Getting it Right:
Bond Documents
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
• 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
• 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?
• 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
• 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?