

— THE
Bond Basics

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THE BOND BASICS

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NOTICE

Neither the National Association of Bond Lawyers (the “Association”) nor its General Law and Practice Committee takes responsibility as to the completeness or accuracy of the materials contained herein. Accordingly, readers are encouraged to conduct independent research of original sources of authority. This Basics Handbook is provided to further professional education only and is not intended to provide legal advice or counsel as to any particular situation. If you discover any errors or omissions, please direct your comments to the President of the Association or to the Chair of the Association’s General Law and Practice Committee.

FOREWORD

One valuable way in which public finance law practices can meet the challenge of offering competent, yet affordable, legal services to clients is through the greater utilization of junior associates and paraprofessionals, such as paralegals and legal assistants. In addition, as with many professions, the practice of public finance needs new professionals to fill the void left by experts who, in large numbers, have either retired or are planning to retire in the near future. This “Basics Handbook,” prepared by a subcommittee of the General Law and Practice Committee (“Committee”) of the National Association of Bond Lawyers, represents a compilation of resource materials relating to the issuance of municipal securities. The subcommittee was purposefully staffed with attorneys and non-attorneys with varied levels of experience in public finance. This Basics Handbook is intended to provide certain foundational information to serve as a resource for those beginning their work in the legal aspects of public finance (“Novices”) as well as more experienced professionals who, from time to time, would like to get back to the basics. Readers are encouraged to revisit this Basics Handbook as they gain more experience in public finance. This Basics Handbook is intended to be easily digestible by Novices in public finance on their first day, but still helpful for partners revisiting concepts in federal tax law or federal securities law. It is a basic, but insightful, reference tool which may serve as a foundation for understanding public finance transaction documents and related matters. The National Association of Bond Lawyers does not intend this Basics Handbook to set standards or provide documents for use in municipal bond transactions.

The municipal bond market is very large, with great variety and complexity. There are over 50,000 issuers. Each issuer is subject to federal, state and local laws and all manner of regulations and customs. No handbook can account for all of the differences among issuers, types of obligations and/or participants. This Basics Handbook is intended to acquaint beginners with the general complexities involved in the issuance of municipal bonds, not to explore each complexity in detail.

Readers should note that attached to this Basics Handbook is a Glossary of terms frequently used in public finance transactions. Many of these terms are used in this Basics Handbook. Readers are encouraged to refer to the Glossary often. In addition, for advanced guidance on a particular subject, readers are encouraged to review the wealth of subject matter specific documentation and resources which are available on the National Association of Bond Lawyers’ website at: www.nabl.org/learn/resources.

This Basics Handbook may be updated from time to time, as appropriate, to reflect changes in law or practice. It is the Committee’s desire that the materials included be as current as possible. Therefore, all readers are urged to send the Committee their comments and to offer recommendations. Neither the Committee nor the National Association of Bond Lawyers makes any warranty or representation, implied or express, as to the accuracy and completeness of all or any portion of this Basics Handbook, including, but not limited to, the Glossary.

This Basics Handbook is not intended to be used to give legal advice. It is recommended that readers seek the advice of an attorney concerning any question raised by the text and materials contained in this Basics Handbook.

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ANATOMY OF A PUBLIC FINANCE TRANSACTION

INTRODUCTION TO A PUBLIC FINANCE TRANSACTION

The following information is more fully described throughout this Basics Handbook and is set forth here to provide an overview of a public finance transaction, the parties thereto and specific tasks that Novices may undertake. Readers should note that attached to the end of this Basics Handbook is a Glossary of terms frequently used in this Basics Handbook and in public finance transactions.

A. Basics About Bonds

A [Bond](#) is simply the evidence of debt, in the same way that a promissory note is evidence of the obligation to repay a loan. [Bonds](#) are issued by a governmental entity, such as a state, county, city or an authority in order to finance or refinance qualifying projects. An [Issuer](#) may issue [Bonds](#) to finance its own project. In these cases, the [Bonds](#) are referred to as [Governmental Bonds](#) or [Governmental Purpose Bonds](#). In other cases, the [Issuer](#) may issue the [Bonds](#) to loan the [Bond](#) proceeds to a third party. In these cases, the [Bonds](#) are referred to as [Conduit Bonds](#). [Bonds](#) are generally considered to be one of two types: (1) [General Obligation Bonds](#), which are typically secured by the full faith and credit and general taxing power of the governmental entity issuing the [Bonds](#); or (2) [Revenue Bonds](#), which are secured by a specific source or sources of revenues that are not [Ad Valorem Property Tax Revenues](#). [Bonds](#) are issued either as [Tax-Exempt Bonds](#) or [Taxable Bonds](#).

B. A Basic Process of Issuing Bonds

Typically, [Bonds](#) are issued because a determination is made by an [Issuer](#) or a [Borrower](#) that: (1) current revenue cash flow is not sufficient to fully finance a project on a pay-as-you-go basis; (2) current and future users of a project with a long life should contribute to the cost of the project (intergenerational equity); or (3) other reasons deemed prudent by the [Issuer](#) or [Borrower](#) requiring the issuance of [Bonds](#). Once the determination is made to issue the [Bonds](#), the [Issuer](#) or [Borrower](#) will assemble a financing team that often involves the following: [Bond Counsel](#), [Issuer's Counsel](#) and/or [Borrower's Counsel](#), [Disclosure Counsel](#), a [Municipal Advisor](#), an [Underwriter](#) (or [Lender](#)) and [Underwriter's Counsel](#) or [Lender's Counsel](#) (if required by the financing plan).

There are a significant number of preliminary tasks to complete prior to [Closing](#) the [Bond Issue](#). The following table is an example of certain important preliminary tasks and determinations that the financing team must undertake:

- The purpose and authority to undertake the project and the financing;
- State and tax law considerations regarding the use of the proceeds of the [Bonds](#);
- The source of revenues to be pledged to the repayment of the [Bonds](#);
- The [Conduit Issuer](#) for the [Bonds](#), if applicable;

- Any remaining and unselected members of the financing team;
- The timetable for the financing, including dates for [Pre-Closing](#) and [Closing](#);
- The [Useful Life](#) of the project to be financed with the proceeds of the [Bonds](#) and the maturity schedule for the [Bonds](#) (this may be limited by the [Useful Life](#) of and the type of the project, as well as the revenues pledged to repayment of the [Bonds](#));
- Development of the structure of the financing (e.g., variable or fixed [Interest Rate](#));
- How the [Bonds](#) will be sold (e.g., [Private Placement](#) or [Public Offering](#)) and market conditions (e.g., [Interest Rates](#) and [Redemption](#) provisions); and
- Required covenants for the [Bonds](#) (e.g., terms for issuing [Additional Bonds](#) secured by the same source of revenues, required coverage of [Debt Service](#) of such revenues, etcetera).

After the financing team completes the preliminary tasks, it will complete drafting the documents for the transaction, complete a [Due Diligence](#) process (analyzing and mitigating legal issues, credit risk, and factual disclosures set forth in the [Offering Document](#)), implement the financing plan (which includes the sale or placement of the [Bonds](#) with one or more investors), and execute the documentation. Finally, the [Bonds](#) are delivered to the investors, and the [Issuer](#) receives the sale proceeds in exchange for the [Bonds](#) (and, if [Conduit Bonds](#) are issued, loans the proceeds to the [Borrower](#)).

C. Projects for Novices

The specific tasks that may be assigned to Novices depend on their firm's role in a transaction (e.g., whether the firm is serving as [Bond Counsel](#), [Underwriter's Counsel](#), [Disclosure Counsel](#), [Issuer's Counsel](#), [Borrower's Counsel](#), [Lender's Counsel](#), or other special counsel). These tasks may be completed in their entirety by the Novice or for final review by a supervising attorney or more experienced and responsible professionals. Regardless of their level of experience or responsibility, Novices should keep the supervising professional informed as to the progress of these assignments. In addition, Novices should consult with the supervising professional about the various projects in which they are involved, particularly when fielding questions from parties outside the firm. Novices should always consult the supervising professional in the case of substantive questions on public finance transactions or firm policies.

The following sections contain brief descriptions of tasks which may often be performed by Novices:

I. When the Firm is Acting as Bond Counsel

- Review records as to the use of the proceeds of the [Bonds](#) for tax [Due Diligence](#) purposes, prepare a memorandum discussing findings and assist the supervising attorney with tax [Due Diligence](#) interviews;
- Compile and organize various materials and information relating to the [Issuer](#) of the [Bonds](#) and/or the [Borrower](#);
- Prepare initial drafts and continue to assist in the drafting of all financing documents, certificates, opinions and, if applicable, the review of the related [Offering Document](#);
- Handle routine correspondence and telephone calls and consult the supervising attorney whenever a legal judgment, legal opinion or legal advice is required or sought;
- Coordinate the distribution of documents, receive comments on documents and transmit comments to the supervising attorney;
- Prepare applications and submissions for governmental consent and approvals of the transaction, including authorizing resolutions;
- Review the [Bond Purchase Agreement](#), the [Indenture](#), other primary financing documents and the [Offering Document](#) to communicate to the supervisory attorney whether conditions to [Closing](#) have been satisfied;
- Review drafts of all documents for consistent use of defined terms and cross-references;
- Prepare an initial draft of the list of [Closing](#) documents;
- Confirm the [Closing](#) documents and other [Closing Transcript](#) items fulfill all of the deliverables required by any authorizing resolutions, including the [Bond Resolution](#), the [Bond Purchase Agreement](#), the [Indenture](#), or other documents that contain conditions precedent to the issuance of the [Bonds](#);
- Assemble documents for signatures and, with the assistance of the supervising attorney, coordinate their execution and delivery;
- Prepare governmental filings, such as [IRS Form 8038](#) and [Financing Statements](#), such as [UCC-1s](#), and coordinate the necessary recordations and filings thereof;

- Attend the [Pre-Closing](#) and [Closing](#), and coordinate document execution, distribution and recording, if necessary; and
- Organize documents for the [Closing Transcript](#) (physically or online) and supervise the [Closing Transcript](#) preparation.

II. When the Firm is Acting as Underwriter’s Counsel or Disclosure Counsel

- Review records as to the use of the proceeds of the [Bonds](#) for [Due Diligence](#) purposes, prepare a memorandum discussing findings and assist the supervising attorney with [Due Diligence](#) interviews;
- Prepare initial drafts and continue to assist in the drafting of the [Offering Document](#), [Bond Purchase Agreement](#), [Continuing Disclosure Undertaking or Agreement](#), [Agreement Among Underwriters](#) and the [Selling Group Agreement](#) for review by the supervising attorney;
- Handle routine correspondence and telephone calls and consult the supervising attorney whenever a legal judgment, legal opinion or legal advice is required or sought;
- Coordinate the distribution of documents, receive comments on documents, incorporate basic comments into the documents and coordinate the incorporation of the more substantive comments with the supervising attorney;
- Assist in finalizing the [Offering Document](#) by coordinating comments and corrections with the [Printer](#) and/or financing team, confirming distribution and/or posting of the [Offering Document](#) with the [Printer](#) and/or the financing team and reviewing the final [Offering Document](#) prior to printing and/or posting;
- To the extent required, prepare initial drafts of the [Blue Sky Memorandum](#) and legal investment memorandum, and draft and coordinate [Blue Sky Law](#) filings under the attorney’s supervision;
- Check the [Closing](#) documents against the [Bond Purchase Agreement](#) and [Offering Document](#); and
- Attend the [Pre-Closing](#) and [Closing](#), and coordinate [Underwriter](#) document execution and distribution.

PARTIES TO A FINANCING AND THEIR ROLES

INTRODUCTION

The parties to a municipal financing will vary depending on the type of the transaction and whether the [Securities](#) are sold in a [Private Placement](#), a [Competitive Sale](#) or a [Negotiated Sale](#). Accordingly, not all of the parties listed below will appear in each public finance transaction. Conversely, in certain financings, there may be additional participants not listed below.

BOND COUNSEL

[Bond Counsel](#) may be an individual attorney or a firm of attorneys qualified in the area of public finance. [Bond Counsel](#)'s primary function in a public finance transaction is to provide a legal opinion with respect to the validity of the [Bonds](#) and other subjects, particularly the federal and state tax treatment of [Interest](#) on the [Bonds](#). [Bond Counsel](#)'s client is generally, but not always, the [Issuer](#). As the municipal bond practice has evolved over recent years, [Bond Counsel](#) frequently performs other functions in connection with the transaction. Some of the additional services that [Bond Counsel](#) may perform are as follows:

- Reviewing and/or supervising the procedural actions taken by the [Issuer](#) to approve the transaction and issuance of the [Bonds](#), including drafting appropriate documents (e.g., an [Inducement Resolution](#), a [Bond Resolution](#) and [Closing](#) certificates), coordinating the enactment and execution of such documents and confirming publication or posting of necessary notices;
- Reviewing and/or preparing the documentation relating not only to the [Bonds](#) (e.g., an [Indenture](#), a [Bond](#) form and one or more [Tax Certificates](#)), but also to other aspects of the transaction as a whole (e.g., a [Loan Agreement](#) in a [Conduit Financing](#), a waste disposal agreement or similar type documents), as well as coordinating the execution of such documents;
- Assisting in planning the structure of the [Bonds](#) and the overall transaction based on the economic and business decisions of the [Issuer](#) and/or [Borrower](#) in consultation with the [Municipal Advisor](#) and other professionals involved in the transaction;
- Assisting the [Issuer](#) or others in preparing or reviewing all or parts of the [Offering Document](#) to be used in connection with the sale of the [Bonds](#), as well as preparing or reviewing a [Continuing Disclosure Undertaking or Agreement](#);
- Assisting the [Issuer](#) or others in obtaining from governmental authorities such additional approvals or rulings (e.g., [TEFRA Approval](#), bond referendum, bond validation) that [Bond Counsel](#) determines are necessary or appropriate in connection with the transaction;
- Preparing or reviewing a mortgage, security agreement, or other documents related to the source or sources of revenues securing the repayment of the [Bonds](#) (e.g., intergovernmental agreement, real property lease, or similar);
- Rendering opinions related to the transaction (e.g., the applicability of particular provisions of the securities laws, the validity and enforceability of security agreements, [Indentures](#) and other documents); and
- Assisting the [Issuer](#), the [Municipal Advisor](#), the [Underwriter](#) and the [Underwriter's Counsel](#) in presenting information to [Rating Agencies](#).

Readers are encouraged to read the National Association of Bond Lawyers’ “The Function and Professional Responsibilities of Bond Counsel,” the “Model Engagement Letters” report and the “Model Bond Opinion Report,” each of which are available on the National Association of Bond Lawyers’ website at: www.nabl.org/learn/resources.

BORROWER

Sometimes the [Issuer](#) issues the [Bonds](#) as a [Conduit Financing](#) through which another party borrows the proceeds from the [Issuer](#) or leases from the [Issuer](#) the facility or facilities financed with the [Bond](#) proceeds. The party borrowing those proceeds is the [Borrower](#), often called a [Conduit Borrower](#) or conduit obligor. The [Issuer](#) uses the funds received in the repayment of the loan or the rent payments under the lease from the [Borrower](#) to repay the [Bonds](#).

[Borrowers](#) in a [Conduit Financing](#) can be other state or local governments (e.g., a state pooled financing, such as a state revolving fund, that loans moneys to local governments to finance certain projects like clean water or wastewater projects) or private [Borrowers](#) (e.g., nonprofit entities). Tax-Exempt [Conduit Financings](#) involving [Borrowers](#) that are not state or local governments must have their facilities or uses of the proceeds of the [Bonds](#) fall within one of the permitted categories under the [Code](#) in order for such facilities or uses to be eligible for financing with [Private Activity Bonds](#) that are [Tax-Exempt Bonds](#) under the [Code](#).

BORROWER’S COUNSEL

[Borrower’s Counsel](#) serves as counsel to the [Borrower](#) in connection with the issuance of [Conduit Bonds](#). [Borrower’s Counsel](#) renders an opinion as to the status of the [Borrower](#) (e.g., a [501\(c\)\(3\) Organization](#), a state or local governmental entity or a for-profit corporation), as well as to the enforceability of the documents signed by the [Borrower](#) such as the [Loan Agreement](#). In addition, Borrower’s Counsel often addresses real estate issues and renders an opinion on the lien created by a mortgage or a deed of trust. For additional information, please see the National Association of Bond Lawyers’ “The 501(c)(3) Opinion in Qualified 501(c)(3) Bond Transactions,” which is available on the National Association of Bond Lawyers’ website at: www.nabl.org/learn/resources.

CREDIT ENHANCEMENT OR LIQUIDITY FACILITY PROVIDER

[Credit Enhancement](#) provides an additional source of repayment for the [Bonds](#) if the expected source of repayment (for example, revenues produced by the project that is financed by the [Bonds](#)) may be less than sufficient to pay the [Principal](#) and [Interest](#) on the [Bonds](#) when it is due, or if the credit strength of the underlying security is low. [Credit Enhancement](#) can take the form of [Bond Insurance](#), a line of credit, a surety bond, a [Guaranty](#) or a [Letter of Credit](#). Generally, [Credit Enhancement](#) raises the [Rating](#) on the [Bonds](#), which reduces the [Interest Rate](#) on the [Bonds](#) because it provides the bondholders with additional comfort as to the repayment of the [Debt Service](#) on the [Bonds](#). However, not all [Credit Enhancement](#) provides the same level of security to bondholders. As an example, a [Guaranty](#) might provide a guarantee from a party other than the [Issuer](#) to repay only a portion of the principal and interest on the [Bonds](#) if the [Issuer](#) is unable to do so, while a [Bond Insurance Policy](#) might guarantee the repayment of both principal and interest on the [Bonds](#) if the Issuer is unable to make those payments.

In addition to obtaining [Credit Enhancement](#), a liquidity facility or a [Standby Bond Purchase Agreement](#) may also be obtained by an [Issuer](#) to provide the [Issuer](#) with funds on short notice to permit it to purchase the [Bonds](#) it has previously issued if the holders of the [Bonds Tender](#) them to the [Issuer](#) prior to the [Maturity Date](#). Bondholders will often have these [Tender](#) rights in the case of [Bonds](#) bearing a [Variable Interest Rate](#) or that are [Commercial Paper](#). If the bondholders [Tender](#) their [Bonds](#) to the [Issuer](#) earlier than the [Issuer](#) anticipates, the [Issuer](#) is required to buy them back from the bondholders, but it may not have money to make that purchase. The provider of the liquidity facility will provide the funds to the [Issuer](#) to make the purchase, and the [Issuer](#) will then be obligated to repay the provider of the liquidity facility once the [Issuer](#) has money from the resale of the [Bonds](#) or from other sources to repay such provider.

THE DEPOSITORY TRUST COMPANY (“DTC”)

[DTC](#) is a U.S. registered clearing agency for all types of [Securities](#) (i.e., an entity that is responsible for maintaining the records regarding clearing and settlement of trades and payments of [Securities](#)), including [Bonds](#). For eligible [Book-Entry Only Securities](#), [DTC](#) receives [Debt Service](#) payments from the [Paying Agent](#) and distributes the [Debt Service](#) payments electronically to the ultimate beneficial owners of the [Bonds](#). Cede & Co., [DTC](#)’s nominee, is typically the only registered bondholder. For more information, please see the National Association of Bond Lawyers’ “Demystifying DTC: The Depository Trust Company and the Municipal Bond Market,” which is available on the National Association of Bond Lawyers’ website at: www.nabl.org/learn/resources.

DISCLOSURE COUNSEL

In some transactions, the [Issuer](#) engages [Disclosure Counsel](#) or special securities counsel to assist it in understanding and satisfying its disclosure responsibilities under federal securities laws, both in connection with primary offerings of [Bonds](#) and secondary market disclosure. As [Issuers](#) respond to the increasing demands of the marketplace and to regulatory pressure for continuing disclosure, the role of such [Disclosure Counsel](#) or special securities counsel continues to expand. Accordingly, in connection with a primary offering, [Disclosure Counsel](#) would generally perform some of the tasks set out below as the responsibility of [Underwriter’s Counsel](#), and [Disclosure Counsel](#) may serve as the primary coordinator of the [Offering Document](#) on behalf of the [Issuer](#). Also, if the [Issuer](#) determines that it will provide secondary market information, [Disclosure Counsel](#) or special securities counsel may draft the [Continuing Disclosure Undertaking or Agreement](#) and assist with implementing a compliance program or reviewing such a system if one exists as a means of complying with the [Issuer](#)’s commitment to providing continuing disclosure. For more information, please see the National Association of Bond Lawyers’ “Model Letter of Disclosure Counsel,” which is available on the National Association of Bond Lawyers’ website at: www.nabl.org/learn/resources.

DISSEMINATION AGENT

A [Dissemination Agent](#) may be engaged to assist the [Issuer](#) or [Borrower](#) in complying with its ongoing continuing disclosure obligations. A [Dissemination Agent](#) typically collects and compiles the [Issuer](#)’s or [Borrower](#)’s annual financial information and audited financial statements and files this information with the online database operated by the [MSRB](#), entitled [Electronic](#)

[Municipal Market Access](#) (“EMMA”) In addition, the [Dissemination Agent](#) assists the [Issuer](#) or the [Borrower](#) with the filing with [EMMA](#) of any required material event notices or any desired voluntary event notices filed by the [Issuer](#) or the [Borrower](#).

ESCROW AGENT

An [Escrow Agent](#), or [Escrow Trustee](#), serves as custodian of funds in a [Refunding](#) transaction and is responsible for holding and managing the escrow investments up to and including the date the [Refunded Bonds](#) are redeemed.

ISSUER

The [Issuer](#) is the entity with the constitutional, statutory and other relevant local law authority to issue the [Bonds](#). [Bonds](#) may be issued either for the [Issuer](#)’s own benefit or for the benefit of the [Borrower](#) through a [Conduit Financing](#).

ISSUER’S COUNSEL

The [Issuer](#) may have its own [Issuer’s Counsel](#) involved in the transaction, who is separate from the [Bond Counsel](#). The [Issuer’s Counsel](#) may be either an employee or employees of the [Issuer](#) or an outside attorney or a firm of attorneys. [Issuer’s Counsel](#) often give opinions that the [Issuer](#)’s proceedings have been conducted legally, the [Issuer](#) is a legally existing state or local governmental entity and the [Issuer](#) has the authority to execute the documents to which it is a party.

LENDER

One or more [Lenders](#), typically commercial banks, may purchase [Bonds](#) sold pursuant to a [Private Placement](#) (also known as a [Direct Purchase](#) or a bank placement) for their own portfolios. At the [Closing](#), the [Lender](#) delivers an [Investor Letter](#) to the [Issuer](#), sometimes called a “big boy letter,” certifying that the [Lender](#) understands the terms of the transaction, has the expertise to perform its own credit analysis and will not rely on disclosures of the [Issuer](#) or others in deciding to purchase the [Bonds](#).

LENDER’S COUNSEL

[Lender’s Counsel](#) serves as counsel to the [Lender](#) in [Private Placement](#) transactions. Responsibilities of [Lender’s Counsel](#) include reviewing transaction documents, advising the [Lender](#) on the applicability of federal and state securities laws, drafting continuing covenant agreements, if applicable, and ensuring compliance with the [Lender](#)’s internal policies and procedures.

MUNICIPAL ADVISOR

A [Municipal Advisor](#) may be engaged by the [Issuer](#) or a [Conduit Borrower](#) to provide financial consulting or advisory services to the [Issuer](#) or the [Borrower](#). A [Municipal Advisor](#) may be either an independent financial advisory firm or a commercial or investment bank that, in addition to underwriting and distributing [Securities](#), performs financial advisory services. While generally they are strictly acting in an advisory capacity as to financing techniques and the

structure of the [Bonds](#) and the transaction, from time to time [Municipal Advisors](#) may, if licensed as a broker or dealer, participate in an [Underwriting Syndicate](#) provided that they comply with the relevant rules of the [Municipal Securities Rulemaking Board](#) (“MSRB”).

RATING AGENCY

One or more national credit [Rating Agencies](#) may provide an independent appraisal of the credit quality of the [Issuer](#), the [Borrower](#) and/or the [Bonds](#). In general, the higher the [Rating](#) of the [Bonds](#), the lower the [Interest Rate](#). The largest [Rating Agencies](#) are S&P Global Ratings, Moody’s Investors Service and Fitch Ratings.

REGISTRAR AND PAYING AGENT

The [Registrar](#) and [Paying Agent](#) maintains the [Bond](#) register, which is the list of all bondholders, and pays the [Principal](#) and [Interest](#) on the [Bonds](#) to bondholders. Typically, the [Trustee](#) is also the [Registrar](#) and [Paying Agent](#).

SPECIAL TAX COUNSEL

[Special Tax Counsel](#) may be engaged to render opinions on the laws relating to federal and/or state income tax exemption for the [Interest](#) on the [Bonds](#). In addition, [Special Tax Counsel](#) may be engaged to assist the [Issuer](#) on certain discrete questions relating to these income tax exemptions, including questions regarding [Yield](#) restrictions on investments of unspent [Tax-Exempt Bond](#) proceeds and the [Rebate](#) requirements under federal income tax law.

TRUSTEE

A bank or other financial institution may be engaged for particular transactions to serve as the [Trustee](#), particularly [Conduit Financings](#) or [Revenue Bonds](#). The [Trustee](#) holds the [Bond](#) proceeds, repayment funds and any reserves in trust for the bondholders during the term of the [Bonds](#). The [Trustee](#) is typically paid an annual fee for its services. Before the [Closing](#), the [Trustee](#) establishes all funds and accounts necessary under the [Indenture](#) and makes arrangements for any investment of funds and money transfers at the [Closing](#). After the [Closing](#), the [Trustee](#) manages the funds and accounts, including the [Flow of Funds](#) between accounts, to the extent provided in the [Indenture](#) and any investment instructions. In the [Event of a Default](#) on the [Bonds](#), the [Trustee](#) acts on behalf of and in the best interests of the bondholders. The [Trustee](#) also becomes involved in processing any [Bond Redemptions](#). The [Trustee](#), the [Issuer](#) and the bondholders are involved with the [Bonds](#) as long as any [Bonds](#) are outstanding. It is common for [Bonds](#) to have a maturity of up to thirty years, but there are [Bonds](#) that have been issued with a 100-year maturity and everything in between. Therefore, all instructions to the [Trustee](#) in the [Bond](#) documents are written so that the requirements can be carried out until the final [Maturity Date](#). Many [Conduit Financings](#) have both a [Bond Trustee](#) and a [Master Trustee](#). The [Bond Trustee](#) administers the funds and accounts created by the [Bond Indenture](#) or [Bond Resolution](#), and the [Master Trustee](#) administers the funds and accounts created by the [Master Indenture](#). For more information, please see the National Association of Bond Lawyers’ “Form Conduit Indenture, Second Edition,” which is

available on the National Association of Bond Lawyers' website at: www.nabl.org/learn/resources.

TRUSTEE'S COUNSEL

[Trustee's Counsel](#) serves as counsel to the [Trustee](#). [Trustee's Counsel](#) delivers an opinion as to the validity and enforceability as well as the due authorization and execution by the [Trustee](#) of the [Indenture](#) and other agreements to which the [Trustee](#) is party.

UNDERWRITER

The [Underwriter](#)'s primary role is to purchase the [Bonds](#) from the [Issuer](#) and to sell them to the investors. The [Underwriter](#)'s involvement in the financing may depend upon whether the [Issue](#) is a [Negotiated Sale](#) or [Competitive Sale](#). If there are several [Underwriters](#), a managing [Underwriter](#) will be selected to serve as the [Underwriting Syndicate](#)'s primary contact with the financing team and may make recommendations as to the overall structure of the [Bonds](#), the transaction, the cash flow and the date of sale. The [Underwriter](#) usually assists the [Issuer](#) with obtaining [Ratings](#) from the [Rating Agencies](#) and recommending when [Credit Enhancement](#) should be obtained. For more information, please see documents located on the website of the Securities Industry and Financial Markets Association.

UNDERWRITER'S COUNSEL

The [Underwriter](#) of the [Bonds](#) typically hires its own counsel, with the primary exception being in connection with [Bonds](#) sold through the [Competitive Sale](#) process. The [Underwriter's Counsel](#) generally has the role of initial coordinator of preparing the [Offering Document](#) and is generally expected to assist the [Underwriter](#) in performing its [Due Diligence](#) investigation of the [Issuer](#), the [Borrower](#) (if any), the project being financed and the revenues pledged as [Security](#) for the repayment of the [Bonds](#). Generally, [Underwriter's Counsel](#) reviews the transaction documents, reviews the underlying support for [Bond Counsel's Opinions](#) as to the validity and tax-exempt status of the [Bonds](#) and prepares and delivers at the [Closing](#) a "letter" as to the adequacy and accuracy of the disclosure. [Underwriter's Counsel](#) may also prepare some documents necessary to the transaction, including a [Bond Purchase Agreement](#), an [Agreement Among Underwriters](#) and any required preliminary and final [Blue Sky Memorandum](#). For more information, please see the National Association of Bond Lawyers' "Model Letter of Underwriters' Counsel," which is available on the National Association of Bond Lawyers' website at: www.nabl.org/learn/resources.

VERIFICATION AGENT

In certain [Refunding](#) transactions or [Defeasances](#), a [Verification Agent](#) may be engaged. The [Verification Agent](#), typically a firm of certified public accountants, is responsible for independently confirming that the investments purchased for the [Escrow Fund](#) will be sufficient to fund the [Debt Service](#) payments on the [Refunded Bonds](#), up to and including the date the [Refunded Bonds](#) are redeemed. Additionally, the [Verification Agent](#) typically confirms that the [Yield](#) on the investments in the [Escrow Fund](#) does not exceed the [Yield](#) of the [Refunding Bonds](#) if the [Refunding Bonds](#) are issued as [Tax-Exempt Bonds](#). [Bond Counsel](#) relies on the [Verification Report](#) delivered by the [Verification Agent](#) when rendering an opinion as to the legal [Defeasance](#)

of the [Refunded Bonds](#) and to the federal tax-exempt status of the [Refunding Bonds](#) if the [Refunding Bonds](#) are issued as [Tax-Exempt Bonds](#).

TYPES OF OBLIGATIONS

INTRODUCTION

Municipal [Bonds](#) are issued by, or on behalf of, a state or a [Political Subdivision](#) of a state. The [Issuer](#) can be nearly any governmental entity, such as a state, county, city or an authority created by any of these governmental entities pursuant to applicable law. A [Bond](#) is simply the evidence of debt, in the same way that a promissory note is evidence of the obligation to repay a loan. It should be noted that references in this Basics Handbook to the term [Bonds](#) generally are not intended to exclude other types of municipal [Securities](#) (such as notes, certificates, etc.) but to reflect the reality that [Bonds](#) account for a majority of the [Securities](#) issued in the municipal market.

There are two primary types of municipal [Bonds](#): (i) [Governmental Bonds or Governmental Purpose Bonds](#), which are issued to provide funding for governmental projects; and (ii) [Conduit Bonds](#), which are issued by the [Issuer](#) in order to loan the [Bond](#) proceeds to a third party or to fund projects leased to a third party authorized by law to use municipal [Bond](#) proceeds for qualified projects.

Many different types of [Securities](#) are issued in the public finance market. One useful way of categorizing municipal [Securities](#) is according to the source of funds used to repay them. These categories do not, however, cover all varieties of municipal [Securities](#) and do not provide any insight as to other important aspects of the [Securities](#), such as whether the [Interest Rate](#) is fixed or variable, whether the [Securities](#) are subject to [Optional Redemption](#), whether the [Securities](#) are taxable or tax-exempt, and whether the [Securities](#) are subject to the [Alternative Minimum Tax](#), among other important terms and provisions.

GENERAL OBLIGATION BONDS

[General Obligation Bonds](#) are [Bonds](#) issued by a governmental entity as the [Issuer](#) and are typically secured by the full faith and credit and general taxing power of the [Issuer](#). There are three primary categories of [General Obligation Bonds](#): (A) Unlimited Tax [General Obligation Bonds](#); (B) Limited Tax [General Obligation Bonds](#); and (C) [General Obligation Bonds](#) Payable from General Fund. In some jurisdictions, a governmental entity is restricted, or debt limitations are imposed, by state or local statutes, the state constitution, local charters or similar laws or regulations. For more information, please see the National Association of Bond Lawyers' "General Obligation Bonds: State Law, Bankruptcy and Disclosure Considerations," which is available on the National Association of Bond Lawyers' website at: www.nabl.org/learn/resources.

A. Unlimited Tax General Obligation Bonds ("UTGOs")

UTGOs are secured by a promise to levy [Ad Valorem Property Taxes](#), unlimited as to rate or amount, on all taxable property within the territorial limits of the [Issuer](#). The Issuer can be compelled to levy [Ad Valorem Property Taxes](#) to repay the [Bonds](#). In many states, this is a separate

[Millage](#) (levied solely to pay [Debt Service](#)) and the tax revenues may be segregated from other revenues. UTGOs may also be secured by the full faith and credit of the [Issuer](#), and bondholders may be repaid from all sources of revenue the [Issuer](#) is entitled to receive. Voter approval is often required for UTGOs.

B. Limited Tax General Obligation Bonds (“LTGOs”)

LTGOs are secured by limited taxing powers of the [Issuer](#). The [Ad Valorem Property Tax](#) securing the [Bonds](#) may be limited as to rate or amount, and the [Issuer](#) cannot be compelled to levy more than the rate or amount. The limit is often expressed in terms of [Millage](#) (i.e., 1/10 of 1% per “[Mill](#)”). In some states, this is a separate [Millage](#) and the tax revenues may be segregated from other revenues. LTGOs may also be secured by the full faith and credit of the [Issuer](#), and bondholders may be repaid from all sources of revenue the [Issuer](#) is entitled to receive. Voter approval is often not required for LTGOs.

C. General Obligation Bonds Payable from General Fund (“GFGOs”)

GFGOs are not secured by a specific [Pledge](#) of taxing power, and the [Issuer](#) cannot be compelled to increase taxes. GFGOs are secured by a [Pledge](#) of money in the [Issuer](#)’s general fund. However, the [Issuer](#) may be required in good faith to use its general revenue-producing powers. GFGOs may also be secured by the full faith and credit of the [Issuer](#), and bondholders may be repaid from all sources of revenue the [Issuer](#) is entitled to receive. Voter approval is often not required for GFGOs.

REVENUE BONDS

[Debt Service](#) on [Revenue Bonds](#) is payable solely from a single revenue source or pooled revenues from various sources. [Revenue Bonds](#) may be project-based or tax-based. In the case of [Revenue Bonds](#) that are not [Conduit Bonds](#), although the [Debt Service](#) is not payable from the general taxing power of the [Issuer](#), depending on state law, the [Bonds](#) may still constitute a debt of the [Issuer](#).

A. Project-based Revenue Bonds

Project-based [Revenue Bonds](#) are secured by the revenues derived from a specific enterprise, system or facility, such as a utility system, hospital, toll bridge, transportation facility or higher education system. There is no [Pledge](#) of the general taxing power of the [Issuer](#) should the enterprise, system or facility fail to generate sufficient revenues to pay [Debt Service](#).

1. Conduit Revenue Bonds

[Conduit Bonds](#) are another type of [Revenue Bond](#) that may be issued by an [Issuer](#) acting as the [Conduit Issuer](#) for the benefit of a private-sector entity or another governmental entity, known in each case as the [Borrower](#) or [Conduit Borrower](#). In these cases, the [Issuer](#) agrees to issue the [Bonds](#) and either loan the proceeds or lease the project funded with the proceeds to a private sector third-party, commonly a not-for-profit entity, to advance specific purposes within its mission. [Conduit Bonds](#) may be issued as either [Taxable Bonds](#) or [Tax-Exempt Bonds](#). These [Bonds](#) are typically payable solely from

revenues pledged by the [Borrower](#) derived from loan, lease or installment sale payments from the [Borrower](#) utilizing the [Bond](#) proceeds. Unless otherwise specified under the terms of the [Bonds](#), the [Issuer](#) is not obligated to pay the [Debt Service](#) on the [Bonds](#) if the [Borrower Defaults](#).

2. Mortgage Revenue Bonds

[Mortgage Revenue Bonds](#) are issued by state or local housing finance agencies or a local government to finance single-family housing or multi-family rental units for low- or moderate-income families. Mortgage loans to qualified homebuyers are made from the proceeds of the sale of single-family [Mortgage Revenue Bonds](#) and monthly payments made by the homebuyers are used to pay [Debt Service](#) on the [Bonds](#). Mortgage loans from proceeds of multi-family housing [Mortgage Revenue Bonds](#) are used by the borrowing developer to build apartment buildings/housing for rental, and the loan repayments, together with rental income as [Security](#), are used to pay the [Debt Service](#) on the [Bonds](#).

B. Tax-Based Revenue Bonds

Tax-based [Revenue Bonds](#) are secured by revenues derived from one or more designated taxes levied for a specific purpose, including income taxes, excise taxes (such as taxes on tobacco, alcoholic beverages, fuel, etc.), [Special Assessments](#), hotel occupancy taxes and sales taxes. These are sometimes referred to as [Special Tax Bonds](#) or “special obligation bonds.” Unlike [General Obligation Bonds](#), [Special Tax Bonds](#) are not secured by the general taxing power or the full faith and credit of the [Issuer](#). [Special Tax Bonds](#) generally do not require voter approval; however, voter approval of the underlying taxes may be required. Common examples of [Special Tax Bonds](#) include sales tax [Revenue Bonds](#) and hotel occupancy tax [Revenue Bonds](#).

SHORT-TERM DEBT

Bond anticipation notes (“BANs”) may be used during a construction period or during high [Interest Rate](#) periods to delay incurring long-term, high [Interest](#) debt for as long as possible. The BANs may be either revenue or general obligation debt or payable solely from the proceeds of the long-term [Bonds](#), when, and if, issued, and may be subject to the same [Debt Limits](#) and other restrictions to which the long-term [Bonds](#) are subject. Other interim financing mechanisms include grant, revenue and tax anticipation notes.

TAX INCREMENT FINANCING

Tax increment [Bonds](#) are special obligations secured by incremental increases in tax revenues paid by users of developed property or by general increases in taxable values within a designated tax increment area. The taxes involved are usually [Ad Valorem Property Tax](#), although some states may permit the use of sales taxes or hotel occupancy taxes. State laws specify the mechanism and process for the implementation of tax increment financing.

CERTIFICATES OF PARTICIPATION

Certificates of Participation (“COPs”) allow an investor to purchase a participation interest in a stream of payments generated by a lease, installment sale agreement or other governmental

obligation. COPs themselves are not municipal obligations but are instead an interest in an underlying municipal obligation. Examples of items financed with COPs proceeds include computers, telephone systems, courthouses, detention facilities, school buildings and recreational facilities. Sometimes COPs are issued with respect to an underlying governmental obligation or pool of obligations that has already been issued or created. For example, governmental installment sale agreements are often packaged together for resale after their execution by the vendor or a financing company through a COPs issuance. It is important to note that not all leases, installment sale agreements or governmental obligations can generate tax-exempt interest, since, in addition to other requirements, only instruments evidencing a government's borrowing power can bear tax-exempt interest.

BASIC DOCUMENTATION AND PURPOSE THEREFOR

INTRODUCTION

The documents establishing the terms of a municipal financing vary with the type of [Bonds](#) being issued (i.e., [General Obligation Bonds](#) vs. [Revenue Bonds](#)), the laws establishing the [Issuer](#), whether the [Bonds](#) are a [Conduit Financing](#), whether the [Bonds](#) are sold in a [Private Placement](#) or at a [Competitive Bid](#) or a [Negotiated Sale](#), whether there is [Credit Enhancement](#) provided and certain other factors. Different firms may have different approaches to the documentation of the same type of financing. Accordingly, not all of the basic documents listed below may be used in a particular public finance transaction. Conversely, in certain financings, there may be documents used that are not listed below.

INDUCEMENT RESOLUTION

An [Inducement Resolution](#) may be adopted by the [Issuer](#) for the purpose of establishing the [Issuer](#)'s preliminary intention to issue the [Tax-Exempt Bonds](#), subject to satisfaction of certain conditions precedent which may be satisfied on or after the adoption of a [Bond Resolution](#). [Inducement Resolutions](#) are particularly common in [Conduit Financings](#). In addition, an [Inducement Resolution](#) may be used for purposes of Section 1.150-2 of the Treasury Regulations as the "declaration of intent" of the parties to use the [Tax-Exempt Bond](#) proceeds to reimburse expenditures paid from another source prior to the date the [Tax-Exempt Bonds](#) are issued. See "*TAX MATTERS – F. Reimbursement.*"

BOND RESOLUTION

A [Bond Resolution](#) may be adopted by the [Issuer](#) for the purpose of authorizing the issuance of the [Bonds](#) and giving authority to officers of the [Issuer](#) to execute any documents necessary to close the financing. In general, a [Bond Resolution](#) is adopted prior to the [Closing](#) and even prior to the sale of the [Bonds](#) (which occurs when the parties sign the [Bond Purchase Agreement](#) or receive [Competitive Bids in a Competitive Sale](#)) and typically includes or makes provision for the final terms of the [Bonds](#). If the final terms are not yet available because the [Bonds](#) have not been sold, the [Issuer](#) may use the [Bond Resolution](#) to set certain parameters (e.g., the maximum [Principal](#) amount of [Bonds](#) to be issued, maximum [Interest Rate](#), maximum [Maturity Date](#), maximum [Premium/Discount](#), and [Optional Redemption](#) date) on the terms of the [Bonds](#), in which case the [Bond Resolution](#) will delegate to an officer of the [Issuer](#) or a committee

composed of [Issuer](#) members or an officer (e.g., a director of finance) the responsibility of negotiating the final terms of the [Bonds](#) and related financing terms. If the [Bond Resolution](#) includes parameters of the sale with delegated authority, then the [Bonds](#) must be sold in adherence with such parameters.

The [Bond Resolution](#) constitutes a contract between the [Issuer](#) and the bondholders. Special attention should be devoted to ensuring that the [Bond Resolution](#) is final and free of any errors before submitting it to the governing body of the [Issuer](#) (i.e., county commission, city commission, city council, town council) for adoption. Once adopted by the [Issuer](#), the [Bond Resolution](#) is final and cannot be changed. Any changes would likely need to be made by supplemental [Bond Resolution](#) adopted by the governing body of the [Issuer](#) and could delay the transaction. Typically, the [Bond Resolution](#) will include the substantially final form of several of the documents listed below as exhibits, meaning these documents may be changed to some degree even after the [Bond Resolution](#) is adopted.

A [Bond Resolution](#) may be only one piece of the [Issuer](#)'s approval of the terms of the [Bonds](#). Local law procedures vary considerably from [Issuer](#) to [Issuer](#) and from state to state. The steps needed by a particular [Issuer](#) to approve a [Bond Issue](#) are largely determined by applicable state and local governmental laws. For example, some [Issuers](#) must adopt [Ordinances](#), which may be subject to popular referendum, and then follow the [Ordinances](#) with a [Bond Resolution](#). Other [Issuers](#) are required to have the state legislature adopt bond-issuing authority on their behalf. Still other [Issuers](#) (primarily authorities formed under state law for the purpose of being [Conduit Issuers](#)) have streamlined procedures that permit the issuance of the [Bonds](#) with a single [Bond Resolution](#). Sometimes, too, different procedures must be followed by the same [Issuer](#) for new money [Bonds](#) as opposed to [Refunding Bonds](#). You should consult closely with your supervising attorney to gain a detailed understanding of the appropriate documentation for each particular transaction, particularly if the [Issuer](#) is one with which you and/or your firm has not previously worked. There are numerous pitfalls relating to [Bond Resolutions](#) and approval procedures which make replicating a prior transaction without double-checking extremely dangerous.

INDENTURE

The [Indenture](#) (also referred to as a [Bond Indenture](#) or [Trust Indenture](#)) is a contract between the [Issuer](#) of the [Bonds](#) and the [Trustee](#). An [Indenture](#) has two primary purposes. First, in an [Indenture](#), the [Trustee](#) accepts its duties to the bondholders and agrees to monitor and handle the moneys received from the [Bond Issue](#), to handle the revenues pledged as [Security](#) for the repayment of the [Bonds](#), to deposit moneys into the various funds and accounts created under the [Indenture](#) and to make any transfers of funds described in the [Indenture](#). Second, the [Indenture](#) establishes for the benefit of the bondholders the “trust estate” which will serve as [Security](#) for the repayment of the [Bonds](#). The “trust estate” generally consists of the moneys in the funds and accounts held under the [Indenture](#), but also other amounts pledged as [Security](#) for the repayment of the [Bonds](#), such as revenues of a project, an enterprise or system. The covenants included in an [Indenture](#) may also be included, to one degree or another, in the form of a [Bond Ordinance](#) or a [Bond Resolution](#). For more information, please see the National Association of Bond Lawyers’ “Form Conduit Indenture, Second Edition,” which is available on the National Association of Bond Lawyers’ website at: www.nabl.org/learn/resources.

OFFERING DOCUMENT

A municipal [Offering Document](#) is intended to disclose the material facts, circumstances and risks related to the [Bonds](#) and financing that are necessary to enable a reasonable person to make an informed investment decision. As discussed above, [Disclosure Counsel](#), or in some cases [Underwriter's Counsel](#), has the role of initial coordinator of the [Offering Document](#). [Disclosure Counsel](#) or [Underwriter's Counsel](#) typically prepares a [Due Diligence](#) questionnaire to which the [Issuer](#) or the [Borrower](#), if any, provides written responses. The [Due Diligence](#) questionnaire is designed to elicit material information about the financial and operating condition of the [Issuer](#) or the [Borrower](#) that should be disclosed in the [Offering Document](#), if material to investors. In most transactions, both a preliminary and a final [Offering Document](#) are prepared. The preliminary [Offering Document](#), frequently referred to in a [Public Offering](#) of municipal [Bonds](#) as a [Preliminary Official Statement](#) (“POS”), is traditionally prepared and “mailed” (more recently, “posted” online electronically) to potential investors prior to the sale of the [Bonds](#) to the [Underwriter](#) (i.e., before the execution of the [Bond Purchase Agreement](#) or opening [Competitive Bids](#), as appropriate). The final [Offering Document](#), frequently referred to in a [Public Offering](#) of municipal [Bonds](#) as an [Official Statement](#) (“OS”), must be prepared shortly after the sale of the [Bonds](#) and mailed or posted online electronically. The OS is substantially identical to the POS but reflects the final terms of the [Bonds](#) as well as any needed changes to the disclosure resulting from the [Pricing](#) of the [Bonds](#). If [Bonds](#) are not publicly offered, the [Offering Document](#), if any, may be referred to as a [Private Placement Memorandum](#) or a Limited Offering Memorandum.

BOND PURCHASE AGREEMENT

The [Bond Purchase Agreement](#) (also known as the “BPA”), which may also be called a bond purchase contract, a purchase contract or a contract of purchase, is a contract between the [Issuer](#) and the [Underwriter](#) in which the [Issuer](#) agrees to sell the [Bonds](#) to the [Underwriter](#) at a stated purchase price, all subject to terms and conditions which must be met before the [Bonds](#) will be purchased by the [Underwriter](#) and issued by the [Issuer](#). The BPA may include terms that require the [Underwriter](#) to send the [Issuer](#) a [Good Faith Deposit](#) to be held by the [Issuer](#) until the [Closing](#), representations and warranties of the parties, “outs” that dictate the reasons one party or both can terminate the issuance by the [Issuer](#), and the purchase by the [Underwriter](#), of the [Bonds](#), and the documents that are required to be delivered prior to the [Closing](#). In a [Conduit Financing](#), often the [Borrower](#) is also a party to the BPA. Much of the information necessary to produce the [Closing](#) documents will be found in the BPA. Frequently, the BPA includes exhibits of the form of the certificates (e.g., [Closing](#) certificate of the [Issuer](#), incumbency certificate of the [Issuer](#) and certificate of the [Borrower](#)) that will be delivered by the parties and the opinions that will be delivered by the various counsel (e.g., supplemental opinion of [Bond Counsel](#), opinion of [Disclosure Counsel](#) and opinion of [Underwriter's Counsel](#)) and enumerates which documents are to be provided by which parties to the financing and the provisions to be included in the documents. The form of the certificates and opinions included as exhibits to the BPA allows the parties to negotiate the language of those documents ahead of time rather than waiting until the [Bonds](#) have priced or waiting until the days right before the [Closing](#) when there are timing sensitivities.

LOAN AGREEMENT

In a [Private Placement](#), the [Loan Agreement](#) is an agreement between the [Issuer](#) and a [Lender](#) (e.g., a bank) pertaining to the loan of the [Bond](#) proceeds to the [Issuer](#). In [Conduit Financings](#) (whether in a [Private Placement](#) or a [Public Offering](#)), the [Loan Agreement](#) is an agreement between the [Borrower](#) and the [Issuer](#) pertaining to the loan of the [Bond](#) proceeds to the [Borrower](#). In [Private Placements](#) involving [Conduit Bonds](#), particularly those involving a bank as the sole [Lender](#), a [Loan Agreement](#) may be substituted with a [Financing Agreement](#) between the [Issuer](#), the [Lender](#) and the [Conduit Borrower](#), or in the case of a transaction structured as a lease to the [Conduit Borrower](#), a lease or lease agreement. The [Financing Agreement](#) or [Loan Agreement](#) sets forth the terms of the loan, the repayment of which is to be used to repay the [Bonds](#). A [Loan Agreement](#) is often accompanied by a promissory note.

TAX CERTIFICATE/ARBITRAGE CERTIFICATE AND IRS FORM 8038(-G)

There is considerable variation in terms of the tax documentation accompanying a [Tax-Exempt Bond](#) transaction. The common purpose of this documentation is, however, to establish that the transaction meets the applicable requirements of the [Code](#) to allow the [Interest](#) on the [Tax-Exempt Bonds](#) to be excludable from federal income tax. For example, in a multi-family housing [Revenue Bond](#) financing, there is typically a tax regulatory agreement in which the [Conduit Borrower](#) agrees to comply with the federal tax requirements applicable to the [Bonds](#); this document is typically recorded. In other transactions, there may be one or more of a [Tax Certificate](#), which may also be called an [Arbitrage Certificate](#), an arbitrage and tax compliance certificate, a tax compliance certificate, a non-arbitrage certificate or a section 148 certificate, although in each case it will cover matters far beyond the [Arbitrage](#) requirements. The approach to the tax documentation is largely a matter of [Bond Counsel](#) or [Special Tax Counsel](#) preference, with different forms being used in different types of financings. You should consult with your supervising attorney and, if appropriate, [Special Tax Counsel](#), as to the proper approach to the tax documentation in connection with a particular financing. A [Tax Certificate](#) may include various additional certificates, including an [Issue Price](#) certificate to be signed by the [Underwriter](#), as well as schedules related to the project being financed and other documentation.

Depending upon the type of transaction, [Issuers](#) of [Tax-Exempt Bonds](#) are required to file one of the forms in the [IRS Form 8038](#) series to report the issuance of [Tax-Exempt Bonds](#) to the IRS. In most cases, this will be either an IRS Form 8038-G for [Governmental Bonds](#) or [Governmental Purpose Bonds](#) or an [IRS Form 8038](#) for qualified [Private Activity Bonds](#). The filing of these forms – a critical step in establishing and maintaining the federal income tax-exempt status of the [Interest](#) on [Tax-Exempt Bonds](#) – is often the responsibility of Novices. The forms are due by the 15th day of the second calendar month after the end of the quarter in which the [Tax-Exempt Bonds](#) are issued.

CREDIT ENHANCEMENT AND LIQUIDITY FACILITY DOCUMENTATION

As discussed above, [Credit Enhancement](#) is a term which refers to a contractual arrangement to provide for the payment of the [Principal](#) of, [Interest](#), or [Premium](#) on the [Bonds](#), or for the [Redemption](#) of the [Bonds](#) in the [Event of a Default](#) or late payment by the [Issuer](#) or [Conduit Borrower](#). [Credit Enhancement](#) is used for the purpose of improving the creditworthiness of the

Bonds. Types of Credit Enhancement include a Letter of Credit, Bond Insurance Policy or Guaranty. Unlike Credit Enhancement, a liquidity facility is a document often used in the case of certain variable rate financings for the purpose of providing liquidity to the Issuer and/or Conduit Borrower (e.g., so that, if the Bonds are tendered on short notice, they can be repurchased by the Trustee with a liquidity facility such as a Letter of Credit or a Standby Bond Purchase Agreement, rather than obligating the Issuer to advance such a substantial amount of money on short notice).

The documentation required to be provided at or prior to the Closing varies depending on the type of Credit Enhancement or liquidity facility. A Guaranty is a promise to pay specified amounts by a Guarantor (e.g., a corporate parent to the Borrower in the context of a Conduit Financing). A Guaranty is typically documented with a document known as the Guaranty agreement. If there is a Letter of Credit or a Guaranty, an additional document called a Reimbursement Agreement may be included, as well as the Letter of Credit and the Guaranty itself. A Reimbursement Agreement sets out the terms of repayment by the Issuer or the Borrower to the Bank providing the Letter of Credit of any amounts advanced under the Letter of Credit or to the Guarantor of any amounts advanced under the Guaranty. A Reimbursement Agreement also typically contains financial covenants and other conditions for the Letter of Credit or the Guaranty to remain in effect. If a financial guaranty policy or Bond Insurance Policy is purchased for a Bond Issue, a form of the financial guaranty policy or Bond Insurance Policy is typically included in the Offering Document and the actual policy is provided by the Bond Insurer at or prior to the Closing. In each case, certificates and/or opinions may be required of the credit enhancer and/or its counsel as to the enforceability of the Credit Enhancement.

CONTINUING DISCLOSURE UNDERTAKING OR AGREEMENT

A Continuing Disclosure Undertaking or Agreement is provided by the Issuer or other obligated party for the benefit of the bondholders in a transaction subject to SEC Rule 15c2-12, commonly referred to as the “Rule.” In the Continuing Disclosure Undertaking or Agreement, the Issuer or other obligated party (e.g., the Borrower) contractually agrees to disclose certain financial and operating information on an annual basis (e.g., annual audited financial statements) and notice of certain listed events (e.g., notice of Redemption, notice of Defeasance, notice of bankruptcy, or notice of financial difficulty) relative to the Bonds and other financial obligations, should they occur while the Bonds are outstanding.

HOW TO PREPARE BONDS

INTRODUCTION

The method by which Bonds are executed is governed by the authorizing statute or by Issuer decision. If manual signatures are necessary, each Bond will have to be physically signed by the person or persons given the authority to sign. If Facsimile Signatures are permitted, a photocopy of the signature can be copied or printed onto each Bond. Some states require that anyone who signs Bonds have their signature on file with the state. The seal of the Issuer can also be manually affixed or be a facsimile. Ask your supervising attorney for guidance concerning the regulations governing Facsimile Signatures and affixing Issuer seals of the state in which the Bonds are being issued. In addition, the Bond Resolution of the Issuer should specifically authorize the use of Facsimile Signatures and reproduction of the seal of the Issuer on the Bonds.

when an original seal or original signatures are not expected to be used. Once the [Bonds](#) are each manually authenticated (or signed) by the [Paying Agent](#) or [Trustee](#), as the case may be, they become “live” [Bonds](#).

The form of the [Bond](#) may be set out in or attached as an exhibit to the [Indenture](#) or [Bond Resolution](#). The initial draft of the [Bond](#) may contain only a [Dated Date](#) since the [Pricing](#) of the [Bonds](#) has not occurred and the final [Principal](#) amounts and [Interest Rates](#) have not yet been determined. Special attention should be devoted to the [Bond](#) form because it must exactly reflect the terms or parameters, in the [Indenture](#) or [Bond Resolution](#), including all applicable [Redemption](#) provisions. Any material terms of the [Bond Issue](#) should be inserted not only in the [Indenture](#) or [Bond Resolution](#), but in the [Bond](#) form as well. The [Bond](#) form becomes the template for the printed or typewritten [Bonds](#), so it is imperative that it be kept current. Once the [Bonds](#) have been sold, the [Financial Advisor](#) or the [Underwriter](#) will make available a set of “final numbers” that show the [Dated Date](#) of the [Bonds](#), [Maturity Dates](#), [Principal](#) amounts, [Interest Rates](#), [Redemption](#) provisions and certain other material information. Check the sections of the [Indenture](#) or [Bond Resolution](#) dealing with the [Bond](#) terms, the [Bond](#) form, the [Bond Counsel Opinion](#) and the [Offering Document](#) to confirm that the terms of the [Bond](#) sale shown in the final numbers and other key terms are consistent with the [Bond Purchase Agreement](#), in the case of a [Negotiated Sale](#) or the winning bid on the [Bonds](#), in the case of a [Competitive Sale](#).

A [Registered Bond](#) is a [Bond](#) that is registered on books held by the [Paying Agent](#) or the [Trustee](#). Both the [Principal](#) and [Interest](#) are registered in the owner’s name. Any transfer of ownership must be noted on this register. The term “registered” refers to the fact that records are maintained with respect to payment of both [Principal](#) and [Interest](#) to that registered owner. As a result of federal tax law changes in the early 1980s, [Tax-Exempt Bonds](#) must be issued in registered form. This requirement is found in Section 149(a) of the Code.

The [Issuer](#) of the [Bonds](#) is obligated to repay the [Principal](#) to the bondholders according to the terms of the [Bonds](#). In the case of [Conduit Bonds](#), the [Borrower](#) rather than the [Issuer](#) has the repayment obligation, and the [Bond](#) form should specifically state that the [Bonds](#) are not a debt or liability of the [Issuer](#) and that such [Bonds](#) will be repaid only with funds received by the [Issuer](#) from the [Borrower](#). The appropriate language describing the [Issuer](#)’s obligation to repay the [Bonds](#) can, in most cases, be found in the authorizing statute and will track through the [Indenture](#) or [Bond Resolution](#), the [Bond](#) form, the [Bond Counsel Opinion](#) and on the cover and in the body of the [Offering Document](#).

If the [Bonds](#) are going to be [Book-Entry Only](#) through [DTC](#), the [Bond](#) should contain “[Book-Entry Only](#)” language. [DTC](#) provides model language that can be used. [Book-Entry Only](#) bonds are [Registered Bonds](#); however, for [Book-Entry Only Bonds](#), [DTC](#) is the only registered holder and disseminates payments received from the [Paying Agent](#) to the beneficial owners.

All [Bonds](#) are identified by a designated official name. There are thousands of state and local governments that can issue [Bonds](#), and many have several different [Bond Issues](#) outstanding. It is for this reason that the name of the [Bond Issue](#) appears on the [Bond](#). The name of the [Bond Issue](#) may identify the [Principal](#) amount of [Bonds](#), the [Issuer](#), the [Bond](#) type, the federal income tax status of the [Bonds](#), any [Conduit Borrower](#) and year of the [Bond Issue](#) (or series). The title for the [Bond Issue](#) is typically found in the [Bond Resolution](#) adopted by the [Issuer](#).

DENOMINATION

The [Denomination](#) of the [Bonds](#) is set out in the [Indenture](#) or [Bond Resolution](#). For example, an [Issue](#) of [Bonds](#) may be issued in \$5,000 [Denominations](#), meaning for a \$1,000,000 serial maturity, there would be 200 [Bonds](#). Since the use of [DTC Book-Entry Only Bonds](#) has become widespread, it has become increasingly common for one [Bond](#) to be prepared for each maturity comprising the [Bond Issue](#). Accordingly, in the example, there would be one \$1,000,000 [Bond](#) prepared for the entire maturity.

NUMBERING

[Bonds](#) are generally designated with a letter and a number. The correct procedure for designating the [Bonds](#) can be found in the [Indenture](#) or [Bond Resolution](#). To further identify the [Bond](#), each single [Bond](#) is numbered consecutively from one upwards. For example, each [Bond](#) could carry the letter “R” followed by a hyphen and a number. Therefore, the first [Bond](#) would be labeled “R-1.” If more than one series of [Bonds](#) are being issued at the same time or in the same year, the [Bonds](#) would carry the letter “R” followed by a letter. Under such a convention, the first [Bond](#) of the first series would be labeled “RA-1” and the first [Bond](#) of the second series would be labelled “RB-1” to avoid duplicate numbering.

CUSIP NUMBER

CUSIP stands for Committee on Uniform Security Identification Procedures. A [CUSIP Number](#) is composed of a six-digit base number that identifies the [Issuer](#) of the [Bonds](#), followed by three additional numbers/letters identifying the [Bond Issue](#) and maturity. Each maturity of a [Bond Issue](#), therefore, has its own identifying [CUSIP Number](#). The [Underwriter](#) or a [Financial Advisor](#) usually has the responsibility for ordering the [CUSIP Numbers](#). [CUSIP Numbers](#) are typically included on the face, or first page, of the [Bonds](#). In addition, since [CUSIP Numbers](#) are helpful to investors in identifying the [Bonds](#) that they hold and whether they have been called for [Redemption](#), [CUSIP Numbers](#), or sometimes just the base [CUSIP Numbers](#), are typically printed on the cover or inside cover of the [Offering Document](#) and are often listed in the [Continuing Disclosure Undertaking or Agreement](#).

DATED DATE

[Bonds](#) have a [Dated Date](#), which refers to the date the [Interest](#) on the [Bonds](#) begins to accrue. This date also helps to distinguish one [Bond](#) from another. The [Dated Date](#) of a [Bond](#) may be different from the date the [Bonds](#) are actually delivered. The [Cash Flows](#) or “final numbers” prepared by the [Underwriter](#) or the [Financial Advisor](#) and as set forth in the [Indenture](#) and the [Bond Resolution](#) will set forth the [Dated Date](#) of the [Bonds](#).

MATURITY DATE

[Bonds](#) may mature as either [Serial Bonds](#) or [Term Bonds](#), and a [Bond Issue](#) may contain both [Serial Bonds](#) and [Term Bonds](#). [Serial Bonds](#) mature serially over a number of years, with a specific [Principal](#) amount of [Bonds](#) maturing in each year until the entire [Issue](#) has matured. [Serial Bonds](#) are [Bonds](#) that mature in consecutive years, sometimes with a different [Interest Rate](#) for each maturity of the [Bonds](#). [Term Bonds](#) are [Bonds](#) with a single [Maturity Date](#) and [Interest Rate](#)

that are subject to [Mandatory Sinking Fund Redemption](#) (in which case portions of the [Principal](#) are selected at random and repaid on specified [Interest Payment Dates](#) prior to the [Maturity Date](#) along with the accrued and unpaid Interest for the outstanding [Principal](#) of the [Term Bond](#) according to a schedule and [Principal](#) amounts determined when the [Bonds](#) are issued). Sometimes there are “split maturities” where [Bonds](#) mature on the same [Maturity Date](#), but with a different [Principal](#) amount at a different [Interest Rate](#).

INTEREST PAYMENT DATES

The [Interest Payment Dates](#) are the dates on which [Interest](#) is due to the holders of the [Bonds](#). These dates are usually set at semiannual intervals on the first or the 15th day of the month. In variable rate issues and often in [Private Placements](#), the [Interest](#) may be paid on some other periodic basis (e.g., first business day of the month, etc.).

INTEREST RATE

The [Interest Rate](#) is the rate of [Interest](#) that the [Bond](#) bears. The highest rates are customarily paid on the longer maturities. These rates are established by the [Underwriter](#) for the [Bonds](#) through the [Negotiated Sale](#) or the [Competitive Sale](#) and determined by the general level of [Interest Rates](#) and [Yields](#) prevailing in the market at the time of the sale. Most [Bonds](#) are issued at a tax-exempt [Interest Rate](#), but, while the [Bonds](#) are outstanding, some event (e.g., a change in federal income tax law or a failure to satisfy the requirements to maintain the [Bonds](#) as [Tax-Exempt Bonds](#)) could occur that causes the [Bonds](#) to bear [Interest](#) at a taxable [Interest Rate](#). Other [Bonds](#) may be initially issued at taxable [Interest Rates](#), or may bear [Interest](#) that is taxable for federal income tax purposes, but exempt for state income tax purposes.

REDEMPTION/OPTIONAL REDEMPTION PROVISIONS

It is important that the [Redemption](#) terms of the [Bonds](#) ([Optional Redemption](#), [Mandatory Sinking Fund Redemption](#) and [Extraordinary Mandatory Redemption](#)) are included in the text of the [Bond](#) (i.e., the bond form) and are consistent with the [Indenture](#) or [Bond Resolution](#) and the final [Offering Document](#). The [Bond](#) form and the [Indenture](#) or [Bond Resolution](#) will usually contain the provisions that relate to the giving of notice of [Redemption](#), including the content of notice to bondholders, method of notice delivery, timing of notice and other relevant information.

REDEMPTION

[Redemption](#) means the repayment of the [Bonds](#) prior to their [Maturity Date](#). Whenever [Bonds](#) are to be redeemed, a notice must be published and/or mailed to bondholders to notify the bondholders that their [Bonds](#) are about to be redeemed. The contents of the [Redemption](#) notice, whether it must be mailed and/or published, the timing of the notice, the [Principal](#) amount of the [Bonds](#) and specific maturities of the [Bonds](#) being redeemed and other relevant information are included in the [Bond](#) form and the [Indenture](#) or [Bond Resolution](#). The [Issuer](#) may have to pay a [Premium](#) in order to redeem the [Bonds](#) in certain cases, and in such cases, typically, the earlier the [Bonds](#) are redeemed, the higher the [Premium](#).

One common form of [Redemption](#) is an [Optional Redemption](#). An [Optional Redemption](#) provision gives the [Issuer](#) the right to retire all or part of the [Bonds](#) before their [Maturity Dates](#).

There may be a negotiated [Premium](#) for an [Optional Redemption](#). It is often the case that the earlier the [Bonds](#) are redeemed or prepaid, the higher the [Premium](#). It is also very common that [Bonds](#) are not subject to [Optional Redemption](#), or “callable,” for a period of ten years from the date the [Bonds](#) are issued, and in some cases [Bonds](#) are not subject to [Optional Redemption](#) for their entire maturity. If you notice that the [Bonds](#) are not callable for more than 10.5 years after the date the [Tax-Exempt Bonds](#) are issued, you should notify your supervising professional because certain unintended tax consequences may arise in this case. A chart showing the [Optional Redemption](#) periods for the [Bonds](#) and the applicable [Premium](#) for each [Optional Redemption](#) is part of the [Bond](#) form, the [Indenture](#) or [Bond Resolution](#) and the [Offering Document](#) and may appear as follows:

<u>Optional Redemption Period</u>	<u>Premium</u>
December 1, 2033 through November 30, 2034	102%
December 1, 2034 through November 30, 2035	101
December 1, 2035 and thereafter	100

In this example, the [Issuer](#) cannot redeem, or prepay, the [Bonds](#) prior to December 1, 2033 and, from December 1, 2033 to November 30, 2034, must pay a 2% [Premium](#) to redeem the [Bonds](#). In addition, the [Issuer](#) has the option to redeem the [Bonds](#) subject to [Optional Redemption](#) but is not obligated to do so. The information about any [Optional Redemption](#) of the [Bonds](#) is determined at the time the [Bonds](#) are sold.

If the financing includes [Term Bonds](#), the [Bonds](#) may be subject to [Mandatory Sinking Fund Redemption](#). A [Mandatory Sinking Fund Redemption](#) is a requirement (determined at [Pricing](#)) that the [Issuer](#) redeem, usually annually or semiannually, portions of the [Principal](#) amount of the related [Term Bonds](#) in accordance with a schedule, called a sinking fund installment schedule at a price equal to such [Principal](#) amount of the [Bonds](#) and the accrued and unpaid [Interest](#) on the [Bonds](#). [Mandatory Sinking Fund Redemptions](#) usually carry no [Premium](#) and, in some cases, no notice provisions because the requirement is built into the [Pricing](#) for the [Term Bond](#) and known to the bondholders on the delivery date of the [Bonds](#). The holders of the [Principal](#) amount of a [Term Bond](#) to be redeemed on the date of each [Mandatory Sinking Fund Redemption](#) are chosen at random, so the bondholders do not know when or whether all or any [Principal](#) amount of the [Term Bond](#) they hold will be redeemed.

The [Debt Service](#) schedules prepared by the [Underwriter](#) or the [Financial Advisor](#) may include both [Term Bonds](#) and [Serial Bonds](#). Because a [Term Bond](#) is subject to [Mandatory Sinking Fund Redemption](#), it will appear on these schedules like a series of maturities with an identical [Interest Rate](#). If, as an example, a [Debt Service](#) schedule includes a [Term Bond](#) maturing on July 1, 2032, but subject to twelve, semiannual, [Mandatory Sinking Fund Redemption](#) dates, the schedule reflecting the repayment of the [Principal](#) for such [Term Bond](#) would be constructed so that the final [Mandatory Sinking Fund Redemption](#) date would be the date of the [Maturity Date](#) of that [Term Bond](#) (July 1, 2032), the first [Mandatory Sinking Fund Redemption](#) date would be scheduled for January 1, 2027, and the remaining [Mandatory Sinking Fund Redemption](#) dates would be each January 1 and July 1 in between January 1, 2027, and July 1, 2032.

An [Extraordinary Mandatory Redemption](#) provides for the [Redemption](#) of the [Bonds](#) only in the case of certain unexpected, extraordinary or one-time events. These events are listed in the [Bond](#) and/or the [Indenture](#) or [Bond Resolution](#) and may include destruction of the project, excess [Bond](#) proceeds remaining after the project is completed, inability to obtain required permits and approvals or a determination that the [Interest](#) on the [Tax-Exempt Bonds](#) is no longer excludable from federal income tax.

The [Redemption](#) provisions of the [Bonds](#) usually contain dates and amounts that are not determined until [Pricing](#). Accordingly, they are often left blank or are accompanied with an asterisk in the preliminary [Offering Document](#). It is very important that the terms of [Redemption](#) in the [Indenture](#) or [Bond Resolution](#) are consistent with the final [Bond](#) form and the final [Offering Document](#).

DEFEASANCE

When the [Bonds](#) are not yet subject to [Optional Redemption](#), an [Issuer](#) might choose to defease them. This means that the [Issuer](#) or [Conduit Borrower](#) provides (typically through an escrow or other segregated fund) the money or investments necessary to repay the [Bonds](#) (or redeem the [Bonds](#), if they are subject to [Optional Redemption](#) and become callable) through the date of maturity or redemption, as applicable. A [Defeasance](#) is a concept of contract law and must be expressly permitted in the underlying documents pursuant to which the [Bonds](#) were issued. Typically, a [Defeasance](#) will relieve the [Issuer](#) of many of its repayment obligations and, in some cases, other obligations, with respect to the defeased [Bonds](#) (e.g., [Pledge](#) of collateral and [Security](#), covenants, etc.). In exchange for the [Defeasance](#), typically the [Issuer](#) (or [Conduit Borrower](#)) enters into an [Escrow Deposit Agreement](#) with an [Escrow Agent](#). Pursuant to the [Escrow Deposit Agreement](#), the [Issuer](#) (or [Conduit Borrower](#)) typically grants to the [Escrow Agent](#), for the benefit of the bondholders, an irrevocable [Pledge](#) of cash and/or [Securities](#) as collateral and [Security](#) for the [Bonds](#) and irrevocable instructions to redeem the [Bonds](#) at the first available [Optional Redemption](#) date. In other words, the bondholders now look to the money and [Securities](#) set aside by the [Issuer](#) or the [Conduit Borrower](#) (including the investment earnings) for the repayment of the [Bonds](#) instead of the original source of repayment. This is known as a legal [Defeasance](#). Generally, for [Bonds](#) to be legally defeased, verification of the sufficiency of the amounts deposited into the [Escrow Fund](#) is required (and will be done by a Verification Agent), as well as an opinion that there has been a legal [Defeasance](#) of the [Bonds](#). Once [Bonds](#) are legally defeased, they are generally considered no longer outstanding from the [Issuer](#)'s perspective.

STATE LAW MATTERS

INTRODUCTION

State law issues are central to the overall legal analysis necessary in a [Bond](#) transaction. These matters are reviewed in-depth by [Bond Counsel](#) as part of its responsibilities and provide the foundation for the opinion provided by [Bond Counsel](#) at the close of a [Bond](#) transaction. This section will describe various state law matters that are relevant to: (1) delivery of the [Bond Counsel Opinion](#); and (2) information that is disclosed in [Offering Document](#) that may be material to a bondholder's investment analysis.

THE BOND COUNSEL OPINION

A. Components of the Bond Counsel Opinion

Bond Counsel's Opinion typically addresses the following matters: (1) that the Bonds have been duly authorized, executed and delivered by and are valid and binding obligations of the Issuer; (2) the source of payment or Security for the Bonds; and (3) federal and state income tax issues, including whether and to what extent Interest on the Bonds is exempt from federal income taxes and from income or other taxes, if any, imposed by the state in which the Bonds are issued and whether the Bonds are “qualified tax-exempt obligations” within the meaning of Section 265(b)(3) of the Code (“bank qualified”) or qualified for other purposes. Each of these are state law specific matters or matters that hinge on state law analysis.

Bond Counsel is traditionally engaged to provide an objective legal opinion as to validity and enforceability (i.e., whether the Bonds are valid obligations of the Issuer and whether the holder of the Bonds could sue in court to enforce the Issuer's promise to timely pay the Principal and Interest on the Bonds), which is determined under applicable state law. Because validity is the essential first step to both tax-exempt status and federal securities law exemption for the Bonds, the validity opinion is essential to the overall Bond Counsel Opinion. There have been significant cases holding that borrowings which are determined to be invalid are void and unenforceable. Accordingly, bondholders rely on the Bond Counsel Opinion to ensure validity and enforceability of the Bonds.

In addition, most Bond Counsel Opinions address the inclusion or exclusion of Interest on the Bonds with respect to taxation under the laws of the state in which the Issuer is located. Inclusion of this component of the opinion may be less important, or entirely absent, in those states where there is no state income tax. In other states, the tax treatment under state law is tied to the treatment under federal tax law.

While some states will broadly provide that Interest on Bonds is exempt from taxation within the state of the Issuer, the state may include Interest on the Bonds in the measure of corporate excise or franchise taxes. If the Interest is or may be includable in the measure of corporate excise or franchise taxes, the Bond Counsel Opinion generally includes a reference to such effect to avoid any confusion.

B. Bond Counsel Opinion Due Diligence

It is critical for Bond Counsel to know all of the applicable federal and state laws related to a Bond transaction. This is because Bond Counsel is expected to deliver an unqualified approving legal opinion in accordance with the “NABL Standard.” The NABL Standard provides that Bond Counsel must be “firmly convinced” that under the law in effect on the date of the opinion, the highest court of the relevant jurisdiction, if reasonable and properly briefed, would reach the legal conclusions stated in the opinion. Readers are encouraged to read the National Association of Bond Lawyers’ “Model Bond Opinion Report,” which is available on the National Association of Bond Lawyers’ website at: www.nabl.org/learn/resources.

Bond Counsel must take many steps in its analysis of state law considerations to become “firmly convinced” of its opinion conclusions. Areas of review could include:

1. Bond Issuance Approval Process:

a. Is the [Issuer](#) and the [Borrower](#), if any, properly in existence? Have they made necessary filings under state law to remain in good standing under state law?

b. Is the [Issuer](#) authorized to issue the [Bonds](#) and is the [Borrower](#) (if applicable) authorized to borrow the [Bond](#) proceeds?

i. What are the relevant state constitutional and statutory requirements for the issuance of the [Bonds](#), and have they been met?

ii. Is the proposed financing structure authorized under state law? Is the [Pledge](#) of [Security](#) for the repayment of the [Bonds](#) authorized under state law? What state/local/issuer specific requirements must be satisfied prior to issuing the [Bonds](#)?

2. Debt Limits and Exceptions:

a. Is the [Issuer](#) subject to a constitutional or statutory limit upon the issuance of the [Bonds](#)?

b. If so, have the [Debt Limit](#) restrictions or requirements been met or is there an exception available?

3. Use of Bond Proceeds:

a. In addition to performing the analysis under the [Code](#) and Treasury Regulations, is the proposed use of the [Bond](#) proceeds permitted under state law and within the scope of the authorizing documents?

b. Are the [Bond](#) proceeds to be used for a proper public purpose? The public purpose concept restricts public funding to activities that serve the interests of the public at large and generally precludes governmental participation in activities that solely benefit private interests. Even if this concept is not explicitly stated in a particular state constitution, courts have often inferred its existence.

c. Does the [Bond Issue](#) satisfy any applicable state laws that may prevent a state or local government from guaranteeing the repayment of the [Bonds](#) of a private entity (e.g., lending its credit) or using its public funds (e.g., [Bond](#) proceeds) for private purposes?

DISCLOSURE OF STATE LAW MATTERS

A. Federal Securities Law Disclosure Requirements

When determining what state law matters are required to be disclosed in the [Offering Document](#), it is necessary to keep in mind the federal securities law disclosure standard set forth

in Rule 10b-5. A fact is “material” if there is a substantial likelihood that a reasonable investor would consider it important when making an investment decision. Many states have similar securities disclosure standards. See “*FEDERAL SECURITIES LAW - The Antifraud Provisions*” herein.

B. Security and Source of Payment

1. General Obligation Bonds

There are three main categories of information that investors may consider material when analyzing a [Security Pledge](#) on a [General Obligation Bond](#):

a. **Procedural Components of the Pledge:** What procedural steps must an [Issuer](#) take to generate sufficient revenue in the event of a shortfall? Common steps include budgetary approval, voter approval, legislative approval or notice to state regulators. It is also important to consider whether such steps are discretionary or conditional and if any of them require action by another governmental entity. Finally, if compliance with these procedural requirements takes time, consider whether the revenue will be collected in time to pay the [Debt Service](#) on the [Bonds](#).

b. **Substantive Components of the Pledge and General Economic Conditions of the Issuer:** Is the full faith and credit pledge, in substance, a [Pledge](#) of the general fund or a stream of restricted/unrestricted funds? General funds are often comprised of multiple sources of revenue that can include income taxes, property taxes, utility taxes/revenues, sales taxes, hotel (lodging) taxes, business taxes and/or real estate excise taxes. It must be determined which of those revenues would be available to pay the [Debt Service](#) on the [Bonds](#). In addition, information about the unemployment rates, average incomes for residents and other general economic information about the [Issuer](#) needs to be included and verified with a third-party source, if possible.

c. **Other Limitations on the Pledge:** Are there other limitations on the ability to raise/collect taxes? Common limitations include statutory and constitutional limitations; uniformity requirements; the methodology used to calculate the assessed value of property; and miscellaneous state statutes that limit collection.

2. Pledge of and Security Interest in Revenues/Property

Bondholders may or may not have a [Security Interest](#) in particular revenues or assets of the [Issuer](#) and/or the [Borrower](#).

a. **What Type of Bond is It:** The threshold inquiry is whether the [Bond](#) is a [General Obligation Bond](#) (subject to [Debt Limit](#) and lacking a [Security Interest](#) in particular revenues) or a [Revenue Bond](#) (not subject to a [Debt Limit](#) due to a perfected [Security Interest](#) and an inability of investors to require a levy of [Ad Valorem Property Taxes](#)). The authority to grant a [Security Interest](#) in real or

personal property as collateral for an obligation is determined by state law.

b. **What is the Nature of the Pledge and General Financial Information about the Borrower, if applicable:** It is important to disclose the relevant state-specific considerations, such as the nature of the pledge, whether it is unsecured or secured, the limitations on the source of revenue, the lien position (senior, parity, junior, etc.), the limitations on foreclosing/liquidating the assets securing the [Debt Service](#) on the [Bonds](#) and financial and other material demographic information about the [Borrower](#), if applicable.

C. Events of Default and Remedies

Remedies available to bondholders in the [Event of a Default](#) are not uniform and depend on many factors, including the type of breach (payment default vs. technical default); the availability of remedies under constitutional, statutory and contractual provisions; and the type of remedy being sought. State law, judicial actions and local rules may provide for, or limit remedies available to, bondholders upon [Default](#). The [Events of Default](#), potential remedies and any limitations on remedies should be disclosed to bondholders. Common limitations on bondholder remedies include the following:

1. **Seizure of Public Property:** It is extremely rare to be able to seize and sell the property of a public entity.

2. **Acceleration:** Most Governmental Bonds cannot be accelerated because the underlying taxes, rates and charges cannot be accelerated. This means that, if there is a [Default](#), bondholders are typically unable to declare all outstanding [Principal](#) immediately payable and due. As such, bondholders must bring a separate enforcement/mandamus action for each failed payment.

3. **Writ of Mandamus:** The principal remedy available to bondholders of [Governmental Bonds](#) is to seek a [Writ of Mandamus](#) to compel performance of non-discretionary or ministerial duties (e.g., impose or collect taxes or rates and charges). State and/or local law will dictate the procedural steps necessary to compel performance. Some of those steps may be discretionary, conditional or out of the [Issuer](#)'s control (e.g., steps that must be taken by entities other than the [Issuer](#)).

4. Other Rights and Remedies:

a. **Receivers:** Some states allow, pursuant to a judicial or legislative appointment, the appointment of a receiver to undertake budgetary or other [Issuer](#) functions. The powers vary widely by state. For instance, the receiver's powers might be so broad as to supplant the powers, functions and responsibilities of some or all elected officials of the [Issuer](#). Or, the receiver may have a more limited role providing oversight (e.g., budgetary approval) of [Issuer](#) actions. Note, however, that the powers of a receiver are likely very limited in a Chapter 9 bankruptcy context.

b. **Attachment:** While attachment and execution are not generally

permitted against a governmental entity, exceptions may be applicable in some jurisdictions.

c. Other Considerations: State law often contains detailed statutory notice, timing and other requirements that must be fulfilled to exercise tax liens and other remedies. Other material factors include the value of the property subject to the lien, competing rights to the proceeds of any sale and any limitations on a bondholder's right to seek a deficiency judgment against the property owners.

D. Chapter 9 Bankruptcy

1. Filing Considerations: Municipal bankruptcy is different from [Default](#) and is quite rare. Many states limit (or prohibit) Chapter 9 bankruptcy filings and municipalities cannot be forced into involuntary bankruptcy. Express authorization is often required. Even when they are authorized, there are often extensive procedural requirements to obtain bankruptcy protection. Please see the National Association of Bond Lawyers' "2015 Report—Municipal Bankruptcy: A Guide for Public Finance Attorneys," which is available on the National Association of Bond Lawyers' website at: www.nabl.org/learn/resources.

2. The Automatic Stay: Many states/localities have automatic stay provisions that force a municipality to stop paying [Debt Service](#) on its obligations once the bankruptcy petition is filed.

3. Special Revenue Pledge: Bankruptcy proceedings treat [General Obligation Bonds](#) and [Revenue Bonds](#) very differently. Additionally, any "special revenues" (as defined in Section 902(2) of the Bankruptcy Code) acquired by a municipality after the commencement of the Chapter 9 case remain subject to any lien resulting from any security agreement entered into by the municipality before the commencement of the case.

E. State Tax Exemption

Federally [Tax-Exempt Bonds](#) may also be exempt from state income taxation. Whether a [Bond](#) is exempt from state income tax is typically addressed in the [Bond Counsel Opinion](#) and must be disclosed because it is material to investors. Check local laws as well to see if [Interest](#) is exempt from local income taxes.

F. Refunding/Defeasance of Bonds

Rights of [Redemption](#) and any state/local law limitations on those rights should be disclosed to investors. State law may also limit eligible investments for an [Escrow Fund](#). Some states do not allow for legal [Defeasance](#) of municipal obligations. It is important to disclose that a bondholder no longer has an interest in the original [Security](#) pledged for the repayment of the [Bonds](#) following a legal [Defeasance](#). Similarly, the [Issuer](#) should tell potential investors that in the event of a legal [Defeasance](#), many of the promises and covenants in the [Bond](#) documents are released and the [Security Pledge](#) for the repayment of the [Bonds](#) becomes the investments deposited in [Escrow Fund](#).

G. Post-Issuance State Law Considerations

The engagement of [Bond Counsel](#) generally ends with the delivery of the [Bond Counsel Opinion](#) at the issuance of the [Bonds](#). However, it is very important for the [Issuer/Borrower](#) to be aware of, and to stay in compliance with, ongoing, post-issuance tax and disclosure obligations. These include various federal law requirements and state filing/record retention requirements. Finally, a change in use may implicate federal income tax law and state laws. [Bond Counsel](#) should inquire about, and consider encouraging, the adoption of post-issuance compliance procedures by the [Issuer/Borrower](#).

FEDERAL SECURITIES LAW

INTRODUCTION

This section is meant to provide an overview of the federal securities laws that apply to [Bonds](#), specifically highlighting the following areas:

- Registration requirements under the Securities Act of 1933 (the “[1933 Act](#)” or the “[Securities Act](#)”);
- “Antifraud” provisions of the [1933 Act](#) and the [Securities Exchange Act of 1934](#) (the “[1934 Act](#)” or the “[Exchange Act](#)”) and SEC Rule 10b-5, focusing on important Securities and Exchange Commission (“SEC” or the “Commission”) enforcement actions in the municipal [Securities](#) market;
- [SEC Rule 15c2-12](#), which regulates the receipt, content and distribution of [Offering Documents](#) by brokers, dealers and [Underwriters](#) of [Bonds](#), the ongoing provision of information to the secondary market by [Issuers](#) and obligated parties and related broker-dealer procedures;
- SEC rules requiring the registration of [Municipal Advisors](#);
- The [MSRB](#) rules governing the conduct of municipal [Securities](#) brokers, dealers and advisors; and
- The regulatory bodies in the municipal [Securities](#) market, such as the SEC, the [MSRB](#) and the Financial Industry Regulatory Authority (“FINRA”).

REGISTRATION

The [1933 Act](#) is designed to ensure that investors are provided with material information about [New Issues](#) of [Securities](#) offered for sale to the public. The [1933 Act](#) requires that [New Issues](#) of [Securities](#) offered or sold by use of the mails or interstate commerce be registered with the SEC and that a prospectus be furnished to the purchaser prior to the sale. Registration statements must contain detailed information about the business, management and financial condition of the entity issuing the [Securities](#) and must include financial statements of the entity issuing the [Securities](#) audited by independent accountants. They must also disclose information relating to the method of offering, the [Securities](#) and other matters. However, Section 3(a)(2) of

the [1933 Act](#) exempts state and local government obligations, including [Conduit Bonds](#), from these registration requirements. Both the SEC and the [MSRB](#) are prohibited from directly or indirectly requiring municipal [Issuers](#) to disclose information prior to the sale of [Securities](#).

A. Separate Securities

Although municipal [Securities](#) are exempt from federal registration requirements, municipal [Securities](#) must be closely analyzed to determine whether underlying arrangements commonly used in connection with such financings involve “separate securities” which require registration. Rule 131 of the [1933 Act](#) and Rule 3b-5 of the [1934 Act](#) provide that separate securities are “any part of an obligation evidenced by any bond . . . which is payable from payments to be made in respect of property or money . . . under a lease, sale or loan arrangement by or for an industrial or commercial enterprise.” In certain circumstances, a particular financing arrangement involves a separate [Security](#) but comes within an independent statutory exemption under the [1933 Act](#). In other circumstances, there is no independent statutory exemption for a particular financing arrangement, but the SEC staff has concluded that registration is not warranted because the arrangement provides additional security for the underlying municipal [Security](#).

The following types of underlying obligations do not need to be registered as separate securities: (1) [Guaranties](#); (2) [Guaranties](#) by the United States; (3) bank [Guaranties](#); (4) put options; (5) [Letters of Credit](#); (6) participation certificates; (7) insurance; or (8) [Guaranteed Investment Contract](#) payments.

B. Registration by Transaction

1. Subsequent Sale

The subsequent sale by the holder of the [Securities](#) of federal, municipal and corporate [Securities](#) does not render the seller an [Issuer](#) subject to registration requirements.

2. Transactional Exemptions

Municipal [Securities](#) that are not exempt from registration under Section 3(a)(2) or some other “exempt security” provision of the [1933 Act](#) may still be exempt if they are offered and sold in a manner that complies with certain transactional exemptions available under the [1933 Act](#). In particular, Section 4(a)(2) of the [1933 Act](#) provides an exemption from registration for “transactions by an issuer not involving any public offering” – so-called “private placements.” The SEC has promulgated regulations establishing several “safe harbors” under Section 4(a)(2) for [Private Placements](#), as discussed below in more detail.

Regulation D, which is available only to the [Issuer](#) of a [Security](#), provides three different safe harbors, the conditions of which vary with the size of the offering. As a general rule, transactions under Regulation D may not involve any form of general solicitation or advertising, sales are restricted to [Accredited Investors](#) and a limited number of non-accredited investors, and the [Issuer](#) must exercise reasonable care to ensure that the purchasers are not [Underwriters](#) within the meaning of the [1933 Act](#). [Securities](#) purchased in a Regulation D transaction generally are

“restricted securities” that cannot be resold without registering them under the [1933 Act](#) or an exemption therefrom. This task would fall to the original purchaser of the [Security](#).

In such a case, the purchasers in a [Private Placement](#) who wish to resell their restricted [Securities](#) originally sold in a transaction that benefitted from Regulation D may avail themselves of safe harbors, such as those provided under Rule 144 and Rule 144A. Under the general provisions of Rule 144, restricted [Securities](#) of a reporting [Issuer](#) may be sold after a six-month holding period, provided that certain current financial information about the [Issuer](#) is available, the amount sold during any three-month period does not exceed certain prescribed amounts, the sale is effectuated in an unsolicited brokers’ transaction or to a market maker and, in the case of sales meeting a minimum size threshold, a notice of the proposed sale is filed with the SEC and the appropriate national securities exchange, if applicable. The holding period for resales of restricted [Securities](#) of non-reporting [Issuers](#) is one year. Rule 144A provides an alternative safe harbor available in transactions involving sales or resales to purchasers meeting the definition of a [Qualified Institutional Buyer](#).

Qualification for the Rule 144A exemption requires that the seller and seller’s agent take reasonable steps to ensure that purchaser is aware that the seller may rely on the Rule 144A exemption. In addition, in the case of [Securities](#) of an [Issuer](#), such as a municipal [Issuer](#), not subject to the reporting requirements of the [1934 Act](#), the holder of the [Securities](#) and the prospective purchaser must have the right to obtain from the [Issuer](#) certain financial information.

Because the safe harbors provided by Regulation D, Rule 144 and 144A are non-exclusive, are merely safe harbors, and were promulgated by an administrative agency as interpretations of Section 4(a)(2), transactions that do not meet their requirements nonetheless may, under certain circumstances, qualify for the general Section 4(a)(2) statutory exemption provided by Congress.

C. Trust Indenture Act of 1939

The [Trust Indenture Act of 1939](#) (the [Trust Indenture Act](#)) prohibits the sale of corporate debt [Securities](#) to the public unless they are issued under an [Indenture](#) that conforms to federal statutory standards. The basic requirement of the [Trust Indenture Act](#) is that a [Trustee](#) be appointed to oversee the [Indenture](#) and that the [Trustee](#) exercise certain ministerial duties prior to a [Default](#) under the [Indenture](#) and exercise a fiduciary duty to act as a prudent person on behalf of investors after a [Default](#) occurs under the [Indenture](#).

The [Trust Indenture Act](#) expressly exempts any [Security](#) exempted from the provisions of the [1933 Act](#) by virtue of Section 3(a)(2) of the [1933 Act](#) thereby exempting most municipal [Securities](#) from its purview.

D. State Regulation

In addition to the federal securities laws, municipal [Securities](#) are also subject to state securities laws known as [Blue Sky Laws](#). While the federal securities laws focus on regulation of the national markets, the [Blue Sky Laws](#) focus on irregular [Securities](#) and newly formed enterprises, with a goal of protecting the investing public from fraud and worthless speculative offerings.

Although state securities laws vary among the states, most [Blue Sky Laws](#) are based on the [Securities Act](#), promulgated by the National Conference of Commissioners on Uniform State Laws. The [Securities Act](#) provides an exemption from registration of those [Securities](#), including for federally covered [Securities](#) and for [Securities](#) (including revenue obligations or a separate [Security](#), as defined in Rule 131 under the [1933 Act](#)) issued by the United States, any state or any [Political Subdivision](#) or public instrumentality of one or more states.

THE ANTIFRAUD PROVISIONS

Among the primary objectives of the [1933 Act](#) and the [1934 Act](#) are: (1) requiring disclosure of material information about [Securities](#) to allow investors to make informed decisions; and (2) prohibiting misrepresentation or other fraudulent conduct in connection with the purchase and sale of [Securities](#). These objectives are accomplished largely through two “antifraud” provisions: Section 17(a) of the [1933 Act](#) and Section 10(b) of the [1934 Act](#) (and Rule 10b-5 promulgated thereunder).

The antifraud provisions not only apply to statements made in, and omissions from, an [Offering Document](#), but also to statements and omissions that occur outside the “four corners” of an [Offering Document](#), including statements made using electronic media and information posted on an [Issuer](#)’s website. In addition, in its [Staff Legal Bulletin No. 21](#) published by the SEC’s Office of Municipal Securities (“OMS”), the office opined that “[t]he statements of municipal [Issuer](#) officials are also subject to the antifraud provisions if their statements are reasonably expected to reach investors or the [Securities](#) markets. Notably, statements by municipal [Issuer](#) officials ‘who may be viewed as having knowledge regarding the financial condition and operation of a municipal [Issuer](#)’ could be a principal source of significant, current information about the [Issuer](#) of the [Security](#) and thus be reasonably expected to influence investors and the secondary market. Accordingly, depending on the facts and circumstances, the statements of municipal [Issuer](#) officials that may be subject to the antifraud provisions could include verbal statements made by municipal [Issuer](#) officials, such as speeches, public announcements, and interviews with media representatives, as well as statements disseminated through other avenues such as, in the staff’s view, social media.”

A. Section 10(b) of the 1934 Act & Rule 10b-5

Section 10(b) of the [1934 Act](#) makes it unlawful to use manipulative or deceptive devices in connection with the purchase or sale of [Securities](#). The SEC adopted Rule 10b-5 to implement this provision. Rule 10b-5 makes it unlawful for any person:

“(a) To employ any device, scheme, or artifice to defraud, (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.”

Municipal [Securities](#) were brought within the scope of the [1934 Act](#) and Rule 10b-5 by virtue of the [Securities Acts Amendments of 1975](#). As a result, Rule 10b-5 imposes antifraud provisions on [Issuers](#), [Underwriters](#), [Bond Counsel](#), [Issuer’s Counsel](#), [Borrower’s Counsel](#), [Disclosure Counsel](#) and [Underwriter’s Counsel](#) in the context of municipal [Securities](#).

B. Section 17(a) of the 1933 Act

Section 17(a) of the [1933 Act](#) provides:

“It shall be unlawful for any person in the offer or sale of any securities . . . by the use of any . . . instruments of transportation or communication in interstate commerce . . . (1) to employ any device, scheme, or artifice to defraud, or (2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.”

Municipal [Issuers](#) are subject to Section 17(a) because the definition of “person” under the [1933 Act](#) includes “a government or political subdivision thereof.” The language of Section 17(a) is almost identical to that of Rule 10b-5. Despite the similarity, however, Section 17(a) and Rule 10b-5 are not entirely co-extensive. Most notably, whereas Rule 10b-5 protects purchasers and sellers, but only in the sale of [Securities](#), Section 17(a) protects only purchasers of [Securities](#), but does so in the context of both offers and sales. Thus, in some respects, Section 17(a) is both narrower and broader than Rule 10b-5 and vice versa.

C. Common Elements to SEC Enforcement Actions

The SEC has broad authority to bring civil enforcement actions under Rule 10b-5 and Section 17(a). In order to establish liability under Rule 10b-5, the SEC must prove by a preponderance of the evidence that: (i) the defendant made an untrue statement of material fact or omitted to state a material fact needed to make any statements made not misleading, (ii) such statement or omission was made with the requisite mental state and (iii) the misstatement or omission was “in connection with” the purchase or sale of [Securities](#). Rule 10b-5 also imposes liability on persons who were not the maker of an untrue or misleading statement. This secondary liability – or “aiding and abetting” liability – extends liability to individuals who do not directly violate the federal securities laws themselves or who may not be directly involved in [Securities](#) transactions (e.g., lawyers and accountants). In order to establish liability under Section 17(a), the SEC must prove by a preponderance of the evidence that: (i) the defendant made an untrue statement of material fact or omitted to state a material fact needed to make any statements made not misleading, (ii) with the requisite mental state and (iii) the misstatement or omission was “in” the offer or sale of [Securities](#).

D. Private Causes of Action

Rule 10b-5 and Section 17(a) do not expressly permit plaintiffs to bring private causes of action against defendants. Rather, in the context of Rule 10b-5, the ability for private litigants to

allege federal securities law violations is judicially created. In addition to the three elements that the government must establish in SEC enforcement actions, private plaintiffs pursuing Rule 10b-5 claims must also prove the following elements by a preponderance of the evidence: (1) reliance on the untrue or misleading statement; (2) loss causation; and (3) damages. Although the United States Supreme Court has not definitively answered whether Section 17(a) also affords a private remedy, most federal circuit courts that have considered the issue have concluded that it does not.

OTHER REGULATORY PROVISIONS

A. Rule 15c2-12

Rule 15c2-12 directly regulates [Underwriters](#), but not [Issuers](#), conduct in connection with the initial offering and sale of municipal [Securities](#). Rule 15c2-12 “was designed to establish standards for the procurement and dissemination by [Underwriters](#) of offering documents as a means of enhancing the accuracy and timeliness of disclosure to investors in municipal securities” and to “assist underwriters in meeting their responsibilities under the general antifraud provisions of the federal securities laws.” To reiterate, Rule 15c2-12 does not regulate municipal [Issuers](#). The obligations of municipal [Issuers](#) to provide ongoing disclosure is imposed by the [Continuing Disclosure Undertaking or Agreement](#) that Rule 15c2-12 requires the [Underwriter](#) to obtain. Thus, Rule 15c2-12 effectively controls [Issuer](#) access to the public markets even though it technically does not directly apply to [Issuers](#).

B. Current Requirements

Under Rule 15c2-12, when participating in a primary [Public Offering](#), subject to certain exceptions discussed below, an [Underwriter](#) must: (1) obtain and review an [Official Statement](#) that, except for certain specified information, is “deemed final” by an [Issuer](#) prior to making a bid for, or purchase, offer or sale of, municipal [Securities](#); (2) in [Negotiated Sales](#), provide the most recent [Preliminary Official Statement](#) (if one exists) upon request by a potential customer; (3) contract to receive within 7 business days of the date of sale or in time to accompany a request for payment from any customer, sufficient copies of the final [Official Statement](#) to comply with the following requirement; and (4) deliver copies of the final [Official Statement](#) upon request by a potential customer for a specified time period.

Additionally, before an [Underwriter](#) may purchase or sell municipal [Securities](#) in such an offering, Rule 15c2-12 requires that the [Underwriter](#) “reasonably determine” that the [Issuer](#) or an “obligated person” has undertaken in writing, for the benefit of the [Securities](#) holders, to provide certain ongoing disclosure information to the [MSRB](#). These undertakings are commonly referred to as the [Continuing Disclosure Undertaking or Agreement](#). In the [Continuing Disclosure Undertaking or Agreement](#), the [Issuer](#) or obligated person must agree to provide annual financial information and operating data (including audited financial statements, when and if available) and timely notice of the occurrence of certain listed events to the [MSRB](#) through its [EMMA](#) portal.

The final [Official Statement](#) that must be reviewed by the [Underwriter](#) is required to include (1) terms of the proposed [Issue](#) of [Securities](#); (2) financial information or operating data concerning all persons that are material to an evaluation of the offering, among other information; and (3) a description of the [Continuing Disclosure Undertaking or Agreement](#) and of any instances

in the previous five years in which the obligated person for which annual updates will be reported failed to comply, in all material respects, with the obligations in any previous [Continuing Disclosure Undertaking or Agreement](#).

There are several types of transactions that are exempt from Rule 15c2-12. It applies only to an initial (i.e., primary) [Public Offering](#) of municipal [Securities](#) with an aggregate [Principal](#) amount of \$1 million or more. Primary [Public Offerings](#) are exempt from Rule 15c2-12 if the [Securities](#) offered are in [Minimum Denominations](#) of \$100,000 and (1) have a maturity of nine months or less; or (2) are sold to no more than 35 persons, each of whom the [Underwriter](#) reasonably believes (a) has such knowledge and experience that it is capable of evaluating the merits and risks of investing in the [Securities](#) and (b) is not purchasing the [Securities](#) for more than one account or with a view to distribution. Additionally, primary [Public Offerings](#) involving obligated persons that will have less than \$10 million in outstanding [Principal](#) amount of [Securities](#) are exempt from the continuing disclosure requirement of Rule 15c2-12 if the [Issuer](#) or an obligated person undertakes for the benefit of [Securities](#) holders to provide to the [MSRB](#) (1) at least annually the financial information and operating data, if any, that the obligated person customarily prepares and is publicly available; and (2) the same event notices that would be required if the offering were not exempt. Finally, offerings of [Securities](#) that mature within 18 months are exempt from the requirements to provide annual financial information and audited financial statements.

ENFORCEMENT

The SEC may bring enforcement actions under either Section 17(a) of the [1933 Act](#) or Section 10(b) of the [1934 Act](#) (including Rule 10b-5) against [Issuers](#) and obligated persons (collectively, “offerors”) for inaccurately stating or implying in a final [Official Statement](#) that they have substantially complied with their obligations under prior [Continuing Disclosure Undertakings or Agreements](#). In such instances, the [Underwriters](#) in these transactions may also have violated the anti-fraud provisions to the extent they failed to exercise adequate diligence in determining whether the offerors of the [Securities](#) have complied with their obligations under such prior [Continuing Disclosure Undertakings or Agreements](#), and as a result, failed to form a reasonable basis for believing the truthfulness of what the SEC believes to be a material representation in the offerors’ [Official Statement](#).

THE DODD-FRANK ACT OF 2010

In the wake of the subprime mortgage crisis and global financial meltdown of 2008-2009, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). The Dodd-Frank Act enacted sweeping changes in the regulation of financial institutions, [Financial Advisors](#) and the financial markets.

A. Municipal Advisor Rule

The Dodd-Frank Act created new standards, definitions, registration requirements and rules for “[Municipal Advisors](#).” Two major results of the Dodd-Frank Act for [Municipal Advisors](#) are: (i) a requirement for [Municipal Advisors](#) to register with the SEC and the [MSRB](#); and (ii) the codification of a fiduciary duty of [Municipal Advisors](#) to the municipal entities they serve.

The Dodd-Frank Act defines a “[Municipal Advisor](#)” as anyone (except for a municipal entity or an employee of a municipal entity) that (1) provides advice to a municipal entity or obligated person regarding municipal financial products or the issuance of municipal [Securities](#); or (2) undertakes a solicitation of a municipal entity or obligated person on behalf of a broker, dealer, municipal [Securities](#) dealer, [Municipal Advisor](#) or investment advisor; for, or in connection with, municipal financial products, the issuance of municipal [Securities](#) or investment advisory services for a municipal entity. The statutory definition of [Municipal Advisor](#) explicitly excludes the following financial professionals, thereby exempting them from registration: (1) brokers, dealers and municipal [Securities](#) dealers acting as [Underwriters](#); (2) investment advisors registered under the Investment Advisers Act of 1940 and providing traditional investment advice; (3) attorneys providing traditional legal services; and (4) engineers providing engineering advice.

B. Fiduciary Duty

The Dodd-Frank Act imposes a fiduciary duty on [Municipal Advisors](#). The Dodd-Frank Act requires the [MSRB](#) to “prescribe means reasonably designed to prevent acts, practices and courses of business as are not consistent with a municipal advisor’s fiduciary duty to its clients.” The [MSRB](#) has adopted Rule G-42, which implements this rule. *See the discussion on [MSRB Rules](#) below.*

C. Regulation of Asset-Backed Securities

The Dodd-Frank Act also conferred new powers upon the SEC to directly regulate [Asset-Backed Securities](#) ([ABS](#)), including those issued by municipal entities. The Dodd-Frank Act further gives the SEC discretion whether to apply the [ABS](#) regulations to [Issuers](#) of municipal [Securities](#).

MSRB RULES

The [MSRB](#) is a self-regulatory organization created under the Securities Acts Amendments of 1975 (commonly referred to as the “Tower Amendment”) to adopt rules for brokers, dealers and municipal [Securities](#) dealers effecting transactions in municipal [Securities](#). Of particular interest to [Bond Counsel](#) and [Underwriter’s Counsel](#) are rules governing advertising (G-21), primary offering practices (G-11), disclosures to [Issuers](#) by [Underwriters](#) (G-17) and disclosures in connection with [New Issues](#) (G-32).

A. Disclosures in New Issues

[MSRB](#) Rule G-32 requires [Underwriters](#) to submit the [Official Statement](#), together with related details of the [New Issue](#), electronically to the [MSRB](#)’s [EMMA](#) portal within one business day after receipt from the [Issuer](#) but by no later than the [Closing](#) for the [New Issue](#). If the [Official Statement](#) for a primary [Issue](#) is not posted by the [Closing](#), the [Underwriter](#) must post a notice on [EMMA](#) indicating the date of delivery and must post the [Official Statement](#) within one day of receipt from the [Issuer](#). If an offering includes an [Advance Refunding](#), [MSRB](#) Rule G-32 also requires the [Underwriter](#) to submit the [Escrow Deposit Agreement](#) or its equivalent by, or on behalf of, the [Issuer](#) within five days of the [Closing](#). [MSRB](#) Rule G-34(c) requires the [Underwriter](#) or the remarketing agent for variable rate demand [Securities](#) to use its best efforts to obtain and submit to the [MSRB](#) within five business days of receipt any [Standby Bond Purchase Agreement](#), [Letter](#)

of [Credit](#) or other document that establishes an obligation to provide liquidity for the purchase of the [Securities](#) or any amendment thereof.

B. Primary Offering Practices

[MSRB](#) Rule G-11 provides the rules relating to [Underwriting Syndicate](#) practices in connection with [New Issue](#) offerings. [MSRB](#) Rule G-11, subsections (b)-(e) provide specific procedures that [Underwriting Syndicate](#) members must follow regarding priority provisions that govern the allocation of [Securities](#) to different categories of orders as well as requiring disclosure of the allocation of [Securities](#), [Syndicate](#) expenses and other relevant information and sales to related parties. Rule G-11 also requires any dealer that submits orders during any “retail order period” to make certain representations and disclosures regarding eligibility requirements, customer commitment, orders received from a retail customer for a [Security](#) for which the same [CUSIP Number](#) has been assigned, identifying information for the customer (but not including customer names or social security numbers) and the [Par](#) amount of the order. Rule G-11 also requires that the senior [Syndicate Manager](#) communicate to all [Syndicate](#) members and selling group members, at the same time, when the [Issue](#) is free to trade in the secondary market at prices that vary from the initial offering prices. Rule G-11 places significant restrictions on the ability of [Underwriters](#) and remarketing agents to provide bondholder consent to amendments to [Trust Indentures](#) or [Bond Resolutions](#) unless they can meet one of several limited exceptions.

C. Duties of Municipal Advisors

[MSRB](#) Rule G-42 establishes the standards of conduct and duties of [Municipal Advisors](#) when they engage in municipal advisory activities. Specifically, Rule G-42 prohibits a [Municipal Advisor](#) from engaging in certain enumerated activities. In the Regulatory Notice adopting [MSRB](#) Rule G-42, the [MSRB](#) stressed that Rule G-42 is designed to “set forth the core elements of the fiduciary duty” owed by [Municipal Advisors](#) to the municipalities that they advise, which is set out in Section 15B(c)(1) of the [1934 Act](#) but that Rule G-42 “was not intended to comprehensively set forth every aspect of that duty.” In addition, Rule G-42 also provides that the [Municipal Advisor](#) must have a reasonable basis to believe a transaction or product is suitable for a client and must disclose the structure, benefits and risks related to its recommendation. The [MSRB](#) subsequently released “FAQ’s Regarding [MSRB](#) Rule G-42 and Making Recommendations,” the stated purpose of which was to provide “answers to frequently asked questions and related scenarios.” [MSRB](#) Rule G-42 requires that a [Municipal Advisor](#)’s engagement be in writing and must be preceded by certain disclosures, including any conflicts of interest. [Municipal Advisors](#) are also required to follow specific procedures when a [Municipal Advisor](#) gives advice inadvertently that would otherwise create a fiduciary relationship but does not intend to continue the relationship.

D. Dealers Acting as Financial Advisors to Municipal Issuers

[MSRB](#) Rule G-23 provides that, with limited exceptions, a dealer that has a financial advisory relationship with an [Issuer](#) with respect to an [Issue](#) of municipal [Securities](#) may not act as a principal in the purchase, directly or indirectly, of the [Issue](#) or act as the [Issuer](#)’s agent in arranging a placement of the [Securities](#). This rule also applies to affiliates of the dealer. Additionally, Rule G-23 prohibits a dealer that has a financial advisory relationship with an [Issuer](#) with respect to an [Issue](#) of municipal [Securities](#) of that [Issuer](#) from acting as the remarketing agent

for the same [Issue](#) until one year after the relationship has terminated. Rule G-23 (specifically, subsection (d) of Rule G-23) does not prohibit: (i) a dealer [Financial Advisor](#) from placing an [Issuer](#)'s entire [Issue](#) with another governmental entity, such as a bond bank, as part of a plan of financing by such purchasing governmental entity for or on behalf of the [Issuer](#), so long as the dealer [Financial Advisor](#) receives no compensation for underwriting any related contemporaneous transaction or (ii) a dealer [Financial Advisor](#) from purchasing [Securities](#) from an [Underwriter](#) if not done to contravene the purpose of the rule.

E. Minimum Denominations

[MSRB](#) Rule G-15(f) prohibits a dealer from buying or selling municipal [Securities](#) in a transaction with a customer in an amount lower than the [Minimum Denominations](#) set forth in the [Bond](#) documents governing the [Securities](#), unless the customer is selling its entire position or purchasing another customer's entire position in the [Securities](#).

Because retail investors tend to purchase [Securities](#) in smaller amounts, setting the [Minimum Denominations](#) at a higher amount helps ensure that dealers sell higher [Yield Securities](#) only to investors who can make sizeable investments and, therefore, likely are more prepared to bear the higher risk. Note that to benefit from the exemptions to Rule 15c2-12(d)(1), [Private Placements](#) or limited offerings of municipal [Securities](#) must be sold in an authorized [Denomination](#) of \$100,000 or more.

F. CUSIP Number Assignment

Rule G-34(a)(i)(A)(1) requires the [Underwriter](#) to apply for [CUSIP Numbers](#) by no later than the completion of the [Pricing](#) and with sufficient time to ensure [CUSIP Number](#) assignment prior to formal award of any [Bonds](#) in a [Negotiated Sale](#). Rule G-34(a)(i)(A)(3) requires that if a dealer acts as [Financial Advisor](#) in a [Competitive Sale](#), it must apply for [CUSIP Numbers](#) by no later than one business day after dissemination of the [Notice of Sale](#) and with sufficient time to ensure [CUSIP Number](#) assignment prior to formal award of the [Bonds](#). If no such CUSIP assignment has occurred by the award of sale, the [Underwriter](#) must apply for [CUSIP Numbers](#) immediately upon receiving notification of the award. Under Rule G-34(a)(i)(D), in the case of certain [Advance Refundings](#) that partially refund outstanding maturities of a [Bond Issue](#), the [Underwriter](#) also may be responsible to apply for new [CUSIP Numbers](#) for the partially refunded maturities of the [Bond Issue](#).

G. Section 15B(c)(1) of the 1934 Act

Section 15B(c)(1) of the [1934 Act](#) prohibits dealers and [Municipal Advisors](#) from violating any rule promulgated by the [MSRB](#) while selling a municipal [Security](#) or providing advice with respect to municipal financing products or the issuance of municipal [Securities](#). The SEC can institute administrative proceedings against dealers and [Municipal Advisors](#) in the event of a violation of an [MSRB](#) Rule.

REGULATORY BODIES IN THE MUNICIPAL SECURITIES MARKET

A. SEC

The [1934 Act](#) created the SEC, a federal agency that oversees and regulates the securities industry. In that role, the SEC aims “to protect investors, maintain fair, orderly and efficient markets and facilitate capital formation.” SEC oversight of “securities exchanges, securities brokers and dealers, investment advisors and mutual funds” helps eliminate fraud, insider trading and other federal securities laws violations. The SEC is also responsible for the interpretation of federal securities laws, the issuance of new rules and amendments to existing federal securities law, inspections of [Rating Agencies](#), oversight of private regulatory organizations in the accounting, auditing and securities industries and the coordination of U.S. securities regulation with federal, state and foreign authorities.

The SEC is composed of five commissioners, five divisions and twenty-five offices (excluding the regional offices). The commissioners are presidentially appointed with various term lengths.

B. Overview of SEC Offices

1. Division of Enforcement

The SEC’s Division of Enforcement was created in 1972 to consolidate all of the SEC’s enforcement functions, which previously were handled between various divisions within the SEC. Accordingly, the Division of Enforcement is responsible for the investigation of potential federal securities laws violations, administrative proceedings involving these alleged violations, as well as any civil suits filed in federal courts due to the violations.

2. Office of Municipal Securities (“OMS”)

The SEC’s involvement in the municipal [Securities](#) market is handled by OMS. OMS coordinates the SEC’s municipal [Securities](#) activities and administers the SEC’s rules pertaining to municipal [Securities](#) brokers and dealers, [Municipal Advisors](#), investors in municipal [Securities](#) and municipal [Issuers](#). OMS advises the SEC on policy matters relating to the municipal [Securities](#) market and is responsible for policy development, coordination and implementation of SEC initiatives to improve the municipal [Securities](#) market. In addition, OMS provides technical assistance to the Division of Enforcement and the Office of Compliance Inspections and Examinations. OMS works with outside agencies as well because it is the SEC’s liaison with the [MSRB](#), FINRA, the Internal Revenue Service’s Office of [Tax-Exempt Bonds](#) and other investor and industry groups and regulators with interests in municipal [Securities](#). Additionally, OMS actively works within the municipal [Securities](#) market to educate officials of [Issuers](#) and [Borrowers](#) on applicable SEC rules.

C. Representative SEC Enforcement Actions

Key areas examined by the SEC in recent enforcement actions under Rule 10b-5 and Section 17(a) include: (i) the responsibility to present accurate statements about compliance with continuing disclosure obligations; (ii) the responsibility of [Issuers](#) to present accurate and complete information in financial statements; (iii) the responsibility of [Issuer](#) officials that authorize [Offering Documents](#) to ensure that such documents are accurate and complete; (iv) the degree and manner in which [Issuers](#) may rely on staff, third-party experts and attorneys in the drafting and review of [Offering Documents](#); (v) the responsibilities of [Underwriters](#) to ensure the accuracy of [Official Statements](#); and (vi) the levying of financial penalties against [Issuers](#), [Borrowers](#), [Underwriters](#), [Municipal Advisors](#) and other professionals. These areas do not constitute the entire universe of enforcement actions in the municipal [Securities](#) market. For a complete listing of enforcement actions, including the text of certain SEC orders, visit the webpage of OMS.

D. Municipal Securities Rulemaking Board (“MSRB”)

The Securities Acts Amendments of 1975 established the [MSRB](#) as an independent, self-regulatory rulemaking body for the municipal [Securities](#) industry. Previously, the municipal market and its key participants (including banks, securities firms and other financial institutions) operated with high standards of conduct aimed at protecting investors. However, the market rapidly expanded in the 1970s and required a more in-depth and formal regulation system. Under the oversight of the SEC, the [MSRB](#) developed formal regulations and standards as it actively created and wrote rules for the industry. In fact, once approved by the SEC, “MSRB rules have the force and effect of federal law.” The [MSRB](#)’s rulemaking authority extends to municipal brokers and dealers, but not to municipal [Securities Issuers](#). The [MSRB](#)’s rules are enforced by several agencies and other regulatory organizations including the SEC, FINRA, the Federal Deposit Insurance Corporation (“FDIC”), the Federal Reserve System (“FRS”) and the Office of the Comptroller of the Currency (“OCC”).

The MSRB Board of Directors is composed of 15 members including representatives of investors and municipal entities, as well as representatives of the organizations regulated by the [MSRB](#) including bank dealers, broker-dealers and [Municipal Advisors](#). In addition to the creation of regulations for the industry, the [MSRB](#)’s leadership concentrates on general industry outreach, education and leadership and the collection and public distribution of relevant industry information to attain a more transparent market.

E. Financial Industry Regulatory Authority (“FINRA”)

FINRA is a non-governmental entity that oversees and regulates a portion of the federal securities industry. FINRA was created in 2007 when the regulatory operations of the New York Stock Exchange and the National Association of Securities Dealers, Inc. merged to form one self-regulatory organization (“SRO”), thereby consolidating regulatory, investigatory, rule-writing and enforcement responsibility into one organization. As an SRO, FINRA polices its members to prevent fraud and other violations by testing, qualifying and licensing individuals selling and dealing [Securities](#), ensuring the accuracy of the advertisement of [Securities](#) and providing complete disclosure with respect to potential investments. FINRA is empowered to enforce its own rules, federal securities laws and the rules of other federal agencies, such as the [MSRB](#). FINRA also refers

cases of fraud and other violations to the SEC and other organizations. Furthermore, brokers, dealers and municipal [Securities](#) dealers that engage in municipal [Securities](#) transactions must be members of FINRA.

TAX MATTERS

INTRODUCTION

This section is intended to provide a basic summary of federal income tax law relating to municipal [Tax-Advantaged Bonds](#), including [Tax-Exempt Bonds](#), [Tax Credit Bonds](#) and [Direct Pay Bonds](#). The discussion herein will help the reader understand certain requirements for issuing such [Bonds](#). Many of these requirements will be incorporated into the [Arbitrage Certificate](#) executed at the issuance of the [Bonds](#). The discussion that follows is not intended to provide all the complex tax rules related to each type of [Tax-Advantaged Bond](#), and the reader should consult other references, including those prepared by the National Association of Bond Lawyers, for a more in-depth analysis of any particular concept. As of the date of publication, new issuances of [Tax Credit Bonds](#) and [Direct Pay Bonds](#) are no longer authorized under the [Code](#) (as set forth in the [2017 Tax Act](#)). However, many [Tax Credit Bonds](#) and [Direct Pay Bonds](#) that were issued when their issuance was permitted remain outstanding, and Congress may reauthorize them in one form or another in the future.

SOURCE OF INCOME TAX EXEMPTION

A. Federal Income Tax Exemption

Section 103 of the [Code](#) excludes [Interest](#) on any “state or local bond” from gross income for federal income tax purposes. A state or local bond is defined as an obligation issued by or on behalf of a state or [Political Subdivision](#) thereof. An “obligation” is a debt incurred by the [Issuer](#) pursuant to the exercise of its borrowing power and is not limited in form to [Bonds](#) or other [Securities](#). There are many categories of state or local governmental or quasi-governmental [Issuers](#) whose obligations may qualify as [Tax-Exempt Bonds](#), including the 50 states, Indian tribal governments, U.S. possessions, the District of Columbia, cities and towns, [Political Subdivisions](#) (including [Special Assessment](#) districts) and “on behalf of” [Issuers](#), including constituted authorities and [63-20 Corporations](#). Generally, counsel look to the presence or absence of the [Shamberg Powers](#) (i.e., tax, eminent domain and police powers) to determine whether an entity is a [Political Subdivision](#).

B. State Income Tax Exemption

Whether, and under what circumstances, [Interest](#) on a [Bond](#) is exempt from state and local income tax in any particular state is determined by the law of that state. Many states have enacted provisions that piggyback on the federal income tax exemption and provide that the [Interest](#) on [Bonds](#) that are exempt under federal law is also exempt from state and local income tax in those states. Other states provide that [Interest](#) on all obligations issued by state and local [Issuers](#) is exempt from state and local income tax in that state, even if the [Interest](#) is federally taxable. The relevant state legal authority for the [Issuer](#) should be examined to determine the extent of state income tax exemption.

BASIC RULES

There are certain basic federal tax rules that apply to all [Tax-Advantaged Bonds](#). These rules are generally found in Sections 103, 141, 148, 149 and 150 of the [Code](#). This section describes some, but not all, of these basic rules.

A. Arbitrage and Rebate

All [Tax-Advantaged Bonds](#) are subject in one way or another to the [Arbitrage](#) requirements, which are contained in Section 148 of the [Code](#) and the Treasury Regulations that go along with it. These requirements are intended to prevent [Issuers](#) from exploiting the fact that, in general, tax-exempt [Interest Rates](#) are lower than taxable [Interest Rates](#). Specifically, a given [Issuer](#) with a given credit situation will generally be able to borrow money at a lower [Interest Rate](#) if it can issue [Tax-Exempt Bonds](#) than when, or if, it is forced to borrow using [Taxable Bonds](#). In contrast, when an [Issuer](#) invests the [Bond](#) proceeds that it receives from selling the [Tax-Exempt Bonds](#), those investments typically will bear taxable [Interest Rates](#) (because the “issuer” of these investments is the bank that sells them to the [Issuer](#) rather than a state or local government). These taxable [Interest Rates](#) may in many cases be higher than the [Interest Rates](#) that the [Issuer](#) is paying to the bondholders on the [Tax-Exempt Bonds](#) that generated the proceeds that the [Issuer](#) is investing. The difference between the lower tax-exempt [Interest Rate](#) that the [Issuer](#) **pays** to the holders of the [Tax-Exempt Bonds](#) and the higher taxable [Interest Rate](#) that the [Issuer](#) **receives** on the invested [Bond](#) proceeds – a difference that could go straight into the [Issuer](#)’s pocket as pure profit is called [Arbitrage](#).

The federal government views [Arbitrage](#) as effectively shifting the cost of the [Bond](#)-financed project onto the federal government, so Congress has enacted a number of complex limits on when and how much [Arbitrage](#) can be earned and retained by the [Issuer](#). There are two basic questions that arise when determining compliance with the [Arbitrage](#) requirements set forth in Section 148 of the [Code](#). First, can the proceeds of the [Bonds](#) be invested at a [Yield](#) above the [Bond Yield](#) prior to expenditure? The answer to this question is governed by the “[Yield](#) restriction rules.” Second, even if the proceeds can be invested above the [Bond Yield](#), can the earnings be retained or do they have to be paid back to the U.S. Treasury (through a somewhat inaptly named process call “[Rebate](#)”)? [Bonds](#) that violate these [Arbitrage](#) rules are considered taxable [Arbitrage Bonds](#).

B. Yield and Issue Price

[Yield](#) is calculated as set forth in Section 148(b) of the [Code](#) and Treasury Regulations Sections 1.148-4 and 1.148-5. Different rules apply to fixed [Yield Bond Issues](#) as opposed to variable [Yield Bond Issues](#). For fixed [Yield Bond Issues](#), [Yield](#) on the [Bonds](#) generally means that discount rate which, when used in computing the present value of all unconditionally payable payments representing [Principal](#), [Interest](#) and payments with respect to qualified guarantees or qualified hedges, produces an amount equal to the adjusted aggregate [Issue Price](#) of the [Bonds](#). This calculation is done as of the issue date of the [Bond Issue](#), and, except in certain rare circumstances, the [Yield](#) does not change after the [Bonds](#) are issued. For variable [Yield Bond Issues](#), the [Yield](#) on the [Bonds](#) is computed separately for each computation period, as defined in Treasury Regulations Section 1.148-1(b). The [Yield](#) for each computation period is the discount

rate which, when used in computing the present value as of the first day of the computation period of all payments of [Principal](#), Interest, and payments with respect to qualified guarantees and qualified hedges that are attributable to the computation period, produces an amount equal to the present value of the aggregate [Issue Price](#) (or the deemed [Issue Price](#) for any computation period other than the computation period beginning on the issuance date) of the [Bonds](#) as of the first day of the computation period. This calculation cannot be done on the issue date of the variable [Yield Bond Issue](#) because, by definition, the [Issuer](#) does not know how much [Interest](#) will be paid (nor when it will be paid) over the life of the [Bonds](#). As you can see from the definition above, computation of [Yield](#) for both fixed and variable [Yield Bond Issues](#) depends on the [Issue Price](#) of the [Bonds](#).

The [Issue Price](#) definition is found in Treasury Regulations Section 1.148-1(f). For [Bonds](#) issued for money, the [Issue Price](#) is determined by actual sales to the public and, for each [Bond](#) with the same credit and payment terms (generally, each maturity) is the first price at which at least 10% of the maturity is sold to the public. There are special rules for [Bonds](#) sold through a [Competitive Sale](#) and [Bonds](#) sold through a [Private Placement](#). If more than one [Issue Price](#) rule could apply, the [Issuer](#) may select which rule to apply on or prior to the [Closing](#) and different rules can apply to different maturities within the same [Bond Issue](#). The above definition applies to [Bonds](#) issued for money, which will be the vast majority of cases. In rare cases, [Bonds](#) are issued for property that is not money (such as an [Issuer](#) who issues [Bonds](#) to investors that already hold the [Bonds](#) of the [Issuer](#), and the investors deliver their current [Bonds](#) to the [Issuer](#) in exchange for the new [Bonds](#)). Very complicated rules apply in these cases.

C. Yield Restriction

The basic [Yield](#) restriction rule provides that [Gross Proceeds](#) of a [Bond Issue](#) may not be invested at a [Yield](#) “materially higher” than the [Yield](#) on the [Bonds](#) except for a “[Temporary Period](#)” or pursuant to another exception. Once the [Bond](#) proceeds can be treated as spent (or, to use the tax lawyer’s jargon, “allocated to expenditures”), then they are no longer subject to the [Arbitrage](#) and [Rebate](#) rules. Simply paying the proceeds to someone else is not enough to treat the proceeds as no longer subject to the [Arbitrage](#) rules. For example, if an [Issuer](#) pays [Bond](#) proceeds to an unrelated construction contractor to build a building, that payment is treated as a valid expenditure under the [Arbitrage](#) rules, and the [Issuer](#) does not have to continue to monitor what is done with those amounts in the hands of the contractor. In contrast, if the [Issuer](#) pays the [Bond](#) proceeds to an employee for their regular work (which is a “working capital” expenditure for tax purposes), those proceeds might not be treated as spent, even though the [Issuer](#) has paid them to someone else.

1. Materially Higher

The [Yield](#) on investments is materially higher than the [Yield](#) on the [Bond Issue](#) if the [Yield](#) on the investments over the term of the investments exceeds the [Yield](#) on the [Bond Issue](#) by an amount in excess of the applicable definition of materially higher set forth in the Treasury Regulations. The permitted spread between the [Bond Yield](#) and investment [Yield](#) depends on the class of investment (as described in the Treasury Regulations) and the purpose for which the invested proceeds are held. No [Yield](#) limitation applies to investments that are themselves [Tax-Exempt Bonds](#) that are not subject to

[Alternative Minimum Tax](#). In other words, an [Issuer](#) can use [Tax-Exempt Bond](#) proceeds to buy other [Tax-Exempt Bonds](#) that are not subject to [Alternative Minimum Tax](#) and earn a return on those invested proceeds that exceeds the [Yield](#) the [Issuer](#) pays to the holders of the [Tax-Exempt Bonds](#).

2. Temporary Periods

The availability of [Temporary Periods](#) is based on the reasonable expectations of the [Issuer](#) on the date of issuance of the [Bonds](#) as documented in the [Arbitrage Certificate](#). Generally, sale proceeds and investment proceeds of new money [Bonds](#) for capital projects can be invested at an unrestricted [Yield](#) for a three-year [Temporary Period](#) if the time test, the due diligence test and the expenditure test are met. The *time test* is met if the [Issuer](#) reasonably expects on the issuance date that the [Issuer](#) will incur within six months from the issuance date a substantial binding obligation to a third party to expend at least 5% of the net sale proceeds of the [Bonds](#) on capital projects. The *due diligence test* is met if the [Issuer](#) reasonably expects on the issuance date that completion of the capital projects and allocation of net sale proceeds to expenditures will proceed with due diligence. The *expenditure test* is met if the [Issuer](#) reasonably expects on the issuance date that at least 85% of the net sale proceeds of the [Bonds](#) will be allocated to expenditures on the capital projects within three years of the issuance date. There are other [Temporary Period](#) rules and exceptions, which depend on the intended use of the proceeds being invested. These rules are complex, and should be discussed with your supervising attorney and, if applicable, [Special Tax Counsel](#).

3. Yield Restriction Exceptions

In addition to the [Temporary Periods](#), which, as their name suggests, are temporary, there are certain exceptions to the prohibition on investing proceeds above the [Bond Yield](#) that apply for the life of the [Bond Issue](#). A [Minor Portion](#) may be invested at an unrestricted [Yield](#). In addition, a [Reasonably Required Reserve or Replacement Fund](#) may be invested at an unrestricted [Yield](#).

D. Rebate

The [Rebate](#) rules provide that even if [Bond](#) proceeds may be invested at a materially higher Yield above the [Bond Yield](#), all permitted earnings above the [Bond Yield](#), with limited exceptions, must be paid to the federal government. Although quite different from what we think of as a “rebate” in common parlance (someone returning a portion of the money you have paid to them), this payment to the federal government is called a “[Rebate](#)” payment, and the rules surrounding the requirement are referred to as the [Rebate](#) rules. [Rebate](#) must be calculated and paid at least every five years and at the retirement of the [Bond Issue](#).

1. Spending Exceptions to Rebate

The [Rebate](#) requirements do not apply to [Bonds](#) which meet one of three spending exceptions: (i) the 6-month exception, (ii) the 18-month exception or (iii) the 2-year exception. Even if the [Bond Issue](#) meets one of these exceptions, the amounts held in a [Reasonably Required Reserve or Replacement Fund](#) are still subject to [Rebate](#), and a [Debt](#)

[Service Reserve Fund](#) is still subject to [Rebate](#) unless the [Debt Service Reserve Fund](#) constitutes a [Bona Fide Debt Service Fund](#) and certain other exceptions are met. The 6-month exception is applicable to all [Bond Issues](#) and provides an exemption from [Rebate](#) for [Bond Issues](#) in which all [Gross Proceeds](#) are expended within 6 months following issuance. The 18-month exception is applicable to [Bond Issues](#) financing new money projects and has 6-month (at least 15% spent) and 12-month (at least 60% spent) interim spending milestones. The 2-year exception is applicable to Governmental Bond Issues and [Qualified 501\(c\)\(3\) Bond Issues](#) for construction in which all “available construction proceeds” are expended within two years following issuance and has 6-month (at least 10% spent), 12-month (at least 45% spent) and 18-month (at least 75% spent) interim spending milestones.

2. Other Exceptions

[Governmental Bonds or Governmental Purpose Bonds](#) for [Issuers](#) who reasonably expect to issue less than \$5 million during the calendar year are exempt from [Rebate](#) (but are still subject to [Yield](#) restriction after any applicable [Temporary Period](#)). The \$5 million limit is increased to \$15 million if the additional \$10 million is spent for the construction of public school facilities. Further, amounts earned on [Bona Fide Debt Service Funds](#) are exempt from [Rebate](#) if the total earnings on such funds do not exceed \$100,000 per year. Earnings on [Bona Fide Debt Service Funds](#) for [Fixed Rate Governmental Bonds or Governmental Purpose Bonds](#) are ignored whether such earnings exceed \$100,000. Issues with average annual [Debt Service](#) that does not exceed \$2.5 million may also be treated as satisfying the \$100,000 exception.

E. Information Reporting

Section 149(e) of the [Code](#) provides that an [Issuer](#) must timely file an information return for Interest on the [Bonds](#) to be exempt from federal income tax. [IRS Form 8038](#) (for qualified [Private Activity Bonds](#)), IRS Form 8038-G (for [Governmental Bonds](#)) or IRS Form 8038-GC (for small [Bond Issues](#)) must be filed not later than the 15th day of the second calendar month following the end of the calendar quarter in which the [Bonds](#) are issued (i.e., February 15, May 15, August 15 and November 15).

F. Reimbursement

[Issuers](#) often advance their own funds to pay project costs prior to the issuance of [Bonds](#) in anticipation of reimbursement with [Bond](#) proceeds after the [Bonds](#) are issued. Under the [Bond](#) documents, the effect of the reimbursement is that the [Tax-Exempt Bond](#) proceeds are released to the [Issuer](#) immediately, and the [Issuer](#) will want to use them without regard for the tax rules and the limits under the [Bond](#) documents that apply to [Tax-Exempt Bond](#) proceeds. The question that arises, then, is whether the reimbursement qualifies as an expenditure of [Tax-Exempt Bond](#) proceeds for federal income tax purposes (a question that does not depend on whether or not the actual dollars are released to the [Issuer](#)), which would allow those amounts to cease to be treated as proceeds of the [Bonds](#) and thus would no longer be subject to the [Arbitrage](#) and [Rebate](#) rules and other restrictions as to use of proceeds. Treasury Regulations Section 1.150-2 sets forth detailed rules for determining whether a reimbursement qualifies as an expenditure for federal

income tax purposes. In general, the expenditure must be a capital expenditure, the [Issuer](#) or the [Conduit Borrower](#) (but only if it is a [501\(c\)\(3\) Organization](#)), in most cases, must have already declared its intent to reimburse itself with the [Tax-Exempt Bond](#) proceeds and certain expenditure timing requirements must be met.

In order for the reimbursement allocation to qualify as an expenditure of proceeds for federal income tax purposes, there must be an [Official Action](#) adopted not more than sixty days after the reimbursed expenditure, and the reimbursement with [Bond](#) proceeds must occur not later than eighteen months after the later of (i) the date on which the original expenditure was paid, or (ii) the date on which the property was placed in service (or abandoned). In addition, the reimbursement cannot be more than three years (extended to five years in certain cases) after the date on which the original expenditure was paid. [Preliminary Expenditures](#) not exceeding 20% of the [Issue Price](#) of the reimbursement [Bond Issue](#), [Costs of Issuance](#) and a *de minimis* amount not to exceed the lesser of \$100,000 or 5% of the proceeds of the [Bond Issue](#), may be reimbursed without regard to the timing and [Official Action](#) requirements. Working capital expenditures cannot be reimbursed.

PRIVATE ACTIVITY BONDS VERSUS GOVERNMENTAL BONDS

[Private Activity Bonds](#) are defined in the [Code](#) as [Bonds](#) that benefit private entities and require the private entities to repay the [Principal](#) and [Interest](#) on the [Bonds](#). [Interest](#) on [Private Activity Bonds](#) generally is taxable unless the private activities have been deemed by Congress to be worthy of federal subsidy. Unlike [Private Activity Bonds](#), [Governmental Bonds](#) or [Governmental Purpose Bonds](#) are not defined in the [Code](#) but are terms commonly used to refer to municipal [Bonds](#) that are not [Private Activity Bonds](#).

There are seven categories of “qualified” [Private Activity Bonds](#) that Congress has permitted to be issued as [Tax-Exempt Bonds](#), including exempt facility [Bonds](#), qualified mortgage [Bonds](#), qualified veterans’ mortgage [Bonds](#), [Qualified Small Issue Bonds](#), qualified student loan [Bonds](#), qualified redevelopment [Bonds](#) and [Qualified 501\(c\)\(3\) Bonds](#). Each of these types of [Bonds](#) has additional rules that must be met to qualify and continue to qualify as [Tax-Exempt Bonds](#).

Section 141 of the [Code](#) defines a [Private Activity Bond](#) as any [Bond](#) that satisfies (i) the private business use test and the private security or payment test (together, the “[Private Business Tests](#)”) or (ii) the [Private Loan Financing Test](#). Therefore, if both [Private Business Tests](#) or the [Private Loan Financing Test](#) is met, the [Bonds](#) will be [Private Activity Bonds](#). If at least one of the [Private Business Tests](#) and the [Private Loan Financing Test](#) are not satisfied, then the [Bonds](#) will not be [Private Activity Bonds](#) (i.e., they will be [Governmental Bonds](#)).

Under the [Private Business Tests](#), [Bonds](#) are [Private Activity Bonds](#) if more than 10% of the proceeds of the [Issue](#) are to be used in the trade or business of any person other than a governmental unit (the “private business use test”) and more than 10% of the payment of the [Principal](#) of or [Interest](#) on the [Issue](#) is, directly or indirectly, secured by property used in a trade or business or derived from payments related to property used in a trade or business (the “private security or payment test”). These 10% limits are reduced to 5% for unrelated or disproportionate private use. In addition, there is a further limitation that applies to large bond issues. Even if the

[Issue](#) does not satisfy the private business use test, the [Issue](#) will still constitute [Private Activity Bonds](#) if the private business use portion exceeds \$15 million, unless an allocation of [Volume Cap](#) is made.

“Private business use” is broadly defined as any use of [Bond](#) proceeds in a trade or business carried on by a person other than a governmental unit. A “trade or business” is broadly defined as any activity carried on by any person other than a natural person (as well as any trade or business use by a natural person). “Use” can occur in connection with the ownership, lease or management of [Bond](#)-financed property or any other arrangement resulting in a special benefit to a non-governmental entity. Revenue Procedure 2017-13 provides safe harbors under which a management contract will not result in private use of a [Bond](#)-financed facility. Revenue Procedure 2007-47 provides safe harbors under which an agreement by a private party to sponsor research activities that occur in a [Bond](#)-financed facility will not result in private use of that facility.

The private security or payment test is met if the payment of [Debt Service](#) on more than 10% of the [Bond Issue](#) is either (i) directly or indirectly derived from payment in respect of property or borrowed money, used or to be used for a private business use, or (ii) directly or indirectly secured by any interest in property used or to be used for a private business use or payments in respect of such property. Private payments include both direct and indirect payments made by private persons who are treated as using [Bond](#) proceeds regardless of whether those proceeds are formally pledged as [Security](#) or directly used to pay [Debt Service](#) on the [Bonds](#). Payments made pursuant to an arrangement that constitutes private use generally constitutes private payments as well. Payments for operation and maintenance of the property are not included as payments for the use of the property and can be excluded.

The [Private Loan Financing Test](#) is designed to prohibit governmental units from providing [Governmental Bond](#)-financed loans to non-governmental persons. A [Bond Issue](#) satisfies the [Private Loan Financing Test](#) (and, therefore, consists of [Private Activity Bonds](#)) if proceeds exceeding the lesser of \$5 million or 5% of the proceeds of the [Bond Issue](#) are to be used directly or indirectly to finance loans to one or more non-governmental persons.

QUALIFIED PRIVATE ACTIVITY BONDS

As mentioned above, there are certain categories of [Private Activity Bonds](#) that despite meeting the [Private Business Tests](#) or the [Private Loan Financing Test](#) still may be issued as [Tax-Exempt Bonds](#). These “qualified” [Private Activity Bonds](#) are subject to requirements specific to each category of qualified [Private Activity Bonds](#), as well as some general requirements that apply to some or all of the various categories of qualified [Private Activity Bonds](#). Some of these general requirements are described below.

A. Common Types of Qualified Private Activity Bonds

1. Qualified 501(c)(3) Bonds

[501\(c\)\(3\) Organizations](#) are permitted to finance projects with [Tax-Exempt Bonds](#) if they meet the requirements of Section 145 of the [Code](#). These requirements include (1) all property that is to be provided by the [Net Proceeds](#) of the [Bonds](#) must be owned by a [501\(c\)\(3\) Organization](#) or by a governmental unit; (2) the Private Business Tests under

Section 141(b) of the [Code](#) must not be satisfied, treating the [501\(c\)\(3\) Organization](#) which is the [Conduit Borrower](#) and any other 501(c)(3) Organization using the [Bond](#)-financed facilities as a governmental unit with respect to its activities that do not constitute an unrelated trade or business with respect to its respective exempt purpose and by substituting 5% for 10% in the private business use tests; and (3) the [Private Loan Financing Test](#) must not be met.

2. Exempt Facility Bonds

Section 142 of the [Code](#) permits [Private Activity Bonds](#) to be issued as [Tax-Exempt Bonds](#) for the purpose of funding many categories of exempt facilities that are specified in Section 142(a) of the Code. Common categories of exempt facilities financed with [Tax-Exempt Bonds](#) include airports, solid waste disposal facilities (e.g., landfills) and residential rental projects (commonly referred to as multifamily housing). Each category of exempt facility has specific requirements to qualify for [Tax-Exempt Bond](#) financing. Subject to limited exceptions, at least 95% of the [Net Proceeds](#) of an exempt facility [Bond Issue](#) must be used to provide the exempt facility. Expenditures that qualify as being used to provide an exempt facility include amounts paid or incurred that qualify as capital costs of the facility. These costs are commonly referred to as “good” costs. An exempt facility includes land (although there are certain limits on the ability to finance land with [Private Activity Bonds](#) issued as [Tax-Exempt Bonds](#)), buildings or other property that is “functionally related and subordinate” to the exempt facility.

B. Additional Requirements Applicable to Qualified Private Activity Bonds

1. TEFRA

Section 147(f) of the [Code](#) provides that a [Private Activity Bond](#) is not a qualified [Private Activity Bond](#) (and therefore not a [Tax-Exempt Bond](#)) unless the [Issue](#) of [Bonds](#) receives public approval either (1) by the applicable elected representative following a public hearing for which reasonable public notice was provided; or (2) by voter referendum. The first method of public approval is the prevailing method used. Practitioners often refer to the public approval requirement as the “[TEFRA](#)” requirement because it was originally put in place as part of the Tax Equity and Fiscal Responsibility Act of 1982.

Reasonable public notice means notice that is designed to inform residents of the approving governmental unit of the proposed [Issue](#) of [Bonds](#) to finance the project. Notice must be provided at least seven days prior to the public hearing and must state the time and place for the hearing. It must contain a description of the project, the maximum [Principal](#) amount of the [Bonds](#) to be issued for the project, the name of the project’s owner or principal user and the location of the project. The public approval must occur within one year before the issuance of the [Bonds](#) and must include both [Issuer Approval](#) and [Host Approval](#) (in most cases, [Issuer Approval](#) and [Host Approval](#) will be the same approval since the project will be within the [Issuer](#)’s jurisdiction). For a plan of financing under which multiple [Bond Issues](#) are expected for the same project, the public approval must be obtained within one year before the first [Bond Issue](#) is issued under the plan and all issues

under the plan must be issued within three years after the issue date of the first [Bond Issue](#). A new public approval is not required for an [Issue](#) of [Current Refunding Bonds](#) if the [Bonds](#) to be refunded met the public approval process and the average [Maturity Date](#) of the [Refunding Bonds](#) is not later than the average [Maturity Date](#) of the [Refunded Bonds](#). A proposed use of proceeds that would be a substantial deviation from the project described in the public approval may be curable by repeating the public approval process under certain conditions set forth in the Treasury Regulations.

2. Costs of Issuance

Under Section 147(g) of the [Code](#), [Costs of Issuance](#) that can be financed with proceeds of a qualified [Private Activity Bond](#) are generally limited to 2% of the proceeds of the [Bond Issue](#) (with certain exceptions for qualified mortgage [Bonds](#) or qualified veterans' mortgage [Bonds](#)). These costs are treated as “bad” costs for purposes of determining compliance with the 95% test for exempt facility [Bonds](#) and are treated as private business use when determining compliance with the [Private Business Tests](#) for [Qualified 501\(c\)\(3\) Bonds](#).

3. 120% Rule

Section 147(b) of the [Code](#) states that [Private Activity Bonds](#) are not [Tax-Exempt Bonds](#) if the [Weighted Average Maturity](#) of the [Bond Issue](#) exceeds 120% of the average reasonably expected economic [Useful Life](#) of the facilities financed with the [Bond](#) proceeds.

4. Volume Cap

Most types of qualified [Private Activity Bonds](#) are subject to [Volume Cap](#) limits as required under Section 146 of the [Code](#). ([Qualified 501\(c\)\(3\) Bonds are one exception.](#)) [Bonds](#) that are subject to a [Volume Cap](#) limit are generally subject to an overall issuance limit each calendar year within each state. Each year, the IRS publishes a revenue procedure that provides the [Volume Cap](#) applicable to each state. Each state then establishes its own procedures for further apportioning its allocable [Volume Cap](#) among the various [Issuers](#) and types of [Private Activity Bonds](#) with the state.

TAX CREDIT BONDS AND DIRECT PAY BONDS

[Tax Credit Bonds](#) are [Bonds](#) that provide a federal tax credit to the holder rather than an exclusion of [Interest](#) from gross income under the [Code](#). [Direct Pay Bonds](#) are [Bonds](#) for which the [Issuer](#) receives [Interest](#) subsidy payments from the U.S. Treasury. For both types of [Bonds](#), the [Interest](#) on such [Bonds](#) is subject to federal income tax, but the overall economics make these types of [Bonds](#) advantageous to the [Issuer](#) because of the value of the tax credit to the holder or the direct pay subsidy to the [Issuer](#). The American Recovery and Reinvestment Act of 2009 created several new categories of [Tax Credit Bonds](#) and [Direct Pay Bonds](#), including Build America Bonds and Recovery Zone Economic Development Bonds. Pursuant to the [2017 Tax Act](#), there is no current authority to issue additional [Tax Credit Bonds](#) or [Direct Pay Bonds](#). However, previously authorized [Tax Credit Bonds](#) or [Direct Pay Bonds](#) are still outstanding.

REFUNDINGS

A [Refunding Bond](#) is defined as a [Bond](#) the proceeds of which are used to pay [Principal](#), [Interest](#) or [Redemption](#) price on a prior [Issue](#) (the [Refunded Bond](#)), including [Costs of Issuance](#), [Accrued Interest](#), capitalized interest on the [Refunding Bond](#), a reserve or replacement fund or similar costs allocable to the [Refunding Bond](#). A prior [Issue](#) is defined as an [Issue](#) of obligations all or a portion of the [Principal](#), [Interest](#) or [Redemption](#) price on which is paid or provided for with proceeds of the [Refunding Bond](#). A prior [Issue](#) may be issued before, at the same time as or after the [Refunding Bond](#).

The [2017 Tax Act](#) prohibited the issuance of [Advance Refunding Bonds](#) as [Tax-Exempt Bonds](#) issued to advance refund [Tax-Exempt Bonds](#). [Taxable Bonds](#) may be issued to advance refund prior [Tax-Exempt Bonds](#), and [Tax-Exempt Bonds](#) may be issued to advance refund outstanding [Taxable Bonds](#) in certain situations, under guidance provided by the IRS Office of Chief Counsel (Chief Counsel Advice Memorandum 201843009).

REISSUANCE

Reissuance refers to the deemed new issuance of outstanding [Tax-Exempt Bonds](#) for federal tax purposes under Section 1001 of the [Code](#) and Treasury Regulations Section 1.1001-3 as a result of certain changes to the terms of the [Tax-Exempt Bonds](#) after original issuance of such [Tax-Exempt Bonds](#). It is important to recognize a reissuance because it is treated as a [Current Refunding](#) of [Tax-Exempt Bonds](#). A new information return will need to be timely filed with the IRS and final [Rebate](#) compliance will be required for the deemed [Refunded Bonds](#).

CHANGE IN USE – REMEDIAL ACTION

An event that occurs after the [Closing](#) of [Tax-Exempt Bonds](#) may cause the [Tax-Exempt Bonds](#) to be treated as [Taxable Bonds](#) unless a remedial action is taken by the [Issuer](#) in accordance with Treasury Regulations Sections 1.142-2, 1.141-12 and 1.144-2. In most cases, sale or lease of property financed by [Governmental Bonds](#) or [Qualified 501\(c\)\(3\) Bonds](#) to a private entity can result in the need to take remedial action. Allowable remedial actions generally include [Redemption](#) or [Defeasance](#) of non-qualified [Bonds](#), timely use of disposition proceeds in an alternative qualifying manner or alternative qualifying use of the facility.

GLOSSARY

This Glossary is an alphabetical listing of key terms often used by bond lawyers and other financing team members. Many of these terms are used within this Basics Handbook.

1933 Act or Securities Act

The Securities Act of 1933, 15 U.S.C. § 77a, et seq.

1934 Act or Securities Exchange Act of 1934

The Securities Exchange Act of 1934, 15 U.S.C. § 78a, et seq.

2017 Tax Act

Tax Cuts and Jobs Act of 2017.

501(c)(3) Organization

An organization that is exempt from federal income taxation under Section 501(a) of the Code.

63-20 Corporation

A nonprofit public benefit corporation organized under state law that meets the requirements of Internal Revenue Service Revenue Ruling 63-20 to qualify as an Issuer of Tax-Exempt Bonds.

Acceleration

A remedy sometimes available under an Indenture, Bond Resolution or other financing document which permits the Trustee or bondholder to declare all future payments of Principal immediately due and payable after the occurrence of certain specified Events of Default.

Accredited Investor

An investor satisfying the definition promulgated by the SEC in Rule 501 of Regulation D under the 1933 Act.

Accrued Interest

The dollar amount of Interest due on a Bond, computed at that Bond's Interest Rate, from the last Interest Payment Date to the date of calculation.

Ad Valorem Property Tax or Ad Valorem Taxes

A tax based on the assessed value of an item, such as real estate or personal property. The most common Ad Valorem Taxes are property taxes levied on real estate. The Latin phrase *ad*

valorem means “according to value.” All Ad Valorem Taxes are based on the assessed value of the item being taxed.

Additional Bonds

Additional Bonds and the related “Additional Bonds test” are concepts often found in a Master Indenture, Bond Resolution/Ordinance and related documentation. Additional Bonds are Bonds which may be issued in the future under the same Master Indenture, Bond Resolution/Ordinance and related documentation upon meeting certain conditions designed to ensure that the revenues available to repay the original Bonds, any currently outstanding Additional Bonds and the proposed Additional Bonds will be sufficient (the “Additional Bonds test”). *See also “Parity Debt” herein.*

Advance Refunding

A type of refunding transaction in which the Refunding Bonds are issued more than 90 days before the Redemption or final maturity, whichever is earlier, of the Refunded Bonds.

Agreed-Upon Procedures Letter

A letter from an independent certified public accountant stating that they have (i) performed certain agreed-upon procedures as described in their letter, (ii) reviewed the preliminary Offering Document and agreed certain amounts contained therein to the Issuer’s or Conduit Borrower’s accounting records, and (iii) made certain inquiries of the Issuer or Conduit Borrower as to changes in its financial condition. The letter is usually delivered on the date the Bonds are sold and the procedures are usually performed through a date which is five days prior to the date of the letter. On the date of the Closing, the Agreed-Upon Procedures Letter is updated to include the information contained in the final Offering Document. Note that, under applicable accounting principles, an Agreed-Upon Procedures Letter does not require the Underwriter to confirm to the accountants that it has undertaken the same diligence that would be required for an offering registered under the 1933 Act, nor does it require any user of the letter to confirm to the accountants that the letter is sufficient for its purposes.

Agreement Among Underwriters

An Agreement Among Underwriters is used in the purchase of a Bond Issue by a Syndicate and sets out the rights, obligations and purchase commitments of each Underwriter, authorizes one or more Underwriters to act as Manager(s) and gives the Manager(s) authority to act on behalf of the others in connection with the Bond Issue.

Alternative Minimum Tax (“AMT”)

An additional income tax under the Code that applies in certain instances for individuals and in a different way to certain large corporations. Interest on Governmental Bonds issued as Tax-Exempt Bonds is generally excluded from the Alternative Minimum Tax, although corporations must include the Interest in certain calculations. However, Interest on qualified Private Activity Bonds (other than Qualified 501(c)(3) Bonds and certain other Private Activity Bonds) is included as income by taxpayers in calculating the AMT.

Amortization

The payment of the Principal of a Bond Issue by periodic payments either directly to bondholders or to a Sinking Fund for the benefit of bondholders.

Arbitrage

Profit from differences in markets. The classic example of Arbitrage with respect to Tax-Exempt Bonds is the issuance of Bonds at a lower (tax-exempt) rate and investment of the proceeds in obligations paying higher (taxable) rates. The difference between the two rates is Arbitrage. Congress has enacted specific rules (expanded upon in the Treasury Regulations) describing the circumstances under which the Issuer or the Borrower benefitting from borrowing at lower Interest Rates does not have to pay, or Rebate, the Arbitrage earned on the investment to the Department of Treasury.

Arbitrage Bonds

Section 148 of the Code and the Treasury Regulations promulgated thereunder restrict the Yield that can be earned on the investment of unspent proceeds of Tax-Exempt Bonds to a Yield not “materially higher” than the Yield on the Bonds, except during permitted Temporary Periods. Even where a materially higher Yield can be earned, these rules often require the positive Arbitrage to be paid to the federal government as Rebate. Tax-Exempt Bonds violating these requirements are called Arbitrage Bonds, and the Interest on such Bonds will be retroactively taxable for each bondholder for federal income tax purposes. In certain cases, the Issuer of the Bonds and/or the Borrower may agree to make payments to the Internal Revenue Service in return for the Internal Revenue Service not declaring the Interest on the Bonds retroactively taxable for federal income tax purposes.

Arbitrage Certificate

An Arbitrage Certificate (sometimes called a “Tax Certificate,” a “non-arbitrage certificate” or a “use of proceeds certificate”) is a certificate of a responsible officer of the Issuer and/or Borrower certifying compliance with the limitations on Arbitrage imposed on the Tax-Exempt Bonds by the Code and as to certain facts and circumstances in effect at the time of delivery of the Tax-Exempt Bonds concerning the investment of the Bond proceeds and their use, forming a basis to conclude that the Tax-Exempt Bonds are not Arbitrage Bonds. Bond Counsel relies on this certificate in rendering its opinion.

Asset-Backed Security (“ABS”)

A Security which has the Principal and Interest payable solely from a set of other Securities.

Average Life

The Average Life of a Bond Issue is the number of years to the point at which half of the Principal of the Bond Issue will have been retired, which in turn gives an indication as to how fast the Principal is expected to amortize. Generally, the Average Life is equal to (a) the product of

the number of Bonds times the number of years from issuance to maturity divided by (b) the total number of Bonds; for these purposes, a “Bond” is each \$1,000 Par amount, regardless of actual denomination. This term is often used in connection with the Underwriter’s calculations. Contrast “Weighted Average Maturity.”

Basis Point

One one-hundredth of one percent (.01%). Example: 0.04% is four Basis Points, so 5.49% is four Basis Points more than 5.45%. *Compare to “Point.”*

Blue Sky Laws

State securities laws, which regulate the offering of Securities. Although these laws vary from state to state, most contain provisions concerning (a) prohibitions against fraud; (b) regulation of brokers and dealers doing business in the state; and (c) registration of Securities. Issues of Bonds generally qualify for an exemption from state securities registration requirements, although brokers and dealers selling them are subject to many states’ registration and regulatory requirements.

Blue Sky Memorandum

A memorandum to the Underwriter(s), typically prepared by Underwriter’s Counsel, setting forth the requirements of the state securities laws in the states where the Bonds are anticipated to be sold. This memorandum may be followed by a supplemental Blue Sky Memorandum which indicates the states where any required action has been completed so that the Bonds may be sold in such states.

Bona Fide Debt Service Fund

A fund used primarily to achieve a proper matching of revenues and Debt Service within each Bond Year that is depleted at least once each Bond Year except for a reasonable carryover amount that does not exceed the fund earnings for the immediately preceding Bond Year or 1/12 of the Debt Service for the immediately preceding Bond Year.

The Bond Buyer

A daily trade publication of the municipal bond market. *The Bond Buyer* contains, among other things, advertisements and notices of upcoming Bond sales, the results of recent sales and notices of Redemptions. Many Indentures require that Redemption notices be published in *The Bond Buyer*.

Bond Counsel

An attorney or firm of attorneys, frequently retained by the Issuer but sometimes by another party to the transaction, to render an opinion in a Bond financing as to the validity and enforceability of the Bonds and the treatment of the Interest on the Bonds under the Code and applicable state law.

Bond Counsel Opinion

A written opinion of nationally recognized Bond Counsel, delivered to the Issuer at the Closing, addressing the validity of the Bonds and whether and to what extent Interest on the Bonds is exempt from federal income taxes and from income or other taxes, if any, imposed by the state.

Bond Insurance or Bond Insurance Policy

A financial guaranty insurance policy provided by a Bond Insurer which pledges to make scheduled payments of Interest and Principal of a Bond Issue in the event the Issuer is unable to make those payments on time. The Bond Insurer is typically given rights under the bond documents and will direct remedies on Default.

Bond Insurer

A company that issues the Bond Insurance Policy for a Bond Issue.

Bond Purchase Agreement (“BPA”)

The Bond Purchase Agreement, or BPA, which may also be called a bond purchase contract, a purchase contract or a contract of purchase, is an agreement between the Issuer and/or Borrower and an Underwriter in which the Issuer agrees to sell the Bonds to the Underwriter. The Bond Purchase Agreement sets out the terms of the Bonds that the Underwriter is purchasing and the conditions for the Closing.

Bond Resolution/Ordinance

The formal authorization to issue the Bonds, adopted by the governing body of the Issuer.

Bond Trustee

A Trustee specifically acting in such capacity with respect to an Indenture or Trust Indenture/Agreement.

Bond Year

For tax purposes, a twelve-month period which ends on a date selected by the Issuer for the purpose of the Arbitrage rules. The first and last Bond Year of a Bond Issue may be shorter than a twelve-month period (and as a practical matter typically will be). If no date is selected by the Issuer before the earlier of the final Maturity Date of the Bond Issue or the date that is five years after the issuance date of the Bonds, the Bond Years end on each anniversary of the issuance date of the Bonds and on the final Maturity Date.

Bonds

A Bond evidences the borrowing by an Issuer and is a debt instrument for tax purposes. Each Bond is an agreement on the part of an Issuer to repay the Principal of the Bond in certain

amounts and at a specified time or times and to pay Interest from the Dated Date of the Bond to the day it matures or is redeemed.

Book-Entry Only

Used to describe a Bond which cannot be purchased in physical or certificated, form (i.e., there are no printed bond certificates delivered to the actual bondholders). A single bond or a bond for each maturity of the Bonds is delivered to a central securities depository, typically The Depository Trust Company, or DTC, but sometimes to the Trustee under the FAST Program. Bonds held in Book-Entry Only form are Registered Bonds. Ownership by a bondholder of a Book-Entry Only Bond is generally determined by an entry on the records of the Registrar or the records of DTC and its participants.

Borrower

The Borrower, often called a Conduit Borrower or conduit obligor, is the party borrowing Bond proceeds from the Issuer and, in such case, is responsible for making Interest payments and repaying Principal of the Bonds as it becomes due.

Borrower's Counsel

An attorney or firm of attorneys serving as counsel to the Borrower in connection with a Conduit Financing. *See also, "Conduit Financing."*

Bullet Maturity

A single, fixed Principal payment at maturity with no Mandatory Sinking Fund Redemption feature.

Call Provisions

Provisions in a Bond that permit or require an Issuer to prepay or redeem Bonds before the stated Maturity Date. Such provisions are found in an Indenture or the Bond Resolution under "Redemption." *See also, "Redemption."*

Capital Appreciation Bonds ("CABs")

Bonds that pay no Interest until the Maturity Date. In lieu of paying Interest on regularly scheduled dates prior to the Maturity Date, the Interest on the Bonds is treated as accreting, or accumulating, periodically, and gets added to the Bonds' Principal amount until the Bonds reach their Par Value at their Maturity Date. Accordingly, CABs are priced at a substantial discount from their Principal amount.

Cash Flows

Cash flows are financial analyses which have been prepared in connection with a Bond financing. Depending on the financing, Cash Flows may include computations of the Debt Service on the Bonds, the Yield on the Bonds, computations needed to support Bond Counsel's

conclusions as to the sufficiency of an Escrow Fund to cause a Defeasance of a Bond Issue, computations to determine if receipts will be sufficient to pay Principal and Interest on the Bonds, projections of Cash Flows in the funds and accounts or investment earnings and information as to the Issue Price of the Bonds.

Closing

The date of delivery of a New Issue of Bonds, at which time the Issuer delivers the Bonds and the requisite legal documents to the Underwriter or other Bond purchaser in exchange for the purchase price.

Closing Index

An index of all documents (including the basic documents, the proceedings of the Issuer to authorize the Bonds, all security documents, Closing certificates, opinions) to be delivered at a Closing and included in the Closing Transcript.

Closing Memorandum

A narrative form of, or adjunct to, the Closing Index describing the participants, their roles in the financing, Flow of Funds on the date of the Closing, Closing instructions and the documents for which the transaction participants are responsible.

Closing Transcript

The final record of all executed documents (including the basic documents, the proceedings of the Issuer to authorize the Bonds, all security documents, Closing certificates, opinions) delivered at the Closing or shortly thereafter as a bound transcript or in electronic form.

Code

The Internal Revenue Code of 1986, as amended and in effect on the date of issuance of the Bonds.

Commercial Paper

Debt obligations with maturities of between 1 and 270 days; usually backed by some form of Credit Enhancement. Commercial Paper is often said to be issued in “tranches.”

Commission

A form of remuneration received by a broker, dealer or dealer bank purchasing or selling Bonds when acting as agent for a customer. The Commission is typically a charge to the customer of a set fee per Bond.

Competitive Bid or Competitive Sale

A method of selling Bonds in which one or more Underwriters submit proposals for the purchase of the Bonds. The Bonds are awarded to the Underwriter submitting the best bid, determined by the method specified in the Notice of Sale. *Compare to “Negotiated Sale.”*

Conduit Bonds

Bonds issued by an Issuer in a Conduit Financing.

Conduit Borrower

The private business that either receives the proceeds of the Tax-Exempt Bonds through a loan by the Issuer to fund all or a portion of a capital project or leases the facility financed with the proceeds of the Tax-Exempt Bonds. A Conduit Borrower is also often known as a Borrower.

Conduit Financing

A financing in which the Issuer issues the Bonds to finance a project to be used primarily by a third party, usually a private business (e.g., a company, nonprofit, or partnership), sometimes called a Borrower, a Conduit Borrower or a conduit obligor. The proceeds of the Bonds are either loaned to the private business which then uses the Bond proceeds to pay for all or a portion the capital project or the financed facility is leased to the private business. The Bonds are generally repaid by the repayments of the Borrower on the loan or the lease. Industrial Development Bonds and Private Activity Bonds are common types of Conduit Financings.

Conduit Issuer

The Issuer in a Conduit Financing. *See “Conduit Financing” and “Issuer.”*

Continuing Disclosure Undertaking or Agreement

The obligation, or “undertaking,” of the Issuer or an obligated person under SEC Rule 15c2-12, typically in the form of a contract or certificate, to provide (a) periodic updates of financial information and operating data of the type included in the Offering Document for the Bonds, and (b) notice of certain material events which occur while the Bonds are outstanding.

Costs of Issuance

A defined term under the tax rules, meaning items of expense paid by or on behalf of the Issuer or a Conduit Borrower which are directly related to the issuance and sale of the Bonds (e.g., fees of Bond Counsel, Issuer’s Counsel, Borrower’s Counsel, Disclosure Counsel, Underwriter’s Counsel, Lender’s Counsel, Trustee, Municipal Advisor, Underwriter and Rating Agency and printing costs). Costs of issuance are subject to limits in Private Activity Bond transactions.

Credit Enhancement

The use of the credit of an entity having greater financial strength than the Issuer or Borrower to improve the credit quality of a Bond Issue. Frequently encountered types of Credit Enhancement include Bond Insurance, Letter of Credit, other Guaranties and government programs.

Current Refunding

A Refunding in which all Refunded Bonds are redeemed within ninety days of the issuance of the Refunding Bonds.

CUSIP Number

A unique identification number assigned to a Bond by the Committee on Uniform Securities Identification Procedures (“CUSIP”). A six-digit “base” number is provided for each Issuer of Bonds, typically based on the type of repayment source pledged to the Bonds; this “base” number is followed by three additional letters and/or numbers which are specific to each individual Bond maturity selected under the CUSIP identification protocols. CUSIP Numbers are usually printed on the face of each Bond and, increasingly (most generally, as to the “base number”), on the cover or inside front cover of the Offering Document. They are also used to identify Bonds called for Redemption in Redemption notices and to identify submissions to EMMA in connection with Continuing Disclosure Undertakings or Agreements.

Dated Date

The date of a Bond Issue from which Interest begins to accrue, typically the date of the Closing.

Debt Limit

Primarily applicable to Governmental Bonds, the statutory or constitutional limit on the amount of debt an Issuer can incur or have outstanding at any one time. A debt limit is often stated as a percentage of the Issuer’s assessed valuation. The types of debt subject to the limit are specified in the statutes or constitution, or in some cases, may have been determined by the courts, and so a Debt Limit may not apply to all Bonds or municipal obligations of an Issuer (e.g., it may not apply to Revenue Bonds, non-appropriation debt or COPs).

Debt Service

The amount of Principal and Interest required to be paid on an Issue of Bonds. Debt Service on any payment date is composed of Accrued Interest on the Bonds and any Principal due on that payment date.

Debt Service Reserve Fund

The fund established as a reserve for payment of Debt Service on Revenue Bonds in the event there is insufficient money to make a Debt Service payment. The Debt Service Reserve Fund

may be: (a) entirely funded at the time of issuance with Bond proceeds or revenues of the Issuer or Borrower; (b) partly funded at the time of issuance and required to reach its full funding requirement over time, as revenues accumulate; or (c) funded with a surety bond. *See also "Reasonably Required Reserve or Replacement Fund."*

Default

Breach of a covenant, promise or duty imposed by the Bond, Bond Resolution/Ordinance, an Indenture or other financing document (such as a Letter of Credit Reimbursement Agreement). The most basic type of Default is a payment Default (i.e., when the Issuer (or Borrower) fails to pay Principal, Interest, Redemption price on a Bond Issue when due). Other types of Defaults are often referred to as "technical" Defaults, since, rather than involving failures to make payments, they are triggered when contractually defined Events of Default occur, such as failure by the Issuer or Borrower to comply with a covenant (e.g., a failure to charge rates sufficient to meet rate covenants or a failure to maintain prescribed insurance). A Default becomes an Event of Default, which triggers whatever remedies may be provided in the Bond documents, when the Default remains in existence after the allowable cure period provided in the Bond documents.

Defeasance

The termination of the rights and interests of the bondholders under an Indenture or Bond Resolution/Ordinance and the release of the liens on the security for the repayment of the Bonds evidenced by the same, which occurs either upon final payment of all Debt Service on the Bonds or by depositing in an irrevocable Escrow Fund sufficient funds or investments to guarantee timely payment of Principal and Interest due on the Bonds at the earlier of Redemption or final maturity. This mechanism is usually used in connection with a Refunding, when proceeds of the Refunding Bonds are used to establish the Escrow Fund to refund the Refunded Bonds.

Denomination

The incremental Par amount established for a Bond Issue at which the Bonds may be purchased. *See also "Minimum Denomination."*

The Depository Trust Company ("DTC")

A central securities certificate depository through which Securities are held in Book-Entry Only form. *See also "Book-Entry Only" herein.*

Direct Pay Bond

A Taxable Bond that offers a federal Interest subsidy to the Issuer in lieu of the Interest being excludable from federal income tax.

Disclosure Counsel

An attorney or firm of attorneys engaged to assist with understanding and satisfying disclosure responsibilities of an Issuer, both in connection with primary offerings of Bonds and in determining whether (and if so, how) to provide secondary market disclosure.

Dissemination Agent

A firm or company engaged to assist the Issuer or the Borrower in complying with its ongoing continuing disclosure obligations. *See also “Continuing Disclosure Undertaking or Agreement” herein.*

Downgrade

The lowering of a Rating by a Rating Agency. Lower Ratings indicate lower credit quality.

Due Diligence

A term referring to the inquiries and review conducted by either the Underwriter and Underwriter’s Counsel or Bond Counsel or Special Tax Counsel in connection with the issuance of Bonds. The intent of the Due Diligence process conducted by the Underwriter and Underwriter’s Counsel is to make sure that all material facts about the Issuer, any Conduit Borrower, the project being financed, the revenues to be used to repay the Bonds, and other financial information are fully disclosed to potential investors in the Offering Document and that there have been no material omissions or misstatements of fact. The intent of the Due Diligence process conducted by Bond Counsel or Special Tax Counsel is to make sure the appropriate use of Tax-Exempt Bond proceeds and related matters that enable Bond Counsel or Special Tax Counsel to deliver the Bond Counsel Opinion.

Electronic Municipal Market Access (“EMMA”)

A website, operated by the MSRB, designated by the SEC as the official source for municipal Securities data (including disclosures made pursuant to a Continuing Disclosure Undertaking) and Offering Documents.

Escrow Deposit Agreement

The document by and among the Issuer, the Escrow Trustee and sometimes the Trustee and the Borrower, if any, that is used in the Refunding to defease the Refunded Bonds by establishing the Escrow Fund and imposing certain obligations and covenants with respect to the Refunded Bonds, including the payment of the Principal and Interest of the Refunded Bonds through the earlier of Redemption or maturity.

Escrow Fund

The trust account established in the Escrow Deposit Agreement that holds cash, investments, usually obligations of the federal government or, sometimes, federal agencies, or both, all of which are pledged to the payment of the Debt Service of the Refunded Bonds.

Escrow Trustee (or Escrow Agent)

The custodian of funds held in the Escrow Fund and responsible for holding and managing the Escrow Fund, including any investments in the Escrow Fund, up to and including the date when the Refunded Bonds mature or Redeemed, whichever is earlier.

Extraordinary Mandatory Redemption

Redemption of the Bonds in the case of certain unexpected or one-time events occurring with respect to the Bonds or the project financed with the proceeds of the Bonds. These events are listed in the Bond and/or the Indenture or Bond Resolution and may include destruction of the project, excess Bond proceeds over the cost of the project, inability to obtain required permits and approvals or a determination that the Interest on the Tax-Exempt Bonds is no longer excludable from federal income tax.

Event of Default

See “Default” herein.

Facsimile Signature

A copy of an authorized officer’s signature which is reproduced on the Bonds or in the Offering Document. Sometimes an Issuer’s seal may also be reproduced as a facsimile; the relevant procedures for ensuring the authenticity of the facsimile seal are set out in the applicable state law.

FAST

The FAST (Fast Automated Securities Transfer) Program is a program of DTC with a goal of reducing certificate movement by having Bond certificates held by FAST transfer agents rather than by DTC. FAST transfer agents are typically the Paying Agent or Trustee in connection with issuance of the Bonds.

Feasibility Study

A report, which may appear as an exhibit to (or be referred to in) an Offering Document, analyzing the economic viability and future prospects of, and/or demand for, a particular project. The report may contain estimates of revenues, projected budgets and cash flow modeling, as well as narrative analysis as to the demand for the facility, engineering issues, market forces, risks and other items of interest to potential investors.

Financial Advisor

A term often used for a Municipal Advisor. *See “Municipal Advisor” herein.*

Financing Agreement

A Financing Agreement is a basic agreement used in project financings for a Conduit Borrower. The agreement is often between the Issuer, the Conduit Borrower and the Lender. The Financing Agreement may be a Loan Agreement, lease agreement, installment sale agreement or, in some cases, a lease-sublease agreement combination. This document sets forth the terms and conditions for the financing. *See also “Loan Agreement” herein.*

Financing Statement

Another name for a UCC form, filed in the state and/or county where the security for the repayment of the Bonds is located or the transaction is taking place, which may be required to perfect a Security Interest in certain property and revenues.

Fixed Rate

An Interest Rate which is set at the time a Bond is issued and which does not vary during the term of the Bond.

Flow of Funds

A term referring to the order of priority of the receipt, deposit, transfer and application of revenues in the funds and accounts created in an Indenture or a Bond Resolution and may also refer to a document prepared by an Underwriter or Municipal Advisor to show the sources and deposits at the Closing.

Forward Delivery Bonds

Bonds that are priced on a determined date but are not issued and settled until a date further in the future.

General Obligation Bond

A Bond backed by the full faith and credit and taxing power of the Issuer.

Good Faith Deposit

The amount, if any, required to be paid to the Issuer by the Underwriter at the time the Bonds are sold, which serves as the amount retained by the Issuer as compensation for any damages caused to the Issuer by the Underwriter failing to purchase the Bonds at the Closing.

Governmental Bonds or Governmental Purpose Bonds

Bonds issued by an Issuer to finance all or a portion of its own project.

Gross Proceeds

Includes sale proceeds, investment proceeds, transferred proceeds (which, together with sale and investment proceeds equal the “proceeds” of the Bonds) and replacement proceeds, all of which are defined in the Code.

Guaranteed Investment Contract

An investment agreement offered by financial institutions (e.g., banks or insurance companies) which pays a stated rate of return on invested Bond proceeds for a stated term. In order to establish the fair market value of a Guaranteed Investment Contract for purposes of

meeting the requirements under the Code and Treasury Regulations for Tax-Exempt Bonds, bids must be sought for Guaranteed Investment Contracts.

Guarantor

The third party that executes a Guaranty.

Guaranty

A third party's promise to pay the Debt Service on the Bonds or perform some other obligation, which is the primary obligation of another party.

Host Approval

Approval by the governmental unit in the geographic jurisdiction which contains the site of the project to be financed by a Private Activity Bond Issue, as required by TEFRA.

Indenture or Trust Indenture/Agreement

A contract between an Issuer and a Trustee (normally a commercial bank with trust powers) under which the Issuer issues Bonds and specifies their maturities, Interest Rates, Redemption provisions, form, exchange provisions, security and other terms. The Indenture pledges certain revenues as security for repayment of the Bonds. The Trustee agrees to act on behalf of the holders of the Bonds and to represent their interests.

Inducement Resolution

A resolution adopted by the Issuer or the Borrower to indicate the preliminary intention to issue the Tax-Exempt Bonds, subject to satisfaction of certain conditions precedent which may be satisfied on or after the adoption of a Bond Resolution. *See also "Official Action or Official Intent."*

Industrial Development Bonds

Although technically Industrial Development Bonds do not exist under the Code, the 1954 Code term is still in use. Under the 1954 Code, the term Industrial Development Bonds was used to describe what are now referred to as Private Activity Bonds and, most frequently, Qualified Small Issue Bonds. *See also "Private Activity Bond" herein.*

Institutional Investors

Banks, insurance companies, pension funds and other institutions meeting SEC requirements who buy Bonds.

Interest

The amount of compensation for the use of borrowed money paid to the bondholders by the Issuer or the Borrower. The amount of Interest paid by the Issuer or the Borrower is based on the Interest Rate for the Bond and the time between each Interest Payment Date.

Interest Payment Dates

The dates when Interest on a Bond is payable, usually semiannually and usually on the first or fifteenth day of the month.

Interest Rate

The rate expressed as a percentage of the Principal amount of a Bond used to determine the amount of Interest to be paid by the Issuer or the Borrower.

Interest Rate Swap

A type of derivative, in which the Interest Rate on the Bonds is swapped, or exchanged, by the Issuer for an agreed-upon Fixed Rate or Variable Rate based upon an index, calculated on a notional principal amount. The payments are generally netted against each other, with the party owing the greater amount paying the other on a periodic basis. The swap is not a debt instrument, and the notional principal amount is not a payment obligation, but merely the vehicle for calculating swapped payments.

Investor Letter

A letter from a purchaser of Bonds in a Private Placement typically acknowledging any transfer restrictions applicable to the Bonds and attesting to the purchaser's eligibility to purchase the Bonds.

IRS Form 8038

Depending upon the type of transaction, Issuers of Tax-Exempt Bonds are required to file one of the forms in the IRS Form 8038 series to report the issuance of Tax-Exempt Bonds to the IRS. In most cases, this will be either an IRS Form 8038-G for Governmental Bonds or Governmental Purpose Bonds or an IRS Form 8038 for qualified Private Activity Bonds.

Issue

An "issue" of Bonds is a grouping of Bonds for purposes of the federal tax rules. Bonds that are part of different Issues will be analyzed separately. Two or more Tax-Exempt Bonds are part of the same Issue if all of the following conditions are met: (i) the Tax-Exempt Bonds are issued at substantially the same time (sold less than 15 days apart), (ii) the Tax-Exempt Bonds are sold pursuant to the same plan of financing, and (iii) the Tax-Exempt Bonds are reasonably expected to be paid from the same source of funds, determined without regard to guarantees from parties unrelated to the obligor. Taxable Bonds and Tax-Exempt Bonds are never part of the same Issue.

Issue Price

A term defined in the Code and generally meaning, depending on the context, the dollar price at which a maturity of a Bond Issue or all of the Bond Issue was offered to the public by the Underwriter. The Issue Price is key for many tax calculations including the determination of the Yield on the Bonds.

Issuer

A state, Political Subdivision, agency or authority that borrows money through the sale of Bonds or other Securities. The public entity is called the Issuer even in the context of Conduit Financings. Note, however, that not all governmental entities may be able to issue Tax-Exempt Bonds, because to do so, they must satisfy certain criteria. In addition to any statutory or other criteria specifically applying to that entity, generally, to be an Issuer, a governmental unit must have more than an insubstantial amount of one of the Shamberg Powers, or have a sufficiently close connection to such a governmental unit to issue Bonds on behalf of that governmental unit.

Issuer Approval

Approval by the governmental unit issuing the Bonds or the governmental unit on behalf of which the Bonds are issued, as required by TEFRA.

Issuer's Counsel

An attorney or firm of attorneys engaged to represent the Issuer to ensure proceedings have been conducted legally and that the Issuer has the authority to execute the documents to which it is a party.

Lender

The entity, typically a commercial bank, which purchases the Bonds pursuant to a Private Placement (also known as a Direct Purchase or a bank placement) for its own portfolio.

Lender's Counsel

An attorney or firm of attorneys engaged to represent the Lender in a Private Placement.

Letter of Credit

A commitment, usually issued by a commercial bank, used to guarantee payment of the payment of the Principal and Interest on a Bond Issue provided that the conditions set out in the documentation for the Letter of Credit (often called a Reimbursement Agreement) are satisfied.

Level Debt Service

A maturity schedule in which the combined annual amount of Principal and Interest payments remains relatively constant over the life of a Bond Issue. Some state laws require Level Debt Service for certain transactions.

Loan Agreement

A document used in a Conduit Financing pursuant to which the Issuer loans the proceeds of the Bonds to the Borrower in return for a promise to repay the loan to the Issuer or to another on the Issuer's behalf (e.g., the Trustee), in amounts and on dates sufficient to pay the Principal

and Interest on the Bonds, as it comes due. Note that, depending on applicable state statutes, a lease agreement or installment sales agreement may be used instead of a Loan Agreement. *See also “Financing Agreement” herein.*

Manager or Co-Manager

One or more members of a bond Underwriting Syndicate that has primary responsibility for managing the Syndicate.

Mandatory Sinking Fund Redemption

A type of Redemption that applies specifically to Bonds issued as Term Bonds provided in the Bond Resolution/Ordinance and/or an Indenture, pursuant to which an Issuer or a Conduit Borrower is required to retire a specific amount of the outstanding Principal of the Term Bond by Redemption on specific dates. The price paid on each Redemption date with respect to a Term Bond is the amount of the Principal set forth in the Mandatory Sinking Fund Redemption Schedule for such Term Bond plus the accrued and unpaid Interest due with respect to the Term Bond. The Mandatory Sinking Fund Redemption schedule is set out in the Bond documents. *See also “Term Bond” herein.*

Master Indenture or Master Trust Indenture

A type of Indenture which permits the issuance from time to time of one or more series of Bonds under the same Indenture in addition to the initial series of Bonds. This document is also called an “Open Indenture.” *See “Supplemental Indenture” herein.* A Master Indenture is often used in Conduit Financings for multiple Borrowers to combine their credit into a single obligated group.

Master Trustee

A Trustee specifically acting in such capacity with respect to a Master Indenture or Master Trust Indenture.

Maturity Date

The date upon which the Principal of a Bond becomes due and payable to the Bond owner.

Millage or Mill

Millage is the percentage of value of property that is used in calculating taxes. A mill is defined as 1/10 of 1 percent and is multiplied by the assessed value after any exemptions have been subtracted to calculate the taxes.

Minimum Denomination

The lowest denomination of Bond that can be purchased as authorized by the Bond documents. Typically, Bonds have a Minimum Denomination of \$5,000, but some Issuers may

impose a higher Minimum Denomination, most commonly in the amount of \$100,000. *See also “Denomination” herein.*

Minor Portion

The amount of Gross Proceeds of a Tax-Exempt Bond Issue that may be permanently invested at a materially higher Yield than the Yield on the Tax-Exempt Bonds (even if no Temporary Period or exception to Yield restriction applies), equal to the lesser of 5% of the sale proceeds of the Bonds or \$100,000.

Mortgage Revenue Bond

A Bond issued by a state, certain agencies or authorities or Political Subdivisions to make or purchase loans (including mortgage or other owner financing) with respect to single-family or multifamily residences. As indicated by the name, a principal source of security for the Bonds is mortgages on the financed properties. A Mortgage Revenue Bond may also refer to Bonds issued to finance the construction or acquisition of a public utility.

Municipal Advisor

A consultant to an Issuer (or, in some cases, a Borrower) which provides advice with respect to the structure, timing, terms or other similar matters concerning a Bond Issue.

Municipal Securities Rulemaking Board (“MSRB”)

A self-regulatory organization charged with rulemaking authority over municipal Securities dealers and Municipal Advisors. The MSRB rules are approved by the SEC and enforced by the SEC, FINRA and the federal banking regulators depending on the regulated entity.

Negative Pledge

A covenant that is the opposite of a Pledge – a promise not to Pledge property, generally money or other intangibles, to any party other than the Issuer, a Letter of Credit provider or other intended beneficiary of the Negative Pledge. A Negative Pledge can be structured in Tax-Exempt Bond financings under a safe harbor in the Treasury Regulations to provide some security to a Letter of Credit provider without causing the Issuer’s or the Conduit Borrower’s money to become subject to the Arbitrage requirements under the Code.

Negotiated Sale

The sale of a New Issue of Bonds by an Issuer through an exclusive agreement with an Underwriter or Underwriting Syndicate selected by the Issuer. A Negotiated Sale is distinguished from a Competitive Sale, which involves a public bidding process for the purchase of the Bonds. *Compare to “Competitive Bid or Sale” herein.*

Net Cash Refunding

The most common type of Refunding. In such a transaction, the Refunding Bond proceeds, together with Interest earnings thereon, are structured to produce sufficient funds to pay the Principal and Interest on the Refunded Bonds until the Redemption or maturity of the Refunded Bonds, whichever is earlier, and also to pay the Redemption Premium, if any, on the Refunded Bonds on the date of Redemption. This contrasts with a “gross refunding” where the initial deposit of the Refunding Bond proceeds is sufficient to pay all of the Principal, Interest and Redemption Premium, if any, of the Refunded Bonds until the Redemption or maturity of the Refunded Bonds, whichever is earlier, and anticipated Interest earnings are not taken into account. *See also “Advance Refunding” and “Current Refunding” herein.*

Net Proceeds

Proceeds of the Bonds minus amounts used to fund a Reasonably Required Reserve or Replacement Fund.

New Issue

Bonds offered to the public for the first time and often called the “initial offering.”

Non-Callable Bond

A Bond that cannot be called for Optional Redemption by the Issuer prior to its stated Maturity Date.

Non-Investment Grade Bonds

High-risk debt Securities with low Ratings, if any.

Non-Purpose Investments

Investment property other than Purpose Investments.

Notice of Sale

The notice published by an Issuer to advertise an upcoming sale of Bonds in a Competitive Sale. A Notice of Sale generally contains the date, time and place of sale, the Principal amount (and maturity schedule), a description of the Bonds, the security pledged for the repayment of the Bonds, the amount of any Good Faith Deposit, the basis of award, the name of Bond Counsel, method of delivery and time and place of delivery. *See also “Competitive Bid or Sale” herein.*

Offering Document

The document prepared by, or for, the Issuer and distributed to investors to provide disclosure with respect to one or more Issues of Bonds. Among other things, it provides material information about the Bond Issue, such as the purpose for the Bond Issue, a description of the Bonds, summaries of all of the documents relevant to the financing, the security for the repayment

of the Bonds and financial, economic and other relevant information about the Issuer and/or any Conduit Borrower.

Official Action or Official Intent

The evidence of Official Intent of the Issuer (or the Conduit Borrower if it is a 501(c)(3) Organization) to reimburse expenditures with proceeds of the Bonds, including a general functional description of the project to which the reimbursement relates and the maximum Principal amount to be reimbursed. Sometimes called an intent resolution, a declaration of intent, or an Inducement Resolution, it is required under the Code if the Issuer (or the Conduit Borrower if it is a 501(c)(3) Organization) is to be reimbursed for certain expenditures paid from non-borrowed funds prior to the issue date of the Bonds. Note that a Conduit Borrower that is not a 501(c)(3) Organization cannot be the party that adopts the evidence of Official Intent. In such a case, the Conduit Issuer must adopt the Official Intent.

Official Statement (“OS”)

The Offering Document used by an Underwriter in a Public Offering. *See also “Offering Document” herein.*

Optional Redemption

One form of Redemption that gives the Issuer the right to retire all or part of the Bonds before their Maturity Dates.

Original Issue Discount (“OID”)

The amount by which the Par Value of a Bond exceeds its Issue Price. The OID is amortized over the life of the Security. In other words, the holder of a Bond sold with OID treats a portion of the OID as income received in each year that the Bond is outstanding (even though the holder does not receive any corresponding funds). On a Tax-Exempt Bond, that income is generally treated as excludable Interest for federal income tax purposes under the Code. If the bondholder sells the Bond before its Maturity Date, the bondholder’s gain on the sale is the difference between the sales price and the bondholder’s adjusted cost basis, which changes each “computation period” that the Bond is outstanding by adding the accreting, or accumulating, OID to the Issue Price.

Par or Par Value

The stated or face amount of a Bond. The Par Value is also referred to as the face amount.

Parity Debt

Two or more Issues of Bonds with the same priority of claim or lien on the same underlying Security and sources of repayment (i.e., revenues) for all of the Bonds. For example, two Issues of Revenue Bonds are said to be on a parity with each other if the revenues, projects, program loans and other assets securing the first Revenue Bond Issue also secure the second Revenue Bond Issue and vice versa, and the two Issues have equivalent seniority. Two or more Issues of Bonds may

be on a parity with each other with respect to one type of Security or revenues and not with respect to another type of Security or revenues. For example, one of the Revenue Bond Issues in the above example may be also secured by Bond Insurance, while the other is not, in which case they would be on a parity with respect to the basic revenues, but not with respect to the Bond Insurance. *See also “Senior Lien Bonds” and “Subordinate Lien Bonds” herein.*

Paying Agent

The institution, often appointed in an Indenture or a paying agency agreement, responsible for making payments of Interest and Principal to bondholders. The Paying Agent is usually a bank or trust company but may be the treasurer or some other officer of the Issuer. Frequently the same entity serves also as the Registrar.

Pledge

A promise to set aside, dedicate and use exclusively for specified purposes certain categories of property, generally money or other intangibles.

Point

One percent or 1%. A bond that is discounted two Points is quoted at 98% of its Par (Principal amount) value. Because the dollar prices of municipal Bonds are quoted as a percentage of \$1,000, a Point is worth \$10 regardless of the actual denomination of a particular Bond. For example, a bond discounted 2 Points, or \$20, is quoted at “98” (98% of its Par Value), or \$980 per \$1,000. A Point should not be confused with a Basis Point. *See also “Basis Point” herein.*

Political Subdivision

A division of any state or local governmental unit which is a municipal corporation or which has been delegated the right to exercise a sufficient part of the sovereign power of the unit. *See “Shamberg Powers” herein.*

Pre-Closing

A meeting of all the parties prior to the Closing, often held the day before the Closing. Typically, this is the meeting at which the parties review the documents and most of the documents are executed. Certain receipts may be unexecuted or executed and escrowed with Bond Counsel until the Closing.

Preliminary Expenditures

Expenditures for a project that can be financed with proceeds of Bonds without obeying the federal income tax rules relating to reimbursements, up to a limit of 20% of the proceeds of the Bonds (which may be issued in multiple Bond Issues) to be issued to finance the project. Preliminary Expenditures include architectural, engineering, surveying, soil testing, Bond issuance and similar costs incurred prior to the commencement of construction, rehabilitation or acquisition of a project. Preliminary Expenditures do not include land acquisition, site preparation or similar costs incident to the commencement of construction.

Preliminary Official Statement (“POS”)

The type of Offering Document circulated prior to the determination of the Interest Rates and certain other terms of the Bonds when it is anticipated or known the Bonds will be purchased by an Underwriter and resold to the public. In a Competitive Sale, a POS is used by the Issuer to gauge Underwriters’ interest in the Bonds. In a Negotiated Sale, a POS is used by Underwriter(s) to gauge interest by prospective purchasers and to facilitate the pricing of the Bonds. Normally, offers for the sale of the Bonds are not made based on the Preliminary Official Statement, and a statement to that effect appears on its face in red print, which is the origin of the “red herring” nickname of the Preliminary Official Statement.

Premium

The amount, if any, by which the price paid by the purchaser of a Bond exceeds the Par Value of the Bond. For example, if a \$5,000 Bond is purchased for \$5,500, there is a \$500 Premium.

Pricing

In a Competitive Sale, it is the term used for when the bids on the Bonds are received by the Issuer. In a Negotiated Sale, it is the term used for the process and result of the determination by the Underwriter(s) and the Issuer of the Interest Rates and Public Offering prices at which the Bonds will be offered to investors.

Principal

The face amount or Par amount of a Bond, not including interest, payable on its Maturity Date.

Printer

The term Printer, or “going to the Printer” simply means to finalize an Offering Document, including all appendices, and email them to a commercial “printing” service who will then compile the various documents into one document for purposes of printing, posting and disseminating the Offering Document to potential investors and other interested parties.

Private Activity Bond

The term used in the Code to describe any Bond issued as part of a Bond Issue that meets both of the Private Business Tests (i.e., more than 10% of the proceeds of the Bonds (5% in certain cases) is to be used in the trade or business of any person or persons other than a governmental unit, and which is to be directly or indirectly repaid, or secured by, a private trade or business) or meets the Private Loan Financing Test (i.e., an amount exceeding the lesser of 5% of the proceeds of the Bonds or \$5 million is to be used for loans to any person or persons other than a governmental unit). Private Activity Bonds are Taxable Bonds, unless the Bonds further qualify as one of the specific types of Private Activity Bonds permitted to be issued as Tax-Exempt Bonds under the Code. Types of Private Activity Bonds that are eligible to be issued as Tax-Exempt Bonds include Qualified Small Issue Bonds, Qualified 501(c)(3) Bonds, single family housing

Bonds, student loan Bonds and “exempt facility Bonds” (a category including solid waste disposal Bonds, multifamily housing Bonds, airport Bonds and Bonds issued to finance facilities identified in the Code).

Private Business Tests/ Private Loan Financing Test

The Private Business Tests or Private Loan Financing Test are federal tax requirements that determine whether or not a Bond is considered a Private Activity Bond. If both Private Business Tests or the Private Loan Financing Test is met, the Bonds will be Private Activity Bonds. If at least one of the Private Business Tests and the Private Loan Financing Test are not satisfied, then the Bonds will not be Private Activity Bonds (i.e., they will be Governmental Bonds).

Private Placement or Direct Purchase

The negotiated offering of a New Issue of Bonds directly to one or a limited number of purchasers without using an Underwriter. The Bond purchasers are typically institutional or private investors who may agree to restrictions as to resale, and the purchasers may be required to sign an agreement acknowledging these transfer restrictions.

Private Placement Memorandum

A type of Offering Document used in a Private Placement. *See also “Offering Document” herein.*

Program Investment

Purpose Investments that meet certain rules set forth in Treasury Regulations Section 1.148-1(b).

Public Offering

An offering of Bonds to the general investing public.

Purpose Investments

Investment property acquired to carry out the purpose of a governmental program for which the Bonds are issued (i.e., conduit loans, mortgage notes, mortgage-backed Securities and student loan obligations).

Put Bond

A Bond that gives the bondholder the right to sell, or put, the Bond to the Issuer or some other party, often a remarketing agent, under specific conditions. Put Bonds are ordinarily put to the Issuer or remarketing agent at 100% of the Par Value of the Bonds. *See also “Tender” herein.*

Qualified Institutional Buyer

An investor satisfying the definition promulgated by the SEC in Rule 144A under the 1933 Act.

Qualified 501(c)(3) Bonds

The term used in Section 145 of the Code to refer to a type of Tax-Exempt Bonds issued as Private Activity Bonds for the benefit of a 501(c)(3) Organization.

Qualified Small Issue Bond

A type of Tax-Exempt Bond issued as a Private Activity Bond permitted under Section 144(a) of the Code if the aggregate authorized face amount is \$1,000,000 or less (or, in certain cases, \$10,000,000 or less) and at least 95% of the Net Proceeds of the Bonds are to be used (i) for the acquisition, construction or improvement of land or property of a character subject to the allowance for depreciation in connection with a “manufacturing facility,” or (ii) to redeem part or all of a prior Bond Issue which was itself a Qualified Small Issue Bond. Other general Private Activity Bond rules also apply.

Rating

A judgment by a Rating Agency as to the credit quality of a Bond. Ratings are intended to give investors an indication as to the likelihood that the Principal of, and Interest on, the Bonds will be repaid. Ratings are typically issued before the Closing but are updated periodically during the term of the Bonds if the credit quality of the Bonds changes. Each Rating Agency has its own notation as to credit quality.

Rating Agency

A national credit agency providing an independent appraisal of the credit quality of the Issuer, the Conduit Borrower, if any, and/or the Bond Issue. The largest Rating Agencies are S&P Global Ratings, Moody’s Investors Service, and Fitch Ratings.

Reasonably Required Reserve or Replacement Fund

A fund maintained to provide Security to bondholders that does not exceed the least of (i) 10% of the stated Principal amount of the Bond Issue (Issue Price if more than a de minimis amount of Original Issue Discount or Premium), (ii) the maximum annual Principal and Interest requirements of the Bonds, or (iii) 125% of the average annual Debt Service requirements of the Bonds. *See also “Debt Service Reserve Fund” herein.*

Rebate

A requirement imposed under the Code with respect to Tax-Exempt Bonds to pay to the Internal Revenue Service an amount equal to the excess of earnings received from investment of Tax-Exempt Bond proceeds over what would have been earned if those amounts had been invested at the Bond Yield (i.e., the Arbitrage on those Tax-Exempt Bond proceeds), calculated using a future value methodology pursuant to Treasury Regulations promulgated under the Code. (In the case of a Conduit Financing, the Bond Documents often shift the responsibility of making Rebate payments to the Conduit Borrower.) Payments are due at least every five years and also on the final Maturity Date or Redemption of the Bonds, whichever is earlier. There are also certain

exceptions to the Rebate requirement, including the so-called “spending exceptions” and an exception for small Issuers.

Red Book

A semi-annual publication called *The Bond Buyer’s Municipal Marketplace* published by Thomson Media that lists municipal bond dealers, bond attorneys and other public finance professionals. This book is referred to as the “red book” due to the color of its cover.

Redemption

The repayment of Bonds prior to their Maturity Date. Common forms of Redemption are Optional Redemption, Mandatory Sinking Fund Redemption and Extraordinary Mandatory Redemption.

Refunded Bonds

Outstanding Bonds which are paid off with all or a portion of the proceeds of Refunding Bonds.

Refunding

A transaction in which Refunding Bonds are issued and their proceeds are used to pay off outstanding Bonds. There are generally two major reasons for a Refunding: to reduce the Issuer’s or Borrower’s Interest costs or to remove restrictive covenants imposed by the terms of the Bonds being refunded. *See also “Advance Refunding” and “Current Refunding” herein.*

Refunding Bonds

Bonds issued in a Refunding. The proceeds of the Refunding Bonds are used to pay off the Refunded Bonds.

Registrar

The person or entity responsible for maintaining records on behalf of the Issuer for the purpose of recording the names of the owners of Registered Bonds. Frequently, this is the same entity as the Paying Agent.

Registered Bond

A Bond whose owner is designated on records maintained for this purpose by a Registrar, often the Paying Agent or Trustee. Transfers of the Bonds occurs only by a transfer on these records. The Principal and Interest on “fully registered” Bonds is paid directly by check (or other fund transfer) to the registered owner.

Reimbursement Agreement

A contract typically seen in transactions that involve a Letter of Credit or a Guaranty. A Reimbursement Agreement sets out the terms of repayment by the Issuer or the Borrower to the

Bank providing the Letter of Credit of any amounts advanced under the Letter of Credit or to the Guarantor of any amounts advanced under the Guaranty. A Reimbursement Agreement also typically contains financial covenants and other conditions for the Letter of Credit or the Guaranty to remain in effect.

Revenue Bond

A Bond which is to be repaid from a specific source of revenues, typically those produced by the facility or system for which the Bond is issued. The Issuer's full faith and credit is not pledged to a Revenue Bond. Conduit Bonds are also typically Revenue Bonds.

Revenue Fund

A fund into which pledged revenues may be required to be deposited as received and from which disbursements are made to pay allowable operations and maintenance expenses and to meet Debt Service requirements and deposit requirements to other funds.

SEC Rule 15c2-12

SEC Rule 15c2-12, promulgated under the 1934 Act, was adopted by the SEC in 1989 to establish standards for the procurement and dissemination of disclosure documents by Underwriters as a means of enhancing the accuracy and timeliness of disclosure to municipal Securities investors.

Security or Securities

Any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or evidence of any participation in any profit-sharing agreement.

Security Interest

A special legal interest in property, fixtures or revenues that exists by contract as Security for payment or performance of an obligation.

Selling Group Agreement

An agreement sometimes used in addition to an Agreement Among Underwriters when a selling group consists of more entities than just Underwriters in a Syndicate.

Senior Lien Bonds

Bonds having a priority claim on one or more Security Interests relative to the claim against such Security Interests by the holders of other Bonds. *See also "Parity Bonds" and "Subordinate Lien Bonds" herein.*

Serial Bonds

Maturities of a Bond Issue which mature in consecutive years or other shorter periods. Generally, Serial Bonds have a different Interest Rate for each maturity. Serial Bonds are not subject to Mandatory Sinking Fund Redemption. *See also "Term Bonds" herein.*

Shamberg Powers

The powers identified in *Commissioner v. Shamberg's Estate*, 144 F.2d 998 (2d Cir. 1944) as the powers used to identify what is a Political Subdivision of a state or local governmental entity in the United States, specifically, the power of eminent domain, the power to tax and the police power. *See "Political Subdivision" herein.*

Sinking Fund

A fund, often held by the Trustee under an Indenture but sometimes held directly by an Issuer (e.g., a Sinking Fund established under local law in connection with a water or sewer enterprise system) to which the Issuer or the Conduit Borrower periodically makes payments or in which revenues from a project are periodically deposited, for purposes of paying the Debt Service on a Bond Issue. This fund is sometimes referred to as the "Debt Service Fund" or the "Bond Fund."

SLGS

Pronounced "slugs," it is an acronym for "State and Local Government Series." SLGS are special United States Treasury Securities sold to Issuers and Conduit Borrowers directly by subscription from the Department of the Treasury. There are two types of SLGS: demand deposit (i.e., money market, short-term Securities) and time deposit (i.e., Fixed Rate Securities of varying maturities), the latter of which are more frequently used. SLGS are designed to help Issuers and Conduit Borrowers comply with Arbitrage restrictions imposed by the Code on Tax-Exempt Bonds and are frequently used to restrict the Yield on investments or to fund an escrow in connection with a Refunding or a Defeasance.

Special Assessment

A charge imposed against properties in a designated district in respect of special benefits received by those properties from the construction of nearby or adjacent public improvements, separate and apart from the general benefit accruing to the public at large. State statutes provide for the apportionment of Special Assessments according to the value of the benefit received. Special Assessments are not taxes.

Special Tax Bond

Tax-based Revenue Bonds that are secured by revenues derived from one or more designated taxes levied for a specific purpose, including income taxes, excise taxes (such as taxes on tobacco, alcoholic beverages, fuel, etc.), Special Assessments, hotel occupancy taxes, sales taxes and limited Ad Valorem Taxes.

Special Tax Counsel

An attorney or firm of attorneys engaged to render opinions on the federal and/or state tax exemption for Tax-Exempt Bonds and those aspects of the transaction relating to whether the Tax-Exempt Bonds qualify for federal tax exemption and, in some cases, state tax exemption.

Specimen Bond

A Bond which is not authenticated by the Trustee or Paying Agent and which is frequently specifically identified as a Specimen Bond and is provided in the Closing Transcripts.

Standby Bond Purchase Agreement

An agreement, usually between an Issuer (or in the case of a Conduit Financing, a Conduit Issuer and a Conduit Borrower), a Trustee (as tender agent) and a commercial bank, used to guarantee repurchase of Bonds that are subject to short Call Provisions (e.g., daily, weekly or monthly) if such Bonds are tendered for purchase by the bondholders and not simultaneously remarketed to and purchased by new bondholders.

Stickering or Supplementing

Amending or supplementing a Preliminary Official Statement or an Official Statement, typically to provide information about new developments or updated information affecting the Issuer, the Conduit Borrower or the Bond Issue. Before the use of electronic distribution of the Preliminary Official Statement and the Official Statement, this new information was often printed on paper with adhesive backing so that it could be attached to the appropriate pages of the Preliminary Official Statement or the Official Statement. When this occurred, the Preliminary Official Statement or the Official Statement was referred to as “stickered.”

Subordinate Lien Bonds

Bonds having a subordinate claim on one or more Security Interests relative to the claim against such Security Interests by the holders of other Bonds, also known as “junior lien bonds.” *See also “Parity Bonds” and “Senior Lien Bonds” herein.*

Supplemental Indenture

A supplement to an outstanding Indenture, entered into pursuant to the terms of an outstanding Indenture and delivered in connection with the issuance of Additional Bonds, to cure an inconsistency or formal defect in the Indenture or to amend the Indenture in some manner. A Supplemental Indenture becomes part of the contract with the bondholders. *See also “Master Indenture” herein.*

Syndicate or Underwriting Syndicate

A group of Underwriters formed to buy a Bond Issue from the Issuer and then offer the Bonds for resale to the public. A Syndicate is organized for the purposes of sharing the risks of underwriting the Bond Issue, obtaining sufficient funds to purchase the Bonds from the Issuer and

to get broader distribution to potential investors. One of the Underwriters acts as the Syndicate Manager or lead Manager, to administer the Syndicate.

Tax

Compulsory charges levied by a governmental unit for the purpose of raising revenue. Taxes are different from Special Assessments, which are levied according to the actual benefits derived by the assessed party and from fees, which must bear a reasonable relation to the costs of services, administration or regulation and are imposed under a government's police power.

Tax-Advantaged Bonds

Includes Tax-Exempt Bonds, Tax Credit Bonds and Direct Pay Bonds.

Tax Certificate

See "Arbitrage Certificate" herein.

Tax Credit Bond

A Taxable Bond that provides a tax credit to the holder in lieu of tax-exempt interest.

Taxable Bond

A Bond, the Interest on which is not excludable from gross income for federal income tax purposes.

Tax-Exempt Bond

A Bond, the Interest on which is excludable from gross income for federal income tax purposes.

TEFRA

The acronym for the Tax Equity and Fiscal Responsibility Act of 1982.

TEFRA Approval

The approval of the Bond Issue by the appropriate governmental unit after a TEFRA Hearing.

TEFRA Hearing

A public hearing held by an Issuer, following publication of a TEFRA Notice, to give the public an opportunity to comment on a proposed Private Activity Bond Issue.

TEFRA Notice

A notice of a TEFRA Hearing, which, under the Treasury Regulations, must be published one time, at least seven days prior to the TEFRA Hearing, in a newspaper of general circulation in the geographical jurisdiction of the Issuer of the Tax-Exempt Bonds and in any “host jurisdiction” (or on the appropriate governmental entity’s website.)

Temporary Period

Temporary Period means the period of time (often set forth in the Tax Certificate), during which a particular category of proceeds may be invested in higher yielding investments without the Issue being treated as Arbitrage Bonds under Section 148 of the Code.

Tender

An offer by a bondholder to sell Bonds to the Issuer at a stated price, often in response to the Issuer’s solicitation of, or request for, Tenders. *See also “Put Bonds” herein.*

Term Bond

Bonds which come due on a single maturity date but which may be subject to Mandatory Sinking Fund Redemption. *See also “Mandatory Sinking Fund Redemption” herein.*

Trust Agreement

See “Indenture” herein.

Trustee

A commercial bank or trust company with trust powers which acts in a fiduciary capacity for and on behalf of the bondholders by entering into an Indenture with the Issuer of the Bonds.

Trustee’s Counsel

An attorney or firm of attorneys engaged to serve as counsel to the Trustee.

Trust Indenture Act of 1939

A federal statute setting out the requirements for Trust Indentures in connection with publicly traded corporate Securities.

UCC

UCC is an abbreviation for the “Uniform Commercial Code,” which governs the transfer of Security Interests in personal property pursuant to state law.

Underwriter

A securities broker or dealer that purchases Bonds from an Issuer and resells them to investors. Underwriters may purchase the Bonds from the Issuer in a Negotiated Sale or a Competitive Sale.

Underwriter's Counsel

An attorney or firm of attorneys engaged to represent the Underwriter or Underwriters in connection with the issuance of Bonds.

Underwriter's Discount

The difference between the amount an Underwriter pays the Issuer for the Bonds at the Closing (i.e., the purchase price) and the price at which the Underwriter sells the Bonds to the public (i.e., the Issue Price). The Underwriter's Discount is treated as a Cost of Issuance.

Upgrade

The increasing of a Rating by a Rating Agency. Higher Ratings indicate higher credit quality.

Useful Life

An accounting estimate of the number of years it is likely for an asset to remain in service for the purpose of cost-effective revenue generation. The IRS employs Useful Life for various purposes applicable to tax-exempt Bonds.

Variable Interest Rate

The Interest Rate on a Bond which varies according to a formula set forth in the Bond or the Indenture or Bond Resolution/Ordinance or based on the Interest Rate required by a remarketing agent to remarket the Bonds at Par.

Verification Agent

A certified public accountant or a firm of certified public accounts engaged for preparing the Verification Report.

Verification Report

A document provided by the Verification Agent, which verifies the mathematical accuracy of the Cash Flows for repayment of the Refunded Bonds, the Yields on the Refunding Bonds, the Refunded Bonds and the investments in the Escrow Fund and other information needed to support Bond Counsel's conclusions that an Advance Refunding Bond Issue is a Tax-Exempt Bond Issue and/or that the Refunded Bonds are defeased.

Volume Cap

A requirement contained in Section 146 of the Code that Private Activity Bonds (with certain exceptions) issued as Tax-Exempt Bonds obtain an allocation of Volume Cap from the state in which the project is located prior to the issuance of the Bonds. Notable exceptions to the Volume Cap requirement include Qualified 501(c)(3) Bonds, certain types of governmentally owned exempt facility bonds and certain Refunding Bonds. Each state has its own procedure for the allocation and certification as to Volume Cap.

Weighted Average Maturity

Generally, the Weighted Average Maturity of a Bond Issue is the sum of the product of the Issue Price of each maturity of the Bond Issue multiplied by the number of years from the Closing until that Maturity Date divided by the Issue Price of the entire Bond Issue. The Weighted Average Maturity of a Tax-Exempt Bond Issue is important for a number of purposes under the Code and Treasury Regulations (see the “120% Rule” above) and must be reported to the IRS on the applicable Form 8038. *Contrast “Average Life” herein.*

Writ of Mandamus

An order from a court to a government official ordering the government official to properly fulfill their official duties or correct an abuse of discretion.

Yield

As computed under the Code provisions applicable to Bonds, the internal rate of return that causes the present value of the payments of Principal and Interest (and, in certain cases, certain other payments) on an Issue of Bonds to equal the Issue Price of the Bonds. In most cases, the calculation is made assuming that the Bonds are all outstanding to their respective maturity or Mandatory Sinking Fund Redemption date. For a Fixed Rate Bond Issue, the Yield is determined once as of the date of the Closing. For a variable rate Bond Issue, the Yield must be determined periodically during the term of the Bonds.

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The Basics Handbook

