Bond Case Briefs

Issue 239

Municipal Finance Law Since 1971

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- Dealers Double Down on Opposition to Muni Advisors Running Private Placements.
- Muni Market Awaits 2 Treasury Regulations.
- When Wall Street Flips Municipal Bonds, Towns and Schools Pay the Price.
- Falling Yields Unleash Flood of Muni 'Century Bonds'
- Morgan Stanley Robot Learns by Reading Unreadable Muni Documents.

- And finally, When Abrupt Turns and Moves Attack is brought to us this week by *Churchman v. Bay Area Rapid Transit District*, in which Alice Churchman fell on a subway platform and injured herself. She laid the blame for the fall on the Bay Area Rapid Transit (BART) District. And how was it to blame, you ask? Per the court, "Several factors combined to create a confusing situation on the platform: the 'opening and closing of doors on opposite side [sic] of the cars'; partially inaudible and confusing instructions broadcast over the public address system; and 'abrupt turns and moves' by other passengers trying to board a train." Surely not! This is a scenario commonly referred to as, "riding the subway."

Morgan Stanley Robot Learns by Reading Unreadable Muni Documents.

- **Morgan Stanley runs official statements through a new program**
- **Too few words show risks of a default for some sectors**

They're longer than classics like Henry David Thoreau's "Walden" and modern hits like J.K. Rowling's "Harry Potter and the Prisoner of Azkaban" but nowhere nearly as engaging.

Yet each week, American state and local governments crank out the doorstops by the dozens, creating a dismal stack of soporific homework for money managers studying whether or not to buy their bonds.

So Morgan Stanley, one of Wall Street's biggest investment banks, experimented with farming out the job of reading 120,000-word bond prospectuses to robots, seeing if the results could yield a sort of CliffsNotes that may separate the signal from the noise.

Strategists Michael Zezas and Mark Schmidt ran 150 official statements through a machine-learning program. They said it revealed some patterns that could help investors avoid credit-rating downgrades or defaults without reading through hundreds of pages of reports.

They focused on bonds issued by local agencies that are backed by riskier projects like continuing-care retirement centers, hospitals and speculative real estate developments. That's where doing close research is most important because local governments almost never default on their own bonds. Here's some lessons:

More words, better odds: Official statements for continuing-care retirement centers that didn't

default averaged 20,194 words longer than those that did, they found. The tendency also held true for so-called dirt bonds sold for real estate projects.
Executive bios: Speculative developments tend to rely on the word “Mr.” to highlight the management of the project, since the riskier deals need to play up their executives’ skills as a key selling point.
Boring is better: Higher-quality debt tended to have more references to the financial statement than defaulted or downgraded debt. The more “boring” the documents, the better, the strategists said.

It was Morgan Stanley’s first time using natural language processing on municipal-bond issuers’ official statements, Zezas said in an email. The bank reported the results to clients to show how Morgan Stanley takes a quantitative approach to its research.

He said they used relatively new techniques and principles outlined by a Stanford University professor, who experimented with it as a way to sift through the huge amounts of information involved in modern political affairs.

Zezas said the bank plans to further test its conclusions. Their next step is to gather more official statements, get more data and solicit feedback from clients. The bank said the findings could help analysts when they are asked to provide a quick take on a new bond deal, not serve as their computerized replacements.

“We don’t recommend cursory credit analysis,” Zezas and Schmidt said in their report to clients. “However, sometimes a simple rule-of-thumb can help.”

Bloomberg Markets

By Amanda Albright

September 16, 2019, 6:07 AM PDT

— With assistance by Jeremy R Cooke

IMMUNITY - CALIFORNIA

Churchman v. Bay Area Rapid Transit District

Court of Appeal, First District, Division 5, California - August 28, 2019 - Cal.Rptr.3d - 2019 WL 4050993 - 19 Cal. Daily Op. Serv. 8579

Train passenger brought action against train operator, a public agency, alleging that operator violated its duty of care as a common carrier with respect to injuries she sustained when she fell on a train boarding platform.

The Superior Court sustained operator’s demurrer without leave to amend and dismissed the action. Passenger appealed.

The Court of Appeal held that train operator, a public agency, did not owe passenger a statutory heightened duty of care for injuries she sustained when she lost her balance and fell on train boarding platform; passenger’s injuries were not incurred while she was in actual progress on her journey, but rather, were caused by ordinary risks of a busy train platform, that is, crowds of people moving in multiple directions, noise, partially inaudible announcements on the public address system, and train doors abruptly opening and closing as passengers boarded and disembarked.

BALLOT INITIATIVES - CALIFORNIA

Gates v. Blakemore

Court of Appeal, Fourth District, Division 2, California - August 22, 2019 - Cal.Rptr.3d - 2019 WL 3987584 - 19 Cal. Daily Op. Serv. 8457

County counsel brought action for declaratory relief regarding duty to prepare ballot titles and summaries for six proposed initiatives, and proponents filed petition for writ of mandate seeking to compel counsel to prepare ballot titles and summaries.

The Superior Court entered judgment for county, and proponents appealed.

The Court of Appeal held that:

- Initiatives would infringe on authority exclusively delegated to the board of supervisors by the California Constitution and thus were invalid, and
- Initiative which would require that chair of county board of supervisors, rather than administrative officer or auditor as designated by the board, perform certain budgetary functions conflicted with County Budget Act and thus was invalid.

ZONING & PLANNING - CONNECTICUT

One Elmcroft Stamford, LLC v. Zoning Board of Appeals of City of Stamford

Appellate Court of Connecticut September 3, 2019 - A.3d - 192 Conn.App. 275 - 2019 WL 4122599

Adjacent landowner sought review of approval by city zoning board of appeals of application of property owner to locate used car business on property.

The Superior Court affirmed, and adjacent property owner appealed.

The Appellate Court held that:

- Technical mistake did not render vice-president's zoning application void for lack of standing;
- Statute governing procedures for consideration of used car dealerships by towns, cities, or boroughs had not been repealed at time zoning board considered application for use of property as used car dealership;
- Zoning board erred by treating application for zoning of property as used car dealership as request for variance and failing to apply standards or make statutorily required findings; and
- Trial court employed incorrect standard of review of board's decision.

Vice-president of company who applied to zoning board for use of property as used car dealership was sufficiently linked to company that had applied Department of Motor Vehicles for used car dealer license such that no one was misled or misunderstood nature of application, and thus, technical mistake did not render vice-president's zoning application void for lack of standing; application for used car dealer license listed vice president's name as officer of company, proposed improvement location survey for zoning purposes identified company's name, and vice-president was introduced as one of company's owners at public hearing.

Statute governing procedures for consideration of used car dealerships by towns, cities, or boroughs had not been repealed at time zoning board considered application for use of property as used car

dealership, and thus, city zoning board was required to review application for zoning approval of property as used car lot under standard set forth therein, although compilations of General Statutes listed statute as having been repealed, where legislature, after having repealed and replaced statute with effective date later that year, repealed and replaced statute with new statute making minor, technical correction to it prior to effective date of statutes that repealed and replaced it, and new statute did not mention either statutes that repealed and replaced original version.

City zoning board erred by treating application for zoning of property as used car dealership as request for variance and failing to apply standards or make findings, including consideration of whether application is made for location that has been found suitable for intended business with due consideration to schools, churches, theaters, traffic conditions, width of highway and effect on public travel, as set forth in statute governing such applications, and thus, remand for consideration of such suitability factors was required, in action by adjacent landowner seeking review of grant of company's application.

Trial court erred by providing its own inferences as to how zoning board of appeals could have classified and weighed testimony at public hearing, and thus, trial court employed incorrect standard of review of board's decision, in review of approval by zoning board of use of property as used car dealership, although board had heard testimony that could pertain to required findings of suitability of location for car dealership, where board stated its reason for approving application.

SCHOOL FINANCE - FLORIDA

School Board of Collier County v. Florida Department of Education

District Court of Appeal of Florida, First District - August 29, 2019 - So.3d - 2019 WL 4062529

School boards brought action against Department of Education, Board of Education, and Commissioner of Education for declaratory and injunctive relief, alleging that statutes requiring, among other things, distribution of capital millage revenues to charter schools violated school boards' state constitutional right to operate, control, and supervise all free public schools.

School boards moved and state defendants cross-moved for summary judgment. The Circuit Court determined that school boards had standing to challenge validity of statutes, but granted summary judgment in favor of state defendants. School boards appealed and state defendants cross-appealed.

The District Court of Appeal held that:

- School boards lacked standing to challenge statutory provisions creating independent charter schools, requiring charter contracts, and restricting ability to improve low-performing schools;
- Provisions requiring distribution of capital millage revenue to charter schools were permissible exercise of legislature's supervisory power;
- Provisions requiring distribution of federal funds to charter schools were permissible exercise of constitutional responsibility to ensure adequate education; and
- Capital millage distribution statutes were not an unconstitutional state ad valorem tax.

School boards lacked standing, under public official standing doctrine, to challenge the constitutionality of statutory provisions that allegedly created independent charter schools, required school boards to enter into standard charter contract with charter school operators, and divested school boards of authority to decide how best to improve low-performing schools; school boards

were required to presume statute was constitutional, statute did not prevent school boards from providing students with an education, and school boards' constitutional claims were mere disagreements with new statutory duties.

Statutes requiring school boards to distribute a portion of capital millage revenue to charter schools were permissible exercise of legislature's supervisory power to ensure adequate provision be made for free public schools, including charter schools, despite contention that state constitution required school funding decisions to be made by local elected officials; state constitution contemplated that state educational authorities could infringe on school boards' local powers pursuant to supervisory authority, and statute provided that funds distributed to a charter school, as well as property purchased with such funds, would revert to school board ownership upon charter school's termination or nonrenewal.

Statutory provisions requiring school boards to distribute federal funds for low-income students to eligible charter schools in their districts were permissible exercise of state educational authorities' constitutional responsibility to ensure the adequate provision of education for all children in public schools, including charter schools, despite contention that statutes divested school boards of their right to determine how to spend the funds; school boards did not have any constitutional right to federal funds for low-income students.

Statutes requiring school boards to distribute capital millage to charter schools within their districts were not an unconstitutional state ad valorem tax; millage taxes were local, charter schools served local purpose of the education of children, and school boards played a role in operating charter schools.

DEVELOPMENT FEES - INDIANA

Knob Hill Development LLC v. Town of Georgetown

Court of Appeals of Indiana - September 11, 2019 - N.E.3d - 2019 WL 4282112

Real estate developers brought petition objecting to municipal ordinances setting sewer system development charges (SDCs) for new developments and providing for annual increase in such charges.

Following evidentiary hearing, the trial court upheld objection as to rate increase ordinance but overruled objection as to rate-setting ordinance. Developers appealed.

The Court of Appeals held that:

- Inclusion of grants in calculation of sewer utility value served statutory purpose of ensuring new sewer service customers paid equitable shares;
- Sufficient evidence supported finding that previously-paid SDCs were not contributions in aid of construction (CIAC);
- Town could consider factors relevant to planning for future growth in setting SDCs; but
- Annual increases in SDCs could not occur without public hearings.

Municipality's inclusion of infrastructure grants in calculation of total value of sewer utility, for purposes of calculating how much new developments should pay for use of new sewage treatment plant, did not result in a double recovery of funds from grants and from new developments, but, rather, served statutory purpose of ensuring new developments paid just and equitable share compared with existing customers.

Sufficient evidence supported finding, following bench trial on validity of municipal ordinances setting and increasing system development charges (SDCs) for sewer service applicable to new developments, that previously-paid SDCs were not contributions in aid of construction (CIAC), as would preclude their inclusion in calculation of value of new sewer plant; expert, who had advised municipality regarding ordinance, testified that previously-paid SDCs were generally considered user charges rather than CIAC.

Town's consideration of factors relevant to planning for future growth in setting sewer system development charges (SDCs) applicable only to new developments was not ultra vires, but, rather, was permissible under municipal sewage works statute allowing municipalities to consider any factors that they deem necessary.

Municipal ordinance providing for automatic annual increase of 2% for sewer system development charges (SDCs) violated statute requiring municipal legislative bodies to hold public hearings before revising sewer rates as well as sewer service customers' due process rights; statute resulted in revision of fees each year without a hearing.

PUBLIC RECORDS - MAINE

Blue Sky West, LLC v. Maine Revenue Services

Supreme Judicial Court of Maine - August 20, 2019 - A.3d - 2019 WL 3926146 - 2019 ME 137

Taxpayer brought action against Department of Administrative and Financial Services (DAFS) and Maine Revenue Services (MRS), with county named as a party in interest, seeking a declaratory judgment that records associated with MRS's valuation of taxpayer's wind power project in unorganized territory of county were not subject to disclosure pursuant to county's Freedom of Access Act (FOAA) request.

County filed a cross-claim seeking judicial review of DAFS's denial of its records request from a subsequent year. The Superior Court entered a judgment concluding that records from first but not second year were subject to disclosure. County appealed and taxpayer cross-appealed.

The Supreme Judicial Court held that:

- Records from first year lacked the requisite labeling to qualify for FOAA exemption for records that were designated confidential by statute;
- Records from first year did not qualify for FOAA exemption for trade secrets; and
- Records from second year comprised clearly labeled confidential and proprietary information protected from disclosure.

Supreme Judicial Court would review trial court's judgment, not as a summary judgment, but as one that rested on the stipulated facts and the court's evaluation of those facts, in Freedom of Access Act (FOAA) dispute in which taxpayer sought a declaratory judgment and county, as the requestor and a named interested party, filed cross-claim seeking judicial review of Department of Administrative and Financial Services' (DAFS) denial of its request, even though parties presented their contentions nominally as cross-motions for summary judgment, where parties did not cite the summary judgment standard and did not assert that there were factual disputes that needed to be adjudicated other than through application of dispositive legal principles to facts garnered from the stipulated record.

Trial court was entitled to accept additional evidence and adjudicate the matter de novo, rather than

act in its usual intermediate appellate capacity in reviewing final agency action, on taxpayer's appeal from Department of Administrative and Financial Services' (DAFS) grant of county's Freedom of Access Act (FOAA) request concerning records of valuation of taxpayer's wind power project in unorganized territory of county; FOAA did not require DAFS to conduct an adjudicatory hearing prior to determining whether the requested records needed to be made available to county for inspection, the administrative record was devoid of any factual findings, and the DAFS summarily stated its decision.

Supreme Judicial Court would directly review the trial court's judgment and not the decision of Department of Administrative and Financial Services (DAFS) on taxpayer's appeal from Department of Administrative and Financial Services' (DAFS) grant of county's Freedom of Access Act (FOAA) request concerning records of valuation of taxpayer's wind power project in unorganized territory of county, where, with the parties' acquiescence, the trial court chose to address taxpayer's request for review de novo rather than in an appellate capacity.

Records associated with Maine Revenue Services' (MRS) valuation of taxpayer's wind power project in unorganized territory of county were not exempt from disclosure to county under Freedom of Access Act (FOAA) exemption for records that were designated confidential by statute, where taxpayer's parent company failed to clearly label records as proprietary and confidential at time records were provided to MRS, even though taxpayer sent letters to Department of Administrative and Financial Services (DAFS) months later identifying the records as confidential.

Records associated with Maine Revenue Services' (MRS) valuation of taxpayer's wind power project in unorganized territory of county were not exempt from disclosure to county under Freedom of Access Act (FOAA) as containing trade secrets within meaning of rules governing privileged material, where records did not contain the agreements between taxpayer and its vendors and only set forth an itemized list of project costs that were paid to vendors pursuant to negotiated written agreements that required taxpayer and vendors to maintain the confidentiality of the agreements' terms.

REFERENDA - NEW YORK

Rochester City School District v. City of Rochester

Supreme Court, Appellate Division, Fourth Department, New York - September 4, 2019 - N.Y.S.3d - 2019 WL 4196039 - 2019 N.Y. Slip Op. 06449

In hybrid article 78 proceeding and declaratory judgment action, seeking declaration that a local law was invalid and that a referendum was void as advisory, as well as a permanent injunction barring the referendum from being placed on the ballot, the Supreme Court, Monroe County, entered judgment granting the relief sought.

City, mayor, and city council appealed.

The Supreme Court, Appellate Division, held that the referendum on local law, which removed provisions governing commissioners of schools from city charter, was impermissibly advisory, and thus invalid where the referendum's effectiveness was conditioned on subsequent action by state legislature, and state had preempted local action in field of public education.

WATER LAW - TEXAS

League of United Latin American Citizens v. Edwards Aquifer Authority

United States Court of Appeals, Fifth Circuit - August 28, 2019 - F.3d - 2019 WL 4050469

Advocacy organization and individuals brought § 1983 action against Edwards Aquifer Authority (EAA), a conservation and reclamation district, challenging apportionment plan for the single member districts used to elect EAA directors, alleging claims including violation of the Equal Protection Clause of the Fourteenth Amendment for alleged dilution of minority votes, and seeking declaratory and injunctive relief and a statutory award of attorney fees and costs.

Several governmental authorities intervened, including one city as a plaintiff, and two cities, county, and river authority as defendants. The United States District Court for the Western District of Texas entered summary judgment for defendants. Plaintiffs appealed.

The Court of Appeals held that:

- EAA was a “special purpose district,” rather than a general purpose governmental entity, that fell within exception to one person, one vote requirement of the Equal Protection Clause, and
- EAA’s apportionment plan by subregional water interests rather than by population did not violate Equal Protection Clause’s one person, one vote requirement.

Edwards Aquifer Authority (EAA), a conservation and reclamation district, was established by Texas Legislature to serve Edwards Aquifer Authority Act’s limited purpose and scope of management, protection, preservation, and conservation of Edwards Aquifer, and granted EAA limited powers in scope and effect and, thus, EAA was a “special purpose district,” rather than a general purpose governmental entity, that fell within exception to one person, one vote requirement of the Equal Protection Clause; EAA could not impose ad valorem property taxes or sales taxes and did not oversee public functions such as schools, housing, zoning, transportation, roads, or health and welfare services, its powers were expressly tailored to protect quantity and quality of groundwater in Aquifer, as it placed certain conditions on permit holders only as necessary to fulfill its legislative mandate to conserve aquifer water, and EAA’s regulation of pollutants did not render it a general governmental body, as such conduct was incidental to its primary task of administering permit process.

Single member district apportionment plan for board of directors for Edwards Aquifer Authority (EAA), a conservation and reclamation district, by subregional water interests rather than by population, was carefully balanced to reflect different water interests in agricultural, spring-flow and urban counties disproportionately impacted by aquifer and, thus, plan was rationally related to Edwards Aquifer Authority Act’s statutory objectives, such that it did not violate Equal Protection Clause’s one person, one vote requirement; residents of agricultural and spring-flow counties were more dependent upon, and owned outsized share of, aquifer water and were disproportionately affected by EAA’s regulation thereof, residents of western and eastern counties disproportionately felt weight of EAA’s regulatory power, eastern counties and wildlife they contained relied most on EAA’s conservation efforts, and apportionment scheme was likely necessary to ensure creation of EAA.

TAX - MASSACHUSETTS

Veolia Energy Boston, Inc. v. Board of Assessors of Boston

Supreme Judicial Court of Massachusetts, Suffolk - September 11, 2019 - N.E.3d - 2019 WL 4282265

City board of assessors applied for direct appellate review of decision of Appellate Tax Board abating taxes on certain personal property, specifically, pipes used to produce, store, and deliver steam, owned by and assessed to taxpayer for certain fiscal year, and application was granted.

The Supreme Judicial Court held that Appellate Tax Board's decision was based on both substantial evidence and correct application of the law.

Appellate Tax Board's decision abating taxes on pipes taxpayer used to produce, store, and deliver steam was based on both substantial evidence and correct application of the law, where energy system operations expert offered extensive testimony that taxpayer's pipes and appurtenant equipment formed essential part of single integrated machine.

Muni Market Awaits 2 Treasury Regulations.

Treasury is finalizing the reissuance rule it released at the end of 2018 and is preparing to release proposed guidance to facilitate the transition away from Libor.

U.S. Treasury Associate Tax Legislative Counsel John Cross told attorneys attending a National Association of Bond Lawyers conference in Chicago on Thursday that other the other regulatory actions involving the municipal bond market constitute small administrative guidance.

Among the administrative guidance in the works are answers to continuing questions about student loan bonds and using economic defeasance to "turn off" Build America Bonds.

Treasury also is considering offering guidance on the definition of an instrumentality in terms of public universities that are exempt from a new federal excise on large university endowments.

That project could impact the municipal bond market in the same way as the effort to redefine political subdivisions did prior to Treasury's withdrawal of that proposed regulation.

Internal Revenue Service enforcement officials told NABL workshop attendees in another workshop session the service is hiring five new revenue agents, up from the current 20, and two additional tax law specialists.

The new positions, which are posted on the USJOBS website, will reverse what has been a long term decline in staffing in the tax-exempt bonds section of the IRS through attrition, mostly because of retirements.

IRS officials also are reconsidering the 2017 reorganization that combined the tax-exempt bond office with the office of Indian tribal governments to form a new ITG/TEB office within the Tax Exempt & Government Entities Division (TEGE) managed by Christie Jacobs.

Allyson Belsome, senior manager of ITG/TEB Technical, said her unit which does the selection of audits would be unaffected by a reorganization, but the field audit group may be split into separate TEB and ITG teams.

The guidance on the elimination of the London Interbank Offered Rate (Libor) was sent by Treasury to the White House Office of Management and Budget on Aug. 28.

"We have gone through most of the gauntlets for public release," Cross said. Review by OMB's Office of Information and Regulatory Affairs is the final step in the process.

The Federal Reserve considers the release of the guidance sometime this fall to be "critical" to making the transition because it impacts $2 trillion in swaps in the marketplace, Cross said.

The Alternative Reference Rates Committee sent a letter to the Treasury in April summarizing on what issues the guidance should consider, including new rates other than the Secured Overnight Financing Rate (SOFR).

"People are looking for other alternatives," Cross said, indicating that there will be an effort to provide flexibility.

NABL members have expressed concern that if floating rate bonds based on Libor switch to another benchmark rate, the switch may be considered a material change to the bonds that causes them to be considered newly reissued.

A re-issuance would make the bonds subject to the latest tax laws and rules and could even make them taxable.

The proposed Treasury guidance is expected to address that potential problem.

The Securities Industry and Financial Markets Association listed $76.9 billion in publicly issued municipal bonds from 872 issuances that used floating rate debt as of Dec. 18, 2018. That's only 2% of the $3.8 trillion municipal bond market and includes debt that uses the SIFMA index but doesn't include swaps.

Libor-based municipal debt was an even smaller amount at $47.6 billion or about 1.3% of the overall muni market.

As for the proposed reissuance rule, NABL, the Bond Dealers of America, the Government Finance Officers Association and the Securities Industry and Financial Markets Association submitted comments earlier this year requesting a continuation of the practice that allows remarketing reissuances at a premium.

By Brian Tumulty

BY SOURCEMEDIA | MUNICIPAL | 09/12/19 02:43 PM EDT

Corporate and Municipal CUSIP Request Volume Bounces Back in August.

NEW YORK, NY, September 12, 2019 – CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for August 2019. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity over the next quarter, found increases in CUSIP request volume across most major asset classes in August.

Read Report.

Falling Yields Unleash Flood of Muni ‘Century Bonds’

Universities, state and local governments rush to lock in ultralow rates for decades

U.S. state and local governments, along with universities, are joining companies in a dash to issue debt and lock in low rates, sometimes for up to 100 years.

Rutgers University funded various capital projects by selling roughly $300 million in debt this week that doesn’t mature for a century. The New Jersey-based school adds to a list that includes the University of Virginia and University of Pennsylvania, which have also sold so-called century bonds in recent weeks.

“The market presented UVA with a historic opportunity,” said Jennifer Wagner Davis, the school’s executive vice president and chief operating officer.

Continue reading.

The Wall Street Journal

By Gunjan Banerji

Sept. 13, 2019 5:30 am ET

When Wall Street Flips Municipal Bonds, Towns and Schools Pay the Price.

A Journal analysis of trading data suggests new bonds often are underpriced, which means taxpayers will pay more in interest

When the West Contra Costa Unified School District in California needed money to repair and upgrade deteriorating classrooms, it hired Piper Jaffray Cos. to sell $191 million of municipal bonds.

As far as school officials knew, the March 2016 sale went off flawlessly, enabling the district to refinance older debt and tackle tasks such as removing asbestos and upgrading science labs.

However, within a day of the initial sale, the original buyers sold, or “flipped,” $35 million of the district’s bonds for a profit of $306,000, a Wall Street Journal analysis of trading in the bonds found.

Continue reading.

The Wall Street Journal

By Tom McGinty and Heather Gillers

Sept. 12, 2019 11:41 am ET

Moody's: Cyberattacks Could Cause Significant Financial Disruption for

Hospitals.

Cyberattacks pose a greater fiscal and credit risk to nonprofit hospitals than any other sector of municipal finance due to the increasingly interconnected nature of hospital operations and information technology.

Hospitals with strong risk management strategies will be better positioned to respond to these operational and financial disruptions, according to a report from Moody's Investors Service.

Small hospitals face the biggest risk, because many lack the necessary cybersecurity resources and will be less able to absorb any financial impact, according to report authors Jennifer Barr, a Moody's analyst, and Lisa Goldstein, Moody's associate managing director.

According to the assessment, the not-for-profit hospital sector's overall cyberrisk is high. Other sectors that have high overall cyberrisk are banks, securities firms and market infrastructure providers because they also rely heavily on technology for their operations.

Data breaches have become a reality for healthcare organizations due to the value of protected health information. In the most critical cases, these data breaches endanger revenue, posing a material risk to financial performance.

To date, Moody's-rated hospitals, representing $250 billion in rated debt, have had sufficient financial resources to absorb the impact of a cyberattack. So far, those impacts have been limited to paying fines when patient data are compromised, with minimal disruptions to operations.

But that could change as cyberthreats evolve and become more sophisticated. Security incidents that result in operational disruptions, like ransomware, present the greatest risk to hospitals, and those disruptive attacks are on the rise, according to Moody's.

Such attacks compromise patient care and expose hospitals to financial losses and lawsuits. Connected medical devices such as insulin pumps, defibrillators and cardiac monitors as well as hospitals' electronic medical record (EMR) systems are points of potential infiltration. Efforts to improve interoperability between organizations, devices and vendors will likely increase this risk, Moody's said.

As the industry continues to push toward digitalization and increased data sharing, the number of infiltration points for cyberattacks will grow.

"Among the biggest risks are attacks against connected medical devices such as insulin pumps, defibrillators and cardiac monitors, which are now entrenched in remote monitoring and require constant updating and patching," the report authors wrote. "The biggest issue for hospitals will be threats that jeopardize patient safety and result in harm or death, exposing hospitals to malpractice accusations and lawsuits."

Ransomware and cyberattacks that compromise hospital electronic health record systems will cause the greatest disruption, affecting hospitals' revenue cycles and disrupting cash flow in the most severe cases, according to the report.

The 2016 ransomware attack at Hollywood Presbyterian Medical Center in Los Angeles had its EMR compromised for several days, resulting in the hospital paying a $17,000 Bitcoin ransom to release the network. The 2017 WannaCry cyberattack on U.K. hospitals resulted in a major IT disruption, causing diversions and delays or cancellations in patient care.

As a result of these threats, hospital management will feel pressured to allocate more resources to protect data and limit system vulnerabilities. Currently, less than 6% of an organization's IT budget is allocated to cybersecurity, according to the Healthcare Information and Management Systems Society. As cyberrisk becomes increasingly important, hospitals will likely increase their investments to shore up cybersecurity programs.

Hospital management teams are developing contingency plans and employing dedicated cybersecurity staff to address threats. Risk management measures include contingency planning, disaster response and obtaining cyberinsurance.

The capacity to take these steps, however, will vary across the hospital sector.

"Small hospitals, particularly critical access hospitals, that lack the resources for a dedicated cybersecurity expert will be more vulnerable. A lack of qualified talent will also remain an industry challenge and require additional investment, leaving less room for investment in other operational areas," the report authors said.

While risk management strategies will help mitigate operational and financial disruptions, malpractice and other legal issues will still be a risk when there is patient harm, Moody's said.

Hospitals remain vulnerable given the overall complexity of their systems and of healthcare delivery as well as the increasing number of attacks.

Fierce Healthcare

by Heather Landi | Sep 12, 2019 3:47pm

Making Sense of Municipal Budgets.

When it comes time to begin the development of your jurisdiction's annual budget, which song immediately pops into your head: "It's the Most Wonderful Time of the Year" or "Don't Cry Out Loud"?

We suspect that the answer to this question will be the same whether asked of staff or elected officials.

For most, the budget process is viewed as an accounting exercise that involves a multitude of spreadsheets, request forms and formulas all leading to a "balanced budget". Oftentimes, the process seems to be cloaked in mystery because no one is quite sure what happens between the time budget requests are submitted and the point at which a draft budget is presented for review. From our experience as a Finance Director and an Elected Official, it felt like a laborious effort that detracted from our actual job responsibilities andwasted a lot of time and paper. The end result is a final Approved Budget document that is full of numbers and graphs, which often falls short of clearly communicating how resources are being allocated to achieve the goals of the organization and meet the needs of community.

Continue reading.

By NLC Guest Writer on September 11, 2019

Dealers Double Down on Opposition to Muni Advisors Running Private Placements.

Broker-dealers want the Securities and Exchange Commission to know exactly where they stand when it comes to municipal advisors and private placements of municipal debt, again asking the SEC not to grant regulatory relief sought by a major MA firm.

The Bond Dealers of America sent a letter to the Securities and Commission on Monday, its second on this subject in three months, asking for municipal advisor and broker-dealer roles to be kept separate. Both BDA and the Securities Industry and Financial Markets Association have written to the SEC to oppose an earlier letter sent by leading MA firm PFM.

After meeting with the SEC after sending its first letter and talking with its members, BDA CEO Mike Nicholas said the group wanted to consolidate its major points so "that the SEC knows very clearly what the industry view is."

The SEC is preparing "very soon to move on this issue," BDA said.

This all follows a PFM letter in October 2018 where the large non-dealer municipal advisor asked the SEC for written guidance confirming that the firm wouldn't need to register as a broker-dealer when engaging in certain activities when advising on private placements of municipal bonds. Municipal advisors have said that they do not want to act as unregistered placement agents, but want to feel secure they aren't breaking the law when they engage in certain negotiations with potential buyers or coordinate certain aspects of a transaction.

Muni advisors generally view this activity as consistent with their fiduciary duties, but dealers oppose it and view those roles as properly the place of a registered dealer firm. While dealers are not fiduciaries of an issuer, they are subject to certain regulations MAs are not, such as a requirement to perform due diligence before a transaction in order to protect investors.

"The BDA is concerned that the requested relief is inconsistent with the SEC and its staff's long held views regarding the need for broker-dealer registration and the purposes of that regulatory regime," Nicholas said.

Nicholas said that if guidance were issued to allow non broker-dealers to participate in private placement activity, it would essentially eliminate the participation of dealers in such transactions.

"If municipal advisors can receive transaction-based compensation for engaging in private placement broker-dealer activities, there would be little reason for dealers to engage in this activity within a municipal securities dealer entity," Nicholas wrote.

In the letter, BDA further emphasized investor protection issues that it believes could be at stake. Broker-dealers serving as placement agents have a due diligence obligation to protect investors, and BDA argued that the requested relief would erode away investor protections.

"Presumably rules are in place for a reason," Nicholas told The Bond Buyer. "This is a very, very regulated industry, presumably for a reason, and so we feel like investor protection is a big part of this issue."

The National Association of Municipal Advisors wrote a letter to the SEC in July, pressing them to provide permission to participate in certain deals without risking enforcement action.

"NAMA's letter commented on the need for MAs to be able to perform their MA duties and represent their clients without having that labeled as broker-dealer activity," said Susan Gaffney, NAMA executive director. "We are not asking for MAs to be able to perform broker-dealer activity without being registered."

By Sarah Wynn

BY SOURCEMEDIA | MUNICIPAL | 09/10/19 10:26 AM EDT

How The Wall Street Journal Analyzed Trading and Profit in the Municipal-Bond Market.

The Journal looked at municipal-bond trades from April 2013 through December 2017

To analyze trading in newly issued municipal bonds, the Journal obtained the following data sets:

Trading data from the Municipal Securities Rulemaking Board
This data set includes all municipal-bond trades from April 2013 through December 2017. There were about 28.5 million trades during the period of the analysis.

Each trade record includes:

• The bond's Cusip (Committee on Uniform Security Identification Procedures), a nine-character alphanumeric code used to identify securities including stocks and bonds.

• A description of the bond that typically includes the name of the issuer

• The interest rate paid on the bond, known as the coupon.

• The maturity date, which is the date on which the issuer will repay the face value of the bond to holders.

• The type of trade, denoted by one of three letters. (S = Sale to a customer by a dealer. D = Trade between two dealers. P = Purchase from a customer by a dealer.)

• The face value, also known as par value, of the traded bond.

• The price of the trade.

• The yield to maturity, or annual interest earnings, that the bond buyer would receive, expressed as a percentage and calculated based on the price of the trade and the interest rate and maturity date of the bond.

Continue reading.

The Wall Street Journal

By Tom McGinty

Sept. 12, 2019 11:30 am ET

BDA Urges SEC to Reject the PFM and NAMA Requests to Avoid Broker-Dealer Regulation

After much consultation with the BDA Municipal Division and Legal and Compliance Committee leadership, along with BDA outside counsel-Nixon Peabody and Davis Polk, the BDA has submitted a letter to the SEC strongly opposing the recent requests for guidance regarding private placement activity by non-dealer municipal advisors.

The BDA learned late last week that the SEC is preparing very soon to move on this issue and is inclined to issue exemptive relief in some capacity. With this new development, the BDA has drafted a letter building off the information received during the member call in late July, and continued contact by staff and outside resources with the SEC.

The BDA is meeting with the SEC this week to further address our concerns. Meetings include the leadership at Trading and Markets, including chief counsel, and the Office of Municipal Securities. Later in the week, the BDA has a confirmed meeting with SEC Commissioner Robert Jackson, and likely others.

The letter, which can be viewed here, focuses on historical precedent, competitive disadvantages and the erosion of investor protections provided by the broker-dealer regulatory regime.

Prior BDA Actions

In late June, the BDA submitted a letter in response to the PFM and NAMA requests for guidance regarding private placement activity by municipal advisors. The letter submitted addresses directly the problems that would arise from the request for interpretative guidance if granted, including rolling back decades of settled law on what constitutes broker-dealer activity.

The BDA has met with the SEC and MSRB, including during the quarterly Fixed Income Working Group fly-in earlier this summer, to discuss our positions and gauge the regulators next steps.

The letter can be viewed here.

Background

PFM, the municipal advisory firm, sent a letter to the SEC last fall asking that the firm “not be required to register as a broker dealer” when conducting certain placement agent activity. They requested guidance exempting them from BD registration, which they argued “is essential for PFM and other MAs to fulfill their statutory mandate to protect [municipal entity] issuers, and to provide clarity and transparency regarding the role of the MA in municipal financing transactions.”

Shortly after learning about the letter, BDA staff met with the SEC and the conversation with SEC staff focused on concerns we have with the request, including that it would negate the substantial regulatory protections under BD regulations in place to protect investors. The BDA also argued that the guidance PFM is asking for would create an unbalanced competitive environment between dealer and non-dealer MAs, and we emphasized that the act of finding investors, even for a direct placement, is inherently BD activity.

Bond Dealers of America

September 9, 2019

If you have any questions, please contact Brett Bolton at bbolton@bdamerica.org

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U.S. Public Power Rating Criteria Update (The First 150 Days)

Read the Report.

California Lawmakers Pass Bill Rolling Back Bond Disclosures.

Californians will see less information when voting on bonds and tax increases if Governor Gavin Newsom signs a bill the legislature passed Friday that rolls back disclosure requirements on the ballots.

The bill removes the obligation that schools and municipalities must disclose the fiscal impact of their measures in the questions put to voters. State senator Scott Wiener, a Democrat and backer of the bill, said trying to explain that in 75 words, the limit of a ballot question, creates confusion, may cause more measures to lose and makes it virtually impossible for tiered parcel taxes to pass. His legislation delegates the description to the guide or another separate document.

The retreat was a setback for Republican assemblyman Jay Obernolte, who had pushed for the disclosure that had passed unanimously two years ago. He said voters should have all the information when they read the ballot questions — not just in voluminous election guides they may not review.

"Californians deserve to know if a measure they're voting on will increase their property taxes," Obernolte said in a statement. "Opponents have argued that voters are confused with this extra level of information, but the truth is that they just want to make it as easy as possible to raise your taxes."

Newsom's finance department said in August that it opposes the bill because adding more information to the voter guides may result in additional production costs that the state has to cover.

Bloomberg Markets

By Romy Varghese

September 13, 2019, 5:54 PM PDT

The Muni-Bond Market's Best Days May Be Over for Rest of 2019.

- **Supply boost, low interest rates weigh on market: Barclays**
- **'Who wants to be aggressive at current rates?' analyst says**

The best days for the municipal-bond market in 2019 are probably behind it.

A surprise boost in state and local government debt sales this month, low interest rates and investors' desire to lock in the market's biggest returns since 2014 suggest that tax-exempt bonds may lag Treasuries for the remainder of the year, according to Barclays Plc strategists led by

Mikhail Foux.

With interest rates not far from a more than half century low, states and cities are seizing on the moment to borrow, creating headwinds for a market that had benefited from a slowdown in new debt sales since late 2017. States and local governments have sold $19 billion of fixed-rated bonds so far this month and plan to issue another $17 billion over the next 30 days, according to data compiled by Bloomberg.

Continue reading.

Bloomberg Markets

By Martin Z Braun

September 10, 2019, 10:32 AM PDT

S&P Charter School Brief: Illinois

Table of Contents

- Authorizer Framework
- Credit Fundamentals
- What We're Watching

As of Sept. 9, 2019, S&P Global Ratings maintains three public ratings on Illinois charter schools. The Illinois legislature first approved the state's charter school law in 1996, and approximately 65,000, or about 3%, of the state's kindergarten through 12th-grade (K-12) students were enrolled in 141 Illinois charter schools during the 2017-2018 school year. The vast majority (about 90%) of Illinois' charter schools are located in Chicago.

Total enrollment at Chicago Public Schools (CPS) has dropped by nearly 10% over the past five years, while charter school enrollment has grown by about 5% over the same period. Charter schools in Chicago serve approximately 13% of total K-12 Chicago students, the majority of which are located in low-income neighborhoods, serving a high free and reduced lunch population, where a quality education is in high demand.

Continue reading.

Oklahoma Pension Fund Cyber Attack Shows Rising Risk for Munis.

- **Hackers stole $4.2M from law enforcement retirement system**
- **Cybersecurity readiness can affect credit ratings, S&P says**

Oklahoma has joined the ranks of state and local governments struck by hackers, fueling concerns about the escalating risk of such attacks on municipalities.

The Federal Bureau of Investigation is probing the cyber theft of $4.2 million from the Oklahoma Law Enforcement Retirement System, the pension fund for highway troopers, state agents, park

rangers and other officers. The fund has recovered some of the money and told retirees benefits would remain intact. But the hack illustrates the state's vulnerability to bigger attacks that could carry far larger financial risks.

"Your ability to pay debt is based on trust, if the trust isn't there, it's going to be hard for everyone," said Geoffrey Buswick, an analyst for S&P Global Ratings, who has written about the risk these attacks pose for public entities. "If you have your head in the sand when it comes to cybersecurity, we're going to look at that for our rating."

Continue reading.

Bloomberg Cybersecurity

By Maria Elena Vizcaino

September 13, 2019, 6:36 AM PDT

Stung Luxury Dorm Bondholders Say University Broke Promises.

- **University of Oklahoma had 'moral obligation' to renew leases**
- **Trustee calls the university's decision a 'belligerent act'**

The trustee representing bondholders who invested $250 million in a luxury dorm at the University of Oklahoma accused the college Monday of breaking a promise to lease retail and parking spaces over the 40-year term of the bonds.

The dorm at OU's flagship campus in Norman has struggled to attract students and in late July suffered another blow when the university notified the complex's non-profit owner that it wouldn't renew the annual leases. Bonds issued in 2017 to finance the 1,230-bed complex known as Cross Village, which had a 27% occupancy rate at the end of March, lost a third of their value after the university terminated the agreement.

The rental payments, projected to make up a third of the dorm's revenue, were a "moral obligation" of the university, lawyers for the trustee, UMB Bank, wrote in a letter to the university's outside counsel Monday. Failure to renew the leases could result in a downgrade of the university's bonds, driving up borrowing costs, the letter said.

Continue reading.

Bloomberg Markets

By Martin Z Braun

September 9, 2019, 9:22 AM PDT Updated on September 9, 2019, 11:40 AM PDT

University of Oklahoma Fires Back at Trust Bank in Muni Bond Dispute.

The University of Oklahoma is pushing back against complaints about its termination of a lease on

commercial space in a troubled student-housing development on its campus.

That development was financed with $250 million of bonds, so the commercial property's rent is important for debt service. The university is arguing that it has no obligation to the bondholders, largely because the debt was issued by a subsidiary of private nonprofit organization Provident Resources Group that was formed in 2016 to support the university.

Trust bank UMB disagrees. In a recent letter to the university, its attorney, David Dubrow of Arent Fox, called the lease cancellation a "betrayal" and threatened legal action. Dubrow claimed in the letter that the university "assured investors that even though the leases for the commercial space and parking were renewable on an annual basis, [it] intended to rent all of the commercial spaces for the life of the bonds."

Continue reading.

Barron's

By Alexandra Scaggs

Sept. 12, 2019 3:40 pm ET

Study Points to Past Pay-to-Play in Public Pensions.

The behavior was effectively curbed by the SEC's 2010 rule banning quid pro quo transactions, according to academic research.

At least up until 2010, state political donations by asset management executives appear to have been rewarded with public pension mandates, according to a new paper from researchers at the University of San Diego and University of Arizona.

Donations to a state government official or political action committee were linked to higher levels of government pension fund business in a study of about 22,000 investment advisory firms registered with the U.S. Securities and Exchange Commission between 2001 and 2016. A donor's client base had half a percentage point more government accounts — a number equating to about 390 moremandates for the average firm, according to authors William Beggs, a finance professor at the University of San Diego, and Thuong Harvison, a PhD candidate at the University of Arizona.

"Political donations yield a materially large number of government clients on an absolute number of accounts basis," they wrote. "Since public pension plan allocations tend to be large with regard to asset levels… this suggests that political donations may have a large economic impact on an advisor's fee revenues."

The authors suggested that asset management executives made campaign contributions to "politicians who will gain the authority to appoint trustees to public pension plans in order to win business managing plan assets." These pension trustees typically have final approval over the selection and termination of plan service providers, including asset managers.

According to the paper, the link between donations and pension mandates was most pronounced for firms offering pension consulting services, managers catering to institutional clients, and firms headquartered in states with "a high concentration of public pension plans and a culture of political

corruption."

The relationship between political donations and public pension mandates was observed up until 2010, when the SEC adopted a new antifraud rule making it illegal for investment advisors to receive business from government entities within two years after making a related political contribution. The rule went into effect on March 14, 2011, effectively banning pay-to-play practices.

"We find the prevalence of pay-to-play activities declines after the adoption of SEC's rule," the authors wrote. They also observed "a sharp drop" in political contributions made by managers with a significant share of government clients following the rule's enactment.

"The SEC's rule on pay-to-play activities for investment advisors appears to have been successful in curbing the prevalence of this type of quid pro quo activity in the investment management industry," they concluded.

Institutional Investor

by Amy Whyte

September 13, 2019

[Moody's Views Addition of Bond Insurers for Prepa RSA as 'Significant Progress']

Credit-rating agency points to uncertainties in outcome of Puerto Rico utility restructuring plan

SAN JUAN — The addition of two monoline bond insurers to the Puerto Rico Electric Power Authority's (Prepa) restructuring support agreement (RSA) represents "significant progress" toward completion of the public corporation's debt restructuring process and transformation, including averting the possibility of the utility being forced into receivership, credit rating agency Moody's Investors Service said in a report Tuesday.

The island's Financial Oversight and Management Board (FOMB) announced Monday that, together with the Fiscal Agency and Financial Advisory Authority (Aafaf by its Spanish acronym) and Prepa, it reached an agreement with bond insurers Syncora Guarantee Inc. and National Public Finance Guarantee Corp. to join the RSA that certain Prepa bondholders and Assured Guaranty Corp. reached earlier this year.

"The addition of national and Syncora to the RSA demonstrates further progress toward Prepa's debt restructuring and a subsequent emergence from bankruptcy," Moody's report states. "As part of this agreement, National and Syncora agreed to drop their previous litigation seeking a court motion to appoint a receiver for Prepa."

Moody's notes that the agreement does not change the economic terms of the RSA announced in May, which among other things, calls for existing bondholders to exchange their bonds for new securitization bonds that will be issued by a "new special purpose vehicle" that is separate from Prepa.

The debt service on the new securitization bonds will be covered with additional revenues raised

with a “transition charge” on Prepa customers.

With the addition of the two bond insurers, the RSA has the approval of about 90 percent of the uninsured bonds and all of Prepa bond insurers, which exceeds the minimum 67 percent threshold needed for approval. Nevertheless, the rating agency cautions that completion of the debt restructuring process is still subject to a number of conditions, including approval from “the court overseeing the bankruptcy as well as the approval of the legislature.”

Moreover, Moody’s states that “there remains a high degree of uncertainty about whether this restructuring plan can or will be implemented,” noting the issue of “affordability” of the agreement for Puerto Rico’s “struggling economic base.”

In fact, many economists and consumer advocacy groups have warned that the RSA is a sweet deal for Wall Street banks but bad for Puerto Ricans, who will end up seeing significant hikes to their utility bills. An independent analysis by the Institute for Energy Economics & Financial Analysis (IEEFA) has projected lower rates for only a short-term basis, with increases down the road.

Puerto Rico Manufacturers Association President Carlos Rodríguez on Wednesday reportedly called on Gov. Wanda Vázquez and the FOMB to reveal the charges that would be included in Prepa customers’ bills as part of the RSA, noting that the effects of such increases could be detrimental to industries on the island. It would also hamper efforts to attract business to the island, he added.

IEEFA and other organizations have questioned the legality of $5 billion of the Prepa debt in question. MBIA Insurance Corp. and its National Public Finance Guarantee Corp. had filed a lawsuit, citing flaws and conflicts of interest plaguing the $8.3 billion Prepa restructuring deal.

The Moody’s report states that “there is the potential for additional litigation as other creditors, including the remaining unsecured creditors, might seek to challenge the settlement in court.”

The rating company maintains a classification of “Ca” with a negative outlook on Prepa debt. The rating is given to debt that is “highly speculative and likely in, or very near, default, with some prospect of recovery in principal and interest.” Meanwhile, Moody’s rating for National Public Finance is “Baa2,” or moderate credit risk, with a stable outlook.

Execution of the RSA would represent the third debt exchange by Puerto Rican entities after the court approved settlements for the Government Development Bank in November, and the Puerto Rico Sales Tax Financing Corp. (Cofina by its Spanish acronym) in February.

William C. Fallon, chief executive officer of National Public Finance Guarantee, said that following the Cofina transaction earlier this year, it is “a step closer to resolving all of National’s Puerto Rico exposure.”

“We look forward to working cooperatively with the Government of Puerto Rico, the Oversight Board and other creditors on the closing of this transaction, and to restructuring our remaining exposure to the island,” Fallon said in a statement to Caribbean Business, in which he noted that the RSA “provides a blueprint for the restructuring of our insured Prepa bonds.”

The Prepa RSA before the bankruptcy court covers $8.26 billion of debt. A hearing on the RSA is scheduled for Oct. 30.

Caribbean Business

By José Alvarado Vega on September 11, 2019

Fly High With Tax-Free Airport Revenue Bonds.

Summary

- Revenue bonds aren’t burdened by unfunded pension liabilities like General Obligations.
- Airport bonds often yield more than GOs.
- Airport bonds are safe and very essential.

With state and local governments becoming more and more entrenched with unfunded pension liabilities, traditional muni investors should look to safer alternatives. We consider revenue bonds the safest, because they offer haven from the pension timebombs. More specifically, Airport revenue bonds, if done right, can add safety to your portfolio without sacrificing yield. Airport bonds can be a much safer alternative to traditional general obligation bonds because they aren’t strangled by unfunded pension liabilities. Airports are also extraordinarily essential and usually have very little industry competition. Additionally, airport revs often yield more than their general obligation counterparts.

Major US airports issue bonds to fund ongoing improvement projects. Most of these bond issues are backed by all the diverse sources of airport revenues. They include revenue from airlines, rental car companies, concessions, and passenger facility charges (PFC). Passenger facility charges are the most important. Every airline passenger must pay, so it provides a very stable revenue stream. The fee goes toward the upkeep and maintenance of airports, including bond payments, and is set up and capped according to US federal law.

Continue reading.

Seeking Alpha

by Alexander Anderson

Sep. 10, 2019 11:22 PM ET

MSRB Update Newsletter.

Read about highlights from the August Board meeting, CEO Lynnette Kelly’s retirement and new resources and publications in the latest MSRB Update newsletter.

Opportunity Zones Knock Where They’re Needed Least.

Places like Chapel Hill are poor areas on paper because they’re filled with jobless college kids.

If you stroll down Franklin Street, the main drag here in this wealthy college town, you aren’t likely to think you’ve landed in a disadvantaged place. Just a few blocks from the main campus of the University of North Carolina, groups of happy-looking young people crowd the sidewalks and patronize businesses including Starbucks, Chipotle, Cold Stone Creamery, several national bank

branches, a bike shop, a craft-beer brewery and a wine bar.

But like many commercial areas adjacent to major colleges, this section of Chapel Hill is primed to attract millions of additional dollars in new investment thanks to changes that were part of the 2017 tax law. Investors around the country are racing to take advantage of one of the hottest tax-planning strategies in wealth management: sticking money into “opportunity zones.”

The program allows investors to reduce and defer paying capital-gains taxes until 2026 by investing in high-poverty communities. But because of the way the federal government wrote the rules, some census tracts—including Chapel Hill’s—appear on paper to be high-poverty areas but are actually populated by college students with no income. As a result, a tax benefit intended to help poor areas is channeling money to places that are already relatively well-off.

It’s true that Chapel Hill’s opportunity zone has a poverty rate of 47%, three times the state average. But the zone’s median age is 22, 99.8% of residents have high-school diplomas and 49% say they’ve moved in the past year. The tract has a lot of apartments and rental units—including nearly a dozen fraternity and sorority houses—but the median value of owner-occupied housing is $500,000, or triple the state average.

Money is already pouring in. In April a Charlotte-based real-estate firm spent $23.5 million to buy a 119,000-square-foot Franklin Street office building with a ground-level CVS pharmacy and adjacent parking lot. “It is a bit of a head-scratcher why it is an opportunity zone,” the company’s vice president admitted to the Raleigh News & Observer, which noted: “Most people aren’t likely to think of Franklin Street as a disadvantaged area.” The company plans a $12 million renovation to refresh the offices and to convert them to a technology hub. It might include a co-working space.

Many of the country’s 8,700 opportunity zones are in legitimately distressed communities in need of revitalization. Still, as investors have begun announcing deals taking advantage of the tax breaks, some of the projects in opportunity zones appear to fall short of the goal of spurring new investment that lifts up struggling areas.

Developers broke ground in Kentucky last year on a $50 million, 10-story apartment building near the University of Louisville that offers “a unique, unobstructed view of race track Churchill Downs,” according to the trade publication of the National Apartment Association. The developer said: “We planned to build at University of Louisville, anyway, and this financing certainly made that decision even easier.”

In Florida, a Fort Lauderdale developer broke ground this spring on a $40 million apartment building located in an opportunity zone. Monthly rents are expected to go for as much as $1,900. “A lot of these people who are going to live there have a high income,” the developer confessed to a local business publication. The complex will feature amenities including a dog park, a fitness center with a yoga and cycling studio, a full-time concierge and a fourth-floor pool with cabanas.

A Pittsburgh-based real-estate investment firm announced in May that it purchased and plans to upgrade a student-housing community across a pedestrian bridge from the University of Louisiana at Lafayette. The complex already “features a 24-hour fitness center, swimming pool with LED lighting, cybercafe with free printing and a host of other amenities,” the company said in a news release.

A study last year by the Brookings Institution identified 33 college towns with opportunity zones in which more than 85% of residents are college students. The top three were the University of Southern California, Indiana University of Pennsylvania and Illinois State University—each of which has nearby opportunity zones composed of 99% college students.

“There were some obvious flaws in the way this was designed,” Brookings economist Adam Looney says. “You can build anything for any purpose and get the tax break.” He says he has heard of opportunity-zone projects that include building self-storage facilities and solar-power generation, both of which—like renovating luxury student housing—have tenuous connections to community revitalization.

In Chapel Hill, the town’s economic development officer, Dwight Bassett, says the opportunity zone is leading other investors to sniff around the college town—a development he welcomes. Asked if he’d describe the area as impoverished, he says, “No, I wouldn’t.” He adds, however, that a North Carolina Commerce Department official told him last year that the town had two census tracts eligible to become opportunity zones. The official asked Mr. Bassett to recommend one. “We looked where we could get the most economic benefit out of it,” he says, “and that’s the one we nominated.”

The Wall Street Journal

By Tony Mecia

Sept. 13, 2019 6:10 pm ET

Mr. Mecia is editor of the Charlotte Ledger, a business publication in Charlotte, N.C.

Deutsche Bank Emerges as Whistle-Blower in Bond-Rig Probe.

- **Cooperation with U.S. criminal probe noted in civil settlement**
- **German lender agrees to pay $15 million to resolve civil suit**

Deutsche Bank AG is cooperating with the Justice Department’s antitrust investigation into whether several of the largest global banks conspired to rig trading in unsecured bonds issued by Fannie Mae and Freddie Mac.

The bank earned leniency by providing information about other banks accused of rigging trading in the bonds. The cooperation deal emerged Thursday when Pennsylvania’s Treasurer, Joe Torsella, announced that Deutsche Bank had agreed to pay $15 million to resolve allegations in a civil lawsuit filed in federal court in Manhattan, that accuses traders at about a dozen large banks of rigging the bond prices.

According to the deal, the German lender came forward in May to assist Pennsylvania and other plaintiffs in the civil lawsuit. Under federal law, companies seeking criminal leniency in antitrust matters, which includes immunity from prosecution, can also limit their financial exposure by assisting price-fixing victims seeking damages.

Deutsche Bank’s settlement, which requires the bank to install an antitrust compliance program, shows that the bank has been providing the Justice Department with electronic chats and other evidence that could be used to prosecute individuals and institutions. It also suggests that the bank, which is the middle of multiple criminal investigations by the Justice Department, is looking to win some good will with investigators.

In late May, lawyers accusing the banks of manipulating the bond prices said in a court filing that they were working with a cooperator who was providing “smoking gun” evidence including electronic chats. Though they didn’t name Deutsche Bank at the time, examples of chats in the filing

were between traders at Deutsche Bank and others at Goldman Sachs Group Inc., Morgan Stanley and BNP Paribas SA.

The lawsuit accuses financial institutions of ripping off pension funds and others from 2009 to 2016.

Torsella said the settlement on Thursday was “an important first step, but just a first step, toward greater accountability on Wall Street.” He said government-sponsored-entity (GSE) bonds like those of Fannie Mae and Freddie Mac “are foundational to public investment portfolios, particularly for state governments, school districts, county governments and local municipalities.”

“We’re pleased to have resolved the matter,” said Troy Gravitt, a Deutsche Bank spokesman.

The Justice Department opened a criminal investigation into whether some traders manipulated prices in the market for unsecured bonds issued by Fannie and Freddie, the government-backed companies whose financing underlies most U.S. home purchases, Bloomberg News reported last year. No individuals or banks have been charged.

The market for their agency debt — which finances the companies’ operations but doesn’t directly fund mortgages — runs into the hundreds of billions of dollars.

The lawsuit in Manhattan alleges that the chats about the pricing of the bonds in the secondary market also directly implicate Bank of America Corp. and its Merrill Lynch subsidiary, Barclays Plc, Cantor Fitzgerald LP, Citigroup Inc., Credit Suisse Group AG, First Tennessee Bank NA, HSBC Holdings Plc, JPMorgan Chase & Co., Nomura Holdings Inc., TD Securities Inc. and UBS Group AG.

In addition to Fannie Mae and Freddie Mac, these GSE bonds finance the Federal Farm Credit Banks and the Federal Home Loan Banks.

Deutsche Bank approached the lead counsel for the plaintiffs on May 8 and said it was willing to provide them with cooperation materials pursuant to a federal law that allows companies to seek criminal leniency in antitrust matters, the settlement agreement said. The law also limits the financial exposure of companies that assist price-fixing victims seeking compensation.

Judge Jed Rakoff in federal court in Manhattan ruled this month that the case against BNP Paribas, Deutsche Bank, Goldman Sachs, Merrill Lynch and Morgan Stanley could move forward. He dismissed the other financial institutions from the case but allowed the plaintiffs to seek to bring additional evidence forward that could bring those institutions back in to the case, which they did in a filing on Tuesday.

Bloomberg Markets

By Tom Schoenberg

September 12, 2019, 8:41 AM PDT Updated on September 12, 2019, 10:13 AM PDT

Report Recommends Changes to US EPA’s General Permit for Industrial Stormwater Discharges Ahead of Reissuance: Squire Patton Boggs

Stormwater permitting requirements for many industrial facilities are set forth in US EPA’s Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) or

state permits based on the MSGP. US EPA last issued the permit in 2015, which expires on June 4, 2020. While the current Administration does not appear to be predisposed to the implementation of more onerous environmental permitting requirements, an EPA-funded report has recommended transformative changes to the MSGP. The Agency's decision whether to incorporate those recommendations into the reissuance of the MSGP will determine whether industrial facilities will need to implement additional stormwater monitoring and control measures in the coming years.

As we previously reported, in late 2016, US EPA had reached a settlement agreement with a group of environmental organizations that petitioned for review of the 2015 MSGP. The environmental groups believed that US EPA issued the 2015 MSGP without considering critical conclusions related to the MSGP that the National Research Council (NRC) had reached in a 2009 report.

Pursuant to the settlement agreement, US EPA agreed to sponsor and fund another report evaluating certain potential improvements for the Agency's next issuance of the MSGP. Earlier this year, the National Academies of Sciences, Engineering, and Medicine released the envisioned report, titled Improving the EPA Multi-Sector General Permit for Industrial Stormwater Discharges (the NASEM Report).

The NASEM Report provides a number of recommendations for US EPA to consider as it finalizes reissuance of the MSGP. For example, the NASEM Report recommends extending coverage of the MSGP beyond facilities that are strictly defined as part of the industrial sector (such as school bus transportation facilities, gas stations, outdoor material storage and handling operations, and timber lots). This idea of establishing permitting for a broader range of stormwater discharges may be legally imposed upon US EPA. US District Courts in Maryland (with the Fourth Circuit appeal being voluntarily dismissed) and California have already held stormwater discharges from commercial, industrial, and institutional sources are broadly required to be permitted or prohibited under Section 402(p) of the Clean Water Act.

The NASEM Report also reviewed existing monitoring requirements in the MSGP and found that they are "particularly dated and have not been substantially updated over time." Accordingly, benchmark monitoring for total suspended solids (TSS), pH, and chemical oxygen demand (COD) or total organic carbon (TOC) is recommended for all industrial sectors. This would replace the less structured visual-only monitoring and would eliminate the current sampling waiver available to industrial dischargers that have met benchmarks for four consecutive quarters.

Additionally, the NASEM Report recommends that new scientific information be utilized for implementing (and periodically reviewing) sector-specific benchmark monitoring for parameters with the potential to affect stormwater from that industrial sector, such as polycyclic aromatic hydrocarbons (PAH), selenium, arsenic, and iron. Generally, under the existing MSGP, a benchmark exceedance is not considered a permit violation unless no corrective action is taken to prevent future exceedances. Yet, benchmark exceedances can be utilized for determining facility-specific stormwater control measures that could be costly for some industrial dischargers.

The NASEM Report also addresses the utilization of stormwater retention and infiltration as a stormwater control measure. The MSGP considers retention and infiltration of stormwater to be a control measure as these divert portions of stormwater that a facility would otherwise discharge to surface waters. Stormwater retention and infiltration is generally favored for most urban runoff (e.g., from parking lots and roofs) as a method for diverting stormwater from municipal sewer systems. However, the NASEM Report points out that runoff from industrial facilities is different because such runoff has the potential to contain contaminants that pose a risk to groundwater upon infiltration. To account for both these benefits and risks, the NASEM Report encourages US EPA to maintain retention and infiltration as a control measure in the MSGP but to also establish site-

specific factors designed to ensure groundwater protection. If US EPA takes up this recommendation, industrial facilities could be subject to monitoring, permitting, or even some type of treatment requirements if retention and infiltration are utilized as a stormwater control measure for the site.

In the Report, NASEM is clear that it does not analyze the financial costs of its recommendations and leaves that work for US EPA when reissuing the MSGP. The settlement agreement for the 2015 MSGP litigation requires that US EPA consider all of the report's recommendations when revising the MSGP making the Report's lack of cost considerations potentially problematic to the regulated community. Under the current Administration, which has prioritized deregulation and minimally intrusive permitting, skepticism about the level of consideration that will be given to the transformative recommendations of the NASEM Report is fair. Facilities permitted under the MSGP will not have to wait long to know whether permitting obligations are going to change, because the settlement agreement requires US EPA to finalize a draft of the next MSGP permit before the end of November 2019. Squire Patton Boggs will continue to monitor and provide updates on this issue.

by Erik D. Lange

September 13 2019

Squire Patton Boggs

EPA Taps Public for Comment on Water Reuse Plans.

Water scarcity is a growing concern for the EPA, as discussed in depth in its National Water Reuse Action Plan issued this week.

The plan outlines ways that the EPA can work with state and local governments to promote water reuse and support research into new technologies. Due to various pressures, 80 percent of U.S. states anticipate water shortages in some parts of their states in the next decade. Over the past several decades, agriculture, industry, and communities have faced water crises and responded through innovative water reuse plans. According to the agency, water reuse can increase water security, sustainability, and resilience.

The drafted plan distributed this month proposes several actions to address a spectrum of issues, and opens the public comment period to identify the most pressing actions to be taken in the near future. The plan seeks to draw business and municipal partners to support the desired effect of water reuse being considered more universally acceptable. The plan suggests that sources of water for potential reuse can include municipal wastewater, industry process and cooling water, stormwater, agriculture runoff and return flows, and oil and gas produced waters. These source waters can be reused after they are treated and determined to be fit for whatever purpose is necessary, including but not limited to use as drinking water.

According to the EPA, these source waters can and should be reused in agriculture and irrigation, groundwater storage and recharge, industrial processes, onsite and non-potable use, saltwater intrusion barriers, and environmental restoration. Although drinking water is not the focus of the plan, it is possible that reclaimed water could be treated and made potable. Drafted in view of the decades-long droughts in California, and the crises wrought by tropical storms and other natural disasters, the EPA's plan demonstrates that it considers water reuse to be an important prong of its current outlook.

by Rosa D. Forrester

September 12 2019

Goldberg Segalla LLP

OZ Criticisms and How to Strengthen Local Communities (Weekly News Roundup)

Here are five of the most intriguing Opportunity Zones articles from the past week or so. Several articles, notably the big New York Times piece from August 31, were critical of the OZ program and how little it has helped low-income communities so far.

Read More »

Opportunity Db

September 10, 2019

Is There a Big Problem With the Opportunity Zones Program?

Is there a big problem with the Opportunity Zones program?

Thomas Morgan is a real estate developer, broker, and investor who specializes in impact investing and 1031 exchange strategies. On today's episode, we discuss the recent New York Times article and the challenges of raising Opportunity Zone capital for projects in blighted locations.

Read More »

The Conservation Fund Announces Commencement Of Green Bond Offering.

ARLINGTON, Va., Sept. 3, 2019 /PRNewswire/ — The Conservation Fund (TCF) announced today that it is commencing an offering of taxable Green Bonds (the "Bonds") of approximately $100 to $150 million. The Bonds will be issued by TCF and Sustainable Conservation, Inc., a wholly-owned subsidiary as co-issuer (SCI and, together with TCF, "The Fund"). Proceeds from the offering will be used primarily to increase the scale of its "Working Forest Fund®" conservation initiative, dedicated to mitigating climate change, strengthening rural economies and protecting natural ecosystems by the permanent conservation of at-risk forest landscapes. Goldman Sachs & Co. LLC is serving as sole underwriter of the bond.

"The bond proceeds, combined with significant new philanthropic capital, will allow us to accelerate our efforts to conserve America's essential working forests," said Larry Selzer, CEO of The Conservation Fund. "By combining the power of the marketplace with the passion of philanthropy we aim to make a real difference in our nation's efforts to protect forests, address climate change and lift up rural economies."

"The Conservation Fund's Green Bond Framework is credible and impactful, and it aligns with the major components of the Green Bond Principles," said Heather Lang, Executive Director of Sustainalytics' Sustainable Finance Solutions. "Through its use of green bond proceeds, the Fund is demonstrating a deep commitment to conserve lands and working forests, creating significant environmental benefits."

TCF, a nonprofit organization, was founded in 1985 and is headquartered in Arlington, VA. Working with public, private and nonprofit partners, TCF's mission is to protect America's legacy of land and water resources through land acquisition, community engagement, and sustainable economic development, emphasizing the integration of economic and environmental goals.

The offering is being made pursuant to a preliminary offering memorandum. Potential investors should read the entirety of the preliminary offering memorandum as a basis for making any investment decision with respect to the Bonds.

This press release does not constitute an offer to sell or a solicitation of an offer to buy any securities nor will there be any sales of the Bonds in any state or other jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction.

Forward-Looking Statements

This release may contain statements about future events and expectations that are forward-looking statements. Such statements are generally identifiable by the terminology used such as "plan," "expect," "estimate," "budget," "intend," "projection" or other similar words. A number of important factors, including factors affecting the Fund's operations and financial condition, could cause actual results to differ materially from those stated in such forward-looking statements.

All forward-looking statements speak only as of the date of this press release even if subsequently made available by the Fund on its website or otherwise. The Fund disclaims any obligation to update or revise any forward-looking statements that may be made to reflect new information or future events or circumstances that arise after the date made or to reflect the occurrence of unanticipated events, other than as required by law.

PR Newswire

Green is Good – Green Bonds Continue Growth.

Green bonds are hot. According to the Climate Bonds Initiative, global green bond issuances in 2019 exceeded $150 billion USD through August and forecasts have increased to $250 billion USD for the year. If these forecasts are met – or the market even comes close – 2019 will easily mark the largest annual green bond issuance to date.

The green bond market matches investors looking to support projects with specific environmental or "green" attributes with borrowers who want to finance those projects. This unique ability to connect market participants during a period of increasing concern for climate-related risks has driven this market's impressive growth over the past decade. In fact, the green bond market continues to attract increased interest and has become one of the most visible examples of the rapid growth and acceptance of environmental, social and governance, or ESG, investing. As the global green bond market continues to grow and develop rapidly, a brief overview of green bond fundamentals is timely

for those wanting to learn more about this dynamic market.

A brief history

Emerging in 2007, the green bond market developed on a voluntary and self-regulatory basis. Prior to the advent of green bonds, global bond markets had financed, and continue to finance, substantial investments in projects with environmental benefits. However, the landscape shifted in 2007 when the European Investment Bank issued a €600 million "Climate Awareness Bond" and in 2008 when World Bank issued $300 million USD Green Bonds. The groundbreaking aspect of those transactions was providing investors a product that targets capital to projects with specific attributes. In these cases, the projects had green attributes. And while innovative financing techniques continue to emerge within the green bond market, the overall story is less about new financing vehicles than it is a movement to facilitate purpose-driven investment strategies.

Growing concern for climate-related issues, particularly in Europe, made green bonds an attractive investment opportunity and the market steadily grew and began to receive mainstream acceptance in 2013 and 2014. In an attempt to provide guidance to market participants, the International Capital Markets Association released the first version of its Green Bond Principles in 2014. The Green Bond Principles is one of the most widely referenced set of green bond guidelines, and it sets forth best practices for green bond issues in an effort to increase transparency and legitimacy for the self-regulated market. Another notable institution in the green bond market, the Climate Bonds Initiative, has created a labelling program for green bonds that integrates the Green Bond Principles and conforms to the requirements of the Paris Agreement.

Green bonds have now expanded across global financial markets. From 2007 to 2018, nearly $580 billion of green bonds were issued globally, and growth is accelerating in 2019. And although European issuers continue to lead the way based on volume, green bonds are rapidly growing in the Americas and Asia.

What is a green bond?

Green bonds are not currently subject to a universal standard or definition. The fundamental characteristic of a green bond is that the bond proceeds are used for projects that possess green attributes. Green bonds raise funds for new and existing projects. In fact, many green bonds raise funds in advance of knowing the specific projects to which the capital will be allocated. In cases such as these, the issuer's framework and criteria for allocating funds is critical. Although some issuers may be reluctant to place overly restrictive parameters around their allocation decisions, more general or ambiguous selection criteria increases the potential for criticism. Thus the "Use of Proceeds" section of a prospectus and restrictions on use in any transaction documents are central to evaluating any green bond.

Issuers decide whether to label their bonds as green. While not required, many issuers seek the additional legitimacy of independent verification or certification and engage third-parties to review the green attributes of the bonds and the anticipated impact of the investment. Other than the targeted use of proceeds and any ancillary services related to verifying and certifying the use of proceeds, green bonds are quite similar to other bonds.

Green bonds finance a broad range of assets with a majority going to energy, building, transportation and water-related projects. Issuers of green bonds include sovereigns, local governments, government-backed entities and financial and corporate entities.

Measuring impact

One of the most scrutinized areas of the green bond market is assessing the environmental impact of green bond issuances. Green bond issuers must determine whether to (i) hire a third party to review the initial bond offering, (ii) undertake any ongoing reporting obligations and (iii) engage third-parties to verify any ongoing reporting obligations. Although generally relatively modest, agreeing to such actions does add to offering expenses and employee time commitments. Offsetting these costs is the fact that verification and continued reporting provide greater transparency and assure investors that funds are deployed as expected and do, in fact, make a positive environmental impact. Verification and continued reporting also reduce the risk of "greenwashing," the practice of using funds from green bonds for non-green purposes. These additional actions also help to promote the integrity of the green bond market and may very well become more common, or even required in certain jurisdictions, as the green bond market continues to mature.

Why issue a green bond?

In addition to the environmental benefits derived from the projects financed, green bonds carry important tangible and intangible benefits for both issuers and investors. For issuers, green bonds:

- diversify an investor base – green bonds are sought by a growing class of investors, several of which have environmental or other investment mandates
- increased demand – green bonds tend to have wider margins of oversubscription than comparable conventional bond offerings
- investor communication – green bonds demonstrate the issuer's commitment to values that investors, not to mention citizens, customers, shareholders and other stakeholders, find important
- price – recent evidence suggests that green bonds may be developing a small pricing advantage, or "greenium," over comparable non-green bonds.

For investors, green bonds:

- meet investment objectives – a growing number of investors have aspirational or mandatory green investment objectives
- financial performance – green bonds offer risk-adjusted returns generally consistent with more conventional bonds
- potential liquidity – green bonds have demonstrated stronger secondary market performance than conventional bonds.

A Look Ahead

As the green bond market continues to mature and attract increasing amounts of capital, regulators in several jurisdictions have moved to shape and align definitions and qualifications to promote legitimacy and consistency. For example, the European Union's Technical Expert Group on Sustainable Finance issued a report in July 2019 including recommendations to create standards and labels for green financial products. The resulting program, if adopted, would create a voluntary, non-legislative EU Green Bond Standard seeking to standardize comparability and credibility of the green bond market.

Not coincidentally, the green bond market's rapid growth is occurring as nations and corporations and seek to reduce carbon emissions. As global pressures for decarbonization continue to increase, we expect that the green bond market will continue to expand and play a critical role in the growth of green finance more generally. As investors increasingly seek the dual promise of positive financial and social returns, green bonds offer a promising method to cater to that appetite.

September 12, 2019

Eversheds Sutherland (US) LLP

BondLink and Ipreo by IHS Markit Form Alliance to Boost Transparency for Bond Investors.

BOSTON, Sept. 16, 2019 /PRNewswire/ — BondLink, the pioneer enterprise software company providing debt management & investor relations software to issuers in the $4 trillion municipal bond market, today announced an alliance with Ipreo by IHS Markit, a leading provider of solutions for municipal bond issuance. The alliance will enable institutional bond investors to access BondLink's issuer credit data using technology from Ipreo by IHS Markit.

"We're proud to align with Ipreo by IHS Markit to enhance transparency between issuers and investors in the municipal bond market," said Colin MacNaught, BondLink CEO & Co-Founder.

"Ipreo by IHS Markit is an incredible technology leader and plays a central role in the new issuance process. Working together, we can make critical issuer data more easily accessible to institutional investors in real-time as they evaluate new bond deals."

"Our product suite drives efficiencies for banks and bond investors during the new issuance process. We're excited to collaborate with BondLink to make issuer data more accessible for investors," said Will MacPherson, managing director at Ipreo by IHS Markit.

In addition to this alliance, BondLink has a data agreement with Fidelity Investments to host issuer information for retail investors using Fidelity.com to buy municipal bonds. Together, these collaborations facilitate a more efficient bond market by promoting transparency through enhanced technology.

About BondLink

Led by founders Colin MacNaught, CEO, and Carl Query, CTO, BondLink's cloud-based debt management & investor relations platform provides efficiencies to issuers and investors in the $4 trillion municipal bond market. Enhanced investor disclosure and access is supported by market regulators, as well as issuer and investor trade associations. Academic research also shows that better, more accessible disclosure can lead to lower costs for issuers. Headquartered in Boston, BondLink is backed by top investors, including Franklin Templeton Investments, one of the largest municipal bond funds in the country.

To learn more, please visit www.BondLink.com.

Shifts in Tax Policy Need to Address Puerto Rico's Status.

Treasury Secretary Steven Mnuchin rcently met with Puerto Rico Gov. Wanda Vázquez and other officials to inform them of the need to phase out the 4 percent excise tax imposed on American Foreign Controlled Corporations (CFC). This tax was conceived in 2010 by then Gov. Luis Fortuño as a short-term measure to generate additional revenues to the failing Puerto Rican government, which the IRS has allowed the CFC's to take as a tax credit.

Since then, this excise tax generates an estimated $1.8 billion yearly to the commonwealth's coffers. CFC's in Puerto Rico report approximately $40 billion yearly in profits, most of it generated outside of the island but reported in Puerto Rico for its tax advantages.

The Obama's administration had withheld a ruling on the constitutionality of the issue under the assumption that it was a temporary measure. Each governor since has extended the law, which is now set to expire in 2027.

This taxation news would appear to be of little consequence for the greater part of the population. In fact, Mnuchin's statements constitute a shift in Treasury policy and invites welcome attention to the current constitutional underpinnings of how the United States exercises its authority over Puerto Rico.

Underlining this shift in tax policy is the unincorporated nature of the Territory of Puerto Rico. This judicial doctrine developed by the Supreme Court in the so-called insular cases at the turn of the 20th century, was created to address tariff and tax matters on goods imported to the United States from Puerto Rico. This doctrine holds that not all constitutional protection are applicable to the territories. The unincorporated territory doctrine is the ghost in the machine that has allowed for congressional discretion — some would argue justifiably "colonial" — in its treatment of Puerto Rico.

With the approval of the Supreme Court, Congress has discriminated for 120 years in favor of powerful economic forces at the expense of the general welfare of American citizens in Puerto Rico. First were the sugar barons, now it's the pharmaceutical companies. In the recent past, Section 936 of the Internal Revenue Code allowed for significant tax credits and incentives — aptly referred to at the time as "corporate welfare" — for American based manufacturers that were constitutionally unavailable in the rest of the country.

The triple exempt tax advantages of Puerto Rico's bonds, which made them so attractive in the municipal bond market and contributed to our decades long public debt financing addiction, are also based in this same constitutional justification.

Puerto Rico's current fiscal and economic crisis is due in great part to the unincorporated territory doctrine, that until recently benefited the short-term interests of investors and manufacturers, at the expense of long-term economic stability and growth. It is perfectly understandable why the defenders of the status quo lobby to obtain preferential tax treatments. These preferential tax treatments, however, have likely lead Puerto Rico to PROMESA and the Financial Oversight and Management Board (FOMB).

Within this context, Mnuchin statements that the federal government will not continue to give tax credit to CFC's — which make payments made under local law 154, and that the government of Puerto Rico must phase it out within 6 months — are a welcomed first step in leveling the playing field between Puerto Rico and other state jurisdictions. Puerto Rico legislative leadership has already said it will be filing the required legislation.

Under the existing 2017 Internal Revenue Code, the Puerto Rico government can make up its revenues shortfalls by imposing a 10.5 percent income tax on its foreign corporation's intangible assets, which will receive an 80 percent credit from the IRS. This income tax is estimated to produce close to $3.7 billion to the commonwealths revenues. Of course, many of these same "foreign corporations" have individual agreements with the Puerto Rico Treasury that inure them from taxation and may not be constitutionally impaired.

This been said, a change in tax policy that fails to address how Puerto Rico is classified under the

Internal Revenue Code — that is, as a foreign jurisdiction — will always be subject to modifications as Congress sees fit at any given moment. As long as Puerto Rico is kept as an unincorporated territory, which gives Congress the constitutional cover to treat it as a foreign jurisdiction, it will remain hostage to the vagaries of special interests.

Any proposed changes in the Internal Revenue Code must begin with an explicit acknowledgment by Congress that Puerto Rico is an incorporated territory that needs to be treated as any other stateside jurisdiction.

.THE HILL

BY ANDRÉS L. CÓRDOVA, OPINION CONTRIBUTOR — 09/15/19 02:00 PM EDT

Andrés L. Córdova is a law professor at Inter American University of Puerto Rico, where he teaches contracts and property courses. He is also an occasional columnist on legal and political issues at the Spanish daily El Vocero de Puerto Rico

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Muni Bonds Ride the Wave of the Treasury Market Rally.

Catherine Stienstra, head of municipal investments at Columbia Threadneedle Investments, discusses the impact of low interest rates on the municipal bond market. She speaks with Bloomberg's Vonnie Quinn in this week's "Muni Moment" on "Bloomberg Markets."

Watch video.

Bloomberg Markets | Muni MomentTV Shows

September 11th, 2019, 8:34 AM PDT

Bondholders With $1.1 Billion Riding on N.J. Mall Get a Peek.

- **Muni investors invited to visit American Dream this week**
- **Bond prices have soared since unrated, $1.1 billion bond sale**

Wall Street has over $1.1 billion riding on the success of New Jersey's American Dream mega mall, the massive consumer utopia outside New York City that's been in the works for nearly two decades.

So on Thursday, bondholders will get a sneak peek at the retail and entertainment hub to see what their investments helped create.

Bondholders have been invited to visit the complex in East Rutherford, New Jersey, ahead of its much-anticipated opening next month, according to a regulatory filing. Among the firms sending someone is Nuveen, one of the biggest holders of debt issued in 2017 to complete the American Dream.

Continue reading.

Bloomberg Markets

By Amanda Albright

September 11, 2019, 7:22 AM PDT Updated on September 11, 2019, 8:31 AM PDT

TAX - COLORADO
Rare Air Limited, LLC v. Property Tax Administrator
Colorado Court of Appeals, Division II - August 29, 2019 - P.3d - 2019 WL 4064961 - 2019 COA 134

Taxpayer, a lessee of land owned by political subdivision of State, appealed order of the Board of Assessment Appeals (BAA) upholding tax assessment on aircraft hanger facility which taxpayer had constructed on the land.

The Court of Appeals held that:

- Lessee possessed a taxable ownership interest in the hanger facility;
- Lessee's possessory interest in hanger facility was subject to taxation; and
- Unit assessment rule did not apply to lessee's ownership of hanger facility.

Lessee of land owned by airport authority, a political subdivision of State, upon which lessee constructed an aircraft hanger facility at its own expense, possessed a taxable ownership interest in the hanger facility, where lease vested in lessee significant benefits of ownership in the facility, including exclusive use of the facility, right to all depreciation and tax advantages, retention of all profits generated, and rights to encumber improvements and assign or transfer them with proper authorization, lessee also had duty to maintain the facility at its own expense, to pay any assessed taxes pursuant to the terms, and to insure the facility at its own expense, and lessee held title to the facility.

Lessee's possessory interest in aircraft hanger facility on land owned by airport authority, a political subdivision of State, was subject to taxation; lessee owned a significant interest in the property from which it derived profits for private benefit, and lessee had exclusive right of possession to the property.

Look to Insured Munis for High Quality and Attractive Income.

MacKay Municipal Managers have said that insured municipal bonds are like having a belt with suspenders. What does that mean? Investment-grade municipal bonds are already high-quality investments, with historically lower default rates than similarly rated corporate bonds. When you wrap the bonds in insurance it adds an extra layer of protection so that in the event an issuer files for bankruptcy and can no longer service the debt, the insurance company will step in and pay the coupon and principal. Essentially, there are two entities available to pay back bondholders.

This doesn't mean insured municipal bonds are safer than Treasuries (the two remaining municipal

bond insurers writing new business were most recently rated AA), but what they lack in a top-notch rating they make up for in better long-term historical performance and attractive tax-equivalent yield. That yield component will continue to be important now that the Federal Reserve has cut rates and may continue to do so, making the hunt for yield top of mind for investors.

Figure 1 shows how insured municipal bonds have performed compared to Treasuries since the start of 2018. The shaded areas represent time periods that the S&P 500 Index saw significant drawdowns; as expected, during these periods Treasuries outperformed. However, even with four volatile time periods over 19 months, insured municipal bonds still outperformed Treasuries by a cumulative 300bps, and with generally less drawdown (as shown in Figure 2).

Continue reading.

by SPECIAL TO ETF TRENDS on SEPTEMBER 15, 2019

By Maria Rahni, CFA Product Management, New York Life Investments

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2019 Median Ratios for Not-For-Profit Hospitals and Healthcare Systems: Fitch Webinar Replay

Fitch Ratings hosted a webinar to discuss the 2019 Median Ratios for Not-For-Profit Hospitals and Healthcare Systems. Please see our recent press release on smaller U.S. NFP hospitals and their positive turnaround in operating margins.

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California Economic Summit.

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How to Safely Beef Up Bond Returns.

It's easy to see why yield-seeking investors might be demoralized: The rate on 10-year Treasuries, which stood above 3% last autumn, had fallen recently to a mere 1.8%. And things could very well get worse, according to financial advisor Ira Mark.

"It wouldn't surprise me if we retest the low of the [10-year] U.S. Treasury that was hit in July 2016—1.35%," says Mark, Barron's 30th-ranked advisor in New York. But yields of up to 5% are available for those willing to take on a bit more risk, he adds.

A 27-year veteran investor, Mark is unusual among financial advisors in emphasizing fixed income over stocks. He typically recommends that clients use investment-grade bonds or other debt instruments for 75% of their portfolio. For the equity portion, he likes high-quality stocks with a

history of increasing their dividends. “It’s a slow and steady way to build a portfolio and offer consistent” returns, he says.

Among Mark’s favorite investments are high-credit-quality municipal kicker bonds. These bonds typically offer strong yield to compensate investors for uncertainty about their call date. They get their name because the yield received by the investor increases, or “kicks,” if the issuer declines to buy them back when their call dates arrive.

Mark recommends essential-service revenue bonds—those issued to pay for tunnels, bridges, airports, water systems, and the like. Consumers can’t really opt out of using such infrastructure, and that’s a pretty good hedge against the possibility of the bonds defaulting. “I have always told clients that you don’t negotiate at the Midtown Tunnel; you pay the toll to go in and out of Manhattan” from New York’s borough of Queens, Mark says. “Those tolls pay the debt services on the bonds, and, if need be, they can raise those tolls.”

Kicker munis have an unusual price structure that frightens off some individual investors: They’re sold for more than their par value, meaning that the issuer pays less than the bonds’ face value when repurchasing them. But Mark finds that their returns still can beat those of regular corporates.

Among his current holding is a Port Authority of New York and New Jersey bond that matures in 2040. Rated AA- (Standard & Poor’s fourth-highest rating), it will yield 1.75% if held to call in May 2025, and 3.77% if held to maturity. Both numbers factor in the premium-pricing issue. The income is free of local, state, and federal taxes for residents of New York or New Jersey. A North Texas Thruway Authority muni bond, meanwhile, yields 2.20% if called at the start of 2027 and 3.89% if held to maturity.

Mark also likes preferred stock, which generally pays a fixed dividend. Preferreds are higher in the credit structure than common shares; in a bankruptcy, their owners would come just behind bondholders in the pecking order for repayment. Recent issues, including one from Bank of America, sport yields in the 5% range.

Such high yields compensate investors for taking on interest-rate risk. If rates rise, the value of fixed-income investments, including preferred shares, falls. But global investors have flocked to Treasuries as an alternative to their own countries’ even lower-yielding government bonds, and Mark thinks that dynamic could help suppress U.S. rates for several more years.

Aside from their attractive yields, preferreds offer a tax advantage. Most pay “qualified” dividends, which are taxed at a top federal rate of 23.8%—versus the top rate of 37% on income from corporate bonds.

What’s more, current supply-and-demand dynamics bode well for preferreds’ potential price appreciation. Financial institutions, the biggest issuers, have scaled back issuance over the past several years.

How much of each investment should investors own? Mark recommends using munis for 60% of a fixed-income portfolio, preferreds for 30%, and short-term Treasuries for 10%.

But if kicker bonds and preferreds are so attractive, why own a slug of Treasuries, too? First, Mark says, 30-, 60-, and 90-day Treasuries out-yield most other cash alternatives. Second, they’re exempt from state income tax, adding after-tax return for residents of states with income taxes. And third, the easily liquidated paper is “dry powder to take advantage of future opportunities,” he observes. For many investors, that’s a winning combination.

Barron's

By Steve Garmhausen

Sept. 13, 2019 7:00 am ET

How a Municipal Bond Fund Team Digs Deep for Value.

Investing in the many municipal bonds that finance mundane things like the local sewage-treatment plant can often require more expertise than buying headline-grabbing hot stocks like Facebook or Amazon.com .

With more than 55,000 active muni issuers in the marketplace, John Miller, a co-manager of the Nuveen Strategic Municipal Opportunities fund (ticker: NSAOX), has plenty of work to do.

"These issuers might have several different bond deals outstanding at any given point in time," Miller says. "So, the total number of individual muni bonds is approaching two million." An average bond issuance size is just $25 million, he notes. That means researching individual bonds can be challenging.

Continue reading.

Barron's

By Lewis Braham

Sept. 12, 2019 8:00 am ET

FINRA Regulatory Notice 19-28: Guidance Regarding Member Firms' Supervisory Obligations when Participating in Investment-Related Activities with Municipal Clients.

Summary

FINRA is issuing this Notice to remind member firms of their supervisory obligations under FINRA Rules 3110 (Supervision) and 3120 (Supervisory Control System) if they hold or transact in customer accounts owned by municipal entities or obligated persons (municipal clients), as defined in Section 15B of the Securities Exchange Act of 1934 (Exchange Act), and participate in investment-related activities with municipal clients, such as recommending or selling non-municipal securities products to such municipal clients. Under these circumstances, member firms are obligated to determine if such activities require registration as a municipal advisor.

Questions concerning this Notice should be directed to:

- Cynthia Friedlander, Senior Director, Fixed Income Regulation, at (202) 728-8133; or
- Victoria Crane, Associate General Counsel, Office of General Counsel, at (202) 728-8104.

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