



POPE FLYNN  
GROUP

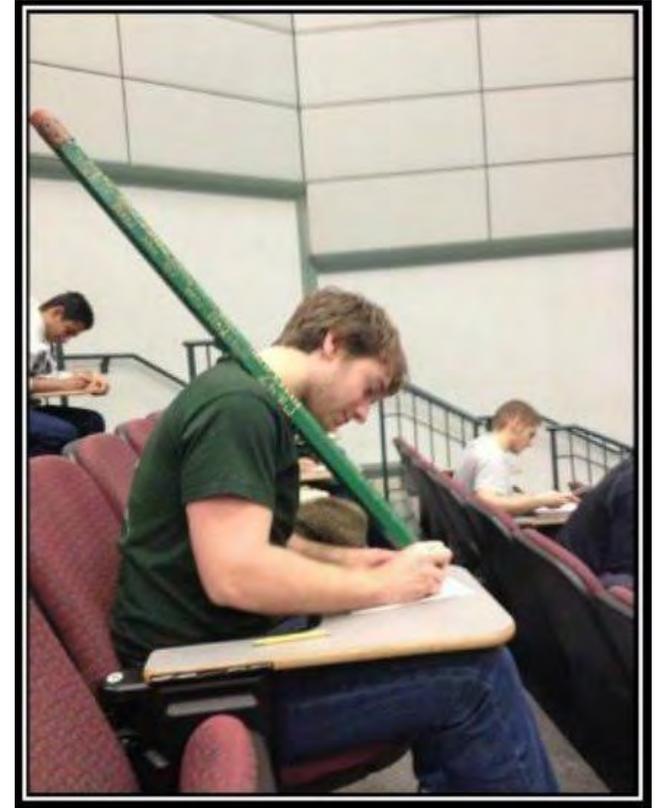
# **MUNICIPAL UTILITY POLICY AND ADMINISTRATION**

**“Utility System Financing Options”**

**February 7, 2018**

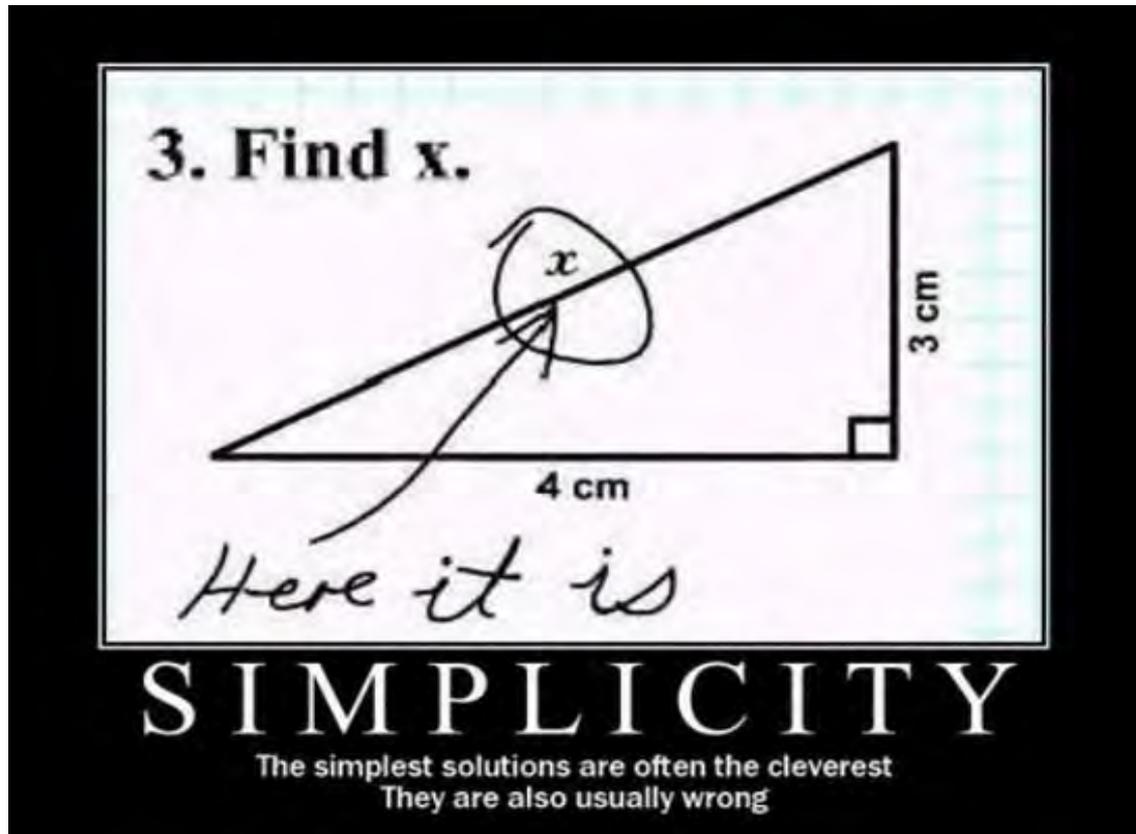
## Background

- Dillon's Rule v. Home Rule
- Role of Bond Counsel
- Restrictions under State law – relate to validity of the borrowing
- Restrictions under Federal law - relate to “tax exemption” of interest
- General Fund v. Proprietary/Enterprise Fund
- Municipal boundary v. service area – S.C. Code Section 5-7-60



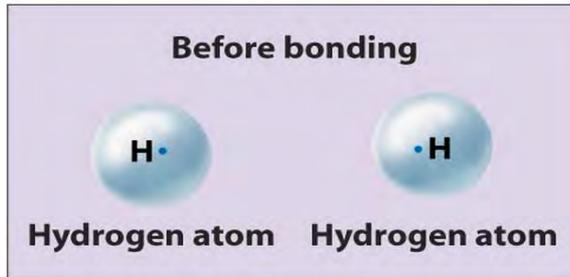
## Background

- Municipalities generally cannot “sign a note” at a local bank



# Basic Municipal Borrowing Tools

What are



**Covalent bond formed**



**Hydrogen molecule, H<sub>2</sub>**



# Basic Municipal Borrowing Tools

- General Obligation Bonds
- Revenue Bonds
- Lease-Purchase Agreements
- Tax Increment Finance Bonds (TIFs)
- Interim Financing (BANs, TANs, GANs)
- Special Tax-Based Financing
- Municipal Improvement Districts (MIDs)



# Revenue Issues for Infrastructure

## Types of Revenue Streams

- Typical utility services include water/sewer systems, solid waste, gas, and electrical
- Recreation fees
- Parking fees
- Revenues from a multi-county business park
- Water park
- Storm water
- Other dedicated sources of non-tax revenues



# Revenue Issues for Infrastructure

**Constitution of  
the State of South  
Carolina, Ratified  
in Convention,  
December 4, 1895**

**South Carolina**

- Why? Pay as you go v. long-term borrowing
- Capital planning process
- SC Constitution (1895): Article X, Section 14(10):  
“[i]ndebtedness payable solely from a revenue-producing project or from a special source, which source does not involve revenues from any tax or license, may be issued upon such terms and conditions as the General Assembly may prescribe by general law.”
- State law authority: (1) Revenue Bond Refinancing Act (S.C. Code Section 6-17-10 et seq.); and (2) Revenue Bond Act for Utilities (S.C. Code Section 6-21-10 et seq.)
- Constitution; State law; Federal law; Local law
  - Action/contract of council:
    - Bond Ordinance; Master/Trust Indenture
    - Series/Supplemental Ordinance; Supplemental Indenture

# Revenue Issues for Infrastructure

## Secured by Revenue Stream

- A limited pledge
- Bond documents will establish a “waterfall” to control the flow of revenues
- Generally, debt service on the bonds will come before O&M expenses (gross pledge) or after (net pledge)



# Revenue Issues for Infrastructure



# Revenue Issues for Infrastructure

## Coverage Ratios

- Rate Covenant – requires that utility rates be maintained at a certain level (a multiple of O&M and debt service)
- Additional Bonds Test – requires certain coverage before the issuance of new debt

## Additional Debt

- Parity bonds enjoy the same lien status as the prior bonds, and must meet the additional bonds test
- Junior lien bonds may be issued at any time
- Special projects, lease/purchase exceptions in bond documents

# Revenue Issues for Infrastructure

## Other Considerations

- A feasibility study will be important
- Among other things, the municipality should compare revenues to expenses (including debt service) and thoroughly plan the improvements
- Refunding: Current v. Advance
- Redemption/Notice/Modifications/Trustee
- Covenants: asset ownership; no free service; audit requirement; insurance; sale of assets/system; surplus appropriations; efficient operation

# Revenue Issues for Infrastructure

Who is this Man?



Source: The State

# Revenue Issues for Infrastructure

## Cumberland v. City of Columbia – what does it mean?

- - Cumberland v. Columbia – how are you using the net profits of the enterprise? What does this tell us about reliance on enterprise fund transfers?
- Utility fees are user fees under S.C. Code Section 6-1-320
- City issues bonds under Revenue Bond Act for Utilities – S.C. Code Section 6-21-440 expressly allows for distribution of surplus revenues
- Surplus should be distributed only after all costs of utility are funded
- Do you provide for calculation of surplus in your budget ordinance?
- Do you have or have you established financial policies to deal with transfers?

## Knowing Your Professionals

- *Bond Counsel*: Required to deliver validity opinion for borrowing
- *Local Counsel*: Know day to day operations; required to deliver an opinion as to underlying documents and litigation
- *Trustee*: Fiduciary for bondholders (not involved in every transaction)
- *Financial Advisor (FA)*: Evolving role, far more involved in transactions; perform roles that Bond Counsel in South Carolina has traditionally performed. Should have discussions with Counsel or existing FA about role in transactions or on-going operations
- *Underwriter*: Only for Market-sold deals
- *Other Counsel*: Represent Trustee, Underwriter, Issuers (i.e. Disclosure or Special Tax matters)

# The Municipal Advisor Rule

## Background:

- Regulations in the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act, passed after the Great Recession, established that anyone providing financial advice to issuers of bonds would be regulated.
- Responsibility was left to the Securities and Exchange Commission to define what a municipal advisor is and is not.

## What or who is a municipal advisor?

- A firm and its associated persons that provides “advice,” with or without compensation, to “municipal entities” and “obligated person” on the issuance of “municipal securities” or “municipal financial products.”

## What are the implications of being a Municipal Advisor?

- Required to register with the MSRB
- Statutory Fiduciary Duty: includes a duty of loyalty and duty of care
- Subject to the MSRB rules.

# The Municipal Advisor Rule

## What is advice?

- A recommendation that is particularized to the specific needs, objectives or circumstances of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including information on structure, timing, terms and other similar matters concerning such products or issues.
- Advice on the “issuance of municipal securities” includes advice during the entire lifespan of the transaction – from the earliest pre-planning stages through maturity or earlier redemption.

## What is not advice?

- Factual information
- General information
- Widely available information

# The Municipal Advisor Rule

## How does this impact South Carolina issuers?

- Many issuers had grown accustomed to relying on their existing financing team members (primarily bond counsel and underwriter) to provide financial advice.
- As of July 1, 2014, those professionals have been limited in the amount and type of financial advice they may provide, unless they meet one of the exceptions/exemptions.
- The types of conversations issuers can have with underwriters and other professionals may be more limited in nature than what has traditionally occurred.

## Exceptions to the Requirement to Register as a Municipal Advisors

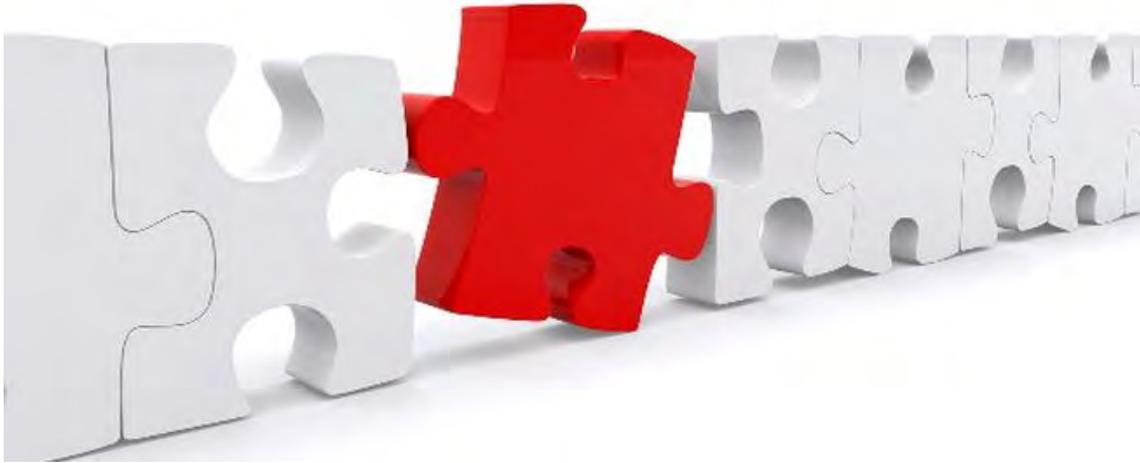
- State and Local Government employees and officials – “acting in an official capacity”
- Certain professionals:
  - Attorneys (traditional legal advice);
  - Engineers (traditional engineering advice);
  - Accountants (traditional audit work);
  - Registered investment advisors (federally registered); and
  - Remarketing agents (standard remarketing).

# The Municipal Advisor Rule

## Exemptions Available:

- Underwriter Exemption: applies when dealer has been hired to underwrite an issue of securities and applies through the end of the underwriting period.
- RFP Exemption: applies to responses to issuer RFPs and RFQs.
- Independent Municipal Advisor Exemption: municipal entities that are represented by independent municipal advisors may receive advice from underwriters and others on the issuance of securities or financial products as long as the independent advisor is providing advice about the solicitation and the municipal entity is relying on its own advisor.
- If there is no exemption, then the underwriter or other professionals may not provide “advice” to the municipal entity.

# Transactional Building Blocks



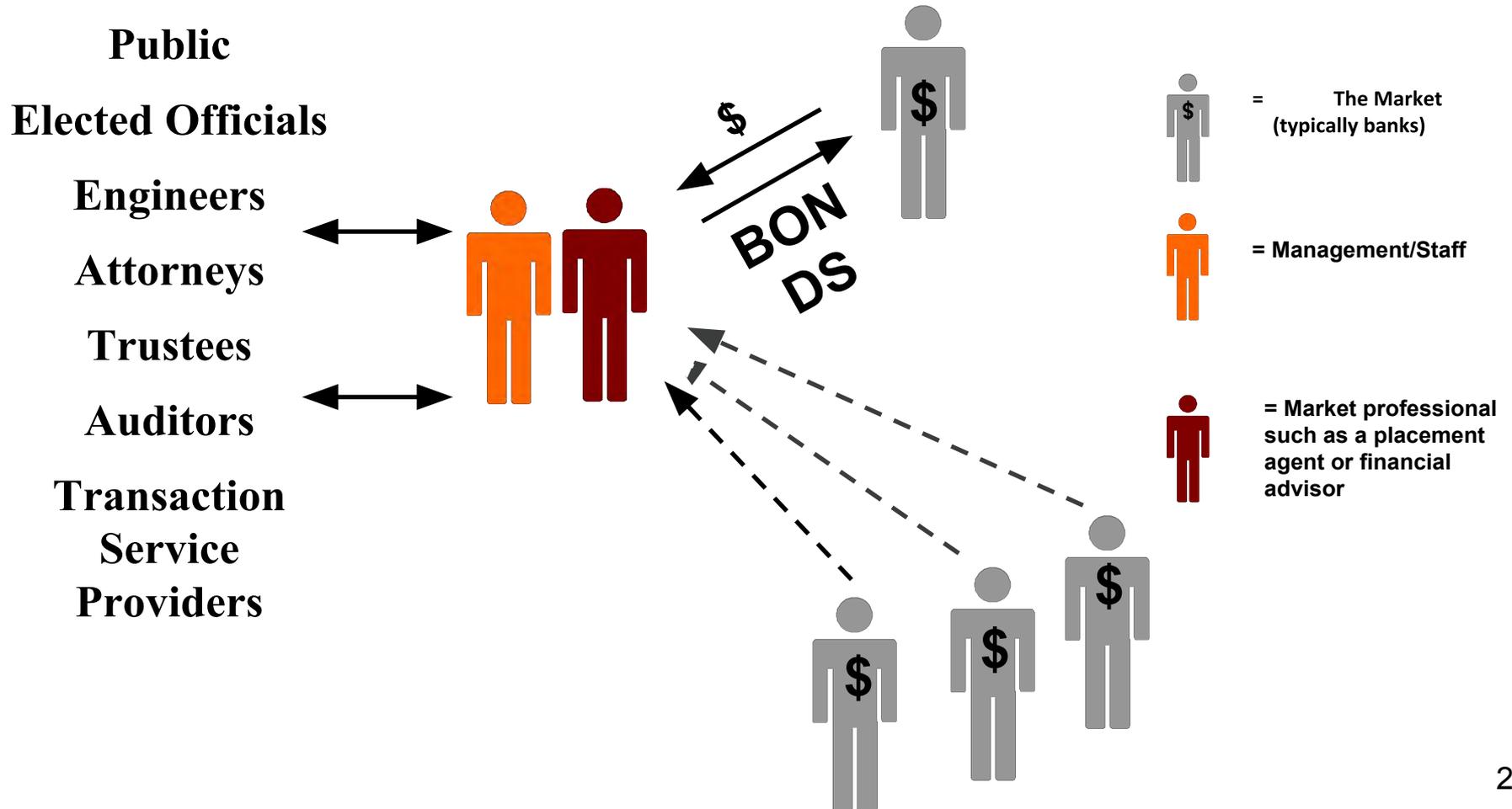
- Taxable v. Non-Taxable
- “Bank Qualified” v. “Non-Bank Qualified”
- Private Placement v. Publicly Sold Transaction: Term, Size, Flexibility, Issuance Costs, Disclosure practices, rate differentials, credit-worthiness; insurance or other liquidity providers

# TAX REFORM

- Tax Exemption Preserved
- Elimination of Advance Refundings
- Elimination of Certain Tax Credit Bonds
- Retention of Private Activity Bonds
- Maintains authorizations for arenas and stadiums
- Reduction of Corporate Tax Rate
  - 35% to 21%
  - Banks, Insurers
  - Be leery of Tax Gross-Up provisions in docs
- Repeal of corporate AMT

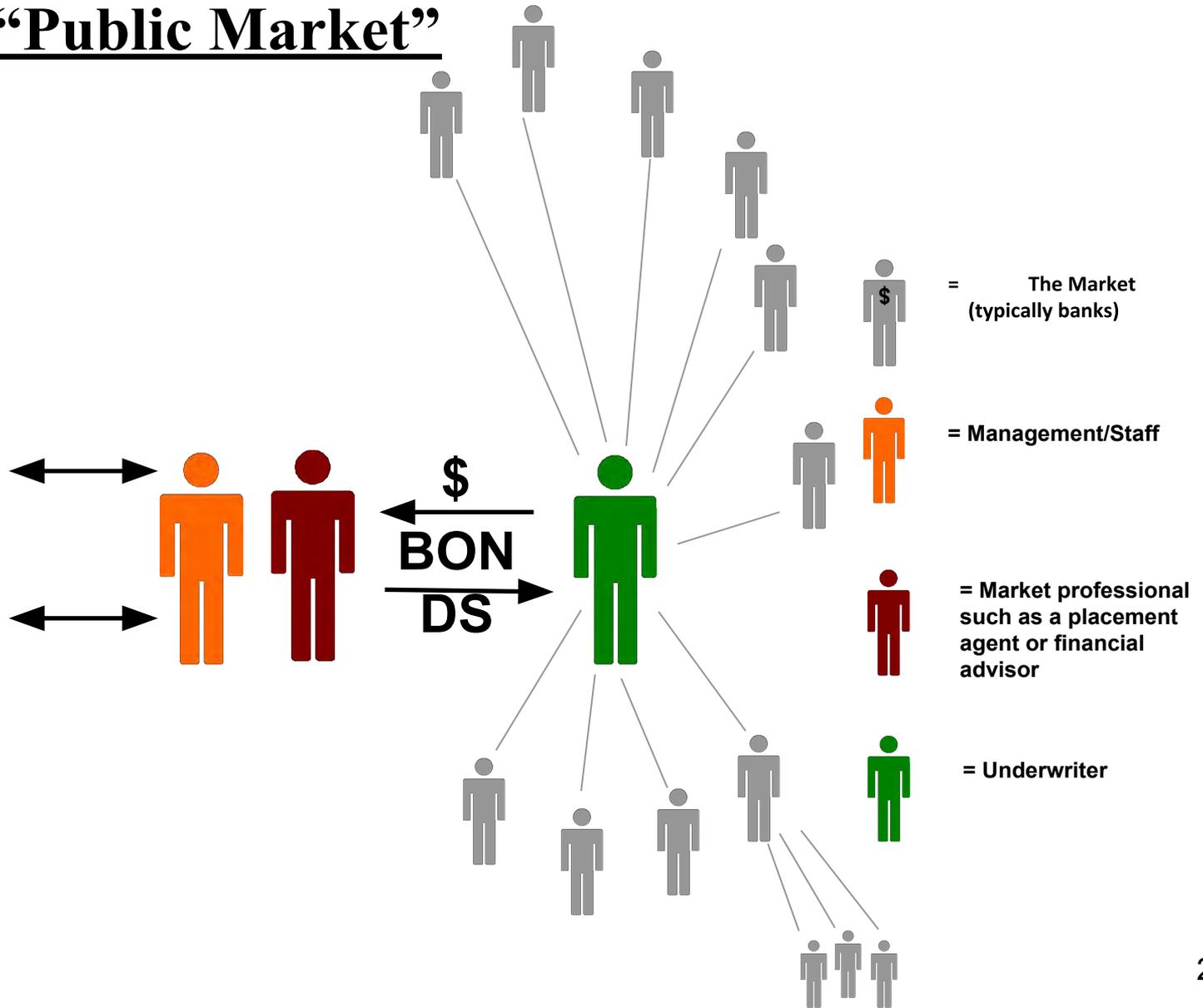


# “Bank Loans”



# “Public Market”

**Public**  
**Elected Officials**  
**Engineers**  
**Attorneys**  
**Trustees**  
**Auditors**  
**Rating Agencies**  
**Transaction Service Providers**



## “Government Loans”

### State Revolving Loan (SRF)

- - Federal program with State match
- - Water and Sewer Only
- - 20 to 30 year term
- - Interest rates trail market
- - Reduced cost for low-income systems or green energy projects
- - Becoming more streamlined
- - DSRF not funded for “A” rated credits
- - Straight quarterly amortization
- - Easy call features

### USDA, Rural Development

- - Lender of last resort
- - Protect service area
- - Rates higher
- - 40 year term
- - No tax work
- - Little structuring flexibility
- - May require interim financing
- - DSRF required (funded over time)
- - Require consent for other debt

# Issue Size and Type

- Issue size often drives the decision for a shorter or longer term (coverage ratios, etc.)
- Type of issue may also impact the decision:
  - \* Security interest/Pledged revenue stream
  - \* Historical performance



# Transaction Flexibility

- Ability to prepay transactions
  - \* Bank Loans provide a high level of flexibility
  - \* Useful especially for dynamic, changing entities
- Investor Call protection

A more  
flexible  
approach

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## Bank Qualification

- “Small” Issuer: \$10,000,000 or less in calendar year
- Tax treatment by Banks
- Rate Differential: May be important determining factor in decision for underwriting or bank loan



# Issuance Costs

- Differential between Bank Loan and Underwritings is usually substantial
- Cost/Benefit analysis essential
- Components of Issuance Costs
  - \* Official Statements
  - \* Ratings
  - \* Insurance
  - \* Legal
  - \* Underwriting fees
  - \* Debt Service Reserves



## Tips for a Smoother Borrowing Experience

- Financial Statements (be timely)
- Define the project: sizing of issue
- Stability in financial administration
- Stability in professionals, including bank and bond counsel
- Pricing is important, but not sole determining factor
- Discussion on front end of expectations – don't agree to things you do not understand
- Policies and Procedures (debt administration, tax, disclosure, coverage, OPEB, Pension, cash management)



## Continuing Disclosure Defined:

- “Continuing disclosure consists of important information about a municipal bond and its issuer that arises after the initial issuance of the bond. This information generally reflects the financial or operating condition of the issuer as it changes over time, as well as specific events occurring after issuance that can have an impact on the ability of issuer to make payments on the bond, the value of the bond if it is traded prior to its maturity, the timing of repayment of principal, and other key features of the bond.”
- Enforced through SEC regulation of Broker-Dealers;  
Required in Primary Offer as an Aid to Secondary Market
- Exempt from Registration and Reporting Requirements of ‘33 Act and ‘34 Act (Tower Amendment – Pre-sale) – But see Rule 10b-5 and Rule 15c2-12 and SEC’s 1994 Interpretative Release (not private placements)

## **What are my continuing disclosure responsibilities?**

Established in the Continuing Disclosure Agreement (CDA) executed at the closing of your bonds.

Issuer may engage a Dissemination Agent to assist with disclosure responsibilities.

Generally Requires:

- Disclosure of Financial and Operating Information
- Material Event Notices

## Issue Details

### CITY OF HARTSVILLE, SOUTH CAROLINA WATERWORKS AND SEWER SYSTEM IMPROVEMENT AND REFUNDING REVENUE BONDS, SERIES 2015 (SC)

#### HARTSVILLE S C WTR & SWR REV REF & IMPT (SC)\*

**Dated Date:** 08/13/2015

**Underwriting Spread Amount:** Disclosed in Official Statement

**Closing Date:** 08/13/2015

**Time of Formal Award:** 07/22/2015 04:39 PM

**Time of First Execution:** 07/23/2015 11:00 AM

[View issuer homepage: HARTSVILLE S C WTR & SWR REV](#) | 
 [See other issues by this issuer](#) | 
 [Return to search results](#)

#### Maturities and issue-related documents

View all maturities of an issue and download the official statement and other documents available from EMMA for this issue. Click on a CUSIP number for security-specific data, including trade price data.

[Final Scale](#) | 
 [Official Statement](#) | 
 [Continuing Disclosure](#) | 
 [Trade Activity](#)

View continuing disclosure or advance refunding document, which provides important information about the security after initial issuance.

#### FINANCIAL INFORMATION & DOCUMENTS

[Collapse](#)▲

##### Most Recent

2016 Audited Financial Statements - City of Hartsville, SC for the year ended 06/30/2016 posted 02/01/2017 (359 KB) [details](#)

2016 Operating Data - City of Hartsville, SC for the year ended 06/30/2016 posted 02/01/2017 (66 KB) [details](#)

##### Annual Financial Information and Operating Data

 [2016 Operating Data - City of Hartsville, SC for the year ended 06/30/2016 posted 02/01/2017 \(66 KB\)](#) [details](#)

 [2015 Supplemental Financial Data for the year ended 06/30/2015 posted 01/21/2016 \(101 KB\)](#) [details](#)

##### Audited Financial Statements or CAFR

 [2016 Audited Financial Statements - City of Hartsville, SC for the year ended 06/30/2016 posted 02/01/2017 \(359 KB\)](#) [details](#)

 [2015 Audited Financial Statements for the year ended 06/30/2015 posted 01/21/2016 \(454 KB\)](#) [details](#)

##### Other Financial / Operating Data

 [Incorporate OS by Reference as of 07/29/2015 posted 07/29/2015 \(12.1 MB\)](#) [details](#)

#### EVENT NOTICES

[Collapse](#)▲

##### Most Recent

Enactment of New Master Bond Ordinance as of 10/16/2017 posted 10/20/2017 (33.1 MB) [details](#)

##### Other Event-based Disclosures

 [Enactment of New Master Bond Ordinance as of 10/16/2017 posted 10/20/2017 \(33.1 MB\)](#) [details](#)

#### Links to Former NRMSIRs

Until 2009, the organizations listed below served as Nationally Recognized Municipal Securities Information Repositories (NRMSIRs) and may have primary market and continuing disclosure documents produced before July 1, 2009, when the EMMA website became the official repository for municipal market disclosures.

- Bloomberg L.P.
- DPC Data
- ICE Data Services (formerly Interactive Data Pricing and Reference Data)
- Standard & Poor's

## **SEC's Municipalities Continuing Disclosure Cooperation ("MCDC") initiative?**

Why are we still talking about this after MCDC?

- The MCDC initiative was a temporary amnesty program which allowed issuers and underwriters to self-report previous violations.
- The amnesty period for issuers to self report expired on December 1, 2014.
- 72 Underwriters Charged Since June 2015
- 71 Issuers charged (including, Columbia, SC and Hilton Head Island, SC)



## QUESTIONS?

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