Bradley

Best Practices in Financial Management and Reporting – Debt Management

Alabama Association of School Business Officials (AASBO) Annual Conference

Tuesday, April 30, 2024, 1:00 – 2:00 p.m.

Presented by: *R. Kane Burnette*

One Federal Place
1819 5th Avenue North
Birmingham, Alabama 35203
Bradley Arant Boult Cummings LLP
Birmingham, Alabama
kburnette@bradley.com
(205) 521-8755

Kane Burnette
Partner

Birmingham, AL
kburnette@bradley.com
P: 205.521.8755

Kane Burnette's primary practice involves serving as bond counsel to municipalities, counties, boards of education and public corporations throughout Alabama on both publicly underwritten and privately placed tax-exempt financings.

Kane is particularly active in the public education sector, where he has represented both public universities and boards of education on tax and finance matters, and he currently serves on the faculty of the University of Alabama's academy for finance training for new school superintendents and chief school financial officers.

In addition to bond counsel engagements, he has served as company counsel and bank counsel in letter-of-credit backed transactions, as lender's counsel in direct placement transactions and as trustee's counsel. He also advises municipal clients on economic development and incentive matters. Kane has experience in representing governmental bodies in compliance matters before the Internal Revenue Service and the U.S. Securities and Exchange Commission.

As an Alabama-licensed Certified Public Accountant (currently inactive), Kane worked in the Birmingham office of Ernst & Young LLP before attending law school.

Practices

- Public Finance
- Distressed Municipal Finance
- Corporate & Securities

Education

- University of Alabama School of Law, J.D., 2009, *magna cum laude*
- University of Alabama, Master of Accountancy, 2003
- University of Alabama, B.S., 2002, Accounting *summa cum laude*

Licensed In

- Alabama

Accolades

- Listed in *Chambers USA*, Banking & Finance: Public Finance, 2020-2022
- Listed in *Mid-South Super Lawyers*, "Rising Stars," Government Finance, 2016-2019
- Listed in *The Best Lawyers in America*®
    - Corporate Law, 2022-2023
    - Municipal Law, 2022-2023
    - Public Finance Law, 2022-2023

Agenda

- Guidelines and Procedures for Financings
- Managing Debt / Post-Issuance Responsibilities

Guidelines and Procedures

- What kinds of indebtedness do Boards of Education generally incur?
  - "Bond issue" for capital projects or refinancing
    - Used for significant capital projects; customized
  - Lease-purchase / installment sale financing for bus acquisition or equipment
    - Used (sometimes) for routine capital acquisitions
  - Alabama Public School and College Authority for leveraging of public school fund allocations
    - Used for smaller capital projects or as a secondary sources of funds for larger projects; set terms
  - Operating line of credit

Bradley

Guidelines and Procedures

- Within certain parameters, Alabama law gives Boards discretion on financings.
  - For example, the maximum term of a “bond issue” is 30 years, but Boards can choose a negotiated sale or a competitive bid process.
  - Bid law not applicable to professional contracts
- How to establish guidelines and procedures?
  - Does your Board have an established financing team?
  - How “active” do the Board members want or expect to be in the process?
- There likely will be different procedures for the different types of indebtedness

Guidelines and Procedures

- What are the important factors for the decision maker(s)?
  - Familiarity with the Board's financial picture / existing indebtedness?
  - Public perception about process?
  - Hometown involvement?
  - Absolute lowest cost?
  - Other?
- Each has its merits and each can have potential downsides.

Bradley

Guidelines and Procedures

- There are certain non-negotiables:
  - Must have adequate local revenues for a warrant financing
  - ALSDE must review and approve a warrant issue prior to there being a binding commitment for sale
- Remember the key role the CSFO usually plays with regard to <u>disclosure</u> to potential investors (for public offerings). Two big jobs: ensure (1) that all information about the Issuer shown in the POS and OS is accurate and complete; and (2) that nothing is omitted from the POS and OS that would be necessary to be included in order to not make the documents misleading.

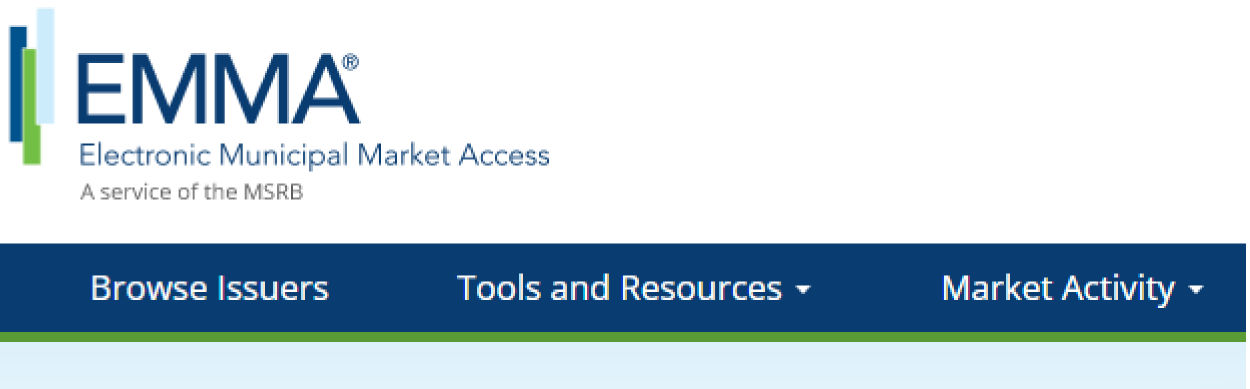
Bradley

Managing Debt / Ongoing Compliance

- There are a handful of post-issuance considerations with which you should be familiar:
  - State law: keeping track of your local tax levies
  - Federal securities law: annual report, audited financial statement and event notice filing on EMMA (Electronic Municipal Market Access system)
  - Federal tax law:
    - Spending funds in a timely manner
    - Arbitrage rebate compliance
    - Monitoring private use

Post-Issuance Compliance - EMMA

- https://emma.msrb.org
- (1) Annual Report; (2) Annual Audit; (3) Event Notices



Bradley

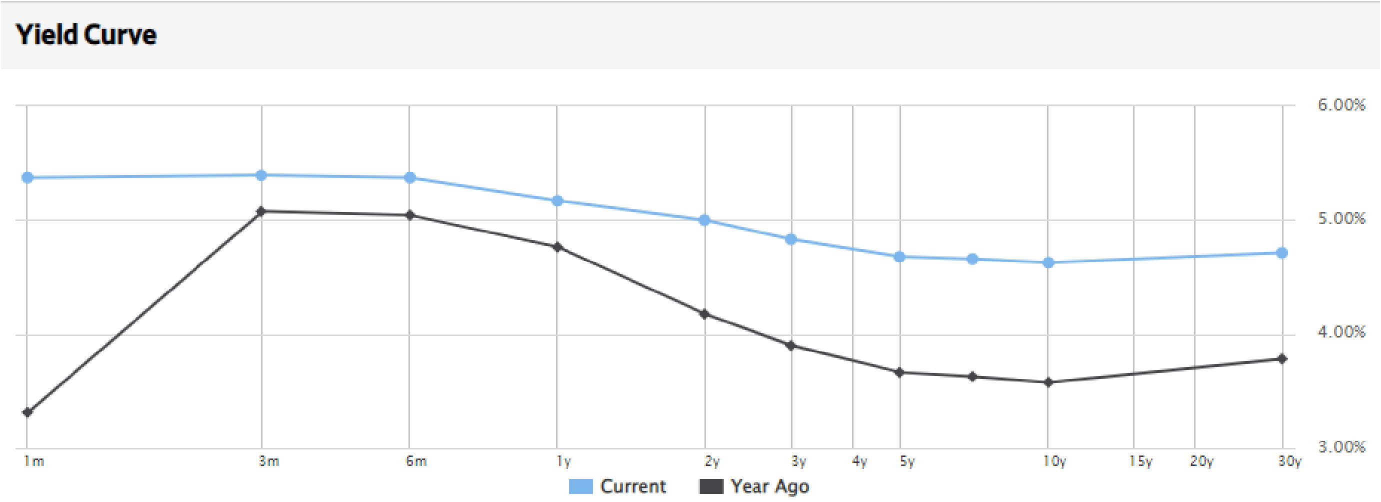
Post-Issuance Compliance – Tax Law

- Spending bond proceeds quickly
- Good rules of thumb:
  - From the date the bonds are issued, your Board should plan to enter into a binding construction contract within 6 months.
  - From the date the bonds are issued, your Board should plan to spend at least 85% of the bond proceeds (including investment earnings) within 3 years
  - If you experience project delays, document the reasons carefully.

Bradley

Post-Issuance Compliance – Tax Law

- Arbitrage rebate compliance – timely concept



Bradley

Post-Issuance Compliance – Tax Law

- Arbitrage rebate compliance
  - General rule (1): during the first three years of a bond issue, it is okay to earn an investment yield above the yield on the bond issue (the definition of "arbitrage")
  - General rule (2): usually, arbitrage earnings must be returned to the U.S. Treasury
  - General rule (3): at the three-year mark, it is not okay to earn investment yield above the yield on the bond issue

Post-Issuance Compliance – Tax Law

- Exceptions to General Rule (2)
  - 6 month spending exception
  - 18 month spending exception
    - 15% within first 6 months
    - 60% within first 12 months
    - 100% within first 18 months
  - 24 month spending exception for "construction" projects
    - 10% within first 6 months
    - 45% within first 12 months
    - 75% within first 18 months
    - 100% within first 24 months

Post-Issuance Compliance – Tax Law

- Hypothetical
- $50,000,000 project fund for new school construction
- Earn 5% on investments - $5,000,000 total
- Bond issue is at 4%
- Board meets 24 month spending exception exactly
  - $5,500,000 spent within first 6 months (10%)
  - $24,750,000 spent within first 12 months (45%)
  - $41,250,000 spent within first 18 months (75%)
  - $55,000,000 spent within first 24 months (100%)
- Rough math: complying with the spending schedule allows BOE to keep extra ~$650,000.

Bradley

Post-Issuance Compliance – Private Use

- Generally not a big factor for BOE financings
- If a facility financed with tax-exempt bonds becomes subject to significant private use, consult with bond counsel.
- Examples:
  - School is sold to 501(c)(3) at market value (note: 501(c)(3) counts as private use)
  - Career/tech center partners with major car manufacturer for use of 45% of the center
  - Company pays school to install solar panels on school membrane roof

Bradley

Managing Debt - Refinancings

- Not many opportunities for refinancings right now due to market forces.
- However, it is expected that interest rates will start to drop soon.
- Guidelines to consider:
  - Does Board have a bright line for savings amount?
  - Remember apples-to-apples comparisons are key.
  - ALSDE financial advisor will help evaluate desirability of a refunding.

Questions?

Pre-Conference Workshops

aasbo | Alabama Association of School Business Officials