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## Why Bond Deals Go Bad



**BNY MELLON**

# Why Bond Deals Go Bad



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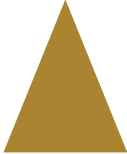
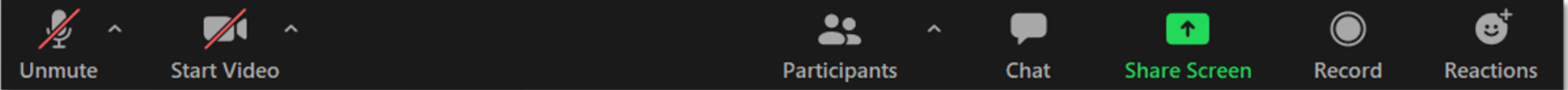
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# Different Best Practices for Different Types of Transactions



- Simpler GO, v. Revenue Transaction, v. P3, v. complex capital stack for project finance
- Size and difficulty of transaction can bear on COI - Not all transactions equal
- Will assume more complex transactions for purposes of presentation



# Best Practices for Onset of Transaction



- Early agreement on the transaction's basic material terms
  - Informal or Formal
  - MOU, LOI, term sheet
  - Importance of trust, especially in P3's. Only "retrade" if material substantive reason and no alternative
  - Appreciate terms can change over time
  - Sometimes insoluble point at outset become clear over time. Identify them early and continue to work on them (don't leave major issue for very end if possible)

# Best Practices for Onset of Transaction



- Prompt disclosure to working group when and if material terms do change and reason
- Importance of working group dynamics
  - Point is to reach workable solutions for all; not to be smartest person in room
  - Who are the decision makers, per stakeholder
  - Don't let lawyer points drive important decisions (clients allowed to take business risk)
  - Importance of schedule, but don't be a slave to it (mindful of real deadlines such as entitlement expiration)
  - Can learn even from arrogant participants. Always listen. Most people want a deal, and they want it to close
  - Try and avoid parties feeling put upon. Only my client is yielding points. Tautology is everyone gives to make a deal, and nobody is perfectly happy
  - Be respectful of other team players schedules. No make work, but accountability if not pulling deal weight



# Specific Transaction Concerns

- Deal mechanics. Focus early and make sure it all works
- Is transaction fully funded? May be waiting for grants, entitlements, equity and debt participants in capital stack to join as deal progresses. And they can change over time
- Are costs / projected revenues being revised as deal drags on. Market. Better information (feasibility studies)
- How firm are deal security sources, such as lease backed transactions. Leases in place?
- Intercreditor issues among competing capital stack stakeholders
- Always be mindful of politics. Start w/ 7-1 for and post-election, 4-4 – antis run against project. Have a plan. Schedule before election changes if possible
- Always be mindful of community concerns. In TIF, who is being shorted otherwise available revenue. Have a plan to address
- Different working groups can affect your bond transaction group. Communication and timing

# Disclosure and CDAs



- 33 and 34 Act and 15c2-12 very fact dependent
- So Disclose. Reasonable investor standard. If unsure, over disclose. Balanced against clarity
- Early airing of disclosure issues if a party has a real concern with disclosure
- Importance of due diligence, especially if not a repeat client / transaction. Don't be lax if repeat
- Hardest issue for disclosure: Accuracy v. English and Understandability

# Closings



- Deal must be baked before closing arranged
- Conversely, be mindful of deal fatigue and deadlines. (beware of participants looking for fatigue and attempting to use leverage - reputation)
- Detailed BPAs (closing certs and opinion in detail) preferable in avoiding closing issues. Don't sell until all material issues resolved. Don't mail POS if possible
- Working closings to be avoided
- Be mindful of who gets paid regardless, and who gets paid only upon closing
- Today's world fewer in person closings and more cloud closing rooms

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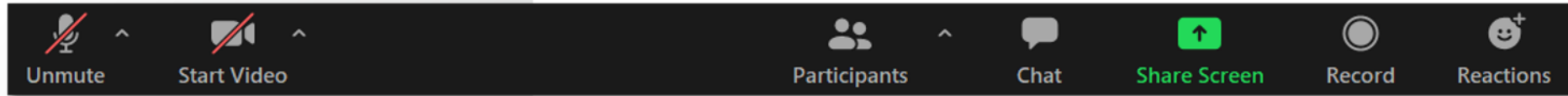
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# Audience Questions



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May 15-16, 2024 // Daily: 12:00 PM – 5:00 PM Eastern

### CDFA // BNY Mellon Development Finance Webcast Series: AI & Bonds

May 21, 2024 // 2:00 – 3:00 PM Eastern



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