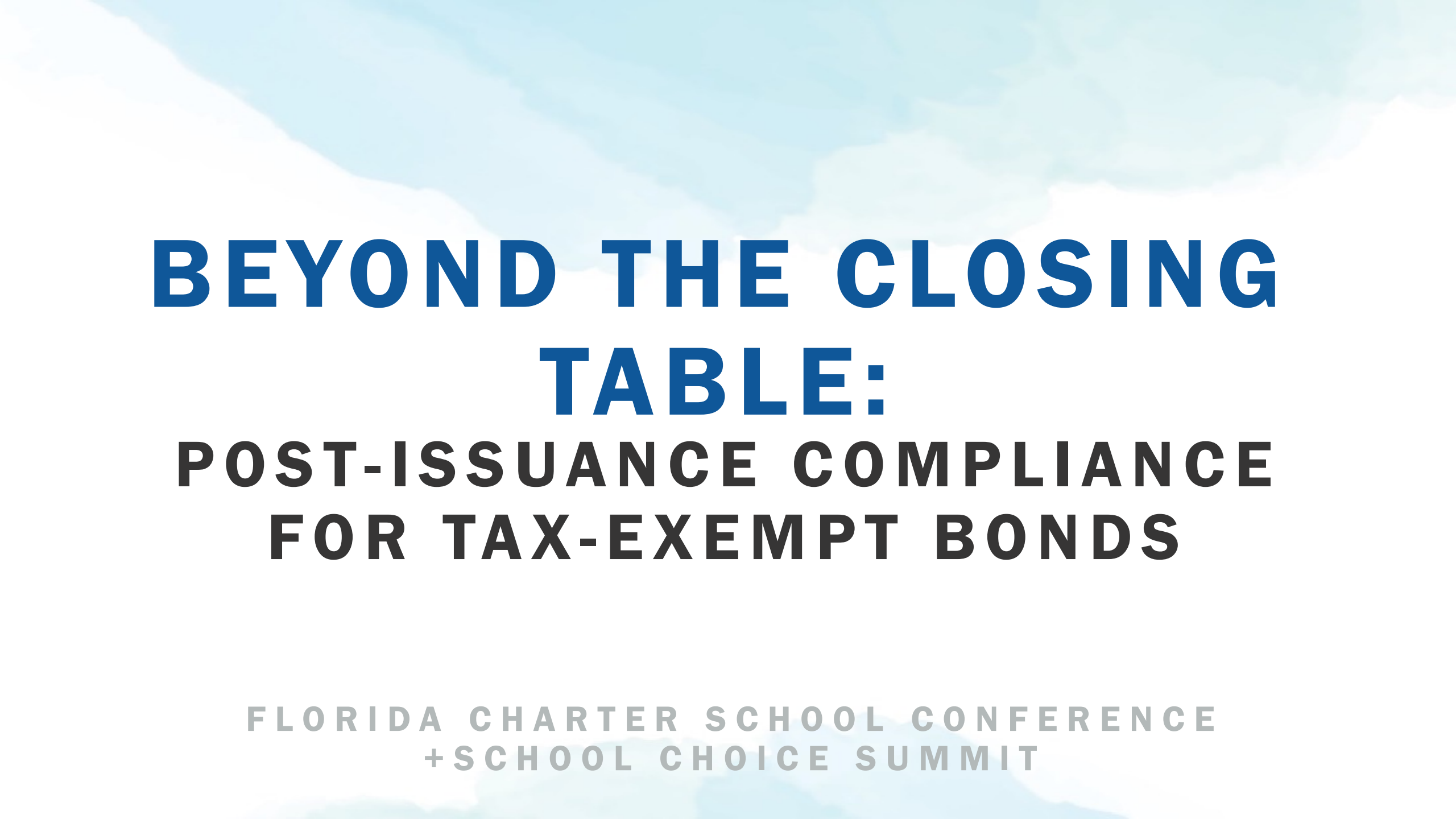




BEYOND THE CLOSING TABLE: POST-ISSUANCE COMPLIANCE FOR TAX-EXEMPT BONDS

FLORIDA CHARTER SCHOOL CONFERENCE
+ SCHOOL CHOICE SUMMIT

PRESENTERS



Braxton A. Padgett, Esq., B.C.S.



Richard Moreno



Emily Rodriguez, Esq.

DISCLAIMER:

**THIS IS NOT LEGAL ADVICE OR
FINANCIAL ADVICE. PLEASE
CONSULT YOUR SCHOOL'S
ATTORNEY ON ALL LEGAL
MATTERS AND A FINANCIAL
PROFESSIONALS FOR
FINANCIAL MATTERS.**



AREAS TO COVER

- Bond Financing Overview
- Restrictions and Reporting Requirements
- Role of the Board and Staff for Post-Issuance Compliance



OVERVIEW OF BOND FINANCING

- Charter and private schools cannot issue bonds by law, BUT can utilize government agencies as conduits to issue bonds on their behalf
- The bonds can be tax-exempt, meaning the bondholder does not have to pay taxes on the income received from interest payments
- Advantage: this allows access to lower interest rate financings





OVERVIEW OF BOND FINANCING

- Bonds are securities that are regulated by the Securities and Exchange Commission (SEC)
- What does this mean?
 - Bond offerings generally comply with the SEC's disclosure and offering requirements
 - School borrowers generally comply with ongoing reporting requirements established by SEC rule

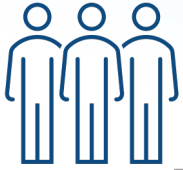




OVERVIEW OF BOND FINANCING

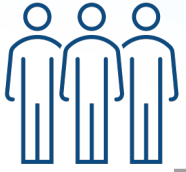
- Tax-exempt bonds are also subject to extensive IRS regulations regarding:
 - The use of the bond financed property in an unrelated trade or business
 - The use of the bond financed property by third parties
 - Arbitrage yields on investments related to the tax-exempt monies





THE PLAYERS

- Borrower (Charter School or Private)
- Issuer
 - Serves as the conduit through which the bonds are issued to qualify as tax-exempt
- Underwriter (Investment Bankers)
 - Coordinates all aspects of the transaction and assists with negotiations
 - Reviews all documents
 - Purchases the bonds from Issuer and sells to investors
- Trustee
 - Holds the proceeds of the bonds and the funds established under the bond documents
 - Disburses proceeds; collects payments from Borrower; makes principal and interest payments to bondholders
 - Enforces Borrower's obligations for the benefit of the bondholders
- Bondholder
 - Investor that purchases the bonds

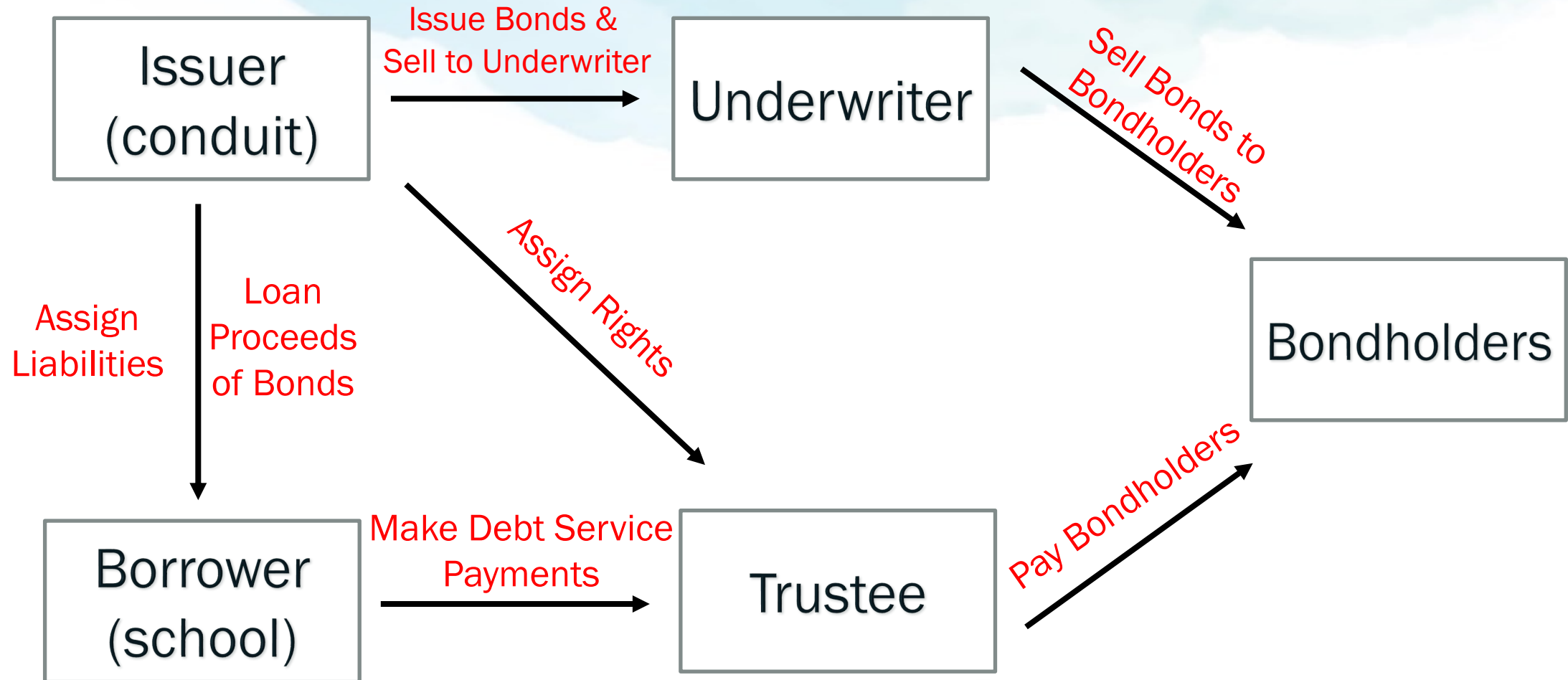


THE PLAYERS

- Financial Advisor to Borrower
- Borrower's Counsel
- Issuer's Counsel
- Bond Counsel
- Underwriter's Counsel
- Trustee's Counsel



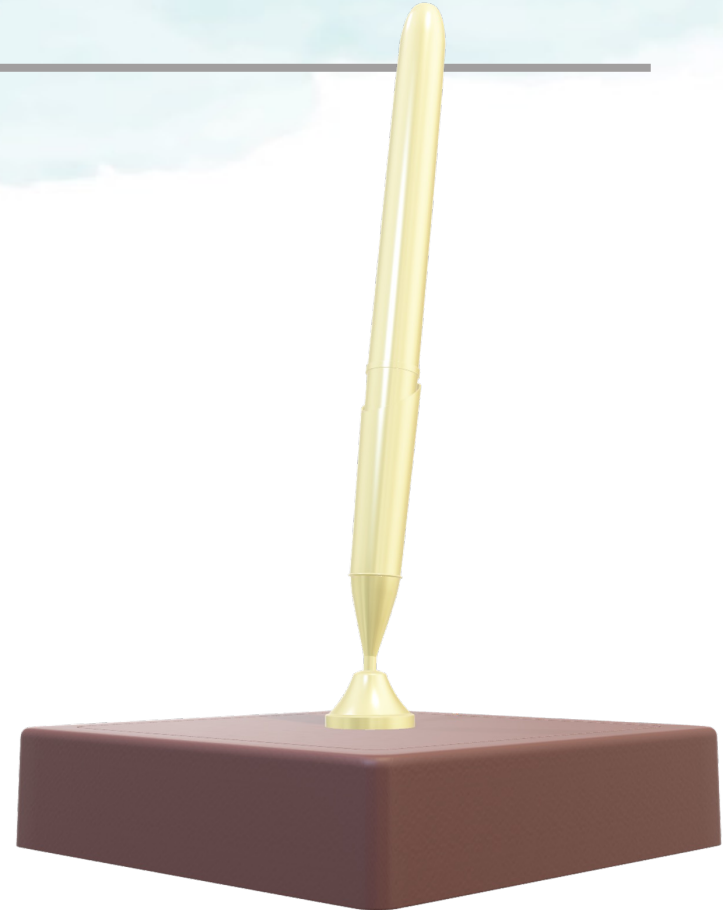
GENERAL STRUCTURE





KEY DOCUMENTS

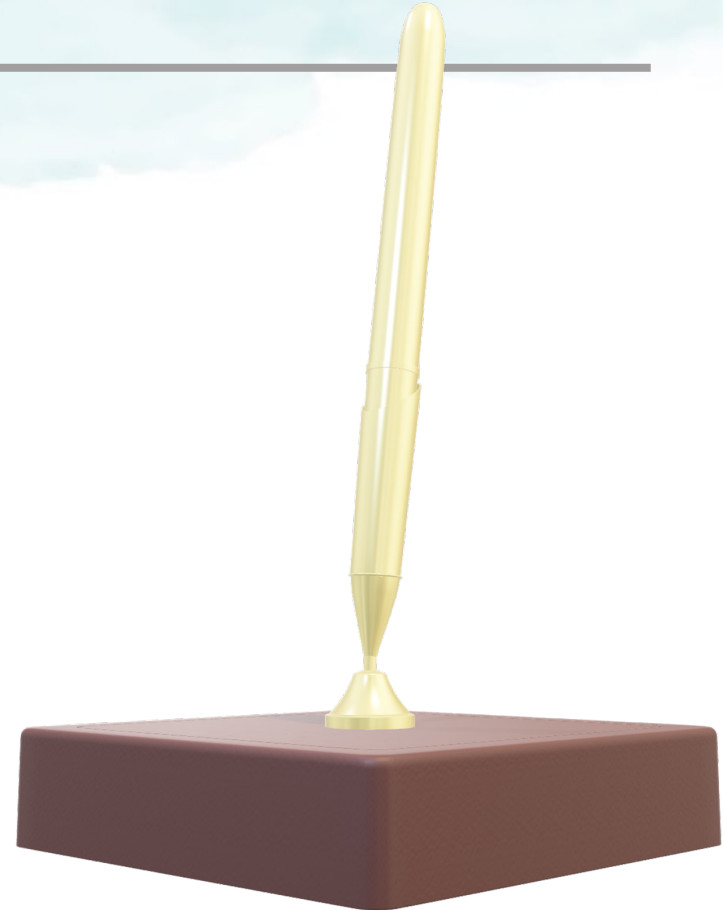
- Trust Indenture
 - Between Issuer and Trustee
 - Assigns rights of Issuer, establishes funds, directs Trustee how to administer such funds
 - Some transactions also have a Master Trust Indenture
- Loan Agreement
 - Usually between Issuer and Borrower
 - Establish repayment obligations, financial covenants, and reporting requirements
- Continuing Disclosure Agreement (CDA)
 - Complies with disclosure requirements under SEC Rule 15c2-12(b)(5)
- Tax Certificate and Agreement
 - Includes certain certifications and requirements related to IRS restrictions on the use of tax-exempt bond proceeds





KEY DOCUMENTS

- Post-Issuance Compliance Policy
 - This is generally a requirement for closing
 - Details the procedures the school will utilize to maintain compliance with bond requirements





GENERAL RESTRICTIONS ON TAX-EXEMPT BOND FINANCED PROPERTY

- No “private business use” or “bad use”
- Unrelated trade or business use
- Wiggle room for up to 5% of “bad use”; 2% of this is generally taken up by the costs of issuance
- No religious use
- Restrictions on service contracts





RESTRICTIONS ON ADDITIONAL INDEBTEDNESS

- Generally, the Loan Agreement will contain certain restrictions on the incurrence of additional debt
 - May require bondholder approval
 - May require the school to meet certain tests, such as historical and projected debt service coverage ratio
- Before incurring debt (loan, lease, etc.), make sure any additional indebtedness requirements have been satisfied





ONGOING REPORTING

- CDA (and likely Loan Agreement) will contain certain ongoing reporting requirements
- Examples of requirements:
 - Provide annual audit
 - Provide quarterly financial reports
 - Provide enrollment data
 - Provide calculation of debt service coverage ratio and days cash on hand as of specified test date
 - Provide material communications from charter school sponsor
 - Provide notice of changes in key personnel
 - Provide annual certification regarding insurance
 - Provide construction updates





ONGOING REPORTING

- Reporting under the CDA is generally done through a company called Digital Assurance Corporation (DAC)
- Reports and disclosures under the CDA are uploaded by DAC to a public database called the Electronic Municipal Market Access or “EMMA”
- The CDA contains a list of events that must be reported to EMMA (select examples below; not exhaustive):
 - Principal and interest payment delinquencies
 - Unscheduled draws on debt service reserves reflecting financial difficulties
 - Non-payment related defaults
 - Rating changes
 - Incurrence of debt



A2					BORROWER: School A, Inc.
	A	B	C	D	E
1	BOND REPORTING TOOL School A, Inc., 20XX Bond Issue Last Revised: September 1, 2025				
2	BORROWER: School A, Inc. ISSUER: Capital Trust Agency TRUSTEE: U.S. Bank National Association UNDERWRITER: B.C. Ziegler and Company DISSEMINATION AGENT: Digital Assurance Certification, LLC SCHOOL: School A				
3	<u>20XX BOND ISSUE</u> Date Issued: MONTH XX, YEAR Capital Trust Agency \$100,000,000 Educational Facilities Revenue Bonds (School A, Inc. Project), Series 20XX				
4	<u>MATURITIES, PRINCIPAL AMOUNTS, INTEREST RATES, PRICES, YIELDS, and CUSIP NUMBERS</u> \$100,000,000 Term Series 20XX Bond due June 1, 20XX; Rate: X.XX%; Price: 100; Yield: X.XX%; CUSIP No.: 12345ABC0				
5	All capitalized terms are defined in the Trust Indenture (as supplemented), Loan Agreement (as supplemented), Tax Regulatory and Agreement, and Continuing Disclosure Agreement				

		Continuing Disclosure Agreement	CDA	
Annually				
Action Item	Source / Agreement	Action Required/ Summary	Due Date	Submit To
Annual Report and Compliance Certification	CDA § 2(a)-(d), 3	The Borrower shall provide the Annual Report to DAC not later than the Annual Filing Date following the end of each Fiscal Year. If the required Audited Financial Statements are not available prior to the Annual Filing Date, then those such statements shall be provided once available in an electronic copy with a Certification to DAC. The contents of the Annual Report are provided in Section 3 of the CDA. If Borrower fails to file the Annual Report and Certification with DAC by the Annual Filing Date, DAC shall immediately send a Failure to File Event to the MSRB (see CDA Exhibit B).	Each December 15th by 10:00 a.m. EST	DAC
Certificate of Insurance	LA § 4.03(f)	The Borrower shall deliver to the Trustee annually an insurance certificate, substantially in the form of Exhibit E (the "Borrower's Insurance Certificate"), certifying that the terms, conditions and covenants of Section 4.03 of the LA have been satisfied.	Annually Substantially in the form of LA Exhibit E	Trustee

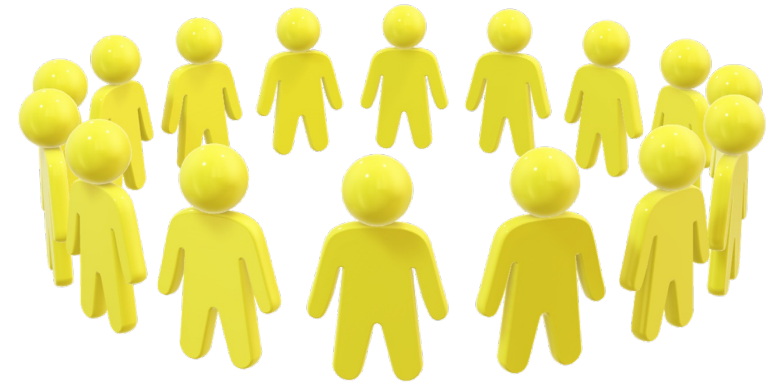
ARBITRAGE

- IRS rules include certain restrictions on yields from investments of the bond proceeds that are materially higher than the bond yield itself
- Arbitrage earnings on investment of tax-exempt bond funds must be rebated to the U.S. Treasury every five years
- Borrowers must engage an arbitrage consultant every five years (or more frequently if required by bond documents) to conduct the arbitrage calculation and determine any rebate amounts



ROLE OF THE BOARD AND STAFF

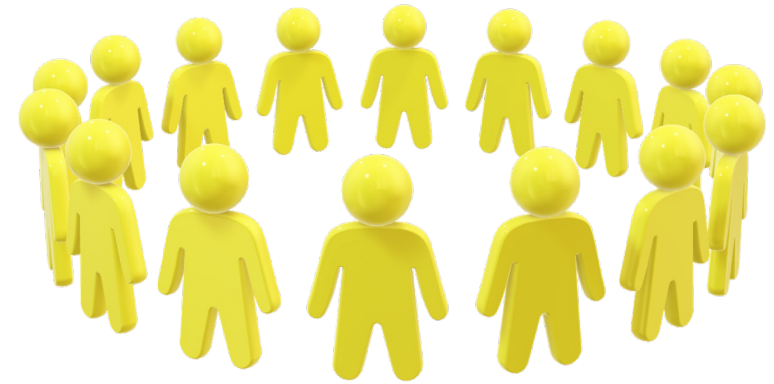
- Make sure you stay informed about the deal from the outset, during the transaction, and post-closing
- Bond compliance is complex – take the time to understand what is required of your school
- Consider doing a post-closing training with responsible staff





ROLE OF THE BOARD AND STAFF

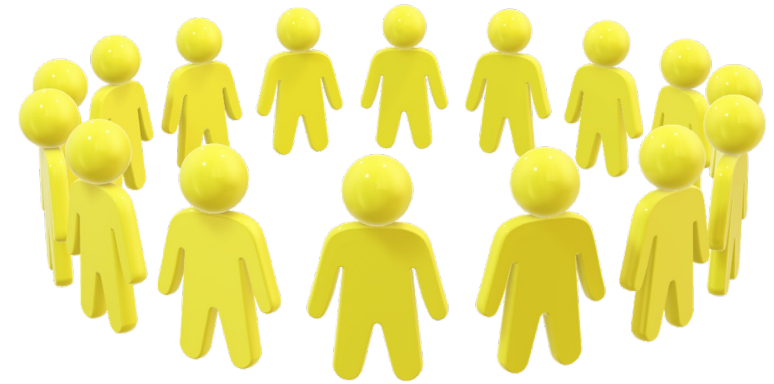
- Designate a staff member or create a board committee to be responsible for compliance-related tasks and reporting
- Ensure personnel are responsible for oversight of reporting and bond compliance – build redundancies
- Ensure staff is tracking all deadlines and timelines (quarterly, yearly, every five years, etc.)
 - Consider creation of a reporting tool that compiles all of this information in one place





ROLE OF THE BOARD AND STAFF

- Ask questions:
 - Before approving new debt or a lease, ensure any additional indebtedness requirements under the bond have been satisfied
 - If an outside organization is seeking to utilize tax-exempt financed facilities, consider consulting legal counsel to determine if allowing the use would have implications on the bonds
 - If the school has incurred new debt, defaulted on debt, or experienced other reportable events, ensure disclosures have been posted to EMMA
 - Periodically check in on whether the school leader or other assigned personnel are staying on top of applicable deadlines and timelines





QUESTIONS?