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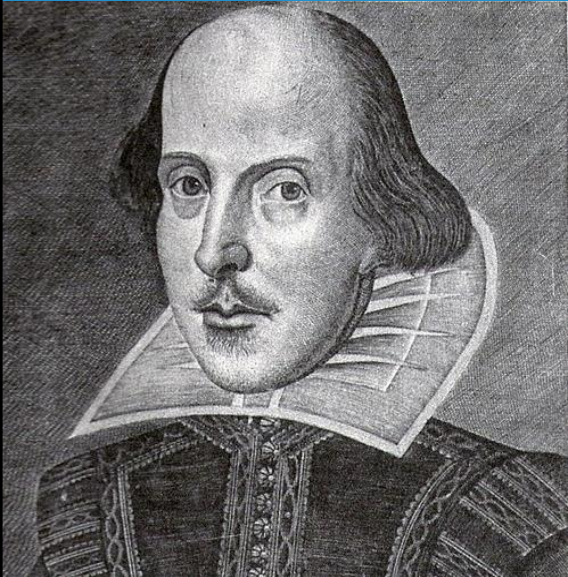
Financing Infrastructure With Bonds and Bank Loans

*Infrastructure Assistance
Coordinating Council Conference
October 23, 2018*

*Marc Greenough
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Why Borrow?



**“Neither a borrower
nor a lender be.”**

Hamlet
Act I, Scene 3

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Why Borrow?



- Current projects produce future benefits
- Investments produce gains
- Accumulating funds is politically difficult

Planning to Borrow



- Amount
- Source of repayment
- Tax status
- Term and redemption
- Interest rates
- Credit enhancement
- Covenants
- Refundings

Credit

General Obligation Bonds

- **Unlimited Tax General Obligation (UTGO) – voter-approved**
- **Limited Tax General Obligation (LTGO) – nonvoted (commissioner bonds)**

Credit

Revenue Bonds

- **Special taxes**
- **System, enterprise, or project revenue**
- **Assessments (LID, ULID, RID)**

Security

Bond Resolution/Ordinance

- Pledge of taxes or revenues
- Flow of funds
- Reserve fund
- Covenants (including rate covenant)
- Debt capacity or additional bonds
- Defeasance

Bonds or Bank Loan?



Bonds

- Long-term (30+ years)
- Requires disclosure
- May require rating

Bank Loan

- Shorter term (10-15 years)
- No disclosure or rating

Who Is Involved?

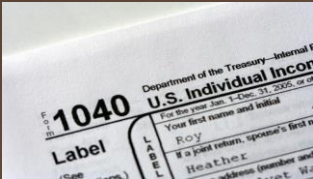


- Issuer
- Financial Advisor
- Bond Counsel
- Purchaser:
Underwriter or Bank
- Purchaser's Counsel
- Fiscal Agent
- Rating Agency

Role of Bond Counsel

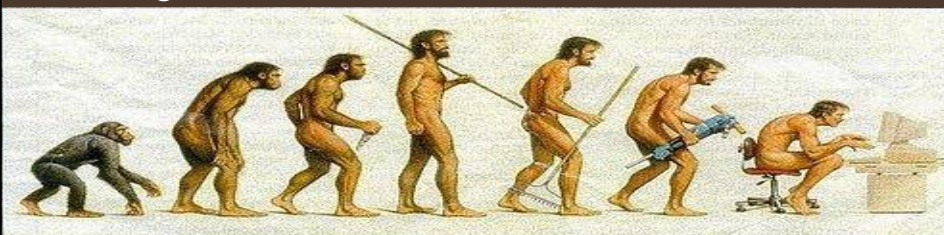


- State Law
- Securities Law
- Tax Law



Timeline

- Structuring and tax diligence
- Disclosure document (if bonds)
- Adopt bond resolution/ordinance
- Rating Agency presentation (if bonds)
- Pricing

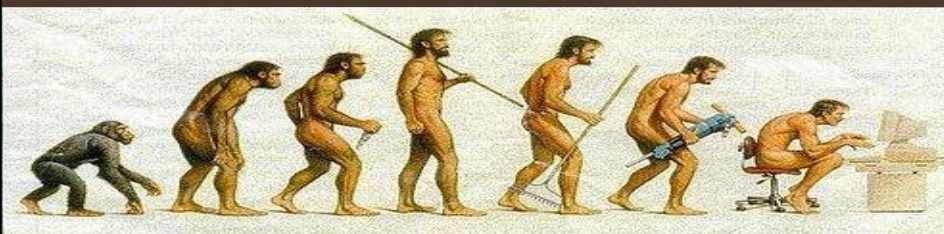


Somewhere, something went terribly wrong

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Timeline (cont'd.)

- Sign purchase contract
- Closing
- Continuing disclosure
- Post-issuance tax and covenant compliance



Somewhere, something went terribly wrong

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Securities Law for Bonds



- Rule 15c2-12:
Official Statement
- Rule 10b-5:
Full and fair disclosure

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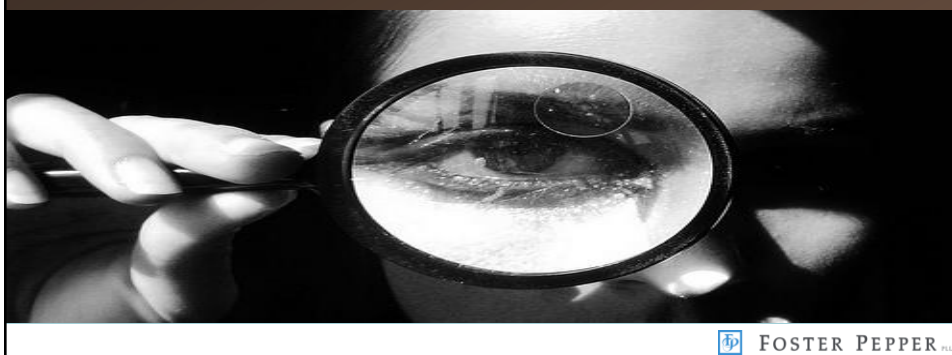
Rule 10b-5

Unlawful, in connection with the purchase or sale of securities in interstate commerce, (a) to employ any device, scheme, or artifice to defraud, (b) **to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading**, or (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

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Securities and Exchange Commission

- Increased initial and continuing disclosure
- Protection of individual investors
- Regulation of states as issuers
- Enforcement in the absence of defaults



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Rule 15c2-12

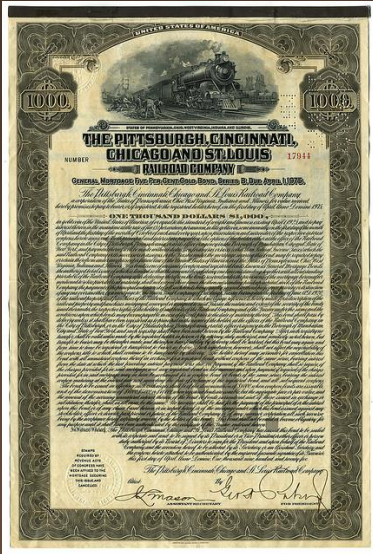
- Applies to public offerings >\$1 million
- Prior to purchase, underwriter must obtain and review official statement



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Official Statement

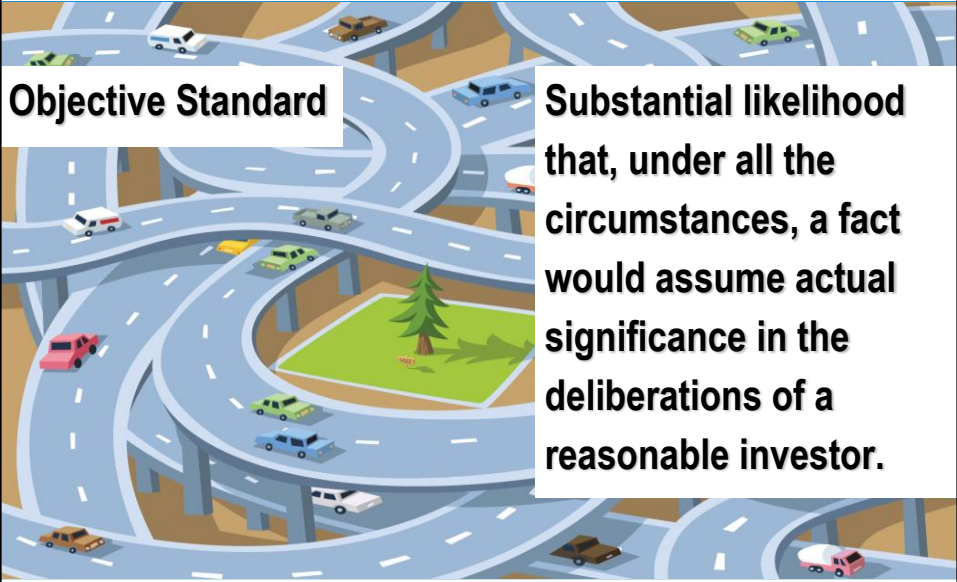
A document prepared by an issuer of municipal securities that sets forth information concerning the terms of the proposed issue of securities, including financial information or operating data concerning such issuer and those other entities, enterprises, funds, accounts, and other persons material to an evaluation of the securities.



Materiality

Objective Standard

Substantial likelihood that, under all the circumstances, a fact would assume actual significance in the deliberations of a reasonable investor.



Continuing Disclosure



MSRB
Municipal Securities
Regulating Board

EMMA - Electronic Municipal Market Access
The Official Source for Municipal Disclosures and Market Data

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February 15, 2017

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- Continuing Disclosure Submissions
- 529 College Savings Plan Submissions


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Tax Considerations

Private Activity and Arbitrage




WE'RE TRYING TO RE-CREATE CONDITIONS AT THE BEGINNING OF THE UNIVERSE...

WHEN THE TAX CODE WAS UNDERSTANDABLE.

LARGE HADRON COLLIDER

www.caglecartoons.com

Mike Keefe THE DENVER POST 4-11-10



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Post-Issuance Tax Compliance

Monitoring Use of Bond Proceeds

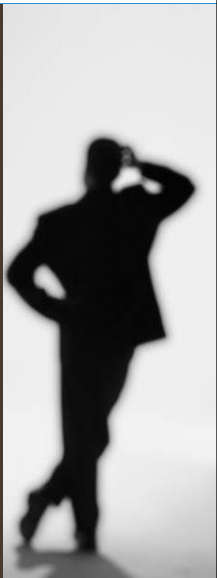
Record Retention



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Helpful Sources

- GFOA (Government Finance Officers Association)
- MSRB (Municipal Securities Rulemaking Board – EMMA)
- NFMA (National Federation of Municipal Analysts)



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