build *partnerships*

FINANCING OPTIONS USING BONDS FOR ILLINOIS SCHOOL DISTRICTS

What is a bond and why would school districts want to issue a bond?

Bonds are a form of debt. In the public sector, "borrowers" or "issuers" of bonds are states, cities, villages, school districts and other local government entities that need money for a variety of reasons. Typically, a school district will want to issue a bond and pay principal and interest over time to spread out the burden of paying for new schools, improvements and other capital needs over the period of expected useful life of the financed assets, as opposed to increasing taxes or impacting its budget over a shorter term. Borrowing by a school district is highly restricted and must be done in accordance with Illinois law.

Use of bond proceeds by a school district

Municipal bonds can be issued by school districts for a variety of purposes, provided that their issuance accords with Illinois law. Commonly, school districts issue municipal bonds for capital projects, working capital needs or refinancing of prior debt.

A. New Projects. Generally, a school district compiles an annual capital improvement budget or prepares a "needs list," which consists of projects the school district considers to be important by means of its impact on the safety, resources and general well-being of the students and community served by the school district. Capital projects can be funded by federal or state grants and other miscellaneous revenue available for general purpose use. However, the primary sources of district funding to pay for capital projects are generally derived from the proceeds of municipal bonds. Projects involving the acquisition of school sites and buildings, construction of new school buildings and additions, and equipping, altering, repairing and reconstructing existing facilities, are examples of school district projects that are commonly financed with bonds. Thus, generally speaking, if a school district is building a new capital project, it is likely that the proceeds of a municipal bond issuance are financing all or a portion of the project.

Often times capital projects are of long term value to current and future students, as well as residents of the school district (such as new school buildings, maintenance of older facilities, expanding or updating current facilities, etc.). Hence, issuing bonds to fund a capital project allows current and future taxpayers within the district to pay related costs over the life of the project as they avail themselves of the benefits it bestows upon the district.

"Typically, a school district will want to issue a bond and pay principal and interest over time to spread out the burden of paying for public infrastructure over the period of expected useful life of the financed assets, as opposed to increasing taxes or impacting their budget over a shorter term. Borrowing by a school district is highly restricted and must be done in accordance with Illinois law."

B. Covering short-term (or long-term) needs. School districts can issue bonds to fund working capital expenditures that arise from a variety of circumstances. Traditionally, working capital bonds have been issued as short-term obligations where the proceeds are used to cover a district's temporary cash flow, or operating, deficit. Short-term budgetary deficits can arise from a mismatch between the receipt of annual revenues (property taxes or other) and the timing of annual expenditures of the issuer within a year. Tax anticipation warrants ("TAWs") are often issued in anticipation of taxes levied but not yet collected. TAWs may be issued in an amount up to 85% of the total amount levied for the particular fund against which the TAWs are issued. Longer-term working capital bonds have become more commonplace in recent times due to financial difficulties stemming from the recent economic crisis, which caused significant declines in property values. School districts use these longer-term working capital bonds to address structural deficits that are not the result of a mismatch of revenues and expenses. Tax anticipation notes allow a school district flexibility to balance out its revenue collections from anticipated levies with anticipated expenditures. A school district is permitted to incur debt by issuing a tax anticipation note in an amount not exceeding 85% of the taxes levied for the particular fund against which the notes are issued. Further, a tax anticipation note is required to mature within two years and may not be issued if there is an unpaid note from any prior year. Although tax anticipation notes are generally a means of balancing a school districts operating expenses with revenue collections, these notes may sometimes be used as a bridge to fund a pending capital project while the school district structures more permanent funding by the end of the year. Insurance reserve bonds, funding bonds, tort judgment funding bonds, interfund loans, interfund transfers, state aid anticipation certificates and working cash fund bonds are permitted under Illinois law assuming certain requirements are satisfied. Certain federal income tax issues exist in connection with working capital financings.

C. Refundings/Refinancings. Like a homeowner who refinances their mortgage when interest rates drop, a school district with outstanding debt can issue refunding bonds in order to take advantage of lower rates. Refunding bonds can also be issued to avoid default or restrictive debt burden. A refinancing can be done as a current refunding, which means the old bonds are called or mature within 90 days of the issuance of the refunding bonds, or an advance refunding (limited to one occurrence) where the old bonds are called on a specified call date and proceeds of the new refunding bonds are typically held in an escrow account until such later call date at least 90 days after the issuance of the refunding bonds. Refundings generally do not need to satisfy direct or backdoor referendum requirements.

> *"Types of Obligations that a school district may issue include general obligation bonds (i.e. building bonds, life safety bonds or funding bonds), alternate revenue source bonds, debt certificates/ installment contracts, leases, tax anticipation warrants, tax anticipation notes and revenue anticipation notes."*

Types of bonds

There are a number of different forms of bonds/debt that a school district may issue to meet its financing needs. Types of Obligations that a school district may issue include general obligation bonds (i.e. building bonds, life safety bonds or funding bonds), alternate revenue source bonds, debt certificates/ installment contracts, leases, tax anticipation warrants, tax anticipation notes and revenue anticipation notes. Refunding bonds have been issued more frequently in recent years due to the lower interest rate environment.

A. General Obligation Bonds. General obligation bonds or "G.O.'s" are debt issued by a school district representing its full faith and credit and backed by its ad valorem taxing power. A general obligation can be issued for any lawful purpose for which ad valorem taxes may be levied subject to constitutional, statutory, or other limitations (such as debt limitations discussed further below) and pursuant to proper constitutional, statutory, or other procedures. The School Code of the State of Illinois, as amended (the "Code") contains the guidelines for bond issuance by school districts.

Generally, the Code limits the amount of bonds that a school district may issue for a particular purpose. The Code also establishes the debt limit, or maximum amount of money a school district can borrow. For elementary and high school districts, the debt limit is 6.9% of the equalized assessed valuation of the district and for unit school districts, the debt limit is 13.8% of the equalized assessed valuation of the district. There are exceptions to the debt limit as outlined in the Code. For instance, if either (i) student enrollment increases or is projected to increase to certain levels and the majority of the electors approve the bond issue or (ii) a school board determines that additional facilities are required to provide a quality educational program and two-thirds of the electors approve the bond issue, a school districts debt limit can increase to 15%. The Code also allows for situations in which the debt limit can exceed 6.9%, 13.8%, or 15%. Bonds, as well as installment contracts, leases, debt certificates, judgments, tax anticipation notes, and teachers' orders, are among the borrowing options which count against a school district's debt limit. Generally, however, alternate bonds do not count against the debt limit.

1. Building Bonds. The Code requires that general obligation bonds issued to pay the cost of acquiring school sites and buildings, equipping, altering, repairing and reconstructing new and existing school buildings and additions secured by an ad valorem tax on all property in the district without limitation as to rate or amount must be approved by voters of the issuer by referendum held at a regularly scheduled election.

2. Life Safety Bonds. School districts can issue life safety bonds in order to alter, reconstruct and repair school buildings and permanent, fixed equipment and purchase and install equipment purchased for purposes of meeting requirements that are set forth in the building code promulgated by the State Board of Education of the State of Illinois for existing facilities that house students. In accordance with statutory procedures an architect or engineer conducts a survey of a school districts buildings and issues findings of such survey in a "safety survey report." The school board approves the safety survey report and submits it to the regional superintendent. The regional superintendent approves (or denies) the safety survey report and submits it to the state superintendent. The state superintendent approves (or denies) the report and issues a certificate of approval. Once approved, the regional superintendent issues an order to begin the project. Assuming the school district follows the procedures discussed above, life safety bonds are not subject to direct or backdoor referendum and are secured by an ad valorem tax on all the taxable property within the school district without limitation as to rate or amount, unless the school district is subject to the Limitation Law (discussed herein), in which case the ad valorem taxing power of the school district would still apply, however the amount of the levy would be limited by the school district's extension base.

3. Funding Bonds. Funding bonds may be issued in order to pay teachers' orders or claims including lease obligations that a school district cannot meet from current revenues. In order to issue funding bonds, a school district follows a procedure similar to other backdoor referendum processes: (i) the school board adopts a resolution declaring the district's intent to issue bonds for a qualifying purpose; (ii) notice of intent to issue the funding bonds is published in a newspaper within the district and if there is no newspaper within the district then a newspaper having general circulation within district; (iii) the notice must inform voters of the district's intent to issue bonds and that the bonds shall be issued unless a requisite number of voters[1] sign a petition and present such petition to the board secretary within 30 days of publication of the notice.

"Bonds, as well as installment contracts, leases, debt certificates, judgment, tax anticipation notes, and teachers orders, are among the borrowing options which count against a school district's debt limit. Generally, however, alternate bonds do not count against the debt limit."

1 The petition must be signed by voters of the district equal to 10% or more of the registered voters of the district requesting that the proposed funding bonds be submitted to all of the voters of the district at the next prospective referendum date.

"Apart from coverage requirements, alternate bonds are subject to a backdoor referendum."

B. Alternate Revenue Bonds. Alternate revenue bonds or "double-barreled" bonds are essentially revenue bonds issued under the Local Government Debt Reform Act (the "Debt Reform Act") with the general obligation of the school district serving as backup security for the bonds. School districts are authorized to use any lawfully available revenue source as a pledge of security for the payment of principal and interest on alternate bonds. The intent of the Debt Reform Act is to permit the issuance of the alternate revenue bonds assuming the pledged revenue source is sufficient so that the tax levy relating to the debt service on the alternate bonds does not need to be extended. The coverage requirements provide that the school district must demonstrate that such pledged revenue source be sufficient in each year the bonds remain outstanding to provide not less than 1.25 times (1.10 times if the revenue source is either (i) federal or state funds that the school district has received in some amount during each of the three fiscal years preceding the issuance of the alternate bonds or (ii) revenues to be received from another governmental unit under an intergovernmental cooperation agreement) debt service on all outstanding alternate bonds payable from such revenue source and on the alternate bonds proposed to be issued.

Apart from coverage requirements, alternate bonds are subject to a backdoor referendum. The backdoor referendum gives registered voters the opportunity to petition the school district to submit the question of issuing the alternate bonds to referendum. However, the petition must be submitted within thirty days after publication of the authorizing resolution and be signed by the greater of (i) 7.5% of the registered voters of the district or (ii) the lesser of 200 of the registered voters or 15% of the registered voters.[2]

County School Facility Occupation Taxes. In 2007, the Illinois General Assembly enacted the County School Facility Occupation Tax Law (P.A. 95 0675) (the "School Sales Tax Law") which authorizes the county board of any county, other than Cook County, to impose a county sales tax to be used exclusively for school facility purposes (the "School Sales Taxes"). "School facility purposes" is defined in the School Sales Tax Law and includes the acquisition, development, construction, reconstruction, rehabilitation, improvement and financing of land, buildings, structures and equipment. The tax may be imposed only in .25% increments and may not exceed 1%. Numerous counties in Illinois have imposed the School Sales Taxes.

2 In school districts with fewer than 500,000 inhabitants, other than most public infrastructure projects such as public school projects, the necessary number of necessary petition signers for a school district with more than 4,000 registered voters is the lessor of (i) 5% of the registered voters or (ii) 5,000 registered voters; and the necessary number of electors for a school district with 4,000 or fewer registered voters is the lesser of (i) 15% of the registered voters or (ii) 200 registered voters.

A county may impose the Sales Taxes only after the question of imposing the tax has been submitted to the electors of the county at a regular election and approved by a majority of the electors voting on the question. Once implemented, Sales Taxes are collected and distributed by the county to school districts within the county on an enrollment basis. Sales Taxes are a common revenue source that is pledged by school districts when issuing alternate revenue bonds.

No referendum is required for a new or replacement school if financed with alternate revenue bonds with School Sales Taxes as a pledged revenue.

C. Leases. School districts are empowered to enter into multi-year lease, purchase and lease-purchase contracts for equipment and property to be acquired. There are a number of conditions imposed upon such lease agreements. Leases related to buildings, rooms, grounds and appurtenances for district related purposes may be entered into for a term not exceeding 99 years if certain requirements are met. The principal amount of the borrowing and the interest related under any such lease agreement must be repaid within 40 years. Leases related to real or personal property such as a school site, building or equipment, may be entered into for term not exceeding 20 years. A form of lease that may be offered to the public is known as a Certificate of Participation ("COPs"), which is a repayment obligation governed pursuant to an installment contract or lease agreement. Under the Debt Reform Act, a school district's ability to issue debt certificates, as described below, make the issuance of COPs unnecessary.

D. Debt Certificates/Installment Contracts. School districts are authorized to borrow money by entering into installment finance agreements. There are statutory specifications as to what constitutes an installment contract. The Debt Reform Act authorizes school districts to purchase or lease either real or personal property through the use of installment contracts not exceeding 20 years in length. Debt certificates may be issued by a governmental unit to evidence the payment obligations of the governmental unit under a lease or installment contract subject to statutory debt limit. There is generally, however, no separate tax levy available for the purpose of making such payments lease or installment payments, it is considered a promise to pay by way of budgetary appropriation. However, a school district not subject to the Limitation Law may enter into an installment contract payable from the levy of a direct, unlimited ad valorem property tax sufficient to pay the installments if certain backdoor referendum requirements are satisfied. The debt certificates are valid regardless of whether an annual appropriation is included in any annual or supplemental budget adopted by the district.

E. Limited Bonds. These bonds are issued in lieu of G.O.'s that have otherwise been authorized by applicable law as described herein. These bonds are payable from a separate property tax levy with no limit on the rate, but the Limitation Law restricts the amount of taxes that can be used to pay the bonds. These bonds are payable from a school district's debt service extension base.

"The Debt Reform Act authorizes school districts to purchase or lease either real or personal property through the use of installment contracts not exceeding 20 years in length."

F. Working Cash Fund Bonds. The purpose of these bonds is to create or increase a working cash fund. If a petition with signatures of at least 10% of the registered voters in the district is filed with the secretary of the school board within 30 days of the school district's publication of the intent to issue the bonds, then the issuance is subject to approval of the electorate. The principal amount of these bonds cannot exceed 85% of the taxes allowed to be levied for educational purposes for the current year plus 85% of the last known personal property replacement tax entitlement minus the greater of (i) the principal amount of the school district's working cash fund bonds outstanding or (ii) the amount to the credit of the district's working cash fund.

TABLE OF FINANCING OPTIONS USING BONDS FOR ILLINOIS SCHOOL DISTRICTS

Type of Debt	Security	General Requirements
General Obligation *Building Bonds*	Full faith and credit and backed by the ad valorem taxing power of the district.	Referendum. Statutory Debt Limit applies.
General Obligation *Life Safety Bonds*	Full faith and credit and backed by the ad valorem taxing power of the district.	Meet Life Safety rules with architect report, regional and state superintendent approval. Statutory Debt Limit applies. BINA required for certain Life Safety Bonds.
General Obligation *Funding Bonds*	Full faith and credit and backed by the ad valorem taxing power of the district.	Notice of intention resolution, backdoor referendum procedures and BINA. Statutory Debt Limit applies.
Alternate Revenue Bonds	"Double-barreled" – payable from a specific revenue source with the general obligation of the district serving as backup security.	Pledged revenues must meet 1.25 times debt service coverage requirement. Backdoor referendum procedures and BINA required. Generally, no Statutory Debt Limit.
Debt Certificate	No separate tax levy backing, obligation is a promise to pay by means of budgetary appropriation (no annual appropriation risk).	Borrow money by entering into installment contract agreement. Statutory Debt Limit applies.
Limited Bonds	Full faith and credit and backed by the ad valorem taxing power of the District.	Bonds otherwise authorized pursuant to applicable law and payable from debt service extension base unlimited as to rate but limited as to amount.
Working Cash Fund Bonds	Full faith and credit and backed by the ad valorem taxing power of the District.	Backdoor referendum procedures, Statutory Debt Limit applies. BINA required.

Types of Bond Sales

Once the school district makes a decision to raise capital by means of bonding, it must next consider which method of finding a "lender" or buyer of the bonds works best. Illinois school districts have flexibility as to the method of sale. A competitive sale of school district bonds is not required. The method by which to attract potential investors of bonds can be a critical component to the resulting interest rate the school district will pay to service its bonds. A credit rating is not legally required to be obtained by the school district in order to issue bonds. However, a credit rating may help lower interest costs, particularly in the case of public bond issuances. The following parts of this section discuss different forms of offering bonds to investors or "lenders" that are typically used.

A. Negotiated sale. In a negotiated sale, the process begins with the issuer choosing an underwriter (or managing underwriter if more than one underwriter). The issuer and the underwriter then negotiate the terms of the offering. Once terms of the offering and assuming all procedural issuance requirements are met by the issuer, the underwriter will buy the bonds from the issuer and remarket the bonds to its investors accordingly.

B. Competitive sale. In a competitive sale, bonds are advertised for sale. The announcement, by way of a notice of sale, includes both the terms of the sale and the terms of the bond issue. Any investment bank, broker-dealer or dealer bank may bid on the bonds at the designated date and time in a "blind" fashion, meaning each bidder does not have knowledge of the other bids. The bidder with the lowest interest cost is awarded the bonds.

C. Direct placement. Direct placement or direct lending in the context of municipal bonds refers to any arrangement in which a single lender/buyer, such as a bank, pension fund, mutual fund, etc., purchases the bonds of the school district directly. This form of sale may also be described as a private placement, a direct purchase or a bank loan. Advantages such as avoiding instability in public markets, avoiding continuing disclosure requirements, and avoiding the rating process make direct placements an attractive option for issuers.

D. Bank qualified or non-bank qualified. Pursuant to Section 265(b)(3) of the Tax Code, banks and savings and loans are not permitted to deduct interest expenses attributable to tax-exempt bonds acquired after the passage of the Tax Reform Act of 1986, or August 1, 1986, unless the "small issuer exemption" applies. If a school district anticipates that it will not issue more than $10,000,000 of tax-exempt debt during the calendar year and the debt is designated as a "qualified tax-exempt obligation" pursuant to Section 265(b)(3), the restriction on the deduction for interest expense does not apply. Issuing so called bank qualified bonds or "BQ" bonds can reduce the interest rate on the bonds since banks that purchase bank qualified bonds do not have a restriction on its interest expense deduction.

"Illinois school districts have flexibility as to the method of sale. A competitive sale of school district bonds is not required. The method by which to attract potential investors of bonds can be a critical component to the resulting interest rate the school district will pay to service its bonds."

> *"Adherence to federal and state laws is a required component of any bond issuance for the borrowing to be binding and legally valid."*

Relevant Laws

Adherence to federal and state laws is a required component of any bond issuance for the borrowing to be binding and legally valid. Below is a sampling of current laws governing the borrowing activities of school districts.

A. Illinois State Law. The Code, Debt Reform Act, the Property Tax Extension Limitation Law of the State of Illinois, as amended (the "Limitation Law"), the Bond Issue Notification Act of the State of Illinois, as amended ("BINA"), the Bond Authorization Act of the State of Illinois, as amended (the "Authorization Act"), the Registered Bond Act of the State of Illinois, as amended (the "Registered Bond Act"), and the Bond Replacement Act of the State of Illinois, as amended (the "Replacement Act") all authorize and govern the issuance of municipal bonds by school districts in the State of Illinois.

The Debt Reform Act was adopted by the Illinois General Assembly to provide supplemental authority to local governmental units regarding the issuance and sale of bonds to accommodate market practices that resulted in additional costs for those citizens residing in local governmental units which were affected by higher rates than would otherwise be necessary. Pursuant to the Debt Reform Act, whenever the authorization of or the issuance of bonds is subject to either a voter referendum or a back door referendum, the approval, once obtained, remains effective (a) for five years after the date of the referendum or (b) for three years after the end of the petition period for the back door referendum.

Pursuant to BINA, school districts proposing to sell non-referendum general obligation bonds or limited bonds, except refunding bonds and certain life safety bonds, must hold at least one public hearing concerning the school district's intent to sell the bonds. Notice of the hearing must be published in a newspaper in general circulation in the school district by the secretary of the school board not less than 7 but not more than 30 days prior to the hearing. At least 48 hours prior to the hearing, the notice must be posted at the school board's primary office. The notice must appear above the name or title of the secretary of the school board. The governing board must then wait at least 7 days following the hearing before adopting a resolution providing for the issuance of the bonds.

B. Property Tax Extension Limitation Law of the State of Illinois. The Limitation Law limits the annual growth in the amount of property taxes to be extended for certain Illinois non-home rule units of government. In general, the annual growth permitted under the Limitation Law is the lesser of 5% or the percentage increase in the Consumer Price Index during the calendar year proceeding the levy year. Taxes can also be increased due to new construction, referendum approval of tax rate increases, mergers and consolidations. The Limitation Law currently applies to Cook County, the collar counties, and counties that have specifically approved the Limitation Law by referendum. Under the legislation, the county board of any such county can initiate a binding tax cap referendum at any regularly scheduled election other than the consolidated primary, which is the February election in odd-numbered years. If the referendum is successful, then the Limitation Law will become applicable to those non-home rule taxing bodies having all of their equalized assessed valuation in the county beginning January 1 of the year following the date of the referendum. School districts subject to the Limitation Law are able to issue limited bonds in lieu of general obligation bonds authorized by applicable law payable from a separate tax levy unlimited as to rate but limited by amount pursuant to the Limitation Law. Limited bonds are payable from the school district's debt service extension base (generally nonreferendum bond levy (excluding alternate bonds) for year to which Limitation Law first applied). The Limitation Law does not restrict referendum approved general obligation bonds and alternate bonds.

E. Federal Income Tax Law. The Internal Revenue Code of 1986, as amended (the "Tax Code") and the arbitrage and rebate regulations promulgated thereunder (the "Regulations") govern the tax-exempt status of municipal bonds. Upon issuance of any municipal bond, the school district will covenant to follow certain federal rules and regulations in order to maintain the tax-exempt status of the bonds. These covenants include reasonable expectations that the bonds are not private activity bonds, meaning they generally benefit a private entity, nor are they arbitrage bonds, which are issued to profit from the difference between tax-exempt and taxable rates, pursuant to the Tax Code and the Regulations.

F. Securities Laws.

1. Rule 10b-5. Rule 10b-5 of the Securities Exchange Act of 1934 (the "Rule 10b-5"), states that:

> It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any national securities exchange,
>
> (a) To employ and 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. 17 C.F.R. §240.10b-5.

> ***"School districts subject to the Limitation Law are able to issue limited bonds in lieu of general obligation bonds authorized by applicable law payable from a separate tax levy unlimited as to rate but limited by amount pursuant to the Limitation Law."***

"Issuers should adopt 'best practices' to protect themselves and their officials from antifraud provisions including, but not limited to, hiring of disclosure counsel, which is a law firm typically representing the issuer on disclosure issues, and the adoption of effective disclosure policies and procedures that ensure appropriate disclosure."

Rule 10b-5 sets out the general statement of federal intent to protect investors against misleading statements or omissions of important facts in official statements or other documents pertaining to the bond issuance. Full disclosure for bond purposes means disclosure of all information material to investors. Recent SEC enforcement actions and a speech from an SEC commissioner indicate a vigorous enforcement initiative on bad disclosure practices targeting issuers and their officials. Issuers should adopt "best practices" to protect themselves and their officials from antifraud provisions including, but not limited to, hiring of disclosure counsel, which is a law firm typically representing the issuer on disclosure issues, and the adoption of effective disclosure policies and procedures that ensure appropriate disclosure. Based on recent enforcement actions against big and small issuers (ranging from large states to small local municipalities), claiming "small unsophisticated issuer" as a defense may not be viable.

Continuing Disclosure. Rule 15c2-12, governs the preparation and distribution of official statements for municipal securities. While this Rule applies primarily to directly regulated entities such as underwriters, broker-dealers and dealer banks, a significant portion of the burden of compliance with Rule 15c2-12 falls on the issuer to supply certain information and disclosure and to take the proper steps to comply with Rule 15c2-12 in a timely fashion. As an example of the importance of meeting continuing disclosure requirements, the Securities and Exchange Commission ("SEC") recently charged a school district in Indiana and a municipal bond underwriter with falsely stating to bond investors that the school district had been properly providing annual financial information and notices required as part of its bond offerings. Without admitting to or denying the SEC's findings, the school district was ordered to cease and desist from violating securities laws and undertake remedial actions and the underwriter agreed to a $580,000 fine along with a one-year collateral bar and permanent supervisory bar for one of its employees.

The SEC recently announced its Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative") to address potentially widespread violations of the federal securities laws by municipal issuers and underwriters of municipal securities in connection with certain representations about continuing disclosures in bond offering documents. The MCDC Initiative provided issuers and underwriters an opportunity to self-report materially inaccurate statements made in final official statements regarding prior compliance with their continuing obligations as described in Rule 15c2-12. The MCDC Initiative began March 10, 2014 and ended for issuers at 12:00 a.m. EST, December 1, 2014 (the deadline for underwriters was September 10, 2014).

Recently, a California school district was charged in the SEC's first MCDC-related case. The Kings Canyon Joint Unified School District was charged with misleading bond investors about its failure to provide contractually required financial information and notices as part of a November 2010 $6.8 million bond offering. Kings Canyon agreed to settle the charges without admitting to or denying the findings. The settlement includes consent to an order to cease and desist from committing or causing any future violations of Section 17(a) of the Securities Act, adopt written policies for its continuing disclosure obligations, comply with existing continuing obligations, cooperate with any future enforcement investigation, and disclose the settlement terms related to the case in any future bond offerings. This decision illustrates the importance of compliance with the continuing disclosure obligation, as the SEC has not specified the level of disclosure failure and the specific omission which led to the violation.

State Blue Sky Laws. The offering, sale and purchase of securities in Illinois are governed by the Illinois Securities Law of 1953, 815 ILCS 5/1 (the "Blue Sky Law"). The Blue Sky Law provides for registration of securities, licensing and regulation of securities broker-dealers, agents, investment advisers, and investment adviser representatives. Subject to statutory exemptions or exceptions, offers and sales of securities in Illinois which are not covered by federal securities law must be registered by coordination or qualification procedures, as applicable. Registration statements for offerings registered by qualification in Illinois must contain full and fair disclosure of all material facts regarding the investment offered and present specific categories of information and financial statements pursuant to the Blue Sky Law.

Municipal Advisor rules. September 20, 2013 marked the official adoption by the Securities and Exchange Commission ("SEC") of its final rules for municipal advisors ("Final Rules"), as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Further, the SEC released additional guidance in May of 2014.

> *"While underwriters have long been regulated by the SEC and other regulatory bodies, the regulation of municipal advisors pursuant to the Final Rules is new. The Final Rules took effect on July 1, 2014. Issuers of municipal securities will likely notice changes."*

While underwriters have long been regulated by the SEC and other regulatory bodies, the regulation of municipal advisors pursuant to the Final Rules is new. The Final Rules took effect on July 1, 2014. Issuers of municipal securities will likely notice changes. While the issuer is not required to hire a municipal advisor, the Final Rules require registration of municipal advisors, define who is a municipal advisor and impose certain limitations on underwriters. An underwriter is exempted from registering as a municipal advisor as long as certain protocols are followed. To qualify for the underwriter exemption, the underwriter must have an engagement to act as underwriter on a specific issuance of municipal securities. Inclusion in a pre-approved underwriting pool is not sufficient. Engagement letter may state that it is preliminary and non-binding, is subject to applicable procurement laws, formal governing body approval, final bond structuring and execution of a bond purchase agreement, may be terminated by either party without liability, and does not prevent the issuer from engaging other underwriters, or from selecting a different underwriting group. Oral or written acknowledgment of engagement from the issuer/obligated person is permitted. Preliminary, non-binding engagement is permitted so long as issuer/obligated person reasonably expects to formally engage the broker-dealer as underwriter. Multiple engagements are permitted, and there is no need to specify status as senior or co-manager.

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