

# APFP's Fall 2017 Educational Seminar

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# APFP's Fall 2017 Educational Seminar Panel

**Moderator:**

**William Henn**, Partner  
McKennon Shelton & Henn LLP

**Panel:**

**Cate Allen**, Principal Counsel to the Treasurer  
State of Maryland

**Solomon Cadle**, Partner  
McKennon Shelton & Henn LLP

**Kathy Clupper**, Managing Director  
Public Financial Management, Inc.

**Jon Kirn**, Managing Director  
Siebert Cisneros Shank & Co., L.L.C.

# Panelist Bios

## **Moderator:**

**William Henn**, Partner

McKennon Shelton & Henn LLP

Bill Henn devotes a significant portion of his practice to the federal tax laws and regulations pertaining to tax-exempt bonds, with particular emphasis on arbitrage, rebate, private use questions, exempt facility qualification and financing and post-issuance compliance issues. In addition, he represents a number of political subdivisions in connection with their financing programs. Bill has substantial experience in tax increment and special assessment bond issues and in the privatization of public facilities, including prisons, water and wastewater facilities, and other infrastructure projects. He is a frequent speaker on tax-exempt finance matters before the Practicing Law Institute and the National Association of Bond Lawyers. In addition to his undergraduate and law school education, Bill studied at the Public Policy Analysis Program at the University of Pennsylvania. Bill is a member of the American Bar Association, the Maryland State Bar Association, the National Association of Bond Lawyers, and the Government Finance Officers Association. He was a partner of Piper & Marbury for 14 years before the founding of McKennon Shelton & Henn LLP. Bill is a member of the Maryland bar.

# Panelist Bios

## **Panelist:**

**Cate Allen**, Principal Counsel to the Treasurer  
State of Maryland

Ms. Allen is the Legal Division Director for the Maryland State Treasurer's Office where she provides advice with respect to, among other things, the federal tax and securities laws applicable to the State's bonds. Ms. Allen was previously a partner at McKennon Shelton & Henn LLP in Baltimore, Maryland where she had a general public finance practice. Notable representations include serving as counsel to the Maryland Water Quality Financing Administration in the creation of its Bay Restoration Fund bond program and as counsel to the Maryland Transportation Authority on the first issuance of GARVEE bonds in the State of Maryland. Ms. Allen is a graduate of Syracuse University and the University of Maryland School of Law.

# Panelist Bios

## **Panelist:**

**Solomon Cadle**, Partner

McKennon Shelton & Henn LLP

Solomon Cadle is a partner with McKennon Shelton & Henn LLP and a member of the tax team. Solomon focuses his practice on the federal tax law and regulations involving public finance. He has extensive experience serving as bond counsel in 501(c)(3) and municipal general obligation tax-exempt and tax-advantaged financings. Solomon serves issuers and borrowers throughout their tax advantaged financings balancing the requirements of the federal tax law with their specific needs, particulars and goals and tailors a tax advantaged structure that maximizes flexibility for the client while maintaining the tax advantaged status of the financing. Solomon also works diligently with issuers and borrowers in their post-issuance tax compliance matters to ensure the preservation of the tax advantaged status of their financings for as long as they are outstanding, including IRS filings, allocations, remediation, contract revisions and exercising an issuer's right to enter into a VCAP with the IRS. Solomon has been involved in a variety of projects including hospitals, schools, parking garages, energy facilities, transportation, water and wastewater facilities, and public recreation and open space projects. Solomon is a member of the Maryland Bar and the National Association of Bond Lawyers.

# Panelist Bios

## Panelist:

**Kathy Clupper**, Managing Director  
Public Financial Management, Inc.

Katherine Clupper is a Managing Director and works with a range of issuers in the Mid Atlantic Region. In addition, she assists in the development of non-profit and higher education clients in Pennsylvania, New Jersey and Delaware. At PFM, Ms. Clupper has served as senior banker for several large Pennsylvania issuers such as City of Philadelphia Parking Authority, the Southeastern Pennsylvania Transportation Authority, the School District of Philadelphia, the County of Chester, Bucks County Water and Sewer Authority and the North Penn Water Authority. She has served as financial advisor for the Philadelphia Housing Authority's first mixed income housing development, Southwark Plaza. Currently, she works with several state level issuers such as the Pennsylvania Industrial Development Authority, State of Maryland, Commonwealth Financing Authority, and the New Jersey Educational Finance Authority. Additionally, she provides financial advisory services to a variety of local issuers both large and small, including the City of Philadelphia, City of Baltimore, City of Wilmington, North Penn Water Authority and several smaller Pennsylvania school districts and municipalities. Ms. Clupper has an MBA in finance from Temple University.

# Panelist Bios

## **Panelist:**

**Jon Kirn**, Managing Director  
Siebert Cisneros Shank & Co., L.L.C.

Jon Kirn is a Managing Director with Siebert Cisneros Shank located in the firm's Washington DC office. He has over thirty years of municipal finance and financial analysis experience and is responsible for working with municipal clients in customizing bond structures, negotiating bond sales and assuring proper execution of each transaction.

In the mid-Atlantic region, Jon has senior managed transactions for the State of Maryland, City of Baltimore, Prince George's County, the Commonwealth of Virginia, Virginia Resources Authority, City of Richmond, Metropolitan Washington Airports Authority, the District of Columbia and DC Water. Nationally, he covers many of the firm's east coast clients.

Mr. Kirn is a founder of and currently serves as the APFP Vice President. FINRA security licenses held are Series 7, 50, 53, 79 and 63.

# ISSUE PRICE OVERVIEW

## Prior Rule (1993 Regulations)

- For publicly offered bonds – first price at which 10% is sold to public
- For bona fide public offering – determined as of sale date based on reasonable expectations regarding initial public offering price



# General Rule: Option 1

First price at which 10% is sold to public

- For private placement to non-underwriter, price paid by buyer/lender

# Hold-the-Price: Option 2

For Bonds offered to the public for purchase

- Initial offering price to the public if each underwriter agrees to neither offer nor sell bonds above initial offering price until 10% is sold at no higher than such price, or 5 business days has elapsed, whichever is earlier

# Competitive Bid: Option 3

For Bonds sold in a competitive sale by issuer and publicly offered by underwriter

- Reasonably expected initial offering price to the public certified to by winning bidder
- Competitive sale has various procedural requirements, including the receipt by issuer of at least 3 bids from underwriters with established industry reputations

# Definitions and Operating Rules

- Public – Any person other than an underwriter or related party (generally 50% control)
- Underwriter – Any person that agrees in writing with the issuer to participate in the initial sale of bonds to the public and any person that agrees directly or indirectly with the person in direct agreement with the issuer to participate in the initial sale of the bonds
- Separate Determinations – Issue price is determined separately for bonds with the same credit and payment terms
- Options 1, 2 and 3 may be applied to different maturities in a bond issue at the election of the issuer

# New Issue Price Regulations Poll

(Asked Anonymously of Industry Underwriters) – *Results Below*

- 1) Have the New Regulations made your job more cumbersome? **100% YES**
- 2) Do you believe the New Regulations have had / or will have a negative financial impact on the competitive bid market? **20% NO, 70% YES, 10% Likely for small issues**
- 3) Do you believe the New Regulations have had / or will have a negative financial impact on the negotiated new issue market? **80% NO, 20% YES**
- 4) On competitive transactions, will the New Regulations cause you to change the number of offerings you bid on? **60% YES, 40% NO**
- 5) On competitive transactions, will it limit the size or type of offerings you bid on? **40% YES, 40% NO, 20% possibly limit to larger deals and higher quality**
- 6) Do you feel there is greater “risk” that requires you to build in more spread? **60% YES, 40% NO**
- 7) Will you fill member orders if you are asked to “hold the price”? **60% YES, 40% NO**
- 8) On negotiated offerings, will you be less inclined to utilize sealed bids or underwrite under-subscribed maturities? **60% NO change, 20% YES, 20% Depends**
- 9) Have you implemented procedures to allow you to track when you have met the “actual price”? **100% YES**
- 10) Do you feel that under different market conditions (i.e. higher rates or greater volatility), the New Regulations will have a greater impact of the underwriting process? **80% YES, 20% NO**