NATIONAL FEDERATION OF MUNICIPAL ANALYSTS
Recommended Best Practices in Disclosure for Airport Debt

The National Federation of Municipal Analysts (NFMA) is an organization of nearly 1,000 members, primarily research analysts, who evaluate credit and other risks of municipal securities. These individuals represent, among others, mutual funds, insurance companies, broker/dealers, bond insurers, and rating agencies.

One of the main initiatives of the NFMA is to promote timely and complete disclosure of the financial and operating information needed to assess the credit quality and risk of a municipal debt issue. The NFMA's efforts have ranged from global disclosure-related issues to more detailed, sector-specific work such as these Recommended Best Practices in Disclosure. For further information on the NFMA's continuing work in the area of disclosure, please see the "Disclosure Guidelines" and "Position Statements" on the NFMA's web site at www.nfma.org.

In order to develop our Recommended Best Practices in Disclosure, diverse groups of NFMA analysts worked with non-analyst professionals in each sector to develop "best practices" guidelines for certain market sectors. These Recommended Best Practices are descriptions of the specific information needed to help analysts do their jobs. The NFMA believes that the best practice in disclosure will always be the one that provides a steady flow of timely information from borrowers to the entire market. An initial draft of the Recommended Best Practices was widely circulated, and an industry comment period was used to seek input from interested parties. Subsequent to the comment period, the paper was revised.

Following is the most recent version of the Recommended Best Practices in Disclosure for this sector. This document is not intended to supplant the amendments to Rule 15c2-12, but to be used in conjunction with the guidance provided in these rules and amendments. It is important to note that the NFMA's disclosure efforts are a continuing process. These guidelines are not static documents, and will be revisited and changed as market conditions warrant. We encourage interested parties to submit comments at any time to lgood@nfma.org so that they can be considered in the development of future versions of these Recommended Best Practices in Disclosure.

The NFMA Recommended Best Practices in Disclosure are not intended to be a "one size fits all" recommendation, and all the information requested may not apply to every transaction in the sector. We encourage the providers of information to indicate when a specific item requested in the Recommended Best Practices is not applicable to a specific transaction.

Introduction

The NFMA Airport Bond Disclosure Subcommittee was formed to draft the Recommended Best Practices for the sector. Members of the subcommittee have all been involved in airport financings and include buy side analysts, investment bankers, rating agency analysts, insurance company representatives, financial advisor representatives, and airport consultant representatives.

The following Recommended Best Practices in Disclosure for Airport Debt applies to general airport revenue bonds (GARBs), passenger facility charge supported (PFC) bonds, and special facility revenue bonds. This Recommended Best Practices paper covers the items to be disclosed in the official statement as well as in the continuing disclosure report. This document includes the following sections:

- Management and Governance
- Local Economic Base
- Airport Demand
- Financial Information (including Interest Rate Swaps and Off Balance Sheet Obligations)
- Legal Analysis (or Security for the Bonds)
- Airline Use and Lease Agreements
- Capital Planning and Facilities Design
- Passenger Facility Charge Financings
- Special Facility Supported Financings

Each of the aforementioned sections has an introductory section explaining the importance/relevance of that particular section to the analysis of a GARB, PFC bond, or special facility revenue bond financing. This is intended to provide issuers with the NFMA's rationale for including recommended disclosure items. It also can be used an education tool for analysts wanting to learn more about either GARBs, PFC supported Bonds, or special facility revenue bonds. Each of the sections then has a list of recommended disclosure items.

The above sections "Management and Governance" through "Capital Planning and Facilities Design" primarily pertain to GARB issues. While this Recommended Best Practices paper has separate sections for PFC supported bonds and special facility revenue bonds, recommended disclosure for these sections should incorporate items included in the other sections as appropriate. For example, for a PFC supported bond issue, recommended disclosure items in the "Airport Demand" and "Local Economic Base" section should be incorporated since each would directly impact PFC revenues. As another example, recommended disclosure items for special facility revenue bonds should address items found in the "Capital Planning and Facilities Design" section.

Timing and Distribution of Disclosure

Recommended Best Practices are as follows;

1. Audited Financial Statements and other secondary market disclosure items should be available to interested parties within four months of the end of the issuer's fiscal year end.
2. Any material event notices, including those required under SEC Rule 15c2-12, should be released as soon as practicable after the information becomes available.

To ensure timely publication of disclosure items, issuers are strongly advised to use whatever electronic media are available, such as their own web sites, in addition to dissemination of information to Nationally Recognized Municipal Securities Information Repositories (NRMSIRs). In addition, it is recommended that issuers and/or their representatives respond verbally and/or in writing to bondholders, underwriters, potential investors, or other market participants about credit matters. To the extent that information at the time the response is conveyed is material, efforts should be undertaken to make that information immediately available to the entire market, at a minimum by transmission to all NRMSIRs.

Management and Governance

A description of the entity responsible for governing the airport, its powers and authority and information about both the senior level professionals responsible for managing key elements of the airport's activity and its employee base should be disclosed. There are many different forms of governance for U.S. airports. A description of the governmental entity that owns and operates the airport and the authority from which its powers are derived should be described. While airport operator governing structures can be classified into general categories such as City, County, State Department of Transportation, and Authority, there are many differences among airport operators falling within these categories. Accordingly, it is important for the investor to know who is responsible for setting policy and strategic direction, who oversees the activities of airport employees including the hiring and firing of senior staff, who approves the operating and capital budgets, who approves expenditures, and who oversees and approves the issuance of debt. Investors should be presented with the experience and credentials of those entrusted with the governance of an airport, whether they are in City, State or County government or are members of an independent authority.

The functions of the senior executives responsible for the day-to-day management and operation of the airport should be described and biographical information should be supplied in order to provide the investor with knowledge and comfort about the quality and experience of key personnel. The method of appointment for the Executive Director (who appoints and how the selection is made) should also be described.

Recommended Disclosure Items

Governance

- Year in which governance structure was established.
- Governing authority – charter, statute, law, ordinance etc.
- Description of powers, including acquisition of property, issuance of debt, taxation.
- Insurance and/or indemnification provisions.

If a division, department or enterprise fund of a City or County:

- Description of legislative body, including form of government, number of legislators, description of election process, term of service (including limitations thereon).
- Description of process by which policy is enacted (what constitutes a voting majority).
- Description of City Council /County Board or Commission committee(s) responsible for policy implementation and oversight of airport activities.
- A list of elected and appointed officials including the Mayor or the County Manager and Council or Commission members (optional) with jurisdictional power over the airport enterprise, and senior Airport staff.
- Brief biographical descriptions of key members of City or County staff directly responsible for finance, legal, administrative, security and audit functions at the airport.

If a division, department or enterprise fund of a State:

- A list of elected State officials (Governor, Lieutenant Governor, Treasurer etc.), DOT Commissioners or Authority members and Senior Airport Staff.
- Brief descriptions of Commissioners and/or Authority members, including profession, years of service and expiration of term.
- Role of Commission: advisory or governing.
- Appointment process for members, terms (including limits thereon if any), and eligibility requirements, if any.
- Appointment process including eligibility requirements, if any.
- Compensation (or lack thereof) for service.
- Frequency of meetings.

If an Authority:

- Brief biographical descriptions (or table) of authority members, including profession, years of Board service and expiration of term.
- Compensation (or lack thereof) for service.
- Appointment process for members, terms (including limits thereon if any), and eligibility requirements, if any.
- Appointment/election process for Chair and Officers.
- Frequency of Board meetings.

Management

- Organizational description in written and/or chart form setting forth reporting responsibilities.

Biographical descriptions of the principal managerial staff including:

- Name and title.
- Year of appointment or beginning of service
- Job description focusing on areas of supervision.
- Previous related career experience
- Educational degrees
- Relevant organizational memberships.

Employees

- Number of total employees, civil service and other.
- Union representation, including current status of contracts, rights to strike, status of arbitration proceedings, if any.
- Description of how police and fire service is provided.

Continuing Disclosure

- Changes in key staff members.

Local Economic Base

The economic and demographic characteristics of an airport's service area are key factors in the demand for air transportation. This relationship is particularly relevant for airports with a high proportion of origination and destination traffic (O&D), as compared to hubbing or connecting activity. However, the indigenous O&D traffic base of hubs is becoming more critical to understand in light of airline financial weaknesses which may prompt downsizing of dominant carrier activity, or in the worse case the abandonment of hubbing activity. In such cases, the demand for air services critical to attracting replacement service by incumbents, or by new carriers as well as potential new hubbing carriers. O&D traffic is influenced more by the local characteristics of the area served than by the individual air carrier decisions regarding hub and service patterns in support of connecting activity. The success of airports dominated by hubbing operations will be more reliant on airline service decisions and the credit quality of the airline(s) using the airport as a hub, rather than the health of the local economy. The ideal economic base is strong and diversified, and is capable of supporting growth in the demand for air transportation services at an airport over the projection period.

Before the local economy can be assessed, the boundaries of the local area served by the airport must be defined. This service area is commonly referred to as the "Air Trade Area" or "Airport Service Area." The size of an airport's service area can be difficult to assess as it depends upon population density, access, competing airports, and the availability of other transportation modes. The Air Trade Area can be the immediate metropolitan area or can encompass several smaller surrounding metropolitan areas.

To evaluate of the strength of the local economy, both demographics and economic diversity should be analyzed. Generally, those communities with higher wealth and income levels, and diverse economic bases have superior debt repayment capabilities. Further, these areas have a higher probability of generating the enplanement activity needed to support the costs of a capital program. U.S. Census Bureau and Bureau of Economic Analysis Data will provide a demographic snapshot of the air trade area. Historical and projected population growth can help with calculating projected enplanement growth. Per Capita Income is an indicator of an airport's ability to produce traffic and the potential level of discretionary traffic. Unemployment is an indicator of the health of the local economy. Diversity of employment sectors enhances credit quality by providing protection against economic cycles. By identifying diversification trends or structural changes in the economy over time, the future performance of an Air Trade Area can be assessed.

Recommended Disclosure Items

Air Trade Area Description

- Location of other airports in the area (include distance data)
- Identify airports owned and operated by airport operator
- Type of service provided by other airports

- Growth trends at other nearby airports
- Population centers surrounding the airport and the related population densities
- Information regarding highways leading from metropolitan areas to the airport
- Map defining the Air Trade Area

Demographics for the Air Trade Area

- Population.
- Average annual population growth over past ten years, with comparison to State and National average growth.
- Projected population growth.
- Age of population.
- Education levels.
- Labor skills.
- Income statistics (with comparisons to State and National averages), such as Effective Buying Income and the percentage of households in higher income categories.
- Employment statistics (with comparisons to State and National averages), such as civilian labor force and average annual unemployment rates.
- Building permit valuation trend.

Employment

- The largest ten employers
- Employment by industry
- Employment by sector
- Regional patterns of employment growth

For any significant employer in the Air Trade Area the following information should be provided:

- Type of business.
- Number of years serving the area.
- New capital investment related to local facility.
- Location of other facilities.
- Strategic importance of local facility.
- Employee growth over past several years.

Airport Demand

The demand for services provided by an airport plays a key role in determining the ability of an issuer to maintain its debt service payments in a timely manner. Demand also represents a key attribute in assessing the adequacy and appropriateness of an entity's capital improvement program and the sustainability of the revenues derived from its operations. A thorough understanding of airport operations is important in assessing the credit quality of an issuer.

Recommended Disclosure Items

Airline Services

- The airlines serving the airport, broken out into domestic, international and charter. Within the domestic category, the airlines should be further broken out by mainline, low cost, and regional. Within the all-cargo category, the airlines should be broken out by domestic, international, and cargo facility operators.
- Any known plans for an airline to enter or leave the market, or if incentive programs are currently being made to an airline to encourage the airline to serve the airport.
- Brief statement of financial condition of major carrier(s) – may cite SEC documents on file.
- Total number of aircraft gates/hardstand positions available / in use, broken out by jet gates, regional aircraft gates, and international gates. The aircraft gate should be described by type of lease provision (exclusive/preferential/common), whether they serve narrow body or wide body and the average number of turns/gate.
- Number of domestic and international cities served on a non-stop basis. Indicate any known additions/deletions to service, including start dates.
- List of top 20 city-pairs including the following: number of daily departures, total number of available seats, average load factor, and largest carrier for that city-pair.
- A discussion of the airport's competitive position relative to other airports in terms of fares, operating costs, and capacity constraints/capital programs. Other airports in the market area or within driving distance of the market area should be described. For a hub airport, competition for transfer traffic posed by other airports across the country and the role of the hub (i.e. – national/regional transfer point and status of the airport in the leading carrier's network) should be discussed. Further, other modes of transportation (i.e. rail and highways) for the service area and any plans for these airports or modes to enhance their competitive position should be disclosed.

For the following information, five years of historical data should be included:

- Airline market share, based on enplanements, for at least the five leading carriers serving the airport.
- Total enplanements at the airport, with subsets for domestic/international, originating/hubbing, and mainline/low cost/regional carrier activity.

- Average number of daily departures.
- Average one-way fare.
- The airport's overall average load factor.
- Landed weight – by leading airlines.
- Number of operations.
- Cargo activity at the airport (in tons), broken out by belly cargo and all cargo carriers.

Other Aviation Related Services

- Customs/FIS facilities and their capacity per hour
- Number of ticket counters in use by airline
- Number of security check points, by terminal and average wait time
- Fuel distribution system and charges for fuel

Automobile Parking

- Indicate whether the airport operates the facility or if it is contracted out to a private firm. If privately operated, indicate the length of contract, termination provisions, and the frequency at which parking revenues are transferred to the airport (daily, monthly, other).
- Total number of spaces, broken out to show terminal spaces, remote/economy spaces, and garage/open air spaces.
- Number of short term and long term spaces.
- Number of spaces impacted by TSA-imposed perimeter rule, if any.
- Any planned increase in spaces/temporary loss of spaces.
- Off-airport competition.

If available, a five-year history of:

- Daily average number of cars parked.
- Occupancy ratios.
- Average duration of stay.
- Average charge.
- Schedule of rates by lot/type – including information on the last rate increase.

Rental Car Activity

- A list of all on-airport, as well as, off-airport operators.

If available, a five-year history of (only for car rental facility charge secured bonds):

- Annual average number of rental cars available.
- Daily average number of cars rented.
- Overall average length of rental contract.
- Average cost of rental.

Concessions

- Number of concession spaces and square footage, by terminal (before and after security) and by retail activity (food and beverage, newsstand, duty free, and other).
- Location (pre and post security).
- Contracts- length and payment formula, including MAG (minimum annual guarantee).
- Overall sales per square foot.
- Largest by revenues (% of total).
- If contracted out to private manager, length of contract and termination provisions.

Future Demand *(may be provided by an airport consultant)*

- A concise description of underlying economic assumptions used in the preparation of the base-case forecast. This should include any factors limiting/favoring growth at the airport including known additions/reductions in airline service, planned capital improvements, capacity constraints, air traffic control constraints, and the airport's future ability to expand.
- Discussion of how capital improvements may impact the mix of airlines serving the airport.
- Projection of how capital improvements may impact demand for other services at the airport, such as parking, concessions, rental car usage, or other airport real estate activity.
- A sensitivity analysis showing the impact of a significant decline in passenger activity related to an economic event or the loss of a major hubbing airline would have on airport financial operations.

At minimum a five-year projection, with a ten year projection preferred of the following:

- Total enplanements, with subsets for domestic/international, originating/hubbing, and mainline/low cost/regional carrier activity.
- Landed weight, including all cargo.

Continuing Disclosure

- Airports should update all of the statistical material listed above on an annual basis.
- Any changes in carriers serving the airport.

- Any cities where service has been added or eliminated.
- A comparison of actual results to forecast.
- Upon an update of the forecast, disclose the changes in assumptions and the impact on projected demand.

Financial Information

Accurate and timely disclosure of financial information for an airport operator is fundamental to the ability to assess credit risk. The key to understanding an airport's financial position and ability to service its debt obligations is embodied in annual financial reports prepared in conformity with generally accepted accounting principles (GAAP). These audits encompass basic financial statements (an income statement, cash-flow statement and balance sheet) as well as supplementary information that complement the data. This supplementary information can include a section for management's discussion and analysis, a budgetary comparison section and a portion of the audit that reviews the status and condition of infrastructure assets, risk pools and pension funds. Other supplementary data should be presented in audit footnotes and could include, for example, presentation or accounting of financial information in compliance with provisions in the legal indenture associated with any indebtedness (i.e. illustration of compliance of the rate covenant or debt service coverage as defined in governing master and supplemental indentures). Annual audited financial statements for airport enterprise and a complete set of comparable audited financial statements for the prior year should be made available within 120 days of fiscal year end. If available, interim financial statements shown against respective budget periods should be made available to investors.

Airport credit quality is fundamentally based on the demand for aviation facilities and the financial strength derived from the resultant effects of passenger flow on activity-based revenues such as concessions. The purpose of presenting and continuing to disclose financial information – both audited and supplemental – is to convey in a straightforward fashion the ongoing operating needs and long-term debt obligations of the enterprise and its ability to service those requirements from cash flow and other non-operating sources of revenue. From this information, analysts generally focus on the following: the overall (in isolation) and relative (compared to other airports) degree of revenue diversity, acknowledgement of specific tenants and risks the loss of passengers they provide may pose to non-aeronautical revenues sources, the composition of debt relative to asset life and annual requirements to service the debt, the overall cost structure and debt level often presented in form of cost per enplaned passenger and debt per enplaned passenger, exposure to short term obligations and offsetting liquidity and other assets that provide a natural hedge. Much of this data are available from the financial statements, other are generated from management reporting and interpretation of audited information. No one data point, metric, or calculation in isolation gives a clear presentation of overall financial health or performance; rather the information must be analyzed in the context of the overall operational characteristics of the facility and specific market characteristics of the service area being served.

The following recommended disclosure items will not include the exhaustive list of data required to insure full compliance with a financial audit or result in an unqualified opinion by an independent auditor. Rather, included below are informational needs that, either in conjunction with the audited financial statements or as element of a comprehensive annual financial report, represent data analysts find important in evaluating credit characteristics going forward. The data may or may not be required or explicitly highlighted in the audited financial statements.

Recommended Disclosure Items

Income/Cash Flow Statement

- Airline revenues by source (landing fees, terminal rentals, other aeronautical charges).
- Major non-airline revenues sources (representing 15% or more of operating revenue).
- Percentage distribution of all elements of operating and non-operating revenues.
- Intergovernmental revenue sources or inflows from sources other than from operations.
- Detail of federal or state grants received and scheduled to be received.
- Top 10 revenue generators (both airline and nonairline).
- Schedule of major fees, rates and charges (landing fee, terminal rental rates, fuel, PFCs, retail concessions, auto parking rates).
- Detailed presentation of operating and maintenance expenses (e.g. salaries and benefits, utilities, supplies and materials, professional services, capital expenses, etc).
- Separate presentation of expenditures paid to overseeing airport sponsor for services provided or as per rental. Including pilots, if any.
- Intergovernmental expenses, payments, or on-going expenditures or revenue offsets.
- Overview of swap terms and conditions, payments and receipts.
- All other annual or contingent obligations.
- Annual capital expenditures by major category or purpose and by funding source (cash fund balance, grants, bond proceeds, etc.).
- Detailed presentation of debt service coverage calculated as per the indenture by lien.

Balance Sheet Information

- Detailed presentation of all direct long-term and short-term debt with accompanying summary of security type, financial maturity, purpose and significant terms and conditions.
- Schedule of gross principal and interest payments through maturity for all fixed-rate GARB indebtedness (adjusted for any swap transactions) prior to any offsetting credits from specifically pledged or otherwise applied revenue sources (such as federal Letters of Intent monies or PFCs).

- Schedule of gross principal and interest payments through maturity for all fixed-rate PFC indebtedness (prior to any debt service offset and adjusted for any swap transactions).
- Schedule of principal and interest payments through maturity for all variable rate indebtedness with assumed interest rate (adjusted for any swap transactions).
- Schedule of remaining annual principal payments through maturity.
- Commercial paper program summary (amounts authorized, outstanding, remaining, unhedged and credit-supported).
- Lines of credit, including amount outstanding, amount available, provider, and collateral pledged.
- Other related indebtedness (off-balance sheet debt for which the issuer served as a conduit).
- Explicitly detailed presentation of cash and unrestricted liquid assets.
- Funds and reserves available for operations and debt service payments for all types of debt and fixed charge payments that have a lien on the pledged security. Include terms, schedule, and redemption provisions.

Financial Forecasts

At minimum a five-year projection, with a ten year projection preferred, of the following:

- Debt service
- Operation and maintenance expenses
- Airline revenues
- Nonairline revenues
- PFC collections and interest income
- Application of airport revenues and PFC revenues
- Debt service coverage

Supplementary Information

- Reconciliation of GAAP accounting to debt service coverage presentation according to the indenture.
- Comparison of current revenue and cost projections to previous projections with management discussion of variances.
- Most recent financial projections outlining forecast revenues (by major categories), operational costs, debt service schedules, cost per enplaned passenger, and assumptions made regarding additional indebtedness and capital program funding.

Interest Rate Swap Contracts

Interest rate swaps can be part of an integral strategy to manage an airport's balance sheet risk by helping issuers achieve financial goals not readily attainable through other investment and/or debt structures. Because interest rate swaps can result in changes to an airport's cash flow, it is important to inform investors of the airport's swap exposure, as well as particular details regarding this exposure. In addition, due to the greater level of scrutiny the rating agencies place on swaps, an airport's swap obligations could have ratings impacts on its outstanding bonds.

Recommended Disclosure Items

Basic Terms of the Swap Contract/Transaction/Obligation

- Description of the counterparty for swap transaction, including ratings of counterparty. The exact legal entity name should be used, rather than any parent holding company. Counterparty ratings should be unenhanced ratings unless a third party enhances the transaction.
- Description of the index or indices (LIBOR, BMA, etc.) that the swap transaction is based on, as well as any fixed rates established at pricing. This would include any additions or subtractions (e.g. LIBOR less 50 basis points). In addition, the implication of changes to the tax code on the swap contract (e.g., discussion of "tax risk" in the transaction), including any changes in the underlying swap index as a result of changes in the tax code should be disclosed. Finally, any "triggers" that change the nature of the index or indices should be outlined (e.g. if one index averages a certain threshold, another index may be substituted).
- Amounts, amortization and maturity of swap contract, including any rights by either party to terminate the transaction (other than for credit-related or default reasons) (e.i.,"knock-out" options). Also disclose any options to put the airport into a swap (i.e., swaptions).
- Description of credit enhancement on swap, if any. If credit enhancement is utilized, the enhancer and its ratings should be disclosed.
- Discussion of downgrade provisions and/or termination provisions, if applicable, including any requirements for posting collateral and/or making final termination payments. As interest rate swaps change in value over time, any requirement for the airport to post collateral and/or make a termination payment could significantly impact an airport's cash flow position. If collateral is currently being posted, the amount of such collateral and the basis for determining this amount should be outlined.
- Any special covenants required by the swap contract that may limit bondholder rights (e.g. counterparty approval of mergers, counterparty rights under the bond indenture/resolution, etc.).

Swap Management

- Discussion of the airport's swap policy, if any – similar to investment policy discussion. This would include who has responsibility for approving any swap contracts, as well as the parameters, if any, outlining when the use of swap contracts is allowed.
- Identification of specific "hedged" bonds, if applicable. This may also include discussion of integration of swap with bonds for tax purposes [although this may not be desirable from a tax/legal standpoint].
- Procedures for monitoring the swap, including mark to market reports, cash flow analysis, auditor review, etc. Include a discussion of the circumstances, if any, and the approval process, if any, for unwinding the swap.
- Plans for future swap transactions, if any.

Implications of Swap Contract on Airport Cash Flows

- Discussion of ongoing swap payment obligations vis-à-vis debt service obligations: Where do ongoing swap payments rank in the priority of payments under the bond resolution/indenture? Which fund do swap receipts flow into? Are these receipts restricted in any way?
- Discussion of swap termination payments vis-à-vis debt service obligations: where do swap termination payments rank in order of priority of payments under the bond resolution/indenture? Which funds do swap termination receipts flow into? Are these receipts restricted in any way?
- What is the current "mark-to-market" value of the interest rate swap?
- Implication of changes to the tax code on the swap contract (e.g., discussion of "tax risk" in the transaction), including any changes in the underlying swap index as a result of changes in the tax code.

Off-Balance Sheet Obligations

Airports are increasingly looking for alternative financing mechanisms to general airport revenue bonds ("GARBs"). These alternative financings if they do not directly or contingently obligate the airport to repay them would be "off-balance sheet" (that is, they would be reflected in the "Notes to the Financial Statements" if they are reflected at all) under current accounting guidelines. Such alternative financing mechanisms may include special facility bonds, lease/leaseback transactions, cross-border leasing, and other financial arrangements. This may include traditional airline special facility bonds, as well as alternative financing structures such as Customer Facility Charge (CFC) bonds (e.g., car rental facility bonds), and fuel distribution system consortium financings. Depending upon the extent of the airport's responsibilities in these transactions (financial or otherwise), it may be prudent to disclose these transactions.

Recommended Disclosure Items

- Description of the other parties to the transaction.

- Description of the facilities.
- Brief description of the transaction structure, including: What was the type of instrument/financing utilized (e.g. lease, bonds, etc)? What are the amortization and payment obligations of the financing structure? What were the proceeds of the transaction used to finance?
- Discussion of the security for the transaction, including: source of payment for these obligations; corporate guarantees being provided, if any; cross default provisions, if any; circumstances where the airport could be held financially responsible for the obligations; the airport's responsibilities, if any, under a default; circumstances where some or all of the facilities financed could be under the control of a third party (such as a trustee or bond insurer) rather than under the control of the airport; impact of a default on the airport's financial position.
- What ongoing obligations does the airport have? Such obligations may include, but are not limited to: reletting provisions where the airport is obligated to find new tenants for the space under certain circumstances, but only to the extent, typically, of its reasonable best efforts, or commercially reasonable best efforts; make-whole provisions which could obligate the airport to compensate interested parties under certain circumstances; and, construction obligations which may require the airport to build certain facilities, typically related infrastructure such as roadways or utility lines. Take-back provisions, or minimum use standards, are *options*, not obligations, which allow the airport to take back the project if it so chooses when certain criteria are not met by the airline tenant.

Legal Analysis (or Security for the Bonds)

The legal analysis defines the specific sources of funds pledged to the payment of the bonds, the priority of payments (flow of funds), the protections available to bondholders (such as a rate covenant and additional bonds test), and the remedies available to bondholders in the event of a default. Best practices information regarding the legal analysis of special facility debt is included in the recommended best practices of Special Facilities Debt section.

Recommended Disclosure Items

New Issue Official Statement for GARB and PFC Bonds

- *Legal Authorization of the Bond Issue* – The body of the official statement should disclose under what legal authority the bonds are being issued, such as a state law or city charter.
- *Definitions of Key Terms Used in the Official Statement* – This section should be included in the summary indenture, which in turn should be inserted in the official statement as an appendix. Definitions of key terms such as revenues, operating and maintenance expenses, net revenues, and debt service should be provided in the body of the official statement in the security section (see below). For PFC supported bonds, a definition of PFC revenues should be included in the body of the official statement.

- *Description of the Security* – This section defines the sources of payment for the bonds (i.e., is it a net revenue pledge of a GARB, a first lien on PFC revenues, or a first lien on PFC revenues with a subordinate lien of GARB net revenues). Also, the official statement should clearly define the bond issue's lien status (i.e. is it a first, second, or third lien obligation) and the amount of debt obligations outstanding for each lien (by both series). Finally, there should be a discussion of any issues relating to Article 9 of the Uniform Commercial Code.
- *Debt Service Reserve Fund* – The Debt Service Reserve Fund (DSR) provides bondholders with an extra level of liquidity in case of short-term disruptions in the pledged revenue stream. The reserve fund requirement for the specific bond issue (i.e., the lesser of 10% of bond proceeds, maximum annual debt service, or 125% of average annual debt service) should be disclosed in the body of the official statement. It should also be disclosed if a Debt Service Reserve Fund is required for any parity bonds. If the reserve requirement is not fully funded at the time of bond issuance, it should be disclosed over what time period it should be fully funded. Additionally, if the amount in the Debt Service Reserve Fund falls below the reserve requirement, the time period for its replenishment should be disclosed. The ability to replace cash in the reserve fund with either a surety or letter of credit should be described if applicable, along with the rating requirements for each instrument. If the DSR is funded with both cash and a surety or letter of credit it should be disclosed if the cash is used prior to the surety or letter of credit.
- *Funds Created Under the Indenture* – A list of the various funds created under the indenture and each fund's allowable uses (i.e., what funds would be available for debt service on the bonds if necessary) should be included in the body of the official statement. It should also be disclosed if the accounts, such as a renewal and replacement fund, have minimum dollar amount requirements, and the current amounts in such funds. It should be disclosed if the specific accounts are maintained by the trustee or by the issuer.
- *Flow of Funds* – A discussion of how the revenues flow through the indenture on a monthly basis should be discussed in detail. This should clearly show the priority of payments, including any payments made under a derivative instrument (i.e., swap termination payments). A flow chart would also be helpful, along with the text description, especially for a GARB.
- *Rate Covenant* – This defines the minimum level of debt service coverage under the indenture. The rate covenant should clearly define what is allowed to be included in the net revenues available for debt service (i.e., amounts held in general reserve/contingency accounts) in demonstrating the specified debt service coverage test. Also, it should be disclosed what is included in debt service for purposes of the test if different than debt service as used in the "Definitions" section (i.e., capitalized interest and PFC revenues may offset debt service paid by the net revenues of the airport). A discussion of required actions to be taken if the rate covenant is not met and the timing of these actions should be included. This section should also identify when non-compliance with the rate covenant becomes an event of default.

- *Additional Bonds Test* – This provides bondholders with protection from dilution of the pledged revenue stream. A detailed recital of the conditions for the issuance of additional parity bonds should be included in the body of the official statement, including the historical and pro forma debt service coverage tests. As with the rate covenant, the disclosure should clearly indicate what revenues are allowed to be included in the net revenues available for debt service (such as allowing increases in landing fees enacted just prior to issuance or a recently approved increase in the PFC). Also, it should be disclosed what is included as debt service if it is different than the "Definitions" section. If the issuer is currently issuing bonds it should be disclosed how it is meeting the additional bonds test (i.e., based on the historical test or the pro forma test). In addition to a parity bonds test, the additional bonds tests for senior and/or subordinate bonds should be disclosed (i.e., whether liens senior to the current issue are closed, except for the issuance of refunding bonds).
- *Other Covenants of the Issuer* – Covenants such as obligations to maintain tax-exempt status and to maintain insurance policies typical of an airport should be disclosed.
- *Covenants Relating Specifically to PFC Debt* - A covenant of the airport to comply with all federal laws (the PFC Act and Noise Act) and regulations to ensure it will not have its ability to collect PFC revenues revoked should be disclosed in the official statement. There should also be a disclosure of a "sufficiency covenant."
- *Permitted Investments* – This section defines what investments the airport can make and places restrictions on the maturity dates of investments in specific funds, such as the debt service fund and debt service reserve fund. A covenant to invest various accounts in permitted investments should be included in the body of the official statement. A full list of permitted investments should be disclosed in the indenture as an appendix to the official statement (this is usually in the definition of Permitted/Qualified Investments in the indenture).
- *Events of Default and Remedies* – A list of the specific events of default should appear in the official statement, followed by a discussion of remedies available to bondholders if there is an event of default. There should also be some disclosure on the limits of those remedies if an event of default occurs, such as the inability of bondholders to accelerate the bonds. Also, any restrictions or rights a bond insurer may have to be deemed "bondholder" for voting purposes should be disclosed.
- *Litigation* - Any material litigation relating to either the issuance of the bonds or the financial health of the airport should be disclosed in the body of the official statement.
- *Continuing Disclosure Certificate* – A summary of the issuer's continuing disclosure obligation should be included in the body of the official statement with the full disclosure certificate included as an appendix to the official statement. It should also be disclosed if the issuer has previously not complied with any continuing disclosure requirements and the reason for non-compliance. If the issuer has not been in compliance with its continuing disclosure requirements, it should disclose steps taken to ensure it would be in compliance going forward.

- *Legal Opinion* – A statement by a nationally recognized bond counsel indicating the bonds are a legal, valid, and binding obligation should be included in the body of the official statement. Also, a bond counsel opinion as to whether the issue is exempt from federal and state income taxes should be in the body of the official statement as well as on the front cover of the official statement. The tax section should have an opinion as to whether the interest on the bonds is a preference item for the AMT. A full legal opinion should be attached as an appendix to the official statement. The body of the official statement should disclose all of the legal parties involved in the transaction (i.e. underwriter's counsel, disclosure counsel, bank counsel, etc.).
- *Amendments to the Indenture* – It should be disclosed what changes to the indenture require bondholder consent and what percentage of bondholders (on a par value basis) are needed for the consents.
- *Relationships of Parties* – The official statement should provide any disclosure of potential conflicts of interest among the professional parties involved in the transaction.
- *Redemption Features* – Any optional, mandatory sinking fund, or extraordinary redemption features should be disclosed in detail in the body of the official statement.
- *Risk Factors* – There should be disclosed in the body of the official statement all relevant risk factors to potential bond investors. Examples of risk factors include the following: uncertainties of projections and assumptions, the potential for costs overruns and construction delays on the capital improvement program, general factors affecting the airport and airline revenues, general factors affecting airline activity, the effect of an airline bankruptcy, the ability to collect passenger facility charges, and the availability of various sources of funding for the capital improvement program.
- *Use of Proceeds*- Disclosure of how bond proceeds will be spent.

For refundings, the following should be disclosed:

- A Description of the bonds being refunded.
- A Description of the escrow (if any) and if the refunding is a legal and/or economic defeasance.
- Verification report and opinion.
- Rights (if any) for issuer to collapse the escrow or restructure the escrow.
- The plan of refunding.

Secondary Market Continuing Disclosure Report for GARB and PFC Bonds

- *Covenant Violations* – A discussion of the specific covenant violation and what actions the issuer is taking to correct the specific violation. This should also include any covenant violations relating to other debt issued by the airport.
- *Updates on Existing Litigation or New Legal Proceedings* – Fully describe any known or pending litigation that may have a material impact on the finances of the issuer. The continuing disclosure report should have an update on any material litigation disclosed in the official statement. This should also include any federal actions taken against the airport relating to federal grants or PFC debt.
- *Updates on insurance policies*. Usually there is a covenant in the indenture to provide to trustee on an annual basis. It should be disclosed what policies are in place, and if any have lapsed, what actions the issuer is taking to correct the situation.
- *IRS Audits of any of the Airport Authority's Outstanding Bonds*. Disclose any IRS audits.
- *Substitution of funds in the DSR with a Surety or Letter of Credit*. Identity of the surety or letter of credit provider should be disclosed and how the premium/fees are being paid. Also, it should be disclosed how the airport plans to use the freed up cash.
- *Updates on Any Revenues Included in Pledge Revenues* – For example, if the airport authority had a PFC application outstanding with the FAA and upon approval those revenues have become part of the pledged revenues.
- *Proposed Amendments to the Indenture* – Any proposed changes to the indenture requiring bondholder approval need to be disclosed. It should be disclosed what percent of bondholders have approved to date and when the necessary approvals are anticipated to be granted. It should also be disclosed if there have been any changes made in the indenture for which bondholder consents are not necessary.
- *Disclosure of How Indenture Funds have been invested* – It should be disclosed in detail how each of the indenture funds are being invested. For example, if the debt service reserve funds are being invested in Guaranteed Investment Contracts (GICs), the GIC providers should be identified, so bondholders can be aware of the airport's exposure to a specific provider.

Airline Use and Lease Agreements

Airline use and lease agreements are the contracts between airports and their airline users that embody the rights and obligations of both parties, and determine the methodology by which the airlines are charged for the use of the airport. The airlines that sign the use and lease Agreement are referred to as Signatory Airlines, and those that do not as Non-Signatory Airlines. Not all airports have use and lease agreements; airline rates and charges may be set by ordinance or permit instead. Use and lease agreements may be short term (5 years or less), medium term (up to 10 or 15 years) or long term (typically up to 30 years). Issues relating to reletting and recapture provisions, and litigation thresholds are discussed in the "Special Facility Supported Financings" section.

Typically, pursuant to the agreement, the airport will lease various premises (gates, ticket counter, baggage, office, VIP club, etc.) to the airline on either an exclusive use or preferential use basis. Exclusive use premises are under the control of the airline, which can decide to sublease to other carriers or not. Preferentially leased premises are subject to forced sharing arrangements, whereby the airport can, under certain specified circumstances, require the lessee to accommodate another carrier on its leased premises, pursuant to a sublease or otherwise. Certain airline terminal premises (gates and sometimes ticket counter) may not be leased, but may be treated as common use facilities for use by various airline users. Common use facilities are controlled by the airport, which determines rules governing usage and sets charges for use. The agreement will also grant use rights to other airport facilities, such as the aircraft landing area.

The agreement will also establish a system of rates and charges whereby the airlines are charged for the use of leased premises, common use premises, landing area and other airport facilities. Traditionally, the two basic methodologies for airline rates and charges were residual and compensatory. More recently, there are a variety of rates and charges methodologies that represent various hybrids of the traditional approaches. A residual agreement provides that the airlines pay all of the costs of the airport and receive the benefit of the non-airline revenues. In a compensatory system the airlines are charged only the costs of the facilities they use and non-airline revenues are used to offset the cost of the rest of the airport's facilities. In both cases the costs charged to the airlines are typically based on historical costs allocable to the facilities, including debt service, fund deposit requirements, and operation and maintenance expenses. Terminal costs are collected through rentals (except for common use gates for which there is a use charge), and landing area or airfield costs are collected through landing fees (based on landed weight of aircraft).

The agreement will set forth the rights and responsibilities of the parties with respect to the use of airport facilities, including the airlines' rights to sublease or otherwise transfer leased premises. It will also set forth various financial requirements imposed on the airport and the airlines (security deposits, indemnification provisions, insurance requirements, etc.).

Finally, the agreement will frequently address the issue of airline review and approval rights with respect to capital improvements at the airport. In some cases this may be an airline review and consultation procedure. In other cases the agreement may require a right of approval by a majority-in-interest (MII) of the airlines. An MII is typically defined by reference to the amount of fees and charges paid by the airlines. In agreements containing MII approval rights there are frequently certain projects, or classes of projects, which are not subject to the MII approval provisions.

Recommended Disclosure Items

General Items

- Full legal name and date of agreement.
- List of Signatory Airlines.
- Percentage of landed weight represented by Signatory Airlines.
- Expiration date of agreement.
- Treatment of agreement in bankruptcy.
- Expiration date(s) and any early termination or extension option provisions.

Lease and Use Provisions

- Preferential v. exclusive use leases.
- Utilization requirements or other "use it or lose it" type provisions (if applicable).
- Forced accommodation and sharing arrangements (if applicable).
- Common use gate arrangements (if applicable).
- Priorities and procedures.
- Sublease and assignments.

Rates and Charges

- Description of cost center structure.
- Basic methodology for calculating rates and charges (residual v. compensatory).
- Adjustment of rates and charges (mid-year v. more often).
- Methodology for billing and collecting rates and charges, self-invoicing, etc.
- Security deposits (if applicable).
- Non-abatement provisions (if applicable).
- Safety net provisions (if applicable).
- Rates and charges payable by non-signatory airlines (if applicable).

Capital Program (if applicable)

- Approved capital programs.
- MII approval provisions.
- Special funds or accounts for capital expenditures.
- Airline consultation procedures.
- Funding of Airport Discretionary Capital Fund.

Rights and Obligations of Parties

- Grant of rights to airlines; restrictions thereon
- Operation and maintenance responsibilities
- Covenants of airport operator

Default and Termination

- Cross default provisions to Special Facility Agreements
- Cure Provision

Capital Planning and Facilities Design

The discussion below outlines some of the major components of airport capital planning and facilities design that analysts should consider when evaluating general airport revenue bonds, otherwise known as GARBs. For special facility revenue bond transactions, please refer to the "Special Facility Supported Financings" section.

Airport Capital Planning

Analysis of an airport's capital plan, also referred to as the 'master plan', is one of many components to consider when determining credit quality. The capital planning process following September 11th has become more challenging due to increasing security requirements, lower passenger traffic, reduced nonairline revenues, and the distressed financial conditions of major network carriers. Airport operators across the nation have re-assessed current and future needs, deferred capital projects, and focused on meeting federal airport security requirements. Airport capital programs have been impacted by security requirements imposed by the Transportation Security Administration (TSA). In many cases, meeting the security mandates will require significant modifications to airport terminal facilities. Bond offering documents should highlight challenges in the planning process; include estimates of capital requirements and potential funding sources for new security equipment, additional support facilities, and other federally required security enhancements. Primary factors to consider when evaluating the airport's master plan include size and structure of the capital program, timing of projects, funding of the program, and the flexibility of the program to be phased or altered as necessary. Rating agencies often comment on the importance of balancing the size of an airport's capital program with the need and demand for new or improved facilities. Typically, disclosure for airport financings should include a discussion of the airport operator's five-year capital improvement program (CIP)--with general components of the CIP, estimated project costs and schedules, and anticipated funding sources.

Airport Facility Design and Security

Additional factors to consider when evaluating GARB transactions are airport facility design and the impact of new security requirements. In the aftermath of September 11th, the landscape of airport facility design continues to change. Installation of large CTX explosive detection systems, expansion of security checkpoints, increasing security procedures, reduced facility utilization, and the shifting needs of financially distressed airlines, continue to drive airport facility modifications throughout the country. Furthermore, some airport terminals are configured with retail vendors located both before and after security checkpoints. Those retail establishments situated prior to security check-in may be competitively disadvantaged in the new post 9/11 security environment. In turn, the airport would be financially impacted. In addition, there have been instances where the TSA's 300-foot perimeter rule has been invoked with serious financial consequences at airports with attached, or close-in parking garages.

There are various components to consider when disclosing the airport's facility design such as terminal configuration, gate location, baggage-handling capabilities, ticketing capacity, auto parking, and rental car facilities. These components are important to disclose as they could potentially affect the airport's operating efficiency, create competitive advantages for some carriers but not others, and impact the ease of reconfiguring space for other purposes, or the ability to shift airline gate positions. Bond disclosure should outline the potential implications that new security requirements could have on airport operations, discuss the potential facility constraints, and identify the location of new security related equipment.

Recommended Disclosure Items

Airport Capital Programs

- Five-year CIP general components, along with estimated project costs and funding sources.
- Ten-year CIP general components (if available).
- Size and structure of the airport's capital plan.
- Overview of the planning process, approvals required, and timelines for approvals.
- Financial feasibility studies for capital programs.
- Disclosure of the estimated capital requirements and potential funding for new security equipment and/or additional support facilities.

Airport Facility Design and Security

- General airport description.
- Description of airport terminal configuration, gate location, ticketing counter capacity, baggage-handling capabilities, ground transportation, maintenance, and cargo facilities.
- Transportation Security Administration (TSA) security requirements and implementation.
- Outline the potential impact new security requirements could have on airport operation.

- Locations of new CTX machines and other security related equipment.
- Discussion of the operational impact of security requirements and potential facility constraints.
- Percentage of concessions located before and after security check points (stated in terms of space and revenues).
- Terminal dwell time (if available).
- Transferability of major facilities.

Continuing Disclosure

- Modifications to the airport's capital plan should be captured under the airport's regular reporting cycle.
- Construction and cost updates should be captured under the airport's regular reporting cycle.
- For special facility bonds, annual construction progress reports.

Additional Disclosure Items

- Site map of the airport.
- Design map including projects outlined in the airport's five-year capital program.
- Map of the project area for special facility revenue bond transactions.
- Terminal design maps outlining the airport's overall security plan.

Passenger Facility Charge (PFC) Supported Financings

Background

Since the PFC program was established as part of the Aviation Safety and Capacity Expansion Act of 1990, many airport sponsors have leveraged portions of their future PFC collections to provide near-term funding for airport capital projects. Under the PFC program's authorizing legislation and the PFC regulations, PFC revenues (which include PFC collections and associated interest earnings) can be used to pay debt service associated with approved PFC-eligible projects. This ability to leverage PFC revenues, as opposed to using them on a pay-as-you-go basis, is a flexible and important source of funding for airport capital projects. Projects that are PFC eligible include those that:

> -Preserve or enhance safety, capacity, or security of the national air transportation system;
> -Reduce noise; or
> -Furnish opportunities for enhanced competition between or among air carriers

Large-scale airport projects often cannot be funded on a pay-as-you-go cash flow basis with annual PFC revenues; without significant adverse schedule impact. Given that major airport projects typically have long useful lives—and given that the projects are usually constructed over a relatively short period of time—many airport operators have used PFC collections as security for long-term debt. Typically, airport operators that leverage PFC collections for major projects also have other projects being funded on a pay-as-you-go basis.

Approaches to Leveraging PFC Revenues

Different approaches to leveraging PFC revenues have been used successfully by airport operators, including three "double-barreled" approaches (incorporating a combined flow of funds with airport revenues, using a direct debt service offset, or providing back-up pledge of subordinate airport revenues) and a PFC stand-alone approach—described in more detail below. Several factors must be considered by an airport operator when deciding which approach to use, including (1) existing bond structure(s)/indenture(s), (2) existing airline agreement(s), (3) existing and future capital project requirements, (4) airport financing goals, and (5) the need for future flexibility in financing capital projects.

> Combined Flow of Funds: PFC revenues, or certain PFC revenues are included in the definition of airport revenues in the airport operator's bond indenture. These "combined" airport revenues are used to pay general airport revenue bond debt service and to demonstrate required annual debt service coverage. A portion of PFC revenues is used to pay debt service on approved PFC projects, and remaining PFC revenues can subsequently be used for pay-as-you-go projects. If PFC revenues are not realized, debt service may be included in the airline rate base depending on provisions of applicable airline agreements or operating permits.
>
> Direct Debt Service Offset: Airport revenue bonds are secured by general airport revenues, and a specified portion of PFC revenues is used to pay certain PFC-eligible airport revenue bond debt service, but PFC revenues do not secure the bonds. PFC revenues are not included in the definition of airport revenues under the airport operator's bond indenture, although the definition of debt service incorporates the PFC credit. PFC revenues directly reduce the amount of debt service used in the calculation of debt service coverage. If PFC revenues are not realized, debt service may be included in the airline rate base depending on provisions of applicable airline agreements or operating permits.
>
> Back-Up Pledge of Subordinate Airport Revenues: PFC bonds are secured by PFC revenues (under a separate bond indenture) and a back-up pledge of airport revenues (subordinate to the general airport revenue bond pledge). A portion of PFC revenues is used to pay approved PFC debt service with remaining PFC revenues used to demonstrate annual debt service coverage and subsequently used for pay-as-you-go projects. If PFC revenues are not realized, debt service may be included in the airline rate base depending on provisions of airline agreements or operating permits.

Stand-Alone: PFC bonds are secured only by PFC revenues under a separate PFC bond indenture. PFC revenues are not incorporated in the operator's general airport revenue bond indenture. PFC revenues are used to pay approved debt service and to demonstrate annual debt service coverage, with remaining amounts used (in most cases) for pay-as-you-go projects. Credit concerns regarding this structure include the fact that it utilizes a single revenue stream and the negative implications for the payment of debt service if PFC revenues are not realized.

There are several risk factors unique to PFC-supported bonds including fluctuations in enplaned passengers (as a result of changes in air service, economic downturns or upswings), airline bankruptcy issues, the ability of Congress to terminate the PFC program, and the ability of the FAA to terminate an airport operator's authority to impose and use PFC revenues. The significance of the risks involved will depend in part on the payment structure of the PFC-supported bonds, as described above. For example, if the bonds in question are supported by airport revenues (double barrel PFC bonds), fluctuations in enplaned passengers or the termination of an airport operator's PFC program would be mitigated by other revenue sources, and the airport operator's ability to invoke its rate covenant (and raise airline rates if necessary) to ensure the payment of debt service and adequate debt service coverage.

There are numerous mitigating factors in connection with the risks discussed above, such as diversity of air carrier market share, the FAA's informal resolution process for PFC-related violations, possible termination protection waivers from the FAA for stand-alone PFC bond projects, higher acceptable debt service coverage levels for stand-alone PFC financings, and the fact that PFC revenues are a significant funding source for the national air transportation system.

The recommended disclosure items that follow address these risk and mitigating factors as well as other disclosure items for PFC-supported financings.

Recommended Disclosure Items

PFC Collections and Program Management

- Date operator began collecting PFCs.
- Current, previous, and planned PFC collection levels (e.g., $3.00 PFC collected from June 1993 through August 2001, $4.50 PFC collected beginning September 2001).
- Total PFCs (including interest income) collected and spent to date (compared to total PFC collection authority).
- Estimated PFC charge expiration date.
- Discussion of operator's plans, if any, to increase its PFC level (to the extent allowable by federal law).

- Discussion of approved, pending, and future PFC applications (major projects to be PFC-funded).
- Actual PFC collections and interest earnings by operator's fiscal year.
- Percentage of enplaned passengers that pay a PFC (by fiscal year).
- Data demonstrating air carrier market diversity
- Any formal PFC collection and auditing procedures (discuss degree of airline acceptance).
- Discussion of any interest penalties charged to airlines for late payments to airport operator.
- PFC collection history (i.e., whether PFCs are being remitted in a timely and accurate manner by the airlines, and historical delinquency rates).
- Discussion of any airline bankruptcy cases where the affected carrier has withheld or is withholding payment of PFC revenues to the airport operator.
- Discussion of PFC audits required by the FAA for airport operator and for airlines.
- Summary of results of annual PFC audit completed by independent auditor.
- PFC fund balances available to pay debt service (including debt reserve funds in connection with PFC-supported bonds).
- For airport operators with stand-alone PFC bonds, does the operator's indenture have a PFC sufficiency covenant, and does it test compliance with the covenant at least annually?
- Discussion of any FAA notices regarding any alleged violations of the PFC Act, PFC regulations, PFC approvals, or the Noise Act.

PFC Bond Structure

Applies to PFC-supported bonds issued under the stand-alone approach or the back-up subordinate airport revenue pledge; where each of these structures involves a separate PFC bond indenture. See "General Airport Revenue Bond Structure" below for PFC-supported bonds issued under the combined flow of funds or direct debt service offset approaches.

- Description of bond security/payment structure (stand-alone or back-up pledge of subordinate airport revenues) and which specific revenues are pledged to the payment of debt service.
- Flow of funds chart--How required deposits are made and in what order? What happens to PFC revenues remaining after the payment of debt service? Are they used to replenish any prior draws on the debt service reserve fund and then for pay-as-you-go projects? Are remaining PFC revenues required to be deposited in bond redemption accounts (i.e., "closed PFC lien")?

- Discussion of reserve funds (cash reserve, surety, or letter of credit). Is the reserve fully funded?
- Discussion of any make-up provisions for actual use of debt service reserve funds or surety (from legally available airport funds?) If the reserve is drawn upon, what is the schedule for it to be replenished?
- Discussion of covenants made by the airport operator in connection with the use of PFC revenues (e.g., sufficiency covenant) or the PFC level imposed.
- Discussion of any provisions relating to the exclusion of specified future PFC collections (associated with an increased PFC level perhaps) from revenues pledged to pay debt service. For example, an airport operator may receive approval to collect a $4.50 PFC, but may decide to pledge only $3.00 to PFC-supported bonds.
- Bond issue assumptions: term of bonds, interest rate, debt structure (level, wrap-around, increasing, etc.), and reserves.
- Discussion of any provisions to (1) add future revenue sources to existing sources or (2) replace or convert existing security to another source at a later date (e.g., from stand-alone PFC revenues to airport revenues—"convertible lien"). Are there requirements regarding the credit quality of any such future revenues (e.g., must not cause a reduction in the underlying rating of the bonds)?
- Discussion of outstanding debt (both PFC-supported and airport revenue bonds).
- Discussion of requirements associated with issuing additional bonds--How are bondholders protected against "over-leveraging" of existing and projected revenues? For example, a common additional bonds test for PFC stand-alone bonds would require the operator to demonstrate 1.50x coverage of debt service requirements. For the combined flow of funds and direct debt service offset approaches, the operator may need to demonstrate 1.25x debt service. The additional bonds test is critical in stand-alone PFC financings as there is no rate covenant (no way for the operator to directly control the level of the PFC collected or the amounts remitted by the airlines).
- Discussion of any plans to issue future PFC-supported bonds. If available, include order-of-magnitude information on PFC bond proceeds and associated debt service.
- Discussion of any line of credit or commercial paper programs where PFCs are being or will be used for repayment.
- Discussion of the percentage of annual PFC revenues that are estimated to be used to pay debt service.
- Discussion of other PFC projects funded on a pay-as-you-go basis and the ability to defer such projects if necessary to pay PFC-supported debt service.

General Airport Revenue Bond Structure

Applies to PFC-supported bonds issued under the combined flow of funds or the direct debt service offset approach; where typically there is not a separate PFC bond *indenture. See "PFC Bond Structure" above for PFC-supported bonds issued under the stand-alone or back-up subordinate airport revenue approaches.*

- Description of bond security/payment structure (combined flow of funds or direct debt service offset) and which specific revenues are pledged to the payment of debt service.
- Definitions of revenues and debt service included in the bond indenture, (1) whether PFC revenues (or a portion of PFC revenues) are included in the definition of airport revenues under the general airport revenue bond indenture, (2) whether debt service under the general airport revenue bond indenture is defined to incorporate a PFC credit, or (3) whether PFC revenues (or a portion of PFC revenues) are treated as other available amounts for purposes of paying debt service and for calculating debt service coverage?
- Flow of funds chart (how required deposits are made and in what order)
- Discussion of reserve funds (surety, cash reserve, or reserve fully funded). If the reserve is drawn upon, what is the schedule for it to be replenished?
- Discussion of covenants made by the airport operator in connection with (1) airport rates and charges and (2) the use of PFC collections or the PFC level.
- Discussions of any provisions to (1) add future revenue sources to existing sources or (2) replace existing security with another source at a later date. Are there requirements regarding the credit quality of any such future revenues (e.g., must not cause a reduction in the underlying rating of the bonds)?
- Discussion of any provisions relating to the exclusion of specified future PFC collections (associated with an increased PFC level perhaps) from revenues pledged to pay debt service. For example, an airport operator may receive approval to collect a $4.50 PFC, but may decide to pledge only $3.00 to PFC-supported bonds.
- Discussion of outstanding debt.
- Bond issue assumptions: term of bonds, interest rate, debt structure (level, wrapped, increasing, etc.), and reserves.
- Discussion of the percentage of annual PFC collections that will be committed to pay debt service.
- Discussion of requirements associated with issuing additional bonds.
- Discussion of any plans to issue future PFC-supported bonds. If available, include order-of-magnitude information on PFC bond proceeds to be used for projects and associated debt service.
- Discussion of any line of credit or commercial paper programs where PFCs are being or will be used for repayment.

FAA and Legislative Matters

- Discuss the ability of Congress to terminate the PFC Program.

- Discuss the significance this funding source to the national air transportation system and the fact that a large number of airports participate in the PFC Program.
- Discuss the FAA's ability to terminate an operator's authority to impose and use PFC revenues (with descriptions of the informal resolution process, the formal termination process, and any PFC termination waivers obtained from the FAA).
- Discuss PFC assurances that airport operator has signed.
- Discuss coordination with FAA regarding the financing and associated PFC application, and the status of that application.
- Discuss any FAA concerns or notices regarding potential violations of the Noise Act, the PFC Act, PFC regulations, or any PFC approvals, that might affect the operator's ability to collect future PFCs.

Projects Being Financed with PFC-Supported Bonds

- Detailed description of project(s) (if available, include a map with the location of the proposed projects).
- Table with estimated costs and sources of funds.
- Discussion of any funding contingency plans (if other expected funds do not materialize)
- Estimated project completion date(s).
- Status of required permits and approvals in connection with individual projects.
- Discuss whether projects being financed are required to achieve airline traffic/passenger forecasts.
- Discuss any construction risks (may have an effect on obtaining PFC termination waivers, discussed under "FAA and Legislative Matters").
- Discuss any litigation concerning individual projects.

Financial Forecasts

At minimum a five-year projection, with a ten year projection preferred, of the following:

For the Stand-Alone Approach:

- PFC collections and interest income
- Debt service
- Application of PFC revenues (collections, interest income, beginning balances, pay-as-you-go spending, payment of debt service, required fund deposits)
- Debt service coverage
- PFC sufficiency test

For the Double-Barreled Approach:

- Debt service
- Operation and maintenance expenses
- Airline revenues
- Nonairline revenues
- PFC collections and interest income
- Application of airport revenues and PFC revenues
- Debt service coverage (under the back-up subordinate airport revenue approach, debt service coverage should be reflected for both general airport revenue bond debt service and for PFC bond debt service)

Sensitivity Analysis

Airport operators and their finance teams should decide what sensitivity analyses, if any, should actually be discussed/included in an official statement or feasibility study. In some cases, it may make sense to reflect financial forecasts that incorporate a range of airline traffic forecasts (e.g., a "low" case and a "base" case) in the official statement and/or feasibility study—with the results of sensitivity cases possibly provided separately to rating agency analysts, bond insurance company analysts, and investors.

Useful sensitivity analyses may include:

- Loss of certain service
- Loss of certain hubbing activity by dominant carrier
- Reduction in air travel (disasters, recession, continued economic downturn, etc.)
- Lower percentage of enplaned passengers paying a PFC
- 1.0 times debt service test (how much of a decrease in enplaned passengers would have to occur to achieve 1.0 times annual debt service coverage, and when did the operator last experience that annual level of passengers?) Note: Under double-barreled approaches, this test may involve placing "caps" or limits on specific airline rates and charges or on overall costs per enplaned passenger.

Key variables and results to be analyzed under sensitivity analyses:

- PFC collections
- Debt service coverage
- Percentage of annual PFC revenues committed to pay debt service
- PFC sufficiency test (for Stand-Alone Approach only)
- Airline payments per enplaned passenger (for Double-Barreled Approach only)

Special Facility Supported Financings

Introduction

Tax-exempt bonds secured solely by the financing payments of a corporate borrower, most typically an airline, is a hybrid area of airport finance that incorporates elements of project finance and corporate debt analysis. New terminals, concourses, maintenance hangars, pilot training facilities, in flight kitchens, customs inspections stations, reservations systems, concession outlets, rental car garages and package sorting facilities cover the majority of uses for these types of financings at airports.

The conduit issuer of airport special facility revenue bonds varies from one transaction to the next, but most typically is the airport owner itself, (be it a city, county or authority), or a state or local industrial /economic development authority or improvement authority acting for the airport. If the conduit issuer is the latter, there can be a confusing thicket of leases, sub-leases and even sub-sub-leases between and among the industrial or improvement authority, the airport and the borrower, which can further confuse an already complicated analysis. In any case, the debt issued is non-recourse to the conduit issuer and/or the airport, which merely lends the proceeds to the borrower who is then obligated for their repayment. Thus, as long as the borrower is current in its financing payments, credit analysis centers on the creditworthiness of the borrower. Regular financial and operating disclosure about the borrower via its public filings enables analysts and bondholders to assess on a continuous basis the borrower's general ability to make scheduled debt service payments. However, as the likelihood of an event of default rises, other factors overlay pure financial analysis. Depending upon the structure of the transaction, the project's essentiality to the borrower (or, in some circumstances, to a potential replacement tenant), demand factors in the service area, the degree of involvement of the airport operator, and of course the underlying legal structure become critical areas of inquiry.

Transaction Structures

The Bond Trustee, on the bondholders' behalf, is assigned certain rights of the issuer as they relate to the borrower, including rights of recovery against the borrower in the event of a bankruptcy. The extent of those rights, together with other aspects of the transaction's legal structure define whether the bondholder is:

1) An unsecured creditor of the borrower;
2) An unsecured creditor of the borrower, with additional rights granted pursuant to a real property lease; and,
3) A secured creditor of the borrower with additional rights granted pursuant to a leasehold mortgage of the facility being financed.

The Bondholder may be further secured by a "Guaranty" of the borrower or its parent, as discussed further on.

It is critically important for the investor to understand the nature of his/her claim in the event of a bankruptcy by the borrower. The interrelationship between and among the issuer, the airport (if the two are different), the trustee and the borrower can be exceedingly complex in these transactions, and that interrelationship is not always clearly described or easy to follow in the Official Statement, which typically provides only brief summaries of key underlying documents.

Before we discuss each of the structures enumerated above, we provide a brief description of the basic legal documents that set forth the relationships and responsibilities of the various parties in special facility transactions. Beyond the Trust Indenture, the nomenclature of the remaining agreements can be truly confounding. Each of the documents described below goes by several different names depending on the legal draftsman. They can have substantially the same purpose but be called different names in different transactions, or they can bear the same name in different transactions, but have very different purposes. When reading each document, ask the following questions: *Who are the signatories to this document? Is this document the source of the borrower's obligation to repay the bonds? Does this document grant the borrower the right to use and occupy the facility? Is this document and/or its attendant payments assigned to the Trustee? What triggers an Event of Default in this document? What are the remedies in such an event? Does the Issuer have any other types of rights to mitigate damages or modify the terms of the document? Are there cross default provisions that tie this document to other documents?*

Under the "Facility Agreement" (also called the "Loan Agreement", the "Payment Agreement", the "Special Facility Agreement" or the "Facility Lease Agreement") the borrower agrees to make payments (called "facility payments", "facility lease payments", "facility rent") to the issuer in an amount sufficient to pay principal and interest on bonds issued to finance the facility. The Issuer typically assigns some or all of its rights and interests in the Facility Agreement to the Trustee.

Under the "Lease", (sometimes called the "Master Lease", the "Special Facility Lease" or the "Airport Lease Agreement") the airport grants the borrower the use and occupancy of the facility or improvements that are the subject of the financing. It may, in that document, or in a separate "Ground Lease", also lease to the borrower the land on which the facility is being constructed.

In some transactions, the lease and occupancy of the facility and the payments securing the debt related to that facility are tied together. The issuer may have assigned the Lease and payments thereto to the Trustee, or the Lease itself may combine the obligations of a Facility Agreement and a Lease together by requiring that the borrower remain current in its debt service payments in order to enjoy continued occupancy of the facility. (The threat of eviction for non-payment of debt can be a real incentive to the borrower to remain current on its debt service obligations.) In either situation, the Trustee may have the benefits and the enhanced rights of a landlord under a commercial real property lease. Commercial Real Property leases are executory contracts that can be assumed, assumed and assigned, rejected or delayed under the Bankruptcy Code.

However, the Facility Agreement and the Lease may, in other transactions, be two separate documents. If the Lease and/or payments under it are contained in a separate document and are *not pledged* to the Trustee and the Trustee has no other grant of collateral, the bondholder is an unsecured creditor without property rights. This is not a desirable status in bankruptcy; recovery of amounts claimed occurs at the end of the bankruptcy process and rarely is the full amount of the claim received.

A "Guaranty" is sometimes provided to the Trustee by the borrower. The guarantor may be the borrower or its parent company. A Guaranty provides the Trustee a claim for amounts due under the bonds that is *separate and independent* from the assignment or pledge of the Facility Agreement or Lease. In bankruptcy, the Guaranty permits the Trustee to claim amounts in excess of the Bankruptcy Code cap on lease damages. Indeed, the Trustee should be able to claim the full amount of debt outstanding. However, unless the Guaranty is secured by some type of collateral (typically, this is not the case) it has little utilitarian value. The word "unconditional" which one usually sees in the description of the Guaranty does not mean "secured"!

If there is a "Mortgage" or a "Leasehold Mortgage", the airport has permitted the borrower to grant to the Trustee a lien or security interest in the borrower's rights of use and occupancy under the Lease. This means that in an event of default that remains uncured, the Trustee has the right to foreclose on the asset and relet it to a new user with proceeds of the reletting going to the existing bondholders.

Now that we have described the documents that set forth the rights, responsibilities and relationships of the various parties to the transaction, we can describe the transactions themselves more fully.

Unsecured Lease or Loan Structure

In this structure, the Lease and the Facility Agreement are two separate legal documents, with different remedies against the borrower for non-performance of its obligations. (In some transactions, the Lease is not even described or summarized in the Official Statement) Remedies for defaults, including payment defaults, under the Facility Agreement are, most typically, acceleration of the debt. Thus, the borrower could be current on its Lease payments to the airport, and delinquent on its Facility payments. Should a bankruptcy occur, the Lease and the Facility Agreement would be examined by the court individually. Bondholders, absent some other grant of collateral, would likely be considered unsecured creditors whose payments could be suspended. The borrower's occupancy of the premises, however, would not be an issue; as long as it remained current on its Lease obligations to the airport, it could continue to use and enjoy the facilities. In bankruptcy, an unsecured creditor can claim the full amount due on the bonds but its claim would be subject to adjustment as previously discussed.

Often times, in these transactions, there is a Guaranty, which provides bondholders with a separate unsecured ability to obtain recourse. However, as discussed in the previous description of the Guaranty, if unsecured, it may have little intrinsic value.

Unsecured Lease with Real Property Rights

In this structure, there is either a single agreement between the borrower and the Issuer that requires the airline to pay debt service on the Bonds in order to occupy the facility, or an assignment by the Issuer of the Lease and/or its related payments to the Trustee. (When the Issuer is not the airport, this is accomplished thorough a series of sub-leases.) There are not separate lease and facility agreements that must be considered when the borrower files for bankruptcy. In either situation, the Trustee has the rights of a landlord under a commercial real property lease. Such a lease is an executory contract, simply defined as a contract in which there are material obligations to be fulfilled by each contracting party. In this case, the borrower is materially obligated to pay debt service as it comes due, and the landlord has the material obligation to provide occupancy of the facilities, which are the subject of the contract. Bankruptcy law generally gives a borrower 60 days to generally gives the borrower 60 days to decide whether to assume commercial real property leases at their full market value.or reject and walk away. However, it is important tonote that this period is often extended by the bankruptcy court. Should the borrower decide that the facility is essential to its continued operations and affirm the lease, all delinquent payments must be brought current. In addition, prior to the decision to assume, assign or reject the lease,payments cannot be suspended while the borrower occupies the facility. Sometimes, particularly at fortress hubs, the dominant carrier in bankruptcy can threaten rejection to extract reduced rents or other financial considerations and the lease, as modified by agreement, would be assumed..

If the borrower decides to reject the lease, the facility can be relet to another potential user. The proceeds of this reletting inure to the benefit of the airport to be used for general airport purposes. The bondholder has no legal claim on these proceeds. However, some of the more recent special facility financings for terminals contain certain “relet” provisions which obligate the airport (only to the degree of using “reasonable efforts” or “commercially reasonable efforts”) to find a new user for the facilities, with the proceeds from the reletting going to the existing bondholders, after payment of certain airport expenses and fees. It could also be triggered, in whole or in part if the borrower does not operate at certain utilization thresholds (for example a certain number of turns per gate, or passenger throughput per gate) that are spelled out in the documents.

If there are reletting provisions in the documents, credit analysis expands to an examination of the facility’s intrinsic worth to other potential users. This involves examining the macro role the airport and the facility play in the overall domestic route system and the presence of other gates at the airport that could compete for new entrants or expanding incumbents.

There may be a Guaranty in favor of the Trustee that provides the bondholders with a separate unsecured ability to obtain recourse. However, as discussed in the previous description of the Guaranty, if unsecured, it may have little intrinsic value.

Lease with Leasehold Mortgage

Under this structure, Bondholders would likely be deemed secured creditors. If there is a Leasehold Mortgage**,** the airport has permitted the borrower to grant to the Trustee a lien or security interest in the borrower's rights to use and occupancy the facility under the Lease. This generally means that in an event of default that remains uncured, the Trustee has the right to foreclose on the asset and relet it to a new user. In these situations, the Trustee instead of the airport has direct involvement in the reletting process and proceeds from the new lessor can be channeled through the Trust Indenture to the existing bondholders. It is important to note, however, that these deals can vary significantly.

A bankruptcy filing would automatically stay any foreclosure, absent obtaining "relief from the stay" from the bankruptcy court. As secured creditors, bondholders would e entitled to the value of the collateral. Bondholders would be entitled to the value of the collateral only, not the full amount of the claim for the liability. The difference in the two values would become an unsecured deficiency claim against the defaulting borrower.

Just as in the reletting scenario described in the previous section, credit analysis where a leasehold mortgage is present entails a macro and micro review of the facility and its place in the national and regional air system. For this structure and for the previous structure (Unsecured Lease with Real Property Rights), project essentiality to the borrower must also be examined.

Importance to the Borrower

It is critical for the bondholder to estimate the likelihood that the borrower would seek a reorganization or liquidation of its operation under the bankruptcy code through corporate credit analysis. Once the probability of a reorganization is assigned, the next step is to assign probabilities that the borrower will reject projects financed via true leases.

A debtor in possession ("DIP") continues to operate much as before the bankruptcy filing buying time for itself to develop a plan to restructure itself and its obligations to match the forecasted revenues. While the borrower is attempting to reorganize the company during this temporary period, it is ultimately restructuring the entire organization (selling assets, cutting costs, reorganizing operations and altering legal structures). The latter however is not merely adjusted in one fell swoop by the bankruptcy court. Instead the legal restructuring is typically the outcome of a series of renegotiations of the company's liabilities and the assumption or rejection of its contracts. It follows then that essential contracts are more likely to be assumed at full freight by the DIP and placed back into force and effect by the bankruptcy court. For example, for an airline to operate it needs gates at a primary hub, at least one small body maintenance facility and possibly a wide-body maintenance facility based on its fleet configuration and in the pre-September 11 environment at least one in flight kitchen. Flight training facilities, reservations systems and office space on the other hand are more likely to be out-sourced.

Special facility projects financed by true leases should address project specific operating information in its disclosure to allow analysts to make an assessment of project essentiality to the borrower's continuing operations. The NFMA recognizes this is a departure from current disclosure practice and brings into question the public release of proprietary competitive information. The NFMA also recognizes the benefits the borrower enjoys by issuing on a tax-exempt basis and the challenges presented to investors to make a level, yet informed investment decision.

Recommended Disclosure Items

Special Facility Project- Description of the Special Facility project being financed, including a detailed discussion of the following:

- Explanation of the size, scope and overall purpose of the project, providing sufficient information to facilitate analysis of both: (i) the essentiality of the project to the ongoing operations of the borrower; and (b) the general marketability of the project to other tenants if bondholders accede to the benefits of any subsequent potential reletting.
- Detailed explanation and attribution of all ownership rights in the Project by the Airport, issuing conduits and airlines or other public instrumentalities or private entities, including the leasehold rights and ultimate fee simple absolute ownership of: (i) the land underlying the project; (ii) all leasehold estates, inclusive of ground leases, site leases and facility leases of every conceivable kind; (iii) rights to all improvements to the real property inclusive of all forms of personal property and fixtures; and (iv) the ownership and timing of reversionary interests in the foregoing properties, most importantly the fee simple absolute ownership;
- Detailed statement of all equipment included within the project and the type of aircraft served by such equipment, if and as applicable.
- Location of the project in relation to: (a) the overall Airport System; and (b) other facilities of the Borrower.
- Indicate precise source(s) of legal right(s) of the borrower to use and occupy: (i) the underlying land; (ii) the improvements to real property comprising the special facility, specifying, for example, whether use and occupancy rights derive from a Use and Lease Agreement, Master Lease, Special Facility Lease, Ground Lease, Loan Agreement and or other similar document(s).
- Conditions limiting the borrower's right to use and occupy the land or real property improvements, including any penalties of eviction relating to payment default, the existence of cross-defaults to any other leases and agreements and a complete explanation of the circumstances and conditions that trigger cross-default and related consequences, rights and remedies resulting from such defaults.

Loan Agreement- Description of the material terms of the Loan Agreement (also referred to as "Facility Agreement" or "Special Facility Agreement"), including the following provisions:

- Legal rights and interests provided to the borrower, issuer and the bond trustee, including creation of explicit third party beneficiary claims under applicable documents and affirmative obligation of the airport to enforce the provisions of the Underlying lease.
- Pledge of any collateral by the borrower to secure the loan.
- Creation and perfection of real property mortgage lien(s) or Article 9 security interest in all forms of personal property.
- Payment terms and obligations of the borrower.
- Events of Default.
- Classification of debt service payments as true lease payments or disguised loan payments under applicable federal and state law, with a detailed analysis of all requisite legal and factual criteria used in making this determination.
- Legal rights and remedies available to the airport, issuing authority and or bond trustee upon occurrence of an Event of Default, including: (a) right of the airport or issuing authority to evict borrower for nonpayment; (b) reservation of right by airport or issuing authority to relet premises; (c) extent of the legal obligation, if any, of the airport or issuing authority to relet premises for the benefit of bondholders.

Lease Agreement- Description of all leasehold and property rights and corresponding obligations of the borrower with respect to the subject Special Facility project being financed under the Lease Agreement, including the following:

- Borrower's legal rights to use and occupy the Special Facility project.
- Pledge of mortgage, leasehold estate or other collateral to secure borrower's payment obligation.
- Events of Default.
- Term of the lease,
- Full description of all rights and responsibilities of the respective lessee and lessor, to the lease, including: (i) responsibility for the payment of taxes, insurance, maintenance of the facility; (ii) reversionary interest in the facility upon termination of the lease; (iii) who is deemed to be the true owner of the facility based upon the intent of the parties and the economic substance of the transaction
- Legal rights and remedies available to the airport, issuing authority and or bond trustee upon occurrence of an Event of Default, including: (a) right of the airport or issuing authority to evict borrower for nonpayment; (b) reservation of right by airport or issuing authority to relet premises; (c) extent of the legal obligation, if any, of the airport or issuing authority to relet premises for the benefit of bondholders.

- Cross-default provisions, if any, between: (i) the borrower's use and occupancy rights and payment obligations with respect to the special facility being financed; and (ii) the borrower's affirmative obligation to pay related debt service under all pre-existing Use and Lease Agreements, Master Leases, Ground Leases, Special Facility Agreements, Loan Agreements or similar document(s).
- Legal rights and remedies available to the airport, issuing authority and or bond trustee upon occurrence of an Event of Default, including: (a) right of the airport or issuing authority to evict borrower for nonpayment; (b) reservation of right by airport or issuing authority to relet premises; (c) extent of the legal obligation, if any, of the airport or issuing authority to relet premises for the benefit of bondholders.
- Foreclosure remedies available to the airport, issuing authority or the bond trustee upon occurrence of Event of Default.
- Limitations restricting the exercise of any relet remedies available either to the airport, issuing authority or bond trustee.

Mortgage and Security Agreement(s)- Full description of all rights in collateral extended to the Indenture Trustee of bondholders indicating:

- Clear and accurate description of all pledged collateral, including all forms of real or personal property,
- Full description of all legal rights and lien(s) created in pledged collateral including real property mortgage, Article 9 security interests and statutory liens, including provision of any legal enforceability opinions
- Protective measures taken and to be taken to ensure ongoing effectiveness of all aforesaid liens and allocation of responsibility for filing continuation statements
- Impact of potential bankruptcy filing upon the enforceability and effectivess of all liens and mortgages

Impact of Bankruptcy on Legal Rights and Remedies- Description of the potential impact of a bankruptcy filing upon all applicable legal rights and remedies available to the airport, issuing authority or bond trustee, including consideration of the following issues:

- Impact of Chapter 11 filing upon classification of special facility debt service payments as true lease or disguised loan payments under Section 365 (d) (4) of the US Bankruptcy Code (the "Code"), detailing the potential risks and or benefits to special facility bondholders of each such classification with respect to the following items: (a) payment of pre-petition debt service payments; (b) payment of ongoing post-petition debt service; (c) enforceability of relet remedies, if any, with respect to either the airport, issuing authority or bond trustee; (d) qualification of the bond claim either as a secured loan or an unsecured loan under the Code; and, (e) priority of payment under the Code for secured claims versus unsecured claims.

- Impact of automatic stay provision upon exercise of legal rights and remedies by the airport, issuing authority or bond trustee, including: (a) foreclosure remedies; (b) eviction proceedings; (c) relet provisions; and (d) the pledge and enforceability of leasehold mortgages or leasehold estates and other forms of collateral.

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