

# Wednesday's News You Can Use

## WHAT TO EXPECT FROM YOUR COUNTERPARTIES IN A PUBLIC BOND FINANCING

ALSTON & BIRD

STIFEL | Merchant Capital Division

 **REGIONS**  
CORPORATE TRUST

  
**CARL  
VINSON INSTITUTE  
OF GOVERNMENT**  
The University of Georgia,

  
**GGFOA**  
GEORGIA GOVERNMENT  
FINANCE OFFICERS  
ASSOCIATION



# Peter K. Floyd



My areas of expertise:

- Complex Intergovernmental and Public Private Relationships;
- Government and Economic Incentives;
- Energy and Utilities (transactions and regulatory (Ga. PSC));
- Infrastructure; and
- Public Finance

Disclaimer – Nothing herein should be interpreted as the formal position of A&B or any of its clients

Disclaimer – Very high level summary and not intended as legal advice re: a particular project

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# STIFEL | Merchant Capital Division



**Trey Monroe** joined Stifel in 2014 through its acquisition of Merchant Capital, L.L.C. where he served as a public finance investment banker and the firm's primary contact for derivative advisory services from 1999-2014. Trey's banking expertise encompasses a wide variety of issuers and credit structures, including bonds and certificates of participation for cities, counties, school systems, water and sewer authorities, municipal utilities, development authorities, and higher education institutions. This experience extends from small private debt placements under \$5 million to publicly offered transactions in excess of \$100 million and includes assisting numerous issuers with first-time credit ratings or credit rating upgrade strategy. Trey routinely serves as a guest speaker for associations of governmental employees and officials such as the Georgia Government Finance Officers Association, the Georgia Rural Water Association, and the Georgia School Business Officials Association.

Mr. Monroe graduated from Emory University in 1997 with a Bachelor of Arts degree in Economics.

# REGIONS CORPORATE TRUST

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## **Cary Jones, CCTS** - Vice President/Corporate Trust Strategist

Cary has more than 22 years experience in Corporate Trust including relationship management and sales. Other experience includes general banking, internal audit and trust compliance. A graduate of The University of Alabama at Birmingham, Cary came to Regions Bank from The Bank of New York Mellon and AmSouth Bank. Cary holds the designation of Corporate Trust Specialist from the Institute of Certified Bankers.

## **Tom Clower** – Vice President/Corporate Trust Relationship Manager

Tom has been employed in the Corporate Trust industry for the past twenty seven years. Most recently, he worked for Wells Fargo Bank. Prior to that, Tom was employed by BNY Mellon and SouthTrust Bank. His broad experience includes higher education, municipal conduit issuances, school districts, utilities and pooled transactions. In addition to account management roles, Tom managed a municipal account administration group, a corporate trust operations unit and a group dedicated solely to the escrow product. Tom is a graduate of Birmingham-Southern College, Cannon Corporate Trust School and Cannon Corporate Trust Operations School.



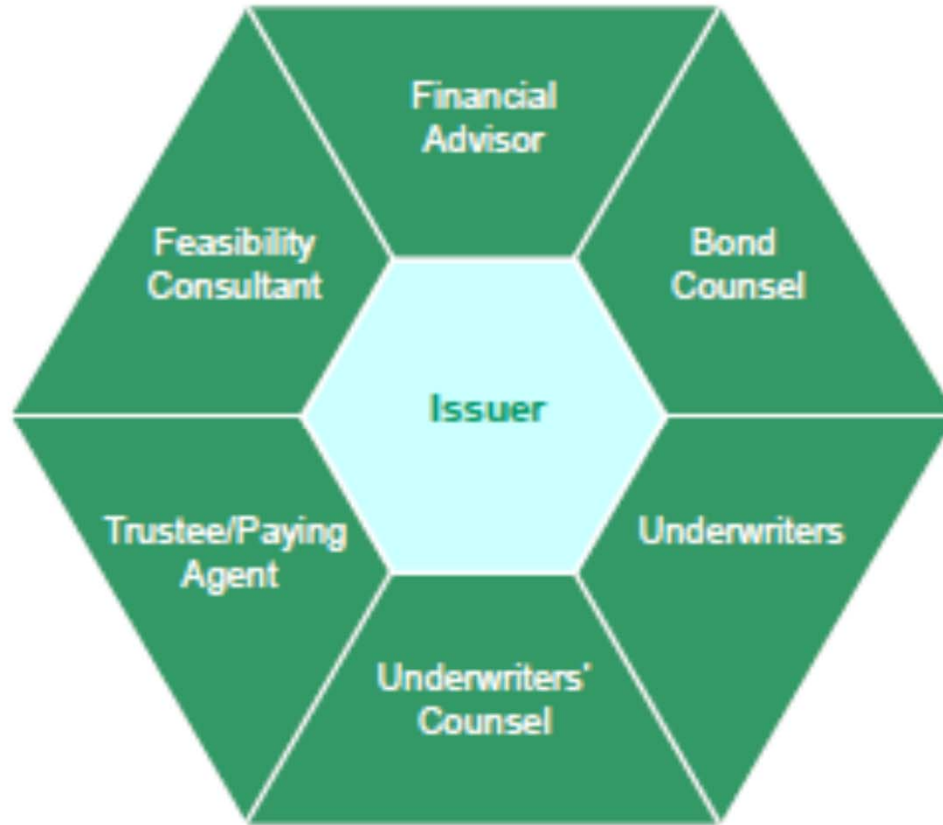
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# Learning Objectives

At the end of this session, you should be able to:

- Recall the public finance process
- Identify the counterparties and their respective roles in a public bond financing
- Recall what to expect from each party in selecting, managing, and determining fees

# Bond Finance Team



# Issuer

- City
- County
- Local Authority
- State Authority
- Direct Issuer vs Conduit Issuer
- Issuer's General Law and Local Law Powers and Limitations

# Traditional Structures

- Traditional “non-appropriations” lease financing
  - ACCG – Lease purchase
  - GMA – Lease purchase
  - Certificates of Participation (COPs)
  - Energy Service Companies (ESCOs)
  - Guaranteed Energy Savings Performance Contracts (GESPCs)
- Revenue bonds
  - Sales to public
  - Component of larger revenue system
- Backdoor general obligation (GO) revenue bonds
  - Intergovernmental contract(s)
    - Government Customer
    - True backdoor – Conduit Issuer



# Traditional Structures

- Traditional GO Bonds (hell or high water, full tax base pledged bonds)
- Special Purpose Local Option Sales Tax (SPLOST) Bonds
- Other



# Bond Counsel

- Determining the statutory authority of the issuer to issue the bonds
- Preparing the legal documents to authorize the bonds
- Ensuring that all technical statutory requirements for the issuance of the bonds are met
- Ensuring that all requirements for the issuance of bonds under the bond resolution or trust indenture have been satisfied
- Ensuring that a tax-exempt bond issue complies with the provisions of the tax law

*Continued on next slide*

# Bond Counsel

- Preparing descriptions of the bond documents and the security for the bonds for use in the official statement
- Based on practice and whether the financing team determines that it is necessary, reviewing the contents of the official statement to affirm that all material information has been disclosed and rendering an opinion relating to the disclosure in the official statement
- Supplying a legal opinion relating to the validity of the bonds and the tax status of the bonds on both the federal and state level

# Issuer's Counsel

- Reviewing all transaction documents
- Supervise approval of all transaction documents by issuer
- Assure compliance with local law (e.g., charters and enabling acts) and practices
- Handle bond validation process, if necessary
- Supplying a legal opinion relating to the enforceability of the principal transaction documents

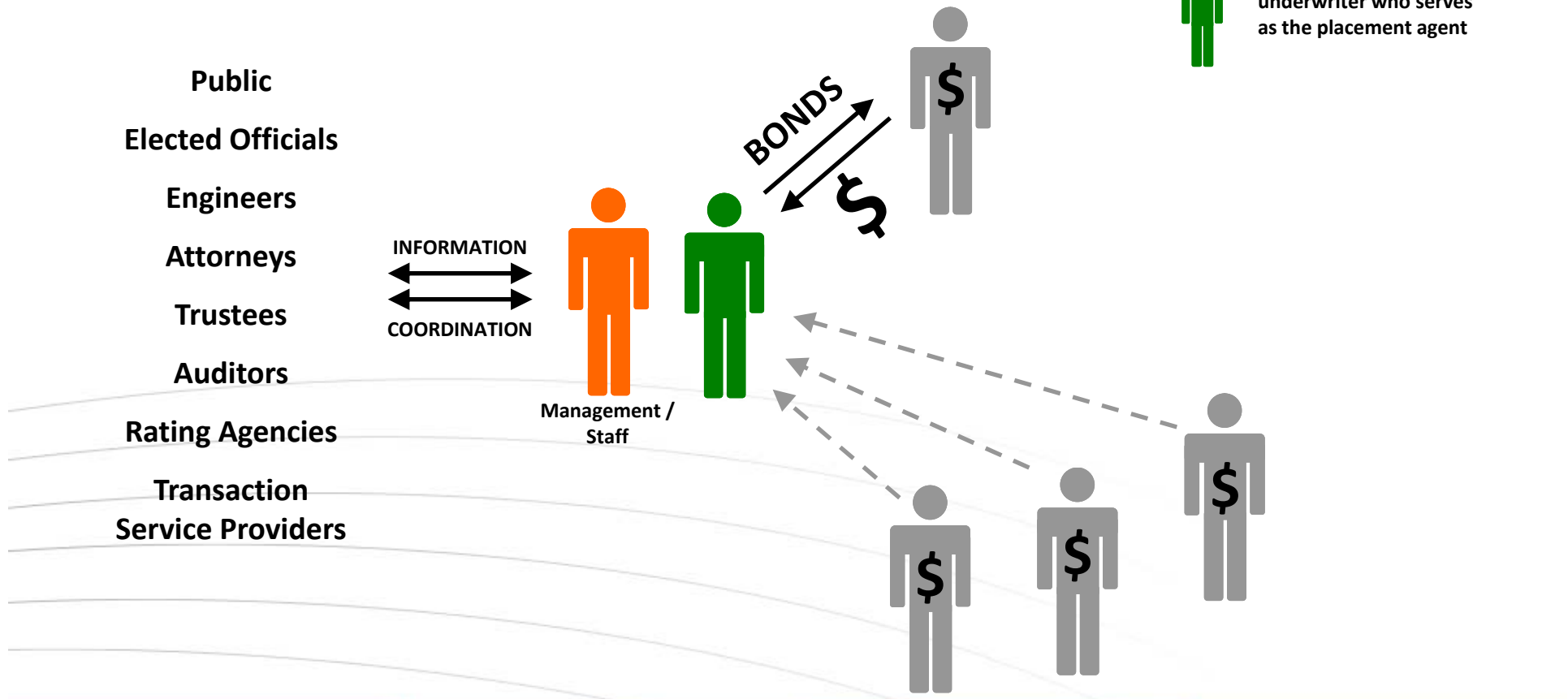
# Underwriter's and Disclosure Counsel

- If the debt is to be sold publically, certain disclosure documents must be prepared
- Typically called an “official statement”
- Difference between Underwriter Counsel vs Disclosure Counsel
- Assure compliance with securities laws
- Supplying a legal opinion to securities law compliance

# Wearing Multiple Hats

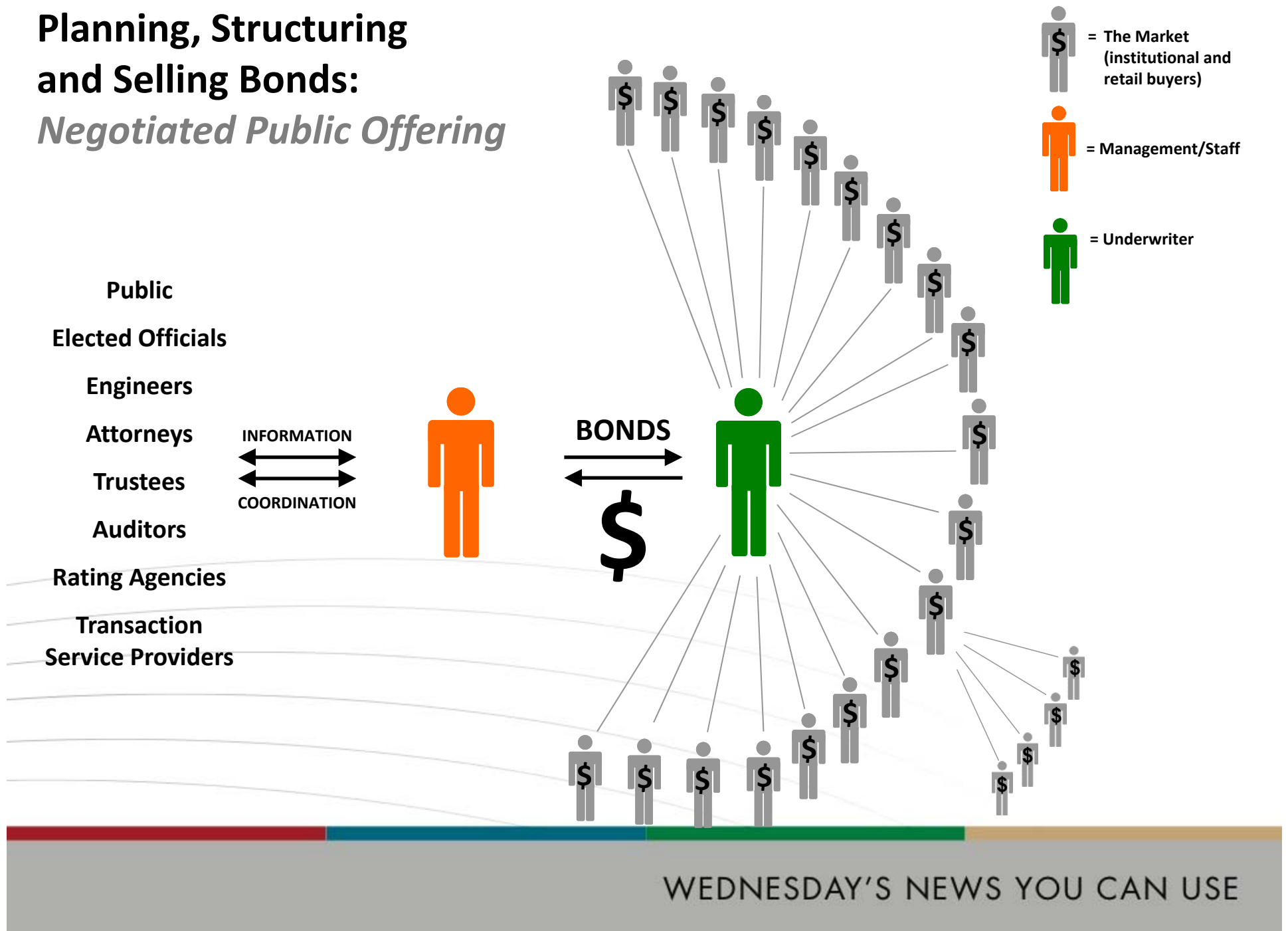
- To reduce closing costs, many of these legal roles may be combined
- Sometimes requires client consent
- Consider pros and cons, example combining Bond Counsel and UW or Disclosure Counsel

# Planning, Structuring and Selling Bonds: *Private Placement*

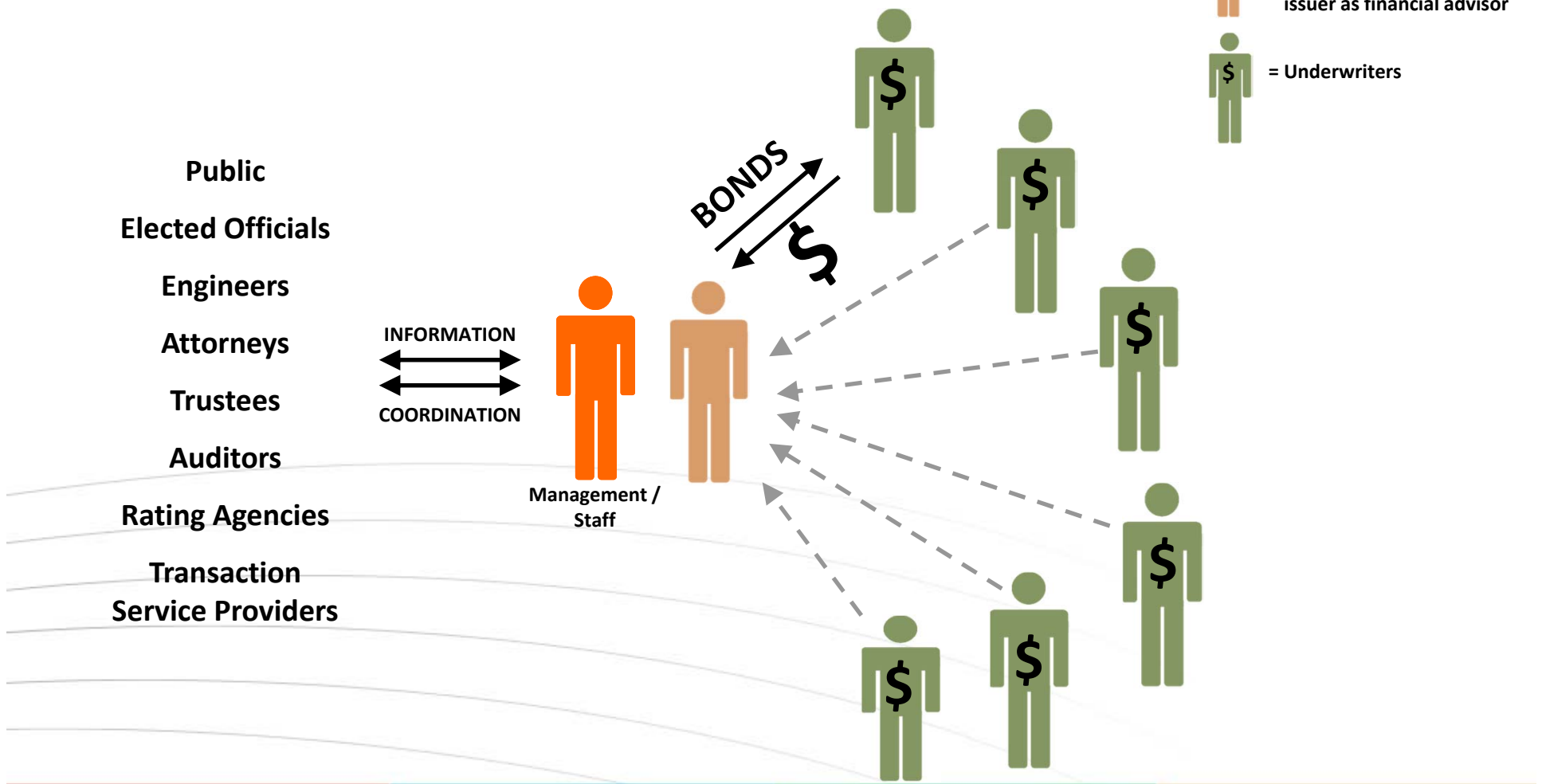




# Planning, Structuring and Selling Bonds: *Negotiated Public Offering*



# Planning, Structuring and Selling Bonds: *Competitive Public Offering*



# Planning, Structuring and Selling Bonds:

## Typical Characteristics

<u>Mode of Sale:</u>	<u>Term (yrs.)</u>	<u>Issue Size</u>	<u>Issuer Credit</u>	<u>Frequency</u>
Private Placement	0 - 10	\$1 - \$50MM	NR - AAA	N/A
Negotiated Public Offering	0 - 30	\$5MM and up	NR - AAA	88%
Competitive Public Offering	0 - 30	> \$50MM	AA & AAA	12%

# TRUSTEE

A trustee is a financial institution, appointed by the issuer of debt securities, to perform services on behalf of the issuer.

- A Trustee:
  - Must protect the bondholders by following the trust documents
  - Is paid by and must provide service to the Issuer through the administration of the bond issue
  - Mitigates risk to the bank by administering the bonds according to the trust documents and industry standards

# TRUSTEE

**Trust Indenture** – The legal contract between the Issuer of bonds or notes and a Trustee. The Indenture sets the rights, duties and obligations of the Issuer and Trustee, as well as the rights of the bondholders. It is a contract establishing rights among the three parties:

- Trustee
- Obligor / Issuer
- Bondholders

## **Activities:**

- Disburse debt service
- Provide accurate records
- Disburse construction funds
- Assist bondholders
- Verify audit confirmations
- Authenticate securities
- Transfer securities
- Draw on Letters of Credit
- Execute investment instructions
- Value reserve funds
- Collect required compliance items

# TRUSTEE

Debt Service is the section of an Indenture relating to the principal and interest payments on a bond issue. Five integral items for accurate and timely performance of debt service are:

- Timely receipt of funds from the Issuer
- Establishment of a record date
- Establishment of payment date
- Determination of the interest rate on the bonds
- Establishment of the Calculation Rule (30/360, Actual/Actual, 30/Actual, Actual/360, and Actual/365)

# TRUSTEE

**Covenant Compliance** – are the sections of a Trust Indenture requiring the Issuer to perform a specific task. This includes the payment of principal and interest as well as the submission of defined documents to the Trustee.

Examples are:

- Insurance certificates; often naming the Trustee as Loss Payee or Additional Insured
- Annual Audited Financial Statement
- Annual Budget
- Annual No Default Certificate

The non-compliance of a covenant requirement will create a default. This is very important to the Trustee's role because it is designed to create a fair and impartial protector for the bondholders in a pre-default situation and is its primary role in a default situation.

# TRUSTEE

**Default** – A default is the failure of an Issuer of bonds or notes to comply with the requirements of the Trust Indenture, Loan Agreement, or any other trust document for which it has a responsibility.

## A Trustee

- Pre default – the Trustee acts as an agent under the trust documents and has limited discretion. Typically, any action taken by the Trustee outside of the defined document requirements is only done with the Sole or Majority Bondholder’s consent or waiver.
- Post default – the Trustee acts as the “prudent man” standard as defined by the trust documents. This means the Trustee shall exercise the same degree of care and skill as it would exercise in its own affairs.

***The Trustee does not have a fiduciary responsibility until there is a default.***



# AGENT ROLES

## **Role of Paying Agent**

The Paying Agent is authorized by the Issuer to invoice, collect, and pay the principal and/or interest on any debt securities on behalf of the Issuer.

## **Role of Registrar**

As Registrar, maintains records on the registered holder names, addresses and payment information as well as the outstanding principal amount for each bondholder.

## **Role of Transfer Agent**

As Transfer Agent, is required to cancel and reissue securities from the existing bondholder to the new bondholder.

## **Role of Redemption Agent**

The Trustee or Paying Agent sometimes serves as the Redemption Agent and is required to publish redemption notices which detail the bonds or notes that are subject to mandatory or optional redemption. These redemption notices inform the bondholders of upcoming principal payments.

# CUSTODIAL SERVICES

## Role of Custodian

The Custodian is authorized to hold assets in safekeeping for a trust account. As the Custodian, for bond proceeds it is authorized to disburse monies to vendors or reimburses the Issuer at the written direction of the Issuer as the owner of the custody account.

## Advantage to using Custodial Services:

- Assets held in custodial accounts in the trust department of a bank, other than cash, **do not become assets or liabilities of the bank and are segregated from the bank's assets.**

Account ownership in the assets remains vested in the individuals or entities for whose benefit the bank is acting as custodian and the **assets are not subject to the claims of creditors.**

# TIPS TO THE ISSUER

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## Tips to a Issuer:

- Exhibits – Ask that your trust documents include exhibits for deliverables such as a No Default Certificate
- Ask your insurance provider to furnish the Trustee with insurance certificates at their renewal dates
- Choose an Arbitrage Rebate provider at closing and request that your Trustee set-up statements for the provider
- Provide your Trustee with a link to your annual financial statement and budget if they are published on your web-site
- If available, request that your Trustee provide you with an account synopsis from their compliance tracking software
- Verify prior to closing that you can meet the detailed compliance deadlines

# Thank You

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