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Orrick Celebrates 150 Years, Including More than a Century in Public Finance

by Tonya Chin

LOS ANGELES -- Helping a municipal issuer finance its infrastructure needs is not like a puzzle, in which every piece has a fixed place, but more like a kaleidoscope, says Orrick, Herrington & Sutcliffe LLP's head of public finance, Roger Davis.

It's like turning the wheel until the best picture for that client falls into place.

"The types of financings and credit structures applied for a road improvement or a water system or an airport and so on are quite different," Davis said. "However, in each case the effort is to find the optimal structure that satisfies the state law requirements for issuing bonds, the federal tax requirements for interest on those bonds to be tax exempt, and the objectives of the issuer."

Those efforts have proved successful for the San Francisco-based law firm, which has ranked as number one municipal bond counsel in the nation since 2001, according to Thomson Reuters data. In California, Orrick has ranked number one every year since 1986, when the earliest data is available.

As the firm celebrates its 150th anniversary this year, including more than a century in public finance, Davis reflected on the firm's role in helping finance some of California's most important infrastructure projects — from the Golden Gate Bridge to the Los Angeles International Airport to Stanford University, and plenty in between.

"Orrick has worked on virtually every type of public finance transaction there is," Davis said. "In almost every state, in several territories, and even a number of Indian tribes."

BUILDING CALIFORNIA

After Davis joined Orrick in 1974, some of the first projects he worked on included financings for San Francisco's largest convention and exhibition complex, for the home field of the San Francisco 49ers, and the region's rapid transit system.

At that time, Orrick's public finance practice was well established, with a group of eight attorneys.

Today, that group has grown to nearly 100, including tax lawyers that specialize in public finance.

As California's number one bond counsel, the firm has worked on much of California's major infrastructure projects,

including the Central Valley Water Project, which irrigates the massive agricultural industry of the San Joaquin and Sacramento river valleys, the rebuilding of San Francisco City Hall, construction projects at California's public universities and more than 30 of its private institutions, and financings for the San Francisco International Airport and other airports throughout the state.

In the 1930s, the firm played a major role in helping to finance the construction of the Golden Gate Bridge. More recently, Orrick was involved with the financing of the retrofit program to help the bridge better resist seismic events.

Similarly, Orrick was also involved in financing the original construction of the San Francisco-Oakland Bay Bridge and of its modern-day seismic retrofit program.

The keystone of the earthquake-safety program, a new multi-billion dollar eastern span of the bridge, is scheduled to open to the public on Sept. 3.

Although Orrick's beginnings are rooted in California, where it opened its first office in post-Gold Rush San Francisco, the firm has since expanded throughout the country, and even further to Europe and Asia.

It expanded starting in the 1980s when Orrick opened an office in Sacramento, followed by New York and Los Angeles. Today, the firm has 25 offices. Those that practice public finance include Sacramento, Los Angeles, Seattle, Portland, Ore., Washington D.C., and New York, in addition to San Francisco.

The exact year in which Orrick first established its public finance practice is unknown, although Davis said it was likely sometime in the late 1800s.

AN EVER-CHANGING INDUSTRY

Today's public finance industry is hugely different from that of the nineteenth century. It has even changed significantly during Davis' career.

"The tax code when I started was one section, which occupied about a third of the page," he said. "Now it's a dozen sections and well over 200 pages, supplemented by many more pages of regulations."

As the market has changed, the firm has adapted, developing a substantial group of tax lawyers who specialize in tax exemption of municipal bonds.

"Now we have a dozen of them — I think, by far, the

largest group in the country — and I'd like to think the best," Davis said.

Similarly, disclosure has increased over time, and especially in recent years as enforcement by the Securities Exchange Commission has ramped up, Davis said.

Official statements have swelled to hundreds of pages, including financial statements, projections, and disclosure, particularly about the topics of current concern.

Orrick, which also holds the number one spot among disclosure counsel, does a great deal of disclosure work for its clients, but it also offers something else — a subsidiary company called BLX Group LLC, which provides continuing disclosure services.

That company is a registered municipal advisor and investment advisor and specializes in municipal advisory, compliance consulting, and management services.

The firm itself also focuses on addressing increased enforcement activity and regulation. Orrick has a group of lawyers that specialize in defending municipal clients and broker dealers in these matters. It also has been helping more clients with Internal Revenue Service audit work.

"Often, because of our large tax group and the expertise that we're recognized to have in the tax area, issuers or borrowers who are audited often seek us out, even if we weren't their bond counsel," Davis said.

Another major change in the past few decades is the number of law firms practicing public finance. When Davis started at Orrick, only two firms in California had a substantial public finance practice, he said. Now there are at least half a dozen.

There were also fewer underwriters in California back then, and most deals were sold competitively. Now, most bonds are sold in negotiated deals. In 2012, 78% of municipal bond volume came in negotiated offerings, while 20% came competitively. The remaining 2% was in private placements.

With more firms comes more competition, which contributed to a change in the hiring process for issuers.

In the past few decades, the amount of requests for proposals has increased, Davis said. Traditionally, issuers went to the same firm they always used and didn't really go through a process like an RFP, but now, RFPs are fairly routine.

"I think it's a combination of more law firms and more competition, and RFPs are a way for issuers to deal with that," Davis said. "And the increased politics and public scrutiny over the way public entities procure goods and services, that has driven many public entities to use RFPs for just about everything."

CUTTING EDGE FINANCINGS

Over the years Orrick has adapted to the industry changes, but it has also introduced some of its own changes by creating new types of financings for issuers.

The firm has developed charter city financings, certificates of participation, pension obligation bonds, tobacco settlement revenue bonds and other municipal securitizations.

Orrick has also developed various tax advantage lease structures, property assessed clean energy (or PACE) financing structures, and helped create public private partnership structures, including the first involving water and wastewater facilities.

At the end of last year, the firm represented Rialto Water Services LLC as concessionaire in a P3 transaction with the City of Rialto, Calif. and its Rialto Utility Authority in the transfer of responsibility for its water and wastewater system.

The firm was also involved in the first sale of a major public transportation asset — the Chicago Skyway toll road — which was completed in 2006.

CHALLENGES AHEAD

Continuing disclosure will continue to be a challenge for municipal issuers, Davis said. The focus will be on keeping the market regularly informed about developments relevant to the security payment and creditworthiness of the bonds.

Other challenges include budget constraints, resulting from diminishing federal funds and the burden of pension and other post-employment benefit obligations, the general challenges associated with market conditions, and the ongoing need for infrastructure.

"The need for infrastructure, both preserving the infrastructure that we already have and creating the additional infrastructure that we absolutely need, has always outstripped, and I think always will outstrip, the ability to finance the necessary construction and improvements," Davis said. "So there will always be a robust need for what we do in public finance."

The challenge for Orrick will be to help its clients finance those needs in the most cost-efficient manner, Davis added. This is where the kaleidoscope comes in.

Part of that also depends on preserving the tax exemption of municipal bonds.

"The main challenges are usually one or more of legal, tax, market, politics, or local opposition," Davis said. "And to overcome them, it takes persistence, creativity and sometimes, a little luck."



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