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**CALIFORNIA
DEBT AND
INVESTMENT
ADVISORY
COMMISSION**

SESSION ONE: DIRECT LENDING – CONSIDERING VOLUNTARY DISCLOSURE TO THE MARKET

ANNA V. SARABIAN,
Facilitator & Speaker
Vice President
Fieldman, Rolapp & Associates

READIE CALLAHAN
Vice President
Capital Strategies/Wells Fargo
Securities

MATTHEW T. REINING
Senior Director & Analytical
Manager
Standard and Poor's

ALLEN K. ROBERTSON
Shareholder
Robinson Bradshaw & Hinson,
P.A. / President, National
Association of Bond Lawyers

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What is Direct Lending?

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- Private bank loans/Direct Lending – an alternative financing method
 - Fixed rate with defined maturity or mandatory tender date
 - Variable rate with flexible payment provisions
- Direct Purchase – the bank purchases a bond directly from the issuer
- Direct Loan – the bank enters into a loan agreement or other type of financing agreement with the issuer

U.S. Bond Market Issuance Information

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U.S. Issuance Parameters

	2009	2010	2011	2012	Mid-2013
Par Value (Billions)	\$474.4	\$499.6	\$348.4	\$436.7	\$192.7
Number of Transactions	15,048	16,812	13,478	15,960	7,602
Avg. Size (Millions)	\$31.5	\$29.7	\$25.8	\$27.4	\$25.3
Negotiated	80%	78%	69%	73%	75%
Competitive	19%	21%	27%	24%	22%
Private Placement	1%	1%	4%	3%	3%

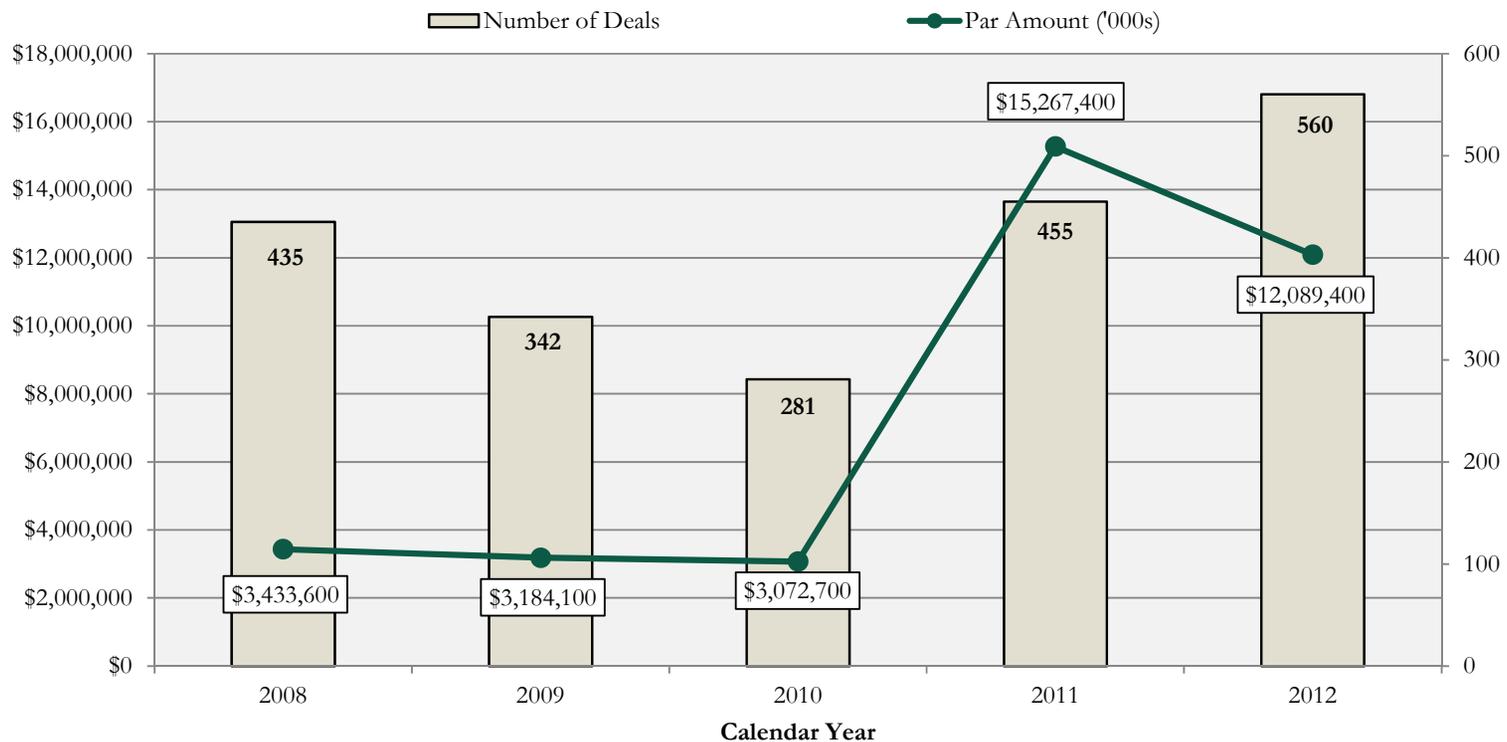
Source: *The Bond Buyer's 2009, 2011 and 2012 In Statistics; Bond Buyer Annual Review 2012.*

Note: The Bond Buyer's data on private placements is the only publicly available information that includes direct lending, but based on the panelists' experience, this data substantially understates the amount of direct lending since 2009.

U.S. Private Placement Issuances

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Private Placement Issuances ('000s) *from 2008 through 2012*

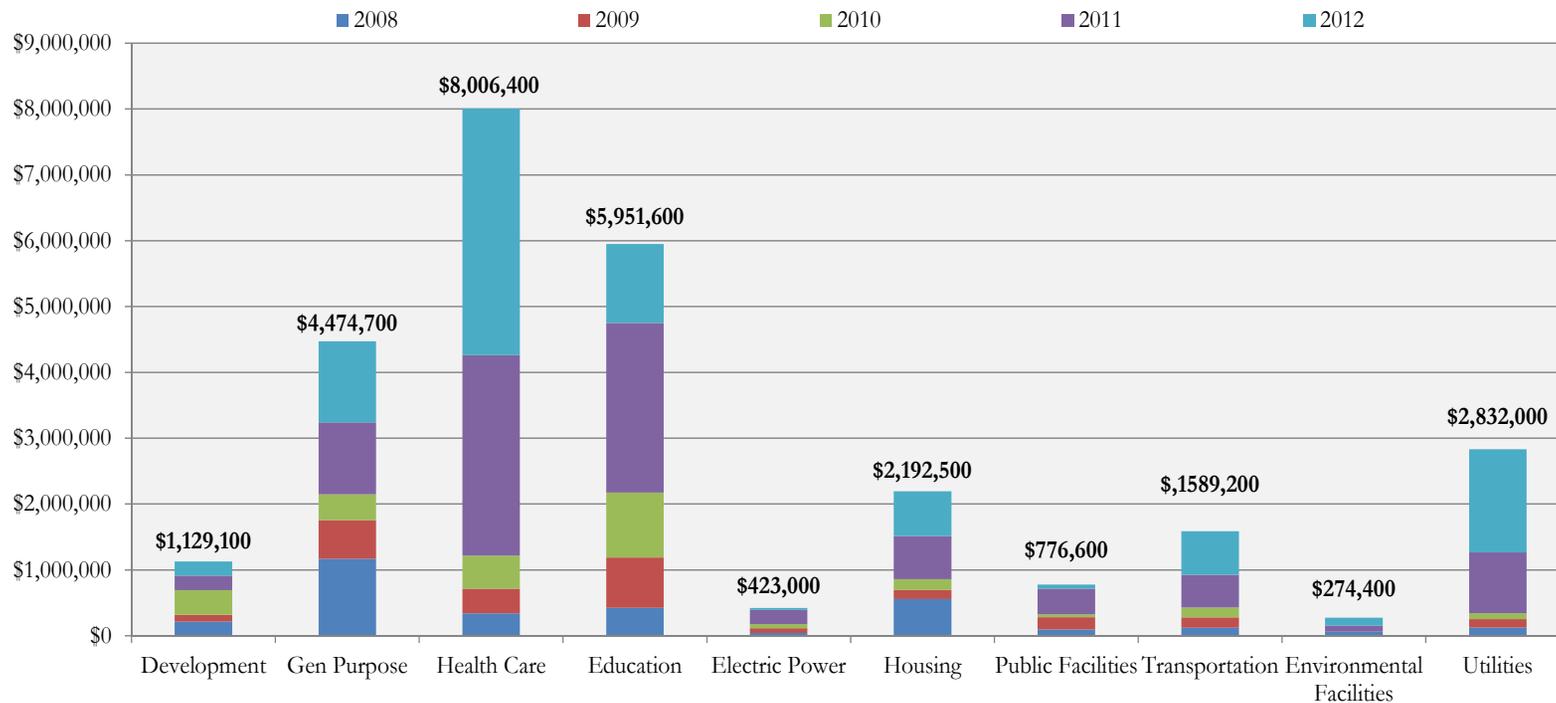


Source: *The Bond Buyer's 2009, 2011 and 2012 In Statistics; Bond Buyer Annual Review 2012.*

Private Placement Issuance by Sector

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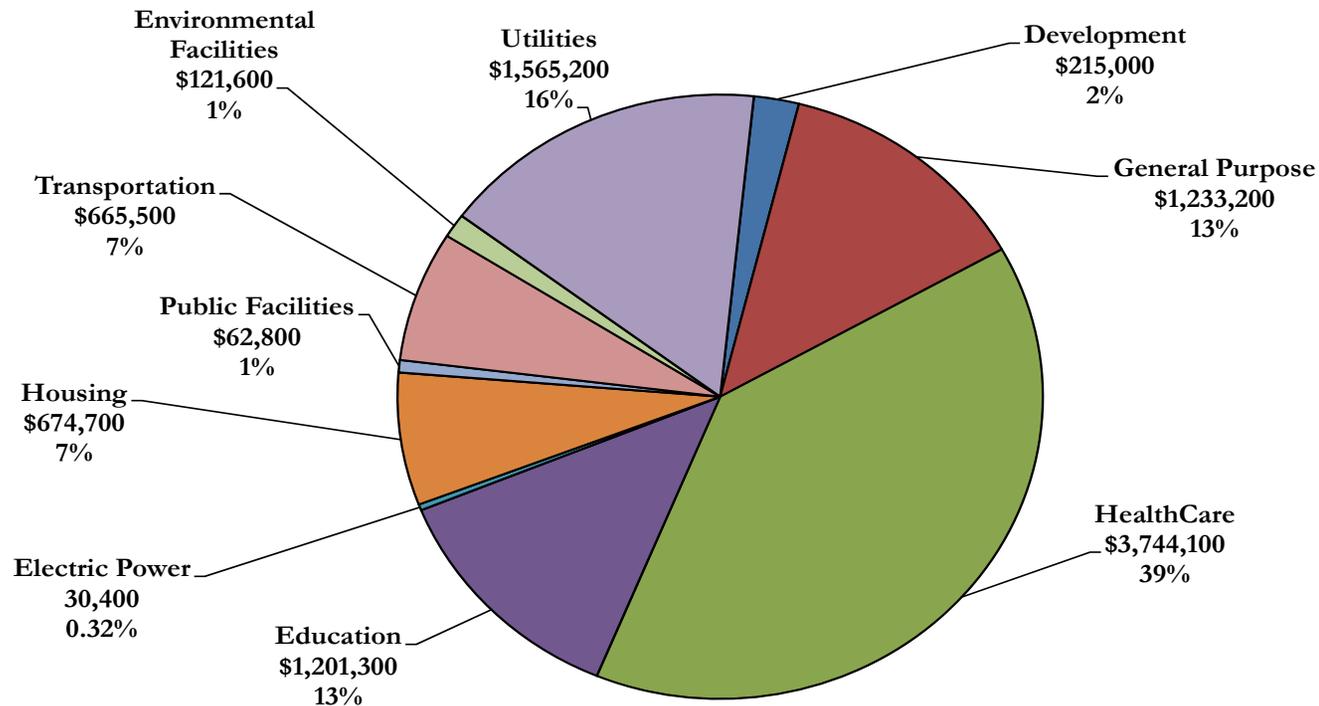
Private Placement Historical Par Issuance by Sector ('000s)
from 2008-2012



Source: *The Bond Buyer's 2009, 2011 and 2012 In Statistics; Bond Buyer Annual Review 2012.*

2012 Private Placement Issuance by Sector

Private Placement Par Amount Issuance by Sector ('000s)
for Calendar Year 2012



Source: *The Bond Buyer's 2009, 2011 and 2012 In Statistics; Bond Buyer Annual Review 2012.*

Direct Lending vs. Public Sale

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- Advantages to Issuers:
 - ▣ Simpler Execution Process
 - ▣ Fewer Issuance Costs and Ongoing Compliance Obligations
 - ▣ Greater Structuring Flexibility

- However, need to ensure transparency:
 - ▣ Work with Your Financing Team
 - ▣ Competitive Solicitation

- How Does This Fit in the Big Picture?
 - ▣ Creditworthiness and attractiveness of issuer's debt
 - ▣ Market access
 - ▣ Cost of borrowing

- Develop Policies and Procedures for Incurrence of Direct Loans

Direct Lending and Rule 15c2-12

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- Disclosure of bank loans currently not required under Rule 15c2-12
- No Ratings, Offering Document or Continuing Disclosure
- However, the bank loan/direct purchase may:
 - ▣ Increase the issuer's outstanding debt
 - ▣ Have different covenants and events of default
 - ▣ Be secured by assets previously available to secure bonds
 - ▣ Be structured with a balloon payment (e.g., a put prior to final maturity at the end of the bank's stated holding period)

Voluntary Market Disclosure

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- Encouraged by market participants
 - MSRB Notice 2012-18 (April 2012)
 - The Bank Loan Disclosure Task Force May 2013 White Paper: *“Considerations Regarding Voluntary Secondary Market Disclosure About Bank Loans”*
 - GFOA Best Practice (2013): *“Understanding Bank Loans (2013) (DEBT)”*

Voluntary Market Disclosure Considerations

- Depends on the particular bank loan's facts and circumstances
 - ▣ Does the issuer have outstanding publicly offered bonds
 - ▣ Is this new money or a refinancing of existing debt w/o any adverse impact on bondholders
 - ▣ Principal amount of bank loan compared to the issuer's bonds' aggregate principal amount (<5%?)
 - ▣ "Plain vanilla" structure or some imbedded risks (e.g., balloon payment)
 - ▣ Is it secured by any or all of the same revenues as the issuer's outstanding bonds

Incentives for Voluntary Market Disclosure, Timing and Antifraud Implications

□ Incentives

- ▣ Preserve issuer's creditworthiness
- ▣ Preserve the attractiveness of issuer's debt
- ▣ Ensure no negative impact on bond ratings
- ▣ Ensure no negative impact on secondary market pricing

□ Timing and Antifraud Implications

- ▣ Most useful if done timely – within 10 business days
- ▣ Subject to the antifraud provisions of the federal securities laws – the provided information must not be materially inaccurate or misleading in the context in which it is provided

How to File and What Information to Provide?

- Post Loan or Financing Agreement on EMMA
- File a summary of some/all of the features relating to the bank loan with EMMA
 - Nonexclusive list of features to include or delete
 - MSRB Notice 2012-18 – a nonexclusive list of possible features
- Redaction/Omissions from Summaries: Presents the same legal issue under the antifraud provisions – will information presented be materially misleading?
 - MSRB Rule G-34(c) rules for redacting posted VRDB documents may provide guidance
 - Work with your financing team and legal advisors

How to File and What Information to Provide? (Cont'd)

- For transactions with no CUSIP, upload as “Other Information” connected with a bond issue already established in EMMA

- Consult with counsel and others on the financing team about what information to include and how best to disseminate it
 - Counsel can assist in identifying legal considerations regarding whether or not to provide additional disclosure and what information to include
 - But NABL’s position is that the decision to voluntarily provide disclosure cannot be decided as a matter of law – the issuer has the ultimate responsibility for making this decision

How to File and What Information to Provide? (Cont'd)

- Develop policies and procedures for disclosure of bank loans (e.g., criteria for determining which Bank Loans to disclose, process for disclosing amendments)

- Consider including terms of usage and disclaimers to limit creation of duties/potential liability
 - ▣ See May 2013 White Paper for sample terms of usage/disclaimers

Further Questions and Discussion

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References

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- AB 2274 introduced by Assembly Member Gordon on February 21, 2014.
- MSRB Notice 2012-18 (April 2012).
- “Considerations Regarding Voluntary Secondary Market Disclosure About Bank Loans,” May 2013 White Paper prepared by The Bank Loan Disclosure Task Force.
- GFOA Best Practice: “Understanding Bank Loans (2013) (DEBT).”
- The Bond Buyer’s 2009, 2011 and 2012 In Statistics.
- The Bond Buyer Annual Review 2012.

Disclaimers

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Contact Information

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ANNA V. SARABIAN

Vice President

Fieldman, Rolapp & Associates

Tel.: 949-660-7308

E-mail: asarabian@fieldman.com

READIE CALLAHAN

Vice President

Public Finance Capital Strategies/Wells Fargo Securities

Tel.: 415-371-2651

E-mail: readie.callahan@wellsfargo.com

MATTHEW T. REINING

Senior Director and Analytical Manager

Standard & Poor's Ratings Services

Tel.: 415-371-5044

E-mail: matthew.reining@standardandpoors.com

ALLEN K. ROBERTSON

Shareholder, Robinson Bradshaw & Hinson, P.A.

President, National Association of Bond Lawyers

Tel.: 704-377-8368

E-mail: ARobertson@rbh.com