

# Roles and Responsibilities: The Financing Team in an Initial Municipal Bond Offering

A key part of issuing new debt is to assemble a team that works for the state or local government. Generally, the bond offering process is a coordinated effort among various professionals to finance a state or local government's capital projects. A municipal government can benefit from an understanding of the roles and responsibilities of its deal team.

Once a state or local government decides to finance a capital project by issuing bonds, it would hire a financing team to finalize the financing plan, develop offering documents, prepare for any rating agency and investor presentations, market the bond offering to investors, price the bonds and close the transaction.

The roles and responsibilities of an issuer's team may vary depending upon the bond offering method of sale — competitive bid, negotiated or private placement.

In a negotiated sale, an initial bond offering by an issuer is directly sold to an underwriter or underwriting syndicate selected by the issuer.<sup>1</sup> In addition to the underwriter or underwriting syndicate, the professionals involved in a negotiated municipal bond financing transaction may include municipal advisors, underwriter's counsel, bond counsel, feasibility consultants, credit enhancers, selling group members, auditors, rating agencies, trustees, disclosure counsel and other counsel. [View a chart of the professionals involved in a negotiated transaction.](#)

Among the primary points of negotiation for an issuer are the interest rate, call features and purchase price of the issue, as well as covenants or other key terms of the bond documents viewed as important in marketing the new issue.

<sup>1</sup> Private placements also are sold by negotiation and involve the sale by a placement agent directly to institutional or private investors rather than through an offering to the general investing public. Investors purchasing privately placed securities often must meet certain standards of sophistication and also are often required to agree to restrictions as to resale, sometimes required to provide a private placement letter to that effect.

A competitive bid is a transaction in which potential underwriters submit proposals for the purchase of a new issue of municipal securities and the securities are awarded to the underwriter or underwriting syndicate presenting the best bid according to stipulated criteria set forth in the notice of sale. The underwriting of securities in this manner may also be referred to as a "public sale" or "competitive sale." The professionals that may be involved in competitive transactions include underwriters, municipal advisors, underwriter's counsel, bond counsel, feasibility consultants, credit enhancers, auditors, rating agencies and trustees. [View a chart of the professionals involved in a competitive transaction.](#)

The following provides general descriptions of the role, activities and responsibilities of members of a bond financing team in an initial bond offering. Other activities conducted by these professionals will depend on the particular type of transaction, the presence of additional financing team members and any restricted role they perform as the issuer may determine.

## The State or Local Government

- defines the financing requirements
- determines the method of sale
- sets and implements debt management policies and procedures of the municipality
- determines available resources for payment of principal and interest of new debt issue
- selects and manages the financing team
- prepares offering documents in consultation with the financing team

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- works with the senior manager to determine how orders are filled or allotted<sup>2</sup> to investors from the bond pricing order period
- determines participation<sup>3</sup> of the senior manager's and syndicate members' liability in a negotiated bond issuance
- determines the compensation of financing team
- negotiates with the underwriter the final purchase price of the bonds
- executes the bond purchase agreement<sup>4</sup> with the senior manager
- adopts bond resolution and/or executes any trust indenture, loan agreement or other bond financing documents
- pays principal and interest on the bonds as they become due
- complies with tax and other covenants included in the bond financing documents
- submits continuing disclosures to the MSRB's Electronic Municipal Market Access (EMMA) system under the issuer's continuing disclosure agreement

<sup>2</sup> Allotments are the number of bonds which are actually sold by an underwriter to an investor.

<sup>3</sup> Participation is the portion of a new municipal bond issue, expressed as a percentage of the number of bonds, for which the senior manager and syndicate members have a legal liability, regardless of whether or not they sell that many bonds. There are two major types of syndication agreements:

*Undivided or Eastern Account* — A method for determining liability stated in the agreement among underwriters in which each member of the underwriting syndicate is liable for any unsold portion of the issue according to each member's percentage participation in the syndicate. Syndicates most frequently are structured as undivided accounts.

*Divided or Western Account* — A method for determining liability stated in the agreement among underwriters in which each member of an underwriting syndicate is liable only for the amount of its participation in the issue, and not for any unsold portion of the participation amounts allocated to the other underwriters.

<sup>4</sup> Bond purchase agreement is the contract between an underwriter and issuer setting forth final terms, prices, and any other relevant conditions upon which underwriter purchases a new municipal bond issue.

## Municipal Advisor

- acts in a fiduciary capacity for the state or local government
- develops requests for proposals and qualifications for underwriters, bond or disclosure counsel, credit enhancement facilities, investment products
- assists in developing the plan of finance and related transaction timetable
- identifies and analyzes financing solutions and alternatives for funding capital improvement plan
- advises on the method of sale, taking into account market conditions and near-term activity in the municipal market
- assists in preparation of any rating agency strategies and presentations
- coordinates internal/external accountants, feasibility consultants and escrow agents
- assists with the selection of underwriters, underwriter compensation issues, syndicate structure and bond allocations
- assists with negotiated sales, including advice regarding retail order periods and institutional marketing, analysis of comparable bonds and secondary market data
- assists with competitive bond sales, including preparation of notice of sale and preliminary official statement, bid verification, true interest cost (TIC) calculations and reconciliations/verifications of bidding platform calculations, preparation of notice of sale, obtaining CUSIP numbers
- prepares preliminary cash flows/preliminary refunding analysis
- analyzes whether to use SLGS,<sup>5</sup> open markets and/or agency securities for purposes of investment of bond proceeds

<sup>5</sup> SLGS are U.S. Treasury securities issued under its State and Local Government Series program for purposes of complying with arbitrage rules under the federal tax code.

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- manages the escrow bids or reviewing SLGS applications for structuring advance refunding escrow
- assists in procuring printers, verification agents, etc.
- verifies cash flow calculations
- plans and coordinates bond closings
- prepares any required post-sale reports of bond sales
- evaluates market conditions and pricing performance of senior manager and co-managers' distribution of bonds

### Bond Counsel

- drafts bond resolution, indenture, loan agreement and/or other bond financing documents
- reviews applicable law to confirm the issuer's authority to issue the bonds and its conformity with other legal requirements
- affirms issuer's authorization of the bond offering
- discloses and examines litigation that may jeopardize the validity of the bond issue
- interprets arbitrage regulations and tax law
- attests to the validity and enforceability of the bonds
- provides guidance in structuring issues related to tax law
- confirms tax-exempt status
- drafts tax certificate

### Underwriter (also known as Senior Manager, Lead Manager or Bookrunner)

- has an "arm's-length" relationship with the municipal government
- provides proceeds at closing and obtains funds from investors
- manages the affairs of any underwriting syndicate formed in connection with a new issue
- in a negotiated offering:
  - works with state or local government and municipal advisor to design the plan of finance
  - develops the bond structure
  - assists in determining timing to sell bonds based on market conditions
  - assists in the development of the bond documents
  - assists in preparing any rating agency strategy and presentation
  - "runs numbers" providing quantitative analysis of financing structure
  - manages the pricing process
  - executes pre-sale marketing

- solicits price views from syndicate members, which provides preliminary pricing indications among underwriters and customers about the offering range of a new issue
- prepares distribution analysis
- works with the state or local government to determine how orders are filled from the bond pricing order period
- executes the bond purchase agreement with the municipal government on behalf of the syndicate
- submits bid in a competitive sale following evaluation of pricing of comparable issues, discussions with potential investors, accessing supply of bonds in the market or bonds scheduled to come to market, weighing possible competition from other firms

### Underwriting Syndicate (also known as Co-Manager(s))

- has an "arm's-length" relationship with the state or local government
- under the direction of the senior manager, purchases an initial bond issue from state or local government and offers it for resale to investors
- provides sufficient capital to purchase an issue
- shares the risks of underwriting the issue with the senior manager
- distributes the bonds to investors

### Underwriter's Counsel

- drafts bond purchase agreement, blue sky memorandum<sup>6</sup> and agreement among underwriters<sup>7</sup>
- advises underwriters regarding their legal positions with respect to the issue
- advises underwriters on state and federal securities laws
- assists underwriters in undertaking due diligence review and provides legal opinion that, based on such review, official statement does not contain misleading information or omit materials information

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<sup>6</sup> Blue sky memorandum specifies the way a specific issue will be treated under state securities laws, usually including all 50 states, Puerto Rico, Guam and the District of Columbia, as well as the steps that must be undertaken to qualify the issue for sale in those jurisdictions.

<sup>7</sup> Agreement among underwriters is a contract among syndicate group members setting forth their rights, duties and underwriter's commitments to each other with respect to a new issue of securities.

## Rating Agencies

- assess the credit quality of the bonds
- assigns rating to the bond issue
- updates ratings periodically while debt is outstanding

## Trustee (also known as Paying Agent, or Registrar)

- acts in a fiduciary role for the benefit of bondholders in enforcing the terms of the trust indenture
- transmits principal and interest payments from an issuer of municipal securities to the bondholders
- holds and invests moneys held in a construction fund, reserve fund or other funds that serve as security for payment of debt service on the bonds
- maintains records on behalf of the issuer that identify the registered owners of the bonds and related matters
- represents the interests of bondholders in the event of a default

Depending upon the type of transaction, other deal participants may be retained as required including:

## Other Counsel

Other counsel in the bond issuance process may include disclosure counsel, special tax counsel, bank counsel, and borrower's counsel. Such special counsel may be necessary for specific issues that are more complex or have particular characteristics calling for such participation.

## Feasibility Consultant

- writes the feasibility report prepared for revenue bond sales (such as in airport and water and sewer revenue bond offerings) and included in the official statements.

The report may evaluate the economic viability, the adequacy of revenues generated by a capital project or program to repay debt. The report generally describes historic and projected demand for the services, economic trends, user base, user fees and rates that generate revenues pledged to cover debt service.

## Credit Enhancers

- supports an issuer's credit in exchange for a fee or a premium, in the form of enhancement such as bond insurance or a letter of credit

## Selling Group Members

- assist in the distribution of a new issue of municipal securities
- acquire new issue securities from the underwriting syndicate but do not participate in residual syndicate profits nor share any liability for unsold bonds

## Verification Agent

- verifies cash flow sufficiency to the call date of the escrow securities to pay principal and interest on refunded bonds

## Escrow Agent

- serves as custodian of funds and holds securities to pay debt service on refunded bonds

## Printer

- prints, or creates the electronic version of, the preliminary and final official statements for distribution to the marketplace

## Auditor

- compiles and examines the municipal government's financial statements upon which the auditor has expressed or disclaimed an opinion
- reports, audits or investigates a municipal government's financial position and results of operations for a set period of time

Generally, the audit includes: (a) a statement of the scope of the audit; (b) explanatory comments concerning exceptions from generally accepted accounting principles and auditing standards; (c) expression or disclaimer of opinions; (d) explanatory comments concerning verification procedures; (e) financial statements and schedules; and (f) statistical tables, supplementary comments and recommendations.