)

- Swap Agreements
 - › Complicated, but essential for the Port to understand
 - How well does it hedge the variable rate debt?
 - What are the additional termination events?
 - What are the collateralization requirements?
 - What is the security and source of payment for regularly scheduled payments and for termination payments?
 - › Swap counterparty
 - How exposed is the Port to a given swap counterparty?
 - Optional termination right?

Getting a Transaction Right for Future Transactions

- Rate Covenant
 - › When I am agreeing to a rate covenant:
 - How are future bond issuances affected?
 - Variable rate debt?
 - Optional and mandatory tenders?
 - Swap Agreements?
 - How are future (or existing) commercial paper programs affected?
 - Commercial paper actually matures

Getting a Transaction Right for Future Transactions (Continued)

- Additional Bonds Test
 - › When I am agreeing to an additional bonds test:
 - How are future bond issuances affected?
 - Variable rate debt?
 - Optional and mandatory tenders?
 - Balloon Indebtedness?
 - Swap Agreements?
 - How are future (or existing) commercial paper programs affected?
 - What are the principal and interest payment assumptions?

Getting a Transaction Right for Future Transactions (Continued)

- Amendment provisions
 - › Does the Port have sufficient flexibility to issue additional bonds in the future?
 - Who consent is required?
 - What procedural limitations are there?

Getting a Transaction Right for Future Transactions (Continued)

- Credit and Liquidity Facilities
 - › Cross-Default risk
 - Events of Default
 - Covenants
 - Representations and Warranties
 - › Acceleration risk
 - What margin is there for the Port if an event of default occurs?
 - What chain reaction occurs?
 - › “Most Favored Nations” Clauses

Getting a Transaction Right for Future Transactions (Continued)

- Swap Agreements
 - › How do the terms of swap agreements affect the future issuances of bonds and commercial paper notes?
 - › Does the swap agreement leave open the ability to secure future swap agreements with the same security and source of payment?
 - › What consent rights do swap counterparties have over future issuances of bonds or commercial paper notes?
 - › What future events trigger termination events under the swap agreement?