

How To Bake a Bond Issue: Have your Cake and Eat it Too!

Jennifer M. Caron, Esquire – Eckert Seamans

Chris Hoffert – Stifel Public Finance

Scott Shearer – PFM Financial Advisors LLC

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www.eckertseamans.com



Cake: Identify Which Type of Cake You Want to Make

Bond Financing: Identify the Project

❖ Capital Project

- Obtain estimated costs
- Determine useful life of projects
- Discuss timing of expenditure of proceeds
- Adopt Reimbursement Resolution

❖ Refunding Project

- Achieve debt service savings
- Restructure debt service payments

Cake: Find Recipe to Use for the Cake You Want to Bake

- Bond Financing: Identify the Financing Team
 - Professionals who will assist in determining the structure and coordinate the process
 - the “recipe” for the financing

PROFESSIONALS:

- Bond Counsel
- Solicitor
- Engineer
- Financial Advisor
- Underwriter
- Paying Agent/Trustee
- Banks/Governmental Lenders

Special Counsel: Bond Counsel

- Role:
 - Reviews compliance with State and Federal Laws
 - Internal Revenue Code of 1986 and the regulations promulgated thereunder
 - Coordinates financing team
 - Drafts most documentation for authorization and closing
 - Provides opinion to bondholders or purchasers
- Ongoing:
 - Track changes in law
 - Consult with borrower on tax compliance issuances
 - Consult with borrower on changes in project scope or permitted scope of new projects

Solicitor

- Bond Counsel works with your Solicitor
 - Role in the Context of a Financing:
 - Reviews authorization and closing documentation
 - Reviews compliance with local laws, codes and Sunshine Act
 - Assists compliance with procedural matters for board action
 - Provides opinion on behalf of the issuer regarding certain aspects of the debt issuance, including any pending litigation

Financial Advisor

- Role:
 - The “numbers crunchers”
 - Hired by and represent the issuer of the debt as a fiduciary
 - Assist with budgeting
 - Using Borrowing v. Reserves
 - Identify debt for possible refunding savings
 - Compares public offering v. bank loan
 - Assists with rating agency matters
 - Aligns project schedule with financing schedule

Bond Underwriter

- Role:
 - Involved in Public Offerings
 - Reviews offering documents; provides insight for dealings with rating agencies, bond insurers and investors
 - Assists with quantitative analysis
 - Markets and sells bonds to investors “pricing the bonds”
 - Uses its own capital to “underwrite” unsold bonds to support issue
 - Provides issue price certificate
- May have their own legal representation

Lenders/Governmental Agencies

- Banks:
 - Serve as lender for private placements
- Governmental “Lenders”:
 - PennVest – legal counsel and paralegal on board
 - 20-30 year debt at low interest rate
 - USDA RUS/Community Facilities Programs – loan specialist and USDA engineer
 - 40 year debt at low, fixed rate of interest

Paying Agent/Trustee

- Paying agent or trustee is a bank or trust company which serves as the intermediary between the issuer of the bonds and the registered owners as the ultimate purchasers of the bonds
- Allows the issuer of the bonds to deal with one institution rather than numerous bondholders
 - the issuer makes one payment to the paying agent who in turn makes payment to the various bondholders
- A paying agent or trustee has certain powers and duties under law and under the appropriate debt instruments
- Typically, if a lender purchases the bank note, it serves as its own paying agent

Engineer/Architect

- Role in the Context of a Financing:
 - Helps identify projects
 - Coordinates bidding/construction schedule with financing needs
 - Prepares self-liquidating debt report (if necessary)
 - Prepares certificates for loan agreement and/or indenture compliance
 - May prepare reports used in the Official Statement

Cake: Gather Ingredients (flour, sugar, eggs)

- Bond Financing: Gather Information
 - Conduct due diligence with issuer
 - Discuss use of proceeds/facilities being financed
 - Review Official Statement used by underwriter in marketing bonds to investors



Cake: Mix the Batter

- Bond Financing: Authorization, Sale and Marketing of Bonds
 - Enact or adopt authorizing Ordinance/Resolution
 - Contents set forth in Local Government Unit Debt Act
 - Approving Incurrence of Indebtedness
 - Accepting Bond Purchase Agreement with Underwriter
 - Authorizing filing with DCED
 - Underwriters Market Bonds to Investors, Ultimately Price the Bonds (set interest rates)
 - Types of sales
 - Negotiated versus Competitive
 - Parameters, live, internet-bidding



Cake: Pour the First Layer in the Pan

- Bond Financing: File Debt Proceedings
 - File authorizing Ordinance/Resolution together with
 - various related financial documents
 - » Borrowing Base Certificate and Debt Statement
 - » Self-Liquidating Debt Report, if applicable
 - Executed Bond Purchase Agreement
 - proofs of publication for of pre and post enactment legal notices
 - Submitted to Department of Community and Economic Development (DCED) via main email address
 - 20-day period for DCED to issue certificate of approval

Cake: Pour the Second Layer in the Pan



- Bond Financing: Preparation for Closing
 - Draft Closing Documents
 - General certificates and receipts
 - Tax Certificate and IRS Form 8038-G
 - Opinions
 - Bond Counsel, Solicitor, and Underwriter's Counsel
 - Continuing Disclosure Certificate
 - Closing Receipt/Settlement Sheet

Cake: Put Cake in the Oven to Bake

- Bond Financing: Advance Towards Closing
 - obtain DCED Approval after 20 day waiting period
 - circulate draft documents for review and comment
 - coordinate execution by issuer and participants
 - Hold pre-closing/pre-signing prior to official closing date
 - arrange for delivery of Bonds and closing documents

Cake: Timer Goes Off; Cake is Baked

- Bond Financing: Closing Day
 - Date of “Issue” under Internal Revenue Code
 - Paying Agent and Underwriter contact DTC for release of bonds
 - Underwriter sends wire to paying agent equal to
 - Principal (par) amount of bonds; premium/discount less underwriter’s discount (underwriter’s compensation)
 - Paying Agent makes transfers and deposits



Cake: Cutting the Slices of the Cake

- Bond Financing: Disbursements of Bond Proceeds
 - Payment of bond insurance premium (if insured)
 - Payment of Costs of issuance
 - Legal fees, financial advisor fees, rating agency fee, paying agent fee
 - **For Capital Projects:** Construction/Project Fund Deposit made
 - May be invested but monitor arbitrage
 - **For Refunding Projects:** Proceeds deposited in sinking fund or escrow fund for repayment of prior bonds



Cake: Cleaning up the Dishes

- Bond Financing: Address Post-Closing Matters
 - Filing 8038-G with IRS
 - Filing UCC Financing Statements with Department of State
 - Post-Issuance Compliance
 - Proper use of proceeds and facilities
 - Ongoing financial and material event disclosure to marketplace
 - Recommend Issuer Consult with Finance Team Professionals if and when questions arise

Questions?

Thank you and enjoy your cake!

Scott Shearer
(717) 231-6262
shearers@pfm.com

Chris Hoffert
(717) 740-4406
hoffertc@stifel.com

Jennifer M. Caron, Esquire
(717) 712-7203
jcaron@eckertseamans.com

www.eckertseamans.com



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