



OFFICE OF THE NEW YORK STATE COMPTROLLER

Debt Issuance Approval Policy Statement and Guidelines

As of January 10, 2023

This document is intended to provide general guidance to municipal bond issuers and their representative firms with respect to the process of obtaining the approval of the State Comptroller for the private and negotiated sale of bonds or notes. These guidelines are subject to change and may be updated as necessary.

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I. Overview

Many public benefit corporations (including public authorities) and certain local governments must obtain the approval of the State Comptroller (“Comptroller” or “OSC”) before selling certain bonds or notes at private or negotiated sale. These requirements are imposed separately in various provisions of the State of New York’s Public Authorities Law and Local Finance Law.

The purpose of the Comptroller’s private or negotiated sale approval function is to protect the interests of the State and local taxpayers by ensuring that the total cost of borrowing to the issuer is reasonable and appropriate. Accordingly, the Comptroller’s review of private and negotiated sales may assess any factor that affects, or potentially affects, an issuer’s cost of borrowing.

This Policy Statement and Guidelines (“Guidelines”) describes OSC’s private or negotiated sale review process, which is conducted by the Bureau of Debt Management, as well as the information normally required by OSC to conduct this review.¹ OSC requires completion of the [Debt Issuance Approval Request](#) form (“DIAR”) to assist the review process by summarizing key information needed to obtain approval of a private or negotiated sale.

II. Applicability

These Guidelines and the accompanying DIAR apply to all public benefit corporations and public authorities that are required to obtain the Comptroller’s approval as a condition prior to selling bonds or notes at private or negotiated sale. These documents also apply to local governments having general authority to sell bonds or notes at private or negotiated sale subject to the Comptroller’s approval.

Public benefit corporations and public authorities that are required by statute to obtain the Comptroller’s approval for the private or negotiated sale of bonds or notes are listed in Appendix 1. Local governments generally issue refundings pursuant to the authority granted by Sections 90.00 and 90.10 of the Local Finance Law (discussed below). In addition, a number of municipalities in the State have the authority to issue bonds or notes on a private or negotiated basis subject to the Comptroller’s approval, as listed in Appendix 2. Note the appendices of this document may not be comprehensive and are only included for informational purposes. **Issuers should consult with bond counsel for definitive legal guidance about whether the Comptroller’s approval is required.**

Local governments that undertake the private or negotiated sale of advance refunding bonds (and certain current refundings) that must obtain the Comptroller’s approval pursuant to

¹ For purposes of OSC’s private or negotiated bond sale review, references to “OSC” shall mean the process conducted by the Bureau of Debt Management.

Sections 90.00 and 90.10 of the Local Finance Law should refer to the OSC document titled "[Simplified Procedures for Local Governments Seeking the Comptroller's Approval of Certain Matters Relating to Refunding Local Debt Pursuant to Sections 90.00 and 90.10 of the Local Finance Law](#)," which is revised from time-to-time. The factors considered by OSC when reviewing the terms and conditions of refunding bonds pursuant to section 90.10 will be largely similar to those described in these Guidelines. In addition to OSC's terms and conditions review, local governments that sell variable rate obligations or discount bonds at private or negotiated sale pursuant to sections 54.90 and 57.00 of the Local Finance Law must also comply with rules promulgated by the Comptroller pursuant to section 57.10 of the Local Finance Law (see 2 NYCRR § 37).

OSC, at its sole discretion, may waive or amend requirements contained within these Guidelines, including instances where a public benefit corporation is issuing bonds or notes at private or negotiated sale for the benefit of a third party that is a private entity.

III. Factors for Review

OSC's review and approval process includes a review of the terms of the bonds or notes and the terms and conditions of the sale. The terms and conditions of the sale include all costs of issuance (including delivery date expenses) paid or to be paid directly or indirectly by the issuer, including underwriters' expenses. The terms and conditions may also include any expenses attributable to derivative and hedge transactions ("derivatives"), which shall include but not be limited to swaps, interest rate locks, caps, floors, collars, and any similar arrangements which affect, or have the potential of affecting, the issuer's cost of borrowing (see Section VI – Derivatives). Since the purpose of OSC's review of private and negotiated sales is to ensure that the total cost of the borrowing to the issuer is reasonable and appropriate, OSC will not ordinarily consider the risk incurred by issuers and conduit borrowers from derivatives undertaken in connection with a private or negotiated sale of bonds or notes. However, in the event any such risks are noted during the course of its review, OSC may comment separately.

OSC generally considers the following factors as part of its approval process, taking into account the nature, size, structure and complexity of the transaction. These factors include but are not limited to the following:

- The amortization of principal, and its impact on the cost of borrowing.
- If applicable, the circumstances and appropriateness under which capitalized interest may be used.
- The reasonableness of the underwriter's spread, including underwriter expenses (as well as miscellaneous expenses directly billed to the issuer).
- The use of management or structuring fees, which is typically not appropriate for most issuers.
- Takedowns by maturity, which should be on a graduated scale.
- The reasonableness of the costs of issuance paid by the issuer or paid from the proceeds of the bonds or notes including, but not limited to, fees for bond counsel, disclosure counsel, financial advisors, purchaser fees in the case of private placements, escrow bidding fees, and rating agency fees.
- The reasonableness of the yields based on market conditions at the time of pricing, as well as a comparison of spreads to pertinent industry standard indices, such as MMD, U.S. Treasuries, SIFMA, SOFR, or other comparable financing measures.
- In the case of refundings subject to these Guidelines (e.g. refundings not undertaken pursuant to section 90.10 of the Local Finance Law), the reasonableness of the savings and savings structure, with the goal of a structure that produces cash flow

savings in every year with no extension of the final maturity. Review will include the level of negative arbitrage and the use of structuring bonds, if any. OSC may also require a maturity-by-maturity screen analysis for potential bond refunding candidates to ensure reasonable savings thresholds are being met.

- A bond insurance cost benefit analysis on a maturity-by-maturity basis may be reviewed for lower rated issuers, or an issuer may provide a statement in consultation with their financial advisor regarding the cost effectiveness of insurance.

Additional factors may be considered, as circumstances require, and the foregoing list of factors is subject to revision at the discretion of OSC.

IV. The Review Process

The review process begins with OSC receiving pre-pricing numbers (including amortization and savings schedules) and a completed preliminary DIAR from the issuer at least three business days prior to the planned publication of a Preliminary Offering Statement (POS), and no later than five business days prior to the planned date of pricing the bonds or notes. Issuers considering the use of non-traditional structures (other than level debt or level savings) should contact OSC with pre-pricing numbers showing the amortization and savings schedules at least five business days in advance of issuing their POS.

If any party other than the issuer provides pre-pricing numbers, the DIAR, or any other information related to the transaction, the issuer must be included in the correspondence with OSC. Whenever possible, issuers must submit documentation electronically.

As additional information required by the DIAR and these Guidelines becomes available leading up to the pricing, such information should be sent to OSC to expedite the approval process on the day of pricing. Except for the information specifically attributable to the actual pricing (as outlined in Section V - Information Required), all other information on the DIAR is to be submitted no later than one business day prior to the date of pricing.

In the event that different series or sub-series of bonds are to be issued as part of one common transaction, if possible, a separate DIAR should be submitted for each series or sub-series. To the extent practicable, OSC will evaluate all of the issuances collectively.

As soon as possible after the bonds are priced, an issuer must submit to OSC a fully completed DIAR containing all the information required by the DIAR and these Guidelines, accompanied by supporting documentation. Upon receipt of such information and documents, OSC will make an initial determination as to whether to approve the private or negotiated sale. OSC will make every effort to complete the preliminary approval process as soon as practicable. If final information is received late in the day, OSC will endeavor to complete the preliminary approval process on the next business day. In order to permit the issuer to execute the bond purchase agreement, OSC will express its preliminary approval by making a notation on the DIAR and thereafter will send a copy of the notated DIAR by email to the issuer.

Following receipt of the DIAR with OSC's preliminary approval noted thereon, and as soon as possible prior to the closing, the issuer must submit any remaining information and documents required by the DIAR and these Guidelines. Final approval by the Comptroller shall be provided by OSC by executing its Debt Approval Letter, a sample of which is provided in Appendix 3. Execution of the Debt Approval Letter, which constitutes the Comptroller's final approval, is conditional upon OSC receiving all such remaining required information and documentation,

including the final official statement. Upon completion of the issuer's submission, and a determination by OSC that such remaining information and documents, are consistent with, and not materially different from the information upon which OSC based its preliminary approval, OSC will execute its Debt Approval Letter (see Appendix 3). OSC will provide an executed Debt Approval Letter by sending an electronic pdf copy via email to the issuer and, if requested, a hard copy original by mail.

V. Information Required

To obtain approval of a private or negotiated sale of bonds or notes, issuers must submit the following information to OSC.

Prior to publishing a POS:

- A description of the debt issuance purpose and financing plan, including any related derivatives.
- A preliminary DIAR, which can be found on the State Comptroller's website at: [Debt Issuance Approval Request](#).
- Preliminary Number Runs, including but not limited to: (i) sources and uses schedule; (ii) bond summary statistics schedule; (iii) schedule detailing components of underwriter's spread (including itemization of miscellaneous underwriter expenses billed directly to the issuer, or billed to a conduit borrower), and a takedown-by-maturity schedule; (iv) schedule detailing all costs of issuance and delivery day expenses; (v) bond pricing schedule that summarizes maturity dates, par amounts, coupon rates and yields; (vi) debt service schedule, with a principal and interest breakout; (vii) for refundings, savings schedule(s) that disclose annual cash flow savings, aggregate present value savings and present value savings as a percentage of refunded par; and (viii) depending on the complexity of the transaction, such additional information as may be requested.

Following the Pricing:

- A fully completed DIAR.
- A POS in electronic format, or link thereto, followed by the final official statement ("OS") when available.
- Rating agency report(s).
- Final and verified number runs pertaining to the debt issuance, including the following: (i) sources and uses schedule; (ii) bond summary statistics schedule; (iii) schedule detailing components of underwriter's spread (including itemization of miscellaneous underwriter expenses billed directly to the issuer, or billed to a conduit borrower), and a takedown-by-maturity schedule; (iv) schedule detailing all costs of issuance and delivery day expenses; (v) bond pricing schedule that summarizes maturity dates, par amounts, coupon rates and yields; (vi) debt service schedule, with a principal and interest breakout; (vii) for refundings, savings schedule(s) that disclose annual cash flow savings, aggregate present value savings and present value savings as a percentage of refunded par; and (viii) depending on the complexity of the transaction, such additional information as may be requested.
- If the debt issuance is insured, a summary of the process used to procure the insurance, a summary of the offers received as a result of that process (in basis points), and an analysis of the costs and financial benefits of utilizing such insurance on a maturity-by-maturity basis.
- Comparable pricings of similar transactions.

- Subscriptions by maturity, with the pricing progression showing any adjustments to yields and spreads made through the pricing process.
- A pricing commentary from the Issuer or Financial Advisor discussing the pricing progression, including explanations for any market concerns and/or pricing circumstances that occurred.
- Any additional information as may be requested.

VI. Derivatives

In the case of derivatives undertaken in connection with a private or negotiated sale of bonds or notes, whether or not undertaken simultaneously with the sale of the obligations, OSC will consider the reasonableness of the terms of the derivatives, as well as how their use fits into the overall plan of finance. OSC's review of the terms of derivatives will include any payments from the proceeds of the bonds, as well as any "off-market" payments to or from the issuer.

Issuers should notify OSC of the proposed details of any derivative transaction that may take place prior to the sale of the bonds or notes, to facilitate the approval process for such sale of bonds or notes, and minimize the possibility that approval complications will arise because of a prior derivative transaction. **If a derivative is entered into prior to OSC's approval of the sale of the bonds or notes, it is also recommended that any such derivative be made contingent upon the successful sale and approval of the related bonds or notes.**

For derivative transactions, whether or not simultaneously undertaken with the sale of the bonds or notes, the following information must be submitted:

- A detailed description on how the counterparty was selected (RFP, competitive bid, etc.), providing a comparison of the offered terms.
- A detailed description of the terms of the transaction(s), including a copy of the derivative confirmation(s).
- A description of all costs incurred in connection with such transactions that are paid by the issuer of the bonds or notes, or paid from the proceeds of the bonds or notes.
- A swap or financial advisor certification (or letter) attesting to the fair market value of the derivative at the time of pricing. This fair market value pricing certification should include a calculation of the fair market value as well as the spread to mid-market (both in dollars and basis points).
- Documentation verifying that derivatives are legally authorized (i.e. statutory authorization, governing board resolution, a certified copy of policies and guidelines governing the use of derivatives as formally adopted by the issuer) and such other documentation as may be requested.

Appendix 1* (Revised 1/10/2023)

Public Benefit Corporations and Public Authorities Required to Obtain the Comptroller's Approval for Negotiated or Private Sales of Bonds or Notes

Statewide Public Authorities

Dormitory Authority	Public Authorities Law Sections 1680(19)(d)(4), 1680-d(4), 1680-1(5)(c) and 1680-q(5)(c) Chapter 392 of the Laws of 1973, Section 6(2) State Finance Law, Section 68-b(1)(g) State Finance Law, Section 69-n(1)(g)
Energy Research & Development Authority	Public Authorities Law, Section 1860(5)
Environmental Facilities Corporation	Public Authorities Law, Section 1290(2) State Finance Law, Section 68-b(1)(g)
Housing Finance Agency	Private Housing Finance Law, Section 46(2)(c) State Finance Law, Section 68-b(1)(g)
Job Development Authority	Public Authorities Law, Section 1805(3)
New York State Tobacco Settlement Financing Corporation	Chapter 62 of the Laws of 2003, Part D3, Section 6(3); and as amended.
Thruway Authority	Public Authorities Law, Section 365(2) State Finance Law, Section 68-b(1)(g) State Finance Law, Section 69-n(1)(g)
State of New York Mortgage Agency	Public Authorities Law, Section 2406(5)
State of New York Municipal Bond Bank Agency	Public Authorities Law, Section 2437(5)
Urban Development Corporation	Chapter 174 of the Laws of 1968, Section 17(7) (Unconsolidated Laws, Section 6267(7)) State Finance Law, Section 68-b(1)(g) State Finance Law, Section 69-n(1)(g)

Regional Transportation Authorities

Albany County Airport Authority	Public Authorities Law, Section 2785(4)
Albany Port District Commission	Chapter 192 of the Laws of 1925
Capital District Transportation Authority	Public Authorities Law, Section 1310(2)
Central New York Regional Transportation	Public Authorities Law, Section 1335(2)

Authority

Metropolitan Transportation Authority	Public Authorities Law, Section 1269(2)
Monroe County Airport Authority	Public Authorities Law, Section 2759(4)
Niagara Frontier Transportation Authority	Public Authorities Law, Section 1299-i(2)
Ogdensburg Bridge and Port Authority	Public Authorities Law, Sections 706(9) and 727
Rochester-Genesee Regional Transportation Authority	Public Authorities Law, Section 1299-kk(2)
Syracuse Regional Airport Authority	Public Authorities Law, Section 2799-jjj(4)(g)

Fiscal Stability Authorities

Buffalo Fiscal Stability Authority	Public Authorities Law, Section 3862(5)
Erie County Fiscal Stability Authority	Public Authorities Law, Section 3962(5)
Municipal Assistance Corporation for the City of Troy	Public Authorities Law, Section 3012(1)(E)
Nassau County Interim Finance Authority	Public Authorities Law, Section 3656(5)

Other Financing Authorities

New York City Transitional Finance Authority	Public Authorities Law, Section 2799-gg(5)
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Municipal/Regional Utility Authorities

Albany Municipal Water Finance Authority	Public Authorities Law, Section 1115-n(3)
Buffalo Sewer Authority	Public Authorities Law, Section 1187(2)
Cayuga County Water and Sewer Authority	Public Authorities Law, Section 1199-hhhh(4)
Clifton Park Water Authority	Public Authorities Law, Section 1120-h(3)
Dutchess County Water and Wastewater Authority	Public Authorities Law, Section 1128(3)(a)
Erie County Water Authority	Public Authorities Law, Section 1056(2)
Green Island Power Authority	Public Authorities Law, Section 1020-h(3)

Livingston County Water and Sewer Authority	Public Authorities Law, Section 1199-gggg(4)
Long Island Power Authority	Public Authorities Law, Section 1020-k(4)
Nassau County Sewer and Storm Water Finance Authority	Public Authorities Law, Section 1232-g(2)
Niagara Falls Public Water Authority	Public Authorities Law, Section 1230-m(3)
North Country Power Authority	Public Authorities Law, Section 1021-i(5)
North Shore Water Authority	Public Authorities Law, Section 1114-g(3)
Onondaga County Water Authority	Public Authorities Law, Section 1156(2)
Orange County Water Authority	Public Authorities Law, Section 1199-ii(3)
Rensselaer County Water and Sewer Authority	Public Authorities Law, Section 1199-h(3)
Saratoga County Water Authority	Public Authorities Law, Section 1199-hhh(3)
South Nassau Water Authority	Public Authorities Law, Section 1114-g(3)
Town of Wilton Water and Sewer Authority	Public Authorities Law, Section 1129(3)
Upper Mohawk Valley Regional Water Finance Authority	Public Authorities Law, Section 1226-l(4)
Water Authority of Southeastern Nassau County	Public Authorities Law, Section 1174-h(3)(a)
Water Authority of Western Nassau County	Public Authorities Law, Section 1198-h(3)(a)
Water Authority of Great Neck North	Public Authorities Law, Section 1197-g(3)(a)
Wayne County Water and Sewer Authority	Public Authorities Law, Section 1199-hh(3)
Authorities formed pursuant to the NYS Local Water and Sewer Authority Act	Public Authorities Law, Section 1196-f(3)

Solid Waste and Resource Recovery Authorities

Alfred, Almond, Hornellsville Sewer Authority	Public Authorities Law, Section 1147-k(4)
County of Franklin Solid Waste Management Authority	Public Authorities Law, Section 2051-h(2)
Dutchess County Resource Recovery Agency	Public Authorities Law, Section 2047-h(2)

Eastern Rensselaer County Solid Waste Management Authority	Public Authorities Law, Section 2050-hh(2)
Montgomery, Otsego, Schoharie Solid Waste Management Authority	Public Authorities Law, Section 2041-g(2)
Oneida-Herkimer Solid Waste Management Authority	Public Authorities Law, Section 2049-hh(2)
Onondaga County Resource Recovery Agency	Public Authorities Law, Section 2045-h(2)
Rockland County Solid Waste Management Authority	Public Authorities Law, Section 2053-j(2)
Town of Islip Resource Recovery Agency	Public Authorities Law, Section 2046-g(2)
Town of North Hempstead Solid Waste Management Authority	Public Authorities Law, Section 2049-h(2)
Ulster County Resource Recovery Agency	Public Authorities Law, Section 2050-h(2)

Parking Authorities

City of Albany Parking Authority	Public Authorities Law, Section 1493-i(2)
City of Yonkers Parking Authority	Public Authorities Law, Section 1596-i(2)
Harrison Parking Authority	Public Authorities Law, Section 1570-h(4)(e)
Middletown Parking Authority	Public Authorities Law, Section 1621-i(2)
Syracuse Parking Authority	Public Authorities Law, Section 1475-i(4)(e)
Village of Nyack Parking Authority	Public Authorities Law, Section 1622-i(2)
White Plains Parking Authority	Public Authorities Law, Section 1433(2)

Regional Development, Recreation, Health Care and Cultural Authorities

Albany Convention Center Authority	Public Authorities Law, Section 2675-j(3)(e)
Clifton-Fine Health Care Corporation	Public Authorities Law, Section 3608(4)(e)
Development Authority of the North Country	Public Authorities Law, Section 2711(5)
Erie County Medical Center Corporation	Public Authorities Law, Section 3633 (4)(f)

Greater Rochester Sports Authority	Public Authorities Law, Section 2582(4)(e)
Long Island Market Authority	Public Authorities Law, Section 906(4)(f)
Nassau Health Care Corporation	Public Authorities Law, Section 3407(4)
New York Convention Center Development Corporation	Section 5-a(3) of Chapter 35 of the Laws of 1979, as added by Chapter 3 of the Laws of 2004; and as amended.
Roswell Park Cancer Institute Corporation	Public Authorities Law, Section 3560(6)(b)
Schenectady Metroplex Development Authority	Public Authorities Law, Section 2665(4)(e)
Suffolk County Judicial Facilities Agency	Public Authorities Law, Section 2350-g(4)(e)
Trust for Cultural Resources of the City of New York	Arts and Cultural Affairs Law, Title E, NYS Cultural Resources Act, Section 20.17(6)
Trust for Cultural Resources of the County of Onondaga	Arts and Cultural Affairs Law, Title E, NYS Cultural Resources Act, Section 20.17(6)
United Nations Development Corporation	Chapter 345 of the Laws of 1968, Section 10-a; and as amended.
Upper Mohawk Valley Memorial Auditorium Authority	Public Authorities Law, Section 1945(4)
Westchester County Health Care Corporation	Public Authorities Law, Section 3308(4)(f)

Off-Track Betting Corporations

Capital District Off-Track Betting Corporation	Racing, Pari-Mutuel Wagering and Breeding Law, Section 508(3)
Catskill Off-Track Betting Corporation	Racing, Pari-Mutuel Wagering and Breeding Law, Section 508(3)
Nassau Regional Off-Track Betting Corporation	Racing, Pari-Mutuel Wagering and Breeding Law, Section 508(3)
Suffolk Regional Off-Track Betting Corporation	Racing, Pari-Mutuel Wagering and Breeding Law, Section 508(3)
Western Regional Off-Track Betting Corporation	Racing, Pari-Mutuel Wagering and Breeding Law, Section 508(3)
New York City Off-Track Betting Corporation	Racing, Pari-Mutuel Wagering and Breeding Law, Section 611(3)

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Appendix 2* (Revised 1/10/2023)
Local Governments Required to Obtain the Comptroller's
Approval for Negotiated or Private Sales of Bonds or Notes

New York City	Local Finance Law, Sections 54.10(a), 57.00(a)
City of Buffalo	Local Finance Law, Section 54.30, 57.00(a)
City of Yonkers	Local Finance Law, Section 54.40
County of Erie	Local Finance Law, Section 54.50
County of Nassau	Local Finance Law, Section 57.00(a)
General Authorization for Municipalities and School Districts to Liquidate Operating Deficits	Local Finance Law, Section 10.10(g)
General Authorization for Municipalities to issue Tax Increment Bonds or Notes	General Municipal Law, Section 970-o (c)

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Appendix 3

Sample Debt Approval Letter

THOMAS P. DiNAPOLI
STATE COMPTROLLER



OFFICE OF BUDGET AND POLICY
ANALYSIS
BUREAU OF DEBT MANAGEMENT

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER
110 STATE STREET
ALBANY, NEW YORK 12236

To: [Public Authority]

Re: Approval of Terms and Conditions of Private Sale for:
[\$Par Amount] [Bond Credit] Bonds, Series [Name/Number]

The terms and conditions of the private sale of the above referenced bonds, as set forth in the attached Debt Issuance Approval Request Form(s), are hereby approved. The Comptroller's approval of this private or negotiated sale of bonds or notes does not constitute an approval, or opinion as to either the legality or effect, of any other matter, including the risk to the issuer of any derivative or hedge transactions undertaken in connection with such sale.

Very truly yours,

for
Thomas P. DiNapoli
State Comptroller

By:
Title:
Date: