



# **Roles and Responsibilities of CSFOs in Municipal Bond Disclosure**

**Alabama Association of School Business Officials (AASBO)  
Annual Conference**

**Wednesday, May 3, 2023, 2:00 – 2:45 p.m.**

***Presented by: R. Kane Burnette***

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## Kane Burnette

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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

### Awards

- 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

- Brief Overview of Federal Securities Laws
- Responsibilities During a Primary Offering
- Post-Issuance Responsibilities

# Overview of Federal Securities Laws

- Two primary sources of authority:
  - Securities Act of 1933 (the “1933 Act”); and
  - Securities and Exchange Act of 1934 (the “1934 Act”).
- But first...what is a security?
  - “Any note, stock...bond” etc.
  - Name is not always conclusive.
  - Security or loan?

# 1933 Act

- General rule: registration
  - Section 5 of the 1933 Act states that it is unlawful to use the means of interstate commerce or the mails to offer to sell or offer to buy a security unless a registration statement has been filed with the SEC.
  - Registration is time-consuming and costly.
- Exception: exempt securities
  - Section 3 of the 1933 Act exempts certain securities from registration, including – most notably for our purposes – municipal securities: “any security issued or guaranteed by any State of the United States, or by any political subdivision of a State....”

# 1933 Act (continued)

- HOWEVER...
  - Exemption from registration does not mean the 1933 Act does not apply at all.
  - The antifraud provisions of Section 17 of the 1933 Act still apply to municipal securities.
  - Antifraud provision: it is unlawful for any person to obtain money in interstate commerce by means of an untrue statement of a material fact in the offer or sale of securities, or any omission to state a material fact necessary to make the statements made, in light of the circumstances under which they are made, not misleading.

# 1934 Act

- Created the Securities and Exchange Commission (SEC), which regulates and oversees broker-dealers.
- Requires “reporting companies” to file periodic reports with the SEC.
- As with the 1933 Act, municipal securities are exempt from many provisions of the 1934 Act, but not from the “antifraud” provisions of the 1934 Act.

## Rule 15c2-12

- Rule promulgated by the SEC under the 1934 Act. The Rule applies to issuers of municipal securities in an indirect fashion – it applies, technically, to broker-dealers, who must see to it that issuer clients comply with the Rule.



## Rule 15c2-12 (continued)

- Under Rule 15c2-12, underwriters of municipal securities must:
  - Obtain a “deemed final” Preliminary Official Statement (POS) from an issuer;
  - Obtain a final Official Statement when available;
  - Post annual audited financial statements when available;
  - Post certain “annual financial information” by a certain date;
  - Post notice of the occurrence of certain specified events (for example, notice of a bond call or notice of a rating change);
  - Post the notice within 10 days on the “EMMA” website – Electronic Municipal Market Access system.

# Primary Offerings

- A brief glossary
  - “Primary offering” – the technical name for a new financing, borrowing, “issue” or “deal” done on a public basis;
  - “Issuer” – usually the borrower of funds and the entity that issues bonds, notes, warrants, etc.;
  - “Underwriter” – a broker-dealer that buys securities from the issuer and sells them to investors;
  - “POS” – Preliminary Official Statement – offering document used by an Underwriter to market securities before a final price is established;
  - “OS” – Official Statement – post-pricing version of POS.

## Primary Offerings (continued)

- Very often, the CSFO is the primary point of contact at the Issuer during a primary offering.
- Remember: while Issuers of municipal securities are exempt from certain provisions of the securities laws, they are NOT exempt from the antifraud provisions.
- CSFOs are therefore critical in helping 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.

# Example of POS/OS

PRELIMINARY OFFICIAL STATEMENT DATED \_\_\_\_\_, 2023

NEW ISSUE – BOOK-ENTRY ONLY (DTC)

Ratings:  
Moody's: \_\_\_\_\_  
See "RATINGS" herein.

*In the opinion of Bond Counsel, assuming compliance by the Board with certain covenants set forth in the Authorizing Resolution herein referred to with respect to certain conditions imposed by Section 103 of the Internal Revenue Code of 1986, as amended, the interest on the Warrants will be excludable from gross income of the recipients thereof for federal income tax purposes. However, see "TAX MATTERS" herein for certain other federal tax consequences to the recipients of the interest on the Warrants. Bond Counsel is of the further opinion that, under existing statutes, the interest on the Warrants will be exempt from Alabama income taxation.*

§ \_\_\_\_\_  
**AASBO BOARD OF EDUCATION**  
**Special Tax School Warrants**  
**Series 2023**

Dated: Date of Delivery

Due: March 1, as shown on the  
inside cover hereof

SEE INSIDE COVER FOR AMOUNTS, MATURITIES, INTEREST RATES, YIELDS AND CUSIPS

The AASBO Board of Education (the "Board") will issue its Special Tax School Warrants, Series 2023 (the "Warrants"), pursuant to the terms of a resolution of the Board to be adopted prior to the date of issuance of the Warrants for the purpose of providing funds for capital improvements to public school facilities under the jurisdiction and control of the Board, providing a municipal bond insurance policy for the Warrants and paying the costs of issuing the Warrants.

The Warrants will be initially issued as fully registered warrants, in book-entry form, registered in the name of Cede & Co., as registered owner and nominee of The Depository Trust Company, New York, New York ("DTC"), which will act as securities depository for the Warrants. Individual purchases of beneficial interests in the Warrants will be made through DTC's Book-Entry System. Purchasers of beneficial interests in the Warrants will not receive certificates representing their interests in the Warrants. So long as Cede & Co. is the registered owner of the Warrants, payments of principal of and interest on the Warrants will be paid through the facilities of DTC. Disbursement of such payments to DTC Participants is the responsibility of DTC and disbursement of such payments to the purchasers of beneficial interests in the Warrants is the responsibility of DTC Participants. See "THE WARRANTS – Book-Entry Only System" herein.

The Warrants will bear interest payable on September 1, 2023, and semiannually thereafter on each March 1 and September 1.

**The Warrants will be payable, as to both principal and interest, solely out of, and secured by a pledge of, the Pledged Tax Proceeds to which reference is hereinafter made. The Warrants are not general obligations of the Board. The Warrants are not obligations of AASBO, Alabama. See "SECURITY AND SOURCE OF PAYMENT" herein.**

**Certain of the Warrants are subject to redemption prior to their stated maturities. See "THE WARRANTS – Redemption Provisions" herein.**

This cover page contains certain information for quick reference only. It is not intended to be a summary of this issue. Investors must read the entire Official Statement to obtain information essential to the making of an informed investment decision.

*The Warrants are offered when, as, and if received by the Underwriter, subject to prior sale, to withdrawal or modification of the offer without notice, and to the approval of the validity thereof by Bond Counsel LLP, Birmingham, Alabama, Bond Counsel, and certain other conditions. It is expected that the Warrants will be available for delivery through the facilities of DTC on or about \_\_\_\_\_, 2023.*

**ALLSTAR UNDERWRITERS**

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_, Preliminary, subject to change.

OFFICIAL STATEMENT

NEW ISSUE – BOOK-ENTRY ONLY

Ratings:  
Moody's: Underlying – \_\_\_\_\_  
S&P: Sandlot Insured – \_\_\_\_\_  
(See "RATINGS" herein)

*In the opinion of Bond Counsel, assuming compliance by the Board with certain covenants set forth in the Authorizing Resolution herein referred to with respect to certain conditions imposed by Section 103 of the Internal Revenue Code of 1986, as amended, the interest on the Warrants will be excludable from gross income of the recipients thereof for federal income tax purposes. However, see "TAX MATTERS" herein for certain other federal tax consequences to the recipients of the interest on the Warrants. Bond Counsel is of the further opinion that, under existing statutes, the interest on the Warrants will be exempt from Alabama income taxation.*

§ \_\_\_\_\_  
**AASBO BOARD OF EDUCATION (ALABAMA)**  
**Special Tax School Warrants**  
**Series 2023**

Dated: Date of Delivery

Due: June 1, as shown on  
the inside cover hereof

SEE INSIDE COVER FOR AMOUNTS, MATURITIES, INTEREST RATES, YIELDS AND CUSIPS

The AASBO Board of Education (the "Board") will issue its Special Tax School Warrants, Series 2023 (the "Warrants"), pursuant to the terms of a resolution of the Board to be adopted prior to the date of issuance of the Warrants for the purpose of providing funds for capital improvements to public school facilities under the jurisdiction and control of the Board, providing a municipal bond insurance policy for the Warrants and paying the costs of issuing the Warrants.

The Warrants will be initially issued as fully registered warrants, in book-entry form, registered in the name of Cede & Co., as registered owner and nominee of The Depository Trust Company, New York, New York ("DTC"), which will act as securities depository for the Warrants. Individual purchases of beneficial interests in the Warrants will be made through DTC's Book-Entry System. Purchasers of beneficial interests in the Warrants will not receive certificates representing their interests in the Warrants. So long as Cede & Co. is the registered owner of the Warrants, payments of principal of and interest on the Warrants will be paid through the facilities of DTC. Disbursement of such payments to DTC Participants is the responsibility of DTC and disbursement of such payments to the purchasers of beneficial interests in the Warrants is the responsibility of DTC Participants. See "THE WARRANTS – Book-Entry Only System" herein.

The Warrants will bear interest payable on June 1, 2023, and semiannually thereafter on each June 1 and December 1.

**The Warrants will be payable, as to both principal and interest, solely out of, and secured by a pledge of, the Pledged Tax Proceeds to which reference is hereinafter made. The Warrants are not general obligations of the Board. The Warrants are not obligations of AASBO, Alabama. See "SECURITY AND SOURCE OF PAYMENT" herein.**

**Certain of the Warrants are subject to redemption prior to their stated maturities. See "THE WARRANTS – Redemption Provisions" herein.**

The scheduled payment of principal of and interest on the Series 2023 Warrants when due will be guaranteed under a municipal bond insurance policy to be issued concurrently with the delivery of the Series 2023 Warrants by **The Sandlot Company**.

*The Sandlot Company*

This cover page contains certain information for quick reference only. It is not intended to be a summary of this issue. Investors must read the entire Official Statement to obtain information essential to the making of an informed investment decision.

*The Warrants are offered when, as, and if received by the Underwriter, subject to prior sale, to withdrawal or modification of the offer without notice, and to the approval of the validity thereof by Bond Counsel LLP, Birmingham, Alabama, Bond Counsel, and certain other conditions. It is expected that the Warrants will be available for delivery through the facilities of DTC on or about May 3, 2023.*

**ALLSTAR UNDERWRITERS**

Dated: May 3, 2023

**Bradley**

## Scary Headlines

- “SEC Charges Texas School District and its Former CFO with Fraud in \$20 Million Bond Sale” (March 16, 2022)
- “SEC Charges Rochester, NY, and City’s Former Executives and Municipal Advisor with Misleading Investors” (June 14, 2022)

# Crosby Independent School District (ISD)

- Crosby ISD – approximately 6,400-student district outside of Houston, TX.
- SEC complaint alleged that the CFO was responsible for the District's accounting and "*was the primary contact during the bond financing process.*"
- Complaint further alleges that CFO failed to report \$11.7 million in payroll and construction liabilities and falsely reported having \$5.4 million in general fund reserves.
- School district sold \$20 million of bonds in Jan. 2018.

## Crosby ISD (continued)

- In reality, the District was experiencing financial difficulties and had a negative general fund balance, all of which came to light in August 2018.
- Rating agencies downgraded the District's bonds .
- District's auditor was also charged with improper professional conduct in connection with the audit.
- CFO agreed to pay a \$30,000 penalty and not participate in any future municipal securities offerings.

# Rochester City School District

- \$119 million City of Rochester, NY financing for the benefit of the Rochester City School District.
- SEC complaint alleges that the CFO of the School District was aware of a \$25 million budget shortfall (overspending on teacher salaries) but did not disclose this in the offering documents.
- Issue came to light and bonds were downgraded; ultimately State of NY intervention was required.
- CFO settled with SEC by agreeing to pay a penalty and to not participate in future municipal securities offerings.



# Takeaways

- Remember that offering documents (POS and OS) are the Issuer's documents. Professionals often assist extensively with preparation of the documents, but the final responsibility is on the Issuer to provide materially accurate disclosure.
- Golden Rule / Reasonable Investor test: would a reasonable investor want to know about a financial issue? If so, it is best to err on the side of disclosure.
- Key role that attached financial statements play.
- Enforcement actions followed rating downgrades: critical to deal fairly with credit rating analysts.

# Rule 15c2-12 – Post-Issuance Compliance

- As CSFO, you will \*likely\* take the lead role in compliance with SEC Rule 15c2-12, which imposes “post-issuance” (that is, after the bond issue closes) disclosure responsibilities on issuers.
- Post-Issuance Items:
  - Annual audited financial statements;
  - Annual financial information
    - Differs transaction-by-transaction, but often includes items such as principal tax collections, assessed values, top taxpayers, etc.;
  - Notices of certain events.

# Rule 15c2-12 – Post-Issuance Compliance (continued)

- Event notices
  - There are about 16 of these and most of them are unusual or infrequent occurrences.
  - One recent addition to the list is for the incurrence of a material “financial obligation.”
  - “Financial obligation” does not include public bond issues, so the purpose of the additional item is to have issuers disclose items such as traditional bank loans or capital leases.
- All information to be posted under Rule 15c2-12 is filed on the EMMA website: <http://emma.msrb.org>.

# Summary

- CSFOs play a critical role in ensuring school districts comply with applicable federal securities laws.
- When a primary offering is involved, remember that the financial condition of the Board will be one of (if not the) most important considerations for potential investors.
- Any material factors bearing on a Board's finances that are not reflected in the Board's audited financial statements should be discussed with the financing team and potentially disclosed.
- Remember annual disclosure obligations on EMMA.

# Questions?