Draft Minutes
State Finance Review Commission
Wednesday, May 15, 2024
Office of State Treasurer, C170 State Capitol Complex and
Electronic Meeting via Zoom

Members of the Commission Present:
Marlo M. Oaks (Utah State Treasurer, Chair)
John Dougall (Utah State Auditor)
Sophia DiCaro (Governor's Office of Planning and Budget) - Zoom
Van Christensen (Director of Finance) - Zoom
Blake Wade (Governor's Office designee from Gilmore & Bell) - Zoom
Cleon Butterfield (Governor's Office designee from CFO Utah Housing)
Perri Babalis (Attorney General Office-designee) - Zoom

Others Present:
Kirt Slaugh (Office of State Treasurer)
Diana Artica (Office of State Treasurer)
Jeanette Harris (Zions Public Finance)
Brian Baker (Zions Public Finance)
Mike Bell (Attorney General Office Assigned to UTA) - Zoom
Brook McCarrick (Attorney General Office Assigned to SFRC) - Zoom
Laury Tuttle (Gilmore & Bell) – Zoom
Randy Larsen (Gilmore & Bell)
Rob Lamph (UTA)
Carlton Christensen (UTA)
Julie Berger (Wells Fargo Underwriter for UTA)

Meeting called to order by Treasurer Oaks at 4:00 pm.

1. Prior Meeting Minutes

Meeting minutes from the October 25, 2023 were presented for discussion and approval. Mr. Dougall made a motion to approve the minutes. Mr. Wade seconded the motion. The motion carried unanimously with all members of the Commission voting in favor.

2. Resolution to Approve the Issuance and Sale by UTA of its Sales Tax Refunding Bonds

Mr. Baker presented a financial review of the proposed financing as reported in the UTA presentation handed out in the meeting. Mr. Baker explained that as part of the Recovery and Reinvestment Act, Build America Bonds ("BABs") authorized tax-exempt entities to issue taxable bonds that have a subsidy payment that came from the federal government to offset the interest expense. This made UTA and several tax-exempt entities across the country to issued taxable bonds instead of tax-exempt bonds that would seem to have a higher coupon rate but with the subsidy payment from the federal government for the interest it would make it much more economically efficient with lower borrowing cost than what a comparable tax-exempt deal would have been.

Mr. Baker further explained UTA took advantage of this opportunity and issued their 2009B and 2010 BABs series totaling $461.45M with interest rates between 5.7% to 5.9%. In Utah, UTA was the largest issuer of these and because their bonds went out thirty years and most of them mature towards the end of that thirty-year period, they are the entity with most remaining outstanding BABs. Mr. Baker explained the subsidy payment from the federal government was cut through a process called sequestration so now they do not receive the full subsidy payment. Furthermore, over the last decade there have been talks of whether or not this will be renewed or cut further by the federal government. This creates a problem for UTA which has approximately $130M in remaining subsidy payments at risk. Also, there is administrative pains trying to collect this from the federal government because sometimes the form is sent back as invalid, it gets lost, etc.

Mr. Larsen explained that mathematically and economically issuing BABs bonds was more efficient that issuing tax-exempt bonds and there was never a threat from the federal government to not paid the subsidy. However, the federal government changed the law and reduced the subsidy. Mr. Larsen further explained that because BABs bonds are taxable the market has limited call provisions and so they are make-whole call, in other words; the investors will receive the value of the interest all the way to maturity if the entity is to redeem the bonds earlier or there was an extraordinary redemption and this delivered a much lower taxable rate than the typical 10-year par call from the tax-exempt market. One of the provisions for an extraordinary redemption allowed entities to redeem at par (much more efficient) so long there is a change to the law that created the BABs subsidy. This raised the question if the sequestration changes were a change in the law or was a federal budget that directed the risk to the issuer or the bond holders. There was a case in Indiana where a large power agency sued the federal government over sequestration. It was denied by the Supreme Court so it went to the Circuit Court and they lost. The court ruled the federal government did have the right to use sequestration in distress to cut the subsidies but they made a very important finding in that case and that was the law implicated to use sequestration was a change in code. With that new ruling and settled law in federal court, many issuers are now taking advantage of the same provision which is that an extraordinary redemption allows the entities to call these taxable bonds at par. Hundreds of millions of dollars have closed using this extraordinary redemption option so UTA will not be the first one going in.

Mr. Baker explained that in short, the key benefit of this deal is that there is no savings and at the very worst scenario this will cost UTA a little bit of money. However, this will still make sense to do because (1) Risk Reduction: refinancing $461.45M of BABs will eliminate UTA's exposure to the risk of further subsidy reductions as the result of the federal government actions or inaction. (2) Market Conditions: current market conditions may allow UTA to refinance BABs with the issuance of tax-exempt bonds and potentially achieve overall debt service savings. (3) Future Optionality: in ten years, UTA will likely have the option to refinance the bonds issued today at a lower interest rate and achieve savings. (4) Lower Overall Debt: the proposed transaction would lower UTA's outstanding indebtedness by approximately $45M.

Mr. Butterfield asked when talking about net cost means not taking into account the federal subsidy? Mr. Baker explained the savings are calculated net of all costs and that is assuming that all of the subsidy payments remain in effect. The refunding of all outstanding 2009B and 2010 BABs would result in an aggregate NPV dis-savings of about -$42K or -0.01% of refunded par, that is assuming all federal subsidy payments are made by the federal government until year 2040. However, if the BABs subsidy were eliminated that would result in a NPV savings of 20.43%. Mr. Butterfield asked the term they would sell at. Mr. Baker explained the 2009B BABs will pay off in 2039 and the 2010 BABs expires in 2040 so it is contemplated they would stay in the same footprint. Also, as part of this deal UTA is looking to refund two other series that are not callable at this time. The 2007A bond series where they will MWC the bonds and the 2015A bond series where UTA will do a 40% Tender Offer. In short UTA is planning to refinance worth of $25M of other bonds along with the BABs.

Mr. Wade asked if the new bonds could be advance refunded. Mr. Larsen said they would not need to be. Mr. Wade asked if UTA objective is trying to do a break-even type of deal and if that is a fair statement for purposes of the committee. Mr. Christensen confirm that is the case; break-even from a financial standpoint and extreme reduction in risk in the long-term strategy if those circumstances would change. Mr. Butterfield added as a third item would be the ability to call them in the future if they ended up in a more favorable scenario. Mr. Wade agree that there is value in that and worth noting.

Mr. Butterfield asked about the risk of an investor coming back and who is taking that risk. Mr. Larsen explained that UTA will not go forward with the bonds if there is a legitimate lawsuit that would prevent them from closing. Mr. Butterfield asked if it happens after UTA closed the deal. Mr. Larsen explained after closing the risk comes down but there is no way to make anybody bulletproof. In other words, someone would have to say; after they received notice which the trustee gives, did not complained and accepted the tender offer and now they are going to come back and say there was not a material change to the code. In short, they would have to create that cause of action standing after having received a not preserving status. Mr. Baker further explained there will be a notice to send to all bond holders that have BABs bonds to let them know what is coming. Then there will be a more formal noticed after that is adopted by the UTA Board of Trustees, then it will go to market and it will sell and close after all those different contest periods have expired. Mr. Slaugh wanted to clarify that is the procedure for the contest not the tender offer. Mr. Larsen confirm that is correct and that there is no risk for the tender offer and for the BABs there will be an early redemption notice.

Mr. Wade asked for some clarification in the MWC and tender offers if there are any legal risks on those deals. Mr. Baker explained in the case of MWC that expires in 2026, 2027-2029, they will do the contracted formula for the MWC provision and paid exactly what is owed so that is something that is not contestable. Mr. Wade asked about the first column of the chart showing 2009B/2010 BABs MWC and how that is going to work. Mr. Baker explained that those BABs series have a MWC provisions. The way MWC works using the extraordinary redemption option; the cash flows are discounted back at treasuries plus 130 basis points so you get a better rate from UTA's perspective. Therefore, is somebody tries to suit, they are suing for the difference between treasuries plus 100 basis point as a discount rate in the MWC and treasuries plus 130 basis point in the extraordinary redemption option.

Mr. Slaugh mentioned for the committee's benefit the State is also contemplating a transaction under the extraordinary redemption provision of the State outstanding BABs payments looking at a closing date around August.

Mr. Dougall asked why UTA is coming today versus one or two years ago. Mr. Baker explained is due that lawsuit, that open the gates where that extraordinary redemption provision can be use. Also, this provision was first used at the beginning of this year and UTA was not going to the be the first entity to utilized it.

Mr. Larsen noted in the draft parameters bond resolution authorizing the sale of the bonds of $650M, to bear interest rate of not to exceed 5% per annum with a final maturity in not more than nineteen years and to be sold at a discount from par of not to exceed 2% (instead of 98% as listed in the draft resolution, this was a displaced ratio). It should be 98% price as we would not be selling bonds at a 98% discount.

Treasurer Wade made a motion to approve the resolution as proposed the meeting. Mr. Butterfield seconded the motion. The motion passed unanimously.

3. <u>Other Items of Business:</u>

No other items of business to discuss.

Ms. DiCaro made a motion to adjourn the meeting. Mr. Dougall seconded the motion. The motion passed unanimously.

The meeting was adjourned