

Issuer Responsibilities Post-Issuance

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Now That You've Priced the Bonds....

- Typically, 14-30 days between pricing and closing
- During this time:
 - Lawyers are finalizing all legal documents, including the Official Statement (offering document) to reflect the pricing of the transaction
 - Changes/adjustments cannot be material to the deal
 - If material, must sticker the O/S
 - Team reviews all closing documents
 - Arrange for all documents to be signed, typically the day before actual closing
 - Morning call to confirm receipt of funds and release of bonds to DTC
 - You should be preparing for what's next



What Is Next....

- A. YOU'RE TOTALLY DONE AND CAN GO BACK TO YOUR REGULAR JOB?
- B. TAKE THE REST OF THE DAY OFF?
- C. GO FISHING/PLAY PICKLE BALL?
- D. NOW THE REAL WORK BEGINS?



Reality Sets In

- **YOU'RE BASICALLY ON YOUR OWN**
 - Underwriters have moved on to their next transaction
 - Bond/Disclosure Counsel have also moved on
 - Financial Advisor has basically moved on

So who does that leave?



What Do You Need To Be Thinking About

- Paying bills
- Setting up accounts
- Recording the transaction in your general ledger
- Monitoring
 - Cashflow
 - Proper use of funds
 - Timing on the use of funds
- Reporting
 - EMMA
 - CDIAC
 - Governing Board



What To Do With All This Money?

- Proceeds are received by the Issuer or Trustee
 - Trustee allocates funds between various accounts
 - Cost of Issuance
 - Construction
 - Bond Reserve
- Pay cost of issuance as invoices are received
- Determine how to invest proceeds
 - Reserve Funds
 - Construction Funds
- Let appropriate departments know that funds are available



Understand Your Responsibilities

- To the Regulators
 - IRS and SEC
 - MSRB
 - Regulates Underwriters and Municipal Advisors
 - What do I do with the disclosure letters?
 - MSRB Rules G-17, G-42
- CDIAC Reporting
 - Report of Proposed Issuance
 - Report of Final Sale
 - New Annual Debt Transparency Report
- Under the indenture, tax certificate and continuing disclosure agreement



Understand Your Responsibilities - (cont.)

- Proper use of the bond funds
 - Capital purposes
 - Projects listed
 - Like projects allowed
 - Proceeds expended in a timely manner within the tax certificate
- Properly Invested
 - Permitted investments within bond documents
 - Permitted investments within your investment policy
- Arbitrage Rebate reports prepared during the required timeframes
- Timely debt service payments
 - Include debt service in the budget
 - Monitor your cash flows to ensure adequate funds are on hand for payment



Understand Your Responsibilities - (cont.)

- Setting your proper rates
- Coordinating of project payments or bond draws with the Trustee
 - Use of the proper form
 - Attach appropriate documentation
 - Time your bond draws with cash needs
- Record Keeping
 - Accurate accounting
 - Make sure that the closing transaction is properly set up
 - Financial Statements
 - Notes to the financial statements related to debt service
 - Tracking bond payments
 - Keep track of your payments per each bond issue with details for the individual bond draws and cumulative totals. These totals should reconcile with your Trustee statements.



Get Yourself Organized

- Review your Debt Policy
- Establish a tickler system with dates & responsibilities:
 - Debt service payments
 - Continuing disclosure filings
 - Arbitrage rebate obligations
 - Spending timelines
 - Yield restrictions
 - Use of proceeds



Get Yourself Organized

- Searchable database of trigger events
 - Rating changes
 - New debt or SWAP
 - Document amendments
 - Bankruptcy
 - Legislation
 - Major judgment
 - Late payment/nonpayment
 - Late filing
- Backup planning



Post-Issuance Best Practices

- Know what's in your Continuing Disclosure Agreements (CDA)
- Understand federal and state muni tax and securities requirements
- Develop disclosure policies and procedures to ensure compliance and peace of mind
 - Formal, written, adopted
 - Review update at least every three years
 - Use assistance of outside professionals if desired (municipal advisor, counsel)
- Elements
 - List of all compliance actions at time bonds are sold – by series
 - Documentation of sources and frequency of requirements
 - Identify and assign responsibilities by title



Post-Issuance Best Practices - (cont.)

- Elements

- Create policies and procedures that reflect who you are
- Determine if outside vendor may be of assistance
- Monitor changes in laws and regulations
- Identify records to be maintained, for how long and how to maintain
- Train responsible employees
- Determine how to identify and correct mistakes
- Other considerations
 - Bond Indentures/Bond Ordinance/Bond Resolution
 - Other internal finance policies and how they relate to debt management and post issuance compliance



Post-Issuance Tax Compliance

- Remember all those documents you signed at closing?
 - You now have a legal (and moral) obligation to comply
- Record retention
- Arbitrage and yield restriction
- Correct expenditure of proceeds
- Tracking use of proceeds
- Understanding and monitoring private use
- Remedies when things go sideways (call counsel, IRS VCAP program)



Record Retention

- **General rule: life of the bonds plus three years**
 - If new money bonds are refunded, extends to life of refunding bonds plus three years
- **What do you keep?**
 - Basic records relating to the bond transaction
 - Documents evidencing the expenditure of bond proceeds
 - Documents evidencing the use of bond-financed property by public and private sources
 - Documents evidencing all sources of payment and security of the bonds
 - Documents pertaining to the investment of bond proceeds
- **How do you keep it?**
 - IRS Electronic storage guidelines



Your Relationship With Your Trustee

- While most of your team moves on to their next deal, you and the Trustee are actively involved for the life of the bonds
- Select your Trustee based upon experience, professionalism and resources, not just price
- Trustee performs administrative functions on your behalf which directly reflects on you and your agency and the bond holders
- Selection of the Trustee should begin prior to the closing and as early in the document review process as possible



Your Relationship With Your Trustee

- What skills should they possess?
 - Legal knowledge and document review skills
 - Understanding of investments and settlement process
 - Accounting skills
 - System knowledge
 - Communication skills
 - Organization skills
- In general, they should possess a wealth of information related to your bond issue
- Get them to share this knowledge with you



It's Now Time For Arbitrage Calculation

- Arbitrage is the ability to earn profit by capitalizing in differences between investments or markets
- In the case of public finance, Arbitrage refers to ability to profit from investment of tax-exempt bond proceeds in taxable securities
- The ability to earn arbitrage depends on the relationship between taxable and tax-exempt rates and the shape of the yield curve
- Positive arbitrage represents earnings above the arbitrage yield. Negative arbitrage represents earnings below the arbitrage yield (i.e., “losses”)



Arbitrage Rebate Compliance Activities

- Internal monitoring of rebate compliance
- Recommend annual calculations during construction period
 - Set aside annual rebate liability in Rebate Fund
 - Get it out of the Construction Fund
- Paying rebate is not bad, just need to monitor and pay as required
- Pay attention to requirements in Tax/Arbitrage Certificate



When is Rebate Calculated?

- **Required:**
 - Every five years, and on Final Maturity
 - Refunding Triggers New Final Maturity
 - 8038-T: Only file if rebate is owed
 - When required by bond indenture
- **Recommended:**
 - Annually during construction period



Accounting & Expenditure of Proceeds

- Reasonable expectations vs actual facts – are you spending funds on correct items?
- General Accounting
- Best Practice: Open communication with those responsible for spending the money
- Reallocation of bond proceeds
- Tracking proceeds



Private Use/Payment Tests

- Private Business Use Test:
 - No more than 10% of the proceeds of the bonds can be used for Private Business Use
- Private Payment Test:
 - No more than 10% of the payment of principal or interest on the bonds is made or secured by payments for Private Business Use
- BOTH tests must be “met” in order to have Private Activity Bonds
- Live and learn: the federal government is treated as a PRIVATE party

Be sure to talk with bond counsel about existing and changing federal tax laws



Other Compliance Issues

- Bond Indenture Requirements/Covenants
 - Coverage Ratios
 - Progress Reports/Financial Reports
 - Additional Bonds Tests
- Debt Policy Requirements



QUESTIONS