

Private Activity Bonds for Local Officials

Issuing Private Activity Bonds

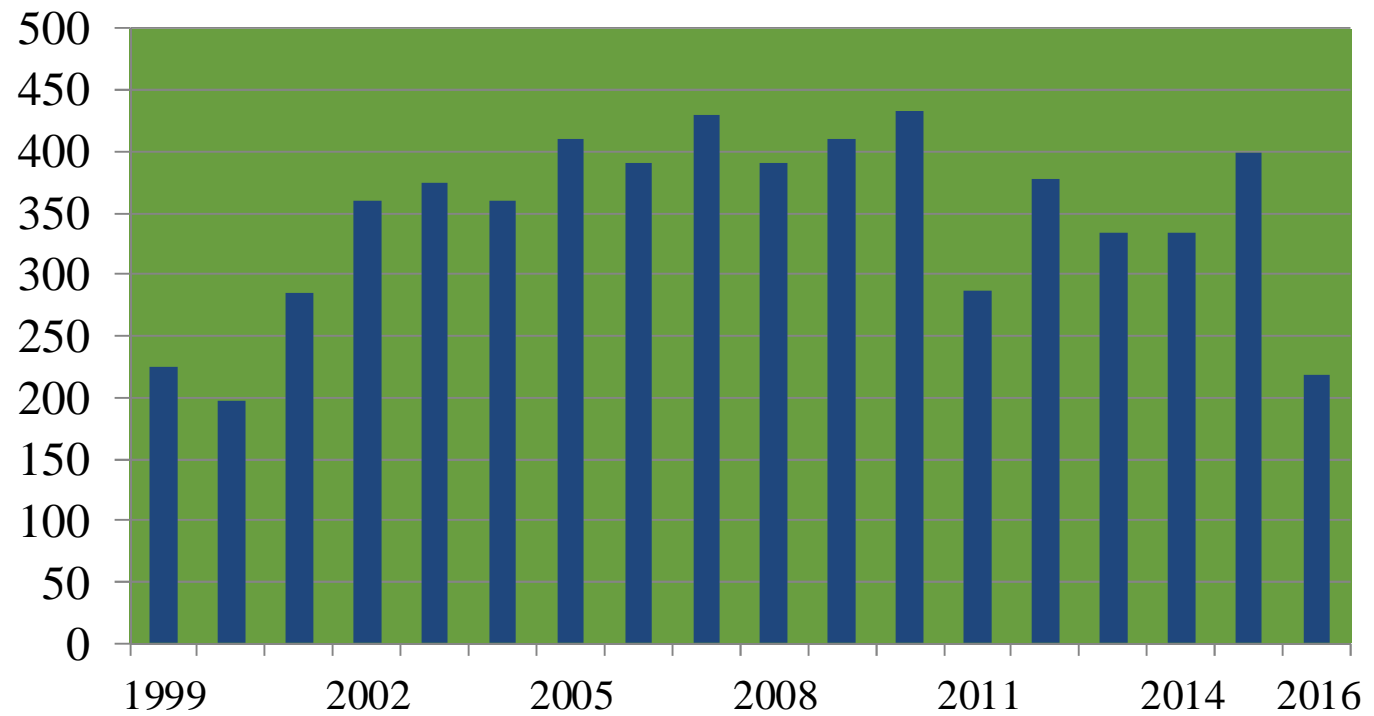
July 2016

Presentation By:

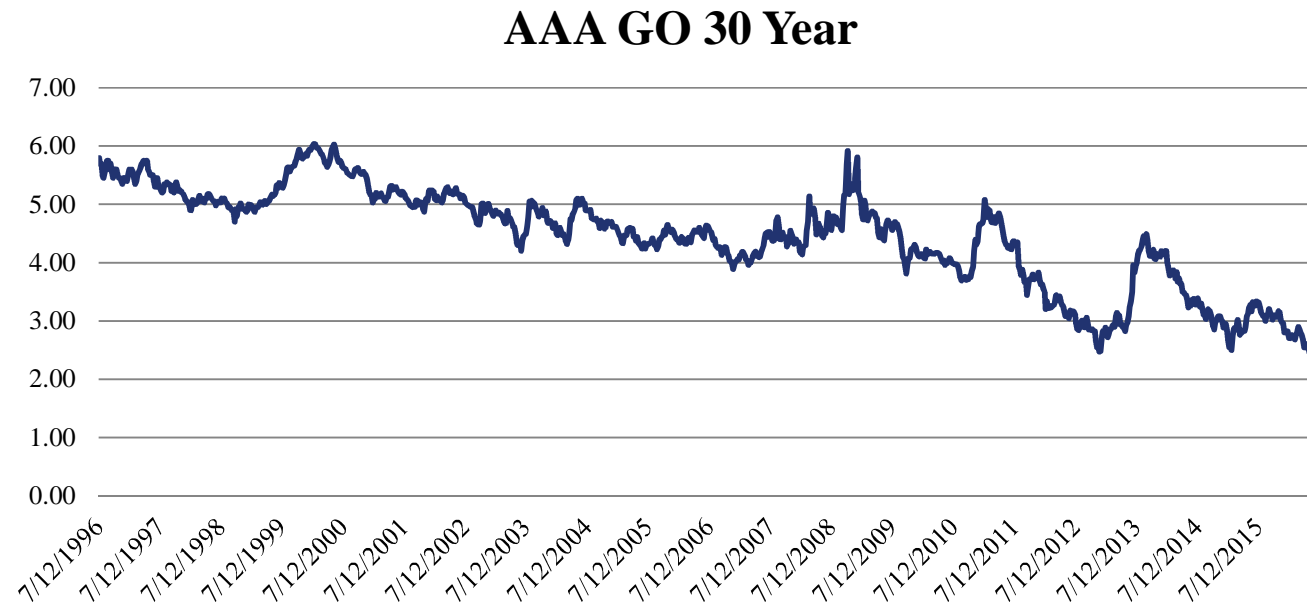
Kutak Rock LLP

Tax Exempt Bond Market

Annual Bond Sales



History of the 20-year “AAA” MMD



Source: D.A. Davidson & Company

Types of Private Activity Bonds

Bonds 1-15 are private activity bonds subject to the unified volume ceiling or cap and eligible for carryforward. Bond #15 is not eligible for carryforward. Bonds 16-20 are private activity bonds, each of which has its own separate cap—these bonds do not fall under volume ceiling.

1. Qualified student loan (Sec. 144(b))
2. Qualified mortgage bonds or mortgage credit certificates (Sec. 143(a) and Sec. 25)
3. Qualified redevelopment bonds (Sec. 144(c))
4. Exempt facility bonds (airports, docks & wharves hydroelectric generating facilities, etc.) (Sec. 142)
5. Mass commuting facilities (Sec. 142(c))
6. Water furnishing facilities (Sec. 142(e))
7. Sewage facilities (Sec. 142(a)(5))
8. Solid waste disposal facilities (Sec. 142(a)(6))
9. Qualified residential rental projects (Sec. 142(d))
10. Facilities for the local furnishing of electric energy or gas (Sec. 142(f))
11. Local district heating and cooling facilities (Sec. 142(g))
12. Qualified hazardous waste facilities (Sec. 142(h))
13. High-speed intercity rail (Sec. 142(i))
14. Qualified enterprise zone facility bonds
15. Qualified small issues (only category subject to cap but not eligible for carryforward) (Sec. 144(a))

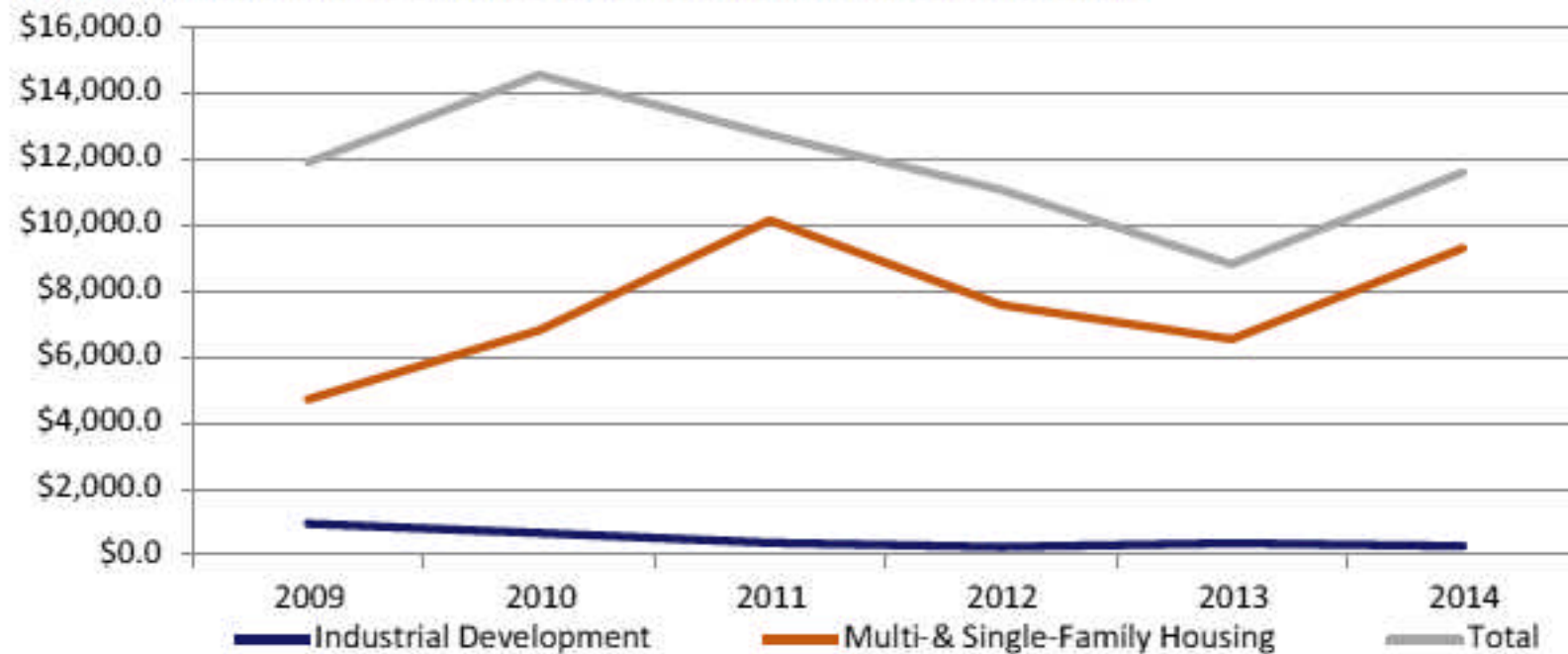
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16. Qualified public education facility bonds have their own volume cap and unused portions may be carried forward. The cap is the greater of \$10 times the state population or \$5 million. (Sec. 142(k))
17. Qualified zone academy bonds have their own separate cap. This volume cap is allocated among states based on their respective populations below the poverty level and is then allocated by each state to qualified zone academies within the state.
18. Qualified highway or surface freight transfer facilities. Also has separate cap. (Sec. 142(m))
19. Clean energy renewable bonds are also subject to their own separate volume cap.
20. There are other bonds, which are also subject to their own separate volume ceilings such as Gulf Opportunity Zone, qualified empowerment zone facility bonds, District of Columbia enterprise zone facility bonds, qualified green building and sustainable design projects, and New York Liberty Zone bonds.

National Private Activity Bond Issuance

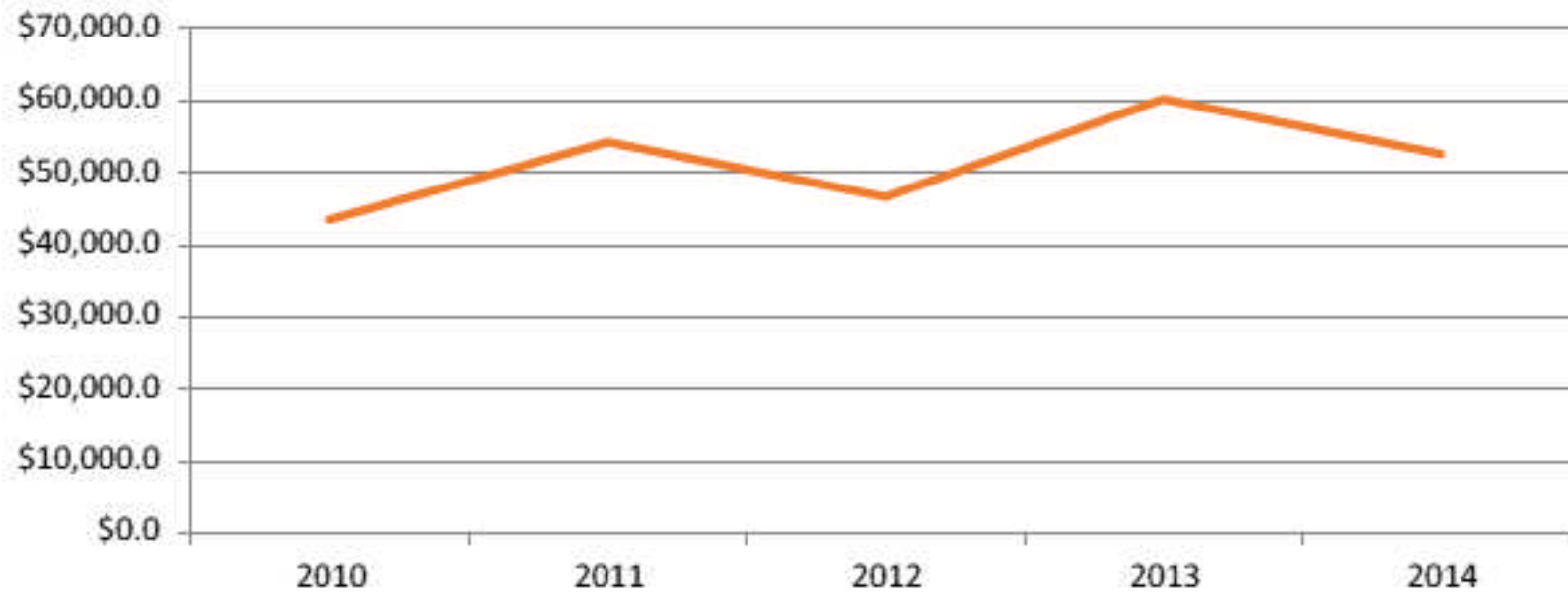
Figure 1. National Private Activity Bond Issuance in Millions of Dollars



Source: CDFA Annual Volume Cap Report, July 2015

National Volume Cap Carryforward

Figure 2. National Carryforward in Millions of Dollars



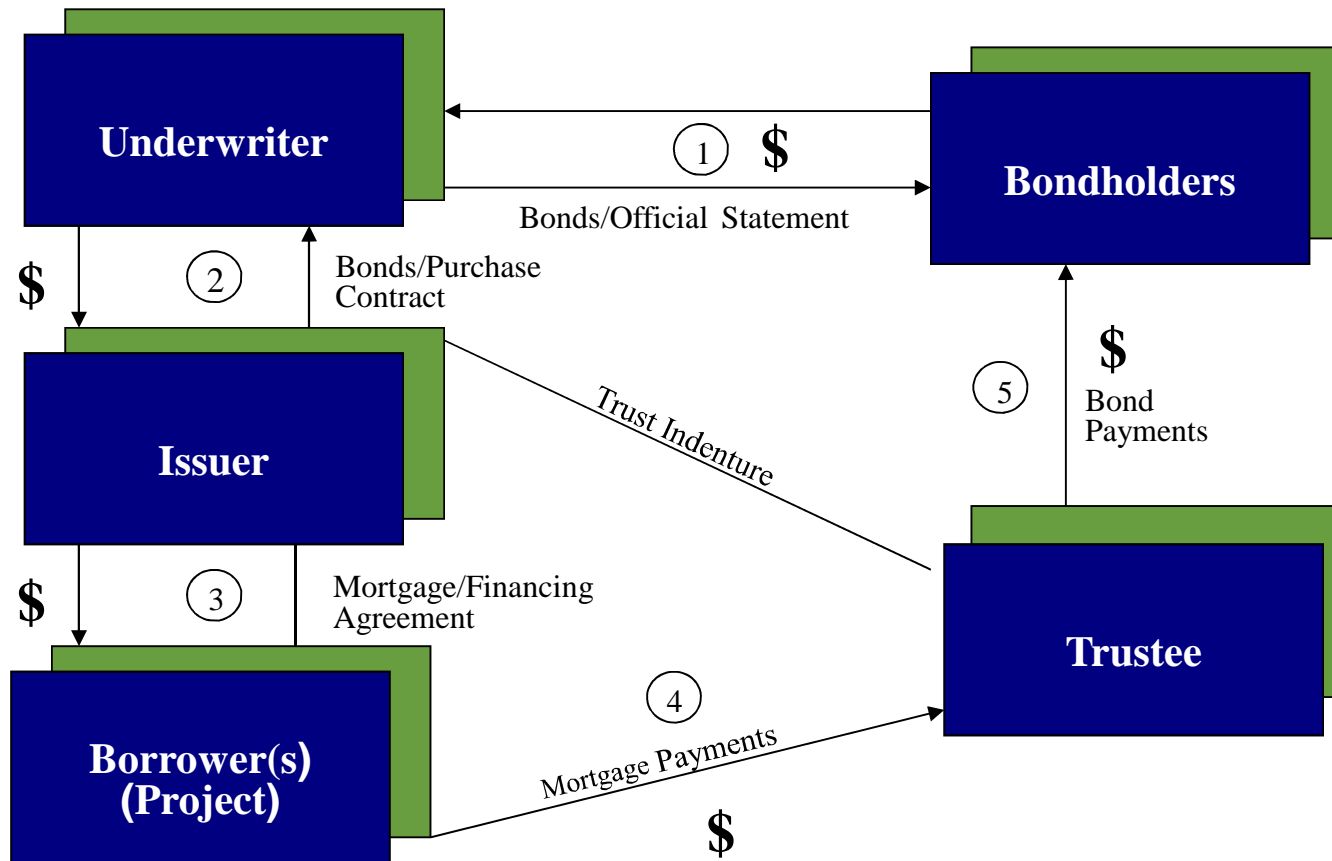
Source: CDFA Annual Volume Cap Report, July 2015

Steps for a Typical Bond Issuance

- Step 1** - Issuer analyzes proposed issue with Borrower, Financial Advisor, Bond Counsel and Underwriter.
- Step 2** - Issuer adopts a resolution stating its intention to proceed with the financing and to formally engage members of the financing team. If required, Issuer applies for State Volume Cap Allocation.
- Step 3** - Drafting is begun on the bond documents and offering documents (the Preliminary Official Statement). Cash flows and documents are sent to rating agencies. Rating agency discussions or investor meetings take place.
- Step 4** - Financing structure and documents are finalized. State Volume Cap Allocation is received and TEFRA hearing is held by Issuer. Parameter Bond Resolution is adopted.
- Step 5** - Preliminary Official Statement is mailed; Bond issue terms are discussed among the Issuer, Borrower, investors and the Underwriters.
- Step 6** - Bonds are offered by the Underwriters to investors. Bonds are underwritten at interest rates and terms agreed to by the Issuer and Borrower. Bond Purchase Agreement is executed among the Issuer, Borrower and Underwriters.
- Step 7** - Bond issue is closed. Underwriters wire bond purchase price to Trustee and take delivery of Bonds.
- Step 8** - Bond proceeds are available to be spent by Borrower.

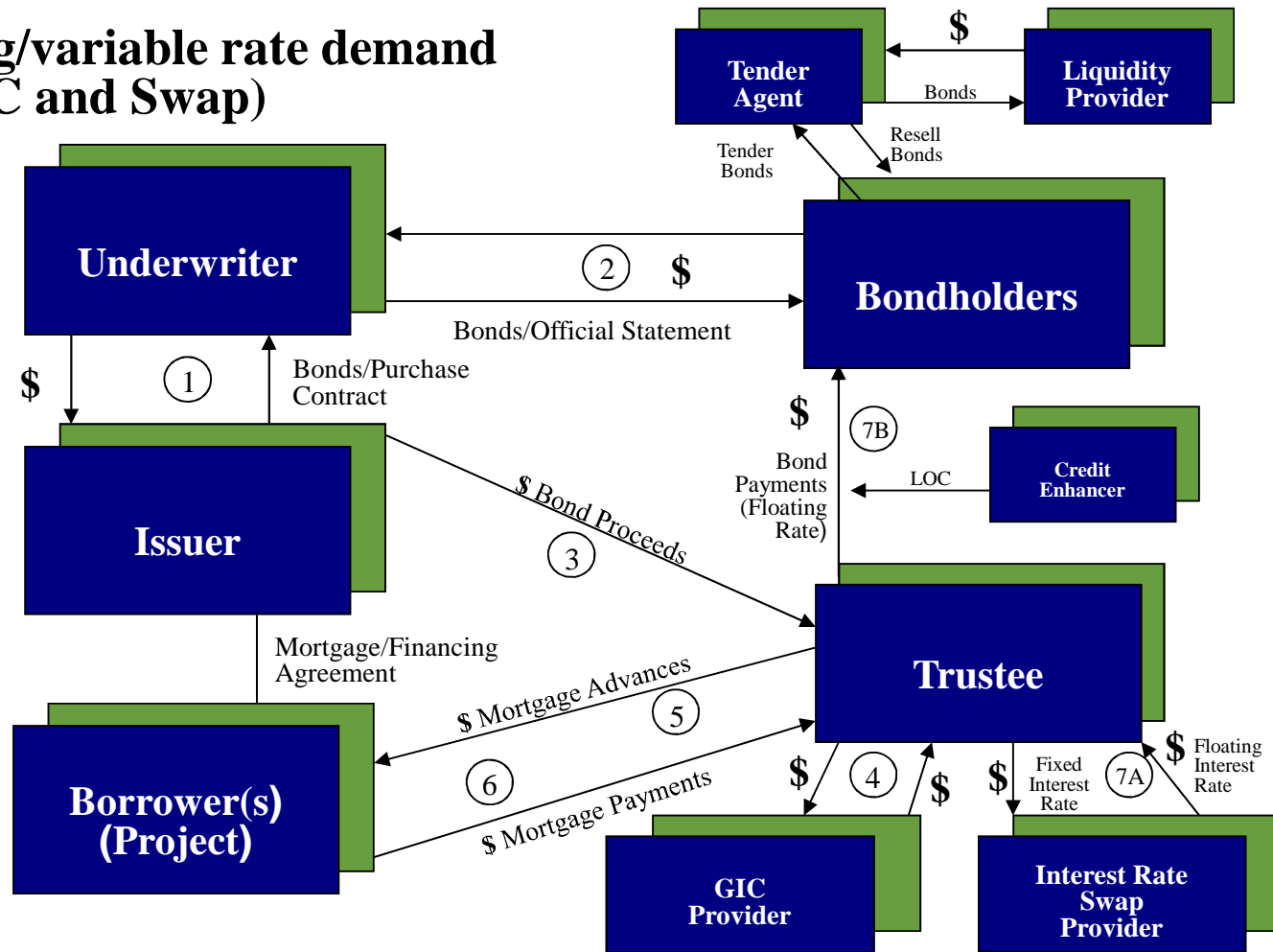
BOND ISSUE

(Simple fixed rate)



BOND ISSUE

(Floating/variable rate demand with GIC and Swap)



Parties to Transaction

- ▶ Issuer
- ▶ Borrower
- ▶ Underwriters
 - Senior Manager
 - Co-Managers
 - Sales & Trading
- ▶ Financial Advisor
- ▶ Bond Counsel
- ▶ Disclosure Counsel
- ▶ Underwriters' Counsel
- ▶ Issuer's Counsel
- ▶ DTC
- ▶ Rating Agencies
- ▶ Trustee
 - Paying Agent/Registrar
 - Authenticating Agent
- ▶ Bondholders
 - Retail
 - Bond Funds
 - Institutional Investors
 - Direct Purchaser
- ▶ Credit Enhancer
- ▶ Liquidity Provider
- ▶ GIC Provider/Broker
- ▶ Swap Provider/Advisor
- ▶ CPAs

Documents

- ▶ Loan Agreement
- ▶ Trust Indenture
- ▶ Resolution/Ordinance
- ▶ Tax Regulatory Agreement
- ▶ No Arbitrage Certificate
- ▶ IRS Form 8038
- ▶ Official Statement
- ▶ Bond Purchase Agreement
- ▶ Opinions
 - Bond Counsel
 - Disclosure Counsel
 - Issuer's Counsel
 - Borrower's Counsel

- ▶ Credit and Liquidity Agreements
- ▶ Continuing Disclosure Undertaking
- ▶ GICs and Swaps
- ▶ Collateral Security Documents
- ▶ Third Party Reports
 - Feasibility Report
 - Phase I Environmental Report
 - Title Insurance
 - Survey
 - Appraisal
 - Engineer's Report

Miscellaneous Stuff

- ▶ Tax Reform
- ▶ Derivatives
- ▶ Blue Sky
- ▶ Repeal of Tower Amendment
- ▶ Lore vs. Law
- ▶ Bond Politics
- ▶ Things that go bump in the night
 - Defaults
 - IRS Audits
 - Change in Use
 - Post Issuance Modifications and Reissuance
 - “Market Dislocations”

This Just In

- ▶ SEC MCDC Initiative
- ▶ Municipal Advisor Regulation
- ▶ MSRB Rule G-17 – SEC Interpretive Notice Relating to Role of Underwriters
- ▶ MSRB Rule G-34 – Liquidity Facility Disclosure
- ▶ SEC Enforcement Actions
- ▶ SEC Investor Alert Relating to Broker-Dealer Due Diligence
- ▶ IRS Report – Avoiding Troubled Tax-Advantaged Bonds
- ▶ IRS Conduit Issuer Publication
- ▶ GAO Report/SEC Report on Municipal Market Place
- ▶ Post Issuance Compliance Policies and Procedures

Questions?

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