

# The Financing Process

RIGFOA Presentation  
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# Sandra Matrone Mack, Esq.

Founder & Principal  
Mack Law Associates LLC

- For over three decades, Sandra Matrone Mack has provided clients with expert counsel and highly effective representation across numerous practice areas including Corporate and Business Law, Public Finance, Commercial Real Estate, and Banking & Finance. She represents clients as bond counsel, underwriter counsel, trustee counsel, and borrower counsel in conduit transactions.
- Sandra is listed as recognized bond counsel in the national Red Book directory for 30 years, she also has achieved special recognition from the Martindale Peer Review and the Best Lawyers in America listing by Woodward/White Inc.
- Appointed to the Rhode Island Student Loan Authority by Governor Gina Raimondo, she is an initial founding director and current board member for Fisher House Boston: a home away from home for military families at the VA Healthcare Medical Facility in Roxbury, MA. Sandra also served as a director for the Mount Hope Trust in Bristol, and volunteered for Sustainable Harvest International in Honduras in 2007.
- A magna cum laude graduate of Georgetown University, Sandra earned her BSFS degree in 1982, subsequently earning a Juris Doctorate at the Georgetown University Law Center in 1986. Admitted to the Rhode Island Bar Association in 1986, she was admitted to the United States District Court, District of Rhode Island, in the following year.

# Adam S. Krea

Vice President

FirstSouthwest, A Division of Hilltop Securities Inc.

- Adam is a financial advisor serving state and municipal-level issuers as well as water and sewer and tax-exempt non-profit issuers mostly in Rhode Island, Connecticut, and Maine. With almost 20 years of public finance experience in both the public and private sectors, Adam brings a wealth of knowledge to special credits and unique transactions.
- Prior to joining FirstSouthwest in 2012 Adam served three terms as the Assistant State Treasurer of the State of Maine where he was responsible for the State's debt issuance, forecasting investment revenues, working with the Attorney General on the 1998 Master Settlement Agreement with the tobacco companies, and appearing before the Appropriations Committee for budgetary matters.
- Adam also served as the Deputy Director of MaineHousing, the State's Housing Finance and Energy Agency where he was responsible for debt issuance, development, legal, asset management, planning, and legislative matters. While at MaineHousing the US Dept of Energy asked Adam, with his unique mix of financial and public policy knowledge, to provide financial insight during the development of DOE's energy financing programs during ARRA.
- Adam graduated from Middlebury College and holds FINRA Series 52 and 63 securities licenses

# Karen Leyden-Beard

Vice President

U.S. Bank National Association

- Karen is a Client Relationship Manager in the Global Corporate Trust Services Division of U.S. Bank, the largest provider of municipal bond trust services in the country with 51 offices in the U.S. and Europe.
- She has over thirty years experience as a bond trustee and her clients include municipalities, state agencies, schools, hospitals, utilities, and corporations. Karen administers a portfolio of municipal and corporate bond issues and escrows.
- Karen was previously with State Street Corporation and Rhode Island Hospital Trust National Bank. She is a graduate of Rhode Island College and Providence College.

# Goals of this session

- To provide an overview of the bond process and various roles involved
- Discuss recommended planning by municipality prior to transaction
- Discuss options available for financing
- Discuss post closing duties and responsibilities

# Pre-Bond Issuance

- Identify need for funds
- Timing and Purpose(s)
- Authority to Issue Bonds
- Conditions and Approvals
- Scope of project: tax exempt purpose? Private use?
- Steps to Borrow (votes, general assembly, etc.)

# Pre-Bond Issuance

- Financing schedule:
  - Are any other projects being financed at the same time? 15 days apart or not to blend yield?
  - Too late? What can you do if you need funds before the bond closing?
  - Will you spend funds before the deal closes?
  - Reimbursement resolution?

# Pre-Bond Issuance

- General Obligation or Revenue Pledge
  - Security for bondholder?
    - General Obligation
    - Appropriation-backed
    - Revenue pledge of an Enterprise Fund (e.g. sewer or water)
  - Indenture?
  - Double Barrel?

# Pre-Bond Issuance

- Public Offering or Bank Direct Purchase
  - Considerations
    - Size
    - Term
    - Costs and time commitment: No POS/OS or rating
    - Financing Terms
      - True Fixed rate vs. fixed with a swap
      - Rate kick-up provisions
      - Acceleration or put features that would concern rating agencies

# From Kick-Off Meeting to Pricing

- Competitive or negotiated
  - New money, refunding, or both?
  - Policy of Municipality
  - Legal requirements for bids or purchasing
  - Timing issue of when funds are needed?
  - “Story” issue
  - Rates Stable or Volatile
  - Market (other bonds issues; holidays; Fed meetings)
  - Rating of municipality
  - Disclosure?

# From Kick-Off Meeting to Pricing

- No rating? One rating? Or more ratings?
  - Bank placements usually are not rated
  - Notes can often be unrated
  - Publicly offered bonds are almost always rated
  - How many ratings are needed and how does my FA analyze this when making a recommendation?

# From Kick-Off Meeting to Pricing

- Documentation/Roles
  - Competitive Transaction Team:
    - Financial Advisor – Structure transaction, draft POS/OS, Draft Rating Report, Pricing, Disclosure, EMMA review
    - Bond Counsel – Review POS/OS, Bond Purchase Agreement, Bond Counsel Opinion, Legal documents
    - Paying Agent (GO) or Trustee (Revenue Bonds)
    - Verification Agent (if a refunding)
    - Treasurer/Finance Director as lead for others in city or town
  - Negotiated Transaction Team adds:
    - Underwriter – markets and sells bonds
    - Underwriter’s Counsel: POS/OS, Bond Purchase Agreement, Legal Opinions; Underwriters Certificate

# From Kick-Off Meeting to Pricing

- Documentation/Roles
  - Bank Purchase:
    - Bond Counsel: Legal opinion, financing agreement and purchase contract
    - FA: structure and negotiate financing particulars, including date of rate lock and closing date
    - Town Treasurer/Finance Director: review all documents with Bond Counsel and FA and sign closing documents with other City/Town officials such as President of Council, Mayor or Manager, Clerk, etc.

# From Kick-Off Meeting to Pricing

- The Rating Presentation
  - A call or an in-person visit? Answer questions or make a presentation?
  - What the Treasurer/Finance Director should do to prepare
- The POS
  - Drafting the front section about the bonds
  - What the FA will need from the Treasurer/Finance Director when drafting the City/Town disclosure section
  - Continuing Disclosure 5-year lookback

# From Pricing to Pre-closing to Funding

- Preparing for the Pricing
  - Structure of the transaction
    - Debt service payment dates
    - Level debt service, level principal, etc
    - Serial or term bonds
    - Coupons/yields
  - Credit enhancement analysis

# From Pricing to Pre-closing to Funding

- The Pricing
  - Competitive transactions
    - Notice of Sale outlines the bid parameters
    - Bids come in electronically at a predetermined time
    - Select best bid based on NIC (Notes) or TIC (Bonds)
    - Any resizing or adjusting and match numbers with winning underwriter
  - Negotiated transactions
    - Preliminary talks between FA and underwriter on refining structure and market conditions
    - Pre-pricing call with underwriter to review their suggested coupons and yields
    - Discuss timing of pricing and when to enter the market
    - Updates and adjustments as needed during actual pricing
    - Wrap-up call and verbal award

# From Pricing to Pre-closing to Funding

- Pre-closing
  - Preliminary OS is revised to include pricing and mailed
  - Bond Counsel Prepares transaction documents
  - Tax due diligence is completed
  - Signed documents in advance of closing/funding

# From Pricing to Pre-closing to Funding

- Funding
  - Actual Transfer of funds from underwriter or bank to municipality
  - Where to hold the funds? Project Fund? Escrow? Draw Down Bond?
  - Segregated Account
  - Can it earn interest? How much? Arbitrage?
  - “Closing Call”

# From Pricing to Pre-closing to Funding

- “Closing” the bond issue
  - Confirm receipt of bond proceeds
  - Upon confirmation of all parties – release bonds with lead manager – usually through DTC
  - Per closing memorandum – deposit funds in various trust accounts
  - For refunded bond issues either hold defeased funds for future bond payments or redeem previous bond issue
  - Reimbursement funds previously expended
  - Payment Costs of Issuance – Requisition Process

# Common Accounts of a Trust

- Bond Fund – to pay scheduled bond payments to holders
- Project Fund – to pay costs of project through requisitions
- Cost of Issuance Fund – to pay initial expenses of the deal
- Debt Service Reserve Fund – to hold funds for further protection of bondholders
- Rebate Fund – to make arbitrage payments
- Redemption Fund – to hold funds for early payoff of bonds (in part or in full)

# **Role of the Trustee**

# Trustee Functions

- Trustee – Financial Institution or Trust Company that acts as an intermediary between bond issuer/obligor and bondholders and administers and enforces terms of the trust
- Trustee roles include:
  - Paying Agent
  - Registrar
  - Transfer Agent
  - Continuing Disclosure Agent
  - Escrow Agent or Trustee of Refunding Trusts

# Trustee Role Pre-Closing & Funding

- Review and comment on Trustee duties in governing documents
- Establish trust accounts as per trust agreement
- Provide wire and or settlement instructions for funds
- If Trustee for a refunding issue – work with and provide information to deal parties on existing bond balances and funds on hand

# Trustee Role Pre-Closing & Funding

- Interface with the Depository Trust Company confirming issue information, hold original 'global bond', release bond position to lead manager
- Review 'closing memorandum' for flow of funds including deposits, payments and investments in trust accounts
- Sign Trust documents, authorize bonds

# Trust Administration

- Make scheduled payments to bondholders = Debt Service
  - Collect funds from issuer/obligor. Can be same day 'pass-thru' or may hold advance funds (ex: monthly 1/6<sup>th</sup> – 1/12<sup>th</sup> )
  - Liquidate investments held in trust accounts for debt service payments
  - Draw on Letter of Credit – bond fund credit enhancement for 'guaranteed' payments

# Trust Administration

- Payment of Requisitions from Project Funds
  - Make expense payments as part of closing as directed on closing memorandum
  - For release of Project Funds, requisition format is usually part of the trust agreement with approval process
- Investment of Funds in Trust Accounts
  - permitted investment language in trust agreement at the direction of the issuer/obligor (not discretionary)
- Variable Interest Rate Resets
  - If variable rate, will interface with reset and remarketing agents and track bond interest accruals
- Registrar and Transfer Agent
  - Will keep bondholder records (DTC is holder of record in many cases)

# Trust Compliance

- Continuing Disclosure to MSRB (through EMMA)
- UCC Lien Holding – continuations
- Completion Certificate (for the project)

# Trust Compliance

- Collect and hold periodic reporting from Issuer such as:
  - Annual/Quarterly Financials
  - CPA Certificate opining to no default as it relates to financial matters
  - Officer's Certificate (of issuer) of no default (usually annually)
  - Arbitrage Rebate Calculation Certificates

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