Bond Case Briefs

Municipal Finance Law Since 1971

Issue 75

- SEC Hits MAs, Execs With $200,000 Fine in First of a Kind Case.
- GFOA Issues Alert on MCDC Initiative Settlement Terms for Issuers.
- MSRB: Implications for Supervisory Procedures of Newly Effective Rules.
- GFOA Issues Alert on Rule G-42.
- SIFMA to SEC: It's Time to Revise Rule 15c2-12 on Muni Disclosure.
- MSRB Updates Content Outline for Municipal Advisor Qualification Exam.
- SEC Said to Study Muni Bank Loan Disclosure That Vanguard Wants.
- Defending Wall Street Fees.
- Going Green: Evolution of Renewables ABS Discussed.
- Trail of Defaults Leads to Dark Corner of Tax-Exempt Bond Market.
- Bill Would Create New $5B Category of PABs for Government Buildings.
- NABL: IRS TEB Announces Form 8038-CP Changes.
- And finally, please bow your heads for a moment of silence to commemorate the demise of "adult-content" conventions in Dallas, Texas. While Three Expo Events, L.L.C. claimed that participants in its three-day adult entertainment expo called "Exxxotica" (inclusion of an additional x or two, clearly an oversight) complied with all applicable City regulations, the City begged to differ. As the court's opinion drily notes, "The City offers a different view of what occurred at the 2015 Exxxotica expo." The ensuing litany of offenses are, sadly, unfit for enumeration in a fine, upstanding publication such as this, but please feel free to visit the opinion.

ZONING - GEORGIA

Schumacher v. City of Roswell

Court of Appeals of Georgia - June 1, 2016 - S.E.2d - 2016 WL 3086089

City property owners filed an action against city that challenged city's approval of a new zoning ordinance and map that rezoned owners' properties.

The Superior Court granted city's motion for judgment on the pleadings. Property owners appealed.

The Court of Appeals held that city property owners' appeal from the Superior Court's review of a local government zoning decision required appeal by discretionary action.

Appeal by city property owners from the Superior Court's review of a local government zoning decision required appeal by discretionary action, pursuant to statute stating appeals from Superior Court decisions reviewing decisions of state and local administrative agencies must be brought by application for discretionary appeal. Owners' amended complaint seeking declaratory and injunctive relief challenged city council's decision to approve a new zoning map on constitutional due process and other grounds, all of owners' requests for relief were tied to city council's zoning decision, and relief could not be granted or denied without affirming or reversing the city council's zoning decision.

MUNICIPAL ORDINANCE - ILLINOIS

McGrath v. City of Kankakee

Appellate Court of Illinois, Third District - May 16, 2016 - N.E.3d - 2016 IL App (3d) 140523 - 2016 WL 2853444

Owner of vehicle that had been impounded brought purported class action against city alleging that its impoundment ordinance violated due process and was an unlawful attempt to use police powers to produce revenue.

The Circuit Court granted city's motion to dismiss. Owner appealed.

The Appellate Court held that:

- Owner lacked standing to assert due process challenge to ordinance, and
- Ordinance was not unconstitutional attempt to raise revenue through use of police powers.

Named plaintiff of class action did not allege that signs were not posed when her car was impounded, and therefore plaintiff lacked standing to challenge city's impoundment ordinance as violative of due process based on lack of adequate notice. Although plaintiff alleged that city did not post signs notifying drivers of ordinance until five years after it was passed, plaintiff did not allege that she was not provided with notice prior to city impounding her vehicle.

City's impoundment ordinance, which contained a $500 charge, did not constitute an attempt to raise revenue through police powers in violation of state constitution. City's use of the word "penalty" in the ordinance established that the charge was a fine, not a fee, and fine was reasonably related to legitimate interest of deterring crime.

LABOR - MINNESOTA

In re Clarification of an Appropriate Unit

Court of Appeals of Minnesota - May 16, 2016 - N.W.2d - 2016 WL 2842883 - 2016 L.R.R.M. (BNA) 154, 574

Association of public-school teachers petitioned the Bureau of Mediation Services (BMS) for clarification as to whether school district's pre-kindergarten instructors were included in teacher bargaining unit.

A BMS hearing officer concluded that the instructors were not included in the bargaining unit. Association appealed.

The Court of Appeals held that the instructors were not "teachers" for purposes of the Public Employee Labor Relations Act (PELRA), and thus were properly excluded from the bargaining unit.

School district's pre-kindergarten instructors were not "teachers" for purposes of the Public Employee Labor Relations Act (PELRA), and thus were properly excluded from the teacher bargaining unit. Instructors were not required to be licensed by the board of teaching or the commissioner of education, as there was no licensure requirement in state statutes governing pre-kindergarten school-readiness programs, no licensure requirement in federal law governing pre-kindergarten programs receiving federal Title I funds, and no licensure requirement imposed by the

school district.

IMMUNITY - MISSISSIPPI

Mississippi Transp. Com'n v. Adams ex rel. Adams

Supreme Court of Mississippi - June 2, 2016 - So.3d - 2016 WL 3091194

Motorcyclist's widow filed suit against Mississippi Department of Transportation (MDOT) and Mississippi Transportation Commission for wrongful death, arising out of motorcycle hitting uneven portion of pavement while motorcyclist, who had inadvertently entered closed portion of highway that was under construction, was attempting to reenter open portion of road, which caused motorcycle to rotate, and motorcyclist being thrown from motorcycle into traffic.

The Circuit Court denied defendants' motion for summary judgment on grounds of immunity under Mississippi Tort Claims Act (MTCA), and defendants appealed.

The Supreme Court of Mississippi held that:

- Defendants' generally discretionary function with respect to placement of traffic control devices was rendered ministerial by MTC's adoption of Red Book standards for road and bridge construction, for purposes of immunity;
- Adoption of Red Book standards imposed ministerial, mandatory duty on MDOT to replace white edge lines that had been covered or removed during operations with temporary stripe before work was discontinued for day;
- Ministerial duty to "organize an adequate and continuous patrol for the maintenance, repair, and inspection of all of the state-maintained state highway system" encompassed section of interstate highway that was under reconstruction; and
- Provision of MTCA that "governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim … arising out of a plan or design for construction or improvements to public property, including, but not limited to, public buildings, highways, roads, streets" did not apply.

LIABILITY - MISSISSIPPI

City of Vicksburg v. Williams

Supreme Court of Mississippi - May 26, 2016 - So.3d - 2016 WL 3022658

Arrestee filed a complaint against city after he was arrested for discharging a firearm.

City filed a motion to dismiss. The Circuit Court denied the motion. City filed an interlocutory appeal.

The Supreme Court of Mississippi held that arrestee's allegation that city police officers acted with complete disregard to arrestee's rights, thereby injuring him, when they placed him under arrest for discharging a firearm within city limits was sufficient to state a claim against city for gross negligence.

Arrestee's allegation that city police officers acted with complete disregard to arrestee's rights, thereby injuring him, when they placed him under arrest for discharging a firearm within city limits,

even though arrestee discharged his firearm to avoid being attacked by neighbor's dog, was sufficient to state a claim against city for gross negligence.

STANDING - MISSOURI

City of Slater v. State

Missouri Court of Appeals, Western District - May 3, 2016 - S.W.3d - 2016 WL 2338532

City, Missouri municipal league, assistant city administrator, municipal court clerk, and individual sought declaratory relief challenging state's and office of state courts' interpretation of statute requiring courts to collect a three-dollar surcharge from litigants for benefit of sheriffs' retirement fund.

The Circuit Court granted defendants' motion to dismiss. Plaintiffs appealed.

The Missouri Court of Appeals held that:

- Court of Appeals had appellate jurisdiction to consider the challenge;
- Assistant city administrator and municipal court clerk lacked taxpayer standing;
- City, nor assistant city administrator and municipal court clerk in their official capacities, alleged any direct impact resulting from the statute, and thus lacked standing;
- Missouri municipal league lacked associational standing; and
- Individual lacked standing.

The Court of Appeals had appellate jurisdiction to consider city's challenge to statute requiring courts to collect a three-dollar surcharge from litigants for benefit of sheriffs' retirement fund. The challenge was conditional, depending on the manner in which the statute was construed, and thus did not vest exclusive appellate jurisdiction with the Supreme Court.

Assistant city administrator and municipal court clerk lacked taxpayer standing to seek declaratory judgment on state's and office of state courts' interpretation of statute requiring courts to collect a three-dollar surcharge from litigants for benefit of sheriffs' retirement fund, where petition failed to allege that compliance with the requirements of the statute would require expenditures, directly caused by the allegedly unlawful surcharge, which were separate and apart from the general operating expenses that municipal courts would incur regardless.

City, nor assistant city administrator and municipal court clerk in their official capacities, alleged any direct impact resulting from rule requiring courts to collect a three-dollar surcharge from litigants for benefit of sheriffs' retirement fund, and thus, they lacked standing to seek declaratory judgment on state's and office of state courts' interpretation of the rule. They did not allege that they were entitled to receive any part of the surcharge, or that the surcharge diverted money away from their municipalities, rather, they merely alleged that they would be required to collect and distribute a particular surcharge along with other court costs.

Missouri municipal league lacked associational standing to seek declaratory judgment on state's and office of state courts' interpretation of statute requiring courts to collect a three-dollar surcharge from litigants for benefit of sheriffs' retirement fund, where petition failed to allege facts sufficient to confer standing on Missouri municipalities.

Injury claimed by individual, prior payment of surcharge under statute requiring courts to collect a three-dollar surcharge from litigants for benefit of sheriffs' retirement fund, could not be remedied

by relief he requested, and thus, he lacked standing to seek declaratory judgment on state's and office of state courts' interpretation of the statute, where individual was not seeking a refund of amount paid, damages for allegedly improper collection of the surcharge, nor had he argued that he would again be subject to the surcharge at some point in the future.

ZONING - NEBRASKA

Lindner v. Kindig

Supreme Court of Nebraska - May 27, 2016 - N.W.2d - 293 Neb. 661 - 2016 WL 3036328

Resident brought action against city and its mayor seeking declaration that ordinance creating off-street parking district adjoining store was unconstitutional.

The District Court dismissed action on limitations grounds. Resident appealed. The Supreme Court of Nebraska reversed and remanded. On remand, the District Court granted summary judgment for city and mayor. Resident appealed.

The Supreme Court of Nebraska held that:

- A constitutional claim can become time-barred just as any other claim, and
- Four-year catchall limitations period applied to action.

Four-year catchall limitations period applied to action brought by resident against city and its mayor seeking declaration that ordinance creating off-street parking district adjoining store was unconstitutional.

ATTORNEYS' FEES - NORTH DAKOTA

Jury v. Barnes County Mun. Airport Authority

Supreme Court of North Dakota - June 2, 2016 - N.W.2d - 2016 WL 3090685 - 2016 ND 106

Self-represented employee sued municipal airport authority after it terminated her at-will employment, asserting causes of action including workplace discrimination.

The District Court granted summary judgment to authority and awarded attorney fees to authority. Employee appealed.

The Supreme Court of North Dakota held that:

- District court was not required to independently provide notice to former employee of hearing on authority's summary judgment motion after authority had already provided notice of hearing; and
- District court did not abuse its discretion in awarding $10,000 in attorney fees to authority.

District court was not required to independently provide notice to former employee of municipal airport authority of hearing on authority's summary judgment motion in employee's action on claims including employment discrimination after authority had already provided notice of the hearing, though district court had previously provided notice to employee of five telephonic hearings.

District court did not abuse its discretion in awarding $10,000 in attorney fees to municipal airport authority, as defendant in employment discrimination action by terminated employee, based on

authority's prevailing party status upon granting of summary judgment, as well as employee's repeated failures to timely cooperate in discovery, bringing meritless motions, and disregarding court orders.

BANKRUPTCY - PUERTO RICO

Puerto Rico v. Franklin California Tax-Free Trust

Supreme Court of the United States - June 13, 2016 - S.Ct. - 2016 WL 3221517

Investors commenced actions against Commonwealth of Puerto Rico, its Governor, its Secretary of Justice, and the Government Development Bank to challenge validity of Puerto Rico Public Corporation Debt Enforcement and Recovery Act, which was Puerto Rico's own municipal bankruptcy law, and enjoin its implementation.

The United States District Court consolidated actions and permanently enjoined enforcement of the Recovery Act on ground that it was preempted. Defendants appealed. The Court of Appeals affirmed. Certiorari was granted.

The Supreme Court of the United States held that although Puerto Rico is not a "State" for purposes of the federal Bankruptcy Code's "gateway" provision governing who may be a debtor, and so cannot authorize its municipalities to seek relief under Chapter 9 of the Code, it is a "State" for other purposes related to Chapter 9, including that chapter's preemption provision, such that the Code preempts Puerto Rico's Recovery Act.

PENSIONS - RHODE ISLAND

Morse v. Employees Retirement System of City of Providence

Supreme Court of Rhode Island - June 6, 2016 - A.3d - 2016 WL 3141754

City employee, a fire-rescue captain, petitioned for writ of certiorari seeking review of decision of city retirement board denying his application for an accidental disability pension.

As a matter of first impression, the Supreme Court of Rhode Island held that employee was not required to show that all three independent medical examiners agreed that he was permanently disabled as a result of a work-related injury.

A city employee who applies for accidental disability retirement benefits under an ordinance requiring three independent medical examiners to "so certify" to the city retirement board the conditions of the service performed by the employee resulting in such disability is not subject to a rule requiring all three to agree that the employee is permanently disabled as a result of a work-related injury.

ZONING - TEXAS

Town of Lakewood Village v. Bizios

Supreme Court of Texas - May 27, 2016 - S.W.3d - 2016 WL 3157476

Town, a general-law municipality, brought action against owner of subdivision lot located in town's

extraterritorial jurisdiction (ETJ), seeking injunction to stop owner's construction of home on lot until owner obtained town building permit.

The District Court granted temporary injunction. Owner filed interlocutory appeal. The Court of Appeals reversed and remanded. Town filed petition for review, which was granted.

The Supreme Court of Texas held that:

- Supreme Court had jurisdiction over interlocutory appeal;
- Town did not have statutory authority to enforce its building codes within its ETJ, abrogating *City of Lucas v. North Texas Municipal Water District*, 724 S.W.2d 811; and
- Public policy arguments did not permit town to enforce building codes within its ETJ.

Supreme Court had jurisdiction over town's petition for review from decision on interlocutory appeal reversing and remanding temporary injunction granted in favor of town to stop owner of subdivision lot located in town's extraterritorial jurisdiction (ETJ) from constructing home on lot until owner obtained town building permit. Although decision reversing and remanding temporary injunction was unanimous, decision conflicted with other appellate court decisions.

Town, a general-law municipality, did not have statutory authority to enforce its building codes or building-permit requirements within its extraterritorial jurisdiction (ETJ) in order to require owner of subdivision lot located in town's ETJ to obtain town building permit prior to building home on lot. Although town had authority to enforce rules and ordinances governing plats and subdivisions of land within its ETJ, building codes and building-permit requirements were not rules governing plats and subdivisions, statutes that referenced enforcement of building codes within ETJs and recognized that other statutes might permit such authority did not authorize town to enforce building codes within its ETJ, and Local Government Code did not impliedly allow town to enforce building codes within its ETJ; abrogating *City of Lucas v. North Texas Municipal Water District,* 724 S.W.2d 811.

Public policy arguments in support of position that town, as general-law municipality, had power to enforce building codes and building-permit requirements within its extraterritorial jurisdiction (ETJ) did not permit town to enforce codes in order to require owner of subdivision lot within town's ETJ to obtain town building permit prior to constructing home on lot; as general-law municipality, town was not permitted to exercise its powers outside its corporate limits unless legislature expressly or necessarily granted such authority, and courts were not permitted to judicially confer authority on town, regardless of compelling public policy reasons for doing so.

IRRIGATION AND DRAINAGE PERMITS - TEXAS

Sumner v. Board of Adjustment of City of Spring Valley Village

Court of Appeals of Texas, Houston (14th Dist.) - May 17, 2016 - Not Reported in S.W.3d - 2016 WL 2935881

Landowner brought action against city, city's board of adjustment, city building official, and neighbor, alleging numerous claims arising from drainage dispute, seeking declaratory judgment, and seeking certiorari review of board's decision rejecting landowner's protest of irrigation and drainage permit issued to landowner's neighbor.

The District Court denied petition for writ of certiorari, dismissed all claims against building official, and granted summary judgment to city and board. Landowner appealed.

The Court of Appeals held that:

- Trial court acted within discretion in severing claims against municipal defendants from claims against neighbor;
- Landowner failed to exhaust administrative remedies regarding his challenge to certificate of occupancy issued by city building official, as would be required for trial court to have subject matter jurisdiction over landowner's petition for writ of certiorari seeking review of issuance of certificate;
- Harris County District Court lacked subject matter jurisdiction over landowner's inverse condemnation claim; and
- Landowner's action against building official was not proper subject of ultra vires claim.

Trial court acted within discretion in granting severance of landowner's claims against municipal defendants from claims against neighbor, in action arising out of drainage dispute in which landowner alleged that neighbor was improperly issued a permit for irrigation system and drain, even though claims included assertion that city building official acted in concert with neighbor to violate landowner's Water Code and constitutional rights. Severed claims could all be subject of independent lawsuits, and claims against municipal defendants were all resolved by trial court's grant of their motions to dismiss or for summary judgment.

Landowner failed to exhaust administrative remedies regarding his challenge to certificate of occupancy issued by city building official, as would be required for trial court to have subject matter jurisdiction over landowner's petition for writ of certiorari seeking review of issuance of certificate, where landowner did not appeal issuance to city's board of adjustment.

Harris County District Court lacked subject matter jurisdiction over landowner's inverse condemnation claim. While district courts were typically courts of general jurisdiction, Legislature had vested exclusive jurisdiction over inverse condemnation claims in the Harris County Courts at Law.

Landowner's request for declaration that city building official acted in concert with landowner's neighbor to violate Texas Water Code was not proper subject of ultra vires claim, in case arising out of official's grant of irrigation permit to neighbor. Real substance of request for declaratory relief was in fact a suit to recover for damage allegedly caused to landowner's property by altering flow of water on landowner's property.

Landowner's ultra vires claim against city building official, arising out of drainage dispute between landowner and landowner's neighbor, who had applied for and been granted an irrigation permit, was not ripe, where landowner did not complain of past action performed by official but instead sought to control future actions in event that neighbor submitted another plan for approval.

PUBLIC UTILITIES - TEXAS

Amarillo v. Railroad Commission of Texas

Court of Appeals of Texas, El Paso - May 25, 2016 - S.W.3d - 2016 WL 3020304

Cities sought judicial review of Railroad Commission's decision to set gas rates on a system-wide basis.

The District Court affirmed. Cities appealed.

The Court of Appeals held that:

- Cities lacked standing to challenge implementation of system-wide rates, and
- Exception to mootness doctrine for claims capable of repetition yet evading review did not apply.

Cities lacked standing to challenge implementation of system-wide gas rate increases and procedural fairness of hearing at which Railroad Commission approved the rates, where cities and gas utility entered into settlement agreement stipulating to rates consistent with implementing system-wide approach and precluding any charge back for past revenues, and cities enacted ordinances for the new rates, so that dispute as to rates was rendered moot, as reversal would not impact prior bills paid by customers, dispute as to procedural fairness was no longer ripe, as any decision would have been relevant only to future disputes handled in same fashion, and any decision would have been mere advisory opinion as to propriety of procedures for determining past rates.

Exception to mootness doctrine for claims capable of repetition yet evading review did not apply to cities' challenge of implementation of system-wide gas rate increase, which was rendered moot by partial settlement agreement between cities and gas utility stipulating to use of system-wide approach and cities' enactment of ordinances for new rates, where there was nothing inherently short about time period for approval and implementation of rates that precluded judicial review, and there was no indication that future rate cases would have been handled by Railroad Commission in same fashion.

TRESPASS - TEXAS

Savering v. City of Mansfield

Court of Appeals of Texas, Fort Worth - May 26, 2016 - S.W.3d - 2016 WL 3021928

Residential homeowners in gated community sued their homeowners' association and city, which had built a bridge over creek to connect the property adjacent to homeowners' land to public park, seeking a declaratory judgment that association owned the property adjacent to homeowners' land and seeking to quiet title to the property, and asserting claims against city for trespass, breach of restrictive covenants, and inverse condemnation.

The District Court denied homeowners' application for temporary injunction, and they appealed.

On denial of motion for reconsideration, the Court of Appeals held that:

- Trial court did not abuse its discretion by denying the homeowners a temporary injunction, preventing general public from accessing bridge, and
- Developer's purported conveyance of property to homeowners' association was not effective, and thus homeowners did not have standing to claim that city's alleged trespass caused them a presumed injury supporting injunctive relief.

Trial court did not abuse its discretion by denying residential homeowners in gated community a temporary mandatory injunction, requiring city to temporarily barricade bridge, which city had built over creek to connect property adjacent to homeowners' land to public park. Trial court had the discretion to believe or disbelieve any of the testimony, to determine that the additional pedestrian access provided by the bridge, when the neighborhood had already had a pedestrian access point that homeowner was aware of when she bought her home, did not constitute irreparable injury or extreme hardship, and to conclude that homeowners had not made a clear and compelling presentation of extreme necessity or hardship.

Even if declaration filed by subdivision's developer containing the gated neighborhood's restrictive covenants attempted to convey lots at issue to homeowners' association as part of the common properties, such conveyance was not effective because the developer filed declaration before the articles of incorporation for homeowners' association were executed or filed, and thus homeowners in the subdivision did not have standing to claim that city's alleged trespass on the property, by building bridge that connected the property to public park, caused them a presumed injury, supporting their request for temporary injunction preventing public from accessing the bridge.

CONSTITUTIONALITY - TEXAS

Three Expo Events, L.L.C. v. City of Dallas, Texas

United States District Court, N.D. Texas, Dallas Division - April 21, 2016 - F.Supp.3d - 2016 WL 1595500

Promoter of adult-content conventions brought action against city, alleging that it passed a content-based and viewpoint-based resolution prohibiting city from contracting with promoter to use convention center in violation of the First Amendment. Promoter moved for preliminary injunctive relief compelling city to contract with it for use of convention center.

The District Court held that:

- Promoter had standing to sue;
- Promoter failed to show convention center was a designated public forum for which strict scrutiny standard would be applied to city's actions;
- City's decision not to contract with promoter was reasonable; and
- Promoter failed to present evidence that city's refusal to contract with it was viewpoint-based.

Promoter of adult-content conventions adequately pleaded facts necessary to establish it had standing to sue city for preliminary injunction compelling city to contract with it for use of convention center to hold three-day entertainment exposition. Promoter pleaded a constitutional injury, the deprivation of its First Amendment rights, that was capable of being redressed by relief sought, an injunction restraining city from enforcing resolution and ordering city to enter into contract with promoter for its three-day exposition at city's convention center.

Promoter of adult-content conventions failed to provide any evidence that city convention center was a designated public forum, and therefore could not establish likelihood of success on essential element of its claim that, under strict scrutiny standard, city's denial of contract for use of convention center violated promoter's First Amendment rights, as required to obtain preliminary injunction compelling city to contract with it for use of convention center for three-day expo. Promoter did not offer any evidence that in creating or operating convention center, city had intentionally opened up a nontraditional forum for public discourse such that city would have heavy burden of showing its actions did not infringe promoter's First Amendment rights.

City established that its decision not to contract with promoter of adult-content conventions was reasonable in light of the purpose of the city's convention center, and thus promoter could not show likelihood of success on merits of its claim that city resolution prohibiting city from contracting with promoter for use of convention center violated promoter's First Amendment rights, as required to obtain preliminary injunction mandating that city enter into contract with promoter for use of convention center for three-day expo. City could have reasonably believed, having observed what transpired at promoter's previous expo held the year before, that it would be incongruous with

purpose of the convention center, to promote economic development of the city, to host an event that would likely include public lewdness and other conduct city ordinance would permit it to otherwise regulate.

Promoter of adult-content conventions failed to provide any evidence that was sufficient to rebut city's showing that it declined to contract with promoter for use of convention center for three-day expo based on belief about expected content of the expo rather than in opposition to promoter's purported viewpoints, and therefore promoter could not show likelihood of success on its First Amendment claim as required to obtain preliminary injunction compelling city to contract with it to use convention center. City's resolution prohibiting city from entering contract with promoter was both content and viewpoint neutral, and there was no clearly articulated particular viewpoint against which city could have discriminated when it passed the resolution.

TAX - FLORIDA

City of Fort Pierce v. Treasure Coast Marina, LC

District Court of Appeal of Florida, Fourth District - May 31, 2016 - So.3d - 2016 WL 3087680

After city was granted exemption from ad valorem taxes on two marinas it owned and operated, owner of private marina, which was not exempted, brought suit seeking declaratory and injunctive relief against application of the exemption to the city's marinas. Both parties moved for summary judgment.

The Circuit Court granted summary judgment to owner. City appealed.

On motion for rehearing, the District Court of Appeal held that city's marinas served a municipal or public purpose, and thus city was entitled to an ad valorem tax exemption.

City's marinas served a "municipal or public purpose," and thus city was entitled to an ad valorem tax exemption, even though they competed with other private marinas in the area. The marinas were open to public use, were exclusively owned and operated by the city, provided recreation for local residents, supported the local economy by attracting non-local residents, and were part of a larger recreational park complex.

SEC: Muni Advisors Acted Deceptively With California School Districts.

The Securities and Exchange Commission today announced that two California-based municipal advisory firms and their executives have agreed to settle charges that they used deceptive practices when soliciting the business of five California school districts.

An SEC investigation found that while School Business Consulting Inc. was advising the school districts about their hiring process for financial professionals, it was simultaneously retained by Keygent LLC, which was seeking the municipal advisory business of the same school districts. Without permission, School Business Consulting shared confidential information with Keygent, including questions to be asked in Keygent's interviews with the school districts and details of competitors' proposals including their fees. The school districts were unaware that Keygent had the benefit of these confidential details throughout the hiring process. Keygent ultimately won the

municipal advisory contracts.

This is the SEC's first enforcement action under the municipal advisor antifraud provisions of the Dodd-Frank Act.

"This unauthorized exchange of confidential client information could have given Keygent an improper advantage over other municipal advisors that were candidates for the same business," said Andrew Ceresney, Director of the SEC Enforcement Division. "The Dodd-Frank Act prohibits this type of deceptive behavior by advisors when dealing with municipal issuers."

School Business Consulting also is charged with failing to register as a municipal advisor.

"These laws apply not only to municipal advisors, but also those who solicit business on behalf of municipal advisors," said LeeAnn Ghazil Gaunt, Chief of the SEC Enforcement Division's Public Finance Abuse Unit. "Municipal entities should be able to trust that their selection of a municipal advisor is untainted by any breach of fiduciary duty."

Without admitting or denying the findings in the SEC's orders instituting settled administrative proceedings:

- School Business Consulting agreed to a censure and a $30,000 penalty.
- The firm's president Terrance Bradley agreed to be barred from acting as a municipal advisor and must pay a $20,000 penalty.
- Keygent agreed to a censure and a $100,000 penalty.
- Keygent's principals Anthony Hsieh and Chet Wang agreed to pay penalties of $30,000 and $20,000 respectively.

The SEC's investigation was conducted by Brian P. Knight, Monique C. Winkler, and Deputy Chief Mark R. Zehner of the Public Finance Abuse Unit with assistance from John Yun of the San Francisco Regional Office.

Date 13/06/2016

ACA Financial Guaranty Sues City of Buena Vista, Virginia.

- **Suit Seeks Payment On $9.2 million Bond Issue Used to Finance the Building of the Municipal Golf Course, Vista Links**
- **Legal Action Could Result in the Foreclosure of City Property including the City Hall, the Police Department Building, and Vista Links Golf Course.**

NEW YORK–(BUSINESS WIRE)–ACA Financial Guaranty Corporation ("ACA") filed suit today against the City of Buena Vista, Virginia for its default on $9.2 million in Lease Revenue Bonds issued in 2005 ("Series 2005") to refund debt the City had incurred building the municipal golf course, Vista Links.

Steve Higgs, Principal Attorney with The Higgs Law Firm stated, "ACA has worked with the City of Buena Vista for many years to accommodate its needs, and more recently has worked to come to a comprehensive resolution that would benefit all parties. After 16 months of continued non-payment by the City, ACA has decided to sue the City to force it to renew payments on the money it borrowed, and to demand it comply with the promises it made under the Bond agreements. The failure of the

City to pay back its Bonds has already resulted in it being excluded from some state borrowing programs, and is likely to impair future efforts for it to borrow from debt markets as long as it remains in default.

“The City’s failure to make its Bond payments could result in the foreclosure of its City Hall, its police department building, and its municipal golf course.”

The City of Buena Vista, Virginia issued annual appropriation bonds in 2005 in the amount of $9.2 million to refund debt the City had incurred to build Vista Links, a municipal golf course. The Bonds are “moral obligation” bonds to be paid back from monies appropriated by the City Council. The City further secured the bonds through a lien on certain city property including the City Hall, the police department building, and municipal golf course, Vista Links. The City also promised to give ACA a first lien on any building to which it moves its municipal services.

In July 2011, at the City’s request, ACA and the City entered into a Forbearance Agreement in which ACA allowed the City to reduce its debt payments to 50% of required debt service for five years. ACA agreed to allow the City to defer repayment of this money until 2035-2040, interest free.

In January, 2015 the City Council unilaterally violated the forbearance agreement by discontinuing all payments on the Series 2005 bonds, despite four members of the City Council having voted in favor of the forbearance agreement. The City then offered to settle the 2005 bonds by paying the value of the municipal golf course, City Hall and police department building, a value prohibitively less than the $9.2 million outstanding.

Mr. Higgs continued, “When the City was having problems in 2011, it came to ACA and asked for help. ACA agreed to reduce the payments by 50%, to be paid back on an extended basis. That’s a deal you would be hard pressed to get from any financial institution. Now the City has broken even that promise, and claims it cannot afford to pay the money back. But the City is not pursuing bankruptcy and is still paying all its other debt. That is unfair.

“In the long run, when you factor in the costs of litigation, the potential loss of the municipal buildings and golf course, the impaired ability to borrow in the future, and uncertainty about whether you can trust the City’s promises, the City would be better off paying the Bonds. The only way that not paying the Bonds makes any financial sense is if the City was contemplating reverting to town status and have Rockbridge County agree to accept it as part of the County.

“The City is engaging in conduct it would never allow from its own citizens. The City Council should honor its promises and pay back the money it borrowed. Even the City has to pay its debts.”

ACA is represented in this matter by Steven L. Higgs of STEVEN L. HIGGS, P.C. in Roanoke, VA.

June 13, 2016 05:30 PM Eastern Daylight Time

S&P: Debt Levels Flatline As U.S. States Prioritize Budget Management Over Investment.

After a small increase in fiscal 2014, the amount of aggregate tax-supported debt outstanding among the U.S. states declined in 2015. According to S&P Global Ratings’ calculations, total tax-backed debt balances outstanding fell by 1.04% compared with 2014. In some states, sluggish economic and revenue growth has limited bonding capacity. But even where legal debt limits aren’t a constraint,

still-lean fiscal margins have contributed to a general reluctance on the part of many states to add new spending commitments despite low interest rates.

For instance, adding new infrastructure can involve more than incrementally higher debt service costs. Often, it also entails new ongoing spending to operate and maintain new roads or facilities. According to the Congressional Budget Office, it's common for more than half of total spending on transportation and water infrastructure to be for operations and maintenance.

Continue reading.

14-Jun-2016

SIFMA: States Can do More to Improve Muni Issuer Disclosure.

WASHINGTON – The Securities Industry and Financial Markets Association is urging states to adopt policies to ensure issuers meet their disclosure requirements and provide investors with relevant information.

The recommendations come after SIFMA conducted a review of current state policies related to local government bond issuance, information disclosure, and financial audits. The study of state laws included all fifty states as well as the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

SIFMA also recently unveiled a state-by-state capital markets database that includes, among other things, downloadable data for each state detailing total muni bond issuance, top muni issuers, the number of broker/dealers and financial advisors, as well as total securities industry employment.

Michael Decker, a managing director and co-head of munis for SIFMA, said that the review of state laws is a response to muni market participants' concerns that the Securities and Exchange Commission may try to use disclosure problems to obtain authority from Congress to regulate issuers.

"I understand why issuers would be nervous about having the SEC as their regulator but there does seem to be a need for somebody to be paying attention to this issue from an oversight perspective," Decker said. "If it's not the SEC … then states are in a perfect position to take that role."

The SEC does not currently have direct regulatory authority over issuers' disclosures in the market. Its muni disclosure requirements run through broker/dealers. SEC Rule 15c212 prohibits dealers from underwriting most bonds unless they have reasonably determined that the issuer has contractually agreed to disclose annual financial and operating data as well as material event notices. Underwriters also must obtain and review issuer official statements to make sure they do not contain any false or misleading information that would be material to investors.

The SIFMA review found that only one state, Louisiana, has a law in place that is designed to help ensure local governments meet their legal disclosure obligations. The Louisiana law requires local governments to maintain records of continuing disclosure agreements (CDAs) and compliance actions. It also requires auditors to examine governments' CDA records and check that local governments have made their required financial filings.

Using auditors to "poke" issuers about their disclosure responsibilities has been a topic of discussion

at several municipal conferences and meetings over the past year and is something SIFMA recommended again after concluding the study.

Decker said SIFMA recognizes the auditor approach would not work for every state. Each state should adopt laws that accomplish the goal of overseeing issuers while fitting into the state's existing legal frameworks, he said.

SIFMA found that 17 states have policies in place that already require governments to file their official statements with state repositories and impose other disclosure requirements on local governments related to bond issuance. Four other states and the U.S. Virgin Islands have laws in place requiring governments to file financial audit information and make the filings publicly available.

"While these initiatives help improve the availability of financial information, they generally are targeted at citizens and taxpayers, not investors," SIFMA said.

Some states, like North Carolina, already have processes in place that can help them ensure compliance, according to SIFMA. North Carolina generally requires its Local Government Commission to approve all local government bond issues. That process could include compliance with outstanding CDAs as a condition of approving future bond issuances, SIFMA suggested.

SIFMA's review follows an ongoing discussion in the municipal market and among market groups on improving disclosure following the announcement of the SEC's Municipalities Continuing Disclosure Cooperation initiative. The initiative, begun in 2014, allows underwriters and issuers to receive lenient settlement terms if they self-report any instances during the past five years that issuers falsely claimed in official statements that they were in compliance with their self-imposed continuing disclosure agreements.

The initiative led to SEC settlements with 72 underwriters representing 96% of the market by underwriting volume. The SEC is expected to soon start releasing settlements with issuers. Some market groups and issuers are concerned the MCDC results could provide Congress with evidence that could be used to justify granting SEC regulatory authority over issuers.

The Bond Buyer

By Jack Casey

June 15, 2016

Bill Would Create New $5B Category of PABs for Government Buildings.

WASHINGTON – A bipartisan bill introduced in the House would allow state and local governments to issue up to $5 billion in private activity bonds to finance the construction and upkeep of certain publicly owned buildings.

The Public Buildings Renewal Act (H.R. 5361), introduced by Rep. Mike Kelly, RPa., would create a new category of private activity bonds for governments to join with private parties to help finance schools, medical facilities, police stations and other social infrastructure.

The recently introduced bill, which has nine co-sponsors, would amend the federal tax code to

provide another layer of tax-exempt financing that would encourage the use of public-private partnerships.

Section 142 of the federal tax code includes 15 categories of "qualified" PABs, one of which is qualified public educational facilities. Kelly's legislation would add a 16th category for qualified government buildings.

Kelly, a member of the House Ways and Means Committee, said his legislation would help resolve an "ongoing infrastructure crisis" that exists in public schools.

Kelly's bill defines qualified government buildings as an elementary or secondary school; public university buildings used for educational purposes; public libraries; courts; hospitals, health care facilities, laboratories and research buildings; public safety buildings including police and fire stations, medical facilities and jails; and government offices.

Tom Qualtere, a spokesman for Kelly, said the bonds would be exempt from state volume cap restrictions generally applied to PABS, and instead would be subject to a new, national cap of $5 billion.

State and local governments would be required to submit a funding application to the Treasury Department that includes the amount requested; the governmental unit that will own the project; and a project description and timeline.

Governments would also be required to provide anticipated funding sources and uses of funds for the project. Entities would be required to issue bonds in the amount allocated by Treasury within two years after the allocation date. If they fail to do so, the unused portion of the allocation would be revoked.

The bill would exclude any retail food or beverage facilities or buildings used for recreation and entertainment, including private golf courses, country clubs, convention centers and sports arenas.

Jessica Giroux, general counsel and managing director of federal regulatory policy for Bond Dealers of America, said the organization supports the proposed legislation because of the new financing routes it could provide municipalities.

"BDA would be supportive of this effort as yet another tool to provide state and local governments additional flexibility to build and rebuild important infrastructure projects, coupled with the benefits of leveraging private expertise," Giroux said. "It is important to remember that tax-exempt bonds have been the cornerstone by which local governments have been able to keep taxes and utility rates lower for ratepayers for over 100 years and it is critical that we maintain this important avenue for growth."

Under current tax regulations, public entities often must choose between taxable P3 financing or a non-P3 structure using tax-exempt bonds. If the legislation were to be enacted, P3 deals could use tax-exempt financing, thus expanding municipalities' ability to take advantage of the P3 structure for public building projects. Qualified PABs are also commonly used to fund transportation and public works projects.

Linda Schakel, a partner at Ballard Spahr in Washington, said there is a "fair amount" of privatization that currently exists in jail and correctional facilities as well as government offices, but is not sure if such private arrangements are common in public schools. She also supported Kelly's bill, but said it was yet to be seen if the partnerships would be based on a lease or a management contract.

“I think it’s a great idea to get private parties to come in and do particularly renovations that are needed,” Schakel said.

Still, Schakel said some private entities may have hesitations about entering into these agreements because they would not receive depreciation on the government-owned facilities.

“It may narrow the number of private parties interested in participating in the program,” she said. “Or it may end up being mainly private parties want to enter into long-term management contracts.”

Kelly’s legislation was referred to the House Ways and Means Committee on May 26.

The Bond Buyer

By Evan Fallor

June 14, 2016

SEC Hits MAs, Execs With $200,000 Fine in First of a Kind Case.

WASHINGTON – In a first of a kind case, two California-based municipal advisory firms and their executives agreed to pay a total of $200,000 to settle Securities and Exchange Commission charges that they used deceptive business practices in dealing with five school districts.

This is the first enforcement action the SEC has taken under the municipal advisor antifraud provisions of the Dodd-Frank Act.

School Business Consulting, Inc. (SBIC) was censured and fined a $30,000 while its president and sole employee Terrance Bradley was barred from acting as a municipal advisor and agreed to pay $20,000. The other MA firm, Keygent LLC, agreed to a censure and penalty of $100,000 and two of its managing directors, Anthony Hsieh and Chet Wang agreed to pay penalties of $30,000 and $20,000, respectively.

The SEC found that while School Business Consulting, through Bradley, was advising school districts about hiring financial professionals, it was simultaneously retained by Keygent LLC, which was seeking MA business from the school districts. During that relationship, Bradley improperly provided confidential information about the hiring processes of five school districts that were his clients to Keygent, Hsieh, and Wang, which may have led to the districts to hire Keygent as a municipal advisor.

The SEC found Bradley verbally disclosed his relationship with Keygent to the school district officials and Keygent’s contracts with the school districts also disclosed that Bradley was on its advisory board, but the districts were not aware Bradley was sharing the confidential information.

The defendants settled the charges without admitting or denying the charges.

A spokesperson for Keygent said in a statement that Keygent “did not ask for this information, nor did [it] change [its] proposals or fees based on the information.” However, the spokesperson said the firm acknowledges that mistakes were made and is taking responsibility.

“In addition to complying fully with the SEC’s order, we have taken proactive steps to improve our compliance program and to ensure that all business practices are entirely in line with the SEC’s

regulations and best professional and ethical standards," the spokesperson said.

LeeAnn Gaunt, chief of the SEC enforcement division's public finance abuse unit, said municipal entities "should be able to trust that their selection of a municipal advisor is untainted by any breach of fiduciary duty."

The events leading up to the enforcement action began in September 2010, when Keygent retained SBCI to serve on its advisory board for $2,500 a month. Bradley had numerous contacts in school districts across California and, through the relationship, Keygent gained access to those contacts with the possibility of introductions to officials in districts that Hsieh and Wang had identified as having refinancing opportunities, the SEC found.

Many of the school districts that Bradley solicited on Keygent's behalf were SBCI's own clients, the SEC said in its documents.

Bradley drafted, and assisted in drafting, the request for qualification documents that the five school districts used in their hiring process. Each of the school districts directed candidates not to make contact with anyone other than specified officials in an effort to make sure the candidates were on an even footing, the SEC found.

Despite that direction, Bradley gave Keygent information like advanced copies of draft interview questions and details of competitors' proposals, sometimes including competitors' fees, the SEC said. He also had discussions with Keygent about how to answer interview questions and suggested topics to bring up during the interviews.

Although Bradley recused himself from four of the five school districts' interview processes, citing a conflict of interest, he never informed the districts he was sharing the information and continued to recommend Keygent to the districts, according to the SEC. The one process in which he participated was at the discretion of the district after Bradley informed the officials of his believed conflict of interest.

The SEC found that SBCI violated Section 15B(a)(1)(B) of the Securities and Exchange Act because it was soliciting for Keygent without being registered as a municipal advisor. The SEC said Bradley, as the firm's sole employee, caused the violation.

SBCI and Bradley also violated Section 15B(c)(1) of the Exchange Act because they did not act consistently with their fiduciary duty to its client. Additionally, they violated Municipal Securities Rulemaking Board Rule G-17 on fair dealing and Section 15B(a)(5), which prohibits MAs from engaging in any fraudulent, deceptive, or manipulative act or practice, while soliciting a municipal entity.

The SEC found Keygent and Hsieh also violated Section 15B(c)(1) and MSRB Rule G-17. The commission also said Keygent, Hsieh, and Wang were a cause of SBCI's and Bradley's violations of Sections 15B(c)(1), 15B(a)(5), and Rule G-17.

The Bond Buyer

By Jack Casey and Lynn Hume

June 13, 2016

White: SEC Focused on Possible Puerto Rico Bond-Related Violations.

WASHINGTON — The Securities and Exchange Commission is “very focused” on examining whether there were any securities law violations involving Puerto Rico bonds as the commonwealth’s fiscal situation deteriorated over the last few years, SEC chair Mary Jo White told the Senate Banking Committee on Tuesday.

She made her comments after Sen. Bob Menendez, D-N.J., pressed her on the topic during a committee hearing. After the hearing, Menendez and six other senators sent White a letter asking the SEC to investigate potential fraud and illegal conduct that may have contributed to Puerto Rico’s debt and fiscal crisis.

“The people of Puerto Rico deserve to know whether illegal activity by advisors to Puerto Rico and its municipal entities contributed to the current debt crisis,” Menendez said during the hearing.

The letter from the seven senators urged the SEC to “immediately commence an investigation into the acts, actions and activities in connection with the underwriting, sale, distribution and trading of Puerto Rico debt in the years leading up to the present crisis.”

The commonwealth is currently struggling with roughly $70 billion in debt and $46 billion in unfunded pension liabilities.

The Senate lawmakers also asked White to update them on the recommendations listed in the 2012 Report on the Municipal Securities Market and “whether the SEC needs new authorities to better protect municipal entities in Puerto Rico and elsewhere.”

Sens. Elizabeth Warren, D-Mass., Chuck Schumer, D-N.Y., Kirsten Gillibrand, D-N.Y., Jeff Merkley, D-Ore., Richard Blumenthal, D-Conn., and Bernie Sanders, I-Vt. co-signed the letter. White said during the hearing that the SEC has been involved in these issues, with its enforcement division releasing several actions related to Puerto Rico bonds over the last few years and its division of investment management issuing guidance for investors assessing Puerto Rico bonds.

“I can’t comment on specifics [of] ongoing [actions] … but I think we can say that we are very focused on the issues you have raised,” she told Menendez.

Legislation designed to help the commonwealth deal with its debt crisis has also passed the House and is now waiting for consideration in the Senate. One amendment that was added to the House bill before it was approved would provide discretionary authority to a seven-person oversight board to to investigate whether brokers and investment advisers either failed to disclose or misrepresented the risks of Puerto Rico securities sold to retail investors.

The SEC, along with the Financial Industry Regulatory Authority, settled with UBS Financial Services, Inc. of Puerto Rico for $34 million in September 2015 after the regulators found the firm failed to supervise the suitability of transactions in Puerto Rican closed-end fund shares. The commission also charged a former broker with fraud after he had customers invest in the CEFs using money borrowed from an affiliated bank.

The action against the former broker, Jose G. Ramirez, Jr., is ongoing in Puerto Rico district court.

UBS did not admit or deny the SEC’s findings that between Jan. 1, 2009 and July 31, 2013 UBSPR allowed 165 customer accounts with conservative investment objectives and $2 million or less in

assets to be more than 75% concentrated in highly leveraged CEF shares. By mid-August 2013, Puerto Rico's bond market had declined considerably and most CEF shares and Puerto Rico munis lost between 20% and 50% of their value.

The SEC also brought two cases in 2014 and 2015 that led to settlements with 14 firms that the SEC found had sold bonds in amounts below the minimum denomination set by the issuer.

The minimum denomination for a bond is the lowest amount of the bond that can be bought or sold, as determined by the issuer in the official statement. Issuers sometimes set minimum denominations on bonds that are risky to discourage retail investors from buying them.

The Bond Buyer

By Jack Casey

June 14, 2016

Phoenix Investment Firm Probed on Muni-Bond Sales.

A financial regulatory group has accused a Phoenix investment company of securities fraud in connection with municipal bond sales to finance an Arizona charter school and two Alabama health-care facilities.

FINRA, or the Financial Industry Regulatory Authority, filed a complaint against Lawson Financial Corp. and Robert Lawson, the firm's president and CEO, alleging securities fraud over the sale of millions of dollars worth of municipal bonds. Lawson denied the allegations in an interview with The Arizona Republic.

FINRA also charged Robert Lawson along with Pamela Lawson, his wife and the company's chief operating officer, with self-dealing and misuse of customers funds by abusing their positions as co-trustees of a charitable-remainder trust. A statement released Thursday said they improperly used trust funds to prop up bonds issued for the charter school, Hillcrest Academy in Mesa, which is being opened as a campus of an unaffiliated company, the Leman Academy of Excellence.

The charter-school bonds were sold in a $10.5 million offering that Lawson Financial underwrote in October 2014. According to FINRA, the bonds were sold to Lawson Financial's customers. Lawson Financial also sold muni bonds to raise financing for two assisted-living facilities in Alabama, the complaint said.

The complaint starts a formal proceeding by FINRA and doesn't represent a decision on the allegations. Companies or individuals named in a complaint can file a response and request a hearing. The complaint could result in a fine, censure, suspension or ban from the securities industry, as well as restitution or repayment of any gains that resulted from the alleged actions.

Robert Lawson said he believes FINRA's interpretation of the facts in the case and conclusions are incorrect. He said Lawson Financial will file a response and request a hearing.

"We've been in business in Phoenix for 32 years and always have tried to act in the best interest of our clients," Lawson told TheRepublic.

The complaint alleges that Lawson and the company were aware of financial difficulties faced by Hillcrest and the two Alabama facilities and fraudulently hid from bond buyers material facts that the school and health facilities were under financial stress.

The complaint alleges that Robert Lawson, with the knowledge of Pamela Lawson, improperly transferred millions of dollars from the account to assist the bond borrowers. FINRA said this came at a time the bond issuers weren't able to pay their operating expenses and, in some cases, were unable to make interest payments. Charitable-remainder trusts are vehicles that allow people to donate assets to a non-profit at death while receiving income from those assets while still alive.

Since 1988, Arizona charter schools have raised $1.5 billion in more than 120 municipal-bond sales, according to a 2015 report by Charter School Advisors. Arizona ranks second only to Texas in this regard, the report said.

Russ Wiles, The Republic | azcentral.com 5:50 p.m. MST May 19, 2016

Reach the reporter at russ.wiles@arizonarepublic.com or 602-444-8616.

Largest PACE Bond Securitization Completed.

Seventh Securitization of PACE Bonds by Renovate America Totals $305.3 Million; Brings Company's Total of Widely Marketed PACE Green Bonds to $1.35 Billion

SAN DIEGO, June 6, 2016 /PRNewswire/ — Renovate America, the largest provider of residential Property Assessed Clean Energy (PACE) financing in the U.S., announced the closing of its seventh securitization of PACE bonds – the largest ever completed to date by any issuer and a designated green bond. The securitization, HERO 2016-2, includes $305,313,000 in Class A Notes rated AA (sf) by Kroll and AA (sf) by DBRS, secured by 13,432 PACE assessments levied on residential properties in 31 California counties. The PACE assessments have an average balance of approximately $24,433, a weighted-average annual interest rate of 7.96 percent and a weighted-average original term of 14.95 years. The PACE assessments were originated between January 2016 and April 2016.

"This transaction is our most successful issuance so far in terms of the level of interest from investors including, for the first time, international investment," said Renovate America's CEO J.P. McNeill. "This private capital is directly benefitting homeowners and communities by lowering utility bills, reducing carbon emissions, and creating clean energy jobs. This all comes at no cost to taxpayers."

The HERO Bond platform is the first asset-backed securities (ABS) platform to solely produce green bonds, with each of the company's seven securitizations having been assessed by Sustainalytics, a leading provider of ESG and corporate governance research and ratings. The company provided a second opinion that the bonds adhere to the Green Bond Principles, and that the proceeds fund projects with measurable environmental benefits. PACE green bonds have received significant interest in part because they do not fund aspirational or speculative projects; the proceeds have already been invested in projects with verified environmental impact.

"Investor interest in HERO Bonds is growing with each issuance because the bonds provide significant relative value versus bonds of similar credit and duration," said Renovate America's SVP for Capital Markets Adam Garfinkle. "Our core investor base remains solid and we add new investors with each transaction."

Renovate America partners with local governments to provide its version of PACE, the HERO Program (Home Energy Renovation Opportunity), to homeowners who finance a wide variety of product installations to conserve water and energy. These installations include energy-efficient products like HVAC, windows, and roofing; renewable and alternative products like solar; and water efficiency products for indoor systems and outdoor landscaping. HERO is unique in that it provides 100 percent financing for energy and water saving products for up to 20 years with fixed interest rates designed to make payments affordable. Homeowners make payments along with their property taxes, and in the event the property is sold, the remaining balance may be able to transfer to the new owner.

Since 2011, the HERO Program has financed more than $1.5 billion in home improvements which will save more than $2 billion on energy bills, conserve nearly 10 billion kWh of electricity, reduce emissions by more than 2.6 million tons, and save more than 4.4 billion gallons of water. It has already created 12,700 jobs across California and had a local economic impact of more than $2.6 billion.

HERO is the largest and most successful residential PACE program in the United States. More than 415 cities and counties have adopted the program across California, including the cities of Los Angeles, San Francisco, San Diego, Sacramento, San Jose, Fresno, Riverside, Anaheim, Santa Ana, Bakersfield, and San Bernardino, among others. HERO will expand into the states of Missouri and Florida in 2016.

About Renovate America

Renovate America is the leading provider of financing for energy and water efficiency home improvements in the U.S. The company's HERO Program provides local governments with a comprehensive residential PACE financing solution that also includes consumer protection, business automation software, workforce training and ongoing access to private capital. This unique public-private partnership offers consumers access to more than 60 types of products that reduce energy and water consumption, without the need for government funding. The HERO Program has received a number of awards including the Governor's Environmental and Economic Leadership Award in California, the Urban Land Institute Best of the Best, and the Southern California Association of Governments President's Award for Excellence. In March, HERO was awarded the U.S. Climate Leadership Certificate for Innovative Partnerships by the U.S. Environmental Protection Agency and was a participant in the 2016 White House Water Summit. Additional information can be found at www.renovateamerica.com and www.heroprogram.com.

Jun 06, 2016, 16:24 ET from Renovate America

GFOA Issues Alert on MCDC Initiative Settlement Terms for Issuers.

Issuers that self-reported under the SEC's Municipalities Continuing Disclosure Cooperation (MCDC) initiative can expect to receive settlement offers containing standard provisions to which they must consent in the near future. The SEC is requesting an extraordinarily short turn-around for the settlement—5 to 10 days—but has indicated that it will extend the settlement offer upon request. This alert provides governments with an overview of the process and GFOA's recommendations that state and local governments participating in the MCDC initiative become familiar with the standard terms that are expected to be in the offered settlements. GFOA strongly recommends that issuers seek legal advice prior to finalizing or signing the proposed SEC settlement agreement and make

sure they fully understand the consequences of the proposed settlement.

Click here for the alert.

Wednesday, June 8, 2016

Things You Didn't Know About Detroit's Historic Bankruptcy.

Nathan Bomey, author of a new book on the largest Chapter 9 filing in U.S. history, reveals the unsung heroes and true timeline of the event.

Nearly three years ago, Detroit's $18 billion bankruptcy — the largest municipal Chapter 9 filing in American history — captured the nation's attention. Detroit, like so many other Rust Belt cities, had suffered from decades of economic decline, as well as shrinking economic support from the state; mismanagement from city leaders that hurt the public trust and shattered finances; and the exodus of more affluent and generally white residents to the suburbs.

These effects and more are captured in the new book *Detroit Resurrected*. It's the first book to extensively chronicle the city's story into and out of bankruptcy, and it's written by journalist Nathan Bomey, who was the Detroit Free Press' lead reporter on the city's bankruptcy and is currently a writer at USA Today. Bomey, who spoke with Governing about the book, based it not only on his extensive reporting at the time but also on revealing and frank post-bankruptcy interviews with key players.

The following interview is edited for length and clarity.

I didn't know until reading your book that bankruptcy was being talked about in Detroit several years before 2013.

It was. In Detroit, the promises to retirees were actually broken many years before the bankruptcy process. I think the problem was [that by the time bankruptcy was considered], political leaders didn't really have the political will to make the tough decisions to avoid this type of process. So they put it off. And one factor in Detroit's bankruptcy that has been widely misunderstood is that the emergency manager law was uniquely tailored to make a bankruptcy go fast. Kevyn Orr got the job about four months before the city ultimately filed for bankruptcy. I think looking back on it, most people would agree that by the time he was installed, bankruptcy was probably inevitable.

You say that Detroit's approach to securing money to restore services is an unusual approach in bankruptcy. Please explain.

Creditors are used to getting their best interests put before the interests of the debtor. But Judge Steven Rhodes put the people of Detroit before the creditors of Detroit because he realized that Chapter 9 bankruptcy does not have to be about who gets paid the highest percentage of their claims. It can also be about, how do we restore a city to serve its people and make public safety come first? So Rhodes allowed Detroit to structure its debt-cutting plan in a way that preserved money for services before it actually carved out the money for creditors.

Explain the so-called Rhodes Test that emerged from this case.

If you look at fairness purely on legal terms and assessing debt, then [restructuring] might be a

matter of just following the rule book on who gets paid back what. But if you introduce the idea that certain creditors are more vulnerable than other creditors, all of a sudden it's up to the judge's discretion whether equal treatment is fair treatment. In the end, Rhodes ruled that his own conscience could dictate whether it was fair for the pensioners to get a higher percentage on their claim back than the Wall Street creditors — and he decided it was fair. If future judges are allowed to apply their conscience to decisions about what's fair and not fair, we could see some very divisive rulings.

Were there any unsung heroes who emerged in your reporting?

Very few people know about two retirees who were extremely important to the resolution of the case: Shirley Lightsey and Don Taylor. They helped negotiate the decision to accept the [roughly 10 percent] cuts in pensions and [90 percent cut] in health care. They had to convince their constituents to vote in favor of it. And I think what they did was remarkable because it was a triumph of pragmatism and it was an example of a sacrifice that we just don't see in politics.

Did any villains emerge?

One of the messages I really wanted to send with this book is that I think the heroes and villains are not always who you think they are. The villains most people cite were the bond insurers Syncora and Financial Guaranty Insurance Company, [whom Detroit proposed paying back 10 cents on the dollar]. But when I look at the case, they were simply fighting to protect their rights. And I'm not sure we should expect anyone to do anything differently. You can quibble with the aggressiveness of their position and the fact that they attacked the Detroit Institute of Arts and tried to liquidate that. But that's more a matter of opinion whether the museum was something that should have been liquidated to pay off creditors.

Detroit taught us a lot about how pensioners and bondholders can be treated in bankruptcy. Are there any other lessons for cities here?

I think that one of the key lessons is someday the bill will come due. The promises you make will eventually be paid for by somebody. In Detroit, it was the retirees and Wall Street who sacrificed. So think about that when you set the budget.

GOVERNING.COM

BY LIZ FARMER | JUNE 16, 2016

Dot-Govs Get a Much-Needed Facelift.

Several big cities are decluttering and redesigning their government websites to make them easier to use.

Is it time to give the government website a makeover? For years, city and state sites have been designed as portals through which the public could find as much information as possible. The motto was clearly, "the more, the better." But the result has been an overwhelming hodgepodge of columns and boxes filled with tiny text, drop-down menus that run on and on, and buttons everywhere.

With so much information crammed on to a home page, visitors are lucky if they manage to find

what they're looking for, says John McKown, president of Evo Studios Inc., a Web design firm that works with municipalities. "The problem with so many government websites has been information overload."

That's certainly the case with the city of Philadelphia's website, which contains more than 66,000 pages and documents, some of which have never been viewed, according to Aaron Ogle, the city's former civic technology director.

Information overload is just one problem. Another is the way information is organized, typically around the name of an agency or department, rather than how it can help someone. And exacerbating the issue are the growing number of online services that cities and states have added. These and other new services, such as slideshows and videos, weigh down sites, making them slow and frustrating for users.

Perhaps the biggest problem is that these sites were built for PCs, but users are going mobile. Forty percent of people who visited a federal website in the first three months of this year used some kind of mobile device, according to the site analytics.usa.gov. This is a real concern since lower-income users tend to rely on their smartphones as their one and only device for accessing the Internet.

Aware of the issue, some states and localities have begun modernizing the look and feel of their websites. In 2014, New York state updated its 15-year-old site. In the redesign, the state emphasized ease of use, simple design and a more intuitive way to find information. The new home page uses a photo-rich design, with a high-resolution image dominating the screen and just a few buttons to direct the user to content. Gone is a typical photo of the state's chief executive, Gov. Andrew Cuomo. The refresh has paid off: Page views jumped from 313,170 in 2013 to 1.1 million in 2014.

Boston and Philadelphia are redoing their websites as well. Both cities have launched beta versions of their new websites that users can visit and try out while the existing website is still up and running. The pilots will give the cities a way to test with actual users what works and what doesn't.

Boston's new pilot version went live in January. It's far cleaner looking and more efficient. "It represents a cultural change around what a portal is," says Lauren Lockwood, the city's chief digital officer.

The biggest lesson that cities and states are learning is to make the new websites more reflective of the work that is done by the city and to present the information in a more readable fashion. Some of the information on Boston's site was found to be written at a post-graduate school level. "Everybody is your audience," says Lockwood, "so you want to humanize their experience."

GOVERNING.COM

BY TOD NEWCOMBE | JUNE 2016

Defending Wall Street Fees.

The performance fees that public pension plans pay private equity and hedge fund managers are coming under scrutiny. Some say the high fees aren't worth the returns on investment and complain that many costs remain hidden. Those two points were part of a critical report last month by the right-leaning Maryland Public Policy Institute on Maryland's hidden Wall Street fees.

Now, the Maryland State Retirement Agency has issued a lengthy response questioning the institute's conclusions. In a letter published this month by Executive Director R. Dean Kenderdine and Chief Investment Officer Andrew C. Palmer, the system's officials attack the institute's methodology while defending its own financials.

Maryland reported paying $85 million in performance fees in 2014, but according to the report it may have actually paid more than $250 million. The policy institute made that estimate by comparing Maryland's disclosed performance fee rate against the rate of performance fees disclosed by New Jersey, which has a similarly sized alternative investment portfolio and fairly comprehensive fee disclosure policy.

But Kenderdine and Palmer say Maryland's $85 million in reported fees are accurate because New Jersey has been "much more aggressive in its pacing of investments." In other words, the private equity funds New Jersey invests in are designed to start producing returns soon after the pension puts money in the fund. Maryland's private equity funds, however, haven't hit that so-called harvesting period when investments are sold and managers receive performance fees from that profit, said Kenderdine and Palmer. So the performance fees are smaller but could theoretically be larger in the coming years.

Though Maryland's investment performance is lagging compared with most plans, according to Kenderdine and Palmer, they may be better off later. That's because stock market losses in the 2001 and 2008 financial crises left them feeling too exposed to one of the "most volatile asset classes," so Maryland now has less of its investments in public stocks than most other plans. That means that "during periods of strong public equity performance, as has been experienced over the past five years, [Maryland] will lag the peer group," the officials said. But, Maryland "should perform better during periods of market stress."

The Takeaway: The pension system's dispute of the figures in the institute's study shows just how murky the issue of reporting Wall Street fees is. In their response, Kenderdine and Palmer also say they support an effort to standardize performance fee reporting. But they join many public pension officials in arguing that even if Maryland's fees were higher, they would be worth it.

"Large amounts of [performance fees] should be considered a positive result, as this would imply much greater gains to the investor," they noted.

In other words, the higher a performance fee, according to them, the higher Maryland's profit from that investment is. While that's true, many contend that cheaper funds can produce comparable (or better) returns on investment.

GOVERNING.COM

BY LIZ FARMER | JUNE 17, 2016

NABL: House Bill Would Create New PAB Category for Government Buildings.

Representative Mike Kelly (R-PA) has introduced H.R. 5361, the Public Buildings Renewal Act, which would create a new category of private activity bonds (PABs) to finance the construction and continued upkeep of publicly owned buildings. H.R. 5361 defines qualified government buildings as elementary or secondary schools, colleges or universities, public libraries, courts, hospitals, public safety buildings and government offices. The bonds issued under H.R. 5361 would also be exempt

from state volume caps restrictions usually given to PABs, and would instead be subjected to a new national cap of $5 billion. The intent of the bill is to encourage public-private partnerships by using the definition of governmental ownership applicable to airports, docks and wharves, and mass commuting facilities. H.R. 5361 was referred to the House Ways and Means Committee.

H.R. 5361 is available here.

GFOA Testifies at IRS/Treasury Department Hearing on Political Subdivisions.

On June 6, 2016, Patrick J. McCoy, GFOA President-Elect and director of finance for the New York City Metropolitan Finance Authority testified on behalf of GFOA at a hearing held by the Internal Revenue Service and the Department of the Treasury on their proposed rule on political subdivisions. The proposal would increase restrictions on the definition of "political subdivision" for the purpose of being able to issue tax-exempt bonds.

McCoy's testimony reiterated concerns expressed in GFOA's member survey—specifically, that it isn't possible to construct a one-size-fits-all definition of what constitutes acceptable governmental control of a political subdivision, given the varied nature of states and tens of thousands of local governments. The proposed rule creates a high level of uncertainty about the status of political subdivisions that have been authorized by governments and a high level of risk for many entities across the country concerning their ability to issue tax-exempt bonds. This is especially true in cases where districts are intentionally designed to reach across multiple jurisdictions in order to create service delivery efficiencies directly to citizens.

McCoy underscored the heart of GFOA's argument against the proposed regulations, stating that they "question the legitimacy and authority of the bodies that enacted the enabling legislation that created the political subdivisions in the first place." The additional requirements of the proposed rule attempt to regulate governing matters that, in the absence of abuse, should be left to the states, as have been the case for decades.

Please click here for the testimony.

Wednesday, June 8, 2016

IRS TE/GE Advisory Committee Issue 2016 Report of Recommendations.

On June 8, 2016, the 21 members of the ACT presented its 15th report of recommendations to the IRS in a public meeting in Washington, DC.

The ACT report addressed five issues:

> **Employee Plans:** Analysis and Recommendations Regarding Changes to the Determination Letter Program
>
> **Exempt Organizations:** Stewards of the Public Trust: Long-Range Planning for the Future of the IRS and the Exempt Community
>
> **Federal, State and Local Governments:** Revised FSLG Trainings and Communicating with

Small Local Governments

Indian Tribal Governments: Survey of Tribes Regarding IRS Effectiveness with Current Topics of Concerns and Recommendations

Tax Exempt Bonds: Recommendations for Continuous Improvement and Enhancing Resources in the Tax Exempt Bond Market

ACT members provide observations about current or proposed IRS policies, programs and procedures, and suggest improvements. The members are selected by the Commissioner of the IRS and then appointed by the Department of the Treasury. The IRS seeks a diverse group of members representing a broad spectrum of people experienced in employee plans; exempt organizations; tax-exempt bonds; federal, state, local and Indian tribal governments.

Read the Report.

MSRB Reminds Municipal Advisors of June 23, 2016 Effective Date of New Rule G-42.

The Municipal Securities Rulemaking Board (MSRB) reminds municipal advisors that MSRB Rule G-42 on duties of non-solicitor municipal advisors and related amendments to MSRB Rule G-8 on recordkeeping become effective on June 23, 2016.

The new rule establishes core standards of conduct for municipal advisors that engage in municipal advisory activities, other than municipal advisory solicitation activities.

View the regulatory notice.

View the approval order.

Resources:
Watch an on-demand webinar (CPE credit available)
Read an overview of the rule for municipal advisors

Grassley Seeks Updates from IRS on Tax-exempt Hospital Work in Light of Recent Cases.

WASHINGTON – Sen. Chuck Grassley of Iowa today asked the IRS for updates on implementing tax-exempt hospital accountability measures, citing two instances of non-profit hospitals in the news for aggressively suing patients.

“As Commissioner of the Internal Revenue Service (IRS), you should be made aware of problematic activity within the charitable hospital community,” Grassley wrote to IRS Commissioner John Koskinen. “Granted, we can both agree that many charitable hospitals perform good work on behalf of the communities that they service. However, some charitable hospitals get as close to the line as possible, while others callously breach it. It is important that Congress, via its oversight role, and the IRS ensure that charitable hospitals are functioning as intended.”

Grassley cited the example of Mosaic Life Care, a Missouri non-profit hospital that ultimately forgave $16.9 million in debt for patients after news coverage of its aggressive collection practices and a persistent inquiry from Grassley. He also cited an Indiana non-profit hospital, Deaconess, that also agreed to help low-income patients after being in the news for patient collection lawsuits.

"These are welcome improvements to the charitable hospital community and others should follow the examples set by Mosaic and Deaconess to better fulfill their charitable mission,"Grassley wrote.

Grassley asked for updates on the IRS' implementation of non-profit hospital reforms that he authored and that were enacted in 2009. These include the public provision of a financial assistance policy and imposing restrictions on certain billing and collection procedures. "Given the abuses observed in my investigation of Mosaic, I am interested in learning more about the IRS' implementation and enforcement of these provisions," Grassley wrote. "The information provided with respect to Mosaic illustrates the value of congressional oversight and sheds light on some of the steps that other charitable hospitals can take to ensure that low-income patients are treated fairly."

Grassley also asked about the status of the requirement, which he also authored, that the IRS and the Department of Health and Human Services collect information on non-profit hospitals and provide an annual report to Congress. The first report was issued in January 2015 covering 2011. The IRS has yet to issue a 2016 report covering 2012.

Grassley has a long record of holding tax-exempt organizations accountable for the tax benefits they receive. His efforts have resulted in well-funded universities' voluntarily spending more from their tax-favored endowments on student aid and reforms to governance at major tax-exempt organizations including the Nature Conservancy and the Red Cross.

Grassley's letter today is available here. More information on his Mosaic inquiry is available here.

Jun 09, 2016

TAX - NEW YORK

Westchester Joint Water Works v. Assessor of City of Rye

Court of Appeals of New York - June 9, 2016 - N.E.3d - 2016 WL 3189055 - 2016 N.Y. Slip Op. 04438

Taxpayer commenced tax certiorari proceeding challenging real property tax assessments on parcels. School district intervened.

The Supreme Court, Westchester County, denied assessor's motion to dismiss proceedings on ground that notices of petition and petitions were not served upon school district's superintendent, but granted school district's motion to dismiss on same ground. Taxpayer appealed, and assessor cross-appealed. The Supreme Court, Appellate Division, affirmed as modified. Leave to appeal was granted.

The Court of Appeals held that recommencement of a tax certiorari proceeding is unavailable where such proceeding is dismissed for an unexcused failure to comply with the requirement that, within ten days of the service of the notice of petition and petition on a municipality, a petitioner must mail a copy of the same document to the superintendent of schools of any district within which the property is located; abrogating *Matter of MM 1, LLC v. LaVancher*, 72 A.D.3d 1497, 899 N.Y.S.2d 774, and *Matter of Consolidated Edison Co. of N.Y., Inc. v. Assessor & Bd. of Assessment Review for*

the Town of Pleasant Val., 82 A.D.3d 761, 918 N.Y.S.2d 169.

For Whom the Bond Calls.

Like most bond investors, you probably check your online brokerage accounts two to three times a week. You might brace yourself for alerts advising you that another bond or two is being called. You may flinch, wince and may even shout a few expletives. Welcome to the insane world of zero/negative interest rates whose ramifications are painful.

The global drive for yield has broken all the rules: Europeans, Asians and foreign corporations are buying taxable and tax-free municipal bonds like crazy. The tax status is irrelevant; it's the yield that matters. The global demand for all U.S. bonds has been insatiable. You may hate U.S. bond yields but foreign investors find them luscious.

Think about it. If you are a German citizen or the cash manager of a German insurance company and have a choice of investing in a ten-year German bund at 0.02% or a ten-year U.S. Treasury at 1.65%, which would you choose? Asked and answered. Plus, capital flows are a simple click away.

With interest rates grinding lower, it's important to stay on top of your bond positions. A perfect example is municipal housing bonds. These are bonds used to finance multi-family or single family mortgages secured by the payments of the underlying mortgage loans. These bonds raise money for affordable housing. Most states issue such housing bonds. Their credit quality overall is good but there is a downside. When there are mortgage prepayments, unexpended, unused proceeds from the bonds issue—you guessed it—bonds can and will be called. If you paid a premium when you purchased the housing bonds and the bonds get called at par, the yield you thought was locked in wasn't.

Many of my California clients and I own California State Department of Veteran Affairs Home Purchase Revenue bonds. Bonds were state and federal tax exempt, 3.50% due December 1, 2021. When the bond was issued in 2011 it had serial maturities going from December 2013 to the longest dated maturity of December 2028.

As rates have continued to grind down we looked at which bonds have been called and where we stood in the maturity conga line. We were right in the line of fire. Most bonds in the series have already been called. Even though the 2018-2020 maturities are non-callable, they have caveats: Bonds can be called, "from unexpended proceeds at any date prior to their respective stated maturity dates," according to the official statement.

As you can imagine, our bonds were selling at a premium over par value, roughly $110 ($1,100 per 1,000 face value). Brokers' bids varied widely and wildly. The low bid was $107; the high bid was $109.983. What were the odds that our issue would be called at par? Difficult to say. But we've seen other lower coupon housing bonds called. So the old saying, "a bird in the hand…" We sold our bonds at the high premium and let the new owners worry about losing their premium.

Bottom line: Check your bond positions for call provisions—both those that are clearly stated and those that have unusual call features. If you aren't preemptive and sell, then your premiums will vanish. 'Tis the season of low interest rates."

All issuers—taxable, tax free, corporations, government agencies—wish to lower their net interest costs. Calling bonds is one way to accomplish this. Good for them, bad for us bondholders.

FORBES

MARILY COHEN

JUN 13, 2016 @ 12:18 PM

Marilyn Cohen is founder and CEO of Envision Capital Management, Inc., a Los Angeles fixed-income money manager.

The Case for Favoring Revenue Bonds Over General Obligation Bonds.

General obligation bonds have encountered problems as municipal issuers face rising fixed legacy costs that challenge revenue growth

A municipal bond is a municipal bond is a municipal bond. Anyone who believes that to be true has failed to see the increasingly idiosyncratic nature of the municipal marketplace.

A testament to that fact: The Barclays Puerto Rico Index declined 12% in 2015, and nothing else followed suit. Muni investors were wise not to draw conclusions about the broader market based on the unique case of Puerto Rico.

The need to be discerning doesn't stop at credit ratings. In fact, it's important to be selective even among traditionally high-quality credits. Currently, there is a strong case to be made for favoring revenue bonds over general obligation bonds.

GO bonds, which today make up one-third of the investible muni market, historically have been considered among the safest forms of municipal debt. Repayment of GOs is secured by a constitutionally prescribed "general obligation" or "full faith and credit" pledge. GOs are paid out of tax revenues and are deemed to have first priority of payment. But municipalities also must use their tax revenues to cover onerous operating costs, and that can leave less money available to pay debt service.

In the past, the security of the GO pledge was rarely questioned. More recently, however, GOs have encountered problems as municipal issuers face rising fixed legacy costs that are challenging or outpacing revenue growth.

Detroit was the first to call into question the sanctity of the GO pledge. As the city took steps to negotiate its way out of Chapter 9 bankruptcy, the repayment of GO debt became a question of willingness, rather than ability, to pay. The question was raised again in discussions in Puerto Rico. There, GOs' constitutional priority had given bondholders confidence in their legal remedies should the commonwealth default. That sense of safety was compromised when a preliminary restructuring plan last year indicated "sacrifice" was needed from all creditors, including holders of GO bonds.

The market has now started to infer potential implications for GO debt in stressed locales such as New Jersey, Illinois and Chicago. While these issuers could raise taxes to meet their debt obligations, such moves are always politically difficult, unpopular and therefore, not easy to implement. The question becomes not whether these stressed locales are able to make the necessary decisions, arrangements and concessions to pay their GO debt, but rather: Are they willing to do what's necessary? Willingness is much harder to read and analyze than ability, and that means GO bonds have been and may continue to be volatile.

Revenue bonds, on the other hand, are underpinned by a dedicated revenue stream, which essentially eliminates any question around a municipality's willingness to pay. Monies generated are specifically assigned to pay debt service. The most common types of revenue bonds are essential-service, revenue-generating projects such as toll roads, airports and water and sewer systems, where the money made (via tolls, fees, etc.) is used to repay bondholders. Revenue bonds are not backed by a full faith and credit pledge, but issuers have the ability to increase user rates should the dedicated revenue stream fall short, and traditionally they have done so to ensure full debt payments.

Not only are revenue bonds showing lower volatility than GOs, but at two-thirds of the investible municipal universe, they represent the largest subset of the market. This means ample opportunity for investors. The health care and transportation sectors, in particular, present some attractive income and return possibilities — the former underpinned by Affordable Care Act-induced demand, demographically driven health care needs and merger-and-acquisition activity, and the latter supported by lower gas prices and increased travel.

Looking to the opposite end of the credit quality spectrum, high yield remains another high-potential area of the municipal market. The sector has produced strong results, tobacco in particular, and is outperforming the broad market year-to-date — notwithstanding Puerto Rico. High yield represents an important source of carried interest and, therefore, income.

Municipal high yield is distinctly different from the corporate high yield market. The two, in fact, have been shown to be uncorrelated. In 2015, for example, collapsing energy prices weighed on corporate high yield and contributed to rising defaults. The Morningstar taxable high yield bond fund category lost 4%, while the high yield municipal fund category was up by slightly more than 4%.

Overall, creditworthiness in the broad municipal space is stronger than at any time since the financial crisis. The market also appears well positioned to continue the solid performance it exhibited in 2015 and so far in 2016. But investors should pick their places, conduct diligent credit research and seek to make the most of all the municipal bond market has to offer.

Investment News

By Peter Hayes

Jun 13, 2016 @ 10:52 am

Peter Hayes is head of the municipal bonds group at BlackRock Inc.

SIFMA Calls for IRS to Withdraw Proposal on Political Subdivisions.

Last week, SIFMA staff testified at a public hearing conducted by the IRS on proposed changes to the definition of "political subdivision" in the context of which issuers are eligible to issue tax-exempt bonds. In our presentation, we reiterated our call for the IRS to withdraw its proposal on the basis that the rule is unnecessary and that it would drastically constrain the ability of state and local governments to finance needed infrastructure. The proposal would have a particularly onerous effect on special districts and similar issuers.

Under the IRS's proposal, in order to qualify as a political subdivision and issue tax-exempt bonds,

an entity such as a special district would need to possess "sovereign powers, governmental purpose, and governmental control." Sovereign powers would be demonstrated by "eminent domain, police power, or taxing power," which is the extent of the current definition. Governmental purpose would require that an entity serve a public purpose and operate "in a manner that provides a significant public benefit with no more than incidental benefit to private persons." Governmental control would be demonstrated by the ability to approve and remove a majority of an entity's governing body, the ability to elect a majority of the governing body, or the ability to approve or direct an entity's funds or assets. The proposal includes other provisions as well. Read the full IRS proposal.

At last week's hearing, of the approximately 10 presenters, which included representatives of dealers, issuers, bond lawyers, developers and other market participants, all but one expressed substantial opposition to the IRS proposal.

View SIFMA's full comment letter to the IRS on this issue.

SIFMA Urges SEC to Amend Muni Disclosure Rule & Issue Additional Guidance.

On June 9, SIFMA and AMG jointly submitted a letter to SEC Chair Mary Jo White urging the SEC to amend Rule 15c2-12 on municipal bond disclosure and provide more guidance in this area.

SIFMA's dealer and asset management members collectively agree that SEC amendment or interpretation of Rule 15c2-12 would be a more comprehensive avenue for ensuring that information regarding direct purchases of securities and bank loans entered into by issues is consistently and uniformly reported to the MSRB's EMMA Web site and made transparent to the market.

"The SEC itself, in its 2012 Report on the Municipal Securities Market (the "Report"), suggested several areas of Rule 15c2-12 ripe for amendment or interpretive guidance," said SIFMA president and CEO Kenneth E. Bentsen, Jr. "Additionally, SIFMA recently submitted our Rule 15c2-12 Whitepaper, which offers a current perspective on the existing framework for providing disclosure in the municipal securities market, the relative burdens placed upon municipal market participants by that framework, and opportunities for improvement in framework structure and guidance interpreting application and compliance. Given the recent discussions at the MSRB, the SEC's own efforts in this area, and the industry's keen interest, we think that the time has come to move forward with a revision of Rule 15c2-12."

Read SIFMA's letter to SEC

Download SIFMA Rule15c2-12 Whitepaper to SEC

TAX - OHIO

Hyde Park Circle, L.L.C. v. Cincinnati

Court of Appeals of Ohio, First District, Hamilton County - May 25, 2016 - N.E.3d - 2016 WL 3003413 - 2016 -Ohio- 3130

Developer brought action against city alleging that city breached development agreement and illegally used tax-increment-financing (TIF) funds. City filed counterclaim for breach of agreement.

The Court of Common Pleas enjoined city from loaning itself TIF-account funds to pay general-fund obligations, ordered city to return $4 million to TIF accounts, awarded developer $177,124.65 in attorney fees and costs, determined that developer could not be reimbursed for actions it took prior to entering agreement, that city was not liable for handling of city improvements, but that developer should have been reimbursed in amount of $247,500, and found that developer had materially breached agreement, but that city suffered no damages. Both parties appealed.

The Court of Appeals held that:

- Developer was entitled to $89,448.77, as opposed to $247,500 on its breach of contract claim, and
- Developer had standing to bring its statutory-taxpayer action.

Developer was entitled to $89,448.77, as opposed to $247,500, on its breach of contract claim against city for failure to reimburse developer for work performed by subcontractor. While there was no dispute that services provided by subcontractor were proper subject for tax-increment-financing (TIF) reimbursement, and, thus, developer was not barred from seeking to recover money from city for reimbursement under development agreement between developer and city, agreement was clear that project was capped at $4 million in TIF funds, and evidence showed that city had spent $49,000 in TIF funds to complete work that should have been performed by developer and that only $138,448.77 remained of funds.

Developer had standing to bring its statutory-taxpayer action against city alleging that city illegally used tax-increment-financing (TIF) funds. Taxpayer action did not only benefit developer, as, in determining that city had illegally used TIF funds to cover budget shortfall with city public schools, court found that city had treated TIF accounts as if they were mini-general fund from which it could randomly make loans to itself that could be delayed or forgiven, taxpayer action sought relief in form of injunction to keep city from engaging in illegal loaning practice in future and judgment requiring city to return $4 million to all of neighborhood TIF accounts, and, TIF laws were established to encourage economic development, which benefited public at large, not just developer.

NABL: IRS TEB Announces Form 8038-CP Changes.

The Internal Revenue Service (IRS) Office of Tax-Exempt Bonds (TEB) has announced changes to how TEB processes Form 8038-CP requests for refundable credit payments, which applies to all forms received after May 16, 2016. Form 8038-CP is now interactive, and includes a “Verify and Print” feature, which will alert you of any missing fields and other errors. If any information is missing from the form, the IRS will mail a correspondence letter requesting the missing information and give 30 days for a response. Failure to respond to IRS correspondence results in the IRS not processing Form 8038-CP.

More information on the changes, including the interactive form, is available here.

MSRB Webinar Reminder: Application of MSRB Rule G-37 on Political Contributions and Prohibitions on Municipal Advisory Business to Municipal Advisors.

Thursday, July 7, 2016

3:00 p.m. – 4:00 p.m. ET

MSRB staff will review the new key provisions of MSRB Rule G-37 that extend requirements to municipal advisors related to their political contributions and engagement in municipal advisory business.

Register.

MSRB: Implications for Supervisory Procedures of Newly Effective Rules.

With several MSRB rules for municipal advisors effective in 2016, the MSRB reminds municipal advisors to make any necessary modifications to their written supervisory procedures and compliance policies.

For example, provisions for municipal advisors of MSRB Rule G-20 related to gift-giving became effective on May 6, 2016. Accordingly, a municipal advisor's written supervisory procedures should now include procedures reasonably designed to avoid improprieties and conflicts of interest that may arise when regulated entities or their associated persons give gifts or gratuities in relation to the municipal advisory activities of the recipients' employers. Written supervisory procedures should include a description of how the designated municipal advisor principal(s) will monitor and review the municipal advisory activities of associated persons for compliance with Rule G-20.

Since 2015, municipal advisors have been required under MSRB Rule G-44 to have supervisory procedures and compliance policies "reasonably designed to achieve compliance with all applicable rules" and since April 23 2016, to certify annually "processes to establish, maintain, review, test and modify written compliance policies and supervisory procedures."

GFOA Issues Alert on Rule G-42.

The new G-42 rule from the Municipal Securities Rulemaking Board (MSRB) becomes effective June 23, 2016. Rule G-42, or Duties of Municipal Advisors, stems from the Dodd Frank Act and the SEC's subsequent municipal advisor rule. This rule does not establish any responsibilities for issuers, but it does create numerous responsibilities for the municipal advisors that are hired by state and local governments. GFOA's alert provides information on the types of information and written correspondence that municipal advisors will now be providing issuers, including disclosures of conflicts of interest and acknowledgement of the scope of services for which the advisor is hired. The primer also includes information on aspects of the overall municipal advisor rule and the types of exemptions that are in place when a party other than a municipal advisor provides advice to issuers.

Please click here to access the alert.

Wednesday, June 8, 2016

Market Groups, Regulators Clash Over Political Subdivision Rules.

WASHINGTON – The Internal Revenue Service and Treasury Department's proposed rules on political subdivisions are "overly restrictive" and "misguided," and should be withdrawn or reproposed with a much narrower scope, municipal market groups told the agencies on Monday.

The complaints came during the agencies' joint public hearing over a proposed new definition of political subdivision that has drawn sharp criticism since it was first proposed in February.

Representatives from groups including the Government Finance Officers Association, the Securities Industry and Financial Markets Association and the National Association of Bond Lawyers said the proposed political subdivision rules are unnecessary and could potentially upend much of the muni market.

"We believe the approach taken is misguided," said Scott Lilienthal, a former president of the National Association of Bond Lawyers. "It would create continued uncertainty in the financial markets."

Pat McCoy, the director of finance for the Metropolitan Transportation Authority in New York who spoke on behalf of GFOA, said the group, like others, has been unable to fully grasp the reason for requiring a political subdivision to have a government purpose "with no more than an incidental private benefit."

"Our view is this adds a new layer of incidental private benefit that we were feeling was ambiguous and difficult to define," McCoy said.

Historically, the determination of whether an entity was a political subdivision was based on whether it had the right to exercise a substantial amount of at least one of three sovereign powers: eminent domain, taxation, and policing.

The proposed Treasury and IRS regulations would add two new requirements – that political subdivisions serve a governmental purpose "with no more than an incidental private benefit" and that they be governmentally controlled. To be governmentally controlled, a political subdivision would have to be controlled by a state or local governmental unit or an electorate. Whether an entity serves a governmental purpose would be based on whether it carries out public purposes stated in its enabling legislation and provides no more than incidental private benefit.

The new rules were proposed in response to concerns about who was controlling political subdivisions, John Cross, the Treasury Department's associate legislative tax counsel, said Monday. Some IRS audits found that developers or other private entities were wielding significant control over political subdivisions and this raised concerns among numerous federal officials.

"A core policy goal of the proposal was to enhance accountability in a targeted way," Cross said. "We wanted to add safeguards to ensure that an unreasonably small number of people do not control political subdivisions."

But several speakers at the hearing, including Michael Decker, managing director and co-head of munis at SIFMA, said the current definition is sufficient and does not need any amendment. Decker said the new rules would create "substantially higher" financing costs for local governments in two ways: either investors would pay less for the bonds, creating higher yields, because the bonds would pose more risk or issuers would simply have to issue taxable bonds.

The taxable market would be entirely different due to expectations about issuance size and cash flow structure, he said.

Several of the ten speakers called for a full withdrawal of the rules without suggesting any alternatives, which Cross challenged as unconstructive. Several of those speaking on behalf of utility organizations said the abuses perceived by Treasury and IRS over private parties' control of political subdivisions do not seem to apply to them.

Thomas Devine, general counsel for the Airports Council International – North America, called for more targeted rules that wouldn't disturb what he called "non-problematic" entities like airport authorities.

"We believe there is a bullseye on our back," Devine said. "We believe we are not the subject of your concerns."

In response, Cross said the IRS is not targeting airports or other similar agencies.

That message was echoed by Erica Spitzig, deputy general counsel for the National Association of Clean Water Agencies, who said that the new definition could threaten access to the tax-exempt bond market for water and sewer issuers.

Spitzig said 48 states used tax-exempt bonds to fund sewer and water projects in 2012, a testament to their importance in public infrastructure.

David Schryver, executive vice president of the American Public Gas Association, also called for the withdrawal of the rules, which he said would eliminate the ability for communities to purchase gas with tax-exempt financing.

"Our message is the proposed regulations throw the baby out with the bathwater," he said.

The four-member panel of IRS and Treasury officials said they would consider the comments in finalizing the rules, but also defended much of what was proposed.

Spence Hanemann, an IRS attorney, said the rules were developed to "limit undue private control," while Timothy Jones, senior counsel for the IRS, said the agency was "particularly interested in development districts with a single owner."

Hanemann called the proposed rules "prospective," stressing that they would not go into effect for three years if and when they are finalized. He did not say whether the agencies would withdraw, repropose or leave the current proposed rules unchanged before they are finalized.

Other speakers included: James Thompson, mayor of Sugar Land, Tex.; T.J. Sullivan, a former IRS official and current lawyer with Drinker Biddle & Reath representing Clemson University; and Bond Dealers of America director of federal policy John Vahey.

Vahey was particularly concerned about the public purpose test. "It introduces a level of subjectivity and a significant level of uncertainty," he said, adding that the proposed regulations would also raise the costs of infrastructure projects.

The IRS and Treasury panel also included Diana Imholtz, special counsel for the IRS.

The hearing follows months of criticism leveled at the Treasury and IRS over the proposed rules on political subdivisions.

The agencies received a total of 124 written comments from groups including the NABL and port authorities who argued the new regulations threaten the tax-exemption of many entities long considered political subdivisions as well as the tax-exempt status of their bonds.

The Bond Buyer

By Evan Fallor

June 6, 2016

IRS Publishes New Guidance On Renewable Energy Tax Credits.

In December 2015, the U.S. Congress passed a multi-year extension of renewable energy tax credits, including credits for wind, solar, geothermal, hydropower and biomass facilities. Many of the deadlines for credit qualification in the new law involve the starting date of renewable energy projects, although the time of completion is also significant. Previously, the IRS provided guidance for the "beginning of construction" period. The IRS has now issued additional guidance with respect to the newly passed schedule of credits.

The new guidance, which generally is viewed as favorable to renewable energy project development, is in the form of "safe harbors." If a taxpayer meets the requirements of either of two safe harbors (the "Physical Work Test" or the "Five Percent Safe Harbor"), then it is deemed to have complied with the requirements of the new law that concern when construction commences. After construction has begun, it becomes necessary to show that the work is continuing, which is the purpose of the "Continuity Safe Harbor."

By its recent action, the IRS extended and modified the Continuity Safe Harbor for the third time and provided additional guidance regarding the application of the Continuity Safe Harbor and the Physical Work Test. Additionally, the IRS clarified the application of the Five Percent Safe Harbor to retrofitted renewable energy facilities.

Specifically, the IRS explained that if a taxpayer places a facility in service during a calendar year that occurs no more than four calendar years after the calendar year during which the construction of the facility began, then that facility will be considered to have satisfied the Continuity Safe Harbor requirement. The IRS also noted that a taxpayer may not rely on the Physical Work Test or the Five Percent Safe Harbor in alternating calendar years in order to satisfy the beginning of construction requirement or the Continuity Requirement. The IRS guidance outlines the following factors (among others): (i) "excusable disruptions" to Continuous Construction, or Continuous Efforts Tests, and (ii) the conditions of qualification for the Physical Work Test.

Finally, the IRS emphasized that a facility may qualify as originally placed in service even though it also may contain some used property, as long as the fair-market value of the used property is not more than 20% of the facility's total value (i.e., the cost of the new property plus the value of the used property) (the "80/20 Rule"). Because the Five Percent Harbor is applied only with respect to the cost of new property that is used to retrofit an existing facility, the IRS explained, only expenditures paid or incurred that relate to new construction should be taken into account for purposes of the Five Percent Safe Harbor.

The IRS stated that this guidance clarifies and modifies Notices 2013-29, 2013-60, 2014-46 and 2015-25.

Last Updated: June 2 2016

Article by Cadwalader, Wickersham & Taft LLP

Cadwalader, Wickersham & Taft LLP

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Muni Demand Won't Waver Anytime Soon.

BlackRock's municipal group said any seasonal pullback in the market this month should be seen as restoring value and presenting a buying opportunity.

Entering June, BlackRock shortened duration in its portfolio in recognition of the market's strong run and increased gross issuance. Issuance generally picks up meaningfully in June, the market's worst-performing month over the past five years, but considering the uptick this May, the usual pattern may not fully develop, BlackRock wrote in its monthly municipal market update.

"On balance, we would see any pullback as healthy, short lived and a potential buying opportunity," the report said. "We continue to favor the A-rated space, revenue bonds and the health care and transportation sectors."

In a presentation to reporters Wednesday Peter Hayes, managing director and head of the municipal bonds group, pointed to the strong demand.

"We are seeing a lot of non-traditional buyers have [become] interested in the asset class as well just because global rates are so low and in many cases, negative," he said.

"$28 billion coming into the asset class this year alone is phenomenal but it is not sustainable," said Blackrock Director Sean Carney, head of municipal strategy. "Because of what is driving it, we don't see any catalysts that will change it. Fund flows are the product of past performance and future rate forecasts. Performance has been better than good and future rate forecasts are sideways to lower."

Carney noted the deals have been digested easily and oversubscribed as issuance picked up, as sellers offered a something for everyone with bonds that are evenly distributed across the credit curve.

"2016 issuance is still running about 19% above the five and 10 year average, although its true its down about 7% year over year but we are still on track to end the year around $400 billion and we are about to enter a strong seasonal pattern," Carney said. "Coupon payments will be coming in soon and get re-invested in the market, come July and August."

Illinois, which still doesn't have a budget, is going to access the market with only a minor penalty on yields, the Blackrock strategists said.

"I think it has gotten some attention but the struggle over what is preventing the budget from passing to me is more indicative of the broader market and more problematic of things you might see going forward," said Hayes.

Yesterday, Illinois announced plans to borrow $550 million on June 16. The Prairie State is currently the lowest rated U.S. state.

“We as municipal market participants should really be penalizing in some way, by almost not giving them any access to the market,” said Hayes. “Think about it, they are a state without a budget, they refuse to pass a budget, they have the lowest funded ratio on their pension of any state, and yet they’re going to come to market and borrow money.”

Carney said the strong demand has reduced the penalty for fiscal problems.

“Spreads have widened quite considerably,” he said. “There are a few ways to look at it. One way is that you see the spreads widening but another way to look at it is that with rates continuing to fall, even though they are coming in at wider spreads, the all-in interest cost is not that much greater then where they were, when they previously issued.”

The Bond Buyer

By Aaron Weitzman

June 8, 2016

SIFMA to SEC: It's Time to Revise Rule 15c2-12 on Muni Disclosure.

WASHINGTON – The Securities Industry and Financial Markets Association is urging the Securities and Exchange Commission to amend its Rule 15c2-12 on municipal bond disclosure and provide more guidance in this area.

The dealer group made its request for changes to the SEC rule in a letter sent to SEC chair Mary Jo White from SIFMA president and chief executive officer Ken Bentsen.

The letter highlights recent requests from market groups to modify the rule to include bank loan disclosure as well as a white paper from SIFMA in April pressing for modernization of Rule 15c2-12.

“Given the recent discussions at the MSRB, the SEC’s own efforts in this area, and the industry’s keen interest, we think that the time has come to move forward with a revision of Rule 15c2-12,” Bentsen wrote.

The Municipal Securities Rulemaking Board has consistently urged issuers to voluntarily disclose their bank loans. But after concluding the disclosures are still lacking in this area, the board released a concept proposal in March asking market participants about a possible rule that would require municipal advisors to disclose information regarding their municipal clients’ bank loans and private placements.

While some investor groups applauded the idea, many market groups said it would be harmful and ineffective. Almost every group that responded recommended that the SEC instead boost bank loan disclosure by requiring it under 15c2-12.

“SIFMA’s dealer and asset management members collectively agree that SEC amendment or interpretation of Rule 15c2-12 would be a more comprehensive avenue for ensuring that information regarding direct purchases of securities and bank loans entered into by issuers is … made

transparent to the market," Bentsen told White. "We urge you to make this investor protection issue of bank loan disclosure a top priority for the SEC and its staff."

SIFMA's white paper, released on April 12, recommended a number of updates to 15c2-12.

It suggested that when municipal advisors help prepare official statements, they share with underwriters the due diligence responsibilities for reviewing those documents to ensure the information is not false or misleading.

Leslie Norwood, SIFMA associate general counsel, co-head of munis, and author of the white paper, said that while the paper calls for muni advisors to take on some continuing disclosure responsibilities, it is not trying to shift dealer's duties onto them.

SIFMA also suggested that the commission eliminate the requirement that issuers file event notices for rating changes since those are now posted on the MSRB's EMMA system.

Additionally, the group also asked for the SEC to affirm the position it took in its initial proposing release for 15c2-12 that, given the structure of a competitive deal, "the task of assuring the accuracy and completeness of the disclosure [in competitive deals] is in the hands of the issuer."

SIFMA wanted the SEC to eliminate current complex language in 15c2-12 that dictates when a participating underwriter is expected to send customers copies of the final OS. Instead, the rule should require underwriters to provide final official statements to customers from when they are posted on EMMA until the offerings close, it said.

Rule 15c2-12 should also require issuers to set an actual date as the due date for their disclosures of annual financial and operating information, the group said in the white paper. Currently, issuers typically say the information will be disclosed within so many days after the close of the fiscal years, leaving underwriters to "burn brain cells" and count days, Norwood said at the time the paper was circulated.

Another recommendation is for the provision of 15c2-12 that exempts from disclosure requirements primary offerings with institutional investors to be expanded to explicitly include primary offerings with sophisticated municipal market professionals, qualified institutional buyers, and accredited investors.

An SMMP designation usually applies to banks, savings and loan associations, registered investment advisors, and any person or entity with total assets of at least $50 million. QIBS are defined by the SEC and must own and invest, on a discretionary basis, at least $100 million in securities or, if they are broker-dealers, must meet a threshold of $10 million. Accredited investors can be any individual who consistently earns $200,000 per year, has a net worth exceeding $1 million, or has a leadership role with the issuer of the security being offered.

The Bond Buyer

By Jack Casey

June 10, 2016

SIFMA: States Can do More to Improve Muni Issuer Disclosure.

WASHINGTON – The Securities Industry and Financial Markets Association is urging states to adopt policies to ensure issuers meet their disclosure requirements and provide investors with relevant information.

The recommendations come after SIFMA conducted a review of current state policies related to local government bond issuance, information disclosure, and financial audits. The study of state laws included all fifty states as well as the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

SIFMA also recently unveiled a state-by-state capital markets database that includes, among other things, downloadable data for each state detailing total muni bond issuance, top muni issuers, the number of broker-dealers and financial advisors, as well as total securities industry employment.

Michael Decker, a managing director and co-head of munis for SIFMA, said that the review of state laws is a response to muni market participants' concerns that the Securities and Exchange Commission may try to use disclosure problems to obtain authority from Congress to regulate issuers.

"I understand why issuers would be nervous about having the SEC as their regulator but there does seem to be a need for somebody to be paying attention to this issue from an oversight perspective," Decker said. "If it's not the SEC … then states are in a perfect position to take that role."

The SEC does not currently have direct regulatory authority over issuers' disclosures in the market. Its muni disclosure requirements run through broker-dealers. SEC Rule 15c2-12 prohibits dealers from underwriting most bonds unless they have reasonably determined that the issuer has contractually agreed to disclose annual financial and operating data as well as material event notices. Underwriters also must obtain and review issuer official statements to make sure they do not contain any false or misleading information that would be material to investors.

The SIFMA review found that only one state, Louisiana, has a law in place that is designed to help ensure local governments meet their legal disclosure obligations. The Louisiana law requires local governments to maintain records of continuing disclosure agreements (CDAs) and compliance actions. It also requires auditors to examine governments' CDA records and check that local governments have made their required financial filings.

Using auditors to "poke" issuers about their disclosure responsibilities has been a topic of discussion at several municipal conferences and meetings over the past year and is something SIFMA recommended again after concluding the study.

Decker said SIFMA recognizes the auditor approach would not work for every state. Each state should adopt laws that accomplish the goal of overseeing issuers while fitting into the state's existing legal frameworks, he said.

SIFMA found that 17 states have policies in place that already require governments to file their official statements with state repositories and impose other disclosure requirements on local governments related to bond issuance. Four other states and the U.S. Virgin Islands have laws in place requiring governments to file financial audit information and make the filings publicly available.

"While these initiatives help improve the availability of financial information, they generally are

targeted at citizens and taxpayers, not investors," SIFMA said.

Some states, like North Carolina, already have processes in place that can help them ensure compliance, according to SIFMA. North Carolina generally requires its Local Government Commission to approve all local government bond issues. That process could include compliance with outstanding CDAs as a condition of approving future bond issuances, SIFMA suggested.

SIFMA's review follows an ongoing discussion in the municipal market and among market groups on improving disclosure following the announcement of the SEC's Municipalities Continuing Disclosure Cooperation initiative. The initiative, begun in 2014, allows underwriters and issuers to receive lenient settlement terms if they self-report any instances during the past five years that issuers falsely claimed in official statements that they were in compliance with their self-imposed continuing disclosure agreements.

The initiative led to SEC settlements with 72 underwriters representing 96% of the market by underwriting volume. The SEC is expected to soon start releasing settlements with issuers. Some market groups and issuers are concerned the MCDC results could provide Congress with evidence that could be used to justify granting SEC regulatory authority over issuers.

The Bond Buyer

By Jack Casey

June 15, 2016

SIFMA Urges SEC to Amend Muni Disclosure Rule & Issue Additional Guidance.

Washington, D.C., June 10, 2016 – In a letter to SEC Chair White, SIFMA president and CEO Kenneth E. Bentsen, Jr. urges the SEC to amend Rule 15c2-12, which covers dealers continuing disclosure obligations, and release additional guidance. The text of the letter is as follows:

"The Securities Industry and Financial Markets Association ("SIFMA") and SIFMA's Asset Management Group (the "AMG") together respectfully submit this letter to urge you to direct staff at the Securities and Exchange Commission (the "SEC") to develop a proposal to amend Rule 15c2-12 and release additional guidance.

"The Municipal Securities Rulemaking Board (the "MSRB") recently requested comment on a concept proposal to require municipal advisors to disclose information regarding the direct purchases and bank loans of their municipal entity clients to the MSRB's Electronic Municipal Market Access ("EMMA") system for public dissemination. SIFMA's dealer and asset management members collectively agree that SEC amendment or interpretation of Rule 15c2-12 would be a more comprehensive avenue for ensuring that information regarding direct purchases of securities and bank loans entered into by issuers is consistently and uniformly reported to the MSRB's EMMA Web site and made transparent to the market. We urge you to make this investor protection issue of bank loan disclosure a top priority for the SEC and its staff.

"The SEC itself, in its 2012 Report on the Municipal Securities Market (the "Report"), suggested several areas of Rule 15c2-12 ripe for amendment or interpretive guidance. Additionally, SIFMA recently submitted to you our Rule 15c2-12 Whitepaper, which offers a current perspective on the

existing framework for providing disclosure in the municipal securities market, the relative burdens placed upon municipal market participants by that framework, and opportunities for improvement in framework structure and guidance interpreting application and compliance.

“Given the recent discussions at the MSRB, the SEC’s own efforts in this area, and the industry’s keen interest, we think that the time has come to move forward with a revision of Rule 15c2-12.”

Release Date: June 10, 2016

Contact: Katrina Cavalli, 212.313.1181, kcavalli@sifma.org

SIFMA Believes States Best Positioned to Improve Muni Disclosure.

New York, NY, June 15, 2016 – States have a unique opportunity to be proactive in helping to ensure that local governments that issue bonds in the public market make complete and timely disclosure of financial information and comply with all federal and contractual requirements. To that end, SIFMA is encouraging states to build on existing financial disclosure regimes with the goal of ensuring that investors have access to the financial information they need and that local governments are in compliance with their obligations.

SIFMA’s recommendations follow from a 50-state review of state policies governing local government bond issuance, information disclosure and financial audits.

“SIFMA supports a robust disclosure regime in the municipal market to ensure that investors have timely access to information they need to evaluate their investments,” said Michael Decker, managing director and co-head of SIFMA’s Municipal Securities Division. “In light of our review of state policies, we believe states are the best positioned to lead the way going forward to ensure the highest level of compliance and investor information.”

In the review, SIFMA conducted a thorough examination of policies that govern local government disclosure, issuance and audit practices in all 50 states, Washington, D.C. and three territories, in an effort to determine the extent to which states oversee the continuing disclosure activity of local governments. Continuing disclosure involves the public dissemination of annual financial statements and certain event notices that are material to investors who own or may consider buying bonds issued by governments, authorities, agencies, districts and other public sector issuers.

In its review SIFMA looked at questions like whether states require the submission of and make public official statements (OSs), audited annual financial statements and other information relevant to investors.

The survey found that only one state, Louisiana, has a law in place designed to help ensure that local governments meet their legal disclosure obligations. In 2014 Louisiana enacted Act 463, a state law which both requires local governments to maintain records of Continuing Disclosure Agreement (CDA) requirements and compliance actions and requires financial auditors to examine governments’ CDA records and check that local governments have made required financial filings.

Some states have policies which require the filing of OSs with state repositories and impose other disclosure requirements on local governments related to bond issuance. These states include: Arizona, California, Colorado, Florida, Illinois, Indiana, Kentucky, Louisiana, Michigan, Missouri, New York, North Carolina, Oklahoma, Oregon, Tennessee, Washington and West Virginia. These

policies are a positive step towards improving market transparency. Four states and one territory have laws in place requiring the filing of financial audit information and make those filings publicly available: California, Missouri, New Jersey, Texas and the U.S. Virgin Islands.

SIFMA believes states are in a unique position to help ensure that local government issuers make complete and timely disclosure of financial information and comply with all federal and contractual requirements. We encourage states to adopt laws that:

- Require auditors to check for compliance with continuing disclosure requirements in the context of annual or periodic financial audits; and
- Require local governments to adopt internal policies and procedures related to compliance with all disclosure requirements.

In addition, some states have processes in place that could be leveraged to help ensure disclosure compliance. In North Carolina, for example, all local government bond issues are generally required to be approved by the Local Government Commission. A state with such a process already in place could include compliance with outstanding CDAs as a condition of approving future bond issuance.

Release Date: June 15, 2016

Contact: Katrina Cavalli, 212.313.1181, kcavalli@sifma.org

MSRB Updates Content Outline for Municipal Advisor Qualification Exam.

Read the Outline.

TAX - WASHINGTON

Lee v. State

Supreme Court of Washington, En Banc - May 26, 2016 - P.3d - 2016 WL 3042994

Taxpayers brought action to challenge adopted ballot initiative which provided for an immediate reduction in the sales tax rate unless the legislature proposed a constitutional amendment.

The Superior Court entered order voiding the initiative, and State appealed.

The Supreme Court of Washington held that:

- Action presented a justiciable controversy under the Uniform Declaratory Judgments Act (UDJA);
- Action was justiciable under the public interest exception;
- Title of adopted ballot initiative violated single subject rule and thus was unconstitutional; and
- Adopted ballot initiative altered the process for amending the state constitution and thus was unconstitutional.

Taxpayers' action for declaratory relief that adopted voter initiative, which provided for an immediate reduction in the sales tax rate unless the legislature proposed a constitutional amendment, was unconstitutional presented issues of substantial public interest which required prompt resolution, and thus was justiciable under the public interest exception. If constitutional, the initiative would result in either an immediate and yearly $1.4 billion reduction to the State's

operating budget or a change to the State's constitution by essentially only a majority of voters.

Title of adopted ballot initiative which provided for decrease in sales tax rate unless the legislature amended constitution to requiring supermajority vote or voter approval to raise all taxes and legislative approval to increase any fees violated single subject rule and thus was unconstitutional, as sales tax reduction was unrelated to both a constitutional amendment, which would impact future legislatures, and to the way that future taxes and fees would be approved. While both subjects related to general title of fiscal restraint or taxes, they were not germane to each other, legislative action was not contingent on sales tax reduction, but rather was a means to avoid it, and there was no nexus between constitutional amendment and current sales tax rate.

Adopted ballot initiative which provided for decrease in sales tax rate unless the legislature amended constitution to require supermajority vote or voter approval to raise all taxes and legislative approval to increase any fees altered the process for amending the state constitution and thus was unconstitutional. while legislature would still have to go through the processes outlined in the constitution, the "do this or else" structure of the initiative established a new process for amending the constitution by simple majority vote.

Puerto Rico Loss Is Bondholders' Gain With Congress's Path Clear.

Things are starting to look up for Puerto Rico's bondholders after the U.S. Supreme Court struck down an island law that would have allowed some agencies to turn to court to restructure their debt.

The U.S. territory's securities climbed, with some bonds backed by sales-tax revenue reaching their highest since 2014, as the decision Monday eliminated a risk that Puerto Rican authorities would treat bondholders worse in a debt workout than a federal oversight board. Congress is advancing legislation to empower such a panel to help chart a path out of the island's fiscal crisis.

"Investors will doubtlessly fair better in a federally-directed restructuring program," Height Securities analyst Daniel Hanson said in a report. "The court's decision essentially holds that Puerto Rico has no authority under U.S. law to take action outside the ultimate source of authority — the U.S. Congress."

The relationship between investors and Governor Alejandro Garcia Padilla has become increasingly adversarial since his administration began defaulting on some securities in August, saying it doesn't have enough money to repay its $70 billion debt without shutting off services crucial to its 3.5 million residents. The court decision Monday eliminated a way for Puerto Rico to escape from some debt on its own.

Puerto Rico enacted the Recovery Act in 2014 to give bankruptcy-like powers to some agencies that, unlike many U.S. local governments, can't file for court protection from creditors. If allowed to stand, the law would have affected more than $20 billion in debt and strengthened the commonwealth's hand in negotiations aimed at persuading investors to accept less than they are owed.

The court ruled 5-2 in favor of bondholders who argued that the measure was barred under the federal bankruptcy law, which doesn't apply to the territory. The decision upheld a lower court ruling against the Puerto Rico law.

"Our constitutional structure does not permit this court to rewrite the statute that Congress has

enacted," Justice Clarence Thomas wrote for the majority. Justices Sonia Sotomayor and Ruth Bader Ginsburg dissented, saying that Congress didn't intend to leave the island without access to either a federal or local restructuring law.

The decision leaves Puerto Rico largely dependent on Congress, which is advancing legislation to extricate the island from its difficulties. The U.S. House on Thursday passed a bill, called Promesa, that would establish a seven-member board to manage a restructuring of the commonwealth's debt and oversee its finances. The panel could ask a judge to order a forced restructuring if the government can't reach a deal with bondholders, ensure that the budget is balanced and recommend sales of assets to produce cash.

The Senate plans to take up the measure in the next several weeks, before July 1, when Puerto Rico owes $2 billion on a variety of securities.

Promesa is likely a "much better outcome" for creditors than the Recovery Act, according to Charles Tyson, an analyst at Keefe Bruyette & Woods who follows municipal-bond insurers. The local law had "some provisions even more draconian" than those in Chapter 9 bankruptcy, according to Mark Palmer at BTIG LLC.

The outcome of the crisis, which has been building over the past year, is far from certain and bondholders are still unlikely to recoup the full value of their investments. Garcia Padilla has said the government can't afford to cover all that it owes next month, which may mark its first default on general-obligation bonds. In December, holders of Puerto Rico's electric utility debt agreed to accept a 15 percent loss on their investments, though aspects of that deal are still in flux.

The verdict was welcome news to investors because reinstating the law would have injected fresh uncertainty just as Congress is moving to address the crisis. The most-traded fixed-rate senior sales-tax bonds, known as Cofinas, climbed to 64 cents on the dollar Monday, after last changing hands at 55 cents in April. Zero-coupon Cofina bonds due in 2047 traded on the highest volume since February at 13.3 cents, the highest since June 2013.

Securities due in 2038 from the Puerto Rico Aqueduct and Sewer Authority, which would have been included in the local Recovery Act, climbed from an average of 68.8 cents Friday to as much as 72.3 cents, the highest price since September.

Puerto Rico's benchmark general obligations, which have an 8 percent coupon and are due in 2035, were little changed after the ruling, trading Tuesday at the highest average price since May 24, Bloomberg data show. Three of the five other general-obligation securities with at least $1 million worth of trades on Monday increased in price.

While the federal control board could ultimately force creditors to accept a restructuring in court if the parties failed to reach consensus, the Supreme Court's decision makes it less likely for Puerto Rico to use the legal system to reduce its obligations, Hanson said.

"This idea that Puerto Rico's going to go to court and make some persuasive police-powers argument that gets them out of paying debt seems somewhat less persuasive in the context of the Supreme Court ruling," Hanson said in an interview.

Bloomberg Business

by Brian Chappatta and Michelle Kaske

June 14, 2016 — 2:00 AM PDT Updated on June 14, 2016 — 8:20 AM PDT

Bloomberg Brief Weekly Video (06/16)

Taylor Riggs, a contributor to Bloomberg Briefs, talks with Joe Mysak about this week's municipal market news.

Watch the video.

June 16, 2016

Scaling Impact for Community Development Financial Institutions.

Abstract

The link between economic equity and financial and economic inclusion has long been the focus of community development financial institutions (CDFIs). CDFIs provide financial products and services to low-income, low-wealth, and underserved communities. In this brief, we examine what scale means for CDFIs, distinguishing size from impact. We look at how CDFIs deepen their impact through development and technical assistance services. Finally, we highlight the important role funding and balance-sheet management play in determining the type of future growth the industry can achieve. These questions are especially relevant given today's ongoing public debate about economic growth and equity.

Read the Brief.

The Urban Institute

by Brett Theodos, Sameera Fazili, Ellen Seidman

June 16, 2016

Supreme Court Ruling on Puerto Rico Debt Seen Positive for Investors.

The U.S. Supreme Court's invalidation of a Puerto Rican law giving the island's public utilities access to a bankruptcy-like process isthe latest twist on the path to an eventual restructuring of the U.S. territory's $70 billion debt load.

Monday's decision closes off one avenue for Puerto Rico to revamp some of its obligations and means any workout would depend on Congress, which is considering federal restructuring legislation.

Few public utility bonds changed hands Monday following the court decision. Some fifteen-year bonds issued by Puerto Rico's Aqueduct and Sewer Authority in 2012 traded at 72 cents on the dollar Tuesday morning after hovering in the low- to mid- 60s for much of the year. Benchmark general obligation bonds traded at between about 65 and 67 cents on the dollar Monday afternoon, just as they did Friday.

Bondholders and investment funds had asked the courts to strike down the law, which would have made at least $16 billion of Puerto Rican debt eligible for bankruptcy-like protection.

“We view the ruling as incrementally positive for investors, since the Court has enjoined the Commonwealth from taking unilateral action to force a restructuring,” said Daniel Hanson of Height Securities in an analysis of the court’s decision. The ruling affirmed a lower court finding that Puerto Rico lacks the authority to make bankruptcy protection available to its agencies.

Momentum on the federal restructuring legislation has already buoyed investors. Bond prices rose after the U.S. House on Thursday approved a restructuring package, with yields on the Barclays Puerto Rico Municipal Bond Index falling about 10 basis points to 4.06% Friday. The measure awaits action in the Senate.

Puerto Rico has more than a dozen debt-issuing entities, with each set of bonds carrying different legal protections. Many stakeholders fear that without a restructuring framework, the island’s financial crisis could devolve into a lengthy and expensive legal battle.

The local bankruptcy law struck down Monday would have given the commonwealth more authority to renegotiate its debt on its own than would the U.S. House bill, which envisions a federally appointed financial control board.

Unlike the local bankruptcy law, the congressional measure means that “a lot of discussion and negotiating have to happen before they can force an outcome on creditors,” said Daniel Solender, director of municipal-bond management at Lord Abbett & Co., which holds some Puerto Rican debt in its portfolio.

Howard Cure, director of municipal research at Evercore Wealth Management, which also holds some Puerto Rican debt, said creditors “would rather take their chances with a financial control board than to have the commonwealth decide how much of its outstanding debt to pay.”

Puerto Rico Gov. Alejandro Garcia Padilla had no immediate comment on the decision. But in a statement Thursday, he criticized an earlier Supreme Court decision that underscored Puerto Rico’s dependent status and limited authority.

THE NEW YORK TIMES

By HEATHER GILLERS

Updated June 14, 2016 11:05 a.m. ET

Write to Heather Gillers at heather.gillers@wsj.com

New Jersey Top Court Sides With State in High-Stakes Pension Case.

(Reuters) – The New Jersey Supreme Court ruled on Thursday that retired public employees do not have a contractual right to receive increasing cost-of-living adjustments, a decision that saves the state $17.5 billion.

Governor Chris Christie’s administration suspended the COLA payments, which are tied to inflation, as part of 2011 reforms aimed at curtailing the ballooning cost of public pensions.

Despite running a heavily Democratic state, Christie, a former Republican presidential candidate now stumping for presumptive nominee Donald Trump, has notched several victories against the public sector, beginning with his ability to garner bipartisan support for the pension reforms.

He was even allowed to go back on promises he made in those same reforms when, in 2014, he slashed the state's pension contributions, saying a surprise revenue gap left him no choice. The state Supreme Court vindicated that move last year.

"State taxpayers have won another huge victory, one that spares them from the burden of unaffordable benefit increases for public employee unions," Christie said of Thursday's ruling, citing the billions saved.

Credit rating agencies rank New Jersey the second-worst U.S. state partly because of its growing pension costs and narrow reserves.

Thursday's ruling "eliminates a major threat to the state's fiscal stability," said Moody's Investors Service analyst Baye Larsen in a statement.

The status of the state's roughly $83 billion pension system has never been worse. The state's aggregate funded ratio for all plans is 48.6 percent.

Retired prosecutor Charles Ouslander and others sued when the reforms froze COLAs at 2011 levels, saying they had as much right to that benefit as their base pensions.

"The ramifications of a contract of that sort are harsh" because it binds the legislature "to a policy choice and surrenders the power of future elected representatives to cut back," Justice Jaynee LaVecchia wrote in the 6-1 opinion.

She cited a 2014 federal appellate decision upholding Maine's suspension of COLAs, agreeing that legislatures must use unmistakable language when creating contracts.

Ouslander, who argued the appeal himself, said after the decision that "all public employees should be gravely concerned that their remaining pension benefits have any legal protections left."

The only fix now, Ouslander said, is a potential November ballot initiative to fully fund annual state pension contributions, which Christie opposes.

Wendell Steinhauer, president of the New Jersey Education Association, a teachers union, said the benefit freeze is "theft, plain and simple."

New Jersey Justice Barry Albin dissented from the majority, saying he did not agree that the statutes lacked clarity.

In deciding when to retire, "public employees relied on the legislative promise that COLAs would protect their pensions from the ravages of inflation," Albin wrote.

However, the United States has not had significant inflation in more than a decade and it likely will not for years to come, said municipal bond expert Richard Ciccarone, CEO of Merritt Research Services.

"To keep COLAs as a rigid right provides public servants with an advantage that surpasses what most taxpayers can earn on a parallel basis," he said.

By REUTERS

JUNE 9, 2016, 2:54 P.M. E.D.T.

(Reporting by Hilary Russ in New York; editing by Phil Berlowitz, Bernard Orr)

Michigan Lawmakers Approve Detroit School Rescue Package.

(Reuters) – Legislation approved by Michigan lawmakers on Thursday to bail out the Detroit Public Schools (DPS) will keep the district operating, but falls short on funding to fix its crumbling buildings, according to school officials.

The bill package, approved over objections by Democratic lawmakers, creates a new, debt-free district governed by an elected school board, while leaving the current district in place solely to levy property taxes to pay off outstanding debt.

DPS, which has nearly 46,000 students, has been under state control since 2009 because of a financial emergency.

The American Federation of Teachers-Michigan and Detroit Federation of Teachers criticized the lack of a bipartisan compromise in a joint statement on Thursday.

“These bills are a statement by non-Detroit Republicans that they know what is best for Detroit, a city that is overwhelmingly people of color,” the groups said. “It has been this attitude that resulted in Detroit Public Schools’ massive debt, low academic performance and a ‘wild west’ system of school openings.”

Under the measures approved on Thursday, Michigan would commit $617 million from the state’s share of a tobacco settlement in annual increments of $72 million for the new Detroit Community School District. An emergency state loan for transition costs was capped at $150 million, with only $25 million of that amount available for capital improvements, less than the overall $200 million sought by DPS.

“We also look forward to working creatively with the governor’s office, the state superintendent, and the Michigan Department of Education to identify the remainder of the critical resources necessary to educate our students,” DPS state-appointed transition manager Steven Rhodes said in a statement.

A smaller bailout passed by the House in May raised concerns that DPS would run out of cash later this summer.

Republican lawmakers contended the final $617 million bailout legislation would prevent DPS from filing for municipal bankruptcy even though Rhodes, a former federal bankruptcy judge, has said such a move would be ineffective because much of the district’s debt is guaranteed by the state.

Democrats objected to the absence of a Detroit Education Commission to oversee the opening and closing of public and charter schools in Detroit.

The House and Senate approved the package with a series of votes late Wednesday and early Thursday, sending the legislation to the desk of Republican Governor Rick Snyder, who signaled in a

statement that he supports it.

By REUTERS

JUNE 9, 2016, 3:03 P.M. E.D.T.

(Reporting by Brendan O'Brien in Milwaukee and Karen Pierog in Chicago; Editing by Dominic Evans and Matthew Lewis)

Supreme Court Rejects Puerto Rico Law in Debt Restructuring Case.

WASHINGTON — The Supreme Court on Monday rejected an effort in Puerto Rico to allow public utilities there to restructure $20 billion in debt, striking down a 2014 Puerto Rico law.

Justice Clarence Thomas, writing for the majority in the 5-to-2 decision, said the law was at odds with the federal bankruptcy code, which bars states and lower units of government from enacting their own versions of bankruptcy law.

Puerto Rico is struggling with $72 billion in debt and has argued that it needs to restructure at least some of it under Chapter 9, the part of the bankruptcy code for insolvent local governments. But Puerto Rico is not permitted to do so, because Chapter 9 specifically excludes it, although it is unclear why.

In 2014, the island tried to get around that exclusion by enacting its own version of a bankruptcy law, intended for its big public utilities, which account for about $26 billion of the total debt. But that attempt, called the Recovery Act, ran afoul of the part of the code that says only Congress may enact bankruptcy laws.

Puerto Rican officials had argued that the Recovery Act addressed a gap in the way its debts are treated. Under the bankruptcy code, they said, states may authorize their cities, counties, public utilities and other branches of government to restructure their debts under Chapter 9 of the code. But that law excludes Puerto Rico and all branches of its government, including its public utilities.

Utility creditors challenged the Recovery Act in federal court, arguing that the bankruptcy code displaced, or pre-empted, it. The justices agreed.

The federal law, Justice Thomas wrote, "bars Puerto Rico from enacting its own municipal bankruptcy scheme to restructure the debt of its insolvent public utilities." Chief Justice John G. Roberts Jr. and Justices Anthony M. Kennedy, Stephen G. Breyer and Elena Kagan joined him.

Justice Thomas wrote that the decision was compelled by a straightforward reading of the federal law.

In dissent, Justice Sonia Sotomayor, joined by Justice Ruth Bader Ginsburg, said the majority's approach was too mechanical and failed to take into account the purpose of the bankruptcy law and the impact of its decision. The Recovery Act, she wrote, "is the only existing legal option for Puerto Rico to restructure debts that could cripple its citizens."

"The Commonwealth of Puerto Rico and its municipalities are in the middle of a fiscal crisis," she wrote. "The combined debt of Puerto Rico's three main public utilities exceeds $20 billion. These

utilities provide power, water, sewer and transportation to residents of the island."

"With rising interest rates and limited access to capital markets, their debts are proving unserviceable. Soon, Puerto Rico and the utilities contend, they will be unable to pay for things like fuel to generate electricity, which will lead to rolling blackouts," Justice Sotomayor added. "Other vital public services will be imperiled, including the utilities' ability to provide safe drinking water, maintain roads and operate public transportation."

The majority's approach ignores those realities, she wrote, "rejects contextual analysis in favor of a syllogism" and leaves Puerto Rico "powerless and with no legal process to help" its citizens.

Pedro Pierluisi, Puerto Rico's nonvoting member of Congress, said: "The practical significance of the court's holding is crystal clear. Only Congress can provide the Puerto Rico government with the authority to restructure its debts." He said action by Congress "is essential if the territory is going to overcome its severe — and worsening — economic, fiscal and demographic crisis."

The case has been vexing for all parties because when Congress amended the bankruptcy code to exclude Puerto Rico, in 1984, it left no written record explaining why. Yet the rule barred the island from the only way under United States law that a debtor can legally reduce debt over the objections of creditors.

Besides passing its own bankruptcy law in 2014, Puerto Rico tried to persuade Congress to delete the 1984 exclusion. It said the provision was inexplicable and may have been inserted by mistake.

Those arguments did not sway Congress. But last year lawmakers realized the United States Constitution gave them the power to "make all needful rules and regulations" for territories, including Puerto Rico. Using that approach, the House of Representatives passed a quasi-bankruptcy bill this month that would apply to all territories (though only Puerto Rico is in dire need at the moment).

Obama administration officials have expressed hope that the Senate will take up the measure quickly and enact it before July 1, when Puerto Rico is supposed to make debt payments totaling nearly $2 billion. It is expected to default, which would normally prompt creditors to sue. As now drafted, the bill would stay such lawsuits, put Puerto Rico under federal oversight and give it other legal powers similar to those found in bankruptcy.

In the majority opinion, Justice Thomas noted that Puerto Rico had also been seeking help from Congress. "After the parties briefed and argued these cases," he wrote, "members of Congress introduced a bill in the House of Representatives to establish an oversight board to assist Puerto Rico and its instrumentalities," adding that "the bill does not amend the federal bankruptcy code."

Justice Sotomayor responded that "the government and people of Puerto Rico should not have to wait for possible congressional action to avert the consequences of unreliable electricity, transportation and safe water — consequences that members of the executive and legislature have described as a looming 'humanitarian crisis.'".

Justice Samuel A. Alito Jr. recused himself from the cases, *Puerto Rico v. Franklin California Tax-Free Trust*, No. 15-233, and *Acosta-Febo v. Franklin California Tax-Free Trust*, No. 15-255. As is the court's custom, he did not explain why.

THE NEW YORK TIMES

By ADAM LIPTAK and MARY WILLIAMS WALSH

JUNE 13, 2016

Detroit Eyes Refunding of Up to $660 Million Bonds.

(Reuters) – Detroit would sell its first general obligation bonds since exiting bankruptcy in December 2014 under a proposal by Mayor Mike Duggan's administration to refund up to $660 million of outstanding bonds.

The city council on Tuesday sent the plan to refund up to $275 million of unlimited tax GO bonds sold in 2014 and up to $385 million of limited tax GO bonds sold in 2010 and 2012 to its Budget, Finance and Audit Committee for consideration.

The outstanding bonds were issued through the Michigan Finance Authority and backed by the city's share of distributable state aid payments.

John Naglick, Detroit's finance director, said Detroit expects to capture lower interest rates in the bond refundings to save money for the budget and to lower property tax rates supporting the bonds.

"If it wasn't for this move to record low rates, we wouldn't do this," he said.

Ten and 30-year yields on Municipal Market Data's benchmark triple-A scale are at or near all-time lows, driven by big investor demand for debt sold by states, cities, schools and other municipal issuers.

Detroit was able to shed about $7 billion of its $18 billion of debt and obligations in the biggest-ever U.S. municipal bankruptcy. In its first post-bankruptcy public debt offering last August, the city restructured $245 million of variable-rate revenue bonds backed by city income taxes into a fixed-rate mode at a hefty spread over MMD's scale.

If the GO bond refundings are approved by the city council committee on Wednesday, the measures would head for a full-council vote on June 21. Naglick said the issuance also needs approval from the Detroit Financial Review Commission, the city's post-bankruptcy oversight board, which meets on June 27.

By REUTERS

JUNE 14, 2016, 5:51 P.M. E.D.T.

(Reporting by Karen Pierog in Chicago; Editing by Matthew Lewis)

Yield On 10-year Muni Bonds Drops to Record Low 1.42 pct.

The yield on top-rated municipal bonds due in 10 years dropped to 1.42 percent on Thursday, joining 30-year bonds in reaching record lows on Municipal Market Data's benchmark triple-A scale.

The five-basis-point fall in the 10-year yield pushed it below the previous record low of 1.47 percent set in November 2012, according to MMD, a unit of Thomson Reuters. The 30-year bond yield continued its recent move to all-time lows, ending Thursday at 2.13 percent.

The market where states, cities, schools, and other municipal issuers sell bonds has been in rally mode as cash-heavy investors chase low supplies of debt.

Reuters

Thu Jun 16, 2016 3:48pm EDT

(Reporting By Karen Pierog; Editing by Dan Grebler)

SEC Said to Study Muni Bank Loan Disclosure That Vanguard Wants.

The U.S. Securities and Exchange Commission is considering whether to require state and local governments to disclose bank loans and private placements, according to people familiar with the matter, reflecting bondholders' concerns about the fast-growing segment of municipal finance.

The rule, known as 15c2-12, requires securities dealers to ensure that states and local governments report updated financial information and material events to bondholders. Mutual funds, investment banks and credit analysts have been pushing regulators to respond to extend such requirements to bank loans, which become more prevalent since the 2008 crisis, particularly among smaller borrowers.

"We need a full picture on the balance sheet of our issuers," said Hugh McGuirk, who oversees $23 billion of municipal bonds at T. Rowe Price Inc. in Baltimore. "If we're not seeing the breadth and depth of that market with the terms that go along with it that increases the probability of some sort of surprise."

Direct lending by banks has proliferated in the $3.7 trillion market as states, local governments and non-profits find they can borrow at rates comparable to those on bonds, without the fees or disclosure requirements associated with public-debt offerings. In 2015, S&P Global Ratings evaluated 126 bank loans totaling $5.2 billion. Estimates of the size of the market run as high as $80 billion a year, said Nat Singer, chair of the Municipal Securities Rulemaking Board, the municipal market's self-regulator.

Because loans aren't classified as securities, states and cities aren't immediately required to disclose them, despite the risk they can pose to bondholders. The loan terms can favor banks over other investors and add to a borrower's financial risk.

For example, banks can demand accelerated principal and interest if a payment is skipped or a government's cash falls below a specific target, which could push the borrower into a liquidity crisis if it can't cover the bills. Such provisions last year led S&P to cut one Wisconsin town's credit rating from the third-highest grade to junk until the terms were renegotiated.

"It has the potential to mask the level of indebtedness," said Chris Alwine, head of municipals at Vanguard Group Inc. which holds about $160 billion of the securities. " You might be in a subordinated position that you don't know about."

John Nester, an SEC spokesman, declined comment.

Since the SEC can't regulate state and local government bond issuers, other than through the anti-fraud laws, it imposes its disclosure rules indirectly through its authority over banks.

In 1989, the SEC adopted Rule 15c2-12, requiring bond underwriters to review official statements before a municipal issuer publicly sold securities. It was amended in 1995 and added requirements for continuing disclosure, which the SEC last revisited in 2010.

The rule requires municipal issuers to disclose 14 types of material events within 10 business days, such as failure to pay principal and interest, draws on reserve funds or changes to the security of bondholders. The disclosures are posted on the MSRB's website.

In January 2015, the MSRB asked the SEC to reconsider whether to require bank-loan disclosure. The regulator has encouraged issuers to voluntarily disclose key details about the loans on its online repository, but few municipalities have done so.

The MSRB's call to revisit the rule has been joined by the Securities Industry and Financial Markets Association and the Bond Dealers of America, both of which represent underwriting firms.

Emily Brock, federal liaison for the Government Finance Officers Association, said the MSRB's EMMA website isn't user friendly, hampering voluntary disclosure of bank loans. GFOA encourages debt managers to voluntarily disclose.

"We're working with a system that can't accommodate the disclosure in an easy way," said Brock, whose organization hasn't taken a position on revisiting the SEC rules. "We too want quality data."

The SEC could use Form 8-K in the corporate securities market as a template for events that might be appropriate to include for continuing disclosure by municipal bond issuers. One such event is the "creation of a direct financial obligation or an obligation under an off-balance sheet arrangement."

"Requiring similar reporting by municipal issuers would address our concerns about these obligations that are not subject to Rule 15c2-12 and therefore are not now reported," wrote then-MSRB Chair Kym Arnone to the SEC in 2015.

Bloomberg Business

by Martin Z Braun

June 16, 2016 — 7:35 AM PDT

Illinois Dodging Boycott as Bond-Market Vigilantes Lose Punch.

Illinois can thank plunging global interest rates for saving the state from the consequences of its spreading financial disarray.

The state sold $550 million of bonds on Thursday for a top yield of about 4.1 percent on securities due in 2041, or about 2 percentage points more than benchmark debt, according to data compiled by Bloomberg. Illinois's first offering since January came after yields on German and Japanese debt slipped deeper below zero and Treasuries veered back toward levels not seen for more than half a century at least.

Rock bottom payouts have sent money pouring into state and local debt as investors search for even modest returns, which allowed Illinois to borrow easily from bond buyers once referred to as vigilantes for imposing discipline on spendthrift governments.

“It’s obviously a very favorable environment to sell anything, Illinois included,” said Matt Fabian, a partner at Municipal Market Analytics, a research firm based in Concord, Massachusetts. “People are more worried about yields going negative than they are rising, so there’s clearly demand for strong positive yield like in Illinois.”

The worldwide rally has pushed Illinois’s 10-year yields down over the past three months by more than a quarter percentage point to 3.3 percent, despite a record-long budget impasse that caused Moody’s Investors Service and S&P Global Ratings to downgrade it last week to the lowest level for a state in over a decade.

BlackRock Inc.’s Peter Hayes, who oversees $119 billion of municipal bonds for the world’s largest money manager, suggested investors consider not buying Illinois’s debt to pressure elected officials, a call that didn’t keep the state from returning to the market.

“Clearly the political inaction has soured the taste for many investors,” said Gabe Diederich, a portfolio manager in Menomonee Falls, Wisconsin at Wells Fargo Asset Management, which manages about $39 billion of munis, including Illinois debt. “Investors will lend them money again at a very steep penalty relative to the rest of the market, but with the expectation that ultimately the state will take the appropriate steps to fix their issues.”

Governor Bruce Rauner, a first-term Republican, and the Democrat-led legislature have been unable to agree on a budget since temporary tax-increases expired last year. Stop-gap measures to keep the government running have left it spending more than it brings in, with a deficit of as much as $6 billion projected for the year ending June 30. The political discord has also kept Illinois from finding a way to pay down its $111 billion pension-fund debt, which is the biggest among U.S. states.

Moody’s lowered Illinois’s credit grade on June 8 to Baa2, two steps above junk and its lowest for a state since Massachusetts in 1992. S&P followed the next day by cutting the state to BBB+, one rank higher than Moody’s. Fitch Ratings warned it may downgrade Illinois, too.

The diminished standing on Wall Street has extracted a cost, preventing Illinois from capturing the full benefits as municipal-market rates hold at the lowest since 1965. The 10-year portion of the bonds sold Thursday yielded 1.86 percentage points more than benchmark debt, according to data compiled by Bloomberg. Bank of America won the bonds after an auction among underwriters.

Rauner, a former private equity executive, told reporters in Chicago on Tuesday that bond buyers support reforms he has pushed as a way to stoke the Illinois economy. Since he took office, Rauner has tried to tie any spending plan to changes in Illinois worker-compensation laws, property-tax reductions and limits on unions, an agenda that’s drawn opposition from Democrats who say it would hurt lower-income residents.

“They’re fed up with the financial mismanagement of the state of Illinois,” Rauner said, referring to investors. “This has been going on for decades.”

Still, Illinois remains investment grade and isn’t seen at risk of default. Illinois law gives debt service priority over other expenditures and requires the state to make monthly deposits for interest and principal payments. And given the decline in yields around the world, Illinois may look appealing.

Investors have added money to municipal-bond mutual funds every week since October, the longest stretch since 2010, Lipper US Fund Flows data show. At the end of March, foreign buyers held a record $89.2 billion of state and local debt, almost triple what they owned a decade ago, according to the Federal Reserve Board.

“Instead of just on the surface saying no to potentially deteriorating credits, they’re going to take a really hard look because that’s the only place to go to get any kind of yield in the public fixed income markets,” said Adam Buchanan, senior vice president of sales and trading at Ziegler, a broker-dealer in Chicago. “Borrowers will benefit from that, no doubt.”

Bloomberg Business

By Elizabeth Campbell

June 16, 2016 — 2:00 AM PDT Updated on June 16, 2016 — 8:59 AM PDT

Investors: Know Your Broker's Best-Execution Requirements.

Overview

Bond dealers, typically referred to as brokers, that execute municipal bond transactions on behalf of investors have specific obligations to their customers that include providing relevant information, making suitable recommendations,
offering a fair price and providing their customers with best execution on their transactions. A broker’s best-execution obligations are paramount to ensure investor protection. This document provides an overview of what investors can
expect of their brokers as part of a broker’s compliance with its best-execution obligation to customers.

Continue reading.

Going Green: Evolution of Renewables ABS Discussed.

Representatives from Renovate America, Kramer Levin and T-Rex recently discussed the development of the renewables ABS market during a live webinar hosted by SCI (view the webinar here). Focusing on the PACE and solar sectors, this Q&A article highlights the main talking points from the session, including structuring and performance considerations. For a broader and more in-depth exploration of these themes, download a special SCI/Renovate America research report on green securitisation.

Q: How has the renewables ABS sector evolved?
Craig Braun, md, capital markets at Renovate America: Beginning with the PACE sector, Renovate America was able to complete the first securitisation in the space in 2014 in a transaction of just over US$100m. We followed this issuance up with six further deals since then and plan to be an active issuer in the ABS space for years to come. In total, we’ve completed over US$1bn of green bonds that meet the Green Bond Principles of 2015.

PACE is a common form of financing that can be paid back via a voluntary assessment on an annual property tax bill. It has a lien priority that is equal to all other taxes and assessments, which makes it a low-risk asset class from an investor and rating agency perspective.

PACE is a public-private partnership, whereby a PACE provider teams up with a municipal issuer,

such as the County of Los Angeles. The municipality uses its bonding ability to issue limited obligation improvement bonds that are backed by the various assessments put in place by PACE providers.

Homeowners can apply for PACE financing to upgrade their HVAC systems, or install solar panels or water conserving measures. There are 55 different product categories that qualify for PACE financing and over a million products within those categories, but the improvements must be energy-efficient, renewable energy-generating or water conserving. For instance, the Californian regime heavily promotes water conservation and even includes seismic protection, while Florida provides for wind protection.

PACE empowers homeowners to make the right choice and the smart choice by providing them with a tool to pursue these improvements with no money out of pocket.

California is by the far the most active state out of the 32 states plus Washington, DC that have implemented PACE legislation. In terms of total PACE volume, around US$1.5bn has been originated so far. HERO, our platform, is available throughout California and will soon be available in Missouri and Florida.

Benjamin Cohen, ceo of T-Rex: The other main renewables ABS asset is solar, which can be purchased via PACE, as well as through power purchase agreements, loans and leases. There has been a 65% compound growth rate in residential and commercial solar panel installments in the US over the last decade, facilitated by improved technology. Technology has enabled the cost of solar power to drop from US$40 per watt four years ago to 60 cents per watt today.

SolarCity and Sunrun have been at the forefront of the development of solar ABS. We have seen seven solar ABS issued to date – six by SolarCity and one by Sunrun. The majority of these deals securitise power purchase agreements and over time the deals have increased in size and in yield as investors become more comfortable with the asset class.

One issue you find with solar and not with PACE is tax equity. Tax equity is derived from the investment tax credit, which typically provides 30% of the capital stack and is incredibly complex – but not impossible – to structure around in a securitisation.

Q: In terms of structuring, what are the differences between PACE bonds and regular ABS?
CB: The main difference is that the underlying asset is a tax lien and those are bundled up into limited obligation improvement bonds, which serve as the collateral for the securitisation. The interesting aspect of the PACE assessment is that, like most taxes, the only money that's due is the annual or semi-annual tax payment.

If there is a default or a foreclosure, the principal balance does not accelerate. This is a unique feature of the asset class, which isn't widely appreciated. The only thing that is at-risk during a foreclosure is the tax payment due during that period.

If a homeowner doesn't pay their taxes, they're subject to a penalty – which in California is 10% of the tax due – and after a certain number of months interest begins accruing at 1.5% a month. In the event of delinquencies, there's actually more cashflow available to a PACE deal than if the property owners default on their mortgage payment.

That being said, PACE delinquencies are very low – people tend to pay their taxes, and people with PACE assessments tend to perform better than the average tax payer because they're somewhat of a self-selecting pool. These are people that are investing in their homes and seeking to reduce the cost

of ownership.

Finally, the servicer on PACE deals – certainly in the case of the Californian regime – is the county in which the assessment is being levied. Typically in securitisations, the servicer is an affiliate of the originator or the B-piece buyer. So, in the case of the HERO platform, 28 different servicers are billing and collecting the taxes.

Laurence Pettit, partner at Kramer Levin: Both the solar and PACE asset classes have initially struggled with educating investors as to how servicing works. In the ABS world, we're used to the servicing process being done in a certain way, but in both solar and PACE there are unique aspects to servicing.

In solar, as there is some ongoing maintenance involved on the solar installations and because historically there weren't many companies involved in the sector, the idea of there being a back-up servicer was challenging. In PACE, the challenge is parsing out the different servicing roles: as well as the counties which handle billing and collecting, other servicing duties are performed by the trustee, while the municipality is responsible for foreclosures.

Other than that, the structuring differences are fundamental because PACE is a tax and thus has a benefit from the lien perspective and is secured by the entire property, which is not the case with rooftop solar ABS. In terms of cashflows, you can look to tax lien ABS for comparable payment history and you can access data from counties on how often people are delinquent on their real estate taxes. In the case of California, where limited obligation improvement bonds have been popular for years for other purposes, there is also an indicative history of how those bonds have performed.

Rooftop solar is novel in many respects. We know how diligently people pay utility bills, but the extent to which you can apply that payment history to rooftop solar was open to question from rating agencies and investors. But over time a consensus has formed on how that should be analysed and, as more deals are done, we're starting to develop our own payment history for the bonds – which will provide a significant benefit as the years go by.

Q: California accounts for the majority of PACE assessments currently in place. What are the challenges of expanding the PACE programme into other states?

LP: The initial challenge is something that none of us in the ABS world are very familiar with and it involves state-level politics: each state has its own priorities and legislative issues to deal with. That being said, there is a huge take-up nationwide of PACE legislation – so, despite having to navigate each statehouse separately, PACE is gaining traction because it is popular with both elected officials and consumers.

It resonates with elected officials because the Californian experience has shown PACE to have a tremendous economic stimulus, and it's popular with consumers who embrace new ways to finance home improvements. Seeing as consumers vote for elected officials, PACE creates a virtuous circle.

The most significant attraction is that PACE has a measurable impact on the use of renewable energy and on energy savings. In addition, although it provides a public benefit, it doesn't cost the public sector any money because whoever is hired as the programme administrator (such as Renovate America) will be responsible for ensuring that funding is in place for the improvements installed using PACE.

The programme administrator also has to find an investor to buy the individual assessments or the improvement bonds that are backed by the assessments. There is no period of time during the

origination process where the sponsoring municipality has to use its own funds to pay for any of the programme costs.

Renovate America and others have proven that PACE assessments are an interesting asset for ABS investors, but they derive from municipal finance and marrying some legal and contractual concepts from muni finance with the expectations of ABS investors can be a challenge. Therefore it is important to be involved early and scrutinise the contracts and agreements, and the underlying muni bond indentures to ensure they comply with the expectations of an ABS investor and that they provide for contracted cashflows to be paid from the consumer all the way to the ABS investor.

There are always wrinkles in each state that need to be addressed or at least understood before a programme is launched to ensure there's an efficient means for collecting the tax. Clearly California is a good example.

There also needs to be a clear legal framework that tells you as an ABS investor at what point someone has the right to enforce on a delinquent property owner and that there is someone monitoring the process, who will enforce the remedies where necessary.

Q: Why is the scalability of PACE platforms an advantage?

CB: Once you get beyond the political and legislative challenges, with a tech-enabled platform, the PACE business is highly scalable. We estimate that the opportunity for PACE in the US is an annual market of US$159bn in home improvements, which either reduce energy or water consumption, or generate renewable energy.

California represents about US$22bn of this opportunity and so far we've just scratched the surface in the state. If you translate this across other states, there is a huge opportunity – especially considering residential properties account for 20% of US energy consumption and, of that, HVAC systems represent 40%.

However, there are a number of barriers to entry. Each programme administrator has to work in each state and get the issuers lined up and then get each community to the stage where consumers can opt into a PACE programme. It's a lot of hammer-and-chisel work upfront, but once the infrastructure and the contractor (point of sale) network is in place, the platform can easily be scaled up.

Q: How do commercial PACE financings differ from residential PACE financings? Can we expect any term securitisations in the commercial space?

LP: Residential and commercial programmes are almost exactly the same, except that the improvements/projects are larger in the commercial sector and can be more complicated. They tend to require accommodation or negotiation with the property owner/commercial mortgagee and that makes the origination process more time-consuming.

It is just a question of time before commercial PACE programme administrators can put together portfolios that are suitable for securitisation. It is taking time for commercial property owners to realise the benefits of participating in commercial PACE programmes.

Unlike residential consumers, commercial property owners have multiple options available to them and are more cautious on adopting PACE. But the popularity of commercial PACE is growing and there are no structural or legal reasons why there can't be term securitisations of commercial PACE – it's more about accumulating an appropriate pool.

Q: In terms of refinancings, do lenders typically require PACE obligations to be repaid

prior to the new funding?

CB: Yes they do. The options for a homeowner are either to pay their PACE obligation off, have it transferred to the new property or apply for a limited subordinate PACE product, which we call PACE 2.0. Any time there is a problem with a homeowner in terms of a refi, we have a dedicated group of property advisors that work with realtors and mortgage brokers to facilitate the sale or transfer.

Q: How should investors evaluate risks in solar and PACE securitisations?

BC: There are a handful of risks to be aware of: the typical prepayment and refinancing risk; if there is a default, what is the lag before payment; and what recoveries can be expected. A lesser risk is creditworthiness. Investors have to figure out the likelihood of these risks occurring across an entire portfolio under various scenarios.

The risks become more complex for solar ABS, but also more transparent. An additional risk for solar is how many hours of energy will be produced by the installation. It is necessary to evaluate the characteristics of the solar panel itself, as well as the purchase/lease/loan agreement.

It also important to look at forward power market conditions – especially when evaluating residual positions – because many contracts are for 20 years, yet the life of the panel will likely last for 40 years. Understanding these risks is critical for liquidity and access to capital.

Q: In general, how have PACE securitisations performed?

CB: Renovate America has only issued six deals and two of our competitors have done a deal each, but they were pure private placements and so there's limited information publicly available. With respect to our transactions, delinquencies tend to rise just after the tax payment is due – because sometimes people forget to pay or they have other issues – and then trend downwards.

For the HERO Funding Trust 2014-1 and 2014-2 deals, delinquencies for the 2014-2015 fiscal tax year are averaging just under 40bp. On the 2015-1 and 2015-2 deals, for the 2015-2016 fiscal tax year, delinquencies are a little over 2%. Overall Californian tax delinquencies are on average double that figure, so the transactions are showing very good performance.

Q: Have solar securitisations performed as well as expected?

BC: Solar securitisations have performed better than expected across a few different metrics, including the default rate applied by rating agencies. While more solar securitisations have been issued than PACE securitisations, the total volume of securitised solar assets is lower and so the sector also has limited data points.

Without adequate tools and confidence in the numbers, rating agencies have taken conservative assumptions towards solar. But all the data that has come in over the brief 2.5 years since the first deal in the space shows that default rates are incredibly low – a fraction of what the rating agencies expected them to be – and all the note ratings have been affirmed thus far.

Another good indication of the performance of solar ABS deals is how the securities trade in the secondary market. A great example is SolarCity's first securitisation: it was rated triple-B plus, with a seven-year WAL, and priced in November 2013 at a spread of swaps plus 265bp. Eight months later, its third deal priced at plus 180bp, with a higher advance rate but the same rating and WAL.

A secondary trade of the first deal was subsequently executed at similar levels. Such spread compression reflects the fact that investors are becoming more comfortable with the asset class and the collateral is becoming more seasoned.

Q: Looking ahead, how is the recent extension of the investment tax credit (ITC) likely to impact the solar sector?

LP: The ITC was extended in December 2015 as a 30% credit for residential and commercial solar projects until end-2019, after which the credit drops year by year. The decreases are to 26% in 2020, 22% in 2021 and then permanently to 10% for commercial solar and zero for residential solar. The Solar Energy Industries Association projects that the extension of the credit will result in 50%-55% additional installation capacity, compared to what would have been expected without the extension.

The association is projecting the installation of 98 gigawatts of solar power by end-2020, which is enough to power over 20 million homes. This is, of course, good news for the solar ABS market and indirectly for PACE providers as well.

Q: What are the prospects for tapping the European investor base?

CB: We view the prospects as bright: we're hoping to attract European investors to the US PACE ABS deals we're issuing. We're aiming to provide additional supply this year and recently had our first four HERO deals verified as being in alignment with the Green Bond Principles. This means that the HERO programme is the first ABS platform to issue solely green bonds and the first entirely green bond platform in the world.

PACE aligns nicely with green bond principles because the energy savings/impact is known upfront. We recognise that the European investor base has certain pockets of money that are dedicated to green investment. We plan to take the HERO programme on the road to Europe and meet with investors at the Global ABS conference in Barcelona.

We're unfamiliar with the legislative landscape in Europe, although PACE can work anywhere – it's a matter of having the enabling legislation in place.

Q: Will PACE cannibalise current renewable energy type-deals?

BC: It can and it has. Because PACE is such a straightforward structure and is very easy for investors to understand, you see Renovate America as a market leader originating tremendous volume in a short space of time. Other renewables finance companies have typically struggled to replicate the efficiencies of PACE and so there is significant opportunity to grow its market share, both in the US and – with appropriate legislation – beyond.

Structured Credit Investor

Monday 13 June 2016 11:04 London/ 06.04 New York/ 19.04 Tokyo

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Insurer Threatens to Seize City Hall After Muni Bond Default.

The Blue Ridge mountain hamlet of Buena Vista, Virginia, is in danger of having its City Hall, police headquarters and municipal golf course seized for defaulting on its debt.

The city, with 6,600 residents, has failed for more than a year to make payments on $9.2 million of debt that's insured by ACA Financial Guaranty Corp., the company said in a statement Tuesday. The securities are a "moral obligation" paid with money appropriated by the city council and secured by the golf course and municipal buildings, according to ACA, which said it filed suit over the default.

"The city's failure to make its bond payments could result in the foreclosure of its City Hall, its police department building, and its municipal golf course," Roanoke attorney Steve Higgs, who is

representing the company, said in the statement. “The City Council should honor its promises and pay back the money it borrowed.”

It would be highly unusual for a city to lose its buildings because of a bond default, highlighting the risk of municipalities putting their credit on the line for speculative projects. Even in municipal bankruptcies, such as Detroit’s, residents are protected from having government assets sold off to satisfy creditors, as is routinely done when corporations collapse.

The golf course has been a money-losing proposition since 2004, running up losses of $3.2 million, according to Buena Vista’s annual report. It didn’t lead to the development of nearby real estate, as the city expected, nor did it draw enough players to cover its costs.

ACA said that in July 2011 it agreed to let the city cut its debt payments by half for five years, but in January 2015 Buena Vista stopped paying altogether.

The city stopped making payments to support the debt service “when it became clear that essential government services would have to be drastically slashed,” Brian Kearney, the city’s attorney, said in a statement. He said ACA has been unwilling to negotiate a reasonable settlement.

“All bond holders have been paid in full because the city purchased payment insurance from ACA,” Kearney said.

Bloomberg Business

by Darrell Preston

June 14, 2016 — 10:34 AM PDT Updated on June 14, 2016 — 2:17 PM PDT

SEC Settles First Muni Advisor Action Under Provisions of Dodd-Frank Act.

Investing.com — The U.S. Securities and Exchange Commission agreed to settle charges with two California-based municipal advisory firms on charges they used deceptive practices while soliciting business opportunities from five California school districts.

The enforcement action marks the first of its kind under the municipal advisor antifraud provisions of the Dodd-Frank Act. Under the enforcement action, the SEC found that School Business Consulting, Inc., a general consulting services company, advised several school districts about their hiring process for a financial advisory company, while it was retained by Keygent, LLC, an ElSegundo, California management consultant. At the same time, Keygent allegedly sought municipal advisory business from the same school districts associated with the consulting company. School Business Consulting, according to the SEC, allegedly shared confidential information with Keygent, including the fees charged by their competitors’ proposals and potential questions likely to arise at interviews during the hiring process. Ultimately, Keygent benefited from the confidential information by winning the municipal advisory contracts.

Without admitting or denying the SEC’s findings, School Business Consulting agreed to pay a $30,000, while the company’s president Terrance Bradley accepted a ban from acting as a municipal advisor. Bradley also agreed to pay a $20,000 penalty. Keygent agreed to pay a $100,000 fine, while two of its principals, Anthony Hsieh and Chet Wang, agreed to fines of $30,000 and $20,000 respectively.

“This unauthorized exchange of confidential client information could have given Keygent an improper advantage over other municipal advisors that were candidates for the same business,” said Andrew Ceresney, Director of the SEC Enforcement Division. “The Dodd-Frank Act prohibits this type of deceptive behavior by advisors when dealing with municipal issuers.”

School Business Consulting engaged in the “solicitation of a municipal entity,” since it received direct compensation from Keygent, the SEC said in an administrative order. Consequently, SBCI should have registered as a municipal advisor as soon as it started soliciting for Keygent, the SEC added. Section 975 of the Dodd-Frank Act prohibits municipal advisors from engaging in an y course of business that is not consistent with their fiduciary duty.

“These laws apply not only to municipal advisors, but also those who solicit business on behalf of municipal advisors,” said LeeAnn Ghazil Gaunt, Chief of the SEC Enforcement Division’s Public Finance Abuse Unit. “Municipal entities should be able to trust that their selection of a municipal advisor is untainted by any breach of fiduciary duty.”

Jun 13, 2016 08:26PM ET

The Price Illinois Will Pay For its Deepening Debt.

A little-noted but nonetheless important factor in Illinois’ long-running fiscal stalemate has been the state’s ability to keep borrowing money even as its finances have deteriorated.

Municipal bond markets have served as a pressure release valve, sparing Gov. Bruce Rauner and House Speaker Michael Madigan the full potential consequences of their intransigence and fiscal dereliction. Investors’ appetite for Illinois IOUs helps stave off a short-term crisis that might force Rauner and Madigan to compromise.

Bonds finance capital spending, smooth out cash flows and keep $26 billion in existing Illinois bond debt afloat through refinancing. The state has even propped up its ailing pension funds with money borrowed in bond markets. “It’s critical to the state,” says Laurence Msall, president of the Civic Federation, a fiscal watchdog group.

And so far, Illinois hasn’t lost that critical funding source, despite a credit profile that only a payday lender could love. The state has more than $7 billion in unpaid bills, a worst-in-the-nation pension funding shortfall of more than $100 billion, and it’s heading into a second straight year without a budget. Yet it floated $480 million in bonds in January and plans to borrow another $550 million this week.

All investors have asked in return is a higher interest rate than fiscally responsible states pay on their bonds. Illinois paid about 4 percent on its last issue, compared with a median rate of 2.34 percent for AAA-rated state bonds, according to Richard Ciccarone, CEO of Merritt Research Services, a provider of research and data on municipal bonds.

But a couple of developments last week suggest the price of profligacy is about to rise. Credit rating agencies Moody’s and Standard & Poor’s cut Illinois’ ratings again, with Moody’s parking the state just two levels above junk status. More ominously, an influential bond investor openly questioned the market’s willingness to indulge a borrower incapable of basic fiscal discipline.

RISING PRICE OF ADMISSION

“We as municipal market participants should really be penalizing in some way, by almost not giving them any access to the market,” Peter Hayes, who oversees a $119 billion municipal bond portfolio at investment giant BlackRock, told Bloomberg News last week. “Think about it—they’re a state without a budget, they refuse to pass a budget, they have the lowest funded ratio on their pension of any state, and yet they’re going to come to market and borrow money.”

Hayes’ remarks shouldn’t be taken as a signal that bond markets are about to slam the door on Illinois. Budget or no, many investors can’t resist a 4 percent yield in an era of rock-bottom interest rates. And from a bondholder’s perspective, risk of a payment default appears low, explains Moody’s senior credit officer Ted Hampton.

Despite its fiscal chaos, Illinois still brings in plenty of revenue to cover debt service on bonds. What’s more, state law gives bondholders first crack at those revenues, meaning they’ll likely get paid before any money goes to struggling social services agencies stiffed by the state. “We don’t think the state of Illinois is likely to default on its (bond) debt anytime soon,” Hampton says.

What Hayes’ comments do suggest, however, is that skepticism toward Illinois is growing among bond investors. Ciccarone notes that some have begun to back away from Illinois bonds, relegating the state to a costlier corner of the market. “With conservative investors you’re seeing resistance,” he says. “The investors that are stretching for yield are interested.”

As demand for Illinois paper shrinks, its borrowing costs will rise. How high? Possibly a lot higher, if paralysis endures in Springfield and Illinois’ credit rating keeps falling. Moody’s has a negative outlook on Illinois, a sign that at least one more downgrade may be coming. A drop into junk territory would be extremely expensive—junk-rated Chicago Public Schools bonds carry a rate of 8.5 percent.

A far-fetched scenario, perhaps, but Illinois’ current fiscal predicament seemed unimaginable not so long ago. As Hampton says, “We’re sort of in uncharted territory here with Illinois.”

CRAIN’S CHICAGO BUSINESS

BY JOE CAHILL

June 15, 2016

SEC Announces Deal With Two California-Based Municipal Advisory Firms.

SAN FRANCISCO (Legal Newsline) – The Securities and Exchange Commission (SEC) announced that School Business Consulting Inc. and Keygent LLC will settle allegations of using deceptive practices when soliciting business from five California school districts.

According to the SEC, these school districts were using School Business Consulting to advise them on their hiring process for financial professionals. While this was underway, Keygent allegedly retained School Business Consulting. Keygent purportedly sought the municipal advisory business of the same school districts. School Business Consulting allegedly shared confidential information about the districts with Keygent.

“This unauthorized exchange of confidential client information could have given Keygent an improper advantage over other municipal advisors that were candidates for the same business,”

Andrew Ceresney, director of the SEC Enforcement Division, said. “The Dodd-Frank Act prohibits this type of deceptive behavior by advisors when dealing with municipal issuers.”

School Business Consulting was additionally charged with failing to register as a municipal adviser.

“These laws apply not only to municipal advisers, but also those who solicit business on behalf of municipal advisers,” LeeAnn Ghazil Gaunt, chief of the SEC Enforcement Division’s Public Finance Abuse Unit, said. “Municipal entities should be able to trust that their selection of a municipal adviser is untainted by any breach of fiduciary duty.”

School Business Consulting will pay $30,000, while its president will pay a $20,000 penalty. Keygent will pay $100,000 while its principals will pay $30,000 and $20,000 respectively.

by Mark Iandolo

Jun. 14, 2016, 8:03pm

History Not a Guide for Possible Chicago Public Schools Bankruptcy.

Only four school districts have declared Chapter 9 bankruptcy in the past 62 years, and two of those abandoned the process, says a municipal bankruptcy expert asked about the possibility of Chicago Public Schools doing the same.

CPS, the nation’s third-largest school district, faces a nearly $1 billion budget deficit and the possibility of staying closed in the fall if the state fails to pass a budget.

Rather than compromise with legislators over education funding, Gov. Bruce Rauner has publicly supported a bill introduced by Rep. Ron Sandack that would allow Illinois school districts and other local units of government access to Chapter 9 of the federal bankruptcy code.

James Spiotto, managing director of municipal finance consulting firm Chapman Strategic Advisors LLC in Chicago, points out that only four school districts have filed for Chapter 9 out of 322 total filings since 1954. He adds that two of those dismissed their cases in favor of other resolutions.

“The reason for that is there are better methods that states have developed to deal with troubled school districts,” Spiotto said.

“School districts are so important to the economy, the community and the citizens that states have developed mechanisms to monitor, supervise, provide oversight, and if necessary, change the superintendent or board.”

He explains that the San Jose School District in California filed for Chapter 9 in 1983, after a contract dispute with teachers that resulted in an arbitration award that the school district couldn’t afford.

The school district used the process to resolve the dispute and dismissed the bankruptcy without a plan of debt adjustment less than a year later.

Spiotto says Richmond Unified School District in California filed for Chapter 9 in 1991, and announced that it would close several schools. But after students’ parents filed a lawsuit to prevent the closings, the state legislature gave the school district $29 million to bridge its gap in funding.

The school district hired a new superintendent and dismissed the bankruptcy without a plan of debt adjustment later that year. It also changed its name to West Contra Costa School District.

Spiotto contends that the other two school districts that have filed for Chapter 9 in the past 60 years – Copper River School District in Alaska and Chilhowee R-IV School District in Missouri – are too small to serve as examples for larger, urban school districts like CPS that may consider bankruptcy.

He says that Copper River only had 511 students and six schools when it filed for Chapter 9 in 1986. The school district rejected the teachers' union contract because it couldn't pay salaries, but in the plan of debt adjustment, the salaries were frozen and significantly reduced.

Spiotto adds that Chilhowee R-IV filed for Chapter 9 in 1992, after five former teachers won a $200,000 judgment against the school district. The school district only had an annual budget of $650,000 at that time.

"Chapter 9 really just deals with debt adjustment," Spiotto said. "Chapter 9 cannot interfere with the property, government and affairs of the municipality, which can be a school district, without the consent of the school district. So the school district would still control its operations."

"Since you don't reach issues of operations, you don't reach issues of academics and performance and achievement," he added. "Those are other critical issues, so Chapter 9 really is not a holistic approach for a school district."

Spiotto contends that major school districts should instead consider state-sponsored resolution mechanisms rather than bankruptcy. For example, he says, California allows state takeover of school duties with an appointed administrator and enables the school district to receive emergency loans from the state general fund.

In Ohio, he says, an academic distress commission helps school districts develop a recovery plan when their academic performance is low. The commission can reassign or appoint school administrators, terminate contracts and develop budgets.

Spiotto points out that Illinois takes a different approach. The Illinois State Board of Education can take control of troubled school districts in cities of less than 500,000 inhabitants, but that obviously doesn't apply to CPS.

"They are separate from any oversight, or setting up a physical oversight panel to review them, which other school districts do have in Illinois," Spiotto said. "Because of the separateness of Chicago Public Schools, it's left to the control of the city."

Spiotto suggests that Illinois set up an oversight authority for CPS that could help the school district with its funding. The authority would provide interim financing and determine what is affordable for the school district, recommend to the legislature additional tax sources or increases in tax limits and ensure that academic achievement continues to improve.

Ted Dabrowski, vice president of policy at the Illinois Policy Institute, points out that the State Board of Education has taken over a few failing school districts, including East St. Louis and North Chicago, but the results have been mixed.

"The biggest issue is that you have one large bureaucracy stepping in to take the place of another bureaucracy," Dabrowski said. "While that might fix some of the financial problems, it doesn't really address the true question, are they helping student outcomes and are we seeing better education for children?"

While Chapter 9 bankruptcy might temporarily improve CPS' finances, Dabrowski also contends that Mayor Rahm Emanuel and the Chicago Board of Education have not made tough decisions on how to use taxpayer money more efficiently and properly provide funds for school programs and teachers' salaries and pensions.

"I would say that a state takeover will only help when there is pension reform and when the Chicago Teachers Union is forced to back off of its unrealistic claims and demands," he said.

Spiotto says despite the "theater that you read about in the newspapers," he wouldn't rule out CPS and the teachers reaching a resolution for the sake of students and the community.

"They work through the problems," Spiotto said. "That is the best solution. And if they need help from the state, that could help them bridge the financial problems that school districts obviously find themselves in from time to time."

FORBES

BY AMANDA ROBERT

JUN 16, 2016 @ 10:01 AM

Illinois Budget Impasse Hits $550 Million Bond Sale.

Illinois' long-running budget impasse stung the state on Thursday in the U.S. municipal market where buyers of its $550 million bond issue demanded bigger yields over the market benchmark.

The pricing was "surprisingly soft," considering a strong rally in muni bonds on Thursday, said Greg Saulnier, a Municipal Market Data analyst. The results demonstrate that the market is increasing its penalty due to the state's worsening fiscal and political problems, leaving Illinois unable to take full advantage of the historically low borrowing rates.

Bank of America Merrill Lynch won the tax-exempt general obligation deal in competitive bidding, pricing bonds due in 2026 with a 5 percent coupon to yield 3.32 percent, which is 185 basis points over MMD's triple-A yield scale. The spread was 175 basis points ahead of the bond sale, according to MMD, a unit of Thomson Reuters.

It was also wider than the 154 basis-point spread in 10 years for Illinois' $480 million GO bond sale in January.

Illinois is poised to be the only U.S. state since at least the 1930s to end a fiscal year without a complete budget.

Its Republican governor and Democratic-controlled legislature have so far failed to reach a deal on fiscal 2016 or 2017 spending plans. That leaves unaddressed the growing structural budget deficit and huge $111 billion unfunded pension liability in the fifth-biggest U.S. state.

The bond issue itself was seen as a weapon in the political war to pressure Democrats to cave in to Governor Bruce Rauner's demands, while losing money for the cash-strapped state.

ILLINOIS SELLS INTO MARKET RALLY

Muni yields have been hitting new record lows on MMD's scale in recent days, driven by cash-heavy investors chasing low supply of debt.

Rauner's office said the true interest cost for the bonds, which carry maturities from 2017 to 2041, was 3.74 percent, down from 3.99 percent in the January sale, and the lowest ever for similar general obligation bonds issued by the state.

"It's clear from today's bond sale that investors realize Illinois now has a governor that is trying to turn the state around and right its fiscal ship," Rauner spokeswoman Catherine Kelly said in a statement.

Some market participants thought Illinois' so-called credit spread should be even wider.

"It's odd to me," said Nicholos Venditti, a portfolio manager at Thornburg Investment Management. "Illinois has proven time and time again they can't get anything done."

Heading into the deal, Illinois' credit ratings, which were already the lowest among the states, were downgraded by Moody's Investor Service and Standard & Poor's.

The governor's office also revealed on Wednesday that the state lacks appropriations to actually spend all the proceeds earmarked mainly for road construction and mass transit projects due to the impasse.

State Treasurer Michael Frerichs, a first-term Democrat, predicted the bond issue could be a net money-loser for Illinois if the borrowed funds go unspent and must be invested short-term.

"We'll make far less in interest than we'll be paying in interest to the bondholders," Frerichs said in an interview. "I think we need to make these investments in infrastructure, but we're going about it in the wrong order. It seems backwards issuing the bonds and hoping they get an appropriation to spend them."

On Wednesday, Rauner administration officials warned of the imminent shutdown of transportation projects and the loss of 25,000 construction jobs without a budget deal.

Spokesmen for House Speaker Michael Madigan and Senate President John Cullerton, both Democrats, declined to speculate on the chances of either legislative chamber granting the Rauner administration the spending authority it needs to fully tap the bond issue.

REUTERS

CHICAGO | BY KAREN PIEROG AND DAVE MCKINNEY

Thu Jun 16, 2016 6:19pm EDT

(Editing by Daniel Bases and Matthew Lewis)

Puerto Rico GO Bond Price Dips, Rescue Bill Moves to Senate.

Puerto Rico's benchmark General Obligation bond fell in price on Friday in choppy trading after the U.S. House of Representatives passed legislation aimed at helping the U.S. territory fix its fiscal mess.

The GO bond, carrying an 8 percent coupon and maturing in 2035, last traded at 64.74 points in price, pushing the yield to 13.05 percent from 12.73 percent on Thursday, according to data provided by the Municipal Securities Rulemaking Board.

According to the MSRB's Electronic Municipal Market Access database, about $21 million worth of bonds traded versus $14 million the day before.

Late on Thursday the House passed the "Puerto Rico Oversight, Management and Economic Stability Act" (PROMESA), by a vote of 297-127, with the U.S. Senate expected to take up the bill quickly ahead of a $1.9 billion debt payment due July 1.

Puerto Rico has a $70 billion debt load it says it cannot pay and a staggering 45 percent poverty rate. It faces steady migration of its residents to the mainland and a potential humanitarian crisis because it cannot sustain social services.

PROMESA, if passed by the Senate and signed into law, would establish a powerful seven-member federal Oversight Board to navigate through the restructurings. Among other things, the board would have the authority to enforce balanced budgets.

"It is definitely a step forward, a very good step forward. We think it was necessary. It doesn't answer all your questions but at least it sets up a framework and does provide fiscal management and oversight which we think was necessary because the credibility of the government is pretty much shot," said Joe Rosenblum, director of municipal credit research at AllianceBernstein in New York.

"We don't think at these prices we are ready to dip our toes back in and we haven't seen a lot of trading activity out there, so I think we are in company," Rosenblum said.

PROMESA does not set out specific rules for restructuring, leaving such decisions to the control board to work through with creditors. This is a critical point for municipal bond market investors where long-standing rules set out a hierarchy among creditors, typically with GO bondholders considered senior to all others.

"Regardless of how things get restructured today, the fact that the economy continues to shrink and the population continues to shrink is a problem for the credit going forward," said Craig Brandon, co-director of municipal investments at Eaton Vance in Boston.

REUTERS

NEW YORK | BY DANIEL BASES

Fri Jun 10, 2016 5:52pm EDT

(Reporting By Daniel Bases; Editing by Tom Brown)

BlackRock Says Illinois Should Lose Access to Debt Markets.

The Land of Lincoln should be forced to log-off from the muni bond market, one influential Wall Street firm said Wednesday.

BlackRock, the world's biggest asset manager, said the debt-drunk state, with the worst pension

shortfalls in the land, should lose its access to the $3.7 trillion municipal debt markets.

“They’re a state without a budget, they refuse to pass a budget, they have the lowest funded ratio on their pension of any state, and yet they’re going to come to market and borrow money,” Peter Hayes, who oversees the firm’s $119 billion in muni bonds, said on Wednesday.

President Obama’s home state, the least credit-worthy in the country, according to Moody’s Investors Service, is also planning its second general obligation bond offering this year, for $550 million.

The state’s legislature has been mired in a standstill over its budget — and hasn’t passed one in more than 11 months. There is also no budget for the fiscal year that begins on July 1.

As it stands, the state has more than $7.2 billion in unpaid bills and more: Its pension has a shortfall of more than $111 billion.

Its GO bonds were downgraded by Moody’s earlier this year — to Baa1 — two steps above junk.

Facing such a calamitous future, Hayes is blowing the whistle.

Wall Street “should really be penalizing in some way, by almost not giving them any access to the market,” Hayes said at a media event.

BlackRock is a giant.

It has about $4.6 trillion in assets — more than six times Illinois’ gross domestic product of $736 billion, according to the latest figures from the Federal Reserve Bank of St. Louis.

While certainly an outlier, Illinois, with $148.2 billion in debt, isn’t the only entity pretty far out on the debt limb.

Puerto Rico is $72 billion in debt, and has already technically defaulted on some of it. Congress is trying to pass a bill that would create a committee to oversee the island territory’s finances and restructure their debt.

A spokeswoman for Illinois Gov. Bruce Rauner declined to comment on Hayes’ comments. A spokeswoman for BlackRock declined to elaborate.

Despite being so drunk on debt, most believe Wall Street will keep on serving up more.

“Despite its lack of a budget, [Illinois] is still a state, and state GO bonds haven’t defaulted in modern history,” Matt Fabian, partner at Municipal Market Analytics, told The Post. “So it is impossible to think that it will not be able to place the new bonds, and probably at yields that aren’t too far off from where they sold them the last time around.”

Illinois bonds floated in May, before the Moody’s downgrade, paid 3.62 percent — roughly 1.83 percentage points over AAA-rated munis, according to Bloomberg.

Still, Fabian added, “BlackRock is one of the largest investors in municipal bonds, so their words (and their lack of interest in buying IL right now) carry more weight than you might think.”

Things are so bad in Illinois that the deadbeat state is late in paying $3 million to the FBI for processing fingerprints, the AP reported.

The debt is so old that it could be turned over to Washington's collection agency, the Treasury Department, for collection.

The New York Post

By Kevin Dugan

June 8, 2016 | 11:59pm

Trail of Defaults Leads to Dark Corner of Tax-Exempt Bond Market.

When Philip J. Kennedy needed financing to buy low-income housing in a wealthy Dallas suburb, he bypassed Texas agencies for a tax-exempt bond issuer 700 miles away in Gulf Breeze, Florida.

Leaving the state allowed Kennedy's non-profit American Opportunity Foundation Inc. to secure $35 million to buy Garden Gate Apartments in Plano, Texas, and a development in Fort Worth without answering questions from local authorities about AOF's past difficulties repaying debt.

Scores of non-profit organizations like AOF are required to use government-created agencies when selling bonds. In return, the agencies charge fees. At times, these conduits aren't in the same state as the projects they're financing, giving officials on the ground little incentive to scrutinize the deals.

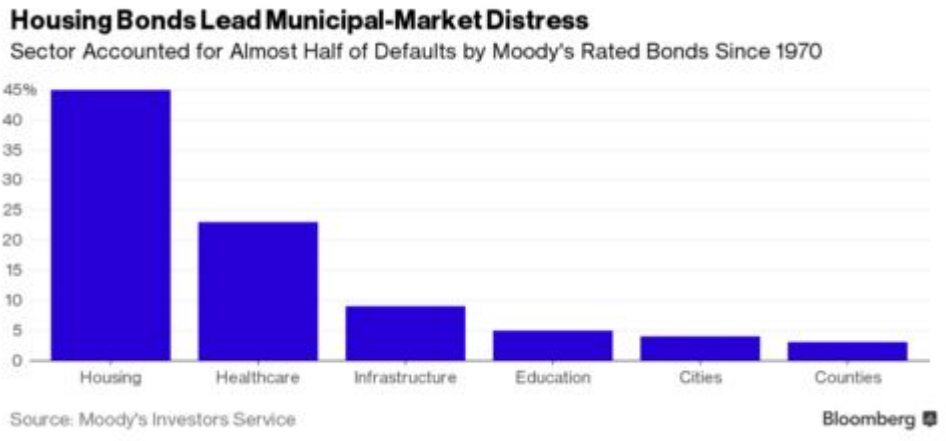
It's all perfectly legal. But for investors, it can be risky. Such conduit deals account for nearly 60 percent of the defaults in the $3.7 trillion municipal-bond market, according to Municipal Market Analytics. In most cases, bondholders, not taxpayers, are on the hook if the projects flop.

Default History

Between 2000 and 2004, Kennedy's AOF defaulted on 14 of 18 outstanding municipal bonds issued in the 1990s, affecting about 5,550 units, according to data compiled by Bloomberg. In 2014, AOF defaulted on bonds issued by a Texas affordable-housing agency to buy apartments in Houston, Dallas, and San Antonio. More than 1,700 apartments lost their subsidies, and rents at one complex climbed 22 percent.

Kennedy, 62, didn't disclose AOF's default history in materials submitted to Plano, and the town council didn't ask him whether any of his projects had failed, according to a video of the meeting. The Florida agency that issued the bonds said its due diligence indicated that AOF "know what they're doing."

"If they had gone through the Texas finance authorities, like the state one, maybe someone at the state would have questioned whether they should be approved or not," said Plano resident Jim Dillavou, a retired Deloitte LLP partner and critic of the city's plan to develop more apartments. "By using a Florida outfit they avoided that scrutiny."



In an interview, Kennedy said the decision to use a Florida agency wasn't motivated by AOF's past defaults in Texas, though it allowed him to avoid the need to win approval from the state's bond-review board.

"It's a very, very difficult process in Texas," he said. "They've had a lot of issues with 501c3 defaulted deals and so they just make you jump through a lot of hoops." Non-profit organizations are known as 501c3s, after the relevant section of the U.S. tax code.

Kennedy said he chose a Florida conduit because his original plan was to also buy an apartment complex in that state. That deal fell through, he said.

AOF was founded in Atlanta in 1983 to sponsor low-income housing. Kennedy became president in 1991. His compensation was about $360,000 in 2014, according to tax filings. AOF owns or has ownership interests in 14,000 apartment units, which are managed by outside firms that it hires.

West Coast

AOF has been successful on the West Coast, where one of its subsidiaries, AOF/Pacific, serves as as general partner and has small ownership interests in more than 100 affordable properties with more than 13,000 units. Many are financed with low-income housing tax-credits so there's less leverage, Kennedy said.

AOF has also acquired, rehabbed and sold 125 single-family homes to first-time buyers.

"I'm not particularly proud of what I did in the 90s," Kennedy said. "I'm proud of the way I hung in there and got it all worked out."

Capital Trust Agency, the Florida conduit, has issued about $1.9 billion of debt for projects such as private-jet facilities and hotels. To raise the money for AOF, Capital Trust charged about $97,400 in fees.

Ed Gray, the executive director, said his agency reviewed financial statements and visited the apartment complexes in Plano and Fort Worth. About $81 million of the debt Capital Trust has issued has defaulted, according to data compiled by Bloomberg.

"I can't speak to that," Gray said of AOF's default history. "I can only speak to projects that I'm aware of that they currently operate, and have found no lack of expertise."

Little Regulation

Public agencies like Capital Trust operate in a little-regulated corner of the municipal market. They issue bonds for private companies and nonprofit organizations that would otherwise lack access to tax-exempt borrowing. Local taxpayers benefit from the fees and aren't on the hook to repay the bonds, which are often used for riskier real-estate projects.

All 50 states have conduit issuers. Florida is one of seven that allow some conduits to issue debt for out-of-state projects, according to the Council of Development Finance Agencies. The practice has drawn criticism from some public officials, who say it can allow debt issuers to elude oversight by financing projects through authorities beyond their jurisdiction.

AOF's Plano and Fort Worth debt was good enough for Bank of America Corp. The bank bought $26.1 million of the bonds, which yielded 5.5 percent. Fundamental Advisors, a New York-based private equity firm, bought another $11 million of subordinate notes that pay interest as high as 15 percent. AOF provided $600,000 in equity, according to Capital Trust. Melissa Kitlowski, a Bank of America spokeswoman, and Julie Oakes, a Fundamental spokeswoman, declined to comment.

Public Purpose

Gray of Capital Trust said AOF's housing complexes were in good shape and generate enough income to support the debt.

"We felt this financing for these properties was a good public purpose for us to be involved and therefore when the applicant came to us to consider issuing the bonds, we did so," Gray said.

Plano, whose median household income is 60 percent higher than the state's, has a population of 280,000 and is located about 20 miles (32.2 kilometers) northeast of Dallas. It's dotted with corporate campuses. In 2014, Toyota Motor Corp. decided to move its North American headquarters to Plano from California. Garden Gate, AOF's apartment complex, is the town's only subsidized low-income housing for families.

"All we've done is allowed them the ability to issue tax-exempt" debt, said Denise Tacke, Plano's finance director. "We have no responsibility for repayment."

Bloomberg Business

by Martin Z Braun

June 9, 2016 — 2:00 AM PDT Updated on June 9, 2016 — 7:24 AM PDT

U.S. Municipal 30-year Bond Extends Record Low Yield for Third Day.

The yield on AAA-rated 30-year U.S. municipal bonds fell for the third consecutive day to an all-time low of 2.27 percent on Thursday, according to Municipal Market Data's benchmark scale.

A surge in municipal bond issuance this week was met by strong demand from investors, many of them foreign buyers being drawn to the market in an attempt to escape negative interest rate policies abroad.

"Munis are the most attractive ugly duck left," said Greg Saulnier, municipal analyst for Municipal

Market Data. “Given what foreign money looks like, investors are snapping these up.”

Investors this week saw a whopping $12 billion of new sales enter the market, a high for the year to date.

Municipal market investors have also been encouraged by Federal Reserve Chair Janet Yellen’s comments on Monday that rate hikes could be pushed off until later in the year.

The streak of record lows may not be over yet. July is typically the biggest month for principal and coupon redemptions, which will likely again boost demand for municipals.

Over the past two days, the market also saw record low yields on 30-year AAA-rated municipal bonds of 2.36 percent on Tuesday and 2.34 percent on Wednesday.

The yield on AAA-rated 10-year bonds ended Thursday at 1.56 percent, nine basis points above the all-time low of 1.47 percent set in November 2012.

Reuters

By Robin Respaut

Thu Jun 9, 2016 4:08pm EDT

(Reporting By Robin Respaut; Editing by Bill Trott and Dan Grebler)

U.S. Muni Bond Sales Fall Next Week After Issuance Spike.

New sales of U.S. municipal bonds are expected to slow next week to $5.7 billion from the year high of $12 billion in the week just ended, according to preliminary Thomson Reuters data.

That surge in municipal bond issuance was met by strong demand from investors, many drawn to the market in an attempt to escape low or negative interest rate policies globally.

The demand pushed yields down on AAA-rated 30-year U.S. municipal bonds to record lows three consecutive days in row.

“Sometimes supply feeds demand in a way that we see good performance, and we continue to see yields drop,” said Jim Colby, chief municipal strategist at VanEck.

Despite the expected drop in issuance, municipal analysts predict record-low yields may continue into next week.

“There is sound reasoning that rates could move lower,” said Colby. “The marketplace is saying, maybe rates are going to rise. The Fed is seeing evidence of strength in the marketplace, so short-term rates will rise. Let’s employ a strategy that will let us earn positive returns.”

Investors have poured money into municipal bond funds for 36 straight weeks, the longest stretch of consecutive inflows since 2010, according to data from Lipper, a Thomson Reuters company. Positive flows began in January 2009 and continued every week through March 2010.

Next week’s $5.7 billion in new sales will be lower than the 2016 year-to-date weekly average of

$7.5 billion, according to Thomson Reuters' Municipal Market Data (MMD). That is in part because many issuers rushed to sell bonds this week, before a possible rate hike, said Greg Saulnier, MMD municipal analyst.

Among the largest deals to hit the market next week is $550 million of Illinois general obligation bonds offered in competitive bidding on Thursday. Ahead of the sale, both Moody's Investors Service and Standard & Poor's downgraded the state's credit ratings, which are inching closer to "junk" level.

A political impasse between the state's Republican governor and Democrats who control the legislature has left Illinois without budgets for the current and next fiscal year and no plan for addressing its $111 billion unfunded pension liability and big structural budget deficit.

REUTERS

SAN FRANCISCO, JUNE 10 | BY ROBIN RESPAUT

(Reporting by Robin Respaut Additional reporting by Hilary Russ; Editing by Daniel Bases and James Dalgleish)

New Jersey's Top Court to Rule in High-Stakes Public Pension Case.

The New Jersey Supreme Court is expected to decide on Thursday whether the state's 2011 public pension reform improperly froze retirees' cost-of-living increases, a ruling that could cost the state billions of dollars.

Governor Chris Christie's administration suspended the so-called COLA payments, which are tied to inflation, as part of bi-partisan reforms aimed at curtailing the ballooning cost of public pensions.

Retired prosecutors challenged the provision, saying they have a contractual right to the adjustments, just as they do to their base pension payments.

If the retirees prevail, New Jersey's already underfunded pension system could be hit with another $17.5 billion of liabilities, according to The Record, a Bergen County newspaper, which cited a court filing.

New Jersey's roughly $83 billion pension system is as poorly funded as it has ever been. The state's aggregate funded ratio for all plans is 48.6 percent.

When including local government contributions, the overall system appears somewhat better funded at 59.5 percent, which is still far below the baseline 80 percent level considered healthy.

The court is expected to release its decision in the case, called Berg v. Christie, on Thursday, according to the court system's website.

Wall Street credit rating agencies rank New Jersey the second-worst U.S. state, behind only Illinois, in part because of its pension problems.

Some holders of New Jersey's roughly $37 billion of outstanding bonds are concerned about the impact the case could have on the state's fiscal condition.

For example, in April a Morgan Stanley wealth management director emailed Charles Ouslander, the retired prosecutor who petitioned the Supreme Court, to ask him about possible outcomes on behalf of the firm's retail clients who own New Jersey bonds, according to the email seen by Reuters.

Spreads on New Jersey 10-year bonds, which measure how much extra yield investors demand for riskier bonds, are a full percentage point higher than general top-rated municipal bonds, according to Municipal Market Data, a Thomson Reuters unit.

Another pressure on state finances could come from a ballot question Democrats hope to put before voters in November.

The constitutional amendment would require the state to fully fund its annual contributions to the retirement system, something it has not done since before Christie's tenure.

The state would need at least $2.8 billion of new taxes by 2022 to pay for the measure, according to a panel convened by Christie.

REUTERS

BY HILARY RUSS

Wed Jun 8, 2016 7:39pm EDT

(This version of the story corrects the name in paragraph four to Kramer instead of Parker.)

As Trump, Clinton Push Infrastructure, Muni Deals at 6-Year High.

Donald Trump and Hillary Clinton don't share many positions. But the need to revamp the nation's infrastructure is one of them.

Clinton, the likely Democratic presidential nominee, says the U.S. is "dramatically underinvesting in our future," and she'd pour money into roads and waterways. Trump, the presumptive Republican candidate, is blunter: the country's infrastructure is "terrible" and airports are "a disgrace." He wants to "start the greatest long-term building project in American history."

It appears that local leaders are finally coming around to that line of thinking, seven years after the end of the recession. With interest rates the lowest since 1965, states and cities issued $67.3 billion of debt for infrastructure in the five months through May, the most since 2010, Bank of America Merrill Lynch data show. That was the last year of the federal Build America Bonds program, which encouraged governments to borrow by paying a share of the interest bills on debt sold for public works.

While the uptick is still just a fraction of what's needed to shore up thousands of deficient bridges and countless pothole-laden roads, it reflects a long-awaited shift by municipal officials who have hesitated to borrow for new projects even with interest rates at five-decade lows. The increase coincides with unprecedented demand for tax-exempt debt, suppressing yields and saving states and cities millions of dollars.

"Recent history tells us that simply having low interest rates is not going to be what drives cities to take on new debt," said Christiana McFarland, director of research in Washington at the National

League of Cities. “The looming threat of infrastructure needs is certainly putting cities in a position to do everything they can to take on those projects now.”

The American Society of Civil Engineers estimates that the U.S. will fall $1.44 trillion short of the $3.32 trillion it needs to invest in infrastructure through 2025.

It’s not just states and cities that are responsible for that gap. Congressional officials last year spent weeks haggling over a transportation-funding measure before finally enacting a five-year, $305 billion bill that incrementally raises spending each year.

If presidential campaign promises are to be trusted, help could be on the way.

Clinton’s website features a plan that would raise federal spending on public projects by $275 billion over a five-year period, including a national infrastructure bank that would run an expanded Build America Bonds initiative.

In Trump’s book, “Crippled America: How to Make America Great Again,” he doesn’t put an exact price tag on infrastructure spending, but calls it “a trillion-dollar rebuilding program” that’ll be “one of the biggest projects this country has ever undertaken.”

“Regardless of what happens at the state and local level, the federal government needs to be a strong partner in any solution,” Brian Pallasch, managing director of infrastructure initiatives at American Society of Civil Engineers, said in an interview. “The presidential candidates, I’m heartened to see all of them in different ways at least mentioning infrastructure and saying it’s important that we start dealing with it.”

In the meantime, states and localities are stepping up borrowing for public works as their finances improve. Over the past year, they’ve boosted spending on public construction to the most since 2010, Census Bureau data show.

California, the most-indebted U.S. state, sold $813 million of bonds in March for projects including clean water and clean air, children’s hospitals, earthquake and highway safety, housing and emergency shelters, traffic reduction and port security, offering documents show. Across the country, Maryland borrowed about $1.04 billion on Wednesday for construction projects, grants to localities and other initiatives.

Even with municipalities ramping up bond sales, it’s unlikely the pickup will push interest rates higher, according to a report this week from Municipal Market Analytics.

That’s because individuals have poured money into muni mutual funds every week since October, the longest streak since 2010, Lipper US Fund Flows data show. The more than $16 billion of inflows to start the year is the most since at least 1992.

The yield on a Bond Buyer index of 20-year municipal general-obligation bonds plunged to 3.18 percent on Thursday, setting a new 51-year low. Top-rated 10-year munis yield 1.55 percent, according to data compiled by Bloomberg, while those due in three decades yield 2.36 percent, the lowest since the data begin in 2009.

“You have budget surpluses in a number of states, and extremely low yields available in the market right now allow them to borrow at attractive rates,” said R.J. Gallo, head of the municipal bond group at Federated Investors, which oversees $6.9 billion of the debt. “It all adds up that you’re seeing more new-money financing and more public construction. The muni market can certainly handle it.”

Bloomberg Business

by Brian Chappatta

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U.S. Municipal Bond Market Grows to $3.747 trln in First Quarter - Fed.

June 9 (Reuters) – The U.S. municipal bond market grew to $3.747 trillion in the first quarter from $3.719 trillion in the fourth quarter, according to a quarterly report from the Federal Reserve released on Thursday.

Households, or retail investors, held $1.608 trillion compared with $1.597 trillion the previous quarter.

Property and casualty insurance companies bought $10.4 billion of munis in the first quarter, while life insurance companies acquired $13.3 billion. U.S. banks increased their muni holdings by $48.4 billion.

U.S. mutual funds bought $78.5 billion of munis in the first quarter, while exchanged-traded funds added $7.1 billion.

(Reporting by Robin Respaut; Editing by Meredith Mazzilli)

Despite Strong Muni Market, GO Munis Turn Risky: BlackRock

The muni bond market is now questioning the willingness and ability of some issuers to make payments on general obligation bonds: BlackRock's Peter Hayes

Municipal bonds, a favored fixed income asset class among high net worth investors, are experiencing strong demand this year despite the debt troubles of Puerto Rico, New Jersey and Illinois and gains that, unlike last year's, are lagging those of Treasuries and investment grade and high yield corporate bonds.

Flows into muni bond funds topped $22 billion for the first five months of the year, and muni fund assets reached a record high of $632 billion as of June 1, according to Lipper. Demand from foreign borrowers seeking higher yields is adding to demand. Year-to-date investment grade munis have returned just over 3%, capturing most of the gains that BlackRock's Municipal Bonds Group had been expecting for the full year.

Peter Hayes, a managing director and head of the group, said Wednesday the firm is now reassessing its outlook but expects another 1.5% return for the remainder of the year.

Despite the relatively strong performance of municipal bonds overall, however, he expects the problems of issuers like New Jersey and Illinois, which have large fixed costs for pensions but not enough revenues to pay them, will likely get worse, and general obligation bonds will suffer the most.

The GO category of muni bonds, backed by the full faith and credit of the issuer, have traditionally been considered the gold standard and safest type of issue among muni credits, but that view has been upended by the problems dating back at least to Detroit, said Hayes.

“The muni bond market is now questioning the willingness and ability to pay of some entities to pay,” said Hayes. He doesn’t expect that sentiment will abate anytime soon.

“Two things have to happen first,” said Hayes. “You have to have significant pension reform and cut benefits or you’ve got to pay for it. Many of the entities have the ability to pay for it to some degree but politically they don’t want to.”

Those politics could potentially change in some states if elections result in one party rule of the governor’s office and legislature, but in the meantime the muni market “will continue to question the GO structure,” said Hayes. And spreads in such states, which also include Pennsylvania and Connecticut, could widen further.

About Illinois which recently announced plans to borrow $550 million for capital projects, Hayes said the state should be penalized by muni market participants “in some way, by almost not giving them any access to the market.…Think about it — they’re a state without a budget, they refuse to pass a budget, they have the lowest funded ratio on their pension of any state, and yet they’re going to come to market and borrow money.”

ThinkAdvisor

By Bernice Napach
Senior Writer

JUNE 8, 2016

Surprise: Taxable Munis Beat Tax-Free this Year and Longer.

Municipal bonds that are taxable at the federal level are surprising outperformers this year. While tax-free munis were up 2.7% through the end of May, taxable munis were up 6.71%. That’s even better than high-yield munis, which were up 4.73% in that time frame, according to Eaton Vance.

It’s not just this year. The 5-year and 10-year returns of taxable munis are also higher than tax-exempt munis. Taxable munis gained an average of 8.1% a year over the last five years and 6% over the past 10 years. Tax-exempt munis gained 5.3% and 4.7% in those two time periods.

Most individual investors don’t know even know taxable munis exist. But institutional investors, looking for yield under every stone, are increasingly finding these securities attractive, says Adam Weigold, portfolio manager at Eaton Vance, who wrote a blog post Tuesday that explains the dynamics of the market.

One dynamic is that a lot of foreign investors are buying these bonds for their high yields and relative safety.

Weigold concludes his piece:

> We believe a flexible opportunistic approach allows access to all parts of the muni market:

> Taxable or Tax Exempt. Taxable municipal bonds can round out a diversified fixed-income portfolio, offering competitive yields, high quality and low risks of default. As a result, taxable U.S. municipal bonds are bringing the potential rewards of investing in U.S. infrastructure and other public-purpose projects to a growing number of U.S. and non-U.S. investors alike.

Weigold manages Eaton Vance Municipal Opportunities (EMOAX), which has returns in the top 3% of all muni funds for the five-year, three-year and one-year periods, according to Morningstar.

Barron's

By Amey Stone

June 7, 2016, 2:42 P.M. ET

El Paso Turns Around a Losing Game by Refinancing Stadium Bonds.

When El Paso, Texas, sold bonds three years ago to build a 9,500-seat stadium for its minor league baseball team, Detroit had just gone bankrupt and speculation was rife that the Federal Reserve was poised raise interest rates. The yields were so high they prompted a political outcry over why the deal wasn't done sooner.

Thanks to a turnabout in the market, which has driven municipal borrowing costs to the lowest since 1965, the city has made some of that expensive legacy go away.

El Paso sold $17.7 million of bonds last week, refinancing almost a third of the debt issued in August 2013, for a top yield of 3.4 percent on securities due in 2043. The first time around, the city paid as much as 5.95 percent on the tax-exempt bonds. On a $10 million loan, that difference amounts to about $255,000 a year.
"They're very excited about cutting the cost," said Maria Urbina, the city's financial adviser with First Southwest, a division of Hilltop Securities.

El Paso, with a population of about 680,000 along the Rio Grande, built the new home for the Chihuahuas, a Triple-A franchise of the San Diego Padres, to revitalize its downtown, a development strategy that's been used by cities such as Biloxi, Mississippi, and Hartford, Connecticut.

With the Federal Reserve holding monetary policy steady amid signs of an economic slowdown, El Paso joined another trend: refinancing debt. About $107 billion, or 61 percent, of the new municipal bonds sold during the first five months of the year were used to pay off higher-interest securities, according to Bank of America.

Refinancing will let the city spread out what would have been a $17 million balloon payment in 2023, said Mark Sutter, El Paso's chief financial officer, who took the job after the original bonds were issued.
"This makes our debt service much more manageable," he said.

The stadium was approved in November 2012, when voters signed off on a hotel-tax increase needed to pay for it. While officials initially intended to sell the bonds as soon as possible, that was delayed in part because of a May 2013 city election and ongoing controversy over the ballpark. Its construction required razing the former city hall.

That June, bond prices began tumbling after the Fed said it would wind down its program of buying bonds to hold down interest rates. A month later Detroit filed the largest municipal bankruptcy in U.S. history.

The El Paso stadium bonds priced in late August. Since the start of June, 30-year municipal yields had risen 1.4 percentage points to about 4.7 percent, the highest since 2011, according to data compiled by Bloomberg.

The timing led city council members to call for audits into how the financing was handled. Taylor Moreno, chief of staff for Mayor Oscar Lesser, had no immediate comment.

Yields at more than 50-year lows have allowed the city to rework part of it.

“They couldn’t have caught the market at a better time,” said David Jaderlund of Jaderlund Investments in Santa Fe, New Mexico. “This should produce some good savings for them.”

Bloomberg Business

by Darrell Preston

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