Bond Case Briefs

Issue 214

Municipal Finance Law Since 1971

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- Fitch Ratings: Updated U.S. Public Finance Tender Option Bond Criteria
- Fitch Publishes Exposure Draft On New Short-Term Rating Criteria.
- Fitch Feedback Report on Discussion Paper: Short-Term Ratings
- And finally, The Honorable Gerald Austin McHugh, Pompous Ass, Presiding is brought to us this week by *East Rockhill Township v. Richard E. Pierson Materials Corp.*, in which His Honor begins the opinion with, "This case represents an unusual exercise of federal diversity jurisdiction in that I am being asked to address what is essentially a local zoning controversy." *A local zoning controversy.* Imagine it! The effrontery! The judge goes on to note that the quarry in question has maintained its permits, "albeit without engaging in the extraction of stone." Please stand by as I engage in the extraction of my bile duct/gag reflex. Lighten up, Francis.

OPEN MEETINGS - ALABAMA

Swindle v. Remington

Supreme Court of Alabama - March 8, 2019 - So.3d - 2019 WL 1090393

President of education association, in her individual capacity and in her capacity as president, brought action against members of board of the Public Education Employees' Health Insurance Program (PEEHIP) in their official capacities for declaratory and injunctive relief based on a claim that the PEEHIP board members violated the Open Meeting Act in regards to a decision to increase health insurance premiums and surcharges.

The Circuit Court entered summary judgment for association's president, invalidated the increased charges, and ordered money held in escrow to distributed back to the respective PEEHIP members. PEEHIP board members appealed.

The Supreme Court of Alabama held that the closed morning session that occurred prior to the board's open afternoon meeting in which the board approved the premium and surcharge increases was a "meeting" under the Open Meetings Act that included the afternoon meeting.

Circuit court's decision to invalidate the increases in health insurance premiums and surcharges approved by the Public Education Employees' Health Insurance Program (PEEHIP) and to return the funds in escrow to the insureds, which was a decision made as part of a summary judgment entered against PEEHIP based on a finding that PEEHIP violated the Open Meetings Act when approving the increases, would be de novo rather than deferential; Open Meetings Act afforded a circuit court no discretion to invalidate actions taken during a meeting because of a violation that occurred prior to

the open meeting conducted in a manner consistent with the Open Meetings Act, and the primary issue in this case whether a morning training session was part of one full-day meeting.

Closed morning session that occurred prior to open afternoon meeting of board of the Public Education Employees' Health Insurance Program (PEEHIP) was a "meeting" under the Open Meetings Act that included the afternoon meeting, despite argument that the morning session was a training program and was necessary to educate board members about complex financial matters; the morning session, which was prearranged, was attended by all board members, record was replete with references that staff made recommendations to the board in the morning session about proposed increases in health insurance charges, board members asked questions during the morning session about the proposals, and at least one member openly disagreed with the recommendations.

PERMITS - ALASKA

Rosauer v. Manos

Supreme Court of Alaska - March 8, 2019 - P.3d - 2019 WL 1087294

After homeowners had trees removed from a municipal right-of-way across the road from their home, only obtaining a required permit several months later, neighbors, whose property abutted the right-of-way and whose house had been behind the removed trees, sued homeowners and tree-removal company for damages.

The Superior Court granted summary judgment to homeowners and the tree-removal company, and neighbors appealed.

The Supreme Court of Alaska held that retroactive permit was validly granted and, thus, conferred lawful authority for tree removal, and thus, neighbors could not establish claim under timber-trespass statute.

It was not unreasonable to interpret city's municipal code provision, authorizing waiver of permit terms and conditions, to include waiver of the prior-authorization requirement.

Department of Development Services' decision to grant homeowners a retroactive permit, to remove trees from a municipal right-of-way across the road from their home, would be reviewed for reasonableness; city's municipal code delegated significant authority and discretion over public-use permits to the Department, code broadly entrusted decisions regarding safe and efficient use of public spaces to Department, and authority to grant retroactive permits, with terms and conditions necessary to protect public interest, was consistent with such a policy.

Retroactive permit, to remove trees from municipal right-of-way across road from homeowners' home, was validly granted and, thus, conferred lawful authority for tree removal, and thus, neighbors, whose property abutted right-of-way and whose house had been behind the removed trees, could not establish claim under timber-trespass statute, which required that removal be without lawful authority; city's municipal code delegated significant authority and discretion over public-use permits to the Department of Development Services, code broadly entrusted decisions regarding safe and efficient use of public spaces to Department, and authority to grant retroactive permits, with terms and conditions necessary to protect public interest, was consistent with such a policy.

PUBLIC PENSIONS - CALIFORNIA

Mijares v. Orange County Employees' Retirement System

Court of Appeal, Fourth District, Division 3, California - January 23, 2019 - 32 Cal.App.5th 316 - 243 Cal.Rptr.3d 728 - 19 Cal. Daily Op. Serv. 1541

Employer brought action against county retirement system seeking declaratory relief that retirement system board's corrective measure requiring employer to provide additional funds to retirement system was invalid.

The Superior Court granted judgment on the pleadings in retirement system's favor. Employer appealed.

The Court of Appeal held that:

- Corrective measure was not impermissibly retroactive;
- County retirement system board did not require receipt of written petition requesting that employees be withdrawn; and
- Board had authority to implement corrective measure.

County retirement system board's corrective measure, requiring employer to pay approximately $3.3 million in additional contributions over 20 years to address unfunded accrued actuarial obligations of pension benefits promised to its employees, was not impermissible retroactive policy, although measure required payment two years after last employee retired from employer, since payment to address unfunded liability applied prospectively to former employees and was not payable immediately.

County retirement system board did not require receipt of written petition requesting that employees be withdrawn from the county retirement system and transferred to state retirement system, and thus statute governing withdrawn employees was inapplicable to county retirement system board's corrective measure requiring employer to pay approximately $3.3 million in additional contributions over 20 years to address unfunded accrued actuarial obligations of pension benefits promised to its employees, where employees who transferred to state system did so via transfer agreement made between county retirement system board and employer.

County retirement system board had authority to implement corrective measure requiring employer to pay approximately $3.3 million in additional contributions over 20 years to address unfunded accrued actuarial obligations of pension benefits promised to its employees, since board had plenary power to assure prompt delivery of benefits to participants and their beneficiaries, and board had statutory authority to approve funding periods to amortize unfunded accrued actuarial obligations.

PUBLIC UTILITIES - IDAHO

Idaho Power Company v. Tidwell

Supreme Court of Idaho, Boise, September 2018 Term - December 28, 2018 - 434 P.3d 175

Landowner, who intervened in proceeding concerning utility's application for certificate of public convenience and necessity to construct high-voltage electric transmission line, appealed Public Utility Commission's decision denying landowner's request for intervenor funding for reimbursement of landowner's attorney fees.

The Supreme Court of Idaho held that:

- Deadline to file intervenor funding request was 14 days after Commission held last evidentiary hearing, not due date for petitions for reconsideration of final order;
- Landowner was provided adequate information about right to seek intervenor funding and deadlines governing such requests; and
- Landowner was not entitled to award of appellate attorney fees pursuant to private-attorne--general doctrine.

ZONING & PLANNING - IOWA

Ames 2304, LLC v. City of Ames, Zoning Board of Adjustment

Supreme Court of Iowa - March 8, 2019 - N.W.2d - 2019 WL 1086853

Landowner filed petition for writ of certiorari after city denied landowner's permit for interior remodel of nonconforming use residential structure.

The District Court annulled writ. Landowner appealed. The Court of Appeals reversed. Zoning board sought further review.

The Supreme Court of Iowa held that landowner's proposed remodel did not constitute a prohibited increase in the intensity of the nonconforming use.

Landowner's proposed interior remodel of nonconforming use residential structure containing four one-bedroom apartment units, which would have increased number of bedrooms within units, did not constitute a prohibited increase in the intensity of the nonconforming use, where remodel would not have increased number of dwelling units within the structure.

Ordinance prohibiting increases in intensity of nonconforming uses, which defined "intensity" as degree or level of concentration to which land was used for commercial, industrial, or any other nonresidential purposes but did not define "intensity" concerning residential purposes, was nevertheless applicable to residential structures.

EMINENT DOMAIN - MASSACHUSETTS

Smyth v. Conservation Commission of Falmouth

Appeals Court of Massachusetts, Barnstable - February 19, 2019 - N.E.3d - 94 Mass.App.Ct. 790 - 2019 WL 660964

Landowner brought action against local land commission, claiming that denial of her residential construction variance, pursuant to wetlands protection bylaw, effected an uncompensated taking of her property.

Commission filed a motion to bifurcate the trial, so that only the question of damages would be tried before a jury.

The Superior Court denied the motion. After a jury trial, the jury found in favor of landowner and awarded damages. The Superior Court then denied commission's motion for judgment notwithstanding the verdict (JNOV). Both parties appealed.

The Appeals Court, Green held that:

- As a matter of first impression, landowner was not entitled to a jury trial;
- Reduction in property's appraised value did not in itself constitute a regulatory taking; and
- Landowner was not entitled to compensation.

Landowner was not entitled to a jury trial in her action challenging a wetlands protection bylaw as a regulatory taking, based on denial of her application for a residential construction variance; landowner's claim did not sufficiently resemble an action in tort, in that she did not allege any physical invasion of her property and her claim did not concern whether a wrongful act occurred, but rather requested compensation for a lawful inverse condemnation.

Reduction in appraised value of landowner's property from $700,00 to $60,000, due to denial of landowner's application for residential construction variance, did not in itself constitute a regulatory taking; even in unbuildable condition, the property's value was still $11,000 higher than the amount which landowner's predecessor originally paid for the property and the zoning bylaw allowed other uses for this property, such as a park, playground, or privacy for abutting owners.

Landowner was not entitled to compensation for a purported regulatory taking of her property, based on denial of her application for a residential construction variance; evidence showed a lack of any financial investment by owner or her predecessor toward development of the property, including a substantial period in which the property could have been freely built upon, and, even with the variance denial, landowner's property was worth more than its original purchase price, such that any compensation could have constituted a windfall.

EMINENT DOMAIN - NEW JERSEY

Casino Reinvestment Development Authority v. Birnbaum

Superior Court of New Jersey, Appellate Division - February 15, 2019 - A.3d - 2019 WL 638750

Casino Reinvestment Development Authority (CRDA) brought condemnation action against property owners, seeking a judgment that CRDA had duly exercise its power of domain over the property for redevelopment purposes.

After a hearing, the Superior Court dismissed the action as a manifest abuse of power. CRDA appealed.

The Superior Court, Appellate Division, held that CRDA failed to establish that the condemnation was reasonably necessary.

Casino Reinvestment Development Authority (CRDA) failed to establish that condemnation of private property was reasonably necessary for a proposed redevelopment project, as required for CRDA to exercise its power of eminent domain; the project was intended as a complement to a nearby casino, whose revenue would have provided the project's primary funding, but that casino closed down and statutory changes after the project's conception reduced or eliminated significant funding sources which the CRDA relied on to incentivize private investors to commit to redevelopment, such that CRDA was attempting to bank the property in hopes that it would be used in a future undefined project.

MUNICIPAL CORPORATIONS - NEW YORK

Incorporated Village of Garden City v. Zambardino

Supreme Court, Appellate Term, New York - March 7, 2019 - N.Y.S.3d - 2019 WL 1177709 - 2019 N.Y. Slip Op. 29065

Village sought to recover in commercial claims action the sum of $937.50 against defendant for fees for services that had been rendered by village's fire department in responding to an automobile accident.

The District Court granted summary judgment in favor of defendant, and village appealed.

The Supreme Court, Appellate Term, held that exceptions to common law free public services doctrine did not apply.

Exceptions to common law free public services doctrine did not apply to claim brought by village who sought to recover $937.50 against defendant for services that had been rendered by village's fire department in responding to an automobile accident; exceptions to doctrine only applied to statutes passed by state legislature, not to a village code, and village code was contrary to Home Rule law, which prohibited a village to charge individuals for expenses related to the aftermath of automobile accidents.

ZONING & PLANNING - PENNSYLVANIA

East Rockhill Township v. Richard E. Pierson Materials Corp.

United States District Court, E.D. Pennsylvania - March 6, 2019 - F.Supp.3d - 2019 WL 1057421

Township brought action in state court to enjoin owner and lessees of quarry from installing an asphalt plant at the quarry. Owner and lessees removed the action and asserted a counterclaim under the Declaratory Judgment Act seeking a declaration that township's efforts to regulate the quarry were preempted by Pennsylvania's Noncoal Surface Mining Conservation and Reclamation Act, and that an asphalt plant was a permitted accessory use.

The District Court held that:

- District court would accept jurisdiction under Declaratory Judgment Act over claim challenging township's denial of a permit to operate the quarry;
- District court would abstain from exercising jurisdiction over claim seeking permission to operate an asphalt plant at the quarry; and
- Township lacked authority under Pennsylvania law to regulate the operation of quarry or limit the amount of stone extracted from it.

BANKRUPTCY - PUERTO RICO

In re Financial Oversight and Management Board for Puerto Rico

United States Court of Appeals, First Circuit - February 22, 2019 - 916 F.3d 98

In the debt adjustment case of the Commonwealth of Puerto Rico under Title III of the Puerto Rico

Oversight, Management, and Economic Stability Act (PROMESA), representatives of the Puerto Rico legislature brought action against the Financial Oversight and Management Board for Puerto Rico, its members, and its executive director, alleging that Board acted in excess of its authority by refusing to certify budget developed by the legislature and by instead certifying a new fiscal plan and territory budget that it had developed.

Board moved to dismiss for lack of subject matter jurisdiction and for failure to state a claim. The United States District Court granted motion. Appeals were taken.

The Court of Appeals held that:

- Addressing questions of first impression, the federal courts lacked Article III jurisdiction over the complaint's request for a declaration about fiscal plan recommendations;
- The district court correctly concluded that it lacked statutory authority to review alleged errors in the Board's certification determinations; and
- The complaint failed to state a claim to relief on the theory that the Board exceeded its authority under PROMESA during the fiscal plan and territorial budget processes.

In debt adjustment case of the Commonwealth of Puerto Rico under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), federal courts lacked Article III jurisdiction over request by representatives of Puerto Rico legislature for declaration that rejected policy recommendations concerning rights of employees in Puerto Rico, which were contained in fiscal plan developed by the Financial Oversight and Management Board for Puerto Rico, were non-binding recommendations; if request were read to seek a declaration about the rights of the Board and Legislative Assembly whenever there was disagreement about whether to implement a fiscal plan policy included by the Board, that would have been a request for an advisory opinion, and if request were read to refer to particular labor reform package, the dispute lacked the requisite reality, as currently certified fiscal plan did not include the objected-to labor reforms.

Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) precluded declaratory judgment and injunctive relief challenges by representatives of Puerto Rico legislature to actions of the Financial Oversight and Management Board for Puerto Rico in declining to certify legislature's budget and instead certifying new fiscal plan and territory budget developed by the Board; PROMESA granted the Board exclusive authority to certify fiscal plans and territory budgets for Puerto Rico and then explicitly insulated those certification decisions from judicial review.

PUBLIC PENSIONS - TEXAS

Eddington v. Dallas Police and Fire Pension System

Supreme Court of Texas - March 8, 2019 - S.W.3d - 2019 WL 1090799 - 2019 Employee Benefits Cas. 78, 886 - 62 Tex. Sup. Ct. J. 560

Pensioners filed petition against city police and fire pension system and its board chair for declaratory relief, requesting declaration that amendments to pension plan that reduced future interest rate and accelerated withdrawal requirements on accounts established pursuant to deferred retirement option plan offered under pension system violated state constitution.

Following bench trial, the District Court concluded amendments did not violate constitution and dismissed pensioners' claims. Pensioners appealed. The Court of Appeals affirmed. Pensioners filed petition for review.

The Supreme Court of Texas held that prospective changes to interest rate paid on deferred retirement option plan (DROP) accounts did not violate state constitution.

PUBLIC RECORDS - VERMONT

Long v. City of Burlington

Supreme Court of Vermont - September 21, 2018 - 199 A.3d 542 - 2018 VT 103

Advocacy organization brought action against city alleging that the city violated the Public Records Act (PRA) by failing to disclose an unredacted market feasibility study for a proposed redevelopment project.

The Superior Court awarded summary judgment to the city. Advocacy organization appealed.

The Supreme Court of Vermont held that:

- The study was exempt from disclosure under the PRA trade secrets exemption despite voluntary submission of redacted version of the study to city;
- Developer made reasonable efforts to protect the confidentiality of information contained in the study, as required for that information to be exempt; and
- Even if the city's acknowledgment of a non disclosure agreement with developer was not binding on the city, the study was protected by trade secrets exemption.

Market feasibility study for a proposed redevelopment project was exempt from disclosure under the Public Records Act's (PRA) trade secrets exemption despite voluntary submission of redacted version of the study to city; developer who conducted the study included anticipated project costs and revenues, financial projections, and confidential lease terms with a major prospective tenant in the document, which could be reverse engineered by competitors to determine developer's pricing and forecasting models.

Developer made reasonable efforts to protect the confidentiality of information contained in market feasibility study for a redevelopment project, as required for that information to be exempt from disclosure under Public Records Act's (PRA) trade secrets exemption; developer only shared information with third parties when absolutely necessary, and only then on the condition that the information not be shared further, developer had a confidentiality agreement with its own consultant prohibiting the sharing of the information without consent, and developer requested confirmation from city that it acknowledged a non disclosure agreement.

Even if a city's acknowledgment of a non disclosure agreement (NDA) with developer was not binding on the city, market feasibility study conducted by developer for a redevelopment project was protected by trade secrets exemption under the Public Records Act (PRA); the PRA did not require a valid NDA for information to be exempt as trade secrets and developer made reasonable efforts to ensure that the information stayed confidential.

SIFMA Issues Muni Model Placement Engagement Agreements.

New York, NY, February 19, 2019 – SIFMA today issued two new model placement agent engagement agreements, along with related commentary. One of the agreements covers conduit

bonds and the second covers non-conduit bonds.

“These new agreements add to SIFMA’s suite of model and master agreements that aid our member firms and others in the marketplace by reducing compliance risk and legal costs and increasing regulatory certainty,” said Leslie Norwood, managing director, associate general counsel and co-head of SIFMA’s Municipal Division.

The two new agreements are intended for use by brokers, dealers, and municipal securities dealers acting as a placement agent. Federal securities laws require a broker dealer to have an adequate and reasonable basis for recommending a security to an investor. Use of these agreements will assist broker dealers in ensuring their compliance with federal securities laws.

Fitch Feedback Report on Discussion Paper: Short-Term Ratings

Read the Report

Fitch Publishes Exposure Draft On New Short-Term Rating Criteria.

Fitch Ratings-London-22 March 2019: Fitch Ratings has published an exposure draft proposing new criteria for short-term ratings across its corporate, financial institution and public finance portfolio. The proposals follow a major review of the function and utility of our short-term rating scale, begun in August 2018 with the publication of a discussion paper and a broad-based market dialogue, which has helped shape our proposed, expanded approach to a short-term scale for today’s capital markets.

The proposed criteria revisions would amend our correspondence table between Long- and Short-Term IDRs to provide a substantially more differentiated analytical view of short-term risk between issuers. More specifically, we propose increasing the number of long-term ratings that can correspond to more than one short-term rating to five from three, by permitting Long-Term IDRs of ‘A’ to correspond to ‘F1+’ (in addition to the existing ‘F1’ mapping) and Long-Term IDRs of ‘BBB+’ to correspond to ‘F1’ (in addition to the existing ‘F2’ mapping).

The new proposed criteria would also reflect the greater granularity now present in our asset class criteria, compared with criteria in effect at the time of the original introduction of the short-term scale. Consequently, the exposure draft proposes specific short-term oriented analytical factors that would be used as the primary elements to distinguish between short-term ratings at crossover points.

We have also published a summary of feedback received during our market dialogue on alternative approaches to the current short-term rating scale. As well as responding to different options discussed with the market, this paper outlines some of the logistical issues associated with the proposed revised criteria.

The exposure draft contains an assessment, by sector, on the estimated potential impact of the proposed criteria. The short-term ratings of any issuers whose ratings we believe will be affected by

the finalised change in criteria will be individually placed Under Criteria Observation (UCO) upon publication of the final criteria, at the conclusion of the exposure draft period. No long-term ratings will be affected by this proposed criteria change, and we also do not currently expect any impact on any money market fund ratings, where short-term ratings serve as inputs to the rating process. We intend to conclude resolution of all eventual UCO designations within six months of the publication of final criteria. The new criteria would apply cross-sector at the point of finalisation, and sector criteria would be updated to reflect the approach in the course of scheduled sector criteria updates.

Fitch invites feedback on the proposed criteria from market participants. Comments should be sent to criteria.feedback@fitchratings.com by 23 April 2019. Fitch will publish on its website any written responses it receives, in full, including the names and addresses of such respondents, unless the response is clearly marked as confidential by the respondent.

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Fitch Ratings: Updated U.S. Public Finance Tender Option Bond Criteria

Fitch Ratings-New York-22 March 2019: Fitch Ratings has published the following updated report: "U.S. Public Finance Tender Option Bond Rating Criteria." This report updates the prior report published on March 28, 2018. The key elements of Fitch's tender option bond rating criteria remain consistent with those of its prior criteria report.

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Kansas City Joins U.S. Airport Boom With $1.5 Billion Renovation.

- **Brutalist-style terminals from 1970s haven't kept pace**
- **The world of air travel has changed,' project developer says**

Kansas City Mayor Sly James will be on hand Monday to celebrate the symbolic destruction of an unloved landmark: his city's nearly five-decade-old airport, whose brutalist-style, poured-concrete terminals make it appear like a relic of a bygone age.

The $1.5 billion, four-year renovation is the largest public works project ever in Missouri's biggest

city and part of a growing construction boom by American municipalities that are overhauling airports built when “jet-set” was a synonym for the one percent.

Since the beginning of 2017, airports have raised nearly $30 billion in the bond market to finance work needed to accommodate record numbers of passengers. Chicago is planning a major expansion for O’Hare International, once the nation’s biggest. New York’s LaGuardia is getting a major makeover. In Salt Lake City, the entire airport, with the exception of its runways, will essentially be rebuilt over the next five years.

Like many around the country, Kansas City’s, which opened in 1972, isn’t well-suited to the times.

Patrick Klein, director of aviation at the airport, said its three, separated U-shaped terminals — one of which is currently empty — are essentially “cement igloos” that don’t allow it to add more restrooms, concessions, nursing areas or other facilities that travelers have come to expect. That’s meant it has been largely unchanged since the opening, despite a nearly tripling in passenger traffic. The renovation will transform the three-terminal space into a single-terminal operation.

Behind the Times

“These airports were designed with one-power outlet to plug in the vacuum for the cleaning crew,” said Geoffrey Stricker, managing director at Edgemoor Infrastructure & Real Estate, the developer on the project. “The world of air travel has changed, security has changed, customer needs and terms have changed, technology has changed. Airports need to have modern facilities that are attractive to airlines.”

On Friday, the airport completed a $110 million debt placement with Morgan Stanley for initial costs, and the city council has approved about $1.8 billion in bonds for the project. John Green, the airport’s chief financial officer, said the first round of bonds — backed by the airport’s revenue — will be sold in the “early to mid-summer.”

Stricker, the developer, said the sheer scale and scope of the Kansas City project separates it from others. They’re essentially constructing an entirely new facility with tarmac upgrades, a parking garage and a new road network to get to the facility, in addition to an entirely new terminal.

Officials in Kansas City hope the new airport will help draw corporate headquarters and talent from increasingly expensive coastal cities.

The condition of the airport is “adequate for a market this size” but has trouble competing with other regional epicenters like Denver or Dallas, said Tim Cowden, president and CEO of the Kansas City Area Development Council. “The airport didn’t give off the dynamism and vibrancy that the city has,” he said. “Now it will.”

Not Good Enough

He thinks the airport was a reason Kansas City didn’t make the final list for Amazon.com Inc.’s second headquarters, which the city bid for. “Our airport and our air service was not up to par with the other regions that made it,” he said. “Now, as we have opportunities to compete for future projects, this new airport will allow us to compete on a level with other markets in our fighting weight.”

On Monday, Mayor James is expected to join airport, community and development officials to start the ceremonial demolition by hammering off a piece of the existing terminal — officially beginning the four-year endeavor.

Bloomberg Markets

By Danielle Moran

March 24, 2019, 6:50 AM PDT

Record High Value a Cause for Concern for Muni Bond Bulls.

Sean Carney, head of municipal strategy and primary markets at BlackRock, discusses record high valuations in the municipal bond market. He speaks with Bloomberg's Taylor Riggs in this week's "Muni Moment" on "Bloomberg Markets."

Watch video.

Bloomberg MarketsTV Shows

March 20th, 2019

Municipal Bonds Off to Best Yearly Start Since 2014.

- **Muni-debt funds have raked in cash steadily since early Jan.**
- **Tax-exempt bond returns are twice as high as Treasuries**

State and local-government bonds are headed for their strongest start to a year since 2014, propelled by an influx of cash into municipal-debt mutual funds as investors seek out tax havens and the Federal Reserve holds off on interest-rate increases.

The securities have returned 1.8 percent in 2019, putting them on track for the best first-quarter showing in five years. That's roughly double the gain for Treasuries, according to Bloomberg Barclays indexes.

The outperformance has been driven in part by a push among investors to cut their tax bills after the new limit on state and local deductions was ushered in, a trend that Bank of America Corp. analysts said they expect to continue. The Fed's decision to step back from tightening monetary policy is also boosting fixed-income investments.

"SALT is creating elevated demand, especially on the two coasts," said Michael Pietronico, chief executive officer of Miller Tabak Asset Management. "The perception that the Federal Reserve is on hold has helped pull cash off the sidelines."

Investors have added about $12.6 billion to municipal-bond mutual funds since early January, with about $1.6 billion sent in during the week ended March 13, the tenth straight weekly gain, according to Lipper US Fund Flows data. At the same time, the pace of new bond issuance hasn't kept up with demand, analysts say, a factor that helped push the prices of top-rated 10-year bonds earlier this month to their highest against Treasuries since at least 2001.

"We expect demand to remain strong, supply to remain light – it's going to be a struggle to find value," said Pietronico, who anticipates that municipal bonds will return from 3 to 4 percent this

year. “As the year progresses, we think it will get more brutal.”

Bloomberg Markets

By Claire Ballentine

March 18, 2019, 10:30 AM PDT

How to Survive the Zombie LIBOR Apocalypse: Saul Ewing

They’re out there now, in small towns and big cities, getting ready to rise up and wreak financial havoc on unsuspecting bond issuers and borrowers. Unless they’re sought out early and neutralized, the zombie LIBOR interest rates could take a big bite out of municipalities, hospitals, colleges and other institutions and borrowers with outstanding bonds, loans or swap contracts bearing interest rates tied to LIBOR.

It’s already fairly well known that LIBOR, the London interbank offered rate, is being phased out as a reference rate. By the end of 2021, LIBOR will be replaced with another, as yet undetermined, reference rate or rates. Bank regulators in the United Kingdom and the United States have realized, belatedly, that LIBOR never was an efficient or fair way to set international benchmark interest rates. LIBOR is basically an average of what a small number of banks estimate on a daily basis to be their cost to borrow unsecured funds from each other in different currencies across different time periods. These unregulated self-reported estimates (or, more accurately, educated guesses based on an extremely small number of unsecured interbank lending transactions) are not based on actual transactions and, being free from governmental oversight or transparency, were ripe for inaccuracies and even manipulation.

Following some headline-grabbing charges of LIBOR-rigging by large banks, LIBOR’s days were numbered, and the British authority overseeing LIBOR announced that, after 2021, it will no longer persuade or compel banks to submit estimates for the determination of LIBOR. The only question left then was what would replace LIBOR – or would a seemingly undead LIBOR continue to control interest rates as Zombie LIBOR?

Beware the Zombie LIBOR

LIBOR is now, in effect, a dead rate walking. The plan is that LIBOR will cease to exist as a benchmark interest rate at the end of 2021, but many imaginative market observers are calling it a “Zombie LIBOR”, because it’s not really alive now, and it may not really be dead after 2021. As mentioned above, LIBOR is no longer considered to be a reliable benchmark rate, and may become even less reliable as fewer banks provide LIBOR estimates and others move to alternate interest rates. Issuers and borrowers may begin to wonder whether their existing LIBOR-indexed bonds, notes or swap instruments actually reflect the real cost of borrowing money. Issuers and borrowers entering into new transactions may eschew LIBOR altogether in favor of another benchmark rate, without waiting for 2022 to roll around.

However, because so many currently outstanding bonds, loans and swap transactions have LIBOR baked into them, with no easy way to switch to another interest benchmark or comparable interest rate, it’s possible that LIBOR may need to stay around even after 2021 in order to provide these “legacy” deals with a benchmark interest rate, no matter how unreliable. Some legacy deals with maturities extending beyond 2021 may have no other good choice but to stick with a zombified

LIBOR, even as new deals and other legacy deals have switched over to another, more nimble, benchmark rate. LIBOR, kept artificially alive by a small number of reporting banks, would then go head to head with another rate, or rates, until the legacy deals all mature or find a way to provide an alternate benchmark rate.

SOFR to the Rescue?

In the United States, a committee convened by the Federal Reserve Bank to study LIBOR replacements recommended the adoption of an alternative interest rate benchmark tied to U.S. treasuries-backed repurchase agreement market from actual market transactions. The recommended rate – called the Secured Overnight Financing Rate, or SOFR – represents rates that banks are able to fund overnight on a basis secured by U.S. government debt. The Federal Reserve Bank of New York has been publishing SOFR on a daily basis since April 3, 2018.

As a benchmark for determining interest rates, SOFR has some structural advantages over LIBOR. SOFR is an overnight secured rate based on actual Treasury transactions, changing daily, whereas LIBOR is an unsecured rate based on bankers' estimates of future rates, which means that SOFR is much less susceptible to manipulation and abuse than LIBOR. LIBOR is based on unsecured loans and, therefore, builds in a risk premium; SOFR is a secured rate, with no risk premium, so SOFR generally produces a lower rate than LIBOR and is considered less volatile than LIBOR. And who knows what could happen to LIBOR if, or when, Brexit becomes a reality? So far, it appears that SOFR is the heir apparent as the benchmark interest rate in the U.S. following LIBOR's ultimate demise, assuming LIBOR really does go away.

Who's in Harm's Way?

For decades, LIBOR has been ubiquitous in lending and swap transactions. In the public finance sector, many state, county and local issuers, school and park districts, conduit 501(c)(3) borrowers such as hospitals and colleges, and conduit private activity bond borrowers have issued bonds or entered into loan or letter of credit transactions which provide that interest is to be determined by reference to a floating LIBOR rate (of usually 30, 60 or 90 days), together with an "applicable margin" or spread expressed as a percentage or basis points. LIBOR may be used in determining a taxable rate or tax-exempt rate, or both, and borrowers may have the option to convert floating LIBOR rates into floating prime or fixed rates, and then back again.

Issuers and borrowers have also been frequent participants in swap transactions, under which the issuer or borrower pays a fixed rate of interest to a counterparty and receives in return a floating rate as a percentage of LIBOR. In these transactions, the bonds are issued with a fixed rate, which is then exchanged with the swap counterparty for a LIBOR-based rate, so that the bondholders receive interest at a floating rate tied to some percentage of the applicable LIBOR.

Not only do issuers and borrowers need to concern themselves with the phase out of LIBOR, but banks, underwriters, placement agents, trustees, bondholders and other participants in the municipal bond marketplace will also be closely monitoring the looming battle between LIBOR and SOFR, and trying to determine which side to choose.

The Specter of a LIBOR Legacy

With 2021 staring down at them, bond issuers, conduit borrowers, banks and others are now facing LIBOR's demise from two distinct viewpoints – either those with existing, or legacy, transactions which have pegged interest rates to some fraction of LIBOR, or those entering into new deals with the full knowledge that LIBOR as we know it won't be around forever. For those entering into new

floating rate transactions, being forewarned is being forearmed against Zombie LIBOR. As further discussed below, issuers, borrowers and banks can anticipate the phase out of LIBOR and draft their documents accordingly, such as by providing appropriate spread, trigger and fallback provisions. Those with legacy contracts referencing LIBOR, however, aren't so lucky. They will need to pour over their existing documents and get a handle on what happens to their interest rates once LIBOR is history.

Issuers and borrowers with legacy agreements for LIBOR-indexed debt maturing prior to the end of 2021 have, ostensibly, no great incentive to revisit their LIBOR agreements, yet they may wish to calculate whether the LIBOR-based interest rate they are currently paying has a real relationship to the actual cost of borrowing funds. They may discover that their LIBOR is a Zombie LIBOR untethered from reality. In that case, they might want to renegotiate for a lower interest rate – through a new benchmark rate, a new applicable margin, or both – for the remaining term of their LIBOR obligations.

On the other hand, issuers and borrowers with legacy agreements for LIBOR-indexed debt maturing after the end of 2021 have a pressing incentive to revisit their LIBOR agreements – and as soon as possible. These agreements contain the seeds of a Zombie LIBOR uprising which, left unchecked, could lead to uncertainty, higher interest rates and the municipal bond market version of panic in the streets.

The trouble with many legacy LIBOR contracts is that they didn't even bother to contemplate that LIBOR may go away someday, or else they contemplated only a temporary suspension of LIBOR quotes. Those legacy contracts which were sagacious enough to address the possible unavailability of LIBOR, no matter how short-term, usually provided for "fallback" language setting out an alternate benchmark rate to be used when LIBOR was not available.

These fallback provisions have taken many forms, and have set up a variety of alternate benchmark rates, ranging from choices like prime, some sort of fixed rate, some other floating rate determined by another index listed in the financial press, or a rate picked at random by a lender or bond trustee. Issuers and borrowers will need to scrutinize the fallback language, if any, in each of their legacy LIBOR contracts with an eye towards such critical issues as:

- **What's the alternative?** Does the fallback language clearly and unambiguously identify an alternate benchmark rate? Is the alternate benchmark rate readily ascertainable in today's market, and does the alternate benchmark rate accurately reflect the cost of borrowing money? If the fallback rate is the prime rate, the issuer or borrower will be facing a rate substantially higher than LIBOR. There's no sense in replacing a Zombie LIBOR with another unreliable rate, or a rate that gives one party a distinct advantage over the other.
- **Who's in charge?** The fallback language may give the lender, a bond trustee or some other party carte blanche to determine if LIBOR is indeed unavailable and what alternate benchmark rate is to be used in LIBOR's place. Does the issuer or borrower have any say in the matter? If it doesn't like the new alternate benchmark rate or the resulting new interest rate, can the issuer or borrower refinance or redeem without getting hit with a prepayment penalty?
- **What's the spread?** The fallback language in many legacy contracts may have described an alternate benchmark rate, but probably did not provide a mechanism for adjusting the applicable margin or spread in the event LIBOR is not available. Many legacy LIBOR documents set the interest rate for a bond or loan at a multiple of LIBOR – for example, 0.75 of LIBOR for a tax-exempt bond. As mentioned above, though, LIBOR is a risk-based rate and therefore runs higher than risk-free reference rates such as SOFR (which, being based on secured short-term transactions, will generally be a lower rate than LIBOR). A higher or lower applicable margin may be required so that the actual interest rate paid under LIBOR will be roughly comparable to the

actual interest rate under the alternate benchmark rate. Issuers, borrowers and lenders may need to perform mathematical gymnastics to come up with a new spread to use with the new benchmark rate, but the end result should be that the actual interest rate charged to the issuer or borrower won't fluctuate wildly if and when an alternate benchmark rate replaces LIBOR.

- **How do we fix this?** There's a good chance that your legacy LIBOR contracts will have to be amended because the fallback provisions are absent, confusing or inadequate, or because the margin is too high or too low for the new alternate benchmark rate. But it may not be so easy to amend legacy contracts. Loan agreements with banks may require the bank's consent, or the consent of all or a majority of syndicated lenders. Indentures for bond issues may require the consent of all or a majority of bondholders. Issuers and borrowers should determine what consent, if any, is needed to amend legacy documents and, if so, can the required consent be readily obtained or waived?
- **But not so fast.** Amending legacy documents for tax-exempt bonds or loans could result in a "reissuance" for federal income tax purposes. The IRS considers a tax-exempt obligation to be reissued if there are what it deems to be "significant modifications" to the terms of the obligation so that it ceases to be the same obligation as originally issued and is essentially a new obligation, unless the terms of the bond documents themselves provide for such modifications. A reissued tax-exempt bond or loan is subject to a re-testing of the requirements for tax exemption. At a minimum, a new Form 8038 will need to be filed with the IRS, bond counsel may be required to perform additional tax due diligence, and bond counsel, issuer's counsel and/or borrower's counsel may have to give new opinions. The bottom line is that bond counsel should always be consulted prior to any amendments of legacy documents for tax-exempt obligations.**Getting Around LIBOR Before It Goes Away**

While bond issuers, conduit borrowers and banks with legacy LIBOR deals will bear most of the brunt of the LIBOR phase out, that doesn't mean that structuring and negotiating new floating rate transactions is going to be a piece of cake for anyone. Those entering into new floating rate bond or loan deals will know the perils of going forward beyond 2021, and will need to be very careful in their negotiations over issues such as:

- **A workable alternative.** New contracts tied to LIBOR should provide for a definitive alternate benchmark rate to go into effect as soon as LIBOR is no longer available. As of early 2019, SOFR seems to be the leading contender for the new benchmark rate, but there are also good arguments in favor of the Federal Funds Effective Rate, especially with respect to swap contracts. Other benchmark rates may emerge as we get closer to 2021. The key thing is to not leave it to chance but instead have a workable, fair fallback benchmark rate waiting in the wings.
- **Who's pulling the trigger?** New contracts should also clearly state who is responsible for determining when LIBOR is no longer available, and how that party will make that determination. Should the new benchmark rate kick in on January 1, 2022, or can the new benchmark rate go into effect earlier, when someone, somewhere determines that LIBOR is nothing but a hollow zombie?
- **Setting the spread.** As discussed above, the spread or margin for LIBOR may not necessarily be the appropriate spread for another benchmark rate. For new contracts, the issuer/borrower and lender should agree on an appropriate spread for when the new benchmark rate goes into effect.

Become a Zombie LIBOR Fighter

The closer we get to 2021, the more likely it is that LIBOR will become a zombie interest rate. It won't reflect real-world interest rates and may wind up costing unwary issuers and borrowers a lot of money in interest rates that are substantially higher than the market rate.

However, you can – and must – fight back against the Zombie LIBOR infestation. First, identify all of your bonds, loans, swap contracts and other financial commitments which have interest rates tied to

LIBOR. Then, review the appropriate documents for each deal to see how they handle LIBOR unavailability triggers, new benchmark interest rate fallback provisions, adjustments to the margin and the other issues discussed above. If there is a fallback mechanism, try to figure out what your new interest rate might be using the new benchmark rate multiplied by the appropriate margin (either the existing margin or a new margin corresponding to the new benchmark rate). Is the LIBOR-based rate and the currently specified margin higher or lower than the alternate benchmark rate that would replace LIBOR?

Most importantly, communicate with your lender, swap counterparty or bond trustee. You may need to renegotiate terms, restructure the debt or consider a refunding or refinancing. Also, seek the assistance of competent legal counsel, with up-to-date market experience, to help ward off Zombie LIBOR and guide you through the process of transitioning from LIBOR to the new interest rate benchmark.

by Randall Kulat

March 19, 2019

Saul Ewing Arnstein & Lehr LLP

Population Growth, Temporary Cap Increase Boost LIHTC and Bond Ceilings.

The Internal Revenue Service (IRS) released 2019 population figures in Notice 2019-19, indicating the 2019 low-income housing tax credit (LIHTC) ceiling and tax-exempt private activity bond (PAB) cap for all states will increase. From 2018-2019, the U.S. population increased by 1,448,256 people to 327,167,434 in total, representing a 0.4 percent gain. U.S. territories lost more than 140,000 people, a 3.8 percent decrease.

The fiscal year (FY) 2018 omnibus appropriations bill provided a 12.5 percent increase in LIHTC allocations from 2018-2021. For 2019-2021, annual inflation adjustments would be applied to the new 2018 allocation amounts. Novogradac estimates the temporary 12.5 percent increase will increase affordable housing production by about 28,400 homes over 10 years compared to previous law.

Under Rev. Proc. 2018-57, each state's 2019 LIHTC ceiling is the greater of $2.75625 multiplied by the state population or $3,166,875. The 2019 PAB volume cap is the greater of $105 multiplied by the state population or $316,745,000. With the increase in per-capita allowances, states that lost population but do not qualify for the small-state minimum, will not be seeing a decrease in their LIHTC and PAB cap. In 2018, the state LIHTC cap was the greater of $2.70 per resident or $3,105,000 and state bond caps were the greater of $105 per resident or $310,710,000.

Highlights from Notice 2019-19 include:

Fastest growth: Arizona and Idaho grew by more than 2 percent each, with total population changes of 155,376 and 37,265, respectively. Other states with at least a 1 percent increase in population include (in increasing order): New Hampshire, North Carolina, Montana, Oregon, South

Carolina, Nevada, District of Columbia, Texas, South Dakota, Florida, Colorado, Washington and Utah.

Losing population: States that lost population include: Alaska, Connecticut, Hawaii, Illinois, Kansas, Louisiana, Maryland, New Jersey, New York, Rhode Island, West Virginia and Wyoming. Territories that lost population are American Samoa, Puerto Rico and the U.S. Virgin Islands.

New York saw the largest numeric decrease with a 307,190 population decline, representing a nearly 1.6 percent drop. The largest percent decrease is Puerto Rico, with a loss of nearly 4.3 percent of its population or 142,024 residents. The population 2019 population figures for American Samoa, Guam, the Northern Mariana Islands and the U.S. Virgin Islands are the 2018 midyear population figures in the U.S. Census Bureau's International Database and therefore, do not reflect the impact of the 2018 hurricane season.

Biggest states: The 10 most populous states continue to be California with 39,557,045, followed by Texas, Florida, New York, Pennsylvania, Illinois, Ohio, Georgia, North Carolina and Michigan. Eight of the top 10 states saw population increases for 2019. In addition to New York losing nearly 1.6 percent of its population, Illinois also lost 60,943 residents or nearly 0.5 percent of its population. Of all U.S. states with increases, Pennsylvania and California saw the smallest population percentage gain with 0.01 percent and 0.05 percent, respectively.

Small-State LIHTC Minimum: Because their populations are below the small state minimum, these states will receive LIHTC allocations of $3.167 million and not the population-based LIHTC allocation: Alaska, Delaware, the District of Columbia, Montana, North Dakota, Rhode Island, South Dakota, Vermont and Wyoming. U.S. territories are American Samoa, Guam, Northern Marian Islands and the U.S. Virgin Islands. This list of small-state recipients remains unchanged from 2016, 2017 and 2018.

Small-State PAB Cap Recipients:

The small-state PAB recipients for 2019 are the same as those in 2018, with the additions of Arkansas, Mississippi and Montana. Eighteen states, plus the District of Columbia will receive the 2019 small-state PAB minimum: Alaska, Arkansas, Delaware, the District of Columbia, Hawaii, Idaho, Kansas, Maine, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Rhode Island, South Dakota, Vermont, West Virginia and Wyoming.

Published by Michael Novogradac on Tuesday, March 19, 2019

S&P 2019 U.S. Municipal Green Bond & Resiliency Outlook: Will The Self-Labeled Market Rebound?

The U.S. municipal market for self-labeled green bonds bucked global trends in 2018 and declined for the first time since 2013, although this was in line with broader volume decreases in public financings reflecting tax law changes, which eliminated the ability of issuers to advance refund existing debt.

Continue Reading

Mar. 14, 2019

When Bond Funds Make Sense.

When Bond Funds Make Sense

Like mutual funds and exchange-traded funds, bonds and bond funds can help investors take the edge off market volatility and create a balanced, diversified portfolio. But a debate rages among people who worry about this stuff: Is it better to own individual bonds or bond funds?

The benefits of bond funds

With an individual bond, you get 100 cents on the dollar when it matures (assuming the issuer doesn't default). The knock on bond funds is that, because they are constantly buying and selling bonds, they have no maturity date. Therefore if rates are rising, the value of the fund goes down, and you might have to sell the shares for less than you paid.

While this criticism of bond funds is accurate, there are quite a few caveats. For starters, you'll need at least $500,000 in the bond portion of your portfolio to achieve sufficient diversity and the scale to absorb transaction costs. Short of that, you're better off in funds.

What's more, a bond fund can take advantage of rising rates by constantly buying bonds with higher coupons. But say you own a $10,000 bond paying 3% interest and rates rise to 4%. The semi-annual payouts of about $150 won't be enough to buy a new, higher-yielding bond.

And finally, while it's true you will get your money back if you hold a bond to maturity, you still suffered opportunity cost – you were unable to invest that $10,000 in a new, higher-paying bond without selling and taking the loss.

Continue reading.

Barron's

March 24, 2019 11:00 a.m. ET

Moody's: FEMA's Decision About California Dam Is a Signal to States and Localities

The federal agency may want governments to repair and replace aging infrastructure before it fails, but making California eat some of the repair costs could lead to more deferred maintenance on other projects, the ratings company said.

State and local governments can no longer assume the federal government will cover the costs of disasters it deems caused by deferred maintenance after California's request for $306 million to repair the Oroville Dam was denied, Moody's Investors Service said this week in a report.

Heavy rainfall damaged the Northern California dam's spillway in February 2017, and the resulting flood risk forced the evacuation of 180,000 residents.

The Federal Emergency Management Agency notified the California Department of Water Resources on March 7 that only $333 million of the $639 million the state requested for repairs would be

reimbursed. FEMA argued preexisting structural issues with the upper spillway should have been addressed before it failed—declaring those repairs ineligible for at least 75 percent reimbursement.

A 2018 forensic report found systemic problems at the dam, starting with its design and construction but also with maintenance of the structure.

The state agency plans to appeal the decision to FEMA for itself and 29 local water contractors, wholesalers that supply treated water. But FEMA has made clear state and local governments should expedite repair or replacement of aging infrastructure before it fails, according to Moody's weekly credit outlook.

"Prior to the FEMA denial, localities might have anticipated reimbursement even for structures of uncertain storm preparedness," reads the report. "Having to demonstrate infrastructure sufficiency for natural disaster cost reimbursement by FEMA will increase the cost and complexity of local governments' disaster preparation and post-disaster recovery."

The agency doesn't intend to send messages with its decisions, Brandi Richard, spokeswoman for FEMA Region IX, told Route Fifty by email.

"We do encourage tribal, state, and local governments and homeowners to maintain and repair structures as a way to reduce the severity of damage caused by disasters," she added.

FEMA hasn't received the water agency's appeal yet, Richard said, and the appeals process could take up to 18 months. In the meantime, DWR plans to charge contractors $42 million over the course of 2019 for the repairs.

Should FEMA reject DWR's appeal, the department will either have to absorb the repair costs, probably by tapping reserves, or pass them onto contractors and ultimately ratepayers. That could result in higher-than-expected water bills for 27 million people, about 70 percent of California's population, according to the report.

Most of DWR's revenue, 50 to 55 percent, comes from the Metropolitan Water District of Southern California, which serves 19 million customers across Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura counties. The Metropolitan Water District's contract runs through 2035, and the district would likely be responsible for 45 percent of repair cost through that duration, according to the report.

DWR did not respond to a request for comment.

"We support [DWR] and recognize the agency has worked tirelessly to protect public safety and to successfully repair the Oroville spillways," said Jennifer Pierre, general manager of the association State Water Contractors, in a statement given to The Sacramento Bee. "We firmly believe that federally-required repairs to Oroville after a federally-declared emergency should qualify for full federal assistance."

To further offset costs, DWR may have to defer maintenance on other projects, according to the report, which could lead to another disaster.

"Our decisions to grant or deny funding are solely based on the laws and guidelines that govern our work," Richard said. "It is not our agency's intent to be unfair to our state and local partners. That's why we provide subject matter experts to help them submit projects for reimbursement."

Route Fifty

By Dave Nyczepir
News Editor

MARCH 22, 2019

A Closer Look at Environmental Impact Bonds.

How Are They Affecting Green Infrastructure?

Across the nation, countless cities with antiquated sewer and stormwater systems are under orders from the U.S. Environmental Protection Agency (EPA) to reduce stormwater runoff to decrease the amount of pollution entering local waterways. When Washington, D.C., faced this problem, city officials decided to experiment with green infrastructure rather than investing in expensive new pumps and pipes. Since green infrastructure had never been implemented on such a large scale, however, the city faced a huge challenge when it came to financing the project.

For the city, the solution was to launch the country's first Environmental Impact Bond, or EIB. Considered a "pay for success" strategy, an EIB allows cities to share both the risks and the rewards of solving problems through innovative strategies with investors. They make it possible for governments, investors and other participants to focus on overall outcomes rather than specific activities, and they are proving successful.

What are EIBs, how do they work and how exactly are they affecting green infrastructure? Let's take a closer look.

EIBs and How They Work

EIBs are instruments for financing large projects that pay returns based on outcomes. Like Green Bonds, they are commonly used to raise funding for environmentally sustainable projects, such as green infrastructure. Unlike Green Bonds, however, the financial return of the investment is tied directly to the success of the project. In other words, investors can only collect a return on their investment if the project proves to be successful. In the case of financing green infrastructure projects using an EIB, investors see a financial return when a demonstrable difference to the environment is achieved.

The current generation of investors cares about environmental and social returns as much as it cares about financial gain. Known as "impact investors," these individuals and organizations are seeking environmental, social and financial returns when making investments. When a municipality decides to fund a green infrastructure project using EIBs, it seeks investors who want to help pay for environmental capital projects.

Once bonds have been issued, the issuer uses the obtained funds to pay for their planned green infrastructure solutions. The principal amount of the bonds and interest must be remitted on scheduled payment dates. Following an evaluation period, the issuer pays the investors an outcome profit when there is demonstrable proof that the project has performed better than expected. If it underperforms, however, the investor must pay the municipality a "risk-sharing" payment. This usually means that the investor receives little or no interest.

RELATED — Sharing the Risks and Rewards: Examining the 'Pay for Success' Model of Environmental Impact Bonds

What Is Green Infrastructure?

Green infrastructure, also sometimes referred to as GI, is an innovative approach to managing stormwater runoff. It utilizes natural processes, such as evapotranspiration and infiltration, to slow down stormwater to prevent it from overwhelming municipal sewer systems and polluting waterways.

Green infrastructure also harnesses the power of these natural processes to clean and sometimes reuse stormwater. There are several types of green infrastructure, but the overall goal is to replicate natural environments and make it possible to deal with rainwater and snowmelt runoff as naturally as possible.

Green infrastructure includes things like permeable pavements, bioretention and roof-top collection processes. Porous asphalt, pervious concrete, rain gardens, bioswales and tree boxes can all be used in green infrastructure processes as a means of allowing water to be absorbed naturally into the ground. Green roofs, rain barrels and cisterns serve as options for collecting or reusing rainwater and reducing runoff. Man-made wetlands are also common solutions for dealing with stormwater in urban and suburban areas.

Benefits of Environmental Impact Bonds for Green Infrastructure

Because green infrastructure solutions are relatively new and have not been tested in the long term, obtaining financing is often a major challenge for municipalities. Environmental Impact Bonds provide access to funding for projects that are normally difficult to finance. They may also make it possible to obtain financing faster by engaging new investors.

Green infrastructure projects are sometimes risky. Financing them through EIBs means that the risk is shared by municipalities and investors. This, of course, makes it easier for municipalities to embrace green strategies since they are not carrying the entire burden if a project fails.

How EIBs Are Affecting Green Infrastructure

There are more than 700 communities throughout the United States with combined sewer systems. This means that stormwater and raw sewage flow through the same system before reaching a treatment facility. When these systems are overwhelmed, the combined sewage and stormwater ends up polluting local waterways. EIBs make it possible for municipalities facing this type of problem to fund environmentally friendly projects as solutions.

In the case of Washington, D.C., the original plan was a $2.6 billion tunnel system to keep overflow out of local rivers. Partway through the project, however, planners realized that green infrastructure initiatives would cost less ($25 million) while helping the city solve its wastewater problem. The country’s first EIB made it possible to move ahead with this innovative project that may have otherwise been impossible to finance.

EIBs are having a huge impact on green infrastructure because they enable municipalities of virtually all sizes to embrace solutions like permeable pavement, green roofs and rain gardens. Financing such projects through traditional means is often challenging due to the unique risks involved with green infrastructure, but organizations are coming up with creative ways to implement greener infrastructure. For example, Atlanta won the first EIB Challenge supported by the Rockefeller Foundation and will be provided with $12.9 million worth of green infrastructure. With the help of creative financing, EIBs make it possible for municipalities to embrace these innovative, environmentally friendly and cost-effective alternatives to traditional stormwater management

infrastructure.

A Unique Funding Option

The impact of paving over forests, meadows and wetlands has been seen on a massive scale across the nation. Through green infrastructure projects, however, many cities and communities are creating natural methods of dealing with stormwater runoff. Environmental Impact Bonds can provide a unique means of funding these projects, as they allow municipalities to share the risk with investors who are interested in environmental, social and financial returns on their investments.

Atlanta DWM completes first publicly-issued Environmental Impact Bond

Quantified Ventures, an impact investment firm, and Neighborly, a mission-oriented broker dealer, recently announced the issuance of the first impact bond to be offered on the public markets. The $14 million Environmental Impact Bond (EIB) gives the City of Atlanta Department of Watershed Management (DWM), access to funding for innovative green infrastructure projects that will address critical flooding and water quality issues, reduce stormwater runoff and enhance the quality of life of Westside neighborhoods that are in the Proctor Creek watershed.

The Atlanta EIB builds on the success of previous impact bond offerings in several ways. As a publicly issued bond, it has all the hallmarks of a traditional public municipal bond offering, such as a designated CUSIP number providing wide distribution and access to the secondary market, and has been highly rated by Moody's (Aa3) and S&P (A+). It is also designed to be priced competitively with other municipal bond offerings.

The Atlanta EIB is the second impact bond to be structured by Quantified Ventures as an actual municipal bond, the first of which, with the DC Water and Sewer Authority, was sold in a private placement. In its role in the Atlanta offering, Quantified Ventures brought expertise in evaluating all aspects of EIBs, which require an ability to translate desired outcomes into financial value that can be priced into a security and develop a rigorous evaluation process.

WATER FINANCING & MANAGEMENT

MARCH 25, 2019

MSRB Asks SEC Approval to Require More Data from Underwriters.

WASHINGTON — The Municipal Securities Rulemaking Board has filed rule changes with the Securities and Exchange Commission, which would require underwriters to provide more information about new offerings of bonds and eliminate the need for dealer financial advisors to provide the official statements to the underwriter.

On Thursday, the MSRB filed rule changes to G-11, on primary offering practices, and G-32, on disclosures in connection with primary offerings, after a two-year review process. The new amendments would ultimately increase transparency and equal access to information, the MSRB said.

"Engagement with our stakeholders has been an integral part of our retrospective review of MSRB rules related to primary offering practices," said MSRB Chair Gary Hall. "As a result of the feedback we have received over the past several years, we believe the proposed enhancements will increase

transparency and promote the fair dissemination of information."

The MSRB published the draft amendments after a broader request for comment on primary offering practices, and received feedback from market participants in September 2018.

If approved by the SEC, the new amendments to Rule G-32 will require additional data about new issue bonds to be included on Form G-32 and would auto-populate data from the New Issuer Information Dissemination Service (NIIDS) onto that form.

The NIIDS system, developed by the Depository Trust Company at the Securities Industry and Financial Markets Association's request, collects information about a new muni issue from underwriters or their representatives in an electronic format and then makes that data immediately available to vendors that provide such information to market participants.

Form G-32 is submitted to the MSRB by underwriters and provides information about a new issuance, such as the underwriting spread, maturity date, initial offering price, minimum denomination, and more.

Some market groups said that the underwriter that submits the initial NIIDS data should have no obligation to update that information over the life of the bonds, in 2018 comment letters.

MSRB will ask for dealers to provide the minimum denomination of a new issue and to indicate yes or no on whether a minimum denomination is subject to change.

In his 2018 comment letter, Mike Nicholas, CEO of Bond Dealers of America, said his group supported a yes/no indicator for changing minimum denominations.

The MSRB will also require data on names of additional managers and municipal advisors in a deal. Currently, the data only shows syndicate managers.

However, Nicholas in 2018 wrote that the BDA objected to identifying the municipal advisors, saying the information is obtainable from the final OS.

"The BDA objects to this data field," Nicholas wrote in 2018. "The information is obtainable from the final official statement and does not represent valuable information in the secondary market trading of municipal securities."

The final proposal also dropped a subsection in Rule-32 that said a dealer financial advisor that prepares an OS would have to deliver it to the managing or sole underwriter after the issuer approves it for distribution.

A new amendment in Rule G-11 would align the time frame for the payment of group net sales credits (sales credits for orders in which all syndicate members benefit according to their participation in the account) with the payment of net designation sales credits. Both would then be paid within 10 calendar days after the date the issuer delivers securities to the syndicate.

Currently, group net sales credits are paid out of the syndicate account when it settles, meaning some syndicate members must wait 30 days following the receipt of the securities before they receive the credits. In contrast, sales credits due to a syndicate member as designated by a customer in connection with the purchase of securities (net designated orders) are supposed to be distributed within 10 calendar days after the date the issuer delivers the securities to the syndicate.

The MSRB began its formal retrospective rule review in early 2012 and in October 2018, it said it

would continue its review into 2019.

By Sarah Wynn

BY SOURCEMEDIA | MUNICIPAL | 03/21/19 02:26 PM EDT

How To Use Muni Bonds For Tax-Loss Harvesting.

Democrats' talk of higher taxes for the rich might intensify interest in state and local government bonds, where income is often exempt from taxes.

Tax-loss harvesting in municipal bond portfolios can allow investors to offset tax liabilities stemming from capital gains in other asset classes—as long as investors and advisors do their homework.

"Basically, when rates go up investors will potentially experience capital losses on munis—and that's when tax-loss harvesting gets powerful and interesting," said Alex Etzkowitz, vice president of investment research and strategy at Gurtin Municipal Bond Management in Solana Beach, Calif. "Investors can swap into other bonds, lock into the same amount of income and actually take advantage of losses to offset gains elsewhere. This is unlike tax-loss harvesting with equities, ETFs and mutual funds, which simply defers payments of taxes into the future and effectively postpones the capital gains tax burden."

In a simple example, your client purchases a municipal bond at $120 that is now priced in the marketplace at $110. He or she realizes a $10 loss on the sale and reinvests into a similar security with an identical maturity date, priced at $110. When the bonds mature, there are no capital gains because the purchases were executed above par. But the client has locked in a $10 capital loss that can be used to offset other gains realized through other investments.

Historically, muni bonds have outperformed Treasurys after the hiking of top marginal tax rates. "For top taxpayers, municipal bonds should be a core piece of an overall asset allocation," Etzkowitz said.

High-earning individuals are often better positioned to realize the most benefit from tax-free municipal bonds, said Jim Barnes, director of fixed income at Bryn Mawr Trust in Bryn Mawr, Pa., especially after tax reform introduced limitations on such long-standing deductions as state and local tax and property (SALT) tax.

Muni bonds have become desirable to wealthy investors in high-tax states such as California and New York, where the limitation on the SALT deduction hit hardest.

"We have a few clients in which we do manage a tax-free bond mutual fund portfolio for them in their taxable accounts and we're able to generate fairly comparable yields after taxes to stocks and other taxable bond portfolios," said Bruce Primeau, president of Summit Wealth Advocates in Prior Lake, Minn. He cited the example of managing a portfolio that is 55 percent stocks and 45 percent bonds for a couple that lives in Texas, which has no state income tax. "They do have about $1 million in tax-deferred accounts, but several million dollars in a taxable joint account," he said. "We have to manage a bond component in their taxable account to keep their overall asset allocation in line. In their case, we own a few different municipal bond mutual funds to construct a short-to-intermediate municipal bond portfolio for them, and it's been generating a little over 2 percent after-tax return for them each year."

The market comes with potholes. “The municipal bond market is thin and not efficient for trading,” said William Velekei, a CPA and financial advisor with Corbenic Partners in Bethlehem, Pa. “Investors have more attractive pricing trading larger bond lots than those who trade smaller lot sizes. One strategy we recommend is building out and owning individual bonds in a laddered portfolio. It hedges against the risk of rising interest rates by reinvesting maturing bond proceeds, and it diversifies the holdings of the individual bonds across multiple issuing agencies.”

Velekei’s firm has clients who live in states that have above-average state income tax rates. “This strategy gives us the flexibility to customize a municipal bond portfolio that not only maximizes the benefit at a federal tax level but also at the state income tax level,” he said.

But he had one note of caution: “Municipal bonds are often thought of as safe and conservative. The majority are. But individuals should be aware that not all states, municipalities or agencies have the same credit quality,” Velekei said.

FINANCIAL ADVISOR

by JEFF STIMPSON

MARCH 18, 2019

Hawkins Advisory: Implementing the Rule 15c2-12 Amendments

This Advisory summarizes guidance that the SEC staff has provided to date in public forums regarding the recent Rule 15c2-12 amendments.

Read the Advisory.

Well, You're Going to Hear About Muni Bond Lawsuits: Joe Mysak

- **Price-fixing, collusion at the center of series of complaints**
- **Minnesota adviser, financial fraud powerhouse seek billions**

There was a scene in the “The Sopranos,’’ in which mob boss Tony dreams of talking to a fish. “I don’t want to hear it,’’ he tells the fish. “Well, you’re gonna hear it,’’ the fish replies.

That’s where we are right now with a series of lawsuits filed against a bunch of banks that served as remarketing agents for variable-rate demand obligations. Nobody wants to talk about it. Nobody wants to comment. Nobody really wants to hear about it. But you’re gonna hear about it.

There’s so much about this story that is without precedent. First there was the series of lawsuits filed by a whistle-blower on behalf of California, Illinois, Massachusetts and New York, alleging damages and penalties of at least $3.6 billion.

These lawsuits allege that the banks didn’t price and remarket VRDOs individually, as they promised, but used something called “robo-resetting,’’ basically pricing them as if they were all alike in big buckets. The lawsuits also allege that Wall Street institutions conspired to keep the prices high enough that investors would never put them back, thus saving banks the trouble of having to

find new buyers.

Then there was a big antitrust lawsuit filed in the Southern District of New York by Philadelphia, represented by famed financial fraud powerhouse Quinn Emanuel Urquhart & Sullivan. This referenced the whistle-blower as well as its own analysis, alleging that seven banks named in the complaint colluded to inflate prices on VRDOs. The lawsuit also specifically mentioned that the SEC and the Department of Justice were looking into the whistle-blower's allegations, seeking unspecified damages and penalties in the "billions'' of dollars.

And then the whistle-blower, a Minnesota adviser named Johan Rosenberg, revealed himself because of a Massachusetts ruling requiring that only individuals, not corporate entities, could file False Claims Act lawsuits in the state. This was the last piece of the puzzle.

Where to begin? First, you don't get a lot of whistle-blowers making allegations in the municipal bond market, then letting everyone know who they are. Second, you don't get a lot of law firms of the caliber of Quinn Emanuel standing as plaintiff's counsel in the municipal market. Finally, of course, there's the "billions" — probably the least interesting part about all of this, although it's what will get headlines.

We're still only at the very beginning of a process that will presumably take years, marking another gruesome episode in public finance. And yes, I know: You don't want to hear it.

Bloomberg Business

By Joe Mysak

March 19, 2019, 7:03 AM PDT

Pennsylvania Proposes Restrictions on Municipal Interest Rate Swaps

HIGHLIGHTS:

- New legislation has been proposed in Pennsylvania imposing specific restrictions and parameters on interest rate swaps entered into by certain cities, counties and municipal authorities in the Commonwealth, and imposing new obligations on the providers of such interest rate swaps.
- The First Class City and County Interest Rate Management Agreement Act (H.B. 884) has been referred to the House Committee on Local Government for further consideration. It is anticipated that a similar bill will be introduced in the state Senate shortly.

New legislation has been proposed in Pennsylvania imposing specific restrictions and parameters on interest rate swaps entered into by certain cities, counties and municipal authorities in the Commonwealth, and imposing new obligations on the providers of such interest rate swaps. The bill (H.B. 884) – First Class City and County Interest Rate Management Agreement Act – was introduced in the House of Representatives on March 19, 2019. The bill restates certain restrictions first proposed earlier this year in H.B. 320 and S.B. 206, introduced as part of a series of legislation in both houses of the General Assembly intended to address municipal government reform.

The bill has been referred to the House Committee on Local Government for further consideration. It is anticipated that a similar bill will be introduced in the state Senate shortly.

Which Municipal Entities Are Covered (Each a "Contracting Authority")

- Cities of the first class (those having a population of at least 1 million inhabitants)
- Counties of the first class (those having a population of at least 1.5 million inhabitants)
- Certain municipal authorities

Which Agreements Are Covered

- Any agreement which "in the judgment of the contracting authority is designed to manage interest rate risk or interest cost of the contracting authority on any debt or other debt-related obligations a contracting authority is authorized to incur," and expressly references swaps, interest rate caps, collars, corridors, ceiling and floor agreements, forward agreements, float agreements and other similar arrangements.

Restrictions and Parameters

- Each interest rate management agreement or related confirmation must be **authorized and awarded by resolution** of the contracting authority
- No payments may be made to or on behalf of a contracting authority by the other party except **periodic scheduled payments, termination payments and attorney fees and other consultant fees** incurred in connection with entering into an interest rate management agreement
- Periodic scheduled payments must commence **not later than three years** after the date of the related confirmation
- The index or basis used to calculate the periodic scheduled payments to be received by the contracting authority must be **"substantially similar"** to the index or basis used to calculate the interest due on the associated debt
- At the time of execution, the notional amount of each interest rate management agreement, together with the notional amount of outstanding interest rate management agreements, **cannot exceed 30 percent of the total principal amount** of the debt sharing the same source of payment as such interest rate management agreements
- Payments received by the contracting authority **must be deposited in a payment account** and used for certain enumerated purposes
- The scheduled expiration date of an interest rate management agreement **cannot exceed 10 years** from the date of the related confirmation unless the interest rate management agreement allows the contracting authority to **terminate at any time after 10 years without making a termination payment**

Provider Obligations

Each provider of an interest rate management agreement **must acknowledge the following in a certification**:

- that the contracting authority is a political subdivision or municipal authority
- that the provider has read the law
- that the contracting authority may only enter into an interest rate management agreement to manage interest rate risk or interest cost on debt or other debt-related obligations of the contracting authority
- that it will notify the state's Department of Community and Economic Development, in writing, promptly upon payment of a termination payment by the contracting authority, including the date and amount of the payment and identity of the interest rate management agreement under which it was made

Holland & Knight LLP

by Douglas I. Youngman

USA March 20 2019

TAX - NEW YORK

MSK Realty Interests, LLC v. Department of Finance of City of New York

Supreme Court, Appellate Division, First Department, New York - March 7, 2019 - N.Y.S.3d - 2019 WL 1064041 - 2019 N.Y. Slip Op. 01662

Taxpayer, a limited liability company (LLC) that owned a condominium in New York City, brought article 78 proceeding to annul rules of the Department of Finance of City of New York which retroactively eliminated eligibility for a tax abatement for corporate and other non-individual owners of condominiums and cooperative apartments.

The Supreme Court, New York County, denied the petition, and taxpayer appealed.

The Supreme Court, Appellate Division, held that:

- Department's determination that the term "primary residence" in statute granting a partial tax abatement for cooperatives of condominiums referred to the dwelling place of individuals and did not apply to corporations, LLC partnerships or other entities was not arbitrary or capricious, and
- Department did not violate taxpayer's due process rights when it restored erroneously abated taxes for four years.

Determination by the New York City Department of Finance that the term "primary residence" in statute granting a partial tax abatement for cooperatives or condominiums referred to the dwelling place of individuals and did not apply to corporations, limited liability company (LLC) partnerships or other entities was not arbitrary or capricious; determination was consistent with dictionary definitions and common usage of the term, and was also consistent with legislative history.

New York City Department of Finance did not violate due process rights of taxpayer, a limited liability company (LLC) that owned a condominium in city, when it restored erroneously abated taxes for four years after determining that the statute granting a partial tax abatement for cooperatives or condominiums did not apply to units owned by LLCs; statute's primary residency requirement was made retroactive, and the retroactivity provided for in the statute was not excessive.

TAX - NORTH CAROLINA

Matter of Aaron's, Inc.

Court of Appeals of North Carolina - February 19, 2019 - S.E.2d - 2019 WL 660961

After county board of equalization and review affirmed Tax Administrator's decision to allow assessment of tax deficiency issued by county office of tax assessor against taxpayer for unpaid taxes on goods taxpayer offered to customers through "lease purchase" agreements, taxpayer appealed, arguing that such property was inventory exempt from taxation.

The Property Tax Commission, sitting as the State Board of Equalization and Review, determined that property in physical possession of taxpayer's customers pursuant to "lease purchase" agreements was subject to ad valorem taxation. Taxpayer appealed.

The Court of Appeals held that:

- Taxpayer's transfers of property did not constitute sales, and thus transferred property was not exempt from taxation; and
- Statutory definition of "inventory" did not include goods taxpayer transferred to customers.

Taxpayer's transfers of property to customers through "lease purchase" agreements did not constitute sales, and thus transferred property was not exempt from taxation as "inventor[y] owned by retail and wholesale merchants"; customers were under no obligation to purchase leased property or to pay total purchase price of property, and were permitted to return leased property at any time without penalty, and price to purchase leased property through purchase option was higher than price for purchasing property directly.

Statutory definition of "inventories" as goods "held" for sale in regular course of business did not include goods taxpayer transferred to customers through "lease purchase" agreements, where property was in customers' possession.

Investors Keep Puerto Rico Bonds After First Chapter of Restructuring.

Troubled island's financial prospects could be turning around

Investors are hanging on to bonds issued as part of Puerto Rico's massive restructuring effort, a sign of confidence in the fiscally troubled island's prospects.

Prices have edged higher for $12 billion in new debt backed by sales taxes that Puerto Rico issued several weeks ago. The bonds, known by their Spanish acronym as Cofina s, were issued to investors including hedge funds as part of the U.S. territory's financial restructuring, marking the first settlement in ongoing negotiations to fix its broken finances.

Though the bonds' prices have pared some of their earlier gains, one slice of newly issued sales tax bonds recently traded with an average price of about $95.44, up from $93.00 last month, according to Refinitiv's Municipal Market Data.

Continue reading.

The Wall Street Journal

By Gunjan Banerji and Andrew Scurria

Updated March 21, 2019 5:03 p.m. ET

High-Yield Muni Market Passes a Key Test From Puerto Rico's Sell-Off.

- **New sales-tax debt is most actively traded in muni market**

- **There was concern it could weigh on performance of junk bonds**

Over the past month, hedge funds and other investors dumped more than $2.5 billion of debt they received in Puerto Rico's record restructuring, a sell-off that made the sales-tax-backed securities the most actively traded in the municipal-debt market.

Yet the prices haven't crashed — and the flood did little, if anything, to dampen the gains for other tax-exempt junk bonds.

The performance shows that the $3.8 trillion municipal market weathered a major test from Puerto Rico's bankruptcy, by far the biggest ever for an American government. The debt restructuring, a precursor of others that will follow, had raised concern that the speculative corner of the market would struggle to absorb the billions of dollars of new debt, pushing up yields on Puerto Rico's new securities and other high-risk debt competing for limited space in investors' portfolios.

Continue reading.

Bloomberg Markets

By Michelle Kaske

March 19, 2019, 6:34 AM PDT

Current Status of Puerto Rico Debt Restructuring.

After a decade-long fiscal decline, Puerto Rico filed for bankruptcy protection and has been in federal court since May 2017 to restructure its $120 billion debt portfolio comprised of public debt and unfunded liabilities. The financial crisis of this U.S. commonwealth has contributed to a high poverty rate, in which 40% of Puerto Rican citizens are living under the poverty line and the unemployment rate has been above double digits, along with a nearly insolvent public healthcare system.

The prospect of Puerto Rico's debt restructuring, negotiations with its creditors, and getting a plan of adjustment approved by the bankruptcy court became even more uncertain after a U.S. Appeals Court ruled in February 2019 that the federal oversight board overseeing the bankruptcy process was unconstitutionally appointed.

The court also set a 90-day period for the U.S. president and the Senate to either validate the appointments or reestablish the oversight board. As things were looking promising and progress was being made to achieve the objective of debt restructuring for Puerto Rico, this new ruling has knocked any progress off its rails.

Continue reading.

municipalbonds.com

by Jayden Sangha

Mar 20, 2019

NFMA Municipal Analysts Bulletin.

The Municipal Analysts Bulletin, Vol. 29, No. 1, is available by clicking here.

Ex-Citadel Quants are Gunning for the $3.8 Trillion Muni Market.

- **Headlands responds to 13,000 municipal bond auctions a day**
- **Greater adoption of electronic trading in munis boosts quants**

The quants are coming for the $3.8 trillion municipal market.

Headlands Tech Global Markets LLC, a firm founded by former senior executives at Citadel LLC, is using complex mathematical formulas and powerful computers to buy and sell state and local government securities, seizing on the sometimes divergent prices in a market where the vast majority of bonds only rarely change hands.

Headlands' five-man band of algorithm-driven traders have become a major, if little known, force in the industry, bidding each day on about 13,000 municipal securities that are put up for sale on electronic trading platforms. That's placed it among a group of companies that are bringing technology that has swept through other corners of Wall Street to state and local-government debt trading, challenging a long-held view that a market that finances everything from factories to state governments requires detailed research to gauge prices.

"This idea that every bond is a unique snowflake and a story — they say 'balderdash'," Paul Daley, a managing director at BondWave LLC, a financial technology company, said of Headlands' approach. "All these bonds are mathematical equations, and if we can model it, we can price it."

The emergence of Headlands comes as quantitative trading firms are stepping into a gap left by securities dealers, who are holding less debt in inventory and concentrating instead on fulfilling orders for customers. The shift by dealers was spurred in part by regulatory requirements ushered in after the 2008 financial crisis that increased their cost of capital, prodding them to cut their holdings of state and local-government debt by about 60 percent since 2006, according to Federal Reserve Board statistics.

Generating Bids

"The algorithms and technology are bringing more liquidity into the market, which is a good thing," said Brad Winges, chief executive officer at Hilltop Securities in Dallas. "It's giving more transparency to the individual retail investor."

Matt Andresen, a former co-chief executive at Citadel Securities, the New York Stock Exchange's largest designated market maker, founded Headlands in 2010 with Jason Lehman, who ran Citadel's global options business, and Neil Fitzpatrick, former chief operating officer of Citadel Execution Services.

They were joined in 2013 by Martin Mannion, who had succeeded Fitzpatrick at Citadel. Headlands started trading municipal bonds in 2014 and focuses its computer-driven approach on lots of $100,000 or less, which represent about 80 percent of daily trade volume, though it also trades large blocks as well.

The Chicago-based firm executes more than 1,000 trades a day and had an inventory of $400 million, Andresen, Headlands' chief executive officer, told a fixed-income market structure panel in April 2018. He said the firm's technology can generate prices on more than 700,000 bonds.

"We felt like given our experience providing liquidity to retail-sized orders in other asset classes, even though munis were very different, that we could potentially add value as a liquidity provider," Mannion said in a phone interview. He declined to disclose Headlands profitability.

Ripe Market

Even with such approaches, the municipal market is unlikely to ever be as uniform as the stock market. The over-the-counter municipal bond market has more than 900,000 separate securities issued by tens of thousands of municipalities, with a big chunk of them held by buy-and-hold individual investors.

In 2011, about 99 percent of the market's bonds didn't trade on any given day, according to a report from the U.S. Securities and Exchange Commission. Last year, daily trades averaged 40,400, about half of which had a value of $25,000 or less, according to the Municipal Securities Rulemaking Board.

Yet, several factors have made the the market ripe for the type of quantitative trading that's already got a major hold on the stock market.

The release of same-day trading prices since 2005 has given firms like Headlands more than a decade of data that can now be used to build pricing models, while electronic trading platforms have increasingly displaced the old-fashioned practice of executing trades over the phone. Regulations enacted in 2016 that require brokers to seek the best prices available has also led them to expose bonds to a large number of bidders on such trading platforms.

Win or lose, through the auction process Headlands gets feedback that allows it to refine its pricing models. Automation allows the firm to respond, in periods of volatility, to a spike in the number of auctions, which would be difficult for an individual trader to do manually.

What makes Headlands different from banks such as Citigroup Inc. and Royal Bank of Canada, underwriters that also use such techniques, is that the company doesn't handle new securities offerings and focuses mostly on small lots of bonds. Quantitative tools have allowed the big banks to free up traders to focus on block trades of more than $1 million, where relationships with counterparties are important.

Winges, a former senior executive at Piper Jaffray Cos. who took over as Hilltop's CEO last month, said the firm is spending more money on data aggregation and trading capability for clients. But he said computers won't replace humans on the trading floor.

"If you want to compete, the perfect combination is technology with historical knowledge," Winges said. "You can have the greatest quant model and still lose money and you can have the smartest trader — but not have a lot of technology — and he or she is going to lose money, too."

Bloomberg Markets

By Martin Z Braun

March 19, 2019, 5:11 AM PDT

Quants in the Muni Market Show Bond Liquidity Will Be Fine.

Debt markets continue to evolve in an era of diminished Wall Street influence.

At least one quantitative trading firm thinks it has finally cracked the code to the widely idiosyncratic, infrequently traded, largely individual investor-based U.S. municipal bond market.

Bloomberg News's Martin Z. Braun has the scoop:

> Headlands Tech Global Markets LLC, a firm founded by former senior executives at Citadel LLC, is using complex mathematical formulas and powerful computers to buy and sell state and local government securities, seizing on the sometimes divergent prices in a market where the vast majority of bonds only rarely change hands.
>
> Headlands' five-man band of algorithm-driven traders have become a major, if little known, force in the industry, bidding each day on about 13,000 municipal securities that are put up for sale on electronic trading platforms. That's placed it among a group of companies that are bringing technology that has swept through other corners of Wall Street to state and local-government debt trading, challenging a long-held view that a market that finances everything from factories to state governments requires detailed research to gauge prices.
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> "This idea that every bond is a unique snowflake and a story — they say 'balderdash'," Paul Daley, a managing director at BondWave LLC, a financial technology company, said of Headlands' approach. "All these bonds are mathematical equations, and if we can model it, we can price it."

Continue reading.

Bloomberg Opinion

By Brian Chappatta

March 19, 2019, 10:15 AM PDT

Brian Chappatta is a Bloomberg Opinion columnist covering debt markets. He previously covered bonds for Bloomberg News. He is also a CFA charterholder.

Do Corporate Tax Incentives Work? 20 States, and Most Cities, Don't Know.

Washington state, which gave Boeing $1 billion over the past four years, has a well-established system to evaluate tax deals. Many governments don't.

SPEED READ:

- Boeing has received roughly $1 billion in tax incentives and credits from Washington state over the past four years.

- Washington is one of 30 states that regularly evaluates corporate tax incentives.
- Only a few cities regularly track and assess these business deals to see if the promised results were achieved.

The aircraft manufacturer Boeing has received roughly $1 billion in tax incentives and credits from Washington state over the past four years. That includes tens of millions of dollars for activities in 2017 related to production equipment for the 737 MAX jets, all of which have been grounded in the past week after two fatal crashes.

That information is known because Washington state has one of the more well-established tax incentive evaluation programs in the country. As corporate tax breaks — like the ones used to lure Amazon's HQ2 — have come under increasing scrutiny, more states are tracking them and attempting to ensure that the businesses that receive them are holding up their end of the deals.

Continue reading.

GOVERNING.CCOM

BY LIZ FARMER | MARCH 20, 2019 AT 4:00 AM

Legal Insight - Summary And Analysis Of The Water Infrastructure Improvement Act

Background

Over the last several decades, cities and other municipal entities (such as water reclamation districts) that own and operate wastewater treatment plants and sewer systems have been subjected to additional and increasingly stringent regulatory requirements under the Clean Water Act (CWA).

These requirements emanate from several distinct CWA programs, including those that address control of nutrients and other discharges from municipal treatment plants (also called publicly owned treatment works, or POTWs); systems that combine domestic effluents and stormwater (which give rise to combined sewer overflows, or CSOs); municipal separate storm sewer systems (MS4s); wasteload allocations in total maximum daily loads (TMDLs); and other CWA requirements. Each of these requirements is imposed independently, but the combined impact on the municipal operations, and on the financial status of the community and its residents, can be enormous.

To address these municipal concerns, EPA, in 2012, adopted a policy that allows municipalities to do an "integrated plan" or an IP. In an IP, the municipality can assess all of the CWA requirements that apply to its operations and prioritize them in a manner that seeks to maximize the environmental benefit from using the available resources. Several communities (including Lima, Ohio; Springfield, Massachusetts; and Evansville, Indiana) have used the IP process and have found that it can help them reduce their economic burdens while better protecting water quality.

However, broad implementation of the IP process has not proceeded quickly. Many communities have found that EPA Regions and States within which they operate are hesitant to use this new mechanism. Also, without clear statutory authorization, there is some concern about the long-term stability and continuity of the program. To address these concerns and to provide clear legal authority for IPs, Congress passed the Water Infrastructure Improvement Act – H.R. 7279, now Public Law 115-436, which provides Congressional support for use of the IP process on a long-term

basis. The president signed the act into law on Jan. 14, 2019.

The new law's IP provisions ensure that each community must be informed by their permitting authority (in most cases, the State) that it has the opportunity to develop an IP that can be incorporated into its CWA permit. The permit can then incorporate all regulatory requirements addressed in the IP – and may include projects to reclaim, recycle or reuse wastewater, as well as green infrastructure measures. IP permits can contain compliance schedules, which can last longer than one permit term. IPs can also be developed by communities in enforcement actions, and communities that develop IPs can request that their enforcement orders or decrees be modified based on the provisions in the IP. To ensure that EPA is held accountable for the effective implementation of the IP program, the Agency has to prepare a report to Congress on IPs, and make that report publicly available, within two years after the new law was enacted. The report must contain information on all IPs developed and implemented since EPA's guidance was issued in 2012.

In addition to codifying the IP process, the new law also contains provisions that promote the use of "green infrastructure" measures, such as porous pavement and green roofs. Many communities have sought to use these measures to reduce stormwater discharges without the need to build extensive and costly "gray infrastructure" (GI) systems, such as storage tanks and underground tunnels. However, implementation of GI concepts by EPA and other federal agencies has been inconsistent – sometimes encouraging and promoting their use, and sometimes imposing such extreme restrictions on their implementation that communities simply build gray systems instead. The GI provisions in the Water Infrastructure Improvement Act are intended to require EPA to work actively to promote GI use (within existing legal authorities), and to coordinate the GI policies that are being implemented by EPA offices and other agencies.

In navigating the myriad CWA requirements that are imposed on their operations, municipalities have often found it difficult to have their community-specific concerns heard by EPA. They have also found it challenging to access financial information and other resources that are available to them through EPA. Therefore, the new law includes one other provision: it creates a new office at EPA for a Municipal Ombudsman. The ombudsman's office will assist municipalities by providing them with information and assistance, and will also have the responsibility of providing information to EPA Administrator to ensure that the Agency policies as to CWA obligations of municipalities are consistently implemented by all EPA offices, including EPA Regions.

Specific Provisions of New Law

1. Integrated Planning

- EPA (or the State if the State has been delegated a National Pollutant Discharge Elimination System NPDES permit authority) must inform communities of the opportunity to develop an integrated plan that may be incorporated into the municipality's permit.
- A permit incorporating an integrated plan may integrate all regulatory requirements addressed in the plan, including requirements related to: (1) a combined sewer overflow, (2) a capacity, management, operation and maintenance program for sanitary sewer collection systems, (3) a municipal stormwater discharge, (4) a municipal wastewater discharge, and (5) a water quality-based effluent limitation to implement an applicable wasteload allocation in a total maximum daily load.
- An integrated plan incorporated into a permit may include the implementation of (1) projects, including innovative projects, to reclaim, recycle, or reuse wastewater; and (2) green infrastructure.

2. Compliance Schedules in Integrated Planning Permits

- A permit incorporating an integrated plan can contain a compliance schedule, which can be longer than one permit term if the compliance schedule is authorized by the State water quality standards and meets the requirements of EPA regulation concerning compliance schedules, 40 CFR 122.47.
- The requirement in EPA regulations (40 CFR 122.47) for compliance by an applicable statutory deadline does not prohibit implementation of an applicable water quality-based effluent limitation over more than one permit term.
- Nothing in the CWA provision regarding compliance with water quality-based requirements (Section 301(b)(1)(C)) precludes including a compliance schedule in an integrated planning permit.
- A compliance schedule can be reviewed each time that the permit is renewed, to determine whether the schedule should be modified.

3. Implementation of Integrated Plans Through Enforcement

- In any CWA enforcement action relating to municipal discharges, EPA must inform the municipality of the opportunity to develop an integrated plan.
- Any municipality under a CWA administrative order or settlement agreement (including a judicial consent decree) that has developed an integrated plan may request a modification of the order or agreement based on the integrated plan.

4. Report to Congress on Integrated Plans

- Within two years after enactment, EPA must submit a report to Congress on integrated plans, which must contain information regarding each integrated plan that has been developed and implemented under the CWA since the publication of EPA integrated planning framework in 2012. The report must also be made publicly available.

5. Municipal Ombudsman

- An Office of Municipal Ombudsman has been created at EPA.
- The ombudsman will have duties that include providing technical assistance to communities seeking to comply with the CWA, and providing information to the administrator to help ensure that Agency policies are implemented by all EPA offices, including Regional offices.
- The ombudsman will work with headquarters and Regional offices to ensure that communities are provided information about available federal financial assistance, about flexibility available under the CWA, and about the opportunity to do an integrated plan.
- The ombudsman will publish, on EPA’s web site, general information related to technical and financial assistance to municipalities, flexibility available under the CWA, and resources developed by EPA related to integrated plans.
- The ombudsman will also publish on the website, a copy of each permit, order, or judicial consent decree that implements or incorporates an integrated plan.

6. Green Infrastructure

- EPA must promote the use of green infrastructure in, and coordinate the integration of green infrastructure into, CWA permitting and enforcement, planning efforts, research, technical assistance, and EPA funding guidance.
- EPA must ensure that the Office of Water coordinates efforts to increase use of green infrastructure with other federal agencies, State, tribal and local governments, and the private sector.
- EPA must direct each Regional office, as appropriate based on local factors, and consistent with the requirements of the CWA to promote and integrate the use of green infrastructure within the Region, including outreach and training, and incorporation of green infrastructure into permitting

and other regulatory programs, codes, and ordinance development, including requirements under consent decrees and settlement agreements in enforcement actions.
- EPA will promote green infrastructure information sharing, including through a web site.

7. Savings/Transition Provisions

- Nothing in the integrated planning provisions reduces or eliminates available flexibility under the CWA, including the authority of a State to revise a water quality standard after a Use Attainability Analysis, subject to EPA approval.
- A compliance schedule issued in a permit shall not revise a compliance schedule in a judicial order or decree resolving a CWA enforcement action to be less stringent, unless the order or decree is modified by agreement of the parties and the court.
- Nothing in the integrated planning provisions modifies any obligation to comply with applicable CWA technology and water quality-based effluent limitations.

Analysis of New Provisions and Practical Impacts

The Water Infrastructure Improvement Act provides several tools that municipalities can use to improve their programs for CWA compliance – to make them more effective, less confusing, and to reduce the onerous financial burdens on the communities and their ratepayers. Each community should, for example, consider carefully assessing whether developing an integrated plan will be useful to address its particular compliance obligations. The new law emphasizes incorporation of IPs into permits, rather than enforcement orders or decrees, so each community doing an IP will want to explore use of the permit mechanism rather than the enforcement tools that are usually used by EPA and the States. In developing IP permits, long-term compliance schedules should now be available for use, to ensure that the community has enough time to implement its compliance requirements in a reasonable and affordable manner. Also, the community should be able to include innovative projects in its IP, including reclaim/reuse/recycle programs and green infrastructure measures.

Beyond use of the IP process, communities should be able to utilize other opportunities provided by the new law, whether they are developing an IP or dealing with their CWA issues in another way. To the extent that the community wants to use green infrastructure, for example, it can now point to the clear congressional message that EPA should be promoting – not discouraging – use of GI measures. And, even if it is not using GI or developing an IP, a community can seek the help of the new ombudsman if it encounters difficulties in dealing with EPA demands, or if it needs assistance in accessing EPA financial or informational resources.

Role of Barnes & Thornburg in Assisting Communities

The law firm of Barnes & Thornburg – and its Water Team – has assisted many communities in addressing their CWA compliance and enforcement issues.

In 2010, the Water Team began working with the U.S. Conference of Mayors in its efforts to craft solutions to the CWA challenges faced by its members. In that capacity, members of the team were closely involved in the Conference of Mayors' work with EPA to develop the Agency's integrated planning policy. During the development of that policy, the Water Team convened a group of municipalities that were interested in integrated planning ideas – the Municipal Integrated Planning Alliance (MIPA) – and through that group, participated in EPA meetings and submitted detailed comments on EPA draft policies. Once EPA issued its policy, the Water Team began working with communities to develop IPs, and succeeded in obtaining the first EPA approvals of final IPs. Subsequently, as IP issues began to be debated in Congress, the members of the Water Team participated in drafting proposed legislation. During the legislative process, the team lawyers

represented the National Association of Clean Water Agencies (NACWA), and worked in cooperation with the Conference of Mayors and other municipal groups, in developing and obtaining passage of the final bill.

Our Water Team has deep knowledge of the Water Infrastructure Improvement Act because of our direct involvement with the bill. With that knowledge, the Water Team assists clients with how those provisions can be used to address their specific challenges, how to develop detailed IPs, and how to engage with EPA and State agencies to secure approval of IPs.

For more information about the new CWA provisions, please contact the Barnes & Thornburg attorney with whom you work, practice lead of the firm's Water Team, Fred Andes, at 312-214-8310 or fandes@btlaw.com, or chair of the firm's Environmental Law Department, Erika Powers at 312-338-5904 or epowers@btlaw.com.

1https://www.epa.gov/sites/production/files/2015 10/documents/integrated_planning_framework.pdf.
2https://www.congress.gov/115/bills/hr7279/BILLS-115hr7279enr.pdf

Barnes & Thornburg LLP

by Fredric P. Andes and Erika K. Powers

March 19, 2019

On the Intersection of Competition Law and Local-Government Conduct .

This post studies an interesting question in competition law: can a local government be sued for money damages based on a federal antitrust violation?

The answer is "no," according to a recent decision from a federal court in Charlotte. *Benitez v. Charlotte-Mecklenburg Hospital Authority* is one of several high-profile antitrust cases involving Atrium Health, the large public-hospital system in Charlotte.

Raymond Benitez had inpatient care at Atrium. After insurance, Mr. Benitez faced a $3000 medical bill.

Mr. Benitez's insurer had an agreement with Atrium. That agreement included what are known as steering restrictions. These restrictions limited an insurer's ability to direct subscribers—like Mr. Benitez—to healthcare providers other than Atrium.

These facts prompted a putative class action. The complaint alleges that the steering restrictions

unlawfully drive up prices for inpatient services, inflate the amount of co-insurance that patients must pay Atrium, and thereby violate the federal antitrust laws. The putative class sought money damages and an injunction to stop Atrium's steering restrictions.

Atrium moved for judgment on the pleadings. It argued that a federal statute called the Local Government Antitrust Act barred the claim for monetary damages. The Act provides local governments with absolute immunity against monetary damages brought under section 4 of the Clayton Act.

In its opening brief, Atrium emphasized that it functions as a political subdivision of the state—and that it was created to serve a public purpose. Atrium pointed to numerous cases that have applied the Act to hospitals based on those features.

Judge Robert J. Conrad, Jr. agreed.

Judge Conrad began his analysis by looking at the Act's definition of "local government." That definition includes any "special function governmental unit established by State law in one or more States."

Judge Conrad then noted that courts have broadly construed this definition. That broad construction means that the Act applies to a wide range of decisions that any local-government entity makes.

And, to eliminate any doubt, Atrium is a local-government entity. The General Assembly created Atrium as a public-hospital authority under chapter 131E of the North Carolina General Statutes. Judge Conrad specifically cited section 131E-16(14), which defines a hospital authority as "a public body and a body corporate and politic organized under [North Carolina law]." He explained that the term "body politic" means "a body acting as government."

Judge Conrad then turned to Atrium's powers under the statute. Those powers, he observed, parrot the powers that the General Assembly gave to municipal hospitals under the same chapter. This similarity bears significance, because the Fourth Circuit has granted absolute immunity from antitrust damages to a municipal hospital established under chapter 131E.

By extension, Judge Conrad concluded, a public-hospital authority formed under chapter 131E is likewise immune from antitrust claims that seek monetary damages.

So the Act shields Atrium from claims for money damages. But it does not shield Atrium from claims for injunctive relief.

Judge Conrad put the case on ice nonetheless. He did so because the same injunctive relief being sought in *Benitez* is also being sought in another pending case against Atrium before Judge Conrad. A stay in *Benitez* avoids duplicative litigation, and a resolution of the issues in the other case would resolve the issue in *Benitez*.

That resolution is coming soon, because the parties in the earlier case have reached a proposed settlement. That settlement stops Atrium from enforcing steering restrictions in its insurer contracts and bars Atrium from taking action that would prohibit, prevent, or penalize steering by insurers in the future.

Ellis & Winters LLP

byScottie Lee and Stephen Feldman

Seller's Market Seen Aiding Illinois and Chicago Bond Issues.

CHICAGO (Reuters) – Financial uncertainties swirling around Illinois and Chicago may not deter bond buyers when the two fiscally shaky governments sell more than $1.1 billion of debt this week.

Slim supply in the $3.8 trillion U.S. municipal market, yield-hungry investors, and the shelving of interest rate hikes by the Federal Reserve for the remainder of 2019 have tipped the scale in favor of sellers, investment managers said.

“We believe that if (Chicago and Illinois are) going to pick a time to come to market, now is a pretty good time to be coming,” said Dan Heckman, national investment consultant at U.S. Bank.

Illinois, the lowest-rated U.S. state at a notch or two above junk due to its huge unfunded pension liability and chronic structural budget deficit, will offer $452 million of taxable and tax-exempt general obligation (GO) bonds in competitive bidding on Tuesday.

On Wednesday, underwriters led by Barclays are scheduled to price $700 million of GO bonds for Chicago, which is also struggling with pension funding and deficits, just days before the city elects a mayor to replace the retiring Rahm Emanuel, who served two terms.

“My gut tells me these deals are going to get done and done at a level that is pretty attractive for Illinois and the city of Chicago and over a longer period of time will likely prove unattractive for investors,” said Nicholos Venditti, a portfolio manager at Thornburg Investment Management.

Illinois’ deal comes just weeks after the new Democratic governor, J.B. Pritzker, unveiled a fiscal 2020 budget and a plan to rescue the state’s sagging finances by switching to graduated income tax rates via a constitutional amendment process.

Budget measures, including the use of one-time revenue and a more than $800 million reduction in contributions to the state’s woefully underfunded pensions, could push Illinois closer to a junk credit rating.

“That is a significant risk,” Venditti said, adding that the situation is even “scarier” in Chicago, which already has a junk rating with Moody’s Investors Service, along with ratings of BBB-plus with S&P Global Ratings and BBB-minus with Fitch Ratings.

The city’s two mayoral candidates – Toni Preckwinkle, who currently heads the Cook County Board of Commissioners, and attorney Lori Lightfoot – have not disclosed detailed plans for addressing a projected $252 million fiscal 2020 budget deficit and escalating pension payments that will top $2 billion in 2023.

“At the city level, I think investors are flying blind,” Venditti said.

Meanwhile, demand is strong with municipal bond funds, including high yield, reporting big weekly inflows of investor dollars since early January, according to Lipper.

Muni bond supply totaling $63.8 billion so far in 2019 is 12 percent below the average year-to-date volume in the previous five years, according to Refinitiv data.

Given the “very, very attractive” muni bond environment for issuers, Heckman said there will be appetite for debt from Illinois and Chicago if their deals are “priced appropriately.”

Investors have been demanding hefty yields for the governments' GO debt, with Illinois paying the biggest penalty among states.

Reporting by Karen Pierog in Chicago; Editing by Matthew Lewis

MARCH 25, 2019

Court orders Wells Fargo Securities to Pay Over $800,000 for Bond Offering Disclosure Failures.

The penalty stems Wells Fargo Securities's disclosure failures associated with a municipal bond offering it underwrote to finance startup video game company 38 Studios.

A federal court has ordered Wells Fargo Securities to pay more than $800,000 in civil penalties for disclosure failures associated with a municipal bond offering it underwrote to finance startup video game company 38 Studios. The relevant announcement was made by the United States Securities and Exchange Commission (SEC) earlier today.

The Securities and Exchange Commission charged Wells Fargo in 2016.

According to the SEC's complaint filed in federal district court in Providence, the Rhode Island Economic Development Corporation (RIEDC), aka the Rhode Island Commerce Corporation, loaned $50 million in bond proceeds to 38 Studios. Remaining proceeds were used to pay related bond offering expenses and establish a reserve fund and a capitalized interest fund. The bond offering document produced by the RIEDC and Wells Fargo failed to disclose to investors that 38 Studios had conveyed it needed at least $75 million in funding to produce a particular video game.

Therefore, investors were not fully informed when deciding to purchase the bonds that 38 Studios faced a funding shortfall even with the loan proceeds and could not develop the video game without additional sources of financing. When 38 Studios was later unable to obtain additional financing, the video game did not materialize and the company defaulted on the loan.

The SEC's complaint alleged, among other things, that Wells Fargo, which served as the placement agent for the 38 Studios bond offering, failed to disclose that the project being financed by the bonds, the development of a video game, could not be completed with the financing the bonds would provide. The SEC also alleged that the defendants did not disclose that even with the proceeds of the loan financed by the 38 Studios Bonds, 38 Studios faced a known shortfall in funding. Further, the SEC alleged that Wells Fargo and its lead banker on the deal, Peter M. Cannava, failed to disclose to bond purchasers that Wells Fargo was receiving additional compensation from 38 Studios, totaling $400,000, that was directly tied to the issuance of the municipal bonds.

The final judgment against Wells Fargo, entered on March 20, 2019 by the Honorable John J. McConnell, Jr. in federal court in Rhode Island, enjoins Wells Fargo from violating provisions of the federal securities laws that require disclosure of material information and fair dealing in municipal bond transactions, specifically Section 17(a)(2) of the Securities Act of 1933, Section 15B(c)(1) of the Securities Exchange Act of 1934 and Rule G-17 promulgated by the Municipal Securities Rulemaking Board. Wells Fargo is also ordered to pay a $812,500 civil penalty.

Wells Fargo consented to the entry of the judgment without admitting or denying the allegations.

The SEC's litigation against Cannava continues.

financefeeds.com

by Maria Nikolova

March 20, 2019

Wells Fargo Agrees to Pay $800K in Schilling Video Game Deal.

PROVIDENCE, R.I. — Wells Fargo Securities has agreed to pay an $800,000 civil penalty to settle a U.S. Securities and Exchange Commission lawsuit over Rhode Island's failed $75 million deal with former Boston Red Sox pitcher Curt Schilling's video game company.

Wells Fargo and the SEC announced the proposed settlement in filings Monday with the U.S. District Court in Providence. A federal judge must approve it.

According to details of the agreement, Wells Fargo does not admit or deny wrongdoing. If approved, the company would be permanently barred by the judge from violating certain municipal securities and other laws.

A Wells Fargo spokeswoman said she would not comment because the matter is still pending and has not yet been approved.

The case represents the final legal battle over 38 Studios.

Schilling struck a deal in 2010 to move his company from Massachusetts to Rhode Island in exchange for a $75 million loan guarantee. The state's economic development agency used bonds to fund the deal. Less than two years after the move, 38 Studios ran out of money and went bankrupt.

The SEC sued Wells Fargo and Rhode Island's economic development agency in 2016, accusing them of making misleading statements about the bonds.

It said they failed to disclose that 38 Studios needed at least $75 million but would receive only $50 million of proceeds from the offering, leaving a gap of $25 million. It also said Wells Fargo represented 38 Studios while also representing the state economic development agency as bond placement agent, something it failed to disclose.

The economic development agency previously settled the case, paying a $50,000 penalty without admitting wrongdoing.

Claims against a Wells Fargo employee are still pending. A message was left with his lawyer.

In a separate lawsuit in state court, Rhode Island sued several people and companies involved in the deal. It received about $61 million in settlements in that case, which ended in 2017.

By The Associated Press

March 19, 2019

Bond Dealers of America Forms Working Relationship with Michael Decker – Enhancing Representation of Member Firms and Overall Fixed Income Advocacy

Washington, D.C. – March 21, 2019—The Bond Dealers of America today announced it has formed a working relationship with Michael Decker, former co-head of the Municipal Securities Division at SIFMA, to broaden and deepen the BDA's overall fixed income advocacy and representation of member firms. Michael will strategically focus on federal regulatory and legislative issues as well as market practice issues specific to the U.S. fixed income markets. Michael was a co-founder of the Regional Bond Dealers Association in 2008, along with Mike Nicholas, before departing back to SIFMA in 2009 to co-head SIFMA's municipal securities division.

"Over the past ten years, the BDA has expanded from 14 to 70 member firms, has become the "Main Street" thought leader on market structure, and continues to establish itself as the predominant, effective advocate for dealers active in the US fixed income markets. I've worked with Michael since our days at the Public Securities Association in the mid 1990s and I'm confident that this working relationship will immediately provide the BDA more depth, experience and know-how across markets, while enhancing the BDA's DC and industry presence, and resulting in the BDA being more tangibly beneficial to all member firms whether bank or independent, taxable or municipal, retail or institutional focused. Michael will be an excellent complement to the work currently being led by BDA staff" said Mike Nicholas, CEO, Bond Dealers of America.

The addition of Michael also allows the BDA to deepen the Capitol Hill roles for Kelli McMorrow, Brett Bolton and Justin Underwood. This, in turn, will broaden the BDA's Washington, DC presence, resulting in more impactful advocacy for BDA member firms.

"I'm thrilled to be working with BDA again. They are a strong and influential organization, as indicated by their membership growth and their impact on fixed income policy over the past ten years. I look forward to working with BDA's members and staff to promote public policies that will make the US bond markets better for all participants," Michael Decker said.

"Speaking for the BDA Board, we are excited to work with Michael Decker. Michael's experience and industry knowledge will expand and enhance the BDA's focus, resulting in stronger overall advocacy," stated Angelique David, BDA Board Chair, Chief Operating Officer and General Counsel of Ziegler.

Bond Dealers of America

March 21, 2019

Legislation Introduced in the States Raises Privacy and Contracting Concerns.

At least 28 states have legislation pending that would require state vendors to use a software application that would track actual computer time by state vendors who bill for hours of work on computers. Monitoring by the software would include frequent screen shots and logging of key strokes, and the referred to technology is currently only being offered by one company.

An analysis by the Department of Finance and Administration in Arkansas finds that:

> The provisions in this legislation create significant issues with privacy and federal regulatory compliance. It is not possible to take a screen shot every three minutes and not capture individual and personal data. Key logging software would record everything including passwords, healthcare, and other personal information with no mechanism for redaction before being recorded or stored by the tracking software.

The National Association of State Chief Information Officers has issued the following statement.

> NASCIO, which represents state CIOs, opposes state legislation which would mandate contractor monitoring software because of the significant risks to citizen privacy and federal regulatory compliance concerns it could create. While NASCIO certainly supports contractor productivity, cost efficiency and successful project outcomes, legislation of this nature could introduce unnecessary risks to citizen data by essentially transferring ownership of private citizen data to a third party. This type of legislation also has the potential for unintended consequences, such as impacting a state's cybersecurity insurance policy coverage. State CIOs inherently understand and appreciate the seriousness of protecting citizens' data, and therefore do not support legislation that could serve to increase or introduce additional risk.

According to NASCIO, legislation has been introduced in the following states: Arizona, Arkansas, Colorado, Connecticut, Hawaii, Iowa, Idaho, Illinois, Indiana, Kansas, Louisiana, Maryland, Minnesota, Mississippi, Montana, Nebraska, New Jersey, New Mexico, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Texas, Virginia, Washington and West Virginia.

NASACT members should be aware that the software company seeking to have the legislation passed is billing it as an important fraud prevention and accountability tool. Your office may receive questions from your state legislators.

Questions should be directed to NASACT's Washington Office at (202) 624-5451.

Will the IRS Include Brownfields Properties in Its Opportunity Zone Regulations?

The Opportunity Zone tax incentives created by the federal Tax Cuts and Jobs Act of 2017 seemed to be a perfect opportunity to spur development of environmentally impaired properties, known as brownfields, in economically distressed communities. But the IRS draft regulations currently under consideration do not appear to allow for inclusion of brownfields in the program. That could mean, for lack of a better description, a real lost opportunity for many communities since brownfields often are in the very areas that the Opportunity Zone program is intended to benefit.

The tax law created Opportunity Zones, which now have been designated in all 50 states, the District of Columbia and five U.S. territories, to provide tax benefits to investors in the form of deferred tax on gains invested in a Qualified Opportunity Fund (QOF) until they sell or exchange the investment in the fund or December 31, 2026, whichever is earlier. Depending on how long the investment is

held, up to 15 percent of deferred gain can be excluded. If held for more than 10 years, the investor will not be taxed on any gain from a sale or other disposition of the interest in the QOF. Many investors and economically distressed areas have been eager to take advantage of the program.

Not coincidentally, many Opportunity Zones have properties that could qualify for inclusion in the federal Environmental Protection Agency's (EPA) Brownfield Program, which has existed for a number of years to cleanup and reuse properties that sit idle due to environmental contamination. Although the Opportunity Zone provisions and the Brownfields program seem like a match made in investor-heaven, the EPA pointed out in comments on the IRS proposed regulations and guidance that brownfields may not fall within the definitions of property that qualifies for the incentives.

The statute requires that at least 90 percent of a QOF's assets be Qualified Opportunity Zone (QOZ) property, which ultimately requires direct or indirect ownership of "qualified opportunity zone business property." To be QOZ business property, the "original use" of the property must commence with the QOF or the QOF must make "substantial improvements" in the property within 30 months of acquisition. "Substantial improvements" generally means additions to the property's basis greater than the adjusted basis of the property at the beginning of the 30-month period.

For brownfields properties, the "original use" and the "substantial improvement" requirements are potentially problematic. A property is a brownfield in the first place because its former use(s) caused environmental contamination that render it uneconomical to redevelop without substantial remediation. Under the current "original use" test, this prior use of a former factory site requiring extensive remediation means that the "original use" cannot begin with the QOF. Further, in Rev. Rul. 2018-29, which provides guidance on the meaning of "substantial improvement," the IRS indicated that the substantial improvement rules do not apply to land. Even if the remediation qualified as "substantial improvements," they do not have much chance of completion in the 30-month window for "substantial improvement."

The EPA's comments to the IRS recommend defining "original use" to incorporate brownfields properties located in QOZ. Thus, if a brownfields remediation firm buys a contaminated property in a QOZ with the intent to remediate the property and redevelop it for a new use, the EPA suggests that the brownfield status should qualify as the "original use." Similarly, the EPA recommended that the IRS treat the "original use" of property that has been vacant or underutilized for a year or more as commencing with the QOF, and allow foreclosed and tax-reverted properties held by local governments to be treated as "underutilized or abandoned" property. If adopted, this recommendation would allow the QOF to satisfy the 90 percent test during the remediation period.

The EPA also recommended that the IRS treat the environmental assessment, cleanup and other site preparation costs as expenses meeting the "substantial improvement" test. Rev. Rul 2018-29 appears to apply only to improvements to a building, which would leave out the critical improvements to the land necessary to make a brownfield ready for redevelopment. If adopted, this recommendation would resolve the potential ambiguity as to whether improvements to the land itself count towards the necessary investment to constitute a substantial improvement. Finally, the EPA recommended that IRS allow carryover of gains from QOF investments in brownfields properties to other QOF investments and stacking of QOF investments of brownfield properties.

The IRS held a public hearing last month after having to delay the hearing from January 2019 due to the government shutdown. The final version of the regulations are expected any time. It is, however, unclear whether the IRS will adopt any of these recommendations in its next iteration of the regulations. The IRS's clarification on this and other issues is time sensitive — the elimination of the 15 percent of capital gains invested in a QOF requires a seven-year holding period in the QOF. This means December 31, 2019, is the last day to make the investment to meet this holding period by the

end of 2026, the year in which the deferred gain is recognized.

Lane Powell PC

March 15, 2019

Investors Eagerly Await Trump Rules on Opportunity Zones.

AVONDALE, Ariz. — A hotel groundbreaking ceremony here in an old cotton field not far from Interstate 10 last month featured two United States senators, a hot catered lunch and a stream of speeches about driving economic investment to this corner of the Southwest that is still recovering from the Great Recession.

Whether they were celebrating the beginnings of a wave of investment in distressed parts of America, or just another Marriott property, could hinge on a coming decision by the Trump administration.

A new batch of tax regulations from the Treasury Department will establish the most comprehensive guidelines yet for what sorts of investments qualify for tax benefits associated with opportunity zones, which were created by the 2017 tax law, and how investors must proceed in order to take advantage of them.

Potentially billions of dollars are waiting on the Treasury's decision. Civic leaders in areas like Avondale, which is still hurting from the 2008 housing crisis, are hoping the rules will be broad enough to improve the odds of attracting new businesses that offer well-paying jobs to residents. Investors, eager to put money into the tax-advantaged opportunity zones, are also clamoring for guidelines that could determine the types of projects they can back.

Among the money dependent on the Trump administration's rules is $22 million in investment guarantees, to be announced Monday by the Kresge Foundation, to support two socially conscious investment funds that hope to pour $800 million into manufacturing, clean energy and other business development in Opportunity Zones.

The zones are a creation of President Trump's signature tax law that use tax advantages to lure capital to economically lagging cities, suburbs and rural areas. So far, they have stirred growing investor interest, including from Wall Street, and criticism from some tax experts who worry they will serve mostly as a handout to the rich.

Most of the projects spurred so far by the zone designations are real estate, like condominium developments, or hospitality, like the SpringHill Suites by Marriott project started here in Phoenix's west suburbs by a private equity group called Virtua Partners.

Whether the zones can ultimately spur other types of investment, like small businesses and start-up technology companies, will depend on how the rules are structured. Treasury officials have sent the White House a draft version of what will be the second batch of regulations governing so-called opportunity funds, which invest in Opportunity Zones, and what types of investments can qualify for the special tax treatment.

The tax break works by allowing investors to roll capital gains from other investments into the funds. Taxes on those original gains are deferred and, if the investment is held for several years, can be

sharply reduced. Adding to the attraction is the potential for investors who hold their money in the opportunity fund for a full decade to be exempt from any capital gains taxes on that investment.

Conflict over the regulations reflects, in part, a tension among officials concerned most with limiting the potential for investors to exploit loopholes in the program in order to reduce their tax bills, and those most concerned with maximizing investment in struggling parts of America.

In the first batch of regulations, Treasury officials took a more restrictive approach, according to documents obtained through a Freedom of Information request. But those were ultimately overruled by the White House, which prevailed on several points that investors had championed, those records show.

A recent Internal Revenue Service hearing on what will be the second batch of regulations was dominated by investors and civic leaders requesting changes and additions to the rules in several areas that could deter investment in start-up companies.

Those include a provision that currently requires qualifying businesses to earn 50 percent of their income inside the zones, which would seem to limit businesses that make money by exporting goods or selling them online. Investors are also seeking flexibility to sell their stake in a business before the end of a decade and use the proceeds to invest elsewhere in an opportunity zone.

Investors also want to clarify a rule that forces them to "substantially improve" an asset in order to qualify for the tax benefit, to ensure that biotech, software and other start-ups that deal largely with intellectual property can meet the test.

"The second tranche of regulations is a moment of truth for investors and communities," said John Lettieri, the president of the Economic Innovation Group think tank, who was an architect of the Opportunity Zone concept. The difference in potential investment in the zones between favorable and unfavorable regulations, he said, "is orders of magnitude."

While investors wait for clarity, the existing regulations have "frozen some of the market for business investment," said Steve Glickman, another architect of the concept who now runs an Opportunity Zone-related consulting business called Develop L.L.C., and who has produced an Opportunity Zone Index to help investors find and select promising zones for projects.

The Kresge guarantees, for example, are meant to help two funds — run by Arctaris in Boston and Community Capital Management in Fort Lauderdale, Fla. — deploy $800 million into Opportunity Zone projects like solar farm development in Flint, Mich. In exchange, the funds are committing to a set of rules that would require them to invest in creating living-wage jobs, form community advisory boards and seek to avoid displacing residents from those zones. They will also compile and share data on the quality and impact of their investments, which is not currently required by the federal government.

But they are dependent on the outcome of the regulations, and whether they will encourage business projects. "These are practical concerns for us," said Aaron Seybert, a social investment officer at Kresge. "We need to quantify the risk that we're taking."

The existing regulations have made that calculation relatively easy for real estate investors, who are accelerating previously planned projects in the zones and starting new ones that might not have worked without the special tax treatment. That activity has already paid off for incumbent landowners in Opportunity Zones, according to research by the real estate firm Zillow: Average sales prices in the zones jumped 25 percent last fall, compared with the year before.

City officials welcomed the new hotel to Avondale, a majority-Hispanic city of 84,000 people that is still recovering from the burst housing bubble a decade ago. At one point, 40 percent of the city's homeowners were underwater on their mortgage or had fallen into foreclosure.

Conditions have improved, slowly, and developers have added 200,000 square feet of new retail space in the last five years, city officials said. But Kenn Weise, the mayor, said the city still needed help — and real-estate development won't do it alone.

The city, Mr. Weise said, needs to revitalize its historic downtown, which has fallen on hard times, and it needs businesses to employ the more than 80 percent of workers who live here but endure long commutes to other parts of the metro area, where the jobs are.

"This part of it is easy," Mr. Weise said under the shade of a white tent here recently, gesturing toward the row of shovels that were about to break ground on what will be the latest in a recent string of new hotels near the freeway in and around Avondale. "This is the low-hanging fruit."

The more far-flung dignitaries gathered for the ceremony made similar points, even as they praised Virtua and Hotel Equities, the company that will manage the new hotel. "At the end of the day, real estate development is a very important step forward," Senator Tim Scott, Republican of South Carolina and the principal champion of the Opportunity Zone provision in the tax law, said in a brief speech. "Bringing jobs into the community is a leap forward."

Virtua Partners has 15 projects in the works in the Phoenix area alone, including a townhouse development on the site of a crumbling RV park in nearby Surprise, and more than 100 total projects planned in zones around the country. Construction in the Avondale cotton field will create 120 temporary jobs and 30 permanent ones in the hotel, which officials at the groundbreaking promised would provide pathways for employee advancement.

"Our goal is to give everyone the opportunity to move into the middle class," Quinn Palomino, Virtua's chief executive, said at the groundbreaking, which along with Mr. Scott also featured Senator Martha McSally, Republican of Arizona, and Jan Brewer, the state's former governor.

But even real estate investors would like more from the Treasury in the next round of regulations. In an interview, Ms. Palomino said she hoped the government would mandate reporting on metrics such as the number of jobs and affordable housing units created in the zones.

"Everyone's running to this industry," including a lot of people without the background in real estate development, she said. "It's pretty scary out there, some of the projects that are coming in. Kind of, two guys in the back of a van, trying to get an Opportunity Zone project done."

The New York Times

By Jim Tankersley

March 17, 2019

Real Estate Investors Expected to Unlock Trillions as Feds Finalize Opportunity Zone Rules. Here's Where the Money is Likely to Flow.

Washington's political rancor is rippling across the nation's real estate industry, as the recent

federal shutdown has delayed a plan to unleash trillions in property investment in the country's biggest cities and most impoverished communities.

Specifically, the delay has affected new rules for investing in so-called Opportunity Zones, and in the process has prevented many investors from exploiting one of program's key benefits: the ability to sell long-held properties, more or less tax free.

The potential payoff, which limits capital gains taxes on investment gains that are then reinvested in Opportunity Zones, stems from a little-known provision in the federal tax code changes passed by Congress in 2017.

Continue reading.

By Jeff Jeffrey – National Digital Producer, The Business Journals

Mar 15, 2019, 1:12pm EDT

CDFA Federal Policy Conference.

With the 116th Congress now in session, the time is ripe for a focused, national discussion on the federal development finance landscape. On **April 16-17 in Washington DC**, CDFA will host its **2019 CDFA Federal Policy Conference**, featuring development finance experts and practitioners from key federal agencies, congressional offices, and policy organizations. The CDFA Federal Policy Conference will highlight rural and urban financing programs, the Opportunity Zones incentive, programs for supporting small business development, as well as financing programs for infrastructure, energy, brownfields remediation, and water systems financing.

Conference panels and workshops will be led by our federal financing partners at the Departments of Housing and Urban Development, Agriculture, Transportation, and Treasury, as well as the Economic Development Administration, the Environmental Protection Agency, and the Small Business Administration. Additionally, CDFA will highlight the development finance plans of key Congressional representatives from the House Committee on Ways and Means and the Senate Committee on Finance.

Don't miss this opportunity to unlock the federal financing toolbox in your community. The event will be held at the Washington Marriott Georgetown, and space is limited to the first 250 attendees – register early to secure your seat!

CDFA will hold its spring Capitol Hill Day on April 18. Attendance for Capitol Hill Day is optional, but all participants in the CDFA Federal Policy Conference are encouraged to attend.

Click here to learn more and to register.

What to Think About Next With Opportunity Zones? Community Input For One Thing.

"If you simply try to impose something on a community, you do so at your own peril," says

one mayor. This and other themes emerged this week at a summit focused on the program.

STANFORD, Calif. — Mayor Sly James, of Kansas City, Missouri, says the Opportunity Zones in his city are getting ample attention from investors and developers, but emphasizes that it's going to take more than that to make the program a success.

"There's a high level of interest," he told Route Fifty here Monday during a summit of about 400 state and local leaders, investors and others gathered to discuss the economic development program. "There's people that want to make the investments."

But some, James says, are eying ventures that may not mesh with the city's overall vision for developing the zones—census tracts that are eligible for investment under the program.

"We're saying, 'No, no, no, no, no.' We're not going to have these little scattershot one-off projects," he said. "We want transformative things. So everybody cool your jets. Let's focus this."

Monday's summit shed more light on how governments, the investor community, and nonprofit organizations are approaching Opportunity Zones, a program designed to stimulate investment in low-income areas by offering taxpayers a federal tax break on their capital gains.

Attendees stressed that community engagement will be crucial in any places where investment does take place. There was also discussion about the need for working across agencies and levels of government as the public sector interacts with potential investors in the zones.

And there was talk about the key role philanthropic organizations and foundations may have to play as the program continues to unfold.

"This is one of those moments when we have to go on offense," said Mary Ellen Wiederwohl, CEO of Louisville Forward, an economic development agency in Louisville, Kentucky.

Wiederwohl says there's a need for cooperation among agencies involved in economic development, land use and permitting, with the aim of providing "concierge service" when inquiries comes in from prospective Opportunity Zone investors and developers.

"You don't have to go: 'Well, call the planning department and get back to me on what they say,'" she said. "You're going to lose that deal."

Ben Seigel is Baltimore's point person for Opportunity Zones. In his remarks he bemoaned that he was appearing at the event days after The New York Times Magazine published an article headlined: "The Tragedy of Baltimore," billed as a look at "the crackup" of the city.

But he said in his work he's trying to serve as sort of a "Match.com" for investors and projects in the city that might be a good fit for them.

He noted that Baltimore has launched a "neighborhood impact investment fund" backed by lease revenues from city-owned parking facilities and that the fund will operate alongside the so-called "opportunity funds" that will make investments in zones.

Route Fifty

By Bill Lucia,
Senior Reporter

MARCH 19, 2019

Activated Capital: Blockchain Technology for Opportunity Zone Investing (Podcast Episode #17)

Can blockchain technology revolutionize Opportunity Zones real estate investing? Security token offerings utilizing distributed ledger technology enables tokenization of assets, increased liquidity, reduction of costs, and improved transaction speed. And it has the potential to change how properties are sold and how deals are recorded. Josh Burrell and Lane Campbell at Activated Capital have an

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Opportunity Db

March 20, 2019

City Clarifies Possible Confusion Over Bond Language.

In less than three weeks, Norman voters will consider three propositions on the ballot at the April 2 Special Election, which, if passed, will authorize three city ordinances that dictate how voter-approved funds will be spent.

The first two propositions are a transportation bond and a stormwater bond, and the third is a stormwater utility, which would be established as an enterprise fund that only allows collected fees to be used for stormwater needs.

There are several categories of bonds under the Oklahoma Constitution available to municipalities, each of which has specific guidelines for allowed use. The city worked with its bond counsel to develop the two separate general obligation bonds authorized by Oklahoma bond laws.

“The authorization and issuance of general obligation bonds by a city are governed by specific provisions set forth in the Oklahoma Constitution and related Oklahoma statutes,” said Nathan Ellis, of the Public Finance Law Group, PLLC. “Propositions, or what appears on the ballot, are limited by State of Oklahoma election law to 200 words or less. After including the required technical language, there is little room for more than a general statement of purpose. However, all of the detail within the ordinance is incorporated as a matter of law.”

The ordinances for the transportation and stormwater bonds list specific projects for which voters would be approving funds and direct the city on where to spend any excess funds.

The proposed transportation bond, or Proposition 1, which would fund needed transportation infrastructure projects, is authorized under the Oklahoma Constitution Article X, Section 27 — “indebtedness for purchase, construction or repair of public utilities.” It is a $72 million bond and is limited to the purpose of constructing, reconstructing, improving or repairing streets or bridges.

The Bond Issue Proceeds Act, Title 62, Oklahoma Statutes Section 571 et seq., requires that the city

state the general purpose of the bond issue and further identify specific projects for which at least 70 percent of the bond proceeds shall be expended. The city specifically described the 19 transportation projects, outlined in Ordinance O-1819-25 of the city, which represent 100 percent of the bond proceeds; remaining funds, if any, after completion of all of the specific projects will be used for other projects in the city's comprehensive transportation plan.

The proposed stormwater bond, or Proposition 2, which would fund critical stormwater infrastructure projects, is a $60 million bond authorized under the Oklahoma Constitution Article X, Section 35 — "Municipal and county levy for securing and developing industry" — as further governed by the provisions of the Municipal and County Economic and Community Development Bonds Act found in Title 62, Oklahoma Statutes Section 801 et seq.

The act allows cities to call bond elections for a "qualified economic or community development purpose." Public infrastructure facilities, including specifically stormwater projects, are defined as having a qualified economic or community development purpose.

Although it was not possible to list all of the specific projects and adhere to the word limit, the city did, in its Ordinance O-1819-26, further specify that the purpose of the bonds is "to include, constructing, improving and equipping stormwater drainage facilities." In this ordinance, the city listed the 33 specific stormwater projects that will be completed with the bond proceeds so the public will know exactly how the funds will be spent.

Moreover, should funds remain after the stormwater projects are complete, the ordinance states that any surplus funds shall be utilized to complete other projects identified in the Storm Water Master Plan. The SWMP was completed in 2009 and contains only stormwater projects.

"It is certainly true that the city could use the same act to ask the citizens to authorize indebtedness for a variety of other projects," Interim City Attorney Kathryn Walker said. "However, that is not the case here, and the language in the ordinance clearly does not contemplate or allow for the use of the bond proceeds for anything that is not a stormwater project identified either in the provided list or in the SWMP."

Additionally, because the two bonds up for election April 2 are authorized under separate constitutional provisions, Proposition 1 does not impact Proposition 2's borrowing capacity and vice versa. Also, while a cap on the interest rate percentage must be set in the bond ordinances, these are not the expected interest rates.

For example the not-to-exceed interest rate defined for Proposition 1 is 10 percent per year. However, Finance Director Anthony Francisco said bids for municipal bonds are competitive and based on current market rates.

"By statute, we cannot exceed 10 percent for transportation bonds or 14 percent for community development bonds, but based on current market conditions and the city's AA rating, we expect to be way below that, somewhere in the 4 to 3.5 percent range," Francisco said. "In my time here, when market rates were higher we've had some bonds at 6 percent, but certainly nothing close to 10 percent."

Voters can read the ballot language and see the ordinances, as well as other information, at VisionForNorman.com.

The Norman Transcript

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