

ROLES OF COUNSEL TAX-EXEMPT CONDUIT FINANCINGS

Bond Counsel. Bond Counsel is engaged to give an opinion at the closing that the bonds have been validly issued and that their interest will be exempt from taxation under state and federal tax law. In order to give this opinion, Bond Counsel normally controls the approval and document process. They coordinate the meetings of the industrial development authority or other issuer, including a public hearing with appropriately published notice, and subsequent approvals by the local governing body. Bond Counsel drafts the bond documents, which include a financing agreement between the issuer and the Company and a trust agreement between the issuer and the trustee for the bondholders. Bond Counsel's tax expertise is crucial in structuring the transaction, as is its experience from other financings. Bond Counsel will also prepare for and argue any required validation hearing.

Borrower's Counsel. The Company will engage its own counsel to review the documentation on its behalf and negotiate covenants with the Underwriter or lender. Borrower's Counsel will also deliver at closing an opinion which states, among other things, that the bond documents have been validly authorized and executed by the Company, that the Company is a 501(c)(3) organization (if applicable), and that gives comfort on any public disclosure about the Company and its operations. Borrower's Counsel also handles any title or corporate authorization issues that may arise.

Underwriter's Counsel. In publicly offered transactions, the Underwriter will engage counsel to assist it. Underwriter's Counsel normally prepares the offering document, describing the Company and its operations and any other pertinent information with respect to the bonds. Underwriter's Counsel assists the Underwriter in its due diligence efforts, normally visiting the Company and reviewing its files to determine if there are any items requiring disclosure. Underwriter's Counsel also drafts the bond purchase agreement, the agreement between the Underwriter and the Company which sets forth the Underwriter's requirements for closing, including forms of opinions of the various other counsel, and negotiates financial covenants on behalf of the Underwriter. Underwriter's Counsel will deliver an opinion at closing, per the Underwriter's requirements, concerning the adequacy of the disclosure documents.

In private placement or low-floater transactions, there is no underwriter, but the placement/remarketing agent will engage counsel to prepare the preliminary placement memorandum and any bond purchase or remarketing agreement. Counsel's role in a private placement is not as extensive as it would be in a public offering.

Bank Counsel. In a transaction where a bank will either purchase the bonds for its own account or provide a letter of credit to support adjustable rate bonds, the bank will engage its counsel to draft the credit and security documents, including any deed of trust or mortgage. Bank Counsel will be responsible for negotiating with the Company any financial covenants on behalf of the bank.

Authority's Counsel. The issuer, usually an industrial development authority, will have its own counsel, who will review the documentation from the Authority's point of view and negotiate any covenants involving the Authority. Because the Authority is a mere conduit, this role is typically minor. Authority's Counsel will give an opinion at closing that the bonds have been validly issued and the other bond documents have been validly authorized and executed by the Authority.

The above counsel roles can be combined for increased efficiency in a number of ways, subject to legal conflicts.

For more information about tax-exempt financing, please contact:

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