



An Analysis of the Municipal Advisor Rule

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What's Going On

- Congress as a result of the financial crisis of 2008 decided the industry needed major changes
- One of those changes included making sure issuers of securities (like you) are protected
- Those protections include an effort to improve disclosure of companies that underwrite your bonds
- Additionally those protections included requiring “advisors” to register with the SEC and MSRB
- Those advisors then were recommended to assist you in limiting the liability that exist in bond deals

Who's Who

- Bond Counsel - Gives opinion that securities are valid and opines on tax-exempt status
- Underwriter - Purchases securities from an issuer and resells to investors
- Underwriter's Counsel - Advises underwriters on their legal position with respect to the issue
- Issuer's Counsel - Advises issuers on their legal position with respect to the issue
- Municipal Advisor - Acts as a fiduciary to the issuer; oversees entire financing process

Financings vs Bonds

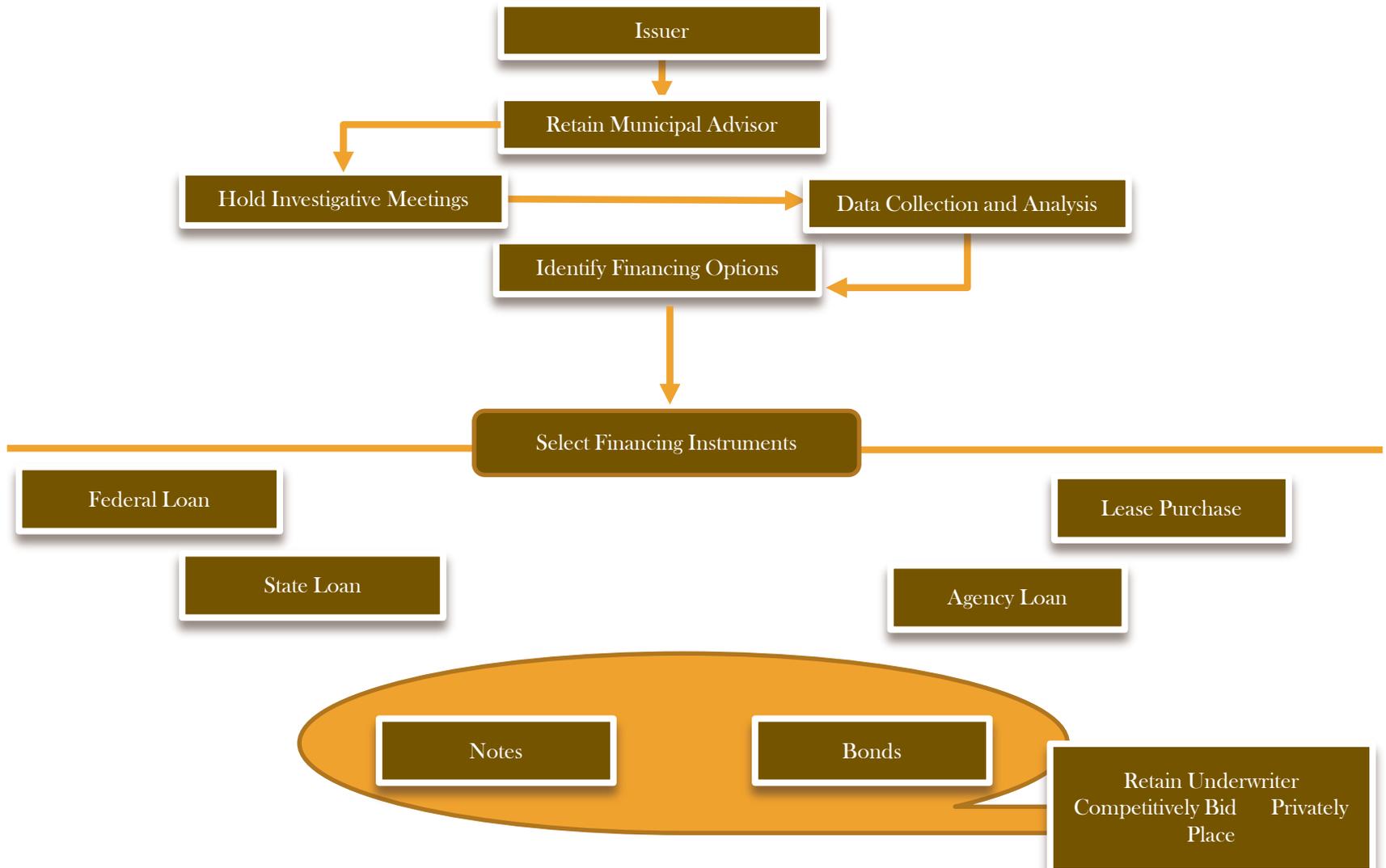
- Federal loans (USDA loans)
- State loans (OWDA loans)
- Agency loans (OAQDA loans)
- Leases or Certificates of Participation
- Notes
- Bonds

Decisions

- Decisions that issuers should seek “Independent Advice” before making:

Negotiate the issue	Use term bonds
Competitively bid the issue	Use bifurcated coupons
Privately place the issue	Attend the bond sale (pricing) in person
Use more than one bond underwriter	Hold a retail order period and offer bonds to residents
Split an issue between calendar years	Accept bids based on comparables or market conditions
Use an Official Statement in conjunction with the issue	Require the underwriter to take more risk
Obtain a rating(s) for the issue	Agree to the allocation of bonds for co-managers
Use Moody's, S&P, or Fitch	Agree to the terms of the note/bond purchase agreement
Travel to Chicago or New York for the rating presentation	Have other plans should the pricing or closing be unsuccessful
Use aggressive call features	Whether underwriter met requirements under MSRB rule G-17
Use callable premium bonds (kicker bonds)	Whether or not to use Bond Insurance

Recommended Process



MSRB Rule G-17

- ❖ An Underwriter:
 - Must deal fairly at all times with both municipal issuers and investors
 - Must disclose it has financial and other interests that differ from those of the issuer
 - Does not have a fiduciary duty to the issuer
 - Is not required by federal law to act in the best interest of the issuer
 - Must purchase securities from the issuer and sell to investors at a fair and reasonable price
 - Has a responsibility to investors to review the issuer's OS for compliance with securities laws

SEC Municipal Advisor Rule

- Took effect January 13, 2014
- Municipal advisors must be registered and subject to SEC and MSRB regulations
- Municipal advisors have an explicit fiduciary duty to their clients
- A fiduciary duty is a legal duty to act solely in another party's interests
- A fiduciary duty is the strictest duty of care recognized by the US legal system
- GFOA “strongly” recommends that you hire a M.A. for your bond transactions.

SEC Municipal Advisor Rule

- Underwriters or other professionals **CANNOT** recommend financings unless they are exempted
 - Exemptions from the Municipal Advisor Rule include:
 - You've retained an independent municipal advisor and you disclose this in writing
 - You seek a Request for Proposals (RFP)
 - You engaged an Underwriter or a signed letter of intent early in the financing process

- Underwriters **CAN** communicate general market conditions, issues, and ideas
- Advice includes specific recommendations with respect to municipal financial products
- Advice does not include general market information or other widely disseminated information

Municipal Advisor Qualifications

- Registration with the proper Federal Agencies
- Absence of conflicting responsibilities
- Financial strength and professional liability coverage
- Established track record of service, expertise, and finance industry knowledge
- Adequate staffing to assure reliable service, and to maintain regulatory compliance
- An ability to unconditionally represent your best interests

Questions



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