THE FINANCING TEAM

Most financings require the services of experienced legal and financial professionals. Some are essential, such as Bond Counsel and Municipal Advisor. It is advisable to periodically review contracts with long-standing paid advisors. Some municipalities are not required to go through a formal procurement process for bond related services, however, if the Issuer[1] desires to go through this process, they may periodically re-advertise for bond professionals. Request for Proposal (RFPs) should be sent to several specialist candidates. The proposals received can then be compared and evaluated to form a basis for selection of the professionals. The Government Finance Officers Association (GFOA) publishes several Best Practices designed to assist state and local governments in the selection of finance professionals.

The Debt Management Division – Municipal Debt Advisory Commission (MDAC) web page has annual MDAC reports showing data on private sector professionals with whom an Issuer may contract for services. Large, frequent issues of debt may have in-house staff with sufficient experience to plan and execute a significant portion of the work related to a bond sale.

The Municipal Debt Advisory Commission (MDAC) exists for the purpose of assisting local municipalities with bond sales and encourages local officials to make use of its services. It is recommended that all governments with borrowing authority acquire at least a procedural knowledge and understanding of debt issuance before attempting to sell bonds.

ISSUER/BORROWER

Issuers are the legal entity responsible for authorizing the documents related to the bond sale. This role is generally filled by a local, regional, or state government. The Issuer is generally the entity receiving the bond proceeds, i.e. the Borrower, but in some instances, the two roles may be different. While the Issuer is the legal entity enabling the sale, the Borrower is the entity that, either directly or through additional documentation, is obligated to repay the bonds. Issuers are governed by elected or appointed government officials who authorize the issuance of the bonds. Some Issuers authorize the issuance of bonds for other entities not directly affiliated with the Issuer. This type of issuance is often called a conduit financing. In Oregon, conduit financings are most common for private college, non-profit, housing, and healthcare facilities.

[1] The term "Issuer" is a general reference to issuing districts, municipalities, and local governments.

ISSUER AND/OR BORROWER LEGAL COUNSEL

Issuers and Borrowers often have their own legal counsel, i.e. a city attorney, general counsel, county counsel, etc.; however, most school district Issuers do not. Bond investors need assurance that the Issuer and/or the Borrower have properly authorized the bonds. Each entity must comply with both state laws and local authorizations. Thus, it is important that the legal counsel has a close working relationship with the Issuer/Borrower and understands authorization rules. It is also often important that the Issuer/Borrower counsel reviews bond documents to ensure accuracy and that any Issuer/Borrower commitments in the bond documents do not conflict with the Issuer/Borrower's other policies and rules.

Local or Issuer staff attorneys often play an important role in bond sales. They are especially vital in ensuring that municipalities are in compliance with local election, meeting, filing, disclosure laws, and other regulations or actions related to the borrowing. Usually in concert with recognized Bond Counsel, they advise in a legal capacity prior to the actual issuance of a legal opinion on the bonds. While the local attorney may perform many of the same or similar legal functions of the Bond Counsel, they do not act as recognized Bond Counsel. Recognized Bond Counsel frequently perform these duties for Issuers when local legal staff are not involved.

BOND COUNSEL

Bond Counsel is an important resource in the debt issuance process. Bond Counsel delivers an opinion, generally to the Issuer, confirming the legality of the bond offering.

Bond Counsel serves two primary functions:

- Opining on the validity of a borrowing.
- Opining on the tax-exempt status of a borrowing.

The legal opinion must be unconditional and is essential for a bond issue to be marketable.

Because of market demands, only a law firm that is recognized as Bond Counsel through experience should act as Bond Counsel. A local attorney or law firm inexperienced in bond matters will rarely be acceptable to the market. Local attorneys may be, and often are, employed for other purposes to assist with debt issuance. Although Bond Counsel are not specially certified or licensed, they must command the confidence and respect of the investment community.

Bonds that are to be marketed nationally should use a "nationally recognized" Bond Counsel. *The Bond Buyer's Municipal Marketplace (the "Red Book")* is a trade periodical which lists firms recognized nationally as Bond Counsel; national firms are those whose legal opinion is recognized in any geographic area. The Debt Management Division can also provide a list of names and addresses of Bond Counsel firms doing business in Oregon and the Pacific Northwest. Related information is available in the Municipal Debt Advisory Commission annual report.

The services of Bond Counsel include:

- Analyzing the project and potential security and determining whether the proposed borrowing may be legally authorized.
- Authorizing the issuance of the bonds and, when appropriate, delegating authority for certain actions.
- Drafting documents which may include a trust indenture, resolution, ordinance, ballot title, Revenue Bond declaration or other document setting the terms of the bond.
- Drafting the Bond Purchase Agreement or, in conjunction with the Municipal Advisor, drafting/reviewing the notice of sale for a competitive bid.
- Examining all or part of the offering document, known as the Official Statement.
- Participating in due diligence calls with the Issuer, Municipal Advisor and/or Underwriter.
- Drafting the Continuing Disclosure Agreement (CDA) or certificate.
- Providing sample post-issuance compliance policy and procedures.
- Examining transcripts of proceedings to due authorization.
- Determining the bonds were legally executed.
- Submitting a written legal opinion on the legal validity and tax status of the offering and validity of borrowing.

MUNICIPAL ADVISORS

Municipal Advisors (MA, also referred to as Financial Advisors - FA) may provide a wide range of services to the municipal debt Issuer. In general, the Municipal Advisor will coordinate all elements of the bond sale from inception to closing, including advising the Issuer on the preferred method of selling the bonds (competitive, negotiated or direct placement). Optimally, a Municipal Advisor is competent and thoroughly knowledgeable in areas of local government laws and practices, investor attitudes and preferences, rating considerations, and the bond and money markets. The Securities Exchange Commission (SEC) and the Municipal Securities Rulemaking Board (MSRB) regulate Municipal Advisors. Beginning September 12, 2017, all Municipal Advisor professionals must take and pass the MSRB's Municipal Advisor Representative Qualification Examination (Series 50) to continue engaging in municipal advisory activities. The MSRB has a list of Municipal Advisor firms and Registered Associated Representatives.

Municipal advisory services are provided by independent consulting firms and by banks. The role of the Municipal Advisor is to provide advice to the Issuer regarding best practices for the sale of the bonds. Municipal Advisors negotiate the best terms on the bond sale for a negotiated issue or prepare the bonds for a competitive bid process. Direct placement issues may be closed without Municipal Advisor services.

The Municipal Advisor manages the sale process leading up to the sale of the bonds and advises the Issuer on business terms and the sale process. The Municipal Advisor should be hired before consideration is given to the method in which the bonds are to be sold as the method of sale decision will affect how Underwriters are selected for the bond issuance.

Municipal Advisors may prepare an overall financing plan, recommend the preferred method of sale, advise on marketing the bonds, assist with a presentation to rating agencies, schedule the timing of a bond sale, determine the range of interest costs for different alternative means of financing, provide an estimate of the costs of issuance, help decide on the bond structure and call provisions, set bid requirements, participate in pricing discussions for a negotiated sale, evaluate the sale when it is finished, prepare or review the Official Statement, and participate in a due diligence call to satisfy the informational needs of the prospective investors and regulatory requirements. The Municipal Advisor may also assist the Issuer in preparing an RFP for other service providers.

It is prudent to develop an RFP that describes the specific services the Issuer desires from a Municipal Advisor. This RFP should be sent to several consulting firms. The Debt Management Division (DMD) can provide a list of Municipal Advisors who have expressed an interest in working with Oregon bond Issuers. Related information is available in the Municipal Debt Advisory Commission annual report. Responses to RFPs from interested advisors enables a Issuer to choose which firm's services will best meet their needs. See GFOA Best Practice titled "Selecting and Managing Municipal Advisors" or request a sample RFP from DMD.

It is necessary that a formal, written contract be signed with the Municipal Advisor which specifies the duration of the engagement, scope of services, and the basis of compensation. Non-independent Municipal Advisors (those affiliated with broker/dealers) are prohibited from changing roles (i.e. resign as Municipal Advisor and become Underwriter) in the middle of a transaction. Municipal Advisors may bill on the basis of a flat rate, the amount of bonds sold, or time expended. If the Municipal Advisor is paid from bond proceeds, care should be taken to ensure the legality of such payment, in terms of the bond resolution and to plan for payment (if any), should the bonds not be sold. MA fees may be contingent upon the successful delivery of the bond issue. While this form of compensation is customary in the municipal securities market, this may present the appearance of a conflict or the potential for a conflict because it could create an incentive for the MA to recommend unnecessary financings or financings that are disadvantageous to the Issuer, or to advise the Issuer to increase the size of the financing.

UNDERWRITER / PRIVATE PLACEMENT AGENT / PURCHASER

Underwriters are securities firms and commercial banks that raise the capital an Issuer desires to borrow by soliciting investors to buy the bonds. The Underwriter ultimately purchases the entire bond issue, even maturities which have not received investor orders, and then resells the bonds to the investors. They may assist the Issuer and Municipal Advisor in providing services in planning and design of the borrowing, spreading the risk of the borrowing among several firms, and marketing the securities in the regional and national public debt markets.

The Underwriter's functions and responsibilities vary significantly, depending on whether the securities are sold using the competitive bid or negotiated method of sale. In a competitive sale, the Issuer and Municipal Advisor are responsible for the planning and design of the bond offering. The Issuer (with the assistance of a Municipal Advisor) solicits bids from competing Underwriters for the purchase of the Issuer's securities. The Underwriter in a competitive sale is also referred to as the Purchaser.

In a negotiated sale, the Underwriter is usually retained once the Issuer decides on a negotiated sale. The Underwriter may be involved in a presentation to rating agencies, schedule the timing of a bond sale, determine the range of interest costs for different alternative means of financing, provide an estimate of the costs of issuance, provide analyses on various bond structures and call provisions, prepare or review the Official Statement and participate in a due diligence call to satisfy the informational needs of the prospective investors and regulatory requirements. The Underwriter ultimately holds an order for investors to place orders for the bonds and then purchases the bonds on terms mutually agreeable to the Issuer and Underwriter.

Private Placement Agents are generally banks or securities firms which assist the Issuer in the arrangement of a bond sale directly to a bank or other sophisticated investors. A Placement Agent does not actually purchase the bonds from the Issuer; rather they arrange the bond sale to a third party for a fee. They are also involved in structuring the bond issue, preparing a term sheet to solicit banks, compiling a list of potential lenders and negotiating the terms of the issue on the Issuer's behalf.

UNDERWRITER’S COUNSEL

In negotiated sales, private placements or direct purchases, the Underwriter (or Placement Agent or Purchaser) may retain their own counsel. This firm is generally one of the same firms that act as Bond Counsel in other bond transactions, though they don’t perform both services on the same transaction. The Underwriter’s Counsel will review various aspects of the bond transaction to give assurances to the Underwriter and will negotiate the purchase agreement on behalf of the Underwriter/Purchaser. Underwriter’s Counsel is solely responsible to the Underwriter and therefore may negotiate terms on behalf of the Underwriter. Underwriter’s Counsel fees are often paid from the expense component of the Underwriter’s gross spread. Issuers should be mindful of this significant expense and reach agreement early in the sale process over the fee to be charged by Underwriter’s Counsel.

DISCLOSURE COUNSEL

A separate Disclosure Counsel is sometimes hired to prepare the Official Statement (OS), although an Issuer, Underwriter, Municipal Advisor or Bond Counsel may also prepare the Official Statement. Some Issuers who are frequently in the market with different teams of Underwriters prefer to retain a single firm to prepare the Official Statement to maintain consistency across many different transactions.

PAYING AGENT/FISCAL AGENT/REGISTRAR/TRUSTEE

The Paying Agent, Fiscal Agent or Registrar facilitates transactions with investors/purchasers of the bonds. The Paying Agent pays to the investors the periodic principal and interest payments throughout the life of the bonds. The Registrar registers the issue upon its sale and re-registers the issue as it is traded on the secondary market. The Registrar is responsible for maintaining records on behalf of the Issuer. When the Paying Agent is a commercial bank or trust company, it is recommended that the Issuer establish a contract containing time limits regarding forwarding funds to the Paying Agent to provide for payment of interest and maturing bonds. The contract would also specify the use of funds not needed to pay debt service, fees to be charged and specific services to be performed. The Paying Agent must be equipped to pay interest on and redeem bonds as they are due, to cancel bonds and coupons and handle lost or stolen bond issues.

The Trustee advocates for the interests of the bondholders, taking appropriate administrative and legal actions on their behalf to enforce the requirements of the bond obligation entered into by the Issuer. In the case of refundings with an escrow, Paying Agents serve in the Trustee role as refunding escrow deposit agent.

Escrow Agents are typically engaged for advance refunding of outstanding bonds. The Escrow Agent manages the refunding bond issue by holding the proceeds from the refunding bond issue in escrow and paying interest; the Escrow Agent also manages the refunded issue by redeeming/repaying the bonds on the call date.

Some Revenue Bond declarations call for a Trustee, who often serves in the role of Paying Agent: holding funds, purchasing the defeasance securities (typically SLGs or open market securities or Treasuries) and paying the debt service on the refunded issue up to and including the optional redemption date.

Prior to the 1990s, the Paying Agent and Trustee kept record of the investors so that timely payments could be made either by mail or wire to the bondholders. With the advent of electronic record keeping and banking, the Depository Trust Company (DTC) became the record keeper for most bond sales and therefore greatly reduced the role of tracking bondholders by Paying Agents and Trustees. These roles continue to exist for the payment of bonds largely as a backup, should the DTC ever discontinue this service.

AUDITORS / VERIFICATION AGENTS

The Official Statement for a bond issue should contain the Issuer's audited financial statements for the most recently completed fiscal year. Most Oregon governments are required by statute to have independent audits to ensure the financial statements are correctly presented and other directly related information is consistent with the financial statements.

When an Issuer sells advance refunding bonds, the proceeds of the bond issue are often placed in an escrow account and invested in securities that are specified in that Issuer's refunding bond documents. In this type of financing, a CPA firm plays the role of Verification Agent. Both MDAC and investors require an independent verification that cash and securities placed in the escrow account will be sufficient to pay off the refunded bonds.

RATING AGENCIES

One or more credit rating agencies such as Moody's Investors Service, Inc., S&P Global Ratings , Fitch Ratings and Kroll Bond Rating Agency appraise, analyze, and monitor the credit quality of an Issuer. These firms provide credit ratings for use by retail and institutional investors to gauge the credit and default risks inherent in the bond issue. The fee for the rating service is paid by the Issuer from bond proceeds and is based on the issue size, type, and complexity. The importance of a rating is dependent on a variety of conditions. The Municipal Advisor can assist municipalities with informational requirements for a bond rating and advice on the desirability of an Issuer presentation to the rating agencies. Often, the Issuer's Municipal Advisor or Underwriter will prepare a rating presentation and help the Issuer prepare for a call with the rating analysts.

CREDIT ENHANCEMENT PROVIDERS

An Issuer may choose to obtain credit enhancement to improve the rating to lower the cost of the borrowing. This enhancement is often in the form of a Bond Insurance Policy issued by a specialty insurance company. Another credit enhancement may be a guarantee from a higher rated credit. The Oregon State Treasury's (OST) guarantee of bonded debt service for qualifying districts under the Oregon School Bond Guaranty Program (OSBG) is an example.

Bond insurance essentially allows an insurance firm to "lend" its rating to a bond Issuer for a fee. The insurance acts to raise the credit quality of the Issuer for each insured issue, which may result in lower interest costs to the Issuer. Bond insurance costs vary based on the size of each issue, the security and the Issuer's underlying credit worthiness. The costs are also based on the total amount of future debt service requirements. Issuers should compare the cost of the insurance with the potential savings resulting from lower interest rates due to the higher credit rating. The insurance is only worthwhile if the present value interest savings from bond insurance exceeds the cost of the enhancement (insurance premium) or if the Issuer would be prevented from accessing the market without enhancement. A bond reserve surety allows Issuers to pay for a fully funded bond reserve rather than funding it with cash. The same entities that provide bond insurance often provide reserve sureties.

OFFICE OF THE STATE TREASURER

The OST has a wide range of financial responsibilities, including managing the investment of state funds, issuing all state bonds, serving as the central bank for state agencies, and administering the Oregon Savings Network.

The Debt Management Division (DMD) provides central coordination for all state issued debt, including General Obligation Bonds, Revenue Bonds, and certificates of participation. The Division monitors local and national bond markets, as well as financial and economic trends that impact bond issuance structures and interest rates. Fees charged for DMD services are detailed in OAR 170-061-0015.

Oregon School Bond Guaranty Program

Oregon voters approved Ballot Measure 54 at the November 1998 General Election. This Oregon Constitutional amendment allows the state to guarantee qualified General Obligation Bonds of eligible school districts, education service districts, and community colleges throughout Oregon. As a result, the program allows qualified districts to have their bonds rated based on the state's current credit rating. The program saves districts thousands of dollars in interest costs over the life of the districts' bonds and can be used alone or in conjunction with bond insurance.

The Oregon School Bond Guaranty Program (OSBG), as defined in Oregon Revised Statues 328.321 to 328.356 is administered by the OST. OST, in this capacity, filed Oregon Administrative Rules 170-063-0000 which guides administration of the program. OST began accepting requests for participation in January 1999.

The OSBG program requires the jurisdiction to submit an application, fee, current audited financial information, an authorizing resolution, and other documentation to the OST. Once the information is analyzed, a Certificate of Qualification is sent to the applicant. Issuers then choose to participate in the OSBG program based on their own cost-benefit analysis. For those Issuers who choose to use the OSBG program, a Confirmation Letter is sent to the Issuer once the Bond Counsel opinion, the final official statement, and other required documentation is received by OST.

Further information on the OSBG program is available on the OST web site.

Private Activity Bond Committee

Private Activity Bonds (PAB) are government tax-exempt debt instruments that provide a direct benefit to private businesses. They bear numerous restrictions imposed by federal and state regulations. Specifically, they are subject to the limitations and provisions of the Federal Tax Reform Act of 1986, section 141 of the Internal Revenue Code and ORS 286A.605 to 286A.645.

PABs use a municipality's tax-exempt status as a conduit to obtain tax-exempt interest rates. The Issuer incurs no legal responsibility to repay private activity conduit bonds; rather, the private business's credit quality provides the security for the debt financing and ultimately all repayment responsibilities.

State statue ORS 286A.615 empowers the Private Activity Bond Committee to carry out the following functions:

- Adopt by rule standards for amounts allocated to the Committee for further allocation for economic development, housing, education, redevelopment, public works, energy, waste management, waste and recycling collection, transportation and other activities that the Committee determines will benefit the citizens of the State of Oregon.

- Develop strategies for reserving and allocating the limit that are designed to maximize the availability of tax exempt financing among competing sectors of the Oregon economy.
- Survey the expected need for private activity bond allocations at least once each year.

The Legislative Assembly allocates the amount of federally authorized private activity bond volume cap among state agencies and the Private Activity Bond Committee for the two calendar years that begin in a biennium. Any volume cap not allocated by the Legislative Assembly is allocated by the Private Activity Bond Committee.

OAR 170-071-0005 and 170-061-0015 governs the PAB Committee's fees, operations, and allocation rules. Any volume cap that is not used by December 15 of each year is returned to the Private Activity Bond Committee; by explicit request, the Committee may extend to December 31. This unused volume cap then becomes carry forward, to be allocated during the first Private Activity Bond Committee meeting of the next calendar year. The carry forward allocation is able to be used within three years and expires December 31st of the third year. If this carry forward is not used, it is then permanently expired.

The PAB Committee shall, by statute and Administrative Rule:

- Support projects that increase the number of family wage jobs in this state.
- Promote economic recovery in small cities heavily dependent on a single industry.
- Emphasize development in underdeveloped rural areas of this state.
- Utilize educational resources available at institutions of higher education.
- Support development of the state's small businesses, especially businesses owned by women and members of minority groups.
- Encourage use of Oregon's human and natural resources in endeavors that harness Oregon's economic comparative advantages.

The PAB Committee meets quarterly and the staff of the Debt Management Division of the Office of the State Treasurer provides services to the PAB Committee. The Committee is responsible for processing requests by state and local Issuers for PAB current and carry-forward allocations. The PAB staff maintains the state's private activity bond volume cap records and provides all administrative support to the Private Activity Bond Committee.

Municipal Debt Advisory Commission

The Oregon Municipal Debt Advisory Commission (MDAC) was established in 1975 to assist local governments in the cost-effective issuance, sale, and management of their debt. The Commission is composed of seven members, including the State Treasurer (or his designee), three local government finance officers, one representative for the special districts, and two other public members.

State statue ORS 287A.634 empowers the Municipal Debt Advisory Commission to carry out the following functions:

- Collect, maintain, and provide information on bonds sold and outstanding and serve as a clearinghouse for all local bond issues.
- Maintain contact with municipal bond Underwriters, credit rating agencies, investors, and others to improve the market for public body bond issues.
- Undertake or commission studies on methods to reduce the costs of state and local issues.
- Recommend changes in state law and local practices to improve the sale and servicing of local bonds.
- Perform any other function required or authorized by law.
- Pursuant to ORS Chapter 183, adopt rules necessary to carry out its duties.

The MDAC strives to improve existing services and to initiate new programs and legislation aimed at lowering borrowing costs and improving debt management practices for local governments, particularly in the area of capital planning and debt administration.

The Debt Management Division provides Commission staffing and services to local Issuers. The MDAC staff can provide broad information on various aspects of bond sales.

Annual Report

State law ORS 287A.634 requires the MDAC to prepare an annual report describing activities of the Commission in the preceding year. This report is available on the Debt Management Division website.

Oregon Bond Calendar

The MDAC keeps a record of upcoming publicly offered bond sales of local districts and state agencies in Oregon and monitors bond market trends and interest rates. The Bond Calendar is available at no charge and may be obtained on the Oregon State Treasurer's Municipal Debt Advisory web site (see Browse Services section). To optimize marketing of all Oregon bonds, Issuers should review the *Bond Calendar* to minimize scheduling conflicts with other Issuers.

The *Statewide Bond Calendar* lists all planned, completed, and postponed bond sales for competitive, negotiated, or privately placed sales. This information is based upon notification of issues (via the MDAC Form 1) and Preliminary and Final Official Statements received from municipalities that issue bonds. Other relevant information included on the MDAC web page are events related to municipal bonds such as a link to the Secretary of State election dates, filings and bond election results and the *Bond Index* (a measure of bond interest rate trading levels in the secondary market) and. The index is a weekly average obtained from bond dealers in Oregon for ten and twenty year maturities of both State of Oregon GO bonds and local (A-rated) unlimited tax general obligation (ULTGO) bonds and provides a handy reference for the trend and level of tax-exempt bond interest rates in Oregon.

Statewide Database

The Debt Management Division maintains a database of all outstanding bond issues for all municipalities in the state. For each bond issue sold, the Bond Tracker database is populated with information about all publicly and privately offered local government debt issuance obtained from the MDAC forms submitted by the Municipal Advisor, Underwriter, Bond Counsel or, as needed, by DMD staff in coordination with Issuers and/or bond professionals. The system is updated annually with revised population statistics and property values for Oregon Issuers in order to calculate overlapping debt for Issuers to use in their offering documents and meet their continuing disclosure requirements.

Pursuant to the authority found in ORS 287A.634, the Debt Management Division requests Issuers to verify their long-term financial debt every other year. This is done to ensure the accuracy of information contained in the Bond Tracker system and is especially important in reporting municipal district overlapping debt for disclosure purposes. Each Issuer is asked to respond by either acknowledging the amounts are correct or, if inaccurate, the Issuer is asked to correct inaccurate data and/or add missing data.

Overlapping Debt Report

Using the Bond Tracker system, the Debt Management Division is able to aggregate information on the Issuer's total debt issued, to which any given jurisdiction is subject. This information is used to create a standardized report called the Overlapping Debt Report. The report includes information concerning maturity dates, amounts, interest rates, and overlapping percentages as a proportion of Real Market Value (RMV) for all property tax-backed debt. For example, the residents of a certain city may be indebted through government borrowing by their city, county, school district, and various special districts such as water, sewer, fire, etc.

Free overlapping debt reports may be requested from the State Treasurer's Office.