

Closing Logistics

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The Essentials

APRIL 19–21, 2023

Poll Question

How many closings have you participated in?

- a) Fewer than 10
- b) 10–20
- c) More than 20

Poll Question

What kind of closings do you work on?

- a) General obligation financings by issuer
- b) Dedicated revenue financings by issuer (revenues pledge)
- c) Conduit financings (real estate + revenues pledge)
- d) Conduit financings (revenues pledge only)
- e) Tax increment / special assessment financings

Poll Question

What methods of sale are you familiar with?

- a) Public sale at competitive bid
- b) Negotiated underwriting
- c) Private placement/direct purchase

Objectives & Topics

Objective: Answer as many questions as possible!

Topics

- What is a Closing?
- Basic Timeline
- Sources of Closing Requirements
- Closing Deliverables
- Registration Requirement, DTC and CUSIPs
- Types of Closings
- Preparing for Pre-Closing
- Pre-Closing
- Practical Advice

What is a “Closing”?

- A “Bond Closing” or “Closing” means the date upon which the bonds are initially issued and delivered in exchange for the proceeds representing the total purchase price of the bonds (or the initial advance in the case of a draw-down bond) paid by the underwriter or original purchaser thereof.
- A closing involves the formal transfer of funds from the lender/investor to the issuer/borrower in exchange for the bonds, notes or other obligations evidencing repayment. The closing is the legal consummation of the financing transaction and the beginning of the issuer/borrower’s legal obligations to repay the lender/investor.
- How do you get there? A lot of work:
 - Document preparation
 - Issuer and host (and maybe other) approval meetings
 - Rating(s) (maybe), marketing (maybe), and sale of bonds (or commitment to buy bonds)
 - Conditions precedent
 - Document sign-offs and signatures
 - Pre-closing
 - Closing

Basic Timeline

Issuer/borrower identifies capital project or other financing needs or refunding purpose

Professionals engaged (bond counsel, underwriter(s), financial/municipal advisor, etc.)

Issuer process established

RFP / offering documents (with notice of sale or terms of proposal) prepared

Term sheet (if needed)

Documentation drafted

Governmental/borrower approvals

Rating process (if needed)

Pricing

BPA / award of sale

Offering document circulated (if applicable)

Pre-closing

Closing

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APRIL 19–21, 2023

Sources of Closing Requirements

- **State Law and Policy**
 - Issuer's authorizing statute
 - Statutes related to issuer, debt or taxing powers
 - Issuer organizing documents
 - Issuer policies
- **Authorizing Documents and Prior Documents**
 - Conditions to issuance
 - Financial tests
 - Notice requirements
- **Federal Tax and Securities Laws**
- **Real Estate**
- **Bond Documents (including BPA)**
 - Trustee requirements
 - UW / lender requirements
 - Bond counsel requirements
- **Credit Provider Agreements**
 - Credit / liquidity provider's requirements
 - Bond insurance requirements
- **Custom**
- **DTC**

Closing Deliverables

Basic documents

- Bonds, notes, indenture, loan agreement, offering documents, BPA, CDA, CCA, etc.

Conditions to closing

- Registration / authentication
- Security documents

Closing certificates (including certified copies of enabling legislation) and receipts

- Issuer, borrower, trustee, financial/municipal advisor, underwriter, etc.

Legal opinions and 10b-5 letters

- Bond counsel approving/supplemental opinions, borrower's counsel opinion, 10b-5 letters, other opinions

Pricing and underwriting documents

- Rule 15c2-12 certificate, issue price certificate, consents, rating letters, final pricing numbers, closing wires, investor letters, comfort letters, etc.

Closing Deliverables

Tax matters

- IRS Form 8038(-G), tax certificate, TEFRA, post issuance compliance policies, supplier certificates

Bond insurance documents

- Actual policies, certificates, opinions

Real estate documents

- Settlement statement, title policy, affidavits, deeds, leases, surveys, appraisals, environmental reports

Refundings

- Payoff letters, verification reports, escrow agreements or letters of instruction, notices of redemption, releases

Other

- Closing memo, UCCs, insurance, bring-downs, third party documents (auditors, consultants, engineers)

Requisitions

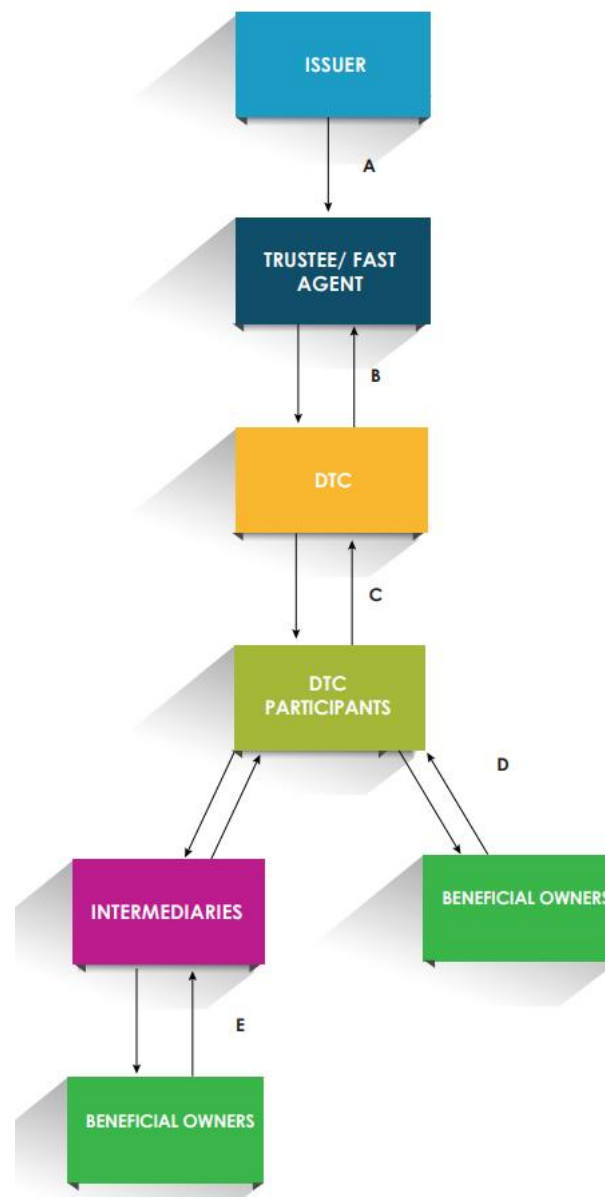
- Costs of issuance (with invoices), project fund, etc.

Registration Requirement System and DTC

- Section 149(a) of the Internal Revenue Code generally requires bonds to be registered in order to be tax-exempt
 - Two acceptable systems:
 1. Certificate system (obligations registered with the issuer or its agent/trustee and transfers go through the same) – *Private placements/direct purchase bonds*
 2. Book-entry system (ownership is reflected in a book entry) – *Publicly offered bonds*
 - Tax-exempt bonds generally cannot be in “bearer” form

DTC

- The Depository Trust Company (DTC)
 - The clearing house was created in 1973 to eliminate logistical and paperwork problems associated with the physical trading of high volumes of securities.
- For bonds to be held by DTC, they must meet the requirements of DTC's *Operational Arrangements – security standards, transfers and record dates, redemptions, notice, etc.*
 - Sections in bond resolution / indenture and offering documents
 - Issuer Blanket Letter of Representations (BLOR)
- FAST – Fast Automated Securities Transfer – program
 - An agent properly registered with DTC as a “FAST Agent” (i.e., the trustee) can take physical delivery of the bonds at closing and hold them on behalf of DTC.
 - Eliminated physical transfer of bonds to DTC.



A - The bonds are registered in the name of "Cede & Co" as nominee for DTC and is held by the Trustee/ FAST Agent.

B - The Trustee/FAST Agent holds the bonds in custody for DTC. The bond is registered in the name of "Cede & Co" as nominee for DTC.

C - DTC allocate positions for the bonds to the DTC Participants. DTC deals directly with the DTC Participants.

D - If a Beneficial Owner is a customer of a Participant, the Participant may be able to identify the Beneficial Owner.

E - If there are one or more Intermediaries between the Participants and the Beneficial Owners, the final Intermediary(ies) may be able to identify the Beneficial Owners.

DTC

What actually happens at DTC closing (FAST Agent version)?

- Participant (i.e., the underwriter) notifies DTC of pending issuance and confirms BLOR on file.
- DTC must receive confirmation from FAST Agent it has bonds in hand by 12pm ET on the closing date.
- No later than 1:15pm ET on the closing date, DTC must receive the closing call.
- Time extensions may be available for a fee if DTC is notified before 1pm ET on the closing date.
- If a FAST Agent holds the new securities (physically) on behalf of DTC, the FAST Agent must be present on the closing call to confirm to DTC that the agent holds security certificates aggregating the par amount reported to DTC by the Participant.
- FAST Agent confirms everything by updating “FRAC” – the Fast Reject and Confirmation system used to track securities held by FAST Agents, including principal balances held by Participants.
- The transaction is reported as closed.
- DTC will credit the Participant’s account and “release” the bonds.

CUSIPs

“Committee on Uniform Securities Identification Procedures”

- DTC’s Operational Requirements require every maturity have a CUSIP number
- CUSIPs are assigned by CUSIP Global Services
- Usually requested by underwriter or financial / municipal advisor
- Included in final offering document and printed on bonds
- Used for continuing disclosure notices, among other things
- Comprised of 9 digits (e.g., 123456 AB 7)
 - First six digits (Base-6)
 - Identifies the issuer (note – an issuer may have one or more CUSIP Base-6 assigned)
 - Next two digits
 - Identifies the type of instrument and the issue within the issuer
 - Final digit
 - Confirmation via a mathematical formula that the previous 8 digits have been verified

Public Sale Closings (Part 1)

Pricing

- Underwriter takes orders (negotiated sale) or bids submitted (sale at competitive bid)
- Pre-pricing call and pricing call (negotiated sale) or award made (sale at competitive bid)
- Finalize and execute BPA (negotiated sale)
- CUSIPs obtained
- Final offering document
- Rule 15c2-12 – To underwriter within 7 business days after pricing
- MSRB Rule G-32 – To MSRB (EMMA website) within one business day of receipt

Updates to all bond documents and closing certificates

Public Sale Closings (Part 2)

DTC

- 10 days before closing – Delivery of the offering document to DTC / confirm BLOR on file
- 7 days before closing – Identify the lead underwriter, CUSIPs, maturities, interest rates and principal amounts

Closing Memorandum

Signature packages

Pre-closing

Wire confirmations

Closing call to release bonds with DTC

Private Placement/Direct Bank Purchase Closing

Interest rate negotiated or locked

Closing date selected

Bond documents and closing certificates finalized

Closing Memorandum

Signature packages

Pre-closing

Wire confirmations

Closing call or email to release bonds to initial purchaser

Closing Differences

What might be different between a private placement / direct bank purchase and a public sale closing?

- One bond vs. multiple (R-1 through R-___)
- Documents (may see bank specific forms)
- Registered in name of purchaser vs. Cede & Co.
- No DTC or CUSIP* or rating
- No offering document (or limited offering memorandum)
- More flexible deadlines
- Investor letters*

* MSRB Rule G-34 – CUSIPs are required for private placements except when, among other circumstances, the underwriter or municipal advisor reasonably believes present intent of purchaser to hold the securities to maturity, earlier redemption or mandatory tender.

Preparing for Pre-Closing

1. Finalizing documents
2. Obtaining signatures
 - i. Timing (some at printing of preliminary offering document, some at or before BPA and others before closing).
 - i. Do signed documents need to go somewhere after bond counsel (e.g., title company for recording)?
 - ii. Signature packages
 - i. Number of originals
 - ii. Signers (authority and availability)
 - iii. Stand-alone pages (generic numbering, no versions, etc.)
 - iii. Electronic or wet ink
 - iv. Notary / courier
 - v. Pages held in “escrow”
3. Obtaining other closing deliverables
 - i. Real estate, closing certificate exhibits, insurance certificates, etc.²⁴

Pre-Closings

- **When?** One to two business days before closing date. For complex transactions, multiple “pre-pre-closing” calls?
- **Why?** ZERO loose ends (missing signatures or closing deliverables). Closing day should be nothing more than wire confirmations and closing call.
- **In-person or virtual?**
 - In-person considerations
 - Printer/copier
 - Other technology
 - Notary
 - Spare room for sidebars
 - Virtual
 - Email or virtual data room

Practical Advice

1. Let the closing index be your guide
2. Do NOT procrastinate
3. Know your resources and deadlines (interoffice, messengers, notaries, FedEx, etc.)
4. Confirm and re-confirm schedules
5. Clear and short communications
 - Signature requests in one email
 - Number of pages
 - Notary or seals
 - Return instructions
 - ✓ PDF
 - ✓ Originals – should be sent by overnight delivery or courier (for tracking purposes)
 - ✓ Deadlines
 - Other requests in a separate email

Practical Advice

1. Manage drafts and versions carefully
2. Check delivery addresses AND CONFIRM people are working at the address (versus from home)
3. Train paralegals and staff (and use them)
4. Don't let your signers go from a physical pre-closing before checking/confirming signature pages!
5. What if...?
 - You don't have a quorum at your issuer approval meeting...
 - The wrong person signed the borrower documents...
 - The authorized signer is on a plane...
 - You discover a legal defect in the TEFRA notice...
 - A lien shows up at the last minute and title company won't insure over it...
 - The return package with the original signed documents goes missing...

Questions

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