

CONDUIT ISSUES AND ISSUERS AND EXEMPT FACILITY BONDS

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The Essentials

APRIL 19–21, 2023

WHAT WE WILL COVER

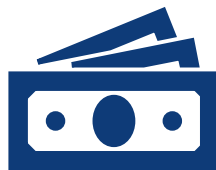
- What are Conduit Bonds?
- Who benefits from Conduit Bond issues?
- How are Conduit Bond issues structured?
- Which securities law exceptions are utilized in a conduit issue?
- What are Exempt Facility Bonds?
- Which tax laws are triggered?

INTRODUCTION

TYPES OF MUNICIPAL BONDS



Governmental
Bonds



Conduit Bonds



Exempt Facility
Bonds
"Private Activity
Bonds"

WHAT IS A CONDUIT ISSUER?

TYPES OF ENTITIES

- “On behalf of” Entities
- In some states, a general purpose governmental issuer
- National Conduit Issues

POWERS – STATE LAW DRIVEN

- Statutorily creates
- Powers vary by state, including issuing powers beyond its borders

JURISDICTION

FOR WHAT AND FOR WHOM DO CONDUIT ISSUERS ISSUE BONDS?

TYPES OF PROJECTS

Healthcare Facilities

Educational Facilities

Cultural Facilities

Social Service Agency Facilities

Housing Facilities

Manufacturing Facilities

"Exempt Facilities"

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EXEMPT FACILITY BONDS

An exempt facility bond is any bond issued pursuant to Section 142, at least 95% of the net proceeds of which are used, or to be used, to finance “exempt” facilities

EXEMPT FACILITIES

- airports
- docks and wharves
- mass commuting facilities
- facilities for furnishing water
- sewage facilities
- solid waste disposal facilities
- qualified residential rental facilities
- qualified broadband projects
- qualified public educational facilities
- electric generating facilities
- qualified hazardous waste facilities
- high-speed intercity rail facilities
- environmental enhancements of hydro
- qualified carbon dioxide capture facilities
- qualified green building and sustainable design projects
- qualified highway or surface freight transfer facilities
- local district heating or cooling facilities
- facilities for the local furnishing of electrical energy or gas

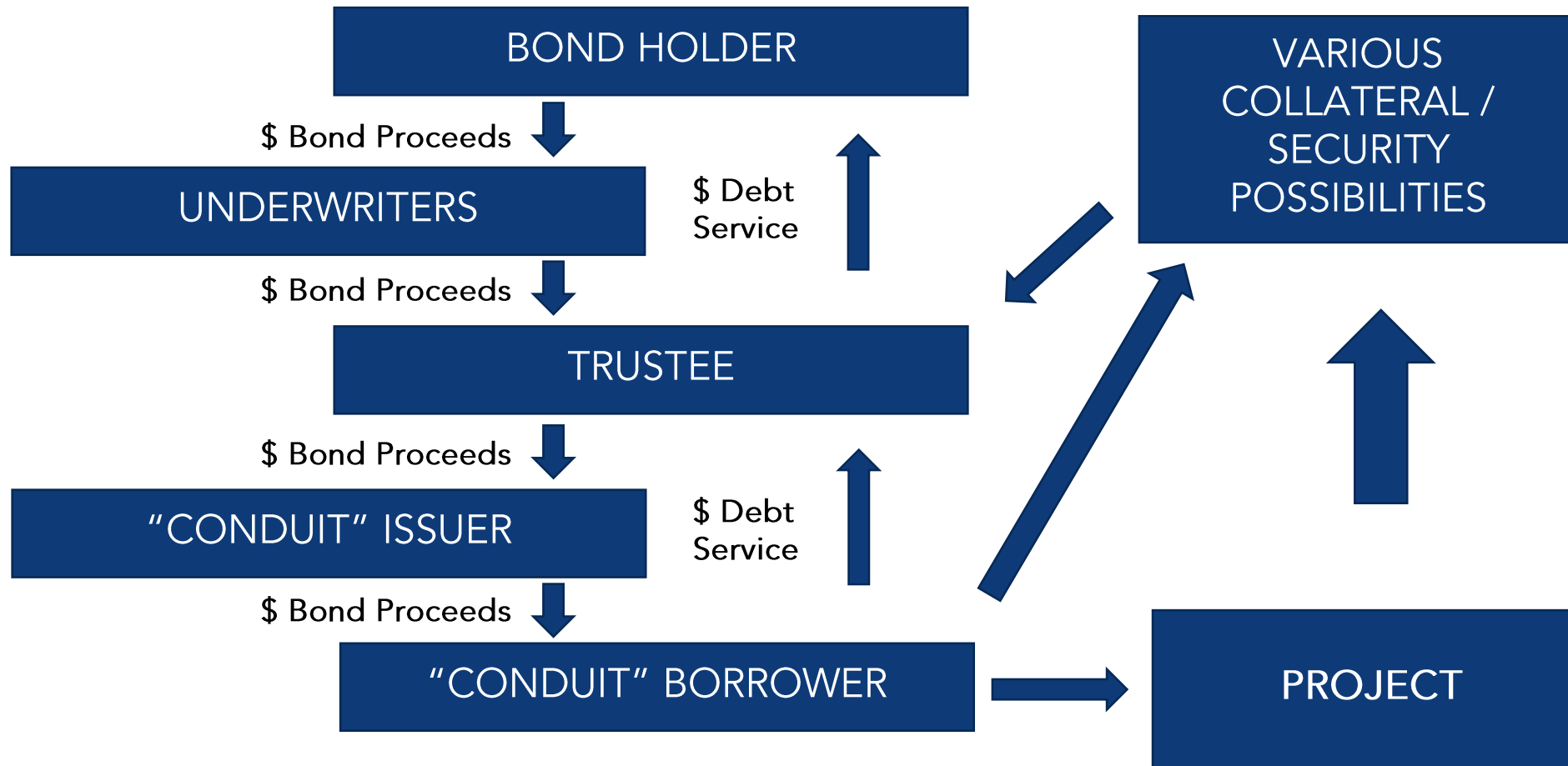
FINANCING STRUCTURES

FOUR KEY QUESTIONS

1. What's the deal (i.e., who are the borrower and potential purchasers and what is the parties' economic agreement or contract)?
2. What is the applicable state law?
3. What are the tax law requirements?
4. How and to whom are the bonds being sold and what are the securities law requirements?

FINANCING STRUCTURES

Basic Fixed Rate Structure – Security and Revenues



SECURITIES LAW ISSUES

REGISTRATION PROVISIONS

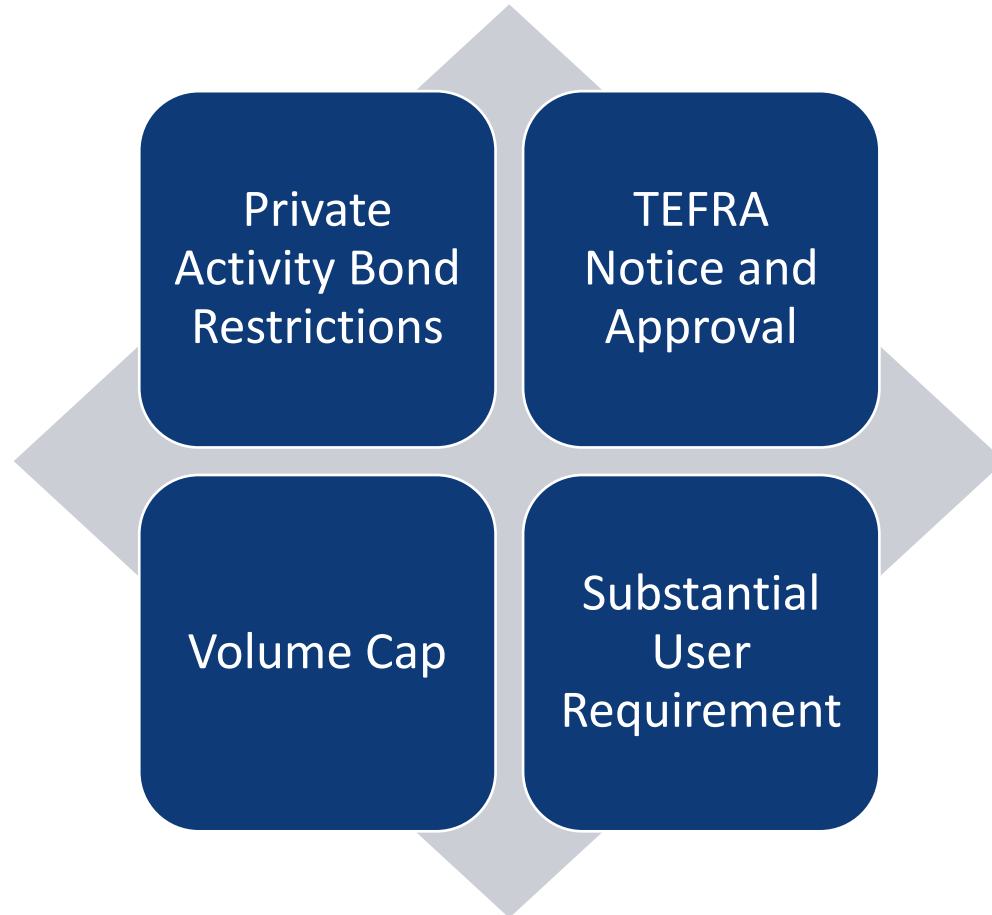
- 1933 Act Registration Requirement
- Section 3(a)(2)
- Section 3(a)(4) - 501(c)(3) securities
- Section 3(a)(8) - Insurance Policies
- Section 3(a)(11) – Intrastate Offerings
- Rule 131 – Separate Security Doctrine

SECURITIES LAW ISSUES (cont.)

CONTINUING DISCLOSURE – RULE 15c2-12

- Who is obligated?
- What information needs to be updated?
- Who needs to “deem” final the Preliminary Official Statement?
- Issues relating to disclosure of past compliance
- Rule requires underwriters to be responsible for ensuring disclosure

TAX ISSUES



EXEMPT FACILITY BONDS

FUNCTIONALLY RELATED AND SUBORDINATE

- Treas. Reg. § 1.103-8(a)(3) provides that an exempt facility includes land, buildings or other property “functionally related and subordinate” to such facility.
- Property is not functionally related and subordinate to a facility if it is not of a character and size commensurate with the character and size of such facility.

EXEMPT FACILITY BONDS

“PUBLIC USE” TEST

- Treas. Reg. § 1.103-8(a)(2) provides that the facilities must satisfy the public use requirement.
 - The facility must serve or be available on a regular basis for general public use or be part of a facility that is so used.
 - A hangar or repair facility at a municipal airport will qualify as a facility for general public use even if it is owned by, leased, or permanently assigned to a private person, provided that such facility services the general public, such as a common passenger carrier or freight carrier.

EXEMPT FACILITY BONDS

OFFICE SPACE RULE

- Section 142(b)(2) provides that:
 - an office will not be treated as part of an exempt facility unless it is located on the premises of such facility and
 - the functions to be performed at such office (except for a de minimis amount) are directly related to the day-to-day operations of such facility.

Questions

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