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A Current Guide to Municipal Bonds and Debt

John M. Kamins, Attorney
T: 248.785.4727
jkamins@fosterswift.com

May 12, 2016

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- This presentation highlights specific areas of law. This communication is not legal advice. The reader should consult an attorney to determine how the information applies to any specific situation. The original air date of this webinar was May 12, 2016 and the law is subject to change after that date.

Varieties of Municipal Bonds and Debt

- Bonds
- Notes
- Installment Purchase Agreements
- Certificates of Participation

Who Buys Municipal Bonds and Debt

- Institutional Investors
- Individuals
- Banks – in direct purchases
- USDA Rural Development (“<u>RD</u>”)
- Michigan Finance Authority (a <u>conduit</u> issuer)

Reasons to Borrow Money

- To finance capital expenditures for public projects ("New Money")
- To refinance outstanding bonds ("Refunding")
- To fund accrued pension or OPEB liabilities
- To pay Costs of issuance

Rarer Reasons to Borrow Money

Only in special cases:

- To fund unfunded accrued liabilities for Pensions & Retiree Medical Benefits (aka OPEB, Other Post-Employment Benefits)
  --December 31, 2016 sunset
- To fund cash flow deficits
  (school districts & charter schools)
- Emergency Loans from State of Michigan

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Professional Advisors from the start

- <u>Bond Counsel</u>
- Financial Advisor (now aka <u>Municipal Advisor</u>)
- Underwriter or Placement Agent
- Engineering Firm

Necessity of specific State law or laws authorizing the borrowing

(aka Enabling Legislation)

- **Many statutes**
- **Many varieties**
- **E.g., publish Notice of Intent and Right of Referendum**

Sources of Payment and Security

- General Obligation ("**GO**") Bonds (Pledge of Full Faith and Credit)
  - **UTGO** = Unlimited Tax General Obligation, requiring ballot proposal and voters' approval
  - **LTGO** = Limited Tax General Obligation, subject to constitutional, statutory and charter tax rate limitations (concept of "**First Budget Obligation**")
- Revenue Bonds

Sources of Payment and Security (continued)

- Special Assessment Bonds
- Tax Increment Revenue Bonds
- Tax Anticipation Notes
- State Aid Notes
- Credit enhancements
  - Bond Insurance
  - Bank Letter of Credit

What are "tax-exempt" bonds?

- Under federal tax law (Internal Revenue Code and U.S. Treasury Regulations)
  - On original issuance date
  - Post-issuance compliance
- Under State law
- **CAUTION**: Uncertainty of federal tax reform

How are muni bonds & notes sold?

- **Competitive Sale** – published Notice of Sale; opening sealed or electronic bids; award order
- **Negotiated sale** – with Underwriter(s), public offering, signed Bond Purchase Agreement
- **Private Placement** – with Placement Agent, signed Bond Placement Agreement
- **Direct Purchase** – by Bank or RD

Disclosure in Marketing Bonds

- **For Competitive Sale** – Notice of Sale
- **For Negotiated sale** – Preliminary Official Statement and final Official Statement
- **For Private Placement** – Preliminary Offering Memorandum and final Offering Memorandum
- **For Direct Purchase** – Investor Letter

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Securities Laws re Marketing Bonds

- Generally, exempt from federal registration (with SEC)
- But federal anti-fraud rules still apply
- SEC **Rule 10b-5**: (A) No misstatement of a material fact; and (B) No omission to state a fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading.
- State securities laws (aka "**Blue Sky**" laws)

Continuing Disclosure, post-issuance

- SEC **Rule 15c2-12**
- Hence, **Continuing Disclosure Undertaking** (CDU) signed at closing (with some exceptions)
- Required annual and event filings with **EMMA**, Electronic Municipal Market Access, online, of the MSRB (Municipal Securities Rulemaking Board)
- Significance of breach of CDU

Some Other Things to Know Before a Municipality Borrows Money

- Need **Qualified Status** from Michigan Department of Treasury or must apply for and receive its prior approval to issue the bonds
- In general, before spending any moneys to pay project costs before bonds are issued, a municipality must timely adopt a proper "reimbursement resolution" to preserve its right to reimburse itself from tax-exempt bond proceeds, when available

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Some Other Things to Know Before a Municipality Borrows Money (continued)

- Bond ratings can be requested and obtained from one or more national ratings agencies: Fitch, Moody's and Standard & Poor's (S&P)
- Some bonds are marketed and sold without a rating
- When federal tax laws preclude issuing tax-exempt bonds to provide all the desired financing proceeds, a municipality may concurrently issue and sell a series of **federally taxable bonds** to finance the shortfall.

Questions?

John M. Kamins
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