
BONDS - NEW YORK

Emmet & Co., Inc. v. Catholic Health East

Supreme Court, New York County, New York - August 28, 2015 - N.Y.S.3d - 2015 WL 5122314 - 2015 N.Y. Slip Op. 25293

Holders of municipal bonds filed putative class action against issuer, claiming breach of contract and breach of duty of good faith and fair dealing based on issuer's coupling of tender offer with redemption of bonds that allegedly violated trust indenture governing bonds, after issuer defeased bonds so that issuer no longer had any payment obligations but bonds remained callable by compelling holders to sell their bonds to issuer at price set forth in indenture. Issuer moved to dismiss for failure to state claim, and holders moved for partial summary judgment on liability.

The Supreme Court, New York County, held that:

- Coupling of tender offer with redemption of bonds breached indenture;
- Issuer's synthetic total return swap with financial advisor breached indenture;
- Breach of covenant of good faith and fair dealing claim was duplicative; and
- Award of punitive damages was not warranted.

Issuer's coupling of tender offer with redemption of municipal bonds issued to refinance hospital's debt and subsequently defeased by issuer but remaining callable was impermissible under trust indenture provision, allowing issuer to redeem any percentage of outstanding bonds, but requiring issuer to randomly select which bonds to redeem if less than 100% of bonds were redeemed, where tender offer allowed bondholders to either tender their bonds at 101% or see them redeemed at 100% of bonds' principal amount, and issuer redeemed only 45% of non-tendered bonds after other 55% were tendered, so issuer effectuated non-random redemption of less than 100% of bonds by excluding its own tendered bonds from redemption.

Issuer's synthetic sale of municipal bonds to financial advisor through total return swap, after impermissible non-random redemption of bonds by coupling tender offer with redemption, was prohibited under trust indenture, providing that all bonds "paid, redeemed or purchased, either at or before maturity, when such payment, redemption or purchase is made, shall thereupon be cancelled by the Trustee and shall not be reissued but shall thereupon be destroyed by the Trustee," since bonds had to be cancelled and could not be resold once acquired by issuer.

Bondholders' claim for breach of implied duty of good faith and fair dealing by issuer of municipal bonds was duplicative, after holders prevailed on their express breach of contract claim against issuer regarding trust indenture that governed bonds, since breach of implied covenant was intrinsically tied to damages resulting from breach of indenture.

Issuer's coupling of tender offer with redemption of municipal bonds that resulted in non-random redemption and subsequent synthetic total return swap with financial advisor, in breach of trust indenture, did not justify award of punitive damages, since issuer's conduct was not intentional, deliberate, fraudulent, or conducted with evil motive, and even if intentional, controversy was between highly sophisticated financial professionals who disagreed about complex issues without clear precedent to guide them.

LIABILITY - NEW YORK

Caramanno v. City of New York

Supreme Court, Queens County, New York - September 3, 2015 - N.Y.S.3d - 2015 WL 5166177 - 2015 N.Y. Slip Op. 25301

Paving subcontractor brought action against city, city department of sanitation, and owner of junkyard after department removed subcontractor's legally parked steam roller following completion of paving work and subsequently sent it to junkyard, where it was destroyed. City and department moved for summary judgment.

The Supreme Court, Queens County, held that:

- Genuine issue of material fact as to whether department's actions were discretionary or ministerial precluded summary judgment, and
- Even if department engaged in ministerial act, subcontractor adequately alleged that it had special relationship with city and department, giving rise to a special duty supporting imposition of municipal liability.

Even if city department of sanitation engaged in ministerial act when it removed paving subcontractor's legally parked steam roller following completion of paving work and subsequently sent it to junkyard, where it was destroyed, subcontractor adequately alleged that it had special relationship with city and department, giving rise to a special duty supporting imposition of municipal liability. Subcontractor alleged that defendants affirmatively acted on its behalf by assuming control of its vehicle, that it had direct contact with department's employees, and that it detrimentally relied on employees' representations that department did not have the roller.

ANNEXATION - NEW YORK

Commandeer Realty Associates, Inc. v. Allegro

Supreme Court, Orange County, New York - August 18, 2015 - N.Y.S.3d - 2015 WL 4920070 - 2015 N.Y. Slip Op. 25276

Property owners commenced Article 78 proceeding seeking writ of prohibition temporarily restraining three municipalities from taking any action on two petitions to annex territory that overlapped with territory proposed for annexation in another municipality's prior annexation petition, on grounds that municipalities lacked jurisdiction to entertain those two petitions, under prior jurisdiction rule, pending final determination of prior petition, and also claiming two petitions were filed for illegitimate purpose of attempting to block prior petition. Municipalities asserted counterclaims and cross-claims for declaratory relief. Individual signatories to two petitions moved to dismiss.

The Supreme Court, Orange County, held that:

- Owners had standing to maintain Article 78 proceeding;
- Writ of prohibition was available for jurisdictional claim;
- Writ of prohibition was not available for illegitimacy claim;
- Article 78 proceeding was ripe;
- In matter of first impression, prior jurisdiction rule applies to municipal annexation proceedings; and
- Prior jurisdiction rule barred processing of two later-filed petitions.

ELECTIONS - OHIO

State ex rel. Morris v. Stark Cty. Bd. of Elections

Supreme Court of Ohio - September 9, 2015 - N.E.3d - 2015 WL 5255463 - 2015 -Ohio-3659

Challengers filed writ of prohibition to prevent Secretary of State and county board of elections from placing mayoral candidate on ballot as an independent candidate.

The Supreme Court of Ohio held that:

- Secretary acted within his discretion in determining that candidate had established a conforming residence within city, and
- Evidence supported finding that candidate had disaffiliated from political party.

Secretary of State acted within his discretion in concluding that mayoral candidate established a conforming residence within city, even though candidate ultimately spent only four consecutive nights at that residence before moving to another residence within city. Candidate moved into first residence without knowing when second residence would become available, and candidate had intended to reside at first residence indefinitely.

Evidence supported finding that mayoral candidate who wished to run as an independent candidate had disaffiliated from political party of which he had been a member, even though candidate did not resign his seat on county board of commissioners. Seats on county board were not assigned by political affiliation, and candidate took affirmative steps to resign from political party.

PENSIONS - OREGON

Moro v. State

Supreme Court of Oregon - April 30, 2015 - 357 Or. 167 - 351 P.3d 1

Active and retired members of the Public Employee Retirement System petitioned for judicial review of legislation aimed at reducing the cost of retirement benefits, which eliminated income tax offset benefits for nonresident retirees and modified the cost-of-living adjustment.

The Supreme Court of Oregon held that:

- Tax offsets were not contractual as required for their repeal to violate Contract Clause;
- Cost-of-living adjustment requirement was a term of the Public Employee Retirement System benefit offer;

- Public employers could revoke offer of cost-of-living adjustment to Public Employee Retirement System benefit for future work without violating the state Contract Clause, abrogating *Oregon State Police Officers' Ass'n v. State of Oregon*, 323 Or. 356, 918 P.2d 765;
- Legislation reducing cost-of-living adjustment cap and bank and imposing fixed rates on benefits received impaired the contractual obligations of public employers in violation of the Contract Clause;
- Supplemental payments were void in whole; and
- Prohibiting payment of tax offset benefits to non-residents did not violate the Privileges and Immunities Clause.

Tax offsets of 1995, which were calculated by applying a formula intended to negate from Public Employee Retirement System benefits the maximum Oregon personal income tax rate, were not contractual, as required for repeal of the tax offsets to violate state Contract Clause, even if the 1995 Legislative Assembly expected that a future legislature would repeal that provision. The legislature had not, in fact, repealed it, statute expressly stated that it was not contractual, and, thus, legislature clearly intended that the 1995 offset would not be contractual.

Tax offsets of 1991, which provided a benefit to both active and retired members of Public Employee Retirement System based on years of service, were not part of the Public Employee Retirement System contract, as required for repeal of the tax offsets to violate state Contract Clause, although it was intended to compensate Public Employee Retirement System members for the losses that they would incur when the state repealed the income tax exemption, as required by federal law. Statute itself was, neither an offer that members had accepted by rendering services nor initially supported by an exchange of consideration, and instead, legislature enacted offset as a type of pre-emptive damage payment to mitigate a claim for breach of Public Employee Retirement System contract that no court had yet sustained, and, thus, it was not a component of the type of employment compensation benefits otherwise found in the contract.

Cost-of-living adjustment requirement for Public Employee Retirement System benefits was a term of the Public Employee Retirement System benefit offer, as required for its amendment to violate the state Contract Clause, rather than merely a continuation of the discretionary dividend payment benefits system that preceded the requirement. By enacting the cost-of-living adjustment system, the legislature made the Public Employees Retirement Board's function ministerial and the application of the adjustment automatic, and legislature continued to make additional discretionary ad hoc payments during periods of particularly high inflation so that employees could reasonably expect that adjustment statute codified some minimum automatic protection of the purchasing power of their future benefits that was separate from any discretionary and gratuitous ad hoc benefits that the legislature might otherwise have provided.

Public employers could revoke offer of cost-of-living adjustment to Public Employee Retirement System benefit for future work without violating the state Contract Clause; benefit was not an irrevocable term of Public Employee Retirement System benefits offer such that it could not be changed prospectively; abrogating *Oregon State Police Officers' Ass'n v. State of Oregon*, 323 Or. 356, 918 P.2d 765.

Legislation that reduced the cost-of-living adjustment cap for Public Employee Retirement System benefits from plus or minus 2% to plus or minus 1.5% for 2013, and, beginning in 2014, eliminated the cap and bank and imposed a fixed rate of 1.25% on benefits received by retired members up to $60,000 and a fixed rate of 0.15% on retirement income in excess of $60,000 impaired the contractual obligations of public employers to apply cost-of-living adjustment provisions to Public Employee Retirement System benefits earned before the effective dates of those amendments in violation of the state Contract Clause. Case involved public employers's financial obligations and,

thus, did not automatically fall within reserved powers that could not be contracted away, public employers failed to establish that funding was so inadequate as to justify allowing the state to avoid its own financial obligations.

Amendments to cost-of-living adjustments for Public Employee Retirement System benefits were void as violative of the state Contract Clause only to the extent that they applied retrospectively to benefits already earned, and, thus, Public Employee Retirement System members who earned a contractual right to benefits by working for participating employers both before and after the effective dates of the amendments were entitled to receive during retirement a blended cost-of-living adjustment rate that reflected the different cost-of-living adjustment provisions applicable to benefits earned at different times. Prospective application of amendments was consistent with the legislative intent, because amendments provided employers with long-term savings.

Legislature could change prospectively, for benefits earned by Public Employee Retirement System members on or after the effective date of statutory amendments, cost-of-living adjustment for Public Employee Retirement System benefits without violating state Contract Clause.

Supplemental payments provided for in legislation amending cost-of-living adjustments for Public Employee Retirement System benefits by reducing cap and imposing a fixed rate could not be severed from the unconstitutional retrospective application of legislation to benefits already earned in violation of the state Contract Clause and were, therefore, void in whole, even though the supplemental payment provision itself was not unconstitutional. Impact on the benefits Public Employee Retirement System members would have received was adverse.

Prohibiting payment of tax offset benefits to non-residents of Oregon, who were members of Public Employee Retirement System, to compensate them for limitations to cost-of-living adjustments for retirement benefits did not upset the substantial equity between resident and non-resident members in violation of the federal Privileges and Immunities Clause, where nonresidents were not subjected to the tax that the tax offsets were intended to offset.

Prohibiting payment of tax offset benefits to non-residents of Oregon, who were members of Public Employee Retirement System, to compensate them for limitations to cost-of-living adjustments for retirement benefits did not violate the Equal Protection Clause. Objective was to remedy damages resulting from the imposition of Oregon income tax, and it was rational to provide that remedy to only those who suffered the damages by paying Oregon income tax.

UTILITIES - SOUTH CAROLINA

Azar v. City of Columbia

Supreme Court of South Carolina - September 9, 2015 - S.E.2d - 2015 WL 5247144

Objectors brought action against city, alleging city's expenditures of water and sewer revenues were unlawful. The trial court granted city summary judgment, and objectors appealed.

The Supreme Court of South Carolina held that:

- Genuine issue of material fact as to what nexus, if any, existed between economic development costs and city's provision of water and sewer services, precluded summary judgment, and
- Genuine issues of material fact as to whether city adequately funded ongoing operating and maintenance expenses, and satisfied the specific statutory set-asides, as a precondition for diverting $4.5 million from its water and sewer enterprise fund into its general fund each year,

precluded summary judgment.

Can Social Impact Bonds Help Reduce Homelessness?

On any given night in Santa Clara County, Calif., more than 6,000 people are homeless. Annually, that's costing the county more than $500 million. To Dave Cortese, president of the Santa Clara County Board of Supervisors, such a high cost should come with better results. The solution, he says, is obvious: "Devise a program that rapidly treats those folks and turns some from persistently homeless to consistently housed, and you cut down on the safety net they're using."

But that kind of prompt and comprehensive response is difficult for local government, in part because of the high upfront costs. Three years ago, Cortese heard about a new financing tool that tapped into the private and philanthropic sectors for early investors for otherwise cost-prohibitive public programs. If the program worked, the government would use future years' revenue to pay back its investors. The tool, known as a social impact bond or "pay for success" program, was new to Cortese. Even though it was called a "bond," it was more of a public-private partnership for experimental and expensive interventions in human services.

Last month, Santa Clara County announced Project Welcome Home, the latest local government initiative that leverages the social impact bond model. In the next six years, a nonprofit called Abode Services will provide housing and support services to between 150 and 200 long-term homeless people. The nonprofit will assign small caseloads to a multidisciplinary team with training in psychiatry, substance abuse, social work, nursing and vocational rehabilitation. The approach represents a combination of evidence-based practices, and is backed by academic research and recommended by the U.S. Department of Housing and Urban Development.

A group of funders is providing $6.9 million — mostly in loans — to make the project happen. Project Welcome Home's goal is to house at least 80 percent of participants for a year or more. If the program is successful, the county will reimburse its lenders as each person hits certain tenancy milestones. For example, lenders will initially be paid $1,242 for every individual who stays housed for three months. The largest reimbursement comes after a formerly homeless person remains in housing for a year:

Payment to Lender per Program Participant Milestone	Participant Milestone
$1,242	3 months of continuous tenancy
$1,863	6 months of continuous tenancy
$2,484	9 months of continuous tenancy
$6,831	12 month of continuous tenancy
$1,035	Each month after the first year of continuous tenancy

In the next six years, the county has agreed to set aside about $8 million from its general fund to pay

back its lenders if Abode is successful in keeping people housed.

Part of the appeal of social impact bonds is that they force local governments to account for current public spending on a problem and estimate cost savings if it reduced the problem using a relatively new and expensive intervention. That logic is driving the Santa Clara project as well. A study published in May by the Economic Roundtable, a policy research nonprofit in California, found that more than 2,800 people are chronically homeless in Santa Clara County, and each of them costs about $83,000 a year in public spending. Cortese and the rest of the Santa Clara County Board of Supervisors are betting that as the homeless population drops, some of that $83,000 in spending at local jails, emergency rooms and shelters will drop as well.

While the Santa Clara County social impact bond is certainly an effort to control spending on homeless services, local officials have been careful not to make reduced costs the sole objective. “We are not predicating success based on the amount saved,” says Greta Hansen, a county attorney overseeing Project Welcome Home. The primary goal, Hansen says, is to house people and keep them housed for a long time. The project also may bring other benefits that county officials consider desirable even if they don’t translate into direct cash savings. For example, wait times at emergency rooms may go down as fewer homeless patients make frequent and repeat visits. That’s a “noncashable” improvement in service delivery, Hansen says.

Another noncashable benefit is the increased focus on data collection and performance measurement in a human services context. Independent researchers from the University of California, San Francisco, have designed an evaluation tool to track treatment groups and control group to determine if Project Welcome Home can be credited for improvements in participants’ health or decreases in their use of social services. “For so long, it’s been a bit of mystery how impactful the [support] services we deliver are,” Hansen says. “We were paying the same amount for a service provider who was extremely effective as one that was less effective. We want to tie our expenditure of public dollars to the outcomes we want to see.”

Santa Clara County’s Project Welcome Home comes at a difficult time for social impact bonds: It launched less than two months after the first and most famous social impact bond in the United States came to an early end. Group therapy for juvenile inmates, the intervention being tried in Rikers Island, N.Y., proved to be ineffective, so the primary funder, Goldman Sachs, pulled the plug. The contract in Santa Clara County includes a similar clause that allows funders to discontinue the project if Abode doesn’t meet its housing targets. “There is risk,” says Cortese. “No one is saying there isn’t risk.” But, he counters, anyone questioning the net benefit of the project should consider the counterfactual, “what you would spend on homelessness if you kept doing what you’ve been doing.” That’s about $3.1 billion over six years, according to the Economic Roundtable study.

While failure is a possibility, so is expansion. The initial project only deals with a small slice of the county’s overall homeless population, but that could change. If enough participants reach their first set of tenancy milestones, Cortese says he would want to explore ways to scale up the program as early as June of next year.

Santa Clara County is one of eight U.S. jurisdictions with a social impact bond project that is up and running. The other seven are in Massachusetts, New York, Ohio and Utah. While they are alike in using nongovernmental funding to cover high upfront costs for an intervention, they seek to address different issues, such as disparities in early childhood education, high prisoner recidivism and chronic homelessness. Other than the Rikers Island project, none have reported final results.

BY J.B. WOGAN | SEPTEMBER 8, 2015

SEC Asks: Should Muni Bond Pricing Change in Wake of Edward Jones?

CHICAGO – Securities and Exchange Commission lawyers pushed municipal market participants meeting here on Thursday to consider whether industry practices on the pricing of new bonds should change in the wake of the SEC's enforcement case against Edward Jones.

"It's a legitimate, open question as to whether industry practices need to change here," Mark Zehner, the deputy director of the SEC enforcement division's municipal securities and public pensions unit, said after a panel discussion of hot topics in municipal securities law at the National Association of Bond Lawyers' Bond Attorney's Workshop. "Is Edward Jones an aberration or is it a symptom of a larger problem in the municipal market?" he asked.

In its first enforcement case on primary market pricing of bonds, the SEC last month ordered the St. Louis based, retail-oriented dealer Edward Jones to pay more than $20 million for overcharging retail customers for new munis. The commission found that instead of selling new bonds to customers at the initial offering price as required, Edward Jones, acting as a co-underwriter, and the former head of its syndicate desk, took bonds into the firm's own inventory and then improperly sold them to customers at higher prices. In some cases, the firm failed entirely to underwrite and offer the new bonds to investors until secondary market trading began.

Zehner said this is "a very important case" that shows the levels to which some underwriters will go to make money. Before the case, there was an assumption that underwriting syndicate members would adhere to both the bond purchase agreement and agreement among underwriters requirements to sell bonds at the "initial offering price" negotiated with the issuer. But after the case, Zehner said he is "not sure that is a good assumption moving forward."

He encouraged bond and tax counsel to think through what they want to see in issue price certificates, in which the senior managing underwriter certifies the issue price – the price at which at least 10% of a maturity is sold to the public in a bona fide public offering.

Stressing that these are his personal views and not necessarily those of the SEC, Zehner said he is just posing the question of what changes the Edward Jones case might lead to, not answering it.

Rebecca Olsen, deputy director of the SEC's office of municipal securities, raised the same question in an earlier underwriters' counsel roundtable. She asked if the senior managing underwriter can continue to rely on co-managers to comply with their obligations under both the BPA and AAU. Olsen also asked whether bond counsel can continue to rely on issue price certificates executed by the senior managing underwriter on behalf of syndicate members without making inquiries about the pricing of those members' bond sales.

She also asked whether the senior underwriter in a syndicate should start asking co-underwriters to sign the issue price certificate and whether bond counsel should be getting on the Municipal Securities Rulemaking Board's EMMA system and looking at prices at which new bonds were sold. The other panelists, who included a lawyer for a broker-dealer, said a strong no to both questions.

Ernesto Lanza, a panelist and shareholder with Greenberg Traurig in Washington D.C., said the Internal Revenue Service has learned that EMMA is not designed to capture information for purposes of determining the issue price or whether bonds are initially being sold at the issue price.

Lanza said it would be “inefficient” and “ultimately ineffective” to have all syndicate members sign the issue price certificate. Leon Bijou, senior vice president and municipal general counsel with Jefferies in New York, said the likelihood of that happening “seems remote.” Bijou noted that the SEC did not go after the senior managing underwriters in the bond issues where Edward Jones committed pricing abuses.

Lanza said, “everyone should be aware that there is significant evolution going on” following the Edward Jones case, but added it won’t be clear for many months what, if any, changes will occur.

“Expect change in the next year or two in terms of the degree to which syndicate members can trust each other, the degree to which issuers can trust members of the syndicate, and the degree to which lawyers will be pulled into the process,” Lanza said.

Bijou said that underwriters do not have the resources to check what other syndicate members are doing and they assume that the other underwriters are complying with regulations.

“It would be very difficult for us to tap a co-manager on the shoulder and say, ‘By the way, did you comply?'” Bijou said. “We get their signature on the AAU and to go beyond that in the industry process would be considered inappropriate and highly intrusive.”

At least one panelist said syndicate members may be more closely scrutinized by the lead underwriter, but Bijou and others pointed out that issuers sometimes put firms in the syndicate and that lead underwriters do not have the capability or desire to kick them or other firms out.

Paul Maco, a partner with Bracewell & Giuliani, said the senior managing underwriter that signs the issuer certificate can only do so much and that the Edward Jones case showed the SEC looks at each member of the syndicate as being responsible for its own compliance.

An audience member later asked Zehner whether the SEC was concerned that issuers, not just investors, were hurt by Edward Jones. Zehner said the SEC focused on investors, who were clearly hurt by Edward Jones’ actions, in part because the issuers got the deal they thought they were getting. They helped negotiate the initial offering price. “I’m not saying they weren’t victims,” Zehner said, referring to the issuers.

In the earlier session, Maco made the point that when Edward Jones was violating the MSRB’s syndicate rules, it was also violating the securities laws.

“The sea change here” is that the SEC now has a large group of enforcement staff that understand how muni bond pricing and trading desks work and they will be watching this area of the market, Maco said. In addition, the Financial Industry Regulatory Authority will start paying attention to these issues and will probably start looking at syndicate practices and pricing in their examinations of broker-dealers, he said.

THE BOND BUYER

BY JACK CASEY

SEP 10, 2015 4:02pm ET

MSRB: Best-Ex Rule Will Not Be Implemented Before Release of Guidance.

WASHINGTON – Implementation of the Municipal Securities Rulemaking Board's best-execution rule will start four months after the board releases guidance on the rule, instead of Dec. 7 as originally planned.

The MSRB announced the later date on Thursday in an effort to give dealers adequate time to review the guidance before the rule becomes effective. The guidance will be a collection of answers to frequently-asked-questions.

"Linking the effective date of the best-execution rule to the publication of the guidance will establish a clear implementation period and ensure that dealers have adequate time to review and make use of the guidance as they continue to prepare to comply with the new rule," the MSRB said in a news release.

Rule G-18, on best execution, requires dealers to use "reasonable diligence" to determine the best market for a security and to then buy or sell the security in that market so the price for the customer "is as favorable as possible under prevailing market conditions." The Securities and Exchange Commission called for the adoption of such a rule in in its 2012 Report on the Municipal Securities Market.

Dealers would have to take into account a list of factors to meet the diligence requirement under the rule, including: the character of the market for the security; the size and type of transaction; the number of markets checked; the information reviewed to determine the current market for the subject security or similar securities; the accessibility of quotations; and the terms and conditions of the customer's inquiry or order.

The MSRB filed the best-ex rule with the SEC in August 2014 and the commission approved it later that year on Dec. 8. The effective date for the rule was to be one year from the SEC's approval, but the need to coordinate between the MSRB, SEC and the Financial Industry Regulatory Authority, which has its own best ex rule for corporate bonds, caused the guidance process to take longer than expected.

"The MSRB is continuing to coordinate with the SEC and FINRA with the goal of publishing best-ex implementation guidance in short order," said MSRB executive director Lynnette Kelly. "Facilitating dealers' compliance with their new obligations and ensuring that retail investors consistently receive the benefit of fair handling of their orders to buy or sell municipal securities is a top priority for the MSRB."

Dealers had expressed concern that the implementation date for the rule was looming and the MSRB still had not provided them with answers to questions they felt they needed to know to for compliance. There had been questions about how dealers could prove they had used "reasonable diligence" or had found a price that was "as favorable as possible."

Jessica Giroux, senior counsel and senior vice president of federal regulatory policy for Bond Dealers of America, said BDA was concerned about the short period of time that remained before the previous implementation date. But she added that, "since the MSRB has announced it will delay the implementation date to coincide with the delay in anticipated guidance, we are pleased that our members will have additional time to read, comprehend and put in place processes and systems to ensure compliance with the rule."

David Cohen, a managing director and associate general counsel with the Securities Industry and

Financial Markets Association, said, “SIFMA welcomes the delay, as it will allow dealers time to amend and further refine the implementation of policies and procedures that have been under development. We also welcome the coordination with FINRA. SIFMA has concerns, however, that four months is not a sufficient amount of time for dealers to design, test, and implement any changes to their systems as a result of the guidance.”

THE BOND BUYER

BY JACK CASEY

SEP 3, 2015 4:48pm ET

Bond Ruling Emboldens Abusive Scheme, Former IRS Official Says: Tax Analysts

A recent private letter ruling has emboldened the use of an abusive arbitrage scheme and should be withdrawn, says William Mark Scott, former director of the IRS Office of Tax-Exempt Bonds.

Summary by Tax Analysts®

September 8, 2015

William J. Wilkins, Esq.
Chief Counsel, IRS Office of Chief Counsel
1111 Constitution Ave., NW
Washington, DC 20224
Re: Priv. Ltr. Rul. 201502008

Dear Mr. Wilkins,
I write to you to lend my voice to the discontent over Priv. Ltr. Rul. 201502008 (dated May 21, 2014, and released Jan. 9, 2015). I believe your office erred when it issued this ruling, and that the ruling should be revoked per Rev. Proc. 2015-1, § 11.04. And, with full knowledge of the errors, I am hopeful you will act accordingly.

Priv. Ltr. Rul. 201502008 addresses the use of a total return swap (TRS) in conjunction with an issue of tax-exempt bonds. In the ruling, one party wears 2 hats as both the swap counterparty and the holder of the tax-exempt debt. Because of this dual role, the swap counterparty/bondholder, through pricing terms applicable to the “total return” portion of the TRS, can lower its taxable income in exchange for greater tax-exempt income. The ruling, therefore, describes an arbitrage scheme that is quite easy to abuse.

Continue reading (subscription required).

Hedge Funds Fill Gap in the U.S. Municipal Bond Market.

Besides shouldering risks on municipal paper that mutual funds won’t take, hedge fund firms are pushing for better disclosure from issuers.

At the end of July, Wells Fargo & Co. analysts Natalie Cohen and Roy Eappen published a research note suggesting that hedge fund buyers are becoming bigger players in the $3.6 trillion U.S. municipal bond market. But as the New York–based researchers pointed out, there's no clear way to see what those firms are buying and why.

Tracking players in the market is tough because of a quirk in how the U.S. Federal Reserve Board counts what it calls household investors. "The Federal Reserve (sadly) includes both non-profit organizations and hedge funds in the Household category" of bondholders, Cohen and Eappen wrote.

Still, a scan of the headlines suggests that hedge funds are going all in on obvious U.S. distressed plays like Puerto Rico, any issuance coming out of Illinois and, more recently, the city of Hillview, Kentucky. (Hillview has filed for bankruptcy, but there's some question about whether it will be able to proceed.)

Hector Negroni, co-founder, co-CEO and CIO at New York–based Fundamental Credit Opportunities, an $800 million municipal finance fund, says the opportunity set for hedge funds is much larger than distressed debt. Although people think municipal bonds are just for mom-and-pop investors, he explains, before the financial crisis proprietary trading desks at the U.S. bulge-bracket banks and even foreign banks were big players.

"Hedge funds have stepped into that gap," says Negroni, who ran Goldman Sachs Group's municipal desk until he founded Fundamental Credit Opportunities within New York–headquartered, $2.2 billion alternative-asset manager Fundamental Advisors in 2012. "It's a liquidity option to be in municipal bonds."

For hedge funds, the municipal bond market is still a bit small for the block trades and other big moves they often make. However, munis have emerged as a viable opportunity for a modest bond sleeve within multistrategy funds or as part of a diversified credit exposure. In Negroni's experience, the types of bonds available within the municipal market vary widely, and they're responsive to ebbs and flows in the market.

Hedge funds create demand for municipal bonds that mutual funds and other retail investors won't touch, notes Vikram Rai, a New York–based analyst and head of municipal strategy at Citigroup. "Hedge funds have longer holding periods as well and are thus willing to take their chance on the steps of the bankruptcy court, whereas mutual funds do not want to see a disruption in their coupon income," Rai says, adding that hedge funds also see liquidity opportunities in municipal bonds owing to the market's overall strength.

That relative strength appears to be bringing foreign banks back too, as regulations permit. According to Wells Fargo's Cohen and Eappen, international buyers have boosted their holdings by 144 percent since 2006: "These investors find municipal securities attractive when they are cheap relative to Treasuries, and the spread effectively overcomes the U.S. tax code." This move to munis is most common during so-called flight-to-quality events like the one that has roiled international markets in recent weeks. Munis even saw increased interest from international buyers on the heels of the U.S. credit rating downgrade in 2011.

The price is right when the current yield on an index of triple-A-rated municipal bonds beats that on equivalent Treasuries. For example, the yield on municipal bonds is hovering around 3.82 percent, according to the Bond Buyer Go 20–Bond Municipal Bond index. As of September 10 the highest yield on U.S. government bonds was 2.98 percent on 30-year paper, the Department of the Treasury reports.

The growth of nonretail interest in municipal bonds has come with pushback from critics who say that hedge funds are just in the market to speculate, but Negroni disagrees. “Hedge funds are professionalizing the municipal bond market,” he says. “Hedge funds are the ones putting bond issuers’ feet to the fire and asking for better disclosures. That’s not a bad thing.”

Alternative-investment firms may get some help from the Securities and Exchange Commission on this score. Municipal bond underwriters are on the agency’s radar as part of its Municipalities Continuing Disclosure Cooperation Initiative. Under this effort the SEC is bringing administrative actions against brokerages selling bonds to investors at inflated prices. On August 13 Edward D. Jones & Co. settled with the regulator on exactly this issue. The St. Louis–based brokerage had to pay a fine of more than $20 million but did not admit or deny wrongdoing.

More surprising is that after the settlement, SEC commissioners issued a separate statement calling for new and clear rules for municipal bond dealers that would require them to disclose markups and markdowns on trades. Taken together, the two actions signal that the agency is keeping a close eye on the municipal bond market and potential pricing violations.

So, why weren’t mutual funds and asset managers already pushing for all of this? The short answer is, mandates. Mutual funds and other retail investment vehicles in the municipal bond market are tasked with generating the most tax-exempt coupons. By contrast, hedge funds must provide the best risk-adjusted returns.

“Hedge funds have deep pockets and a higher appetite for risk,” Citi’s Rai says. “They typically step in at certain price points and provide demand for paper that mutual funds and other real money investors don’t want to hold. This has happened in the case of Puerto Rico and other credits as well, like Detroit.”

Alternative-investment firms with the right expertise are also providing specialty finance and municipal financing. Those packages can include bridge loans and municipal bond offerings around the same projects to create comprehensive solutions.

Rai believes the municipal bond market is strong enough to withstand “a handful” of defaults and subsequent distressed-debt interest without creating havoc. “I am quite optimistic about the overall credit landscape for munis,” he says.

Institutional Investor

By Bailey McCann

SEPTEMBER 11, 2015

Nerd-vana: Giving Fellow Reporters Tips on School Bond Sales Statements.

On Tuesday I tried to pass along everything I know about reporting on school bonds to education reporters around the country as a panelist on an Education Writers Association webinar.

The session focused on the wonky topic of official statements, those compendiums of financial information and legal jargon that come with every public bond issue. Those, plus annual financial updates on the debtor agency, are free and available on the Electronic Municipal Market Access portal.

I discovered this treasure trove of source documents while staring at a 2-inch thick stack of spreadsheets I had been given by a school district that seemingly did not want any clear information on its debt to surface. Burying data in bullpucky appeared to be the strategy – and it was working.

But then I found EMMA and, eventually, the district's debt schedule showing year-by-year what it owed on all its bonds. Clarity had arrived.

EMMA expert Leah Szarek, communications manager for the Municipal Securities Rulemaking Board, was a fellow panelist Tuesday. I learned a lot from her presentation, and hope reporters did not get lost in mine as I went down a rapid-fire list of potential stories. Nichole Dobo of The Hechinger Report moderated.

School bond stories are back in the news in this area. First, after the recession wreaked havoc on normal bond financing, those who can are restructuring their debt to take advantage of lower rates.

The Yosemite Community College District has saved taxpayers $12.5 million with a new issue to restructure $120.2 million in debt from its Measure E bonds. That comes on top of $4.5 million it trimmed from its debt obligations with a 2012 sale.

Checking the statement, I see that property owners will still pay another $800.5 million through 2042 on the district's total debt. But, checking their property-valuation schedule, I can also see that is spread over nearly $54 billion (note the "b") worth of real estate over the far-flung district covering part or all of six counties.

Taxpayers pay roughly $25 per $100,000 valuation each year for the bond, which has remade Modesto Junior College with cutting-edge classroom space in its health sciences building, the Community Science Center and its newly opened Center for Advanced Technologies.

Another upcoming story will be Turlock Unified making plans to float a bond in 2016.

Turlock trustees will hold a special meeting at 6:30 p.m. Wednesday to talk over the idea of a school bond measure. They will meet in the school district main office at 1574 E. Canal Drive, Room 102.

After years of declining enrollment, Turlock schools are growing again and proposed development in the south area of town would overcrowd its existing schools there. With the state no longer offering to provide half the funding for new schools, Turlock must figure out how to raise all the money on its own if it wants to create a new school for those new neighborhoods.

The district has also recently refinanced its debt. That should lower its annual debt payment, which in fiscal year 2014-15 cost property owners $4.2 million, according to its bond statement on EMMA. That money went toward outstanding debt for the work finishing at Turlock High School, upgrades the district made to older elementary schools, and the bond to build Pitman High.

Expect to see other school districts weighing bond measures by next year as the rebounding economy brings more families to the area. If you want to know what they already owe or how their finances are doing, check out EMMA.

THE MODESTO BEE

SEPTEMBER 8, 2015

BY NAN AUSTIN

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Fed Rate Increase Too Late for BlackRock, Alpine Muni Cash Funds.

Whether the Federal Reserve's first interest-rate increase since 2006 comes this week or not, it won't be soon enough for Alpine Funds' municipal money-market fund.

Alpine Woods Capital Investors closed the $120 million fund in April after more than 12 years of operations, joining seven other tax-exempt money-market funds that have liquidated in the last 12 months, according to data compiled by Bloomberg. That number is set to grow. BlackRock Inc. in July said it would close its New Jersey, North Carolina and Virginia money funds by the end of year, leaving it with 15.

"It's tough times in the muni market," said Peter Crane, president of Westborough, Massachusetts-based Crane Data, a money-fund researcher. "Rates are so low that nobody cares about the taxes on them, because there's no income to be taxed."

Caught in a vice of the Fed's zero interest-rate policy and the cost of implementing new government regulations, fund companies are culling their offerings through liquidations and mergers. Municipal money-fund assets have plunged by half since peaking in August 2008, to $250 billion. The falloff has far outpaced taxable money-market funds, which dipped 20 percent in that period, to $2.4 trillion as of Sept. 10, according to the Investment Company Institute.

Municipal funds have been hit harder than prime money funds because the tax-exempt market is dominated by individual investors, while the taxable market is led by institutions which have been holding cash, said Crane. Tax-exempt seven-day money funds currently yield an average of 0.01 percent, while taxable funds yield 0.02 percent, according to iMoney.Net.

"Retail investors have options, whereas institutional investors are dealing with other people's money, so they can't afford to take risks," he said. In particular, assets in brokerage sweep accounts are moving to bank deposits from muni money-market funds, Crane said.

Tax-exempt money-market funds, which invest in high-rated, short-term debt and are treated like cash by investors, may still recover as rates rise. Balances in tax-exempt funds more than doubled from the early 1980s through 2008, with faster inflows when the Fed funds rate was rising than it was declining, according to Moody's Investors Service.

Alpine Woods, based in Purchase, New York, said its fund wasn't big enough to justify additional expenses resulting from U.S. Securities and Exchange Commission rules that take effect in October 2016 aimed at preventing a run on the funds. Costs for lawyers, technology, disclosure and stress testing are going up, fund managers said.

In September 2008, the $62.5 billion Reserve Primary Fund "broke the buck" because of losses on Lehman Brothers Holdings Inc. debt. Its move to reprice shares below $1 sowed panic among investors, who pulled $310 billion from money funds in a single week, helping freeze credit markets.

"Clearly there are some organizations where the cash product is essential to their product line-up and they have the scale to weather the storm," said Steven Shachat, who managed the Alpine fund. Alpine still has a $980 million "ultra short" municipal fund, whose holdings have an average maturity of about 90 days.

Some bigger fund companies are also trimming product lines. In July, Western Asset Management, a Legg Mason Inc. affiliate, merged its $540 million Institutional AMT Free fund into the $1.3 billion Institutional Tax Free Reserves Fund, citing similar objectives and investment strategies.

“A shift in assets resulting from the low interest rate environment coupled with money market reform, gave us the opportunity to assess our platform and determine how best to continue to meet the investment needs of our clients,” Katherine Ewert, a BlackRock spokeswoman, said in an e-mailed statement.

Money-market fund revenue declined almost 60 percent, to $3.6 billion from December 2009 to December 2014, Crane estimates.

Under the new SEC rules, institutional taxable and municipal money market funds will move from a stable $1 price per-share to a floating share price.

In addition, funds may impose liquidity fees of as much as 2 percent and/or temporary suspensions of redemptions if weekly liquid assets fall below 30 percent. If weekly liquidity falls below 10 percent, money market funds must impose a 1 percent liquidity fee.

By contrast, retail funds, which are limited to individuals, can maintain a stable $1 per share price, although they are still subject to redemption restrictions and fees if they drop below liquidity levels. More than 70 percent of the $250 billion in tax-exempt money-market assets are classified retail by the Investment Company Institute. The new rules don’t apply to U.S. government money-market funds.

Even as investors fled tax-exempt money funds, yields on short-term municipal bonds have averaged 0.07 percent over the last three years as state and local-government issuance of the debt has shrunk.

Municipalities are locking in 30-year fixed rate bonds for as low as 3.2 percent rather than issuing floating-rate bonds backed by bank credit facilities. In addition, as the improving economy boosts tax receipts, state and local governments’ need for short-term financing has declined.

Government officials are also focusing more on the risks related to issuing floating-rate bonds and entering into swap agreements. Municipalities may be forced to unwind the deals and buy back their debt at great cost if their credit rating is lowered below investment grade.

Chicago faced as much as $2.2 billion in payments to banks after Moody’s cut the third-largest U.S. cities debt to junk in May. The city has approved borrowing $1.1 billion to convert floating-rate bonds into longer-term fixed-rate debt and terminate interest-rate swaps, where floating and fixed-rate payments are exchanged.

“There’s a propensity for issuers to say, you know, the last thing we want is some sort of downgrade event to trigger a swap termination,” said Lyle Fitterer, who helps oversee $38 billion of munis at Wells Capital Management in Menomonee Falls, Wisconsin.

Bloomberg News

by Martin Z Braun

September 13, 2015

SEC Won't Be Pinned Down on MCDC Continuing Disclosure Violations.

CHICAGO – Securities and Exchange Commission officials repeatedly rebuffed bond lawyers' attempts to pin them down on the specific parameters of continuing disclosure violations based on the commission's settlements in June with 36 underwriters under the Municipalities Continuing Disclosure Cooperation initiative.

The initiative allows underwriters and issuers to receive lenient settlement terms from the SEC if they voluntarily self-reported any instances during the past five years in which they falsely claimed in official statements to be in compliance with their self-imposed continuing disclosure agreements.

Panelists at the National Association of Bond Lawyers' Bond Attorneys' Workshop here persistently questioned commission officials about whether an issuer who said it had complied with its continuing disclosure obligations materially violated those obligations if it was 14 days late in filing its annual financial disclosures. They also asked about whether the lack of violations involving the failure to file material event notices means the SEC does not consider these to be material to investors.

But LeeAnn Gaunt, chief of the SEC enforcement division's municipal securities and public pensions unit, told conference attendees that the commission described examples of violations in its settlements with underwriters to provide market participants with broad guidance, especially after they complained the earlier Kings Canyon Unified School District case failed to do so.

"We were genuinely in good faith trying to make these orders something that would be useful to you," Gaunt said during one of the panels on hot topics in municipal securities law. "Hearing the concerns expressed about the opacity of the Kings Canyon order and understanding that people genuinely in good faith were wanting to have a bit more texture on the nature of the violations that were reported and that were independently determined," the muni enforcement unit worked to ensure the order provided some guidance, she said.

But she said the examples cited reflect a range of conduct that fit the submissions the SEC received and that nobody should be "trying to find a bright line" in the order.

"What we tried to do in part in the spirit of the MCDC initiative, which was voluntary and cooperative, was not to necessarily lay bare every failure everybody reported," Gaunt said. "We wanted this to be a set of orders that were helpful to the industry, helpful to the market but didn't unduly [and] unnecessarily belabor failures, some of which were very repetitive in nature."

Elaine Greenberg, a panelist, partner with Orrick, Herrington and Sutcliffe, and predecessor to Gaunt at the SEC, sat on one of three hot topics securities law panels and tried to get more clarification on the SEC considers to be material violations under the initiative. Alexandra MacLennan, a partner with Squire Patton Boggs, similarly sought clarification from Mark Zehner, deputy chief of the SEC's muni enforcement office, during a different hot topics panel, but neither Greenberg and MacLennan made much headway with the SEC officials.

In response to Greenberg's questions on materiality examples, Gaunt said each example bullet point in each order is considered material, but she cautioned that if multiple events are mentioned in one bullet point, only the cumulative actions mentioned in the one point should be considered material.

Gaunt also said the absence of any examples involving failures to file material event notices does not mean they will not show up in future settlements.

“Nobody should take from that fact that we have decided that the failure to file material event notices is absolutely never actionable,” Gaunt said. “We’re not setting a floor, we’re not setting a ceiling.”

The examples are “not the universe of everything that could be,” Rebecca Olsen, deputy director of the SEC’s Office of Municipal Securities, said during another panel.

Zehner echoed Gaunt during his panel: “Those are only examples. They are not floors, they are not ceilings,” he said, adding, there is no “magic line drawing.”

Both Zehner and Olsen separately stressed that market participants should not be looking at the SEC to determine whether disclosure failures are material. They said materiality is always a facts and circumstances determination of what a reasonable investor would want to know when buying or selling bonds. “The market should not be looking to the SEC … to say what is material,” said Olsen.

Gaunt did not rule out the possibility that there could me more than one more set of underwriter settlements, saying “there will be at least one more group” of underwriter settlements but that she could not “say for sure if there will be another one after that.”

Some sources have said issuer settlements will not be released until next year. Asked about that by a reporter, Gaunt said she could not say.

Both Olsen and Jessica Kane, director of the SEC’s OMS, said that the MCDC initiative has served an important purpose in focusing market participants’ attention on the commission’s Rule 15c2-12, on disclosure. Kane said the initiative has provided “valuable insight into how 15c2-12 is working.” Both she and Olsen suggested that the settlements will allow them to determine whether further changes to the rule or other actions are needed.

One bond lawyer in the audience noted that most continuing disclosure agreements provide remedies for bondholders if issuers fail to meet their obligations. Zehner replied the SEC’s focus during the investigation was not on issuers’ failure to file disclosures but rather on whether they made false or misleading statements when they said they were meeting their obligations. Zehner added, however, “I think one of the issues that the industry has to wrestle with is whether current remedies on disclosure failures are adequate.” Continuing disclosure agreements are essentially contracts between the issuer and the bondholders subject to state contract law. In theory, if the bondholders are upset that an issuer has failed to meet its continuing disclosure obligations and want to force the issue to remedy the situation, they can sue the issuer under state law. But in reality, a bondholder typically does not know the identities of other holders of the bonds and small holders do not have the financial resources to file a lawsuit.

Zehner said after the panel that if bondholders had an adequate enforcement mechanism to force issuers to comply with their disclosure obligations, the SEC would not need to bring enforcement cases in this area.

“In a perfect world, we should never have to show up,” he said.

The MCDC also may already be changing some market practices. Until the initiative, most offering documents contained language saying the issuer had complied in all material respects with its continuing disclosure undertakings. If this language was included in an official statement and the issuer did not meet its undertakings, then the SEC could easily show the issuer made a false representation. As a result, many of the lawyers on panels said issuers may no longer include these statements in their offering documents.

“MCDC made issuers aware that those statements have risk,” said Barron Wallace, a partner at Bracewell & Guiliani and a panelist on an underwriter’s counsel roundtable. Paul Maco, a former OMS director from the same firm who was also a panelist, pointed out that these statements are not required by Rule 15c2-12 but rather have been a “construct that was developed by the bar.”

Another member of the audience asked Zehner what trends or patterns he sees in the market that bond counsel and underwriter’s counsel should pay attention to. Zehner said there are so many areas that it is hard to think of a list, but responded to the question by warning that “if you are participating in a higher risk, higher yield transaction, you need to be more careful.”

After the panel he explained that issuers need to be sure they are disclosing all of the risks in these kinds of deals. The SEC for example brought enforcement action against Allen Park, Mich., its former mayor, and its former city administrator in connection with $31 million of munis sold in 2009 and 2010 to finance a movie studio project in the city. The SEC found that offering documents contained false and misleading statements about the scope and the viability of a questionable movie studio project as well as Allen Park’s overall financial condition and its ability to pay debt service.

THE BOND BUYER

BY JACK CASEY

SEP 11, 2015 11:15am ET

UBS wins Puerto Rico Bond Fund Arbitration After Spate of Losses.

UBS AG has prevailed against an investor’s multi-million-dollar arbitration claim for losses tied to the firm’s Puerto Rico bond funds, following a string of investor victories.

A Financial Industry Regulatory Authority (FINRA) arbitration panel ruled that investor Berta Ganapolsky relied on advice from her family’s “outside counsel” and an accountant, instead of her UBS broker, when she chose to remain invested in a bond fund that was underwritten and sold by UBS’s Puerto Rico arm. The ruling, dated Wednesday, was posted to FINRA’s website on Friday.

“We believe that justice was not done here,” said Charles Lichtman, a lawyer in Boca Raton, Florida, who represented Ganapolsky. “Our client is a 78-year-old widow, whose UBS broker put all of her money into one investment,” Lichtman said in a statement.

Ganapolsky, who filed the case last year, had sought a total of $9.1 million in relief.

Many of the Puerto Rico funds sold by UBS were highly concentrated in the debt of the Caribbean island’s government and related entities. UBS is defending against hundreds of arbitration claims filed with FINRA, which collectively seeking more than $900 million in damages.

Some of the funds lost half to nearly two-thirds of their value between March 2011 and October 2013, amid fears about the size of Puerto Rico’s debt burden and the weakness of its economy. They have failed since to recover.

“UBS is pleased with the arbitrators’ decision in this matter,” a spokesman said.

The panel’s decision follows a series of recent UBS losses. On Aug.31, arbitrators ordered UBS to

pay $2.9 million to two Puerto Rican investors. And Aug. 11 arbitrators ordered UBS to pay two investors $2.5 million.

In May, arbitrators ordered UBS to buy back an investor's Puerto Rico bond fund portfolio for $1 million. As the value of the investor's portfolio plunged, a UBS manager told him that "even a skinny cow could give milk," the ruling said.

The panel, in reaching its decision on Wednesday, also recommended removing details about Ganapolsky's complaint from the public record of her broker at the time, David Jose Lugo.

FINRA rules require that summaries of investors' arbitration complaints appear in the public records of brokers who are either named in a case or facilitated a transaction.

Lugo's public record reflects dozens of such complaints about the funds and also notes that he left UBS in May. Lugo's lawyer was not immediately available to comment.

REUTERS

SEPT 11 | BY SUZANNE BARLYN

(Reporting by Suzanne Barlyn; Editing by Leslie Adler)

Markets Provide a Reality Check for the Risky Bet of Pension Obligation Bonds.

The scary stock market that we've seen since mid-August is a classic example of how reality keeps intruding on theory. And it shows how there really is no such thing as free money on Wall Street, no matter how beguiling the sales pitch.

The case in point: pension obligation bonds — a supposedly magic solution to the problem of underfunded government pensions. The idea is that governments with badly underfunded plans can borrow money at historically low rates, invest the borrowed cash in the stock market, and earn much more on stocks than the bonds cost in interest.

I wrote a skeptical article about these bonds in July, with Cezary Podkul of ProPublica as co-author. "Governments can borrow cheaply these days — but the risks of investing pension bond proceeds are unusually high," we said. Recent weeks have proved us right.

We warned that potential pension bond issuers such as Colorado and Pennsylvania would be taking a huge chance by selling billions of dollars of bonds at seemingly low rates and investing the cash in the then-stable stock market.

The idea, as presented by investment banks (which get fees for doing deals), is that pension bonds can be a magic elixir. For two groups in particular, they profess, it's just the thing: employee unions worried that underfunded pension plans could lead to benefit cuts, and public officials who want to improve pension-funding ratios without raising taxes or cutting benefits.

After all, the argument goes, you can't go wrong selling bonds at about 5 percent interest to raise money to buy stocks, which have historically produced returns exceeding 10 percent.

Oops. Timing is everything. Had a government sold pension bonds on July 10, the day our article appeared, it would have suffered a double whammy. The Standard & Poor's 500-stock index has dropped 6 percent since then, and interest rates on the kind of municipal bonds that make up a large piece of pension issues have fallen.

Had Colorado sold its proposed maximum of $12 billion in pension bonds on July 10 and put the proceeds into the S&P 500 that day, its portfolio would be about $700 million underwater. What's more, its bonds would probably be carrying a somewhat-higher-than-current-market interest rate.

That's because the rate on 30-year AA-rated taxable muni bonds, a major component of pension bond issues, was 4.74 percent Thursday, according to Bloomberg, down from 5 percent on July 10. Rates on the 20-year version of the bond, another major pension bond component, were down slightly, to 4.46 percent from 4.49 percent.

So Colorado — which fortunately for its taxpayers deferred the pension bond issue after state legislators got nervous — would have had a large paper loss and would be paying what at least for now is an above-market rate on much of the borrowing.

"Recent market behavior has reminded us that markets have volatility and uncertainty and may not provide the returns we want, no matter how badly we need them," said Ben Valore-Caplan, a Denver-based adviser to institutional investors who quit as vice chairman of the Colorado Public Employees' Retirement Association board rather than be involved in a pension bond issue.

"Markets don't care that a pension is underfunded," he told me. "Pensions don't get secret access to higher returns or lower risk. When they forget their place, the markets sooner or later will remind them."

The S&P 500 has produced an average of 10.6 percent in price increases and reinvested dividends over the past 45 years. But that doesn't mean you are guaranteed a double-digit return if you invest on a particular day. It's about statistics: You can drown in a pond that's an average of one foot deep if you happen to step into a 10-foot-deep part.

It's one thing to invest in stocks over the long term. But investing gradually, over time, is a lot different than hocking yourself to the eyeballs and putting the borrowings into the market in one shot.

No, I'm not saying that stocks won't recover and go on to new highs. What I am saying is that any government — or any retail investor — borrowing a ton of money and putting it all in the stock market at once is taking an enormous risk. It's not a risk I would take myself. As recent weeks have shown, it's not a risk that governments should take, either.

The Washington Post

By Allan Sloan

September 10, 2015

Research for this column was provided by Cezary Podkul of ProPublica.

Detroit Schools Paying Penalty in Bond Market Post Bankruptcy.

Detroit's schools are paying a hefty penalty for persistent financial woes as the district taps the tax-exempt debt market in the wake of the city's record bankruptcy.

The $121 million in notes maturing in August being sold through the Michigan Finance Authority were priced to yield 5.75 percent, according to preliminary data compiled by Bloomberg. That's about 5.5 percentage points more than one-year benchmark municipal bonds.

"The market pricing is just reflective of many buyers' uncertainty regarding the legal standing of this type of security package for a name that has suffered so much fundamentally in recent decades," said Gabe Diederich, a Menomonee Falls, Wisconsin-based money manager at Wells Capital, which manages about $39 billion of municipals, including some Michigan school holdings.

The proceeds of the deal will refinance debt to help cover the district's budget deficit, according to bond documents. The district, which has been run by a state-appointed manager since 2009, is in Wayne County, which entered into a consent pact with the state last month to try to mend its own spiraling finances.

Michelle Zdrodowski, a spokeswoman for the schools, said in an e-mail that the district was not going to make any comment during the pricing period.

Detroit Public Schools' financial problems mirror a shrinking population, a trend that has contributed to slumping enrollment. The "severe declines" in the number of students enrolled at Detroit schools has limited state aid available for debt payments, according to Standard & Poor's, which rates the notes SP-3, its lowest short-term grade. The schools saw average annual enrollment declines of more than 12 percent from 2007 to 2012, according to S&P.

In May, the Michigan Finance Authority sold $82.8 million of notes maturing in June 2016 at a yield of 4.75 percent.

The district is behind on its pension payments by about $92 million, bond documents show. The state's office of retirement systems can ask the Michigan treasurer to intercept state aid to the schools to get the funds. While the director of the pension system has said that he doesn't plan to do that as long as the district sticks to its plan to make payments in October, the pension costs remain a drag on school finances.

The state is working to ease the district's fiscal woes. In April, Gov. Rick Snyder proposed a restructuring of the school system into two parts. One district would be charged with paying off the $483 million of operating debt using an existing property tax, and the other would be tasked with educating students and collecting state aid funds, according to bond documents. Legislation on the plan is expected to be introduced in the coming months, according to bond documents dated Sept. 4.

"Ultimately there just doesn't appear to be a near-term catalyst for boosting enrollment and changing the trajectory of the trends of Detroit public schools itself," said Diederich, who passed on the note sale Thursday.

Bloomberg News

By Elizabeth Campbell

September 11, 2015

Orrick: SEC Expands its Focus in the Municipal Bond Market, Bringing First-Ever Charges Against an Underwriter for Pricing Violations Related to Primary Offerings.

Coming on the heels of the SEC's first wave of settlements with underwriters as part of its Municipalities Continuing Disclosure Cooperation ("MCDC") initiative, the agency has brought yet another precedent-setting enforcement action against an underwriter in the municipal bond market. On August 13, 2015, the SEC brought a settled enforcement action against the brokerage firm Edward Jones, in which the firm agreed to pay more than $20 million to settle charges that it overcharged customers in connection with the sale of municipal bonds in the primary market. Edward Jones settled without admitting or denying the SEC's findings.

According to the SEC, Edward Jones regularly underwrote—usually as part of an underwriting "syndicate" or group—and sold municipal bonds to the public through negotiated offerings. Underwriters of municipal bond offerings are generally required (as part of an agreement between the members of an underwriting syndicate) to offer municipal bonds to the public at the "initial offering price," which is the price negotiated between the issuer and underwriter. To compensate the underwriter for its services, the issuer typically sells the bonds to the underwriter at a price below the initial offering price.

The SEC charged that, on numerous occasions, Edward Jones violated its agreements with both bond issuers and its fellow underwriters by improperly reselling municipal bonds to its customers at prices above the initial offering price. The SEC found that between 2009 and 2012, Edward Jones overcharged its customers in 75 different negotiated offerings, netting the Firm more than $4.6 million in additional revenue.

The SEC also found that Edward Jones regularly purchased bonds without disclosing to the underwriting syndicate that the purchases were for Edward Jones' own inventory. While underwriters are permitted to make orders for their own inventories, the SEC contended that they are required to disclose that fact, as customer orders are given priority over orders for an underwriter's own account. Consequently, the SEC found that Edward Jones' failure to disclose this information enabled it to purchase bonds that it otherwise may not have been able to purchase.

In addition, with respect to Edward Jones' trading of municipal bonds in the secondary market, the SEC separately charged the firm with failing to establish an adequate supervisory system to determine whether the markups it charged on certain transactions were reasonable.

The SEC ordered Edward Jones to cease and desist from future violations of Sections 17(a)(2) and (3) of the Securities Act, Section 15B(c)(1) of the Exchange Act, and a number of rules promulgated by the Municipal Securities Rulemaking Board ("MSRB"), which regulates dealers of municipal securities. Edward Jones agreed to pay $5.2 million in disgorgement, as well as a $15 million penalty. It also undertook a number of remedial measures, including: (i) hiring a dedicated compliance officer for its fixed income desk; (ii) adopting new procedures for the sale of municipal bonds, including a requirement that bonds acquired in new issuances may only be sold at the initial offering price; (iii) disclosing in writing the amount of any markup or markdown on all fixed income trades; and (iv) making restitution to affected customers.

This action sends a signal to municipal market participants that the SEC continues to be on the lookout for violations of securities laws or MSRB regulations in connection with both disclosure and pricing. Indeed, as Andrew Ceresney, the SEC's Director of Enforcement, stated in the SEC's press

release announcing the Edward Jones case, the enforcement action "reflects [the Commission's] commitment to addressing abuses in all areas of the municipal bond market." Moreover, in the aftermath of the case, four SEC commissioners took the unusual step of issuing a separate statement calling for the completion of clear rules requiring dealers to disclose markups and markdowns on municipal securities trades.

Article by William J. Foley Jr, Kevin M. Askew and Elaine Greenberg

Last Updated: September 8 2015

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.

TAX - WASHINGTON

Automotive United Trades Organization v. State

Supreme Court of Washington, En Banc - August 27, 2015 - P.3d - 2015 WL 5076289

Industry group brought action challenging agreements under which Indian tribes agreed to buy taxed fuel and State agreed to refund portion of fuel tax receipts to tribes. The Superior Court granted summary judgment in favor of state. Industry group appealed.

The Supreme Court of Washington, en banc, held that:

- Fuel tax refund agreements between Indian tribes and State did not violate constitutional provision governing fuel tax receipts, and
- Agreements did not violate separation of powers provision of state constitution.

Agreements under which Indian tribes agreed to buy taxed fuel and the State agreed to refund a portion of the fuel tax receipts to the tribes did not violate state constitutional provision that limited use of state fuel tax receipts to highway purposes, where refunds were paid to tribal governments under contracts that limited their use to various government purposes, and governor was statutorily authorized to enter into such agreements.

Legislative authorization for executive to enter into agreements under which Indian tribes agreed to buy taxed fuel and the State agreed to refund a portion of the fuel tax receipts to the tribes did not constitute delegation of legislative authority in violation of separation of powers doctrine of state constitution, where legislature had provided fairly detailed standards and guidelines for such agreements, legislature defined objective of agreements, and legislature required regular audits and reports regarding agreements.

TAX - PENNSYLVANIA

GAI Consultants, Inc. v. Homestead Borough

Commonwealth Court of Pennsylvania - July 8, 2015 - A.3d - 2015 WL 4095523

School district brought declaratory judgment action against redevelopment authority, other taxing

bodies, and waterfront partners, asserting authority had the contractual duty to direct bank holding tax increment financing (TIF) fund to pay any assessment appeal refunds on properties pledged to waterfront district at the direction of the taxing body, regardless of tax year.

Owner of parcel pledged to waterfront district brought action in assumpsit in order to recover $34,535 from borough taxing authority following assessment appeal. The Court of Common Pleas entered order declaring authority had a contractual duty under TIF agreement to direct payment of assessment appeal refunds, and ordered authority to direct reimbursement to county and school district of refunds paid to owner of pledged parcel. Borough appealed.

The Commonwealth Court held that four-year statute of limitations for contract actions did not bar claims of taxing authorities for pre-2010 property tax assessment appeal refunds.

TAX - ALABAMA

Bonedaddy's of Lee Branch, LLC v. City of Birmingham

Supreme Court of Alabama - September 4, 2015 - So.3d - 2015 WL 5192185

City brought action against limited liability company (LLC) that operated restaurant and member of LLC seeking payment of business-license, occupational, and sales taxes. Following a bench trial, the Circuit Court entered judgment in favor of city and permanently enjoined LLC and member from operating a business within the city's corporate limits until all tax liabilities were satisfied. LLC and member appealed.

The Supreme Court of Alabama held that:

- City's failure to follow administrative procedures prior to suing LLC member deprived court of subject matter jurisdiction over sales tax claim;
- Failure to follow administrative procedures did not deprive court of subject matter jurisdiction over business-license and occupational tax claims;
- Member was not personally liable for business-license and occupational taxes owed by LLC; and
- LLC was provided with notices of final assessments.

Pennsylvania GO and Appropriation Ratings are Unchanged for Now Despite Absence of an Enacted Budget.

NEW YORK (Standard & Poor's) Sept. 9, 2015–Standard & Poor's Ratings Services today said its ratings, including its 'AA-' general obligation (GO) rating, on the State of Pennsylvania are unchanged despite the lack of an enacted budget for fiscal 2016. As we noted in our report in "Late State Budgets: Summer Cliffhangers No One Wants To See," published on June 4, 2015, on RatingsDirect, most state governments exhibit a strong commitment to debt repayment and have demonstrated willingness to honor their obligations even in the absence of a budget, in our view. This commitment could take different shapes or modalities, but whether it is a continuing resolution, a standing appropriation or some other method, the intended outcome is the same: to ensure full and timely payment of debt service.

Two months into fiscal 2016, Pennsylvania's lawmakers have yet to agree on a budget. Negotiations have continued as lawmakers try to reach an agreement on pension reform and education funding,

without which budget passage is unlikely. From a credit standpoint, Pennsylvania's constitution provides that if sufficient funds are not appropriated for timely payment of all commonwealth general obligation (GO) bond debt service, the treasurer shall set apart from the first revenues thereafter a sum sufficient to pay principal and interest on the debt. As such, GO debt has a priority lien on state revenues and is paid even in the absence of a budget. Pennsylvania, which is no stranger to late budgets, typically schedules its non-GO debt to mature in December and June, with a few exceptions, which the state has currently addressed.

These include debt issued by the Pennsylvania Economic Development Financing Authority (PEDFA), lease revenue bonds, and certificates of participation (COPs). On Sept. 1, the state paid its debt service on PEDFA's series 2012 bonds for the Forum Place. The state made lease payments prior to the end of the previous fiscal year that were sufficient to cover debt service on Sept. 1, 2015. Philadelphia Regional Port Authority's lease revenue debt (series 2008), also due Sept. 1, was paid with proceeds from a loan to the Pennsylvania Department of Transportation from the state's Motor License Fund. Payments for debt service on COPs issued by the Department of Human Services (DHS) come due on Oct. 1 and are included in payments made to DHS to keep the facilities operating in order to ensure the health, safety, and welfare of its citizens. The state has also indicated that the payments for the Pittsburgh and Allegheny County Sports and Exhibition Authority, series 2010 lease revenue bonds will be made from the commonwealth's Gaming Economic Development Tourism Fund and are not subject to appropriation.

In the absence of a budget, there are no state aid payments that flow to Pennsylvania's school districts (see "Pennsylvania School District Ratings Based On State Aid Intercept Program Put On Watch Negative on Budget Delay," published Sept. 4, 2015).We believe that the lack of funding for school districts could translate into increased pressure on lawmakers and provide an incentive for them to reach budget consensus over the next couple of months. We will continue to monitor the state's ongoing budget deliberations to determine what impact, if any, the protracted budget negotiations have on Pennsylvania's credit quality.

Under Standard & Poor's policies, only a Rating Committee can determine a Credit Rating Action (including a Credit Rating change, affirmation or withdrawal, Rating Outlook change, or CreditWatch action). This commentary and its subject matter have not been the subject of Rating Committee action and should not be interpreted as a change to, or affirmation of, a Credit Rating or Rating Outlook.

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S&P Webcast: U.S. Not-For-Profit Health Care Median Ratios.

Standard & Poor's Ratings Services held an interactive, live Webcast and Q&A on Thursday, September 10, 2015, at 2:00 p.m. Eastern Time where the discussion included the U.S. not-for-profit health care median ratios reports.

Listen to the Webcast.

Sep. 10, 2015

Moody's: U.S. Not-For-Profit Health Care Sector Outlook Revised To Stable From Negative, Though Uncertainties Persist.

Standard & Poor's Ratings Service has revised its outlook on the U.S. not-for-profit health care sector to stable from negative. We made this revision in light of operational improvements driven by the Affordable Care Act (ACA) Medicaid expansion, including a stronger-than-expected boost in volumes and payor mix reflecting clear declines in the number of uninsured people, management initiatives that are delivering on their early promise to improve performance, increasing balance sheet flexibility with generally higher unrestricted reserves, and continued operational benefits from merger and acquisition (M&A) activity.

Our previous negative outlook had anticipated modestly more downgrades than upgrades over the course of 2015. As recently as December 2014, however, we mentioned that there was "a glimmer of relief" for health care providers. The glimmer emerged faster and stronger than projected, as the historical changes sweeping the health care delivery system are taking root slower than expected allowing providers' responses to a broad array of pressures to take hold. Although we expect broad industry pressures to continue and even grow over time, most notably the movement toward a value versus the current fee for service orientation, we believe ratings for the vast majority of providers will remain the same over the remainder of 2015 and 2016, and upgrades and downgrades will remain balanced. Therefore, Standard & Poor's revised its outlook on the U.S. not-for-profit sector to stable.

Overview

- ACA Medicaid expansion has helped improve utilization and payer mix.
- Operational benefits continue to emerge from M&A activity.
- Systems are weathering industry challenges better than stand-alone hospitals.
- The number of uninsured and the related burden for providing uncompensated care has lessened as a result of the ACA and Medicaid expansion.
- Year to date rating action trends favor credits that reside in Medicaid expansion states.

Continue reading.

09-Sep-2015

S&P's Public Finance Podcast: (Factoring GASB 67/68 Into Our Pension Analysis And Second-Quarter Rating Trends)

In this week's Extra Credit, Senior Director Larry Witte, from the global fixed income group, discusses second-quarter rating trends, and Senior Director Lisa Schroeer, from the local government group, talks about how GASB 67/68 factors into our pension analysis.

Listen to the Podcast.

Sep. 11, 2015

Incoming NABL President Kenneth Artin Discusses Group's Agenda.

WASHINGTON — Secondary market disclosure, issue price, the tax exemption for municipal bonds and private placements with banks are some of the topics the National Association of Bond Lawyers will focus on in the coming year, according to the group's incoming president, Kenneth Artin.

Artin, a shareholder at Bryant Miller Olive who splits his time between Orlando, Fla. and here, talked about the organization's agenda in a recent interview with The Bond Buyer. He will become the new NABL president on Wednesday at the group's annual meeting in Chicago, succeeding Antonio Martini, a partner at Hinckley Allen & Snyder in Boston.

Artin said he expects it "to be a busy year as the years in the past have been." NABL will continue reacting to situations that develop as part of the group's larger goal of confronting the challenges facing the muni market.

"I feel like the market itself is evolving and so, as an organization, we have to basically assist our members in understanding these changes and trying to help them work through some of the issues," Artin said. "As the market evolves, so do the lawyers."

A large portion of NABL's securities law efforts in the upcoming year will be devoted to improving secondary market disclosure, which Artin said "has been a mantra" for buyside participants.

The disclosure efforts will include monitoring of the Municipalities Continuing Disclosure Cooperation initiative and the lessons learned from it, he said.

The MCDC initiative allowed issuers and underwriters to receive favorable settlements if they voluntarily alerted the Securities and Exchange Commission to instances during the past five years when they sold or underwrote bonds with materially misleading official statements about meeting their continuing disclosure obligations. The SEC released the first round of settlements on June 18, in which 36 underwriters agreed to pay a combined $9.3 million. Commission enforcement officials have said the market should expect another round of underwriter settlements by the end of the year. After all of those are finished, the agency will then start releasing settlements with issuers.

Artin said he is waiting for the issuer round of MCDC settlements to draw further conclusions on how the enforcement action may be helping issuers and underwriters improve their continuing disclosures. The settlements should give a better idea of what the SEC deems materially significant, he said.

"The awareness of the responsibility to file secondary market disclosures and at least focus on it at the time [issuers and underwriters] go to market has improved" with MCDC, Artin said. But he added later that, "there's got to be a better way" to address key areas of disclosure than through an enforcement initiative.

Continuing disclosure practices can also be improved by ongoing talks NABL has planned with market participants and regulators over the upcoming year, Artin said. There will be a special focus on the time period between bond issues, where he said he believes there is room to "heighten [issuers'] awareness" of their responsibilities.

Artin noted that NABL's most recent disclosure project was a paper designed to help its members assist clients in drafting policies and procedures for continuing disclosures. It did not focus on MCDC, but instead drew conclusions from past cases discussing disclosure lapses, like those in

Stockton, Calif., Vallejo, Calif., and Jefferson County, Ala.

The incoming president said he wants NABL to revisit a paper written on voluntary market disclosure in 2000 by updating the advice it provided on investor inquiries, such as when an analyst calls an issuer official for information.

“The forces have changed” since 2000 and the group wants to be able to educate its members so they can help their clients when investor calls come in, with emphasis on how the calls need to be handled and the fact that issuers can talk to analysts who call.

“I think one of the big issues with respect to secondary market disclosure is increasing the transparency of the market so the market is much more liquid and it can react to changes quicker,” Artin said. He also warned that the amount of information released has to be balanced. “The analysts and the buyside want more and more information, but I think there has to be a focus on what it is they need rather than what they want,” he said.

Tax Law Projects

On the tax law front, the big issue right now is the issue price regulations that the Treasury Department and the Internal Revenue Service proposed in June. NABL’s tax law committee is currently working on providing comments on the proposal to Treasury and the IRS, Artin said. The comments are due Sept. 22.

“The issue price regs have their plusses and their minuses,” he said.

The general proposed rule is that the issue price of a maturity is the first price at which 10% is sold to the public. The public would be anyone other than the underwriters or a related party, with underwriters defined as the underwriting syndicate and anyone who enters into a contract or other arrangement to sell the bonds with any of the syndicate members.

If 10% of a maturity hasn’t been sold by the sale date, an issuer could use the initial offering price to the public as of the sale date as the issue price if certain criteria are met. The criteria includes that the lead or sole underwriter certifies that no underwriter will fill an order from the public after the sale date and before the issue date at a higher price than the initial offering price unless the market moves after the sale date. Another condition is that the issuer can’t have reason to know, after exercising due diligence, that the underwriter’s certification is false. Artin said a benefit of the proposed rules is the definition of the public that they provide. However, underwriters have to try to figure out how to document market moves, and issuers aren’t sure how to perform the due diligence. “I think part of our comments will be focused on those issues in order to provide guidance in that area,” he said.

NABL also has a group that is looking at the rules for when management contracts do not give rise to private business use. One of the projects on the Treasury and IRS 2015-2016 guidance plan is to update guidance on management contracts issued in 1997. The group is “doing a rather deep dive, going back and taking a look at some of the underlying assumptions that were used in preparing the [1997] management contract rules and seeing if they’re still valid,” Artin said. The management contract rules are important due to the increased use of public-private partnerships. P3s are increasingly being used to finance transportation projects, particularly because the popularity of the Transportation Infrastructure Finance and Innovation Act federal loan program among issuers, he said.

“You have these governmental projects that have increased private use by large concessionaires and

there might be a way where the portion of the project that's used and operated by the governmental unit can be financed tax-exempt [bonds] and the private portion of it [can] be financed through the private concessionaire," Artin said. "All of that is sort of wrapped up in that project."

NABL is continuing to monitor the definition of a political subdivision for tax-exempt bond purposes, another project on the priority guidance plan, Artin said. The project was added to the guidance plan after the IRS issued a controversial technical advice memorandum in 2013 that concluded the Village Center Community Development District in Florida was not a political subdivision when it issued bonds from 1993 to 2004 on grounds that its board was and always will be controlled by the developer rather than publicly elected officials.

In June, the IRS issued another ruling that prevents the TAM from being applied retroactively. However, Artin pointed out there are many other special districts out there that aren't transitioning to control by residents.

Another item on the guidance plan is finalizing rules proposed in 2008 about public approval requirements for private-activity bonds. NABL would like to see these rules finalized given that the proposed rules were published a while ago. The final rules should update the public-approval requirements to take new technologies into account, Artin said.

NABL is engaged in an ongoing dialogue with the IRS tax-exempt bond office about revisions to the Internal Revenue Manual used by TEB staff. NABL and the Government Finance Officers Association are discussing a joint project on post-issuance tax compliance, Artin said.

Tax Exemption

Artin vowed that, during his term, NABL "will remain vigilant with respect to monitoring tax exemption."

"Part of our mission is to continue to educate Congress with respect to the importance of tax exemption," he said. "We just have to keep driving that home and make sure that they understand this is how most of the local governments finance the infrastructure that is needed for this country."

While Artin does not think that Congress will put forth a comprehensive tax-reform package next year, he said that NABL has to monitor two legislative areas where the muni exemption could be at risk.

One is the transportation bill. The current extension of transportation funding expires Oct. 29, and if Congress decides to move forward with a long-term transportation bill, it could consider paying for it by doing some form of limited tax reform, Artin said.

The other area is the debt limit, which will likely need to be raised or suspended by the end of the year. Congress could look to some type of tax reform to pay for an increase in the debt limit, he said.

NABL will also monitor proposals from the 2016 presidential candidates to see if and how they could affect munis.

"You can't get too excited because it's a campaign proposal, a campaign promise," Artin said. "And so the best you can do is monitor them, and if something were to become real serious, try to educate whoever's proposing it as to the true benefit of tax exemption and the purpose of tax-exempt bonds."

General Law Projects

Artin also discussed several projects that NABL's general law and practice committee is tackling.

One will explore the specific elements of issuers' private placements of bonds with banks and how they relate to the issuers' financial conditions or credit ratings. "[The paper] is going to give our membership some guidance or issues to consider when they are doing the private placements," Artin said.

Direct placements occur when securities are not offered publicly but are instead privately sold to a single or small number of institutional investors who are usually considered sophisticated, such as large banks, mutual funds, and insurance companies. Typically the sales do not have to be registered with the SEC because of the investors' institutional status.

"Ratings agencies are concerned about this," Artin said. "What are the provisions being granted to the banks that aren't being granted to the bonds being sold to regular retail investors? What special event is a default or [what] remedies [are] being granted to the banks versus regular bondholders? There are a lot of issues you have to take into concern with banks buying the debt versus a bondholder."

Another project is on disaster-relief bonds, Artin said. NABL is preparing a list of federal- and state-level recommendations that would be helpful in the wake of disasters. In the past, Congress has responded to disasters on a piecemeal basis, and NABL intends to make recommendations that could apply across the board, regardless of the type of disaster.

The general-law committee is also working on a project that explains the role of the Depository Trust Company in the municipal bond market.

The DTC, a subsidiary of the Depository Trust & Clearing Corp., is a registration system for muni bonds that has been used for years. All of the bonds in an issue can be registered in the name of DTC, which has broker-dealer participants that have customers. DTC is essentially the sole bondholder of the issue and the individuals or businesses that paid money to buy the bonds are the beneficial owners. The question is, when bondholder consent is needed, how does information gets from the DTC to the beneficial owners of the bonds, Artin said.

"We thought it was an important enough topic to basically demystify it," and explain how the DTC is supposed to work, he said.

A Career in Public Finance

Artin went directly into public finance after completing his education.

He earned undergraduate and law degrees at the State University of New York at Buffalo in 1979 and 1982, respectively, and a master of laws in taxation from Southern Methodist University in 1983. He was recruited out of SMU to work as a junior tax lawyer with McCall, Parkhurst & Horton in Dallas and while there, rounded out his knowledge by training on bond law at the senior partners' urging, he said.

Artin left Texas and worked at Cobb, Cole and Bell in Florida for about nine years, practicing on both the bond and tax sides of public finance law. While he was at that firm, he started to pick up some securities law work, he said. Artin opened Bryant Miller Olive's Orlando, Fla., office in 2000 and has worked at the firm since, but has split his time between Florida and running the firm's Washington office for the last three years.

Artin said he primarily works as bond counsel but also does some disclosure work. His time with

NABL has largely been devoted to working on the securities side of the group. He has been a speaker on various securities law panels during conferences and has served on and chaired the group's securities law committee.

"I think of myself as a bond lawyer with a heavy tilt toward securities law," Artin said. Artin said his work has been "a very interesting practice over the years" and although he has spent his entire career in public finance, he has "never looked back."

His family is also well aware of his extensive work in the industry. Every time they pass by a bridge or airport that he has financed, he said his children are quick to say: "Yes Dad, we know you financed it Dad."

The Bond Buyer

by Naomi Jagoda and Jack Casey

SEP 8, 2015 12:45pm ET

IRS Auditing Minnesota BAB Issue.

WASHINGTON — The Internal Revenue Service is auditing $91 million of Build America Bonds issued by the Minnesota Public Facilities Authority in fall 2010.

The authority disclosed the audit in an event notice posted on the Municipal Securities Rulemaking Board's EMMA system on Sept. 3.

The IRS informed the authority of the audit in a notification dated Aug. 26. The IRS' notice said that at that time, it had no reason to believe that the authority's BABs fail to comply with applicable tax requirements, according to the event notice.

The authority said that it is responding to the IRS' information document request. The bonds under audit are the authority's taxable state revolving fund revenue bonds, series 2010D, which were issued as BABs. Proceeds of the bonds were to be used to make or purchase clean water and drinking water loans, according to the official statement.

Bank of America Merrill Lynch was the underwriter of the bonds, which were sold competitively. Briggs and Morgan was bond counsel, and Public Financial Management and Springsted were financial advisors.

The Bond Buyer

by Naomi Jagoda

SEP 9, 2015 7:49am ET

Bryant Miller Olive Attorney Kenneth Artin Elected President of the National Association of Bond Lawyers.

ORLANDO, Fla., Sept. 9, 2015 /PRNewswire/ — Kenneth Artin, a Shareholder in the law firm of Bryant Miller Olive, is being sworn in today as President of the National Association of Bond Lawyers.

The National Association of Bond Lawyers is comprised of nearly 3,000 lawyers from around the United States. As President of the NABL, Artin will serve as its main spokesperson, representing the collective interests of his fellow public finance professionals in matters affecting the legal and regulatory frameworks of the public finance industry.

This includes important interface with the Securities and Exchange Commission and the Internal Revenue Service on issues such as the possible elimination of tax-exempt bonds and concerns related to the issue price of bonds.

NABL is the premier organization of public finance attorneys in the United States and promotes the integrity of the municipal market by advancing the understanding of and compliance with laws affecting public finance.

Some of the current issues that Artin will face during his year as President include:

- Several national-level proposals that could either limit or even eliminate tax-exempt bonds. Tax-exempt bonds allow municipalities to borrow money at a lower interest rate, resulting in lower costs on construction projects and other infrastructure needs. By limiting or even eliminating these tax-exempt bonds, local governments would have to pay more for these infrastructure projects, and the people who would feel the greatest negative impact are the taxpayers themselves.
- The renewal of the Federal Transportation Bill, which could have an impact on the tax code and tax-exempt bonds.
- Issue Price Regulation – NABL will testify before the Treasury in late October on new IRS regulations related to the issue price of bonds.
- Several municipalities have declared bankruptcy during the last few years – the city of Detroit and Jefferson County, Alabama being two examples. What happens to the bonds issued by those municipalities? NABL recently issued the 3rd edition of its Municipal Bankruptcy: A Guide for Public Finance Attorneys to discuss this issue.

“Ken has been an important leader and contributor to the NABL Board and our seminars, teleconferences and projects for years,” said Allen Robertson, NABL’s 2013-14 President. “We are certain Ken will make an excellent 37th President of the NABL.”

Artin has been practicing public finance law since 1986 and has been an active participant in NABL since 1996. In recent years, his practice has primarily focused on major public-private partnership and public finance transactions in connection with transportation facilities across the United States, and with higher education institutions throughout Florida.

“Ken is known for innovation and hard work. The team at Bryant Miller Olive is proud that he will be able to dedicate his immense talents to representing public finance lawyers across the country over the next year,” said Grace Dunlap, managing shareholder of the firm. “Ken has a real passion for the continued enhancement of the public finance legal profession.”

Artin is a Managing Shareholder in the Washington, D.C. office of Bryant Miller Olive. He splits his time between the Washington, D.C. office and BMO’s office in Orlando, which he calls home.

About Bryant Miller Olive: With a distinguished 45-year history of serving its clients’ needs, Bryant Miller Olive represents governments, businesses and agencies in legal matters relating to public

finance, state and local government law, complex transactions, project finance, and litigation. The firm has served as Bond Counsel on more deals than any other firm in the Southeast over the past five years, and more than any other firm in Florida over the past decade. Members of the firm are often called upon to handle some of the most complex legal issues in the boardroom and in the courtroom. The firm has offices in Tampa, Tallahassee, Orlando, Miami, Jacksonville, Atlanta and Washington, D.C. For more information, visit http://www.bmolaw.com.

Georgia's New P3 Law Expands Opportunities for Investors, Developers.

The new Partnership for Public Facilities and Infrastructure Act allows state and local agencies to expand their pursuit of public-private partnerships beyond the highway and water reservoir P3s already being conducted in Georgia. The law authorizes agencies to pursue P3s to build and maintain public buildings and for other types of transportation and water-related projects. This breakthrough will increase state and local agencies' ability to undertake projects they might otherwise lack the financing or construction expertise to pursue.

To help state and local officials and developers understand and use the law to procure such projects, NCPPP and the American Council of Engineering Companies of Georgia will co-host a one-day event, The Future of P3s in Georgia, on Sept. 24 in Atlanta. During the event, experts will discuss how P3s are conducted, what types can be pursued under the new law and how successful projects in Georgia and other states have been carried out.

To set the stage for this meeting, P3 Digest asked several experts who will speak at the conference to describe the new law and the ways it will influence how agencies and private developers negotiate P3s in Georgia.

The new law, signed May 5 by Gov. Nathan Deal, allows "qualifying projects," to be pursued as P3s, a term that is defined broadly as those that meet a public purpose or need, explained Brad Nowak, a partner at Morris, Manning & Martin, LLP. Previously, only transportation projects — chiefly highways — and university campus housing could be built through such partnerships. The new law expands the types of P3s that can be negotiated to include various types of public buildings, many different transportation, water, wastewater and stormwater projects, and solid waste facilities, he added.

Georgia already has some experience in public building P3s. Corvias Campus Living negotiated a partnership with the University System of Georgia in 2014 to build, manage and maintain student housing at multiple locations. "The partnership is reportedly the first time that a state system has privatized student housing across a portfolio of campuses," Nowak noted.

However, the new law will greatly streamline the negotiating process for conducting such projects and other types of P3 projects, noted Michael Sullivan, president and CEO of ACEC Georgia. Before the new law took effect, Georgia did not permit state or local agencies to negotiate non-highway P3s directly with private firms. The University of Georgia System project required involving a private real estate foundation in the project to generate financing and a separate county development authority to provide bond financing. "It's a very convoluted process. The new law provides a clear, transparent process for agencies in Georgia to use P3s for almost any kind of public infrastructure," said Sullivan.

The law establishes a statutory framework for P3s and a committee that will craft optional

procurement guidelines for localities. This adds transparency and consistency to the procurement process, commented Robert Fortson, a partner at McGuireWoods LLP, which worked hard to win passage of the legislation. “The lack of these support mechanisms created barriers to entry for both public and private sector participants,” he said.

The 10-member Partnership for Public Facilities and Infrastructure Act Guidelines Committee will prepare model guidelines local governments can use to receive and consider unsolicited project proposals, although these governments can choose to develop their own. However, locally developed guidelines must cover certain details, such as time frames for receiving and processing the proposals, how proposal financial review and analysis will be conducted, and procedures for reviewing and considering competing proposals, Nowak explained. The model guidelines committee recently was appointed and expects to issue the guidelines by July 1, 2016, he added.

The new opportunity to develop many types of infrastructure P3s makes this an excellent time for state and local agencies to learn more about this procurement option, these experts say.

Discussing these types of projects with officials who already have conducted them in Georgia is a good way to get up to speed, Nowak advised.

Valuable lessons also could be learned through a study of the types of partnerships that have been conducted in Virginia, Florida and Texas, all of which have P3 laws similar to Georgia’s.

“The success of Virginia’s P3 law offers a great model for the types of projects that are possible — everything from wastewater treatment facilities to aquatic centers to parking decks. The model guidelines committee should also serve as a great resource to educate local cities, counties and school districts about best practices in P3 procurement,” said Fortson.

“Many outside consultants, such as engineers, attorneys and other advisors who often represent the public sector on P3 projects can also help explain the ins and outs of the new law, its application to developing projects and ways to properly procure, structure and document them,” said Nowak.

Sullivan believes that the insights that will be shared about the new law and successful case studies discussed during the event will help attendees quickly get up to speed on P3s.

“I am very excited about this year’s P3 Summit and hope that many state and local government officials — as well as private firms — will attend and find out how to use Georgia’s new P3 law as another tool in the toolbox for providing all kinds of public infrastructure in a new way,” he said.

The Future of P3s in Georgia will be held at the Georgia International Convention Center, adjacent to Hartsfield-Jackson Atlanta International Airport. For more details, including registration information, visit the event website.

NCPPP

By Editor September 10, 2015

State and Local Governments' Ticking Debt Bomb.

As uncomfortable as it has been to watch, the unfolding drama in Greece has had one clear benefit: It has forced many other countries, including our own, to take a closer look at debt, as well as

revenues, costs, growth rates, demographics and so on.

Fortunately the United States, compared to most European countries, doesn't look too bad. Our economy has bounced back from the Great Recession far faster than others. Still, our national debt as a share of gross domestic product has leveled out at a rate somewhat higher than most European countries'. Between that and the unnaturally low level of current interest rates, an aging population and a likely pickup in health-care costs, economists are betting that the overall federal debt will resume its historic rise, leaving only about 5 percent of GDP available for all discretionary federal programs, including defense.

Former Democratic Sen. Robert Kerrey of Nebraska and former Republican Sen. John C. Danforth of Missouri, who co-chaired the 1994 Bipartisan Commission on Entitlement and Tax Reform, recently warned in a retrospective on the commission's report that "the cost of servicing our higher debt will become the fastest-growing category of the budget." Already, they noted, "federal spending on major investment programs is 2.7 percent of GDP and 12.8 percent of the budget — both historic lows." Clearly if Washington is to right the ship — an almost humorous notion in this age of dysfunction — there will have to be significant tax and entitlement reform, as well as elimination of many subsidies handed out over the years to special interests.

That's the federal picture, but what about states and localities? The fiscal outlook is mixed, but there are some general conclusions one can draw. According to a survey conducted by 11 associations of state and local officials, most states and localities are experiencing modest improvement in revenues. Forty-one states expect to meet or exceed their revenue projections for 2015. A recent study by Moody's reveals that state debt levels last year declined for the first time in 28 years. Ending balances for cities are nearing their pre-recession highs, though they are still below the levels achieved in 2006. Counties are recovering even more slowly and unevenly, but they are recovering.

Meanwhile, the most politically sensitive and worrisome economic issue state and local leaders face involves public pensions. The news here is also somewhat contradictory. In mid-July, the Pew Charitable Trusts released a research report covering the period through 2013, warning that the total state pension shortfall is creeping up on $1 trillion, with the funding gap between what has been promised and what is available rising by 6 percent to $968 billion.

But another report on state and local plans prepared by the Center for Retirement Research at Boston College — considered the gold standard in the analysis of public pensions — is a bit more sanguine. It notes that when the disastrous year of 2009 was rotated out of the so-called "smoothing process" in 2014, it resulted in "a sharp increase in actuarial assets and … the first improvement in the funded status of public-sector plans since the financial crisis." The average percentage of required contributions paid last year bounced up to 88 percent from the average of 82 percent over the past few years.

In other words, a slowly improving economy and healthier financial markets offer a slight ray of hope. "What happens from here on out depends very much on the performance of the stock market," the Boston College report stated. "In 2018, assuming a healthy stock market, plans should be at least 80 percent funded."

That's a significant figure, because somewhere around 80 percent funding is considered the minimum to deem a pension plan healthy. We haven't seen that level in some time. But the Pew study includes a significant warning: "State and local policymakers cannot count on investment returns over the long term to close this gap and instead need to put in place funding policies that put them on track to pay down pension debt."

So despite some recent improvement, serious problems remain, some of which dominate headlines. If this country has a Greece, it's probably Illinois, with Chicago as its Athens. Or perhaps it's a commonwealth like Puerto Rico, now some $70 billion in the red and seeking permission from Washington to restructure its debt in bankruptcy.

Localities may still depend on federal assistance in the case of natural disasters like hurricanes or floods. But the report from the 11 state and local associations makes clear what they don't want: "State and local governments can weather difficult economic periods and officials are taking steps to restore fiscal stability," it said, but added that "interference in the fiscal affairs of state and local governments by the federal government is neither requested nor warranted."

Translated, that means "hands off." But that gets tricky. The courts have struck down a number of both state and local reform efforts in places like Arizona, California, Illinois and Oregon, putting new pressure on governors and legislatures to come up with meaningul, systemwide overhauls. So Washington and many states and localities are running out of options for significant financial reforms, not just for pension systems, but their balance sheets as a whole. The sooner they meet their responsibilities, the better.

GOVERNING.COM

BY PETER HARKNESS | SEPTEMBER 2015

Founder, Publisher Emeritus

Puerto Rico Bond Plan Said to Outline Debt Service Affordability.

A long-awaited plan that addresses Puerto Rico's $72 billion debt load will include projections of how much debt-service the island can pay over the next five years, according to a person with direct knowledge of the proposal.

Governor Alejandro Garcia Padilla is set to receive from his top officials and outside restructuring advisers on Tuesday what is being called by his administration as an economic recovery and debt-adjustment plan, or the Working Group plan. The governor plans to release the proposal publicly on Wednesday, Victor Suarez, his chief of staff, said in a statement.

That report will include annual revenue and expenditure projections for the next five years after taking into account proposed spending reductions and measures to boost revenue collection rates, according to the person, who asked for anonymity because the discussions are private.

Those calculations won't include annual principal and interest costs, so the gap between estimated revenue and anticipated spending, what the report will call a "primary surplus," will indicate how much Puerto Rico can afford to pay for debt service every year, the person said. The person declined to say what the primary surplus would be.

"This is really just the beginning of a new stage, but this stage still could last years," said Matt Fabian, a partner at Concord, Massachusetts-based Municipal Market Analytics. "You have different sets of buyers, all with different expectations for their recovery and all with different willingness to negotiate on price."

Barbara Morgan, who represents the Government Development Bank at SKDKnickerbocker in New

York, said Monday that the bank didn't have a comment at this time. Betsy Nazario, a spokeswoman in San Juan for the GDB, and Jesus Manuel Ortiz, a spokesman in San Juan for the governor, didn't immediately respond to e-mails.

In a statement e-mailed to reporters Tuesday, Suarez said Garcia Padilla will be presented with the plan during the afternoon and has instructed his advisers to make it public Wednesday.

"This plan is an indispensable element to put Puerto Rico on track toward economic growth, to face fiscal challenges and bring back social well being for Puerto Ricans," he said.

The commonwealth and its agencies pay about $4 billion each year in debt service, not including principal and interest costs for the Electric Power Authority and the Aqueduct and Sewer Authority, the person said. A Puerto Rico agency, the Public Finance Corp., missed a Sept. 1 interest payment, according to a filing with the Municipal Securities Rulemaking Board. It's the second skipped payment for the agency after failing to pay $58 million of principal and interest Aug. 3 because lawmakers didn't allocate the funds in a budget crunch.

Garcia Padilla in June directed his administration to evaluate the island's obligations and said the commonwealth was unable to repay all of its debt on time and in full and would seek to delay debt payments "for a number of years."

The Working Group plan follows a Sept. 1 tentative agreement the Electric Power Authority reached with some of its bondholders that would offer investors 85 percent of the value of the bonds they hold through a debt exchange.

Puerto Rico bonds rallied last week following the tentative agreement struck with holders of about 35 percent of the electric debt. General obligations with an 8 percent coupon and maturing July 2035 traded Friday at an average price of 76 cents on the dollar, up from a record-low 66.6 cents on June 30, according to data compiled by Bloomberg. It was the highest since June 26, the last trading day before Garcia Padilla said the commonwealth's debt was unpayable and directed officials to work on a plan to ease debt payments.

Commonwealth securities gained 3.95 percent last week, the biggest advance for the period since October 2008, according to S&P Dow Jones Indices. Puerto Rico debt has still dropped in value this year, losing 7.2 percent through Sept. 4 compared with a one percent gain for the broader municipal-bond market.

A Puerto Rico restructuring would be the largest in the $3.6 trillion municipal-bond market, surpassing Detroit's record bankruptcy filing in July 2013 that involved about $8 billion of bonded debt. Along with $72 billion of debt, Puerto Rico's largest pension fund has only 0.7 percent of assets to cover $30.2 billion of projected costs, according to financial documents. It's the worst-funded among U.S. state retirement plans and stands to deplete its assets by 2020, according to Moody's Investors Service.

Bloomberg News

by Michelle Kaske

September 7, 2015 — 9:00 PM PDT Updated on September 8, 2015 — 7:21 AM PDT

Muni Sales Poised to Rise as Redemptions Slow; Fund Flows Drop.

Municipal bond sales in the U.S. are set to increase in the next month while the amount of redemptions and maturing debt falls.

States and localities plan to issue $10.2 billion of bonds over the next 30 days, according to data compiled by Bloomberg. A week ago, the calendar showed $8.8 billion planned for the coming month. Supply figures exclude derivatives and variable-rate debt. Some municipalities set their deals less than a month before borrowing.

North Texas Tollway Authority plans to sell $750 million of bonds, Illinois Finance Authority has scheduled $468 million, Austin, Texas, will offer $293 million and Lee Memorial Health System, Florida will bring $277 million to market.

Municipalities have announced $11.1 billion of redemptions and an additional $12.9 billion of debt matures in the next 30 days, compared with the $25.8 billion total that was scheduled a week ago.

Issuers from Florida have the most debt coming due with $1.79 billion, followed by California at $1.17 billion and New York with $1.16 billion. Washington, D.C. has the biggest amount of securities maturing, with $413 million.

The $3.6 trillion municipal market shrank by 4 percent in 2014. This year, maturities are poised to drop 38 percent to $176 billion from the 2014 levels.

Investors removed $715 million from mutual funds that target municipal securities in the week ended August 26, compared with an increase of $50 million in the previous period, according to Investment Company Institute data compiled by Bloomberg.

Exchange-traded funds that buy municipal debt fell by $100.3 million last week, reducing the value of the ETFs by 0.58 percent to $17.2 billion.

State and local debt maturing in 10 years now yields 105.209 percent of Treasuries, compared with 104.213 percent in the previous session and the 200-day moving average of 101.835 percent, Bloomberg data show.

Bonds of Tennessee and Michigan had the best performance over the past year compared with the average yield of AAA rated 10-year securities, the data shows. Yields on Tennessee’s securities narrowed 15 basis points to 2.15 percent while Michigan’s declined 6 basis points to 2.46 percent. Puerto Rico and Illinois handed investors the worst results. The yield gap on Puerto Rico bonds widened 110 to 11 percent and Illinois’s rose 40 basis points to 4.20 percent.

Bloomberg News

by Kenneth Kohn

September 8, 2015 — 4:32 AM PDT

Puerto Rico Investors May Shun Debt-Exchange Offer, Moody's Says.

Puerto Rico Governor Alejandro Garcia Padilla wants bondholders to accept less than they're owed to help the island dig out from its fiscal crisis. Few may be willing to go along, according to Moody's Investors Service.

The governor's advisers said in a report released Wednesday that the commonwealth should ask investors to voluntarily exchange their bonds for new securities, which would allow it to cut debt payments. Such a restructuring plan will be released in a few weeks, said Jim Millstein, chief executive officer of Millstein & Co., which is advising the government.

"It is unlikely that holders of the many Puerto Rico bonds will agree to forgo or defer substantial sums of promised principal and interest," Moody's analyst Ted Hampton said in a statement after the report's release. "There is a high probability of protracted litigation, particularly on the part of investors holding general obligation or other securities with strong legal protections."

The expected bondholder response shows the difficulty Puerto Rico faces as it embarks on a restructuring unprecedented in the $3.6 trillion municipal market. Puerto Rico general-obligation bonds are protected by the commonwealth constitution and others are backed by dedicated revenues, which may lead some investors to challenge the island in court.

The commonwealth has already clashed with bondholders over the issue. When Garcia Padilla signed a law that would've helped its public corporations reorganize, the mutual-fund companies OppenheimerFunds Inc. and Franklin Resources Inc. persuaded a federal judge in San Juan to throw out the act.

Detroit's $18 billion bankruptcy illustrates the difficulty of getting investors to part with their bonds. Seeking to cut its interest bills, the city offered to buy back $5.2 billion of water and sewer debt, with most investors receiving more than 100 cents on the dollar. Only 28 percent of the securities were ultimately sold back.

Puerto Rico says it has $13 billion less than it needs to cover debt payments over the next five years, even after taking into account proposed spending cuts and measures to raise revenue. That estimate excludes the electric and water utilities.

Island officials haven't indicated what terms may be offered to owners of its various classes of debt. Moody's, which projects that some investors may recoup as little as 35 cents on the dollar, said signs of steeper losses would lead to further rating cuts.

Bloomberg News

by Michelle Kaske and Brian Chappatta

September 9, 2015 — 11:33 AM PDT

Puerto Rico Seen Trying to Avert Defaults One Bond at a Time.

Puerto Rico may have to begin taking revenue that repays highway debt to help the struggling commonwealth pay for its general-obligation bonds as soon as this budget year, according to Height Securities.

The Caribbean island, which says it's short $13 billion needed for bond payments in the next five

years, must pay investors $1.1 billion this year on general-obligation debt guaranteed by its constitution. That pledge has been increasingly called into question. Standard & Poor's dropped Puerto Rico's rating to CC, the third-worst grade, saying in a report late Thursday that all of its tax-backed debt is highly vulnerable to default.

Facing potential cash shortfalls as soon as November, Puerto Rico may use petroleum and gasoline taxes that fund its highway-agency's debt, raising the risk of a default on the securities, Daniel Hanson, an analyst at Height, a Washington-based broker dealer, said Thursday on a conference call with clients.

"It seems reasonable to expect that considerable amounts of cash are about to be clawed back from corporations to help cover general-obligation debt service," Hanson said.

Governor Alejandro Garcia Padilla on Wednesday released a report showing that Puerto Rico has only $5 billion available to cover $18 billion of principal and interest payments in the next five years. The government also projected that it may run out of cash by the end of 2015 and will have a $500 million shortfall when the fiscal year ends in June, right before an $805 million payment to general obligation bondholders is due July 1.

Puerto Rico said in a May 7 quarterly report that it could resort to emergency measures to cover its debt bills, including taking "taxes or other revenues previously assigned by law to certain public corporations to secure their indebtedness." Its Public Finance Corp. defaulted on debt-service payments in August and September after lawmakers failed to allocated funds.

Puerto Rico's highway bonds carry higher yields than other commonwealth securities, reflecting the risk. Debt maturing in 2028 last traded for an average of 13 cents on the dollar on Aug. 28 to yield 42 percent. That's almost four times the yield on Puerto Rico's most frequently traded general obligations.

Taxes on gasoline and petroleum products that Puerto Rico allocates to its highways agency for debt service are considered "available commonwealth resources," according to bond documents. The island's constitution requires that the government use such revenue to pay general obligations if needed. The island has about $4.7 billion of highway bonds outstanding, according to the May 7 report.

Puerto Rico has about $541 million of mostly petroleum and gas taxes dedicated to highway bonds that it could use in the fiscal year ending June 30, Hanson said. Another $290 million from a petroleum-tax increase implemented last year and not currently pegged to specific debt is also available.

"In accordance with the constitution of Puerto Rico, the proceeds of such taxes and license fees are subject to being applied first to the payment of general obligation debt of and debt guaranteed by the commonwealth," according to bond documents.

Tolls and other fees from the authority aren't subject to a so-called clawback. Documents from Puerto Rico's most recent highway bond sale in 2010 highlighted that it never had to use appropriated money to pay general obligations.

Investors who bought debt knowing they have priority over other bondholders will probably assert their rights in court, Moody's Investors Service said Thursday in a report. The credit rater maintained its projected recovery rate of 65 percent to 80 percent for general obligations. Highway securities may recoup just 35 percent to 65 percent.

To ease the budget shortfall, the administration may consolidate 135 schools, reduce public-worker overtime, cut government subsidies and end corporate-tax loopholes, according to the report Wednesday. Puerto Rico lawmakers may also want to use the $680 million of annual sales-tax revenue that goes straight to repaying other bonds, called Cofina by their Spanish acronym, Hanson said.

“That may make Cofina much more at risk than people think,” Hanson said.

Puerto Rico’s $15 billion of Cofina bonds have stronger protections than the highway debt. The first $680 million of sales-tax collections are sent to a trustee to pay bondholders, with the rest put into the general fund, Hanson said. Puerto Rico law protects the portion that’s sent to the trustee from being used by the government, according to bond documents.

General obligation investors are likely to challenge that law in court by claiming that their payments have priority under the constitution, Howard Sitzer, senior municipal analyst at CreditSights Inc., said in a conference call with clients on Thursday.

“We think that the legal opinions behind the sales-tax financing corporation debt are subject to dispute and likely to be the subject of litigation going forward,” Sitzer said. General obligations “are to be paid by the first revenues received by the government, which implies that any tax revenues would be available.”

Bloomberg News

by Michelle Kaske and Brian Chappatta

September 10, 2015 — 11:45 AM PDT Updated on September 10, 2015 — 2:58 PM PDT

As Charter School Bond Sales Rise, Pennsylvania Fight Shows Risk.

At Chester Upland School District, one of Pennsylvania’s poorest, the receiver appointed by Governor Tom Wolf to oversee its finances moved to cut $25 million from the charter schools that teach more than half of its 7,200 students outside of Philadelphia.

The effort was blocked by a judge last month, giving a reprieve to the privately-run schools — and the bondholders repaid with taxpayer funds. “Those schools would have been forced to close,” said Bob Fayfich, executive director of the Pennsylvania Coalition of Public Charter Schools.

The skirmish in Pennsylvania underscores the pitfalls for investors following a surge in bond sales by charter schools, which receive funding based on how many students enroll. The independently operated institutions provide parents an alternative to poorly performing neighborhood schools.

In cities including New York, Chicago and Detroit, teachers’ unions are fighting the expansion of charters, saying they siphon money from traditional schools. Last week, the Washington State Supreme Court deemed them unconstitutional because they’re not accountable to voters, jeopardizing funding for the schools in that state.

Securities sold by the upstarts are among the riskiest in the $3.6 trillion municipal market because the schools fail if students don’t sign up or they’re shut down because of poor results. Forty-one, or 5 percent, of the 818 charter-school bond deals sold since 1998 have defaulted, according to a survey

released in July by the New York-based Local Initiatives Support Corp., which assists the institutions. That compares with a default rate of 0.02 percent for municipal issues rated by Moody's Investors Service since 1970.

Standard & Poor's said in an August report that it expects more downgrades than upgrades this year to the charter schools it rates because of their small size and limited financial flexibility.

"Political risk is part of the equation," said John Miller, co-head of fixed income in Chicago at Nuveen Asset Management, which oversees about $100 billion of municipal debt including securities from Pennsylvania charter schools. "It's not a risk-free credit category."

With municipal-market yields holding near a half-century low, investors have snapped up charter-school bonds, which offer higher payouts than debt sold by states or cities because of the risk. About $1.4 billion of the securities have been sold this year, following a record $1.9 billion in 2014, according to data compiled by Bloomberg.

Chester Upland School District, in an impoverished stretch of the suburbs southwest of Philadelphia, had 3,890 enrolled in charter schools in the past year, according to state figures. The Chester Community Charter School, which educates about 3,000 of them, sold $57 million of bonds in 2010 to buy buildings it uses.

The district has contended with chronic deficits despite being under state control since 1994. Wolf tried to close the $23 million shortfall in its $139 million budget this year by cutting special-education payments to charter schools to $16,000 per student from $40,000 and capping the tuition the state will pay for online instruction.

The governor, who took office in January, said that Chester was sending more special-education funding to charter schools than other districts. Its payments were the biggest in the state and $9,000 more than the district with the next highest in the region.

Jeffrey Sheridan, a spokesman for the governor, said the administration is "committed to drastic, but necessary" actions to stabilize the Chester school system.

The potential funding loss had led investors to demand higher yields on bonds sold by the Chester Community school compared with top-rated securities. A tax-exempt security due August 2030 traded Sept. 4 at an average yield of 5.9 percent, or 3.23 percentage points over benchmark munis, Bloomberg data show. The difference was as little as 2.7 percent in March.

Max Tribble, a spokesman for CSMI LLC, the company that manages the community school, and David E. Clark Jr, the school's chief executive officer, didn't return calls for comment.

Akosua Watts, who runs the Chester Charter School for the Arts, which has 490 students, said the school is already owed $1.8 million from the state, and the cuts first proposed by Wolf could have forced it to close. "We're in a tight situation," she said. "We're doing the best we can to manage."

She and other school officials received a break on Aug. 25, when Delaware County Judge Chad Kenney, who must approve the district's financial plans, rejected the governor's cutbacks. Sheridan said the receiver will propose another blueprint this month and that he disagrees with those who said the previous one would have shuttered schools.

"Governor Wolf believes charter schools can be an innovative approach to public education and should be part of our public education system, but charter schools must be held to the same standards to which public schools are held," Sheridan said.

The fight in Chester may not be the last in Pennsylvania. In the proposed budget for the year that began in July, which has yet to be approved by the Republican-controlled legislature, Wolf wanted to cap the tuition payments for online charter schools.

There will probably be more efforts to reduce payments or curb enrollment in the state's charters, said Thomas Stoeckmann, a senior research analyst in Menomonee Falls, Wisconsin, for Wells Capital Management, which oversees $38 billion of municipal bonds, including those from charter schools.

Such risk "definitely has increased and has probably been more pronounced since the recent election," he said.

Bloomberg News

Romy Varghese

September 10, 2015 — 9:01 PM PDT Updated on September 11, 2015 — 6:16 AM PDT

Puerto Rico Fails Without Washington Help, Morgan Stanley Says.

Puerto Rico's attempt at a sovereign-like debt restructuring without complete lawmaking authority is likely to fall short in the absence of intervention by U.S. political leaders, according to Morgan Stanley.
"We doubt Puerto Rico's ability to execute this style of restructuring without U.S. Congressional action, keeping us from adopting a clearly bullish position," Michael Zezas, chief municipal strategist at Morgan Stanley in New York, wrote in a report dated Sept. 10.

Puerto Rico's fiscal crisis should spur Congress to help the island negotiate with its creditors, either by implementing a fiscal control board at the federal level or allowing some public corporations to file for Chapter 9 bankruptcy projection, Morgan Stanley said. Unlike cities and municipalities of U.S. states, the island's localities cannot access Chapter 9.

Governor Alejandro Garcia Padilla's administration on Wednesday unveiled a proposal that estimates Puerto Rico will have only $5 billion of available funds to repay $18 billion of debt-service costs over the next five years. The commonwealth may seek to defer principal payments for several years on some of its $72 billion debt burden.

It's unclear whether general-obligation bondholders will be offered smaller losses than owners of Puerto Rico's sales-tax supported debt under a restructuring, Morgan Stanley said. The island's constitution stipulates that general-obligations must be paid before other expenses. The revenue bonds, known as Cofina, are repaid from dedicated sales-tax revenue.

If general-obligation bonds are treated senior in repayment, then bondholders would receive a internal rate of return of 8 percent on debt that carries an 8 percent coupon and 6.6 percent on debt with a 5 percent coupon, Zezas wrote. The recovery rates will be lower if sales-tax bonds get first payment, he said.

General obligations with an 8 percent coupon and maturing July 2035 traded Friday at 73.1 cents on the dollar, down from an average 75.5 cents on Sept. 8, the day before the plan was released, according to data compiled by Bloomberg. The yield was 11.5 percent.

“There’s a good argument to be made that general obligations appear fairly valued, particularly considering that the lower end of expected internal rate of returns would rise with greater austerity,” Zezas wrote. “Yet, these reports imply that Puerto Rico can execute an effective sovereign-style restructuring in a timely manner, something we dispute.”

Bloomberg News

Michelle Kaske

September 11, 2015 — 10:56 AM PDT

Bloomberg Brief Weekly Video - 09/10/15

Taylor Riggs, an editor at Bloomberg Brief, talks with Joe Mysak about this week’s municipal market news.

Watch the video.

September 10, 2015

Fitch Releases Exposure Draft for U.S. State & Local Government Criteria.

Fitch Ratings-New York-10 September 2015: Maintaining rating stability through swings in the U.S. economy is critical for both state and local government credits, according to Fitch Ratings. The rating agency has published an exposure draft for revisions it is proposing to its criteria for U.S. state and local governments.

One notable component revolves around the fundamental role that a government’s economy plays in analysis. ‘Whereas it was a standalone bucket in the past, we now propose incorporating the economy into the analysis of four focused key rating factors,’ said Managing Director Laura Porter. ‘We are introducing scenario analysis to explicitly consider the economic cycle in order to better communicate our expectations for state and local government rating stability through cycles.’

The four key rating factors driving state and local government ratings are centered around:

–Revenues;
–Expenditures;
–Long-term liabilities;
–Operating performance.

As part of its revised criteria, Fitch would create scenarios that consider how a government’s revenues may be affected in a cyclical downturn and the options available to address the resulting budget gap. Fitch has made publicly available preliminary versions of two tools that support this analysis. The Revenue Sensitivity Tool estimates possible future revenue behavior in a downturn, allowing the user to view and chart historical revenue performance and form peer groups for over 500 state and local issuers. The Scenario Analysis Tool compares issuers’ ability to navigate through a downturn.

Under the revised criteria, Fitch will also provide more in-depth opinions on reserve adequacy related to individual issuers' inherent budget flexibility and revenue volatility. 'State and local government credits have proven to be quite resilient despite the broader market turmoil in recent years so creating these scenarios would not only make our ratings more likely to remain stable over time but make any rating movement much more predictable,' said Porter.

Fitch does not expect the proposed criteria revisions to trigger widespread rating changes. Rating actions would likely not exceed 10% of the government credits covered by the criteria, with a roughly equal mix of upgrades and downgrades. Upgrades would likely result from the more focused consideration of the economy while downgrades would center around the more integrated consideration of the adequacy of reserve funding.

Fitch will be accepting market feedback for its proposed revisions until Nov. 20, 2015. Comments can be emailed to 'pfcomment@fitchratings.com'.

Exposure Draft: U.S. Tax-Supported Rating Criteria is available here.

Fitch's exposure draft will also be available on a new landing page ('info.fitchratings.com/pf comment') along with the following documents:

–An overview of the criteria and answers to frequently asked questions ('Proposed Tax-Supported Rating Criteria: Overview and FAQs');
–New through-the-cycle tools ('Introducing the Fitch Revenue Sensitivity Tool for Public Finance'), the preliminary versions of which will be publicly available (with limited data) during the comment period.

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BDA Submits Letter to SEC on MSRB Proposed Rule G-42 Regarding the Core Duties of Municipal Advisors.

The BDA submitted a comment letter to the SEC in response to their request seeking approval or disapproval of MSRB Proposed Rule G-42 which would establish the core duties of municipal advisors when providing municipal advisory services to state and local governments and other clients.

In its letter to the SEC, the BDA reiterates our concern with the Proposed Rule's absolute ban of related principal transactions and urges the Commission to disapprove the Proposed Rule so that the MSRB can redesign a more reasonable conflicts of interest regime.

Specifically, the BDA believes:

- The proposal that certain principal transactions be banned is out of step with how the duty of loyalty is managed with other fiduciaries.
- A different approach should be considered by the MSRB and this approach should involve and engage the client and require appropriate disclosures and informed consents.

You can read our full letter here.

09-11-2015

Public Pension Funds Roll Back Return Targets.

Public pension funds from California to New York are cutting investment-return predictions to their lowest levels since the 1980s, a shift that portends greater hardships for employees and cash-strapped governments as Americans age.

New upheavals in global markets and a sustained period of low interest rates are forcing officials who manage retirements for nearly 20 million U.S. beneficiaries to abandon a long-held belief that stocks, bonds and other holdings would earn 8% each year, as well as expectations that those gains would fund hundreds of billions of dollars in liabilities.

More than two-thirds of state retirement systems have trimmed assumptions since 2008 as the financial crisis and an uneven U.S. recovery knocked many below their long-term goals, according to an analysis of 126 plans provided by the National Association of State Retirement Administrators. The average target of 7.68% is the lowest since at least 1989. The peak was 8.1% in 2001.

On Friday, the New York State Common Retirement Fund, the third-largest public pension by assets, said it plans to drop its assumed returns to 7% from 7.5% after cutting a half-percentage point five years ago. That followed Thursday's vote by the San Diego County Employees Retirement Association to drop its level to 7.5% from 7.75%.

"Realism," said Brian McDonnell, managing director for pension consultant Cambridge Associates, is "creeping in."

Moving expectations below 8% isn't just an arcane accounting move. It has real-life consequences

for systems that use these predictions to calculate the present value of obligations owed to retirees. Even slight cutbacks in return targets often mean budget-strained governments or workers are asked to pay significantly more to account for liabilities that are expected to rise as lifespans increase and more Americans retire. A drop of one percentage point will typically boost pension liabilities by 12%, said Jean-Pierre Aubry, an assistant director at the Center for Retirement Research at Boston College.

Public pension funds use a combination of investment income and contributions from employees, states and cities to fund benefits.

In Boulder, Colo., the city eliminated 100 positions and consolidated city programs as a way of compensating for three reductions in the state's investment forecast and a rise in pension contributions, as the economy sputtered. It also stopped planting tulips in most areas and shifted to less expensive wildflowers as a way of making an additional $1.7 million in pension payments, according to the city's chief financial officer, Bob Eichem. "You do more with less," Mr. Eichem said.

U.S. pensions first started to reconsider their investment-return assumptions after being stung by deep losses during the 2008 financial crisis. The event helped drop 10- and 15-year annual returns at large public pensions to 6.9% and 5.8%, respectively, according to the Wilshire Trust Universe Comparison Service. The retirement systems' median return was 3.4% for the 12 months ended June 30 amid downturns in foreign stocks and bonds, their worst annual performance since 2012.

Retirement systems argue that lowering assumptions fortifies their fiscal health, because the influx of extra contributions means they become less reliant on generating big returns.

Some big funds are preparing to pull their goals back even further. The California Public Employees' Retirement System, the nation's largest pension, is discussing a new reduction below its level of 7.5%. The Oregon Public Employees Retirement System and the Texas Municipal Retirement System, the 14th and 35th largest, both approved lowering their forecasts in late July by a quarter of a percentage point. "Those days" of believing 8% could be earned annually "aren't here anymore," said New York state Comptroller Thomas P. DiNapoli.

But some critics contend that pensions are still relying on unrealistic expectations to fill ballooning funding gaps even as they move targets below 8%. The lower assumptions remain considerably higher than levels seen in the 1960s, when pensions estimated 3% to 3.5% returns from portfolios primarily comprised of cash and bonds. Pension officials pushed their predictions higher in subsequent decades as they embraced riskier holdings of stocks, real estate, commodities and hedge-fund assets.

"It's clearly not enough," said Josh McGee, a senior vice president of public accountability at the Laura and John Arnold Foundation, a nonprofit that has worked across the U.S. for changes to guaranteed pension benefits.

Pension funds said that while performance has lagged behind of late, they generally have been able to hit their targets over longer periods and expect to continue to do so.

A panel of U.S. actuaries and pension specialists has recommended that public systems move their assumed future returns down to 6.4%, and many corporations already use a more conservative rate for their pension funds. The average for companies listed in the Fortune 1000 dropped to 7.1% in 2014 from a high of 9.2% in 2000, according to a Towers Watson survey.

The most aggressive move downward among public employee pensions belongs to Delaware, where

the state retirement system has dropped to a target of 7.2% from 8.5% in 2003, the largest change since 2001 among state plans tracked by the National Association of State Retirement Administrators. David Craik, the retirement system's pension administrator, said he wouldn't rule out further decreases.

"I'm kind of surprised others aren't going as low as we did," Mr. Craik said.

More big pullbacks by public plans would likely create deeper financial pain for governments and employees that have already cut services and benefits. Local and state contributions to retirement systems have more than doubled over the past decade, to $121.1 billion in 2014, according to the U.S. Census Bureau. During that same time worker pension contributions rose 50%, to $45.5 billion.

In Fullerton, Calif., officials are sharing a fire chief and command-level staff with one neighboring town and splitting up tree-cutting contracts with other cities in the wake of a half-percentage point cut in return assumptions for the state's retirement system. It was able to save $1.2 million.

"The pension costs are high and will continue to be high," said Joe Felz, Fullerton's city manager. "It's tops to bottom looking where we can get savings."

Still, some retirement systems believe 8% is possible, as 39 of them maintain forecasts at or above that old industry mark, according to the National Association of State Retirement Administrators. Two of them—the Houston Firefighters' Relief and Retirement Fund and the Connecticut Teachers' Retirement System—assume returns of 8.5%, the highest of any other plans.

"We strongly believe, and past history shows, we can continue to achieve the 8.5% long term," said Todd Clark, chairman of the Houston firefighters' fund. The Connecticut fund didn't respond to requests for comment.

THE WALL STREET JOURNAL

By TIMOTHY W. MARTIN

Updated Sept. 4, 2015 6:07 p.m. ET

Write to Timothy W. Martin at timothy.martin@wsj.com

Puerto Rico Plan Calls for Spending Cuts, Tax Overhaul.

Puerto Rico's proposed restructuring plan brings the U.S. commonwealth one step closer to a long-awaited showdown with the investors who are being asked to take losses on the island's $72 billion in debt.

The five-year plan released Wednesday is light on specifics, analysts said, but investors agree it clearly could affect the island's general obligation bonds, which are protected by its constitution, as well as its sales tax-backed debt.

Several investors and analysts said the proposal didn't provide enough detail about how much debt the island wants to cut, what form such cuts may take or which bonds might be affected. Some said it relies too much on future actions by lawmakers in Washington and San Juan and successful negotiations with bondholders and other stakeholders.

“I don’t see anything to work with at this point,” said Daniel Solender, head of the municipal bond group at Lord Abbett & Co., which manages about $17 billion in tax-exempt debt, including some from Puerto Rico. “Now they have to speak up and say what it is they really want.”

The plan doesn’t include specific estimates of losses on Puerto Rican debt, though prices for some bonds fell after its release. Some general obligation bonds maturing in 2035 traded Wednesday at around 74 cents on the dollar, down from about 76 cents Tuesday.

The product of a working group appointed by Gov. Alejandro Garcia Padilla, who in June called the island’s debts unpayable, the plan says that even if all proposed structural changes are adopted by policy makers, the commonwealth will still fall billions short of securing the amount it needs to pay bondholders in the next five years.

Those proposals seek to reduce a $28 billion financing gap over the next five years by adjusting taxes, reducing government spending, revamping welfare and the minimum wage, consolidating public schools, and creating a control board to ensure such changes are implemented.

“The key finding of this plan is that even if we implemented all the measures contained in it, they wouldn’t be enough to achieve the necessary balance,” the governor said in a televised address Wednesday. “The massive public debt of Puerto Rico is an impediment to growth. It is time for the creditors to come to the table and share the burden of the sacrifices.”

The plan has been awaited by investors, who are bracing for losses amid falling bond prices and a growing fiscal crisis, and who have wanted to see new structural changes before lending Puerto Rico any more money. The commonwealth has often borrowed to fund deficits during a decade of economic stagnation and population declines, and officials say it is rapidly running out of cash for operations. A government agency defaulted on a $58 million payment last month.

That makes the island the latest trouble spot in the market for U.S. municipal debt, which has been rocked in recent years by large bankruptcies in Detroit and Jefferson County, Alabama. Puerto Rico bonds are widely held by individuals and mutual funds around the U.S. because of their tax advantages.

Ted Hampton, vice president at Moody’s Investors Service, said the recommended changes will pose political challenges and likely prompt contentious negotiations with bondholders, with a high probability of “protracted litigation, particularly on the part of investors holding general obligation or other securities with strong legal protections.”

Officials say investors have begun organizing themselves into groups based on the type of bonds they own, and the government will begin talks with each group over the next several weeks.

The plan comes after one agreement was struck with commonwealth bondholders. The Puerto Rico Electric Power Authority, known as Prepa, last week reached an accord with its bondholders that would give them 85% of the face value of their junk-rated bonds in exchange for new securities designed to get investment-grade ratings. Prepa, which owes about $9 billion, is still negotiating with other creditors.

The plan also seeks help from the U.S. government, asking Congress to allow some Puerto Rico government entities to access bankruptcy protections. The commonwealth is currently barred from granting its agencies access to that legal process and officials say the lack of a framework is a significant obstacle to the restructuring effort.

The federal government should also reconsider the island’s relatively high minimum wage for young

workers or exempting the island from the Jones Act shipping law—a move that could help reduce the cost of transporting goods, a summary of the plan said. Federal help is also needed to stave off a growing health-care crisis, by equalizing the funds Puerto Rico receives relative to U.S. states, it said.

Joseph Rosenblum, director of municipal credit research at AllianceBernstein, said the report includes serious measures to adjust the island's budget and policy but lacks important details for investors, such as the engines of economic growth, the powers of the control board, or how the island will treat its constitutionally protected general obligation bonds versus its sales-tax debt.

"I am not sure that this report has moved the process along to any great extent, which may only come when they sit down with bondholders," he said.

THE WALL STREET JOURNAL

By AARON KURILOFF

Updated Sept. 9, 2015 4:07 p.m. ET

—Leslie Josephs contributed to this article.

Write to Aaron Kuriloff at aaron.kuriloff@wsj.com

Puerto Rico's Recovery Plan Faces Much Doubt, Many Obstacles.

NEW YORK/SAN JUAN — Puerto Rico's new plan to haul itself out of a huge financial hole is long on ifs and buts and short on confident predictions.

Faced with the prospect that its cash will run out within months, the Caribbean island is proposing numerous measures that require support from its divided legislature, action from a U.S. Congress that may not be supportive, and the willingness of a wide range of bondholders to take losses.

It calls for spending cuts that would hit the U.S. territory's population and a restructuring of its debt that would hurt mom-and-pop investors, as well as U.S. funds. There would also be extensions of excise taxes.

The proposals are all an attempt to close a projected $28 billion funding gap between 2016-2020 as it struggles with a $72 billion debt burden.

Some experts on municipal restructurings said the proposals from a working group established by the Puerto Rican government should force creditors to deal with a clearly worsening situation.

"I sincerely hope that the bondholders will see this report for what it is – a wake up call to come to the table," said Steven Rhodes, who handled the Detroit bankruptcy when he was a judge, and has been hired to advise Puerto Rico. "I don't see a way in which bondholders could be made whole."

But coming only 14 months before Puerto Rico Governor Alejandro Garcia Padilla is up for re-election, and given there is a skeptical Republican-controlled U.S. Congress, the plan is likely to encounter major political obstacles.

"Anything that is perceived by the populace as something that's taking away rights is going to be

difficult to implement on a pre-election cycle," said Jose Perez-Riera, former secretary of economic development and commerce under former governor Luis Fortuno, and now an advisor at a private economic development group in Puerto Rico.

Devised by Puerto Rico officials and advisors, the plan was based on an influential report, released in June, penned by former International Monetary Fund economists who proposed sweeping cuts and reforms in an attempt to reinvigorate growth.

Showing some signs of the challenges to get to even this point, Garcia Padilla said the plan was appropriately light in two areas: new taxes on the population and demands for sacrifices from workers.

Garcia Padilla presented the plan as the "beginning of a negotiation" with creditors that would result in a "major humanitarian crisis" if a deal wasn't reached.

"It's not going to be easy," said Andrew Wolfe, one of the former IMF economists who wrote the earlier report. "There are so many moving parts here – you are requesting actions from the Federal Government and the creditors."

FACING A HAIRCUT

Puerto Rico is likely to face an uphill battle with investors as it tries to cut debt, particularly general obligation bonds. They are seen as sacrosanct in the municipal bond market and viewed as having the best protection in a restructuring.

"The debt restructuring is going to be the most difficult, I think, just because you're asking bondholders to accept less than they thought they were going to get," said Peter Hayes, head of asset manager BlackRock's Municipal Bonds Group, which owns various non-government Puerto Rico bonds.

Bondholders are facing a significant haircut on their debt – the working group who devised the plan said only around $5 billion is available to pay principal and interest on the $18 billion of debt coming due in the coming five years. If the government gets its way, the difference is most likely to come from a loss of both interest payments and delayed payments of principal.

That could lead to protracted litigation if some bondholder factions choose to fight.

"In litigation or a negotiation, there will be requests to do more, to cough up more money and yet I do think it's a fair statement to say that a very high debt burden absolutely has a negative impact on the economy and if you sit back and just continue with austerity it gets worse," said John Miller, co-head of fixed income for Nuveen Asset Management, which holds $300 million in par value of Puerto Rico bonds which are either insured or non-governmental obligations.

Unlike U.S. municipalities, Puerto Rico cannot seek federal bankruptcy protection under Chapter 9. That makes a restructuring much more complicated than faced the city of Detroit, for example, when it filed for bankruptcy in 2013. Puerto Rico has argued that it needs access to Chapter 9 but bills seeking to allow it have stalled in Congress.

"Chapter 9 provides a focus, a mechanism, an urgency, and a supervision that's lacking without it," said Rhodes.

PROTESTS PLANNED

One alternative is a financial control board, proposed in Wednesday's plan. That board would be selected by the Governor from among nominees chosen by interested parties, the working group said.

However, U.S. lawmakers may come up with an alternative plan for a board. "That may be a contentious issue," said Wolfe.

Miller said getting all the reforms passed would be a "long shot" with the U.S. presidential election and the Puerto Rico election both coming up in 2016.

One measure proposes bringing in an Economic Activity Tax Credit, designed as a replacement for tax preferences for manufacturers from the U.S. mainland, which were phased out by 2006. Those had helped the island become a manufacturing hub, particularly for pharmaceutical companies.

"It's not necessarily sustainable," said Wolfe of the proposal for the new tax credit. "Maybe this government on a chance enacts it but a future one could take it away and then you're back to where you are."

Opposition to the plan by labor unions could be a hurdle. The plan calls for a two percent annual attrition rate for public employees, reductions in vacation and sick leave, and potential cuts to teacher pensions. Proposed reductions in the budgets for schools and the island's university may also trigger action by teachers, professors and students.

Already, at least one labor group is planning protests. The Coordinadora Sindical, a collective of labor unions in Puerto Rico, announced on its Facebook page it will hold protests on Friday in San Juan, the island's capital, "in order to stop the so-called fiscal adjustment plan."

"I'm sure unions will oppose this very actively," said Francisco Cimadevilla, a San Juan consultant and head of communications firm Forculus.

The island's university may also see student protests.

"I'm already hearing talk about (protests), and I think most likely there will be, once the public gets the information and can digest it," said Mario Maura Perez, a finance professor at the university's Rio Piedras campus.

By REUTERS

SEPT. 10, 2015, 12:12 A.M. E.D.T.

(Reporting by Megan Davies and Jessica DiNapoli in New York and Nick Brown in San Juan; Editing by Martin Howell)

NFMA Introduction to Municipal Bond Credit Analysis.

The NFMA Introduction to Municipal Bond Credit Analysis registration is now open.

The course will be held at Le Meridien in Philadelphia on November 12 & 13, 2015.

The NFMA has offered this course annually since 1987. This year's course has been revamped, but attendees can still expect to be provided with an overview of the critical information to perform

credit analysis on a variety of sectors. While traditionally an offering for those new to analysis, the course has also been used as a refresher to more seasoned analysts over the years.

Program link.

Register online.

NFMA Releases Final Best Practices for State GO Bond Disclosure After Public Comment.

The National Federation of Municipal Analysts (NFMA) announced today that it has released the final version of its Recommended Best Practices in Disclosure for State Government General Obligation and Appropriation Debt (State GO RBP).

This paper is the first of a two-part update of the NFMA's December 2001 Recommended Best Practices in General Obligation and Tax-Supported Debt (2001 RBP), which addressed all general obligation debt. This RBP
incorporates and builds upon the Voluntary Interim Financial Reporting: Best Practices for State Governments approved by the National Association of State Auditors, Comptrollers and Treasurers from 2014.

According to Jennifer Johnston, NFMA Chair, "Given the changes in the market over the past decade, it was time to revisit disclosure at both the state and local level for general obligation and tax-backed bonds. We wanted to acknowledge the improvements in disclosure that have occurred over this period and incorporate the areas where we need to put more focus."

In light of the scope of the project and length of this RBP, the NFMA provided a 120-day comment period, during which market participants and the public were given the opportunity to review and submit comments on the paper.

The NFMA plans to follow the State GO RBP with RBPs addressing Local GO Bonds and Dedicated Tax Bonds. The NFMA has written RBPs and white papers on over 20 different sectors and topics in the municipal bond market.

To view all of the NFMA's RBPs and white papers, go to www.nfma.org and select "Disclosure Guidelines" under "Publications."

Established in 1983, the NFMA is an organization of nearly 1,400 members, primarily research analysts, who evaluate credit and other associated risks in the municipal market. These individuals represent, among others, mutual funds, insurance companies, broker/dealers, bond insurers, rating agencies, and financial advisory firms.

September 10, 2015

Contact: Lisa Good, NFMA Executive Director
412-341-4898, lgood@nfma.org
www.nfma.org

- A New Plan for American Cities To Free Themselves of Wall Street's Control.
- GASB to Re-Examine State and Local Financial Reporting Model.
- Fitch Updates U.S. Water and Sewer Revenue Bond Rating Criteria.
- Justice's Antitrust Division Conducting Inquiry Into Muni Bond Pricing.
- MSRB Links Effective Date for Best-Execution Rule to Publication of Guidance.
- BDA Submits Letter to SEC on TRACE 'No Remuneration' Indicator.
- CDFA Into Revolving Loan Fund WebCourse.
- And finally, that maniacal cackling you hear emanating from Kansas City is brought to you by *Kansas City Power & Light Co. v. Strong*, in which Daniel and Evelyn Strong, unhappy with the court appraiser's decision to award them $96,465 in compensation for a condemned power line easement decided to take a flyer on an appeal. The jury saw things perhaps a wee bit differently, forking over $1,922,559 and forever validating ye olde contingency fee arrangement.

REDEVELOPMENT AGENCIES - CALIFORNIA

City of Cerritos v. State

Court of Appeal, Third District, California - August 25, 2015 - Cal.Rptr.3d - 2015 WL 5014077 - 2015 Daily Journal D.A.R. 9807

After legislation requiring all redevelopment agencies to dissolve was declared constitutional, cities, successor agencies to several redevelopment agencies, community development commissions, nonprofit housing corporation, and individual taxpayer filed preliminary injunction against state and Director of Finance, seeking to enjoin legislation on additional constitutional grounds. The Superior Court denied preliminary injunction request. Plaintiffs appealed.

The Court of Appeal held that:

- Dissolution of redevelopment agencies did not render appeal moot;
- Legislation did not violate constitutional provision prohibiting legislature from raiding local property tax allocations to help balance budget;
- Legislation was not invalid as pre-budget act appropriation;
- Legislation did not violate single-subject rule;
- Legislation qualified for passage by majority vote by legislature; and
- Legislation did not unconstitutionally exceed scope of governor's emergency proclamation.

Legislation that provided for the dissolution and winding down of redevelopment agencies did not violate constitutional provision prohibiting legislature from raiding local property tax allocations to help balance budget, despite contention that legislation allocated ad valorem property taxes to local agencies on non-pro rata basis without having been passed by a two-thirds supermajority, as required under constitutional provision. Protections provided for by constitutional provision did not apply to redevelopment agencies, constitutional provision was intended to prevent legislature from statutorily reducing existing allocations of property taxes among cities, counties, and special districts, and legislation providing for dissolution of redevelopment agencies did not shift property taxes away from local governments.

LAND USE - CONNECTICUT

Hunter Ridge, LLC v. Planning and Zoning Com'n of Town of Newtown

Supreme Court of Connecticut - September 1, 2015 - A.3d - 318 Conn. 431 - 2015 WL 4940381

After developer filed administrative appeal of town zoning commission's denial of its application for a subdivision permit to develop parcel of land on ground that the developer's plan did not meet open space requirements in town's subdivision regulations, citizen intervened raising environmental concerns. The Superior Court ultimately set aside the commission's findings and enjoined development of the property without prior approval of the court.

Following transfer of the case, the Supreme Court of Connecticut held that court did not have the authority to issue an injunction.

PENSIONS - ILLINOIS

Hendricks v. Board of Trustees of Police Pension Fund of City of Galesburg

Appellate Court of Illinois, Third District - August 24, 2015 - N.E.3d - 2015 IL App (3d) 140858 - 2015 WL 5004550

Retired police officer sought review of the Board of Trustees of the Police Pension Fund's denial of police officer's application for police retirement benefits. The Circuit Court reversed. The Board appealed.

The Appellate Court held that police officer's prior job-related felony conviction, which was vacated by the trial court before officer applied for police pension benefits, did not disqualify officer from receiving his police pension.

PENSIONS - ILLINOIS

Village of Westmont v. Illinois Municipal Retirement Fund

Appellate Court of Illinois, Second District- August 13, 2015 - N.E.3d - 2015 IL App (2d) 141070 - 2015 WL 4763915

Village appealed Illinois Municipal Retirement Fund (IMRF) Board of Trustees' reclassification of village, requiring participation of part-time firefighters in IMRF despite oral assurance that village was not required to do so more than 20 years earlier. The Circuit Court affirmed Board's reclassification. Village appealed.

The Appellate Court held that:

- Village was unambiguously included in IMRF manual's group of municipalities excluded from participation in IMRF, but
- IMRF manual's administrative exclusion conflicted with statute.

Illinois Municipal Retirement Fund (IMRF) manual excluding those municipalities that had a population of 5,000 or more "and/or" had formed a fire pension fund from requirement of participation in IMRF on behalf of part-time firefighters unambiguously included village that had a population larger than 5,000 but did not form a fire pension fund, and therefore Appellate Court would not defer to IMRF's interpretation of manual as excluding only municipalities that met both

elements. The inclusion of “or” marked an alternative indicating that the population requirement and the formation of a fund had to be taken separately, and IMRF’s interpretation rendered the word “or” superfluous.

Illinois Municipal Retirement Fund’s (IMRF) manual, which purported to exclude village from statutory requirement that it participate in IMRF on behalf of its part-time firefighters, conflicted with statute stating municipalities falling under umbrella of IMRF participation could be excluded only as expressly provided by statute, and therefore IMRF could not be estopped from discontinuing manual’s exclusion of village from IMRF participation. Even though IMRF orally represented that village was not required to enroll firefighters in IMRF more than 20 years earlier, village was within umbrella of IMRF participation, statute did not exclude village from requirement to participate, and statute did not allow IMRF to create an independent, “second” exclusion.

FIRE PROTECTION DISTRICT - INDIANA

Anderson v. Gaudin

Supreme Court of Indiana - September 1, 2015 - N.E.3d - 2015 WL 5131480

County resident freeholders brought declaratory judgment action against county board of commissioners, alleging board lacked authority to amend ordinance that established a county-wide fire protection district. The Circuit Court granted summary judgment in favor of resident freeholders. Board and commissioners appealed. The Court of Appeals affirmed. The Supreme Court granted transfer.

The Supreme Court of Indiana held that county board of commissioners had statutory authority to amend ordinance that previously established county-wide fire protection district, where noting in Fire District Act expressly prohibiting amendment of an ordinance establishing a district, and, absent such a prohibition, the Home Rule Act applied to permit amendment; disapproving *Gaudin v. Austin*, 921 N.E.2d 895.

EMINENT DOMAIN - KANSAS

Kansas City Power & Light Co. v. Strong

Supreme Court of Kansas - August 28, 2015 - P.3d - 2015 WL 5081367

Condemnees appealed from court-appointed appraisers’ award of $96,465 in damages in eminent domain proceeding. Following a jury trial, the District Court rendered judgment awarding condemnees $1,922,559 as compensation for the taking. Condemnor appealed.

The Supreme Court of Kansas held that:

- Condemnees’ evidence was admissible and legally sufficient to support jury’s post-taking value determination, and
- Court did not abuse its discretion by admitting developer’s option to buy contract.

Landowners’ evidence, testimony of professional developer and hypothetical buyer, and testimony of landowners’ valuation expert, was admissible pursuant to eminent domain statute, and legally sufficient to support jury’s post-taking remainder value determination, in proceeding to determine proper compensation for power company’s partial taking of landowners’ property for a power line

easement.

Evidence introduced in eminent domain proceeding, to show that a developer had been interested in developing landowners' property into a single family residential subdivision, so interested that he had paid an undisclosed sum to obtain an option to purchase the property, was both material to existence of statutory factors to be considered in ascertaining amount of compensation and damages, and at least somewhat probative in that it tended to support the existence of such factors, and thus, evidence was admissible.

MUNICIPAL ORDINANCE - MASSACHUSETTS

Doe v. City of Lynn

Supreme Judicial Court of Massachusetts, Essex - August 28, 2015 - N.E.3d - 2015 WL 5052474

Certified class of sex offenders subject to municipal ordinance challenged the constitutionality of the ordinance, which imposed restrictions on the right of sex offenders to reside in city. The Superior Court invalidated the ordinance under the Home Rule Amendment, and city appealed.

The Supreme Judicial Court of Massachusetts held that ordinance was inconsistent with the comprehensive scheme of legislation intended to protect the public from convicted sex offenders and, thereby, manifested the "sharp conflict" that rendered it unconstitutional under the Home Rule Amendment.

LIABILITY - NEW YORK

Heather Fox Lima v. Village of Garden City

Supreme Court, Appellate Division, Second Department, New York - September 2, 2015 - N.Y.S.3d - 2015 WL 5125373 - 2015 N.Y. Slip Op. 06714

Pedestrian brought negligence action against municipality, seeking to recover damages for personal injuries allegedly sustained when she slipped on ice in parking lot. The Supreme Court, Nassau County, granted summary judgment's in municipality's favor. Pedestrian appealed.

The Supreme Court, Appellate Division, held that:

- Municipality could not be held liable for injuries allegedly sustained by pedestrian, and
- Municipality's failure to remove snow and ice from parking lot was passive and did not constitute affirmative act of negligence.

Municipality could not be held liable for injuries allegedly sustained by pedestrian who slipped on ice in parking lot, where municipality did not have prior written notice of icy conditions, municipality did not make a special use of parking lot where alleged injury occurred, and municipality did not create the icy condition.

Municipality's failure to remove all snow and ice from the parking lot was passive in nature, and did not constitute an affirmative act of negligence, as required to bring pedestrian's negligence action against municipality, based on allegation that she slipped on ice in parking lot, within exception to the prior written notice requirement.

PUBLIC RECORDS - WASHINGTON

Nissen v. Pierce County

Supreme Court of Washington, En Banc - August 27, 2015 - P.3d - 2015 WL 5076297

Sheriff's detective brought action under Public Records Act (PRA) against county and county prosecutor's office, seeking disclosure of call logs from prosecutor's personal cellular telephone and text messages. The Superior Court granted defendants' motion to dismiss. Defendant appealed. The Court of Appeals reversed and remanded. Defendants filed petitions for review.

The Supreme Court of Washington, en banc, held that:

- Record prepared, owned, used, or retained by agency employee in the scope of employment was "prepared, owned, used, or retained by a state or local agency," under PRA;
- Records an agency employee prepares, owns, uses, or retains on a private cellular telephone within the scope of employment can be a "public record";
- Call and text message logs prepared and retained by telephone company with respect to county employee's private cellular telephone were not "public records" of the county;
- Content of work-related text messages sent and received by county prosecutor were "public records," and
- Public employees are responsible for self-segregating private and public records contained on their private devices.

TAX - ALASKA

DeVilbiss v. Matanuska-Susitna Borough

Supreme Court of Alaska - August 28, 2015 - P.3d - 2015 WL 5061501

Following borough assembly's denial of property owner's request that they remove his property from road service area, property owner filed a complaint against borough, contesting validity of road service tax. The Superior Court granted borough's cross-motion for summary judgment. Property owner appealed.

The Supreme Court of Alaska held that:

- Borough was not required to exclude owner's property from road service area;
- Road service tax was not an invalid special assessment;
- Borough was authorized to provide special services within road service area, thus it could levy taxes to finance those services;
- Validity of a tax does not depend on whether a taxpayer receives a special benefit; and
- Property owner had sufficient economic incentive to bring his claim, entitling borough to attorney fees.

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What Will Tax Abatement Disclosures Mean for Economic Development Groups?

State and local governments will begin disclosing financial information about tax abatements under new guidance from the Governmental Accounting Standards Board (GASB). The requirements take effect for financial statements for periods beginning after December 15, 2015.

Tax abatements are defined by GASB as agreements between one or more governments and an entity or individual that reduce the taxes the entity or individual would otherwise owe, and in which the business or individual promises to take a specific action that contributes to economic development or otherwise benefits the governments or their citizens.

Continue reading.

Smart Incentives

Posted by Ellen Harpel | August 31, 2015

States, Cities Pay $4 Billion in Bond Fees Yearly, Study Finds.

U.S. state and local governments pay about $4 billion a year to underwriters, advisers, rating companies and other firms when they sell bonds, according to a study examining all of the fees for borrowers in the municipal debt market.

The governments used an average of about 1 percent of their bond proceeds to cover the expenses, according to the study by Marc Joffe for the Haas Institute for a Fair and Inclusive Society, a policy center at the University of California at Berkeley. The amounts varied widely, from 0.13 percent for short-term note issue in Utah to 10.6 percent for a California school district.

While underwriters' payouts are closely tracked, far less attention has been paid to the fees charged by other firms, said Joffe, a credit-market researcher. He said greater scrutiny could empower officials to push for lower costs when they raise money in the $3.6 trillion market.

"Making the cost more transparent will allow issuers to shop around and hopefully find a better price," said Joffe, principal consultant with Public Sector Credit Solutions in Walnut Creek,

California. “If governments borrow, they should try to get the most for their money.”

The report, based on a review of 812 offerings nationwide between 2012 and 2015, is one of the broadest looks at the fees governments pay when they borrow. It includes even small expenses, such as the cost of publishing official statements on the Internet.

Underwriting accounted for an average of 46 percent of the cost, the largest single expense, according to the study. Then came bond attorneys, with 15 percent, and financial advisers, who got 14 percent. Fees for municipal-bond ratings totaled almost 8 percent.

Liz Pierce of the Securities Industry and Financial Markets Association, representing bond dealers, declined to comment.

By Darrell Preston, Bloomberg News

August 30, 2015

Justice’s Antitrust Division Conducting Inquiry Into Muni Bond Pricing.

WASHINGTON – The U.S. Justice Department’s antitrust division is conducting a general inquiry into whether certain broker’s brokers have engaged in anti-competitive practices with regard to pricing for secondary market and other municipal bond trades, according to industry officials.

Broker’s brokers act as intermediaries between bidding and selling dealers and typically provide secondary market liquidity for retail investors in the muni market.

The antitrust division has asked for general information about Jersey City. N.J.- based MuniBrokers.com, a company that provides a software platform for brokers’ brokers to conduct and/or manage their business, according to Edward Smith, the company’s general counsel, and Jay Caldas, the company’s president.

The antitrust division appears to have received a complaint about alleged anti-competitive practices and is looking into it, but has not launched a formal investigation and has not requested documents or subpoenaed any information, said Smith and Caldas.

“We’ve been completely open in sharing information with them,” said Smith. “This is a very light process. It’s an inquiry not an investigation.” Justice Department lawyers just want to know about the company’s business, how it operates, he said.

“We periodically have inquiries from regulators,” said Smith. “We know we operate within the compliance of the law.”

The remarks by Smith and Caldas follow an article posted Wednesday night by the news outlet Law360 that said the Justice Department’s networks and technology section opened an investigation in April into allegations that the brokers’ brokers have colluded to limit information about pricing of bonds traded in the secondary market. The article cited MuniBrokers as the center of the examination.

“I was completely surprised by that article,” said Caldas. “Our goal and objective is improved transparency and disclosure in the secondary market.”

Caldas said MuniBrokers, a wholly owned subsidiary of HTD, formerly Hartfield Titus & Donnelly that was created in 2014, is not a regulated entity and does not trade municipal securities. It is a software platform that, among other things, allows brokers' brokers to post bid-wanteds and offering information. In a bid-wanted, a selling dealer asks a broker's broker to obtain the best bid that it can find for certain munis, without specifying a desired price or yield.

The MuniBrokers.com platform does not disclose the counterparties of trades, Caldas said.

"It's like a billboard," Caldas said. "We're not a regulated broker-dealer or an alternative trading system," he said. "We're an unregulated software company." The firm is not involved in executing transactions, but rather provides the software that supports trading.

The company serves nine brokers' brokers, including HTD, all of which are competitors, and is connected either directly or through third parties to about 50 broker-dealers, Caldas said.

Besides HTD, the other brokers' brokers that use the platform are: Butler Muni LLC; Chapdelaine Tullet Prebon, LLC; Clayton, Lowell & Conger, Inc.; Regional Brokers, Inc.; RW Smith; Sentinel Brokers Company, Stark Municipal Brokers; and Wolfe & Hurst Bond Brokers, Inc., a division of BGC Brokers.

MuniBrokers provides subscriptions to anyone who requests them. "It's open to anyone," Caldas said.

Peter Carr, a spokesman for the Justice Department's antitrust division, declined to comment on the matter. Executives for the broker's brokers with MuniBrokers.com either were not aware of the inquiry or were unavailable for comment.

The Municipal Securities Rulemaking Board adopted a specific rule for broker's brokers in 2012. Rule G-43, which took effect in December 2012 and is posted on MuniBrokers.com, affirms a broker's broker's duty to make a reasonable effort to obtain a fair and reasonable price for municipal securities and also reminds selling and bidding dealers of their pricing obligations. The rule, which was adopted after several enforcement cases had been filed against certain broker's brokers for unfair pricing practices, provides a series of safeguards designed to promote fairer results from bid-wanteds.

The rule also cautions dealers against "screening" other dealers from their transactions for anti-competitive reasons. It prohibits dealers placing bids to purchase munis in a bid-wanted from submitting "throw away" bids or from attempting to profit by "picking off" other dealers at off-market prices.

THE BOND BUYER

BY LYNN HUME

SEP 3, 2015 4:07pm ET

DC Circuit Court Rejects Challenge To SEC Pay-To-Play Rule: Womble Carlyle

The DC Circuit Court has rejected an effort by the New York and Tennessee Republican Parties to set aside Securities and Exchange Commission Rule 206(4)-5. The 2010 SEC rule prohibits

investment advisers from providing services for compensation to a government entity within two years after a political contribution to a government official has been made by the investment adviser or its covered associates. The plaintiffs contend that the rule exceeds the Commission's statutory authority, and violates the Administrative Procedures Act and the First Amendment.

The plaintiffs in New York Republican State Committee and Tennessee Republican Party v. SEC had originally filed their challenge in federal district court. That court dismissed the suit for lack of jurisdiction, concluding that the federal courts of appeals have exclusive jurisdiction to hear challenges to rules adopted under the Investment Advisers Act of 1940. The plaintiffs subsequently appealed that decision to the Circuit Court and, in the alternative, asked the Circuit Court for direct review of the rule. The Circuit Court denied both requests in its August 25th ruling.

According to the Circuit Court, longstanding precedent supports the view that challenges to orders and rules under the Investment Advisers Act must be brought to the courts of appeals. In addition, a direct review by the Circuit Court is now time-barred because the Investment Advisers Act requires challenges to be brought within 60 days of the promulgation of a rule. In short, the plaintiffs were four years too late in bringing their case to the right court.

The Court noted that the plaintiffs still may petition the SEC to repeal or amend the rule. And, if the agency denies the petition, they can petition the Circuit Court for review of the SEC decision.

While the Circuit Court never got to the merits of the plaintiffs' challenge, this case is one of many in recent years in which pay-to-play laws and rules have been upheld by state and federal courts. Just last month a unanimous 11-member panel of the same court upheld the long-standing ban on federal political contributions by federal government contractors.

Financial services public contractors face significant compliance challenges from federal and state restrictions on political giving. The SEC pay-to-play rule is both complicated and confusing, and the Commission has stepped up its enforcement of the rule over the past two years. In addition, similar restrictions may apply to financial services firms under Municipal Securities Rulemaking Board Rule G-37 if they engage in municipal securities work. Many states and localities also limit political giving by investment advisers and municipal bond brokers/dealers through laws, rules promulgated by State Treasurers and Comptrollers, and policies adopted by state and municipal pension funds.

Financial services providers that do work for public entities would be wise to consult counsel to ascertain their risk exposure to federal and state pay-to-play laws. Non-compliance – even through inadvertent violations – can result in substantial penalties, loss of business, and reputational harm.

Last Updated: August 27 2015
Article by James A. Kahl
Womble Carlyle

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.

MSRB's Series 50 Pilot Exam to be Offered January 15, 2016 - February 15, 2016

The Municipal Securities Rulemaking Board's (MSRB) Municipal Advisor Representative Qualification Exam (Series 50) will be administered as a pilot exam January 15, 2016 – February 15,

2016. The exam registration window will be available beginning on September 21, 2015 and closing on January 14, 2016. During the enrollment window, municipal advisors can use the Financial Industry Regulatory Authority's (FINRA) Form U10 to enroll their municipal advisor professionals. For more information regarding the Series 50 pilot exam, see the MSRB's Regulatory Notice 2015-15.

Series 50 Pilot Exam	
Exam Window	January 15 – February 15, 2016
Enrollment Window	September 21, 2015 – January 14, 2016
Cost	$265
Number of Questions	120
Test Time	240 minutes (with an additional 30 minutes for a tutorial on how to complete the computerized exam)
Test Results	Test results will be mailed to candidates 8-12 weeks following the pilot

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SEC Asked to Approve Extension of Gift Rule to Non-Dealer MAs.

WASHINGTON – The Municipal Securities Rulemaking Board is asking the Securities and Exchange Commission to approve proposed rule changes that would address potential conflicts of interest by limiting the gifts and non-cash benefits that non-dealer municipal advisors can give to issuers and others in connection with their activities.

The board filed the proposed changes to its Rule G-20 on gifts, gratuities and non-cash compensation with the SEC on Wednesday. The rule already imposes these kinds of restrictions on dealer advisors. The amendments are part of a larger effort from the MSRB to develop a regulatory regime for municipal advisors as mandated by the Dodd-Frank Act.

The MSRB first proposed the rule changes last October and has now updated them based on feedback from market participants.

The modified rule would take effect six months after SEC approval.

"Amending the MSRB's existing gifts rule would ensure common standards for dealers and municipal advisors that all operate in the municipal securities market," said MSRB executive director Lynnette Kelly. "The principles of Rule G-20, together with the MSRB's rules on fair dealing, help preserve the integrity of the municipal market."

G-20 currently prohibits a dealer from giving any thing or service of value, including gratuities, that exceeds $100 per year to a person if the payments or services are related to municipal securities activities of the employer of the recipient.

Terri Heaton, president of the National Association of Municipal Advisors, had urged the MSRB set the limit for MAs at $250 per year and an anonymous commenter had suggested a $50 limit per year in comment letters sent last October, but the MSRB rejected both ideas. Heaton had raised concerns about MSRB statements that various Financial Industry Regulatory Authority rules were not codified into the proposed changes, but would still be applicable. She argued in her letter that since FINRA

does not regulate non-dealer MAs, they would be at a disadvantage because they do not have easy access or direct knowledge of the rules.

The MSRB agreed with Heaton's concerns and has codified the applicable FINRA rules into its amendments.

The board's proposal also lists a number of exceptions to the $100 per year limit. The limit would not apply to "normal business dealings," like gifts of meals or tickets to entertainment such as sporting and theatrical events if the regulated entity or associated persons host the event and the number of gifts is not "so frequent or so extensive as to raise any question of propriety," the MSRB said. It would also not apply to "legitimate business functions" that the Internal Revenue Service would recognize as deductible business expenses or infrequent gifts like those for weddings or funerals.

Several commenters worried the exceptions may leave too many opportunities for abuse, but the MSRB said that specifying conditions, such as that gifts be infrequent to fall outside the limit, are sufficient to address these concerns.

The proposal also would prohibit MAs and dealer-advisors from receiving reimbursement of certain entertainment expenses related to a muni offering from the bond proceeds. The October version said "reasonable and necessary" expenses for meals hosted in connection with the offering would be exempted under the section. But after negative feedback from several groups about the wording of the exception, the MSRB changed the language to "ordinary and reasonable" expenses, citing a standard taken from tax law.

The entertainment provision harkens back to a FINRA case from April 2013 where Alabama-based Gardnyr Michael Capital, Inc. used bond proceeds to pay itself back for three trips to New York where employees spent thousands of dollars unrelated to the firm's business. FINRA fined the firm $20,000 for violations of fair dealing and supervision rules but noted there was no specific prohibition on the firm's actions.

The MSRB also filed revisions to its Rules G-8 on books and records, and G-9 on preservation of records, with the SEC to align the requirements for maintaining records documenting compliance with G-20 for MAs.

Jessica Giroux, senior counsel and senior vice president of federal regulatory policy for Bond Dealers of America, said she believes the changes will not be controversial and that BDA has previously said the amendments would "promote a level playing field in the marketplace."

David Cohen, managing director and associate general counsel with Securities Industry and Financial Markets Association, similarly said SIFMA is happy the MSRB is moving toward a "level regulatory playing field among dealer and non-dealer municipal advisors." But he added SIFMA is disappointed the MSRB did not follow some of the group's suggestions.

BDA, SIFMA, NAMA and the Investment Company Institute all filed comment letters on the MSRB's first version and each plans to file comment letters with the SEC.

THE BOND BUYER

BY JACK CASEY

SEP 3, 2015 3:37pm ET

Not All Muni Interest Reported by High Earners.

WASHINGTON – Nearly half the tax-exempt interest reported on 2013 individual income tax returns was reported on returns filed by single or married taxpayers or heads of households with adjusted gross income of less than $200,000, according to recently released Internal Revenue Service statistics.

But a majority of the returns showing tax-exempt interest were from a primary taxpayer who was at least 65 years old, the report showed.

“Tax exempt municipal bonds are held by millions of middle-class investors but, in particular, half the holders of these bonds are over 65 and have presumably chosen to invest in the safety of municipal bonds for retirement,” said Jessica Giroux, general counsel and managing director of federal regulatory policy for the Bond Dealers of America. “This is a significant demonstration of support for municipal bonds as a solid investment and a secure source of financing for local governments.”

The statistics are from the IRS’ recently released complete report on tax year 2013 individual tax returns, which include the returns of those who are single and married. They are estimates based on a sample of unaudited individual tax returns filed by U.S. citizens and residents during the 2014 calendar year, the latest full year for which the data is publicly available. The tax-exempt interest reported by taxpayers includes interest on municipal bonds and tax-exempt dividends from mutual funds, the IRS said.

Typically, IRS annual reports about high-income tax returns focus on returns with income of over $200,000.

The report showed that most of the tax-exempt interest reported was from high income households. About 44.06% of the tax-exempt interest reported was from taxpayers with AGI of under $200,000 (including those with no AGI), and about 25.84% of the tax-exempt interest was from taxpayers with AGI of under $100,000. These percentages are similar to the ones in 2012, according to the IRS estimates.

However, most returns with tax-exempt interest were filed by households with AGI below $200,000. Specifically, almost 76% of the number of returns with tax-exempt interest showed AGI of less than $200,000, including no AGI.

Less than 4% of the number of all tax returns, regardless of whether tax-exempt interest was reported, were filed by taxpayers with AGI of at least $200,000, according to the IRS.

The income distribution of tax-exempt interest is not new and is probably a driver behind proposals to curb the municipal bond tax exemption for high earners, such as President Obama’s proposal to cap the value of the exemption at 28%, said Michael Decker, managing director and co-head of municipal securities at the Securities Industry and Financial Markets Association.

But to the extent that the 28% cap would apply to a sizable amount of tax-exempt bond interest, it would cause changes in the market. A 28% cap would cause investors to seek higher yields, which would translate to higher borrowing costs for state and local governments, Decker said.

In 2013, married taxpayers filing jointly would be in tax brackets above 28% if they had taxable income of more than $223,050. Taxable income tends to be less than adjusted gross income.

Howard Gleckman, a senior fellow at the Urban Institute, said that the most successful argument for the muni market to make to preserve the exemption is not to focus on the investors but instead to focus on how it helps state and local governments finance projects. Democrats like new projects and Republicans would prefer that projects be controlled at the state and local levels, he said.

Most tax-exempt interest reported on individual tax returns in 2013 was reported on returns with primary filers on the older side. Roughly 3.15 million of returns, or a little over half of the returns with tax-exempt interest, were filed by primary taxpayers who are 65 and older. Returns from those taxpayers reported interest of about $42.4 billion. An additional 1.39 million of returns with a total of about $15.04 billion tax-exempt interest were filed by primary taxpayers with ages of 55 to 64. In cases of joint tax returns, the age is based on the primary taxpayer's age, the IRS said.

"Munis tend to be a good product for retirees who are living off their savings," said Decker, who added that people shift from investing in equities to investing in the fixed-income markets as they approach retirement because bonds are safe and income bearing.

But Gleckman said it doesn't always make the most sense financially for seniors to invest in tax-exempt bonds, for example, if they live in a state without state income taxes and don't make much money.

About 5.99 million of the returns reported tax-exempt interest in 2013 of about $68.1 billion in current dollars, the IRS estimated. The number of returns with tax-exempt interest was half a percent higher in 2013 than it was the previous year, but the dollar amount was 4.2% less than in 2012.

The increase in the number of returns with tax-exempt interest comes after a decline in that category each year since 2008. The amount of tax-exempt interest has declined every year after 2010.

Decker said that the decline in tax-exempt interest in 2013 could be due to the fact that the muni market shrunk during that time. Also, in the low-interest rate environment, bonds are being refinanced and investors are holding bonds with lower interest rates, he said.

THE BOND BUYER

BY NAOMI JAGODA

AUG 31, 2015 4:41pm ET

TAX EXEMPTION - NEW YORK

Drug Policy Alliance v. New York City Tax Com'n

Supreme Court, Appellate Division, First Department, New York - September 1, 2015 - N.Y.S.3d - 2015 WL 5098407 - 2015 N.Y. Slip Op. 06693

Applicant for real property tax exemption petitioned under article 78 for order to annul determination of the New York City Department of Finance to deny that application. The Supreme Court, New York County, denied Department's motion to dismiss and directed Department to grant exemption. Department appealed.

The Supreme Court, Appellate Division, held that Department was entitled to answer petition after

denial of its motion.

After court denied its motion to dismiss article 78 petition by applicant for real property tax exemption, seeking to annul determination by New York City Department of Finance to deny application, Department was entitled to answer petition prior to court effectively granting summary judgment to applicant, even though record was arguably substantial and Department had conceded that its motion would be same whether viewed as pre-answer motion to dismiss or one for summary judgment, where parties were not given adequate notice that court would indeed treat motion as one for summary judgment.

TAX SALES - MARYLAND

Kona Properties, LLC v. W.D.B. Corp.

Court of Special Appeals of Maryland - August 28, 2015 - A.3d - 2015 WL 5090056

"These cases contain a common thread tying each together and furnishing the reason we granted the motions to consolidate. In each case, subsequent to the tax sale, the tax sale certificate was transferred to another limited liability company that shared either the same address, attorney and/or incorporator. The new holder of the tax sale certificate foreclosed the property owner's right of redemption and, for some unexplained reason, the certificate holder later decided that it did not want the property and failed to pay the bid price or the outstanding taxes and fees—payment of which is a prerequisite to obtaining the deed to the property. The original property owner or mortgage holder in each case later filed a motion in the circuit court to enforce the judgment against the certificate holder, requiring the certificate holder to pay taxes accruing after the tax sale and to pay the surplus bid to the property owner or mortgage holder. The circuit court granted all three motions to enforce and required the certificate holders to pay the taxes and bid surpluses to the collector."

The Court of Special Appeals granted holders' motions to consolidate appeals and held that:

- Orders granting motions to enforce judgment for surplus bids constituted final judgments;
- Trial court had jurisdiction to enforce judgments;
- Court did not abuse its discretion in finding lack of good cause to strike judgments foreclosing rights of redemption;
- Court had discretion to deny motion to strike mortgagee's motion for monetary judgment against holder;
- Former property owner was entitled to request that court enter judgment for surplus bids against holder;
- Mortgagees were entitled to request that court enter judgments against holders;
- Owner and mortgagees were not unjustly enriched by judgments; and
- Public policy considerations did not preclude court from entering judgments against holders.

Orders granting motions to enforce judgment constituted final judgments for purposes of appeal, in actions in which trial court granted motions to enforce judgment for surplus bids from tax sales owed to former property owner and mortgagees. Orders were entered as separate documents from docket entry, were signed by judge, and decided issue of whether tax sale certificate holders were obligated to pay bid surplus and taxes and interests and penalties due under original judgments to foreclose redemption rights, orders had hallmark of finality in that they put parties out of court, and, by directing holders to pay surplus bids and all taxes together with interest and penalties on taxes due on properties, there was nothing left for court to do to ensure that owner and mortgagees

received bid surplus, as parties knew amounts of surplus and, thus, knew exactly how much holders had to pay.

Trial court had jurisdiction to enforce judgments for surplus bids from tax sales owed to former property owner and mortgagee of another property against tax sale certificate holders, following foreclosures of right to redemption, and, thus, owner and mortgagee had standing, despite claim that court lacked jurisdiction because owner and mortgagee were not properly served. Holders could not have asserted allegedly defective service as justification for vacating judgments foreclosing rights to redeem, and owner and mortgagee had actual notice, as mortgagee filed affidavit stating that it received service and counsel for mortgagee proffered that officer for owner and mortgagee would have testified that they received notice.

Public policy considerations did not preclude trial court from entering monetary judgments against tax sale certificate holders for surplus bids owed to former property owner and mortgagees, despite claim that judgment would send signal to property owners that it was acceptable not to pay property taxes. None of the parties paid taxes due on properties before or after sale, and, thus, city had been subject to cycle of tax delinquency, whereby tax sale purchaser or certificate holder failed to pay its own property taxes after foreclosing title owner's right of redemption, which could not have been intent of Legislature in crafting provisions of tax sale statute.

TAX - OHIO

Schwartz v. Cuyahoga Cty. Bd. of Revision

Supreme Court of Ohio - August 27, 2015 - N.E.3d - 2015 WL 50383212015 -Ohio- 3431

Property owner sought review of decision of the county board of revision (BOR), which retained fiscal officer's valuation of property. The Board of Tax Appeals (BTA) affirmed. Property owner appealed.

The Supreme Court of Ohio held that:

- Constitution did not repeal by implication statutory restriction on using prices from auctions and forced sales as evidence of property value, and
- Forced sale of real property by United States Department of Housing and Urban Development (HUD) was voluntary and at arm's-length.

State constitutional provision requiring legislature to pass law taxing real property "according to its true value in money" did not repeal by implication statutory restriction on using prices from auctions and forced sales as evidence of property value. Auction-and-forced-sale statutory provision codified a general presumption that a sale price from an auction or forced sale was not good evidence of a property's value because the underlying transaction was not voluntary and at arm's-length, merely instructing assessors how to determine a property's value.

Forced sale of real property by United States Department of Housing and Urban Development (HUD) was voluntary and at arm's-length, and therefore purchaser rebutted statutory presumption that sale price was not evidence of property's value for tax purposes, where property was on the market for three years (including one year after the property was transferred to HUD), a for-sale sign was posted at the property and purchaser made several offers to buy it, owner rejected purchaser's offers and was planning to sell to a different prospective buyer, when that sale fell through, owner contacted purchaser and advised him that property would be razed unless he wanted

to buy, and other sales on street evidenced that the market could not bear a higher sale price at that time.

DOJ Investigating Competition In Muni Bond Listing Market.

Law360, New York (September 2, 2015, 6:21 PM ET) — The U.S. Department of Justice is investigating whether several inter-dealer brokers have colluded to thwart competition from rival trading and price-listing services for pricing data on secondary sales of municipal bonds, according to sources close to the probe.

The Antitrust Division's networks and technology section opened an investigation into allegations that the dealers, that handle second-hand trades of municipal bonds between banks and other investors, have agreed to limit information about their buying and selling rates to a site owned by the same group as at least two of the major firms called MuniBrokers.com, two sources close to the investigation told Law360.

The investigation began in April, and the watchdog has been reaching out to industry players, including brokers and price-listing sites, the sources said.

The probe focuses on the market for trading municipal bonds between investors after they have been issued by states, cities and the like.

Unlike stocks and similar types of securities that trade on public exchanges, fixed-income derivatives such as muni bonds trade in an extremely fragmented market with limited transparency about pricing.

Inter-dealer brokers handle large wholesale trades for banks and other institutions looking to move blocks of bonds anonymously, and have historically posted the rates at which they're willing to buy or sell a certain number of bonds on their own websites without charge as well with some price aggregators, such as Fabkom Inc.

At the same time, platforms like KCG BondPoint, TradeWeb Direct and former market leader Bond Desk, which is now part of TradeWeb, have allowed dealers and others to post information about bonds for sale to the retail market.

MuniBrokers.com launched in early 2014 as a platform for the inter-dealer brokers to share their pricing information, and there are now nine firms using the service, according to the website.

The DOJ is investigating whether firms using MuniBrokers.com's trading system have agreed, or have been forced, not to advertise their rates on other platforms, effectively boycotting rival services, the sources said. The agency is also questioning whether the inter-dealer brokers have colluded to keep other platforms that list the prices at which brokers want to buy and sell bonds from sharing that data from one another.

MuniBrokers.com is owned by the same group as inter-dealer broker Hartfield Titus & Donnelly LLC, and both companies are run out of the same Jersey City, New Jersey, offices, according to their websites. Hartfield and another major inter-broker dealer, RW Smith & Associates LLC, are also owned by the same holding company, Town Square Holding LLC.

It is unclear whether the other inter-broker dealers have any stake in the MuniBrokers.com

platform.

Jay Caldas, president of MuniBrokers.com and a partner at Hartfield, declined to comment on the matter.

RWS President and CEO Paige Pierce said “until the investigation is concluded, we are unable to comment.”

The other inter-dealer brokers that use MuniBrokers.com are Butler Muni LLC, Regional Brokers Inc., Stark Municipal Brokers, Clayton Lowell & Conger Inc., Tullett Prebon unit Chapdelaine, BGC Brokers division Wolfe & Hurst, Bond Brokers Inc. and Sentinel Brokers Co. Inc.

RBI President Joe Hemphill declined to comment on the matter. A representatives for Clayton Lowell declined to comment on the matter.

Stark President and CEO Stephen Stark said he was not aware of the investigation and had not been contacted by the DOJ.

Representatives for Butler, Chapdelaine and BGC did not immediately return requests for comment. People at Wolfe and Sentinel declined to provide representatives for comment.

A representative for the DOJ did not respond to requests for comment Wednesday.

By Melissa Lipman

–Editing by Chris Yates.

Texas Law on P3 Selection Process Takes Effect.

A Texas law establishing a center to help government agencies select projects to be developed through public-private partnerships took effect Sept. 1.

HB 2475, signed into law by Gov. Greg Abbott on June 19, established the Center for Alternative Finance and Procurement within the Texas Facilities Commission, which will consult with government agencies regarding best practices for procuring and financing qualifying projects. The center also will assist agencies “in the receipt of proposals, negotiation of interim and comprehensive agreements and management of qualifying projects.”

The law could spur municipalities and public agencies with tight budgets to look to the private sector for financing and management services and state and local governments could use it to help address infrastructure needs, such as vital water projects, noted law firm Vinson & Elkins LLP in a blog post.

“With Texas’ demand for water on the rise, coupled with projected population and economic growth, the bill is an important step toward meeting emerging challenges to the state’s water security,” the law firm wrote.

The center will be required to arrange for an architect, professional engineer or registered municipal advisor to advise agencies about a P3’s costs and benefits. For construction or renovation projects with an estimated cost of less than $5 million, these advisory services can be provided by qualified agency employees. More costly projects must be evaluated by an independent expert.

The law also allows the agency procuring the project to charge a “reasonable” fee to cover the costs of the center’s project review and consultation services.

HB 2475 places a notable exception on the types of P3s that developers can pursue by eliminating an agency’s option to consider unsolicited proposals, Christopher Lloyd of McGuireWoods Consulting LLC pointed out during a session at NCPPP’s 2015 P3 Connect conference.

The new law adds to the level of P3 oversight some agencies already exert. Both the state’s facilities commission and its department of transportation have adopted guidelines on project application requirements, review criteria and evaluation processes. El Paso, San Antonio, Dallas and Houston have established similar guidance,

These requirements, while adding steps to those that agencies already follow to pursue P3s, also signal the state’s willingness to a growing variety of such projects, Vinson & Elkins argues.

“By enacting House bill 2475, the Texas Legislature sent a strong signal that it is open to private involvement in infrastructure financing and delivery across a wide range of sectors,” the firm wrote.

NCPPP

By Editor September 3, 2015

GASB to Re-Examine State and Local Financial Reporting Model.

WASHINGTON — The Governmental Accounting Standards Board is planning to re-examine the standardized framework that state and local governments use to report their financial information.

The board added the project to its technical agenda on Tuesday. It plans to consider several improvements to components of the financial reporting model, including a change that would cause governments to provide more detail about their debt service funds in their financial reports. It also wants to see if changes can be made that would lead governments to release their financial reports in a more timely fashion.

GASB is likely to begin deliberations on areas of the project in October and will reach tentative conclusions that will help the board to develop an initial “due process document,” which is expected to be issued for public comment by the end of next year, according to a memorandum on the project. A final statement or product from the project is not expected to be issued until 2020 or 2021, and the statement would not take effect until after that, said GASB chairman David Vaudt.

The current “blueprint for state and local government financial reporting,” was established by GASB Statement 34, which was introduced in 1999, Vaudt said.

That statement established the format of basic financial reports, as well as some of the notes related to the statements and supplementary information such as the management’s discussion and analysis (MD&A), according to the memorandum. The MD&A is basically the “plain language” description of the information in the financial statements, Vaudt said.

Statement 34 also called for government-wide financial statements that included the reporting of infrastructure, other capital assets and long-term liabilities. Under the standards, state and local governments provide government-wide financial statements as well as statements on their

governmental and proprietary funds, emphasizing major funds.

Over the past few years, GASB's advisory council, which consists of people from stakeholder groups, identified re-examination of the financial reporting model as one of its top priorities for the board to consider, Vaudt said.

GASB's staff conducted research on the idea, including holding nearly a dozen roundtables in 2013 with stakeholders – preparers, auditors and users of financial statements. The data gathered from the roundtables was then used to develop surveys for each type of stakeholders. GASB received survey responses last year from 265 preparers, 164 auditors and 184 users. After receiving the survey data, the board's staff conducted nearly 150 interviews with stakeholders in the first half of this year, Vaudt said.

Through the research, GASB staff learned that "most of the components of the financial reporting model are effective," Vaudt said. "However, a number of areas were identified where improvements could be made."

The most fundamental changes to be explored as part of the new project relate to financial statements on governmental funds. Governments currently use the modified accrual method of accounting for these funds. The modified-accrual method gives more of a short-term look at the funds. GASB wants to examine whether improvements can be made to make sure that governmental funds are measured in a manner that agrees with its conceptual framework for governmental reporting. The board is also going to explore the possibility of having governmental funds measured in a way that is more consistently applied across all governments, Vaudt said.

GASB plans to explore the possibility of extending guidance for "major funds" so that debt service funds are more likely to be considered as part of these types of funds. Users of financial statements said that in most cases, governments' debt service funds didn't qualify as major funds, but that they would like to see more detail about debt service funds in financial reports, Vaudt said.

When it comes to government-wide financial statements, questions were raised about the effectiveness of the statement of activities because of the format and whether that could be improved. The board will also consider whether a government-wide statement of cash flows should be required, according to Vaudt and the board's memo.

When it comes to the MD&A section, GASB will focus on exploring "making this section more meaningful," Vaudt said. The board will look at whether some sections of the MD&A could be eliminated and how guidance on other sections could be enhanced.

"There's just been concern from the user group that many a times, the disclosures become very boilerplate and don't really get into the whys behind their changes," Vaudt said. For example, the section will state that a metric increased by a certain amount but won't explain the reasons for the gain, he said.

Throughout the project, an important part of GASB's work will be to look for areas where the complexity and length of financial statements can be reduced. "One of the primary criticisms of government finance reports is they're not available on a timely basis," Vaudt said. Vaudt said he thinks everyone acknowledges there's always room to improve the financial reporting model, though there may be some resistance to change. When Statement 34 was first developed, it was very controversial. Vaudt noted that, as he's mentioned re-examining the financial model, some people have said they don't want there to be changes to it.

THE BOND BUYER

by NAOMI JAGODA

SEP 1, 2015 2:34pm ET

Kentucky City Claiming Bankruptcy May Not Be Broke, Moody's Says.

Hillview, Kentucky, the first city to file for bankruptcy since Detroit, may struggle to prove it's insolvent and in need of court protection, Moody's Investors Service said.

Because of an $11.4 million legal judgment to a local company, Hillview filed for protection Aug. 20. The locality of about 8,000 people has about $13.8 million in debt, compared with revenue of $2.5 million in the 2014 fiscal year. Though the burden seems insurmountable, Hillview under Kentucky law can issue bonds to cover losses in legal judgments and pay off the resolution over the course of a decade, Moody's analyst Nathan Phelps said Monday in a report.

The local company, Truck America Training LLC, has indicated it may fight the city's bankruptcy by asking the judge overseeing the case for permission to interview city officials under oath and for access to internal city financial documents. Should Truck America or another creditor convince U.S. Bankruptcy Judge Alan Stout in Louisville that the city isn't eligible to remain under court protection, the case would be dismissed and the company free to try to collect the judgment.

Hillview's plight parallels that of Mammoth Lakes, California, a ski resort community of 8,200 near Yosemite National Park that filed for bankruptcy in 2012 because of a $43 million development lawsuit, Moody's said. The locality exited Chapter 9 after about four months because it reached a settlement with the land-acquisition company.

Tax Increase

Hillview, which hasn't defaulted on its general-obligation bonds, also has room to increase taxes on wages, business profits and property, Moody's said. Kentucky courts have said municipalities can raise levies above the maximum rate to repay debt backed by their full faith and credit, according to Moody's.

After filing a Chapter 9 petition, a municipality automatically gains temporary protection from creditors. Unlike in corporate bankruptcies filed under Chapter 11, the city or county can't proceed with its restructuring case until it convinces a judge it's eligible to remain under court protection, in part by showing it isn't paying debts as they come due.

In Aug. 28 court filings, the city claimed it was eligible because it lost the court case to Truck America. The case, which is related to a land sale, led to a judgment for the company of $11.4 million plus annual interest of 12 percent.

The city claimed it tried unsuccessfully to negotiate with creditors before filing for bankruptcy.

The case is In re City of Hillview, Kentucky, 15-32679, U.S. Bankruptcy Court, Western District of Kentucky (Louisville).

Bloomberg News

by Steven Church and Brian Chappatta

August 31, 2015 — 7:45 AM PDT Updated on August 31, 2015 — 9:12 AM PDT

Emanuel Said to Plan Property-Tax Boost for Chicago Pensions.

Chicago Mayor Rahm Emanuel is preparing to press for a property-tax increase of about $500 million to shore up police and firefighter pensions that threaten the city's solvency, the Chicago Tribune reported.

The proposal will be part of Emanuel's Sept. 22 spending plan for the budget year beginning Jan. 1, the newspaper reported. The increase, expected for months, would be the centerpiece of a budget that is $426 million out of balance.

When asked how difficult it will be to raise real-estate levies, Emanuel expressed confidence on Thursday that such an increase specifically to fund public-safety workers' pensions would pass the city council.
"We're going to do it in a fair and progressive way," Emanuel told reporters. "If you're asking me, do I believe we'll get it done, the short answer is yes because I actually believe aldermen are up to the task of charting a new course for Chicago's future."

Chicago needs to pay down a $20 billion debt to its retirement funds that's left it with a lower credit rating than any big U.S. city except Detroit, which went through a record bankruptcy.

"It serves as a clear demonstration of Chicago's willingness to make the difficult but necessary decisions," Ty Schoback, a senior analyst in Minneapolis at Columbia Threadneedle Investments, said in an e-mail. The company manages about $30 billion in municipal bonds, including some Chicago debt.

Reckoning Day

The city faces a reckoning after years of failing to save enough to pay the benefits it promised employees. Over the past decade, Chicago has put $7.3 billion less into the pension funds than actuaries recommended. Its next annual pension payment is projected to jump 10 percent, to $976 million.

Chicago's effort to reduce its liabilities hit an obstacle in July, when a judge ruled the benefits cuts it sought were illegal. The city will appeal to the Illinois Supreme Court, which in May threw out a pension overhaul adopted by the state, saying workers' pensions are protected.

The challenges and subsequent credit downgrades have spurred a drop in the price of Chicago bonds. A portion of $44.9 million of federally tax-exempt securities maturing in 2033 traded Thursday at an average of 91.8 cents on the dollar. That's down from $1.01 when it was first offered in 2014. The yield averaged 6 percent Thursday, 3.2 percentage points more than benchmark debt.

Bloomberg News

by Tim Jones and Elizabeth Campbell

September 3, 2015 — 7:03 AM PDT Updated on September 3, 2015 — 1:45 PM PDT

Bloomberg Brief Weekly Video - 09/03/15.

Taylor Riggs, an editor at Bloomberg Brief, talks with Joe Mysak about this week's municipal market news.

Watch the video.

September 3, 2015

U.S. Municipal-Bond Probe Tied to MuniBrokers Said Set to Close.

The U.S. is poised to close an antitrust investigation in the municipal-bond market involving the operator of an Internet-based trading platform that distributes offerings for brokers, according to a person familiar with the matter.

MuniBrokers.com was contacted by the Justice Department's antitrust division in April as part of a general inquiry, said Ed Smith, general counsel at Hartfield, Titus & Donnelly LLC, which owns the service. Justice Department lawyers have since recommended closing the probe, according to the person, who declined to be named because the matter isn't public.

Trading in the $3.6 trillion state and local debt market is handled over-the-counter by dealers, rather than exchanges. Investors looking to trade in the secondary market must buy or sell exclusively through dealers. These dealers can turn to inter-dealer brokers to facilitate trades.

Law360, a legal-news service, reported Wednesday that the Justice Department was investigating whether firms using MuniBrokers.com's trading system have agreed or have been forced to boycott competing services, citing unnamed sources close to the probe.

Smith said MuniBrokers.com doesn't restrict people from using the service and said they are not a target of an investigation. Jay Caldas, MuniBrokers.com president, said the trading system hasn't restricted the nine inter-dealer brokers that use it from using other systems, nor has there been any agreement among them to shun other systems.

"We distribute to other platforms, we enhance transparency," said Caldas. "We in no way restrict any of the participants in MuniBrokers."

MuniBrokers.com's website distributes bid lists to 1,400 users at 250 firms and to third-parties, including Bloomberg LP, which provides the information to clients. Brokers that use other software to circulate information can join MuniBrokers.com if they choose, Smith said.

Jersey City, New Jersey-based MuniBrokers.com began operations in 2014. Smith said he hasn't heard much from the government in the last few months.

"It's been very quiet," he said. "They're trying to figure out how we operate. They're trying to figure out what you guys do, what's your business model, what's your marketplace."
Peter Carr, a Justice Department spokesman, declined to comment.

About 35,000 offerings and 2,500 to 3,000 bids-wanted are displayed daily, said Caldas. It competes with Fabkom, another trading-system for brokers founded in 1990.

“They were in this space alone for 20 years until we entered in,” Caldas said.

The nine firms that use MuniBrokers.com are: Butler Muni LLC; Chapdelaine & Co.; Clayton, Lowell & Conger; Hartfield Titus; Regional Brokers Inc.; RW Smith & Associates Inc.; Sentinel Brokers Co.; Stark Municipal Brokers; and Wolfe & Hurst Bond Brokers Inc.

In a February 2015 speech, U.S. Securities and Exchange Commission member Luis Aguilar said there’s evidence that dealers have refused to disclose to clients quotes they get through electronic platforms or contacts with other dealers.

“These factors have conspired to create a market that is more illiquid, opaque, costly, and unfair that it should be,” Aguilar said.

Bloomberg News

by Martin Z Braun and David McLaughlin

September 3, 2015 — 1:36 PM PDT

Puerto Rico Balloon Payments Seen as Risk for Some Bond Insurers.

For bond insurers, Puerto Rico’s balloon payments on debt that puts off interest bills for decades is a billion-dollar asterisk.

With Governor Alejandro Garcia Padilla set to receive a plan as soon as next week to restructure $72 billion of debt, the commonwealth’s capital appreciation bonds, which were first sold for pennies on the dollar because they don’t pay interest until maturity, threaten to saddle Ambac Financial Group Inc. and MBIA Inc. with swelling liabilities.

The companies typically use the price at which the bonds were issued when disclosing the potential payouts they face. Once interest is included, Ambac says its Puerto Rico exposure jumps to much as $10.5 billion from $2.4 billion. For MBIA’s National Public Finance Guarantee Corp., it more than doubles to about $10.5 billion.

“The difference between principal at issuance and the amount due at maturity is enormous” on capital-appreciation bonds, said Tamara Lowin, director of research at Rye Brook, New York-based Belle Haven Investments, which oversees $3 billion in munis. “Ignoring the accreted value is irresponsible.”

Bond insurers, which agree to make interest and principal payments if an issuer defaults, are among those with the most at stake as Puerto Rico is pushed to the financial brink. Years of borrowing caught up to the island as the economy languished and residents moved out. The territory defaulted last month for the first time, when it made just a fraction of a payment due on uninsured securities sold by one of its agencies, and Garcia Padilla’s advisers are scheduled to present a debt-adjustment plan on Sept. 8.

Shares of Ambac, MBIA and rival Assured Guaranty Ltd., which tumbled as the commonwealth veered toward default, rose this week after Puerto Rico’s electric company struck an agreement that left investors facing smaller losses than some analysts had predicted. Puerto Rico’s bonds also climbed amid speculation that the government will be able to reach other such deals.

Island officials have yet to say how much of their debt they'll seek to cut, or which securities may be affected. Some investors have snapped up insured Puerto Rico securities, confident that insurers have enough to cover any defaults.

Assured, which insures $9.1 billion of commonwealth debt as measured by principal and interest, has $12.6 billion in claims-paying resources, according to company filings. Ambac has $8.8 billion to meet obligations and National has $4.9 billion, company disclosures show.

National and Ambac say they're confident in their ability to weather a Puerto Rico restructuring, and the biggest balloon payments faced by the commonwealth won't come due for decades. Assured says its $72 million exposure to capital-appreciation bonds is minimal.

MBIA is rated AA-, the fourth-highest grade, from Standard & Poor's, which ranks Assured AA, one step higher. Ambac isn't rated by S&P.

Those rankings are based on their ability to pay debt service on the island securities they insure for the next four years, said David Veno, an analyst at S&P in New York. The largest portions of Puerto Rico's capital appreciation bonds, or CABs, don't factor into that calculation because they don't mature in that time.

Ambac guarantees at least $7.3 billion of Puerto Rico's payments on CABs, most of which are backed by sales taxes and aren't due until 2047. National has more than $4 billion.

MBIA began including the full debt-service total along with the par amount in its last two quarterly reports, which reflect its exposure to CABs. Adam Bergonzi, National's chief risk officer, said the bonds, known by the Spanish acronym Cofina, are backed by a top claim on sales taxes that are sufficient to cover the debt payments.

"We are comfortable with our Cofina exposure," he said in a statement. Though CAB payments may seem large, "collection levels exceed amounts necessary to service all senior debt in future years."

Ambac discloses its exposure to Puerto Rico interest payments on its web site, though its most recent quarterly filing includes only a tally based on the amount of bonds outstanding.

"You need some sort of consistent basis to disclose your par exposure in your portfolio, and that's a metric over time that investors have found valuable in assessing the guarantors and their risk," David Trick, chief financial officer of Ambac, said in an interview. "It's hard to make everything perfectly apples-to-apples without making disclosures extremely complex and potentially confusing."

CABs have drawn scrutiny in states including California, Michigan and Texas because of the financial squeeze the securities put on local governments when they come due. All three have banned or limited the ability of officials to sell them.

Texas's bill, which took effect Sept. 1 and restricts CAB maturities to 20 years, is a credit positive for the state's school districts because they will have more stable debt burdens, Moody's Investors Service said Thursday in a report.

In 2007, Puerto Rico issued Cofina bonds backed by Ambac due in August 2054 that netted the commonwealth $701 million up front, data compiled by Bloomberg show. As the debt matures, investors are supposed to receive about 10 times that amount.

The securities have traded at about 6.8 cents on the dollar over the past month, compared with 9.2 cents when they were issued. Usually zero-coupon bonds increase in price as they get closer to

maturity.

“The biggest risk for National and Ambac is Cofina,” said Bill Bonawitz, director of municipal research in Philadelphia at PNC Capital Advisors. Because of the CABs, “they would ultimately owe enormous numbers.”

Bloomberg News

by Brian Chappatta

September 3, 2015 — 9:01 PM PDT Updated on September 4, 2015 — 6:02 AM PDT

Moody's: Illinois' Budget Impasse Secondary to Intensifying Pension and Revenue Problems.

New York, August 31, 2015 — The State of Illinois’ (A3 negative) current budget stalemate underscores the weak governance already incorporated into its rating, and is symptomatic of the state’s severe fiscal challenges, Moody’s Investors Service says in “State of Illinois: Late Budget Matters Less than Solving Pension and Revenue Problems.”

“Illinois projects its income and other taxes to generate $32 billion this fiscal year, or $5.4 billion less than expenditures without cuts,” author of the report and Moody’s Vice President — Sr Credit Officer Ted Hampton says. “While the state still has options to address its current-year deficit, continued political gridlock and the inability to reach an agreement by late September will greatly increase the likelihood of the deficit moving from projected to actual.”

The state also faces intensifying pressure to fund retiree benefits, which account for roughly 24% of its current general fund expenditures. The pension funding situation is compounded by retiree healthcare benefits costs, which are growing at about 6.5% a year.

“The state’s ability to manage these pressures will be a primary determinant of future rating actions. Given the state’s ironclad protection of benefits for current workers and retirees, Illinois requires a long-term plan to ensure it can at least comply with statutory funding requirements,” Hampton says.

Moody’s says the state has been deficient for many years in meeting the standardized annual required contribution (ARC) requirements to its pensions, and has been legally blocked from reducing its accrued liabilities via pension benefit cuts.

In the absence of a budget, Illinois will eventually have insufficient revenues to fund likely expenses, even as the pace of spending has slowed from last year. Some expenses have been paid because they do not require appropriation, have been mandated by court orders, or are allowed under limited appropriation measures.

Like other states, Illinois has had budget delays before, most recently in FY 2010. Moody’s believes it is unlikely Illinois can significantly reduce expenses without having a full budget in place, especially with services like healthcare that continue to be provided.

The report is available to Moody’s subscribers here.

Moody's: California's State and Local Pension Costs Rising in Face of Limited Reform Options.

New York, September 02, 2015 — The State of California (Aa3 stable) provides the strongest level of legal protections for its public pension benefits via a series of state supreme court decisions, which limits both the state's and its local governments' options to address pension challenges apart from making higher budgetary contributions, Moody's Investors Service says.

Numerous court decisions, collectively known as the "California Rule," have given California pensioners ironclad legal safeguards limiting reforms on pensions and retiree health benefits to future employees, says Moody's in its new report "California and its Local Governments Face Sustained Pension Cost Hikes."

"Because of the California Rule, recent statewide pension reforms will take years to materialize because they are limited to new employees. State and local government contributions to address accumulated unfunded pension liabilities will therefore continue rising for the next several years." says author of the report and Moody's AVP — Analyst Thomas Aaron

Two of the largest US public pension systems, the California Public Employees Retirement System (CalPERS, Aa2 stable) and the California State Teachers Retirement System (CalSTRS, Aa2 stable), comprise a significant portion of pension exposure for the state and its local governments. In addition, there are a number of large cities and counties with localized plans with benefits set at the local level.

California currently has the highest adjusted net pension liability of any state, with an FY 2013 figure of $189.4 billion. However, the state's huge economy places this amount at 92.5% of revenues, which is 17th highest among states and above the 50-state median of 52.8% of revenues.

In 2012, the state passed a broad set of pension reforms which impacted state, most local governments and many participants in CalPERS and CalSTRS. The Public Employees' Pension Reform Act (PEPRA) instituted changes for employees hired after January 1, 2013 or later. This included capping levels of "pensionable" compensation and less generous pension benefit formulas.

Additionally, in 2014, the state implemented reforms and mandatory contribution increases designed to substantially improve CalSTRS' funding trajectory and prevent unfettered growth in the plan's unfunded liabilities, which would have led to asset depletion by the mid-2040s.

While state and local pension costs continue to increase, the maturation of pension plans and their continued reliance on equities and other risky investments lends an additional element of contribution volatility. Efforts to reduce volatility risk are being considered, but would push contribution requirements for the state and local governments beyond what is already anticipated.

The report is available to Moody's subscribers here.

Fitch Updates U.S. Water and Sewer Revenue Bond Rating Criteria.

Fitch Ratings-Austin-03 September 2015: Fitch Ratings has updated its sector-specific rating criteria report titled 'U.S. Water and Sewer Revenue Bond Rating Criteria.' The report replaces

Fitch's existing rating criteria published July 31, 2013. No changes to existing ratings are expected as a result of the update.

Fitch has identified four key rating drivers that affect the credit quality of water and sewer revenue bond issuers:

- **Governance and Management:** A utility's operating and fiscal health is highly dependent on the actions of the utility's employees and governing body;
- **Financial Profile:** Fitch evaluates both historical and forecast financial results to determine the ability of a utility to fund operating and capital needs and meet its debt obligations;
- **Debt Profile:** Fitch analyzes the level and structure of a borrower's debt in determining overall creditworthiness;
- **Operating Profile:** The ability of a utility to provide service to its customers and generate resources sufficient to meet its financial obligations is affected by a range of factors from the deployment of assets to the health of the service area.

The updated criteria report is available here.

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BDA Submits Letter to SEC on TRACE 'No Remuneration' Indicator.

Bond Dealers of America submitted a letter to the SEC in response to a request for comment on a proposal to require a 'No Remuneration' indicator for TRACE trade reports when trade prices do not include a commission or markup, markdown.

This SEC-filed proposal would harmonize TRACE reporting with the previously approved amendments to G-14 for municipal securities trade reporting. The Commission approved those amendments in May. The BDA comment letters to SEC and MSRB on those proposed amendments to G-14 can be read here.

BDA's letter to the SEC focuses on concerns with increasing operational and TRACE reporting complexity for smaller dealers in more complex taxable securities.

Regulatory Notice Summary

SR-FINRA-2015-026: Proposed Rule Change to FINRA 6730 to Require an 'No Remuneration' Indicator When a TRACE Report Does Not Reflect a Commission or Mark-up/Mark-down

Proposed Rule Change to FINRA 6730: Currently, the prices reported to TRACE for agency and principal trades include markups, markdowns, and commissions. There is no indicator for a trade that is reported to TRACE and publicly displayed when the price does not include a markup, markdown, or commission that may be applied after the required TRACE reporting timeframe (based

on a fee-based account or when markup, markdown is based on a customer's monthly trading volume).

The proposal would require: a 'No Remuneration' indicator for trades that do not include a commission or markup, markdown where one is not assessed on a trade-by-trade basis or when the amount is not known at the time the trade is required to be reported. The rule change will be effective upon SEC approval. The implementation date will be May 23, 2016.

Harmonizing with G-14: In May, SEC approved a similar change (for customer trades only) to G-14.

We hope this information is helpful. Please reach out to the BDA with any questions or comments.

Jessica Giroux at jgiroux@bdamerica.org

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Puerto Rico's Power Authority Reaches Deal With Bondholders.

Puerto Rico's power authority said Wednesday that it agreed on a debt restructuring plan with a group of bondholders, in what officials painted as an important step in the island commonwealth's efforts to improve its finances.

The deal, after months of talks between the Puerto Rico Electric Power Authority and a group of mutual-fund companies and hedge funds, could pave the way for similar agreements between investors and the island's struggling public agencies, analysts said.

The Government Development Bank, the island government's fiscal agent, is already laying the groundwork for negotiations with investors who own some of its bonds. Some Puerto Rico bonds rallied as much as 23% on news of the power utility's deal, though they continued to trade at a deep discount to par value.

The bondholders who reached the agreement with the power authority, such as Franklin Resources Inc., OppenheimerFunds and hedge funds including BlueMountain Capital Management LLC and Marathon Asset Management, are slated to receive 85% of the face value of their bonds in exchange for new securities that will be designed to carry investment-grade ratings. Bonds from the authority, which has about $9 billion in debt, are currently rated junk.

The agreement "sends a positive message to the market that there is a way to get a consensual deal that is equitable for both parties," said Lisa Donahue, chief restructuring officer for the authority. The power utility released a term sheet outlining the framework of the plan, though the parties still have to prepare a more formal agreement.

Puerto Rico has been struggling with a sluggish economy and high unemployment for years. The situation prompted Gov. Alejandro García Padilla in June to call the island's $72 billion in debt unpayable, and he has directed a group of government officials to produce a broader fiscal adjustment plan for the island. Its financial troubles are the latest to hit the usually quiet market for municipal bonds, which has been rattled in recent years by large bankruptcies in Detroit and Jefferson County, Ala.

The deal gives the power authority “a fresh start and financial flexibility, with bondholders providing meaningful sacrifices to make that happen,” Stephen Spencer of Houlihan Lokey, the bondholders’ financial adviser, said in a statement. He said the bondholders will work “to finalize these steps and complete the transaction as quickly as possible.”

The restructuring agreement is still contingent on several factors, including obtaining legislative authority for certain aspects of the agreement, underscoring the complexity of the challenges Puerto Rico faces in reducing its debt. Bond insurance companies, including Assured Guaranty Ltd. and MBIA Inc., and other lenders haven’t agreed to the restructuring deal, though the power authority said in a statement that it will continue to negotiate with those parties.

“We have a strong track record of protecting our economic interest related to credits in financial distress and are continuing to negotiate in good faith,” said Robert Tucker, head of investor relations and communications at Assured, in a statement.

Most of the power authority’s creditors also agreed to extend a so-called forbearance agreement until Sept. 18, in which they agree not to exercise certain remedies. MBIA unit National Public Finance Guarantee Corp., however, didn’t extend the agreement. A spokesman for National declined to comment on why the insurer didn’t extend, or whether any action would be taken.

“There’s a lot of detail still to be worked out,” said Rick Donner, senior credit officer at Moody’s Investors Service. Still, the fact the forbearance agreement was extended suggests “the negotiations have reached a critical stage,” he said.

Bonds from the power authority rallied after the deal, reflecting the mood among some investors that the bondholder losses were less severe than expected. On Wednesday, a 2026 bond from the utility traded at 67.25 cents on the dollar, up from 54.57 cents on Monday, a 23% gain, according the Electronic Municipal Market Access website.

Not all investors were buying.

“I still have a lot of questions, and I’m not willing to jump into purchasing anything yet,” said Howard Cure, director of municipal research at Evercore Wealth Management, which oversees $6 billion and doesn’t own any bonds from the power authority.

According to the restructuring plan, bondholders will have the option to receive two types of securities in exchange for their existing bonds, with one carrying interest rates as high as 4.75% and the other as high as 5.5%. The first set of bonds will pay interest for the first five years, but the group of higher-rate bonds will defer interest payments during that time. The bonds will be scheduled to mature in 2043, according to the term sheet.

All investors who own uninsured bonds from the power authority will have the opportunity to participate in the exchange. The bondholder group that led the talks also agreed to discuss providing financing so the authority could offer cash to other investors who don’t want the new bonds. An offering price hasn’t yet been worked out.

The agreement is forecast to reduce the authority’s debt principal by about $670 million and save more than $700 million in principal and interest payments over the next five years.

THE WALL STREET JOURNAL

By MIKE CHERNEY

Updated Sept. 2, 2015 5:35 p.m. ET

Write to Mike Cherney at mike.cherney@wsj.com

Taxpayers, More Pension Burdens Headed Your Way.

Public pension fund managers from California to New York are slashing investment predictions to their lowest levels since the 1980s, a shift that will mean greater hardships for employees and cash-strapped governments as Americans age.

New upheavals in global markets and a sustained period of low interest rates are forcing officials who manage retirements for nearly 20 million U.S. beneficiaries to abandon a long-held belief that stocks, bonds and other holdings would earn 8% each year, as well as expectations that those gains would fund hundreds of billions in liabilities.

More than two-thirds of state retirement systems have trimmed assumptions since 2008 as the financial crisis and an uneven U.S. recovery knocked many below their long-term goals, according to an analysis of 126 plans provided by the National Association of State Retirement Administrators. The current average target of 7.68% is the lowest since at least 1989. The peak was 8.1% in 2001.

On Friday New York State Common Retirement Fund, the third largest public pension by assets, said it would drop its assumed returns to 7% from 7.5% after cutting a half percentage point five years ago. That followed Thursday's vote by the San Diego County Employees Retirement Association to drop its level to 7.5% from 7.75%.

"Realism," said Brian McDonnell, managing director for pension consultant Cambridge Associates, is "creeping in."

Moving expectations below 8% isn't just an arcane accounting move. It has real-life consequences for systems that use these predictions to calculate the present value of obligations owed to their retirees. Even slight cutbacks in return targets often mean budget-strained governments or workers are asked to pay significantly more to account for liabilities that are expected to rise as lifespans increase and more Americans retire. A drop of one percentage point will typically boost pension liabilities by 12%, according to Jean-Pierre Aubry, an assistant director at the Center for Retirement Research at Boston College.

Public pension funds use a combination of investment income and contributions from employees, states and cities to fund benefits.

In Boulder, Colo., the city eliminated 100 positions and consolidated city programs as a way of compensating for three reductions in the state's investment forecast and a spike in pension contributions, as the economy sputtered. It also stopped planting tulips in most areas and shifted to less expensive wildflowers as a way of making an additional $1.7 million in pension payments, according to the city's chief financial officer, Bob Eichem.

"You do more with less," Mr. Eichem said.

U.S. pensions first started to reconsider their rosier outlooks after being stung by deep losses during the 2008 financial crisis. The event helped drop 10- and 15-year annual returns at large public pensions to 6.9% and 5.8%, according to the Wilshire Trust Universe Comparison Service. The

retirement systems earned just 3.43% for the 12 months ended June 30 amid downturns in foreign stocks and bonds, their worst annual performance since 2012.

Retirement systems argue that lowering assumptions fortifies their fiscal health because the influx of extra contributions means they become less reliant on generating big returns.

Some big funds are preparing to pull their goals back even further. The California Public Employees' Retirement System, the nation's largest pension by assets, is discussing a new reduction below its current level of 7.5%. The Oregon Public Employees Retirement System and the Texas Municipal Retirement System, the 14th and 35th largest by assets, both approved lowering their forecasts in late July by a quarter of a percentage point.

"Those days" of believing 8% could be earned annually "aren't here anymore," said New York State Comptroller Thomas P. DiNapoli.

But some critics contend that pensions are still relying on unrealistic expectations to fill ballooning funding gaps even as they move targets below 8%. The lower assumptions remain considerably higher than levels seen in the 1960s when pensions estimated 3%-3.5% returns from portfolios primarily comprised of cash and bonds. Pension officials pushed their predictions higher in subsequent decades as they embraced riskier holdings of stocks, real estate, commodities and hedge-fund assets.

"It's clearly not enough," said Josh McGee, a senior vice president of public accountability at the Laura and John Arnold Foundation, a nonprofit that has worked across the U.S. for changes to guaranteed pension benefits.

A panel of U.S. actuaries and pension experts has recommended that public systems move their assumed future returns down to 6.4%, and many corporations already use a more conservative rate for their pension funds. The average for companies listed in the Fortune 1000 dropped to 7.08% in 2014 from a high of 9.18% in 2000, according to a Towers Watson survey.

The most aggressive move downward among public employee pensions belongs to Delaware, where the state retirement system has dropped to a target of 7.2% from 8.5% in 2003—the largest change since 2001 among state plans tracked by NASRA. David Craik, the retirement system's pension administrator, said he would not rule out further decreases.

"I'm kind of surprised others aren't going as low as we did," Mr. Craik said.

More dramatic pullbacks by public plans would likely create deeper financial pain for governments and employees that have already agreed to service cuts and benefit reductions designed to pay for mounting pension obligations. Local and state contributions to retirement systems have more than doubled over the past decade to $121.1 billion in 2014, according to the U.S. Census Bureau. During that same time worker pension contributions rose 50% to $45.5 billion.

In Fullerton, Calif., officials are sharing a fire chief and dispatch workers with one neighboring town and splitting up tree-cutting contracts with other cities in the wake of a half-percentage point cut in return assumptions for the state's retirement system. It was able to save $1.2 million.

"The pension costs are high and will continue to be high," said Joe Felz, Fullerton's city manager. "It's tops to bottom looking where we can get savings."

Some retirement systems believe 8% is possible, as 35 of them maintain forecasts above the old industry mark, according to NASRA. Two of them—the Houston Firefighters' Relief and Retirement

Fund and the Connecticut Teachers' Retirement System—assume returns of 8.5%, the highest of any other plans.

"We strongly believe and past history shows we can continue to achieve the 8.5% long term," said Todd Clark, chairman of the Houston firefighters' fund.

THE WALL STREET JOURNAL

By TIMOTHY W. MARTIN

Updated Sept. 4, 2015 1:39 p.m. ET

Write to Timothy W. Martin at timothy.martin@wsj.com

GASB Adds Project to Revisit Blueprint of Governmental Financial Statements.

Norwalk, CT, September 1, 2015 — The Governmental Accounting Standards Board (GASB) today added to its technical agenda a project to reexamine the financial reporting model for state and local government financial statements.

The project's objective is to make improvements to the existing financial reporting model, which was established in 1999 through Statement No. 34, Basic Financial Statements—and Management's Discussion and Analysis—for State and Local Governments, and subsequent related pronouncements. Among other benefits, any improvements would be meant to enhance the effectiveness of the model in providing information essential for decision-making and assessing a government's accountability.

The reexamination will benefit from research the GASB staff has conducted with users, preparers, and auditors of governmental financial statements over the past two years on how the financial reporting model is functioning in practice.

"The financial reporting model has a pervasive influence on the effectiveness of financial reporting of U.S. state and local governments and the extent to which the objectives of financial reporting are achieved," said GASB Chair David A. Vaudt. "However, the current model has been fully in effect for a decade. It is an important part of effective standards setting to routinely seek to improve existing standards that have been in effect for some time."

"During the course of the reexamination, the Board will consider concerns about the complexity of the current financial reporting model and the potential effects on timeliness of financial reporting," the GASB Chair said.

Statement 34 established the present structure for state and local government financial reporting—the format and contents of the basic financial statements, certain related notes to the financial statements, and required supplementary information including management's discussion and analysis (MD&A).

One of the most significant additions to the reporting model made by Statement 34 was the introduction of government-wide financial statements containing accrual information—which notably includes the reporting of infrastructure, other capital assets, and long-term liabilities.

Potential Areas of Improvement

The project will consider improvements to major features of the financial reporting model, including:

- **MD&A** — Explore options for enhancing the financial statement analysis section of MD&A and clarify guidance for presenting currently known facts, decisions, or conditions expected to have a significant effect on financial position or results of operations.
- **Government-Wide Financial Statements** — Explore alternatives for the format of the statement of activities and assess whether the value of the information provided by a government-wide statement of cash flows would outweigh the costs of providing that information.
- **Major Funds** — Explore options for providing additional information about debt service funds.
- Governmental Fund Financial Statements — Explore a conceptually consistent measurement focus and basis of accounting and develop a related presentation format for governmental fund financial statements.
- **Proprietary Fund Financial Statements** — Explore options for enhancing the consistency and usefulness of presenting operating and nonoperating revenues and expenses.
- **Budgetary Information** — Explore options for enhancing the consistency of the presentation method and value of budgetary information.

In each of these areas, the Board will continually look for opportunities to reduce the complexity of financial statements, which could positively impact the timeliness of governmental financial reporting.

The Board is scheduled to begin project deliberations in October 2015 and anticipates issuing an initial due process document for public comment by the end of 2016.

Additional information about the reexamination of the financial report model is available on the GASB website, www.gasb.org.

MSRB Links Effective Date for Best-Execution Rule to Publication of Guidance.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) announced today it is linking the effective date of its new "best-execution" rule for retail investor transactions to the publication of implementation guidance so that municipal securities dealers will have sufficient time to review the forthcoming guidance. The MSRB filed documents with the Securities and Exchange Commission (SEC) to establish the effective date of the new rule four months from the publication date of the MSRB's implementation guidance. MSRB Rule G-18, on best execution, with related amendments to MSRB Rules G-48 and D-15, requires dealers to seek the most favorable terms reasonably available for their retail customers' transactions.

The MSRB is coordinating with the SEC and the Financial Industry Regulatory Authority (FINRA) to achieve substantive consistency, as appropriate, in the guidance on best execution for the municipal and corporate bond markets, with the goal of promoting regulatory efficiency across the fixed income markets. Linking the effective date of the best-execution rule to the publication of the guidance will establish a clear implementation period and ensure that dealers have adequate time to review and make use of the guidance as they continue to prepare to comply with the new rule. The MSRB will announce the specific effective date of the rule upon publication of the implementation guidance.

“The MSRB is continuing to coordinate with the SEC and FINRA with the goal of publishing best-ex implementation guidance in short order,” said MSRB Executive Director Lynnette Kelly. “Facilitating dealers’ compliance with their new obligations and ensuring that retail investors consistently receive the benefit of fair handling of their orders to buy or sell municipal securities is a top priority for the MSRB.”

The MSRB’s adoption of the best-execution rule—a key investor protection provision—supports existing MSRB fair-pricing rules, promotes fair competition among dealers and aligns with a recommendation in the SEC’s 2012 Report on the Municipal Securities Market. The SEC report also recommended that the MSRB provide guidance on how best-execution concepts would be applied to municipal securities transactions.

Date: September 3, 2015

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MSRB Seeks Approval to Apply its Gifts Rule to Municipal Advisors.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) today sought approval from the Securities and Exchange Commission (SEC) to apply to municipal advisors the limitations on business-related gift-giving that currently apply to municipal securities dealers. The proposed amendments to MSRB Rule G-20 aim to address conflicts of interest that may arise from the giving of gifts or gratuities in connection with municipal advisory activities.

“Amending the MSRB’s existing gifts rule would ensure common standards for dealers and municipal advisors that all operate in the municipal securities market,” said MSRB Executive Director Lynnette Kelly. “The principles of Rule G-20, together with the MSRB’s rules on fair dealing, help preserve the integrity of the municipal market.”

The proposed amendments also would add a new provision to specifically prohibit both dealers and municipal advisors from seeking reimbursement for certain entertainment expenses from the proceeds of an offering of municipal securities. In addition, the MSRB is seeking to extend to municipal advisors related books and records requirements through proposed amendments to MSRB Rule G-8. Read the rule filing.

The Dodd-Frank Wall Street Reform and Consumer Protection Act charged the MSRB with developing a comprehensive regulatory framework for municipal advisors. In addition to today’s proposal on gift limitations, the MSRB has implemented new supervision and compliance requirements for municipal advisors and has proposed a core rule to establish standards of conduct, including fiduciary duties. The MSRB also plans to amend its existing rule on political contributions to address the potential for pay-to-play activities by municipal advisors.

Read more about the status of the MSRB’s rulemaking for municipal advisors.

Date: September 2, 2015

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A New Plan for American Cities To Free Themselves of Wall Street's Control.

Just three U.S. cities—New York, Los Angeles and Chicago—together with their related agencies and pension funds, do nearly $600 billion of business with Wall Street every year.

In August 2014, the Los Angeles City Council debated whether to call for the renegotiation of the city's financial deals. A report by the labor-community coalition Fix L.A. found that the city had spent more than twice as much on banking fees in fiscal year 2013 as it had on street services.

To try to balance its budget, Los Angeles had enacted hundreds of millions of dollars in cuts over the previous five years. City jobs had been slashed by 10 percent, flood control procedures had been cut back, crumbling sidewalks were not repaired and alleys were rarely cleared of debris. Sewer inspections ceased entirely; the number of sewer overflows doubled from 2008 to 2013.

The campaign slogan wrote itself: "Invest in our streets, not Wall Street!"

At the city council debate, Timothy Butcher, a worker with the Bureau of Street Services, got up and said, "I don't know a whole lot about high finance. I'm just a truck driver. But I do know, if I go to a bank and they give me a bad deal, I don't deal with that bank any more. And I don't understand why the city can't use the same kind of concept on some of these big banks, saying, 'Hey, help us out or, you know, we're not going to deal with you any more.' "

The City Council approved the resolution unanimously.

It was a blow against both the austerity agenda and the iron grip of Wall Street on American cities. State and local governments in the United States rely on Wall Street firms to put together bond deals, manage their investments and provide financial services. For this, banks charge billions of dollars in fees each year. Public officials believe they have little choice but to cough up. When there are revenue shortfalls, cities typically impose austerity measures and cut essential community services, but Wall Street gets a free pass—payments to banks are considered untouchable.

Public officials assume (wrongly) that financial fees are set in stone because they are based on so-called market rates. However, market rates aren't preordained by God. Banks set them, and public finance officials simply don't demand anything substantively lower.

So, what if cities took a page from the labor movement and bargained collectively over interest rates and other financial deals?

The simple reason why anti-union politicians are waging a war on collective bargaining by workers is that it works: There is power in numbers. The basic idea behind such bargaining is to shift the balance of power in the employer-employee relationship and empower workers to negotiate with owners on a more equal footing.

But collective bargaining does not have to be limited to the workplace. Student organizations such as United Students Against Sweatshops have forced university administrations to negotiate over labor standards for their merchandise vendors. Consumer unions press retailers over issues like pricing and safety standards. Community organizations are able to negotiate community-benefit agreements with major corporations in their cities and win benefits such as local hiring policies and

community investment standards.

Similarly, public finance officials in cities, states and school districts across the country could apply collective bargaining practices to their financial relationships with Wall Street. While there is no established mechanism for them to do so, there are some creative options worth exploring. For example, cities could establish a nonprofit or publicly funded agency to set guidelines for municipal finance deals and refuse to do business with any bank that does not comply. (More on this later.)

This may sound pie-in-the-sky, but the reality is that American taxpayer dollars are a tremendous source of bargaining power. Just three U.S. cities— New York, Los Angeles and Chicago— together with their related agencies and pension funds, do nearly $600 billion of business with Wall Street every year, more than the gross domestic product of Sweden. Wall Street wants a piece of that action. If it has to jump through a few hoops to get it, it will. This gives public officials the leverage to demand lower interest rates and fairer terms, freeing up scarce funds for community services like parks, libraries and schools.

Runaway fees

Over the last few decades, the banking industry has shifted its profit model away from interest. Big banks' profits now rely heavily on fees—the money charged for creating loans, packaging them into securities, selling them and servicing them. This structure incentivizes banks to push more complex and expensive deals, like adjustable-rate mortgages and variable-rate bonds, that require fees and add-ons.

Banking fees do not have to bear any relationship to the actual cost of providing services. Banks charge whatever they can get away with, which is why fees have shot up as banks have consolidated and customers' choices have narrowed. For example, in 2007, Bank of America raised its ATM fee for non-customers from $2 to $3. In all likelihood, the bank's costs hadn't suddenly risen 50 percent, despite a spokesperson's claim that the fee hike would offset "significant" expansion and upgrade of its machines. Banks also arbitrarily raised prices on credit enhancements for municipal borrowers after the financial crash.

For cities and states, which deal in large dollar amounts, this nickel-anddiming hits particularly hard. A 1 percent fee on a $200 million bond is a lot more money than a 1 percent fee on a $200,000 mortgage. That explains why the city of Los Angeles paid $334 million in publicly disclosed fees for financial services in fiscal year 2013, according to the Fix L.A. report. This amount did not include principal or interest on any debt, and neither did it include fees that are not publicly disclosed, like the astronomical fees hedge funds and private equity firms charge pension funds to manage investments.

In Illinois, a preliminary analysis by researchers at the Service Employees International Union (SEIU)—full disclosure: where I used to work—found that the state's pension funds spent approximately $400 million in publicly disclosed fees in 2014 alone. New York City Comptroller Scott Stringer has released a report showing that nearly all of the returns from the city's five pension funds over the past 10 years—approximately $2.5 billion—have been eaten up by fees. An investigation by the International Business Times found that New Jersey's pension funds paid more than $600 million in financial fees in 2014.

Every dollar that banks collect in fees from state and local governments and pension funds is a dollar not going toward essential neighborhood services. It's not just the streets and sewers of Los Angeles. Illinois is teetering on the edge of a government shutdown. Already, Gov. Bruce Rauner has slashed funding for college scholarships for low-income students, taken a hatchet to vital healthcare

programs like Medicaid, and cut state funding for CeaseFire, a highly regarded violence-prevention program with a proven track record.

Most public officials still resist acknowledging that these fees are a problem. When Gov. Rauner tried to cut the municipal share of state income tax revenue by 50 percent this spring, the Illinois House of Representatives responded with a first-of-its-kind resolution urging the state to match any such cuts with proportional cuts to financial-service fees. SEIU also proposed a reduction of financial-service fees during its contract negotiations for state workers, but this was roundly rejected by the Rauner administration.

Of course, Rauner has personally profited from these fees in the past. Before deciding to run for office, he was the managing director of a private equity firm that did business with Illinois pension funds, GTCR LLC.

But even public finance officials who don't have direct industry ties typically drag their feet on fee reductions. The Los Angeles City Council's efforts to pressure banks into renegotiating or terminating costly financial deals were met with stiff resistance from the city's financial officers.

There are a number of reasons why finance staff can be reluctant, if not obstructionist, in efforts to curtail banking fees. One is the revolving door between public finance jobs and Wall Street. Another is the fact that public officials can be outflanked by smoothtalking bankers making dishonest and deceptive sales pitches. But perhaps the biggest reason is that officials truly believe they got the best deal they could. Los Angeles's finance staff point out that even though they paid $334 million in fees in 2013 alone, they actually did better than many of their peers.

When Councilmember Paul Koretz called for a vote on the motion in Los Angeles, he skewered the City Administrative Officer's (CAO) office, saying: "Our lack of success in negotiating thus far could partly be a factor of CAO saying that, 'Hey, this is a fine deal and we've done as well on this as anything else we could do.' "

Changing the rules

Under the current system, Wall Street sets the rules of the game and public officials think they have no choice but to play on those terms. They may negotiate around the margins and get a fee lowered by half a percentage point, but they do not typically push back on the illogic of the underlying fee structures.

Cities that consider taking a stand against Wall Street are routinely told that if they do, their credit ratings will be downgraded, and banks and investors will stop doing business with them. In reality, the public finance officials who claim they have no choice but to pay high fees and accept onerous terms from Wall Street banks are like elephants afraid of mice. The notion that Wall Street could sustain a prolonged boycott against a city or state as punishment goes against the very nature of banking. U.S. taxpayer dollars are among the largest pools of capital in the world. If there is money to be made, there will always be a bank that will step in to get that business.

Similarly, threats about credit rating downgrades are baseless. Rating agencies are concerned with a borrower's ability to pay back its bondholders. If anything, negotiating lower fees with banks would free up money and make cities and states less likely to default.

Some cities and states are already blazing the trail. In 2010, then-Massachusetts State Treasurer Timothy Cahill moved state deposits out of Bank of America, Citigroup and Wells Fargo because the banks' credit card operations did not comply with the state's usury law, which caps interest rates at

18 percent.

In 2012, the city of Oakland initiated a boycott of Goldman Sachs because the bank refused to renegotiate a deal that had put the city on the losing side of a risky interest-rate bet costing $4 milion in annual fees and payments.

And earlier this year, the Board of Supervisors of Santa Cruz County, Calif., voted not to do any new business for the next five years with banks convicted of felonies. The boycott affects the five banks, including JPMorgan Chase and Citigroup, that pleaded guilty to illegally rigging foreign exchange rates.

These actions are first steps. However, they would be significantly more effective if cities and states joined together. When Oakland—a mid-sized city of 400,000 people—boycotted Goldman Sachs, Goldman didn't flinch. But if several cities, states and school districts banded together and threatened a boycott, the banking behemoth would be forced to take notice.

Power in numbers

In an ideal world, the federal government would establish standards for protecting state and local officials against predatory financial deals. In the same way that there is a Consumer Financial Protection Bureau, there is a dire need for a Municipal Financial Protection Bureau whose top priority would be to protect taxpayers' interests. Even though there are already agencies with oversight over municipal finance—such as the Municipal Securities Rulemaking Board and the Securities and Exchange Commission—protecting cities and states from abuse is not their priority. And they have close ties to the financial services industry.

Because federal regulation has proven woefully inadequate, and the chances of effective congressional action in the near future are slim to none, cities and states need to step up.

If just New York, Los Angeles and Chicago banded together and threatened to withhold their collective $600 billion of potential annual business with Wall Street, they wouldn't have to simply accept the so-called market rates. They have enough bargaining power to set their own.

Together, they could refuse to sign contracts that prevent them from publicly disclosing fees. If they also get their state governments and pension funds on board, they could alter fee structures for things like bond underwriting. They could require any bank that pitches products to sign a fiduciary agreement, meaning they are legally required to put taxpayer interests ahead of their own.

Santa Cruz County Supervisor Ryan Coonerty has already said he is reaching out to other jurisdictions across the country to urge them to join in refusing to do business with felonious banks. If public officials were to coordinate their demands and present a unified front, they could force the banks to take them seriously.

My organization, the Roosevelt Institute's ReFund America Project, works with community-labor coalitions in cities nationwide that are calling for a reduction in bank fees and an end to predatory municipal finance deals. Last summer, ReFund America and Local Progress—a network linking local elected officials with unions and progressive groups—led a small meeting called "A Progressive Vision for Municipal Finance." We brought together organizers, policy experts and public officials to discuss various proposals for fixing municipal finance. Among those present were four city councilmembers and three representatives from mayors' offices. These officials expressed strong interest in developing a bargaining vehicle that would allow cities to take collective action to stand up to Wall Street.

One idea was the creation of a nonprofit or public agency to set municipal finance guidelines. Individual cities and states could subscribe to these guidelines and the agency would in effect become the gatekeeper for banks wishing to do business with them. The more subscribers the agency had, the more bargaining power it would hold. Strict controls would help ensure the agency remained scrupulously independent of Wall Street. That organization could even be the precursor to a national Municipal Financial Protection Bureau.

People over profit

Together, American cities, states and pension funds hold untold power. If they flex their muscles and organize around coordinated demands, they can radically transform taxpayers' relationship with Wall Street.

In 2012, a community leader from Oakland attended the Goldman Sachs shareholder meeting in New York City and urged CEO Lloyd Blankfein to renegotiate its interest rate swap with the city to avoid library closures and layoffs. He said it was "an issue of morality." Blankfein responded, "No, I think it's a matter of shareholder assets."

This is the mentality that led Rolling Stone's Matt Taibbi to call Goldman Sachs "a great vampire squid wrapped around the face of humanity, relentlessly jamming its blood funnel into anything that smells like money."

It's not just Goldman. All of municipal finance has become an extractive industry, pumping billions away from the communities that need them most. Morality is an externality that financial firms seldom concern themselves with. The financial sector's fee-based business model is designed to maximize profits, not to protect taxpayers.

Banks may not have a moral compass, but their business contracts with our state and local governments can and should. After all, our cities, states and school districts are not simply fodder for Wall Street's insatiable greed. Our elected leaders have a duty to protect us from predatory financial practices. Cities and states can force banks to charge drastically lower fees, do away with arbitrary fee structures and eliminate onerous terms that divert billions of dollars away from the most vulnerable members of our society into bonus checks for our nation's wealthiest few.

Governors in states like Wisconsin, Michigan and Illinois are waging war on collective bargaining and telling taxpayers that empowering publicsector unions robs state coffers, but the real drain on public treasuries is the billions in fees paid to banks every year. And unlike money that goes into workers' pockets, most of these fees are not recycled back into the local economy but sent to offshore tax havens or invested in complex financial schemes. The irony is that collective bargaining is one of the most effective tools available to public officials who truly want to do right by taxpayers—and cast off Wall Street's tentacles.

IN THESE TIMES

BY SAQIB BHATTI

AUGUST 31, 2015

Saqib Bhatti is a fellow at the Roosevelt Institute and Director of the ReFund America Project.

UBS Unit to Pay More Than $2.9 Million to Investors in Puerto Rico.

UBS AG's wealth-management unit was ordered to pay more than $2.9 million to two investors in Puerto Rico for losses tied to funds holding the island's municipal bonds.

Ana Teresa Lopez-Gonzalez and Andres Ricardo Gomez were part of a family of investors that filed an arbitration claim with the Financial Industry Regulatory Authority claiming fraud, breach of fiduciary duty, negligence, breach of contract and unsuitability, among other things. The claims related to investments in UBS-managed closed-end funds and other Puerto Rican municipal bonds, and the use of these investments as collateral for borrowing.

The other family members listed as claimants settled for an undisclosed amount. Before any settlements, the group had sought $10 million in damages, plus other amounts.

Puerto Rico bonds and bond funds plummeted in value as the island commonwealth's financial crisis deepened in mid-2013.

The arbitration panel awarded the investors a combined $2.4 million in damages, plus interest, along with more than $534,000 in legal and other costs, according to the award posted on Finra's website. The panel also denied a counterclaim UBS brought against Mr. Gomez tied to a failure to pay money allegedly owed under the terms of certain credit-line agreements.

As is customary, the Finra arbitrators didn't provide details on the reasoning for their decision, which was dated Monday.

"My clients are gratified by the Finra arbitration award and believe justice was served," said the investors' attorney, Jacob Zamansky. Mr. Zamansky is a principal at securities law firm Zamansky LLC in New York.

A spokesman for UBS said that "although the arbitrators awarded less than the full damages claimants requested, UBS is disappointed with the decision to award any damages, with which we respectfully disagree."

He also noted that the decision in this case isn't indicative of how other panels may rule with regard to other customers who invested in similar products.

Still, this case is one of the latest in a string of legal victories for individual investors facing steep losses in Puerto Rico municipal-bond funds. UBS and other brokerage firms operating in Puerto Rico currently face hundreds of arbitration claims from clients who invested in closed-end funds which mostly invested in bonds issued by the Puerto Rican government and its agencies.

Last month, UBS was ordered to pay about $2.5 million to a San Juan couple. The investors had requested up to $6 million in damages.

And earlier this year, UBS was ordered to pay nearly $1.5 million, out of about $5.8 million requested, to investors in three other cases regarding the Puerto Rico bond funds.

The UBS spokesman on Tuesday said that for more than two decades, "investors in UBS's Puerto Rico municipal bonds and closed-end funds received excellent returns that frequently exceeded the returns available through investments in other bonds or bond funds."

THE WALL STREET JOURNAL

By ANNA PRIOR

Sept. 1, 2015 1:51 p.m. ET

Write to Anna Prior at anna.prior@wsj.com

Chicago and Mayor Emanuel Face a $20 Billion Reckoning.

Chicago Mayor Rahm Emanuel sat on a stage at a community college gymnasium for nearly two hours as residents stepped up to the microphone to plead for more money for buses, schools and programs for the mentally ill.
The mayor jotted notes as the crowd erupted into angry chants and jeers. Then he explained there was little extra cash to be had. “We have a budget deficit and then pension payments,” Emanuel, a Democrat, said at the end of the meeting Monday at Malcolm X College. “We have changes we’re going to have to make.”

Chicago is facing a $426 million budget shortfall next year and needs to pay down a $20 billion debt to its workers’ retirement funds that’s left it with a lower credit rating than any big U.S. city except Detroit.

After its bond prices tumbled this year when investors demanded higher premiums to lend to the third-largest city, Emanuel is under growing pressure to stanch the fiscal bleeding by raising taxes, cutting spending and putting more into a pension system the city has shortchanged for years. He’s set to release a spending plan on Sept. 22.

“Chicago is really at a crucial point here,” said Ty Schoback, a senior analyst in Minneapolis at Columbia Threadneedle Investments, which manages about $30 billion in municipal bonds, including some Chicago debt. “It’s going to be within Chicago’s control to demonstrate to the market that they have the willingness to make the difficult but necessary fiscal decisions.”

While Chicago’s economy recovers, the population grows and its tax revenue rebounds from the toll of the recession, the city is facing a fiscal reckoning from years of failing to save enough to pay the benefits it promised employees. Over the past decade, Chicago has put $7.3 billion less into the pension funds than actuaries recommended, which is pushing up its bills. The city’s next annual pension payment is projected to jump to $976 million, an increase of 10 percent.

The mounting debt led Moody’s Investors Service to lower its rating on Chicago’s $8.1 billion of general obligations by two steps to Ba1 in May. Standard & Poor’s and Fitch Ratings followed by downgrading the city to BBB+, three levels above speculative grade.

The downgrades have caused the price of Chicago bonds to tumble. A portion of $58.5 million of taxable securities maturing in 2033 traded Tuesday at an average of 88.6 cents on the dollar, down from 99.7 cents on April 30.

That pushed the yield to 6.3 percent, 3.6 percentage points more than benchmark debt. That gap is up from 2.5 percentage points at the end of April.

When Chicago sold bonds in July, investors demanded yields of 5.67 percent on 20-year federally

tax-exempt securities, about 2.5 percentage points more than benchmark municipal debt.

“Their big issue continues to be their long-term liability in the form of pension obligations,” said Peter Hayes, the head of municipal bonds for New York-based BlackRock Inc., which oversees $116 billion of the securities. He said the firm isn’t adding to its Chicago holdings. “How they build some of the elements of that into the budget is going to be very, very critical. If they truly address this liability from the revenue standpoint and that becomes credible, the bonds would have the ability at improve.”

Chicago’s effort to reduce its pension liabilities hit an obstacle in July, when a judge ruled the benefits cuts it sought to implement were illegal. The city will appeal the decision to the Illinois Supreme Court, which in May threw out a pension overhaul adopted by the state, saying workers’ pensions are protected.

On top of next year’s deficit, the city still hasn’t come up with the $549 million it needs to put into its police and firefighter funds this year. While Illinois’s Democrat-led legislature passed a plan to lower that payment to $328 million, Republican Governor Bruce Rauner has yet to sign it.

Emanuel, who took office in 2011, hasn’t raised property, gas or sales taxes. During his reelection campaign this year, he said an increase to real-estate taxes, which generated $824 million last year, would be a last resort.

As the mayor entered the town hall meeting Monday, he was met with the chant “Rahm don’t care” by those angered at neighborhood school closings. Over almost two hours, he listened as residents suggested boosting taxes on liquor, regulating ride-hailing companies such as Uber Technologies Inc., taxing trades at Chicago’s options and commodities exchanges, and suing banks to recoup fees the city had to pay to back out of derivative trades after its credit rating was cut.

Wilhemenia Taylor, 58, who owns a home in the city, said she’s concerned about what the budget will bring.
“I’m worried about cuts to the public school system, and higher taxes,” Taylor, a teacher’s assistant, said in an interview while sitting on red bleachers. “And the neighborhoods are going down.”

Despite the difficulty, it’s important for Chicago to demonstrate to investors and credit-rating companies that it’s taking strides to meet long-term obligations that have been neglected for years, said Richard Ciccarone, Chicago-based chief executive officer of Merritt Research Services, which analyzes municipal finance.

“They’ve got to come up with a plan to show some willingness to pay,” Ciccarone said. “We need to show the city’s ability to tap that economic base that it has.”

Bloomberg

Elizabeth Campbell

September 1, 2015 — 9:00 PM PDT Updated on September 2, 2015 — 8:25 AM PDT

Bond Insurers Surge on Proposed 15% Puerto Rico Electric Losses.

Shares of the two biggest debt insurers rallied after Puerto Rico’s Electric Power Authority reached

an agreement with some bondholders on a restructuring plan that would impose a 15 percent loss on investors, less than some had projected.

Assured Guaranty Ltd. shares jumped 3.9 percent to $25.76 at 11:57 a.m. in New York, the biggest increase since November 2014, while MBIA Inc. surged 11.9 percent to $7.57. Both companies, which agreed to repay investors if the utility defaults on some securities, slid after Puerto Rico Governor Alejandro Garcia Padilla said in June that the Caribbean island couldn't afford to repay its debts.

Puerto Rico's power utility, known as Prepa, has been working with creditors for a year to restructure its $8.3 billion debt load and modernize its plants. A group holding about 35 percent of Prepa's outstanding bonds agreed late Tuesday to accept a loss of about 15 percent to pare the agency's debt and reduce principal and interest payments by more than $700 million over the next five years.

A recovery of 85 cents on the dollar "would represent a significantly less painful outcome for the insurers on their exposure to Prepa's debt than had been projected by many observers," Mark Palmer, an analyst at BTIG LLC, said in a research note Tuesday.

Moody's Investors Service had projected that investors would recoup between 65 percent and 80 percent of what they are owed.

Assured only consented to extend a forbearance pact until Sept. 18 to keep negotiations out of court. MBIA was the sole creditor to not renew that contract, according to a statement from Prepa.

Municipal-bond insurers are paid premiums to ensure that investors will receive principal and interest payments on time and in full. Under the agreement reached late Monday, the bondholders, who are traditional municipal investors and hedge funds, will exchange their securities for new debt repaid with a surcharge on the utility's customers.

Bondholders outside of that group may receive debt that pays interest at a rate of 4 percent to 4.75 percent, or convertible capital appreciation bonds with higher payouts.

MBIA's National Public Finance Guarantee Corp. had about $2.1 billion in total debt service exposure to Prepa as of June 30, company filings show. Assured Guaranty's subsidiaries are on the hook for about $1.2 billion of debt-service payments related to the electric agency, according to a company presentation.

Greg Diamond, a spokesman for MBIA, declined to comment in an e-mail Tuesday on the company's reason for not extending the forbearance agreement. Ashweeta Durani, a spokeswoman for Assured in New York, didn't have an immediate comment.

Bloomberg

Michelle Kaske and Brian Chappatta

September 2, 2015 — 9:25 AM PDT

- **Ed. Note:** Last week's issue of the newsletter did not go out as scheduled due to a technical glitch on our end. Consequently, this week's Frankenissue also includes last week's content. We

apologize for any inconvenience. A quick post-holiday issue will go out next Tuesday.

- NABL Releases Paper on Disclosure Policies and Procedures.
- GASB Publishes New Authoritative Implementation Guide.
- NABL Issues Updated Municipal Bankruptcy Primer.
- What Happened to Edward Jones and Does it Impact Issue Price?
- NABL Provides Issuers Disclosure Guidance in Wake of SEC Cases.
- MSRB Eases Voluntary Bank Loan Disclosure for Issuers on EMMA.
- How Can Communities Finance Microgrids for Public Safety?
- *In re Lauderdale County* – Supreme Court of Mississippi holds that county board of supervisors did not waive initial deadline for objectors to file petition objecting to issuance of general obligation bonds by posting petition to a public forum on the internet for two weeks to ensure signatories wanted their names on the petition, and allowing signatories to remove signatures if they so desired.
- And finally, we are reminded again this week of the perennially tragic issue of library-on-library violence by *People ex rel. Geneva Public Library Dist. v. Batavia Public Library Dist.*, an annexation dispute in which all concerned neglected to use their inside voices. Sadly, both libraries were destroyed via the mutual deployment of the Dewey Decimation System. R.I.P.

INVERSE CONDEMNATION - CALIFORNIA

The Inland Oversight Committee v. County of San Bernardino

Court of Appeal, Fourth District, Division 2, California - August 17, 2015 - 190 Cal.Rptr.3d 884 - 2015 Daily Journal D.A.R. 9509

Objectors brought action against county and landowner to challenge an inverse condemnation settlement agreement under the statute forbidding public officers from being financially interested in any contract made by them in their official capacity. The Superior Court denied landowner's anti-strategic lawsuit against public participation (SLAPP) motion. Landowner appealed.

The Court of Appeal held that:

- Objectors' action was "necessary" under the public interest exception to the anti-SLAPP statute, and
- Objectors adequately addressed the "necessity" element in their trial court briefing.

Objectors' action against county and landowner to challenge an inverse condemnation settlement agreement under the statute forbidding public officers from being financially interested in any contract made by them in their official capacity was "necessary" under the public interest exception to the anti-strategic lawsuit against public participation (SLAPP) statute, even if county was still evaluating whether to bring an action to recover the settlement funds, even if no demand had been made on the county, and regardless of the merits of objectors' claims, where no public entity had sought to enforce the rights the objectors sought to vindicate in their lawsuit.

Plaintiffs adequately addressed the issue of the "necessity" element of the public interest exception to the anti-strategic lawsuit against public participation (SLAPP) statute in their briefing in the trial court, thus preserving the issue for appeal, where plaintiffs' opposition to defendants' anti-SLAPP motion began with the argument that "it is undisputed that there has been no public enforcement for the disgorgement of the money illegally paid" under the settlement agreement that the plaintiffs challenged under the statute forbidding public officers from being financially interested in any contract made by them in their official capacity.

EMPLOYMENT - CALIFORNIA

Poole v. Orange County Fire Authority

Supreme Court of California - August 24, 2015 - P.3d - 2015 WL 4998965

Under the Firefighters Procedural Bill of Rights Act a firefighter has the right to review and respond to any negative comment that is "entered in his or her personnel file, or any other file used for any personnel purposes by his or her employer." (§ 3255.) This case presented the question whether section 3255 gives an employee the right to review and respond to negative comments in a supervisor's daily log, consisting of notes that memorialize the supervisor's thoughts and observations concerning an employee, which the supervisor uses as a memory aid in preparing performance plans and reviews.

Firefighter and union filed petition and verified complaint, seeking writ of mandate directing county fire authority to include adverse comments in firefighter's files only after complying with FireFighters Procedural Bill of Rights (FFBOR), and requesting declaratory relief, injunctive relief, civil penalties, and damages. The Superior Court denied relief. Firefighter and union appealed, and the Court of Appeal reversed and remanded. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that daily log kept by fire captain was not a "personnel file" or a file "used for any personnel purposes by his or her employer" subject to FFBOR.

Daily log kept by fire captain was not a "personnel file" or a file "used for any personnel purposes by his or her employer" subject to FireFighters Procedural Bill of Rights (FFBOR), even though captain used the log in the performance of his duties as a supervisor, and thus firefighter did not have any right to review and respond to negative comments in the log. Captain did not share his log with anyone but merely discussed with others some of the incidents that he had observed and also recorded in his log, preliminary to completing firefighter's evaluations and performance improvement plan, log was used to help captain remember past events, and captain did not have authority to take adverse disciplinary actions and thus his comments could adversely affect firefighters only if and when they were placed in a personnel file.

STANDING - CALIFORNIA

San Bernardino County v. Superior Court

Court of Appeal, Fourth District, Division 2, California - August 17, 2015 - Cal.Rptr.3d - 2015 WL 4882569

Objectors brought action against county and landowner to challenge an inverse condemnation settlement agreement under the statute forbidding public officers from being financially interested in any contract made by them in their official capacity. The Superior Court overruled demurrer. County petitioned for writ of mandate.

The Court of Appeal held that taxpayer organizations failed to establish that they had standing to challenge validity of settlement agreement based on county officials' financial interest.

Under the statute providing that a contract made by financially interested public officers in their official capacity "may be avoided at the instance of any party except the officer interested therein," the term "party" means a party to the contract at issue.

Taxpayer organizations failed to establish that they had standing to bring an action against county and landowner challenging the validity of their inverse condemnation settlement agreement under the statute forbidding public officers from being financially interested in any contract made by them in their official capacity, after a former county supervisor pleaded guilty to various bribery-related charges related to his vote approving the settlement agreement, since neither taxpayer organization qualified as a "party" under the statute, and the county owed no mandatory duty to seek to have the settlement agreement declared void, absent evidence that any present county official was involved in fraud or collusion.

HOSPITALS - FLORIDA

Venice HMA, LLC v. Sarasota County

District Court of Appeal of Florida, Second District - August 14, 2015 - So.3d - 2015 WL 4771934

Private hospitals brought action for declaratory and injunctive relief against county hospital district, seeking reimbursement for providing medical care to indigent county residents in the amount of approximately $200 million under provision of a special law that required the county to reimburse private hospitals for providing such care. County counterclaimed, alleging that reimbursement would provide an unconstitutional privilege to private corporations. The Circuit Court entered summary judgment in favor of county. Private hospitals appealed.

The District Court of Appeal held that:

- Provision granted an unconstitutional privilege to private hospitals, and
- Unconstitutional provision was severable from remainder of legislation.

Provision of special law requiring county to reimburse private hospitals in the county for providing medical care to indigent patients granted an unconstitutional privilege to hospitals. Law would have allowed hospitals to enjoy the mandated privilege of reducing their operating cost shared by no other private hospital in the state by demanding taxpayer support in the county.

Unconstitutional provision in special law, requiring county to reimburse private hospitals in the county for providing medical care to indigent patients, was severable from the remainder of the legislation. The offensive provision could be separated from the valid provisions that remained, the legislative purpose of the valid provisions could be accomplished without the invalid provision, and the provision was not so substantively inseparable that the legislature would not have passed the legislation without it.

UTILITIES - IDAHO

City of Challis v. Consent of Governed Caucus

Supreme Court of Idaho, Boise, February 2015 Term - August 20, 2015 - P.3d - 2015 WL 4943521

City petitioned for judicial confirmation to permit it to incur debt to finance water distribution system project without a public vote. Citizen caucus intervened and opposed confirmation. The Seventh Judicial District Court ruled that project was ordinary and necessary expense that did not require public vote. Caucus appealed.

The Supreme Court of Idaho held that:

- Court was not authorized to disregard legal analysis articulated in *Frazier* and *Fuhriman*, as to what constitutes a "necessary expense" under constitutional proviso clause;
- Metering and telemetry upgrade component of proposed water system project was not a "necessary" expense; and
- Caucus was prevailing party entitled to award of attorney fees.

ANNEXATION - ILLINOIS

People ex rel. Geneva Public Library Dist. v. Batavia Public Library Dist.

Appellate Court of Illinois, Second District - August 6, 2015 - Not Reported in N.E.3d - 2015 IL App (2d) 100674-U - 2015 WL 4709534

Geneva and Batavia are both public library districts organized pursuant to the Illinois Public Library District Act (Act). Geneva provides library service to certain portions of Kane County; Batavia provides library services to certain portions of Kane and Du Page Counties. At issue in this appeal is land commonly referred to as Blackberry Township, which both parties have attempted to annex.

On October 18, 2006, Batavia passed Ordinance No.2006–011, which purported to annex Blackberry Township.

Geneva also sought to create an annexation that would safeguard Blackberry Township from future annexation attempts should Batavia's annexation pursuant to Ordinance No.2006–011 fail or be invalidated. Following advice of its counsel, on November 17, 2006, Geneva passed Ordinance No.2006–7, which purported to annex a block of the Blackberry Township territory extending 500 feet in depth and nearly 4,000 feet in width. The parties stipulated that the Geneva annexation, if given effect, would have precluded Batavia from annexing northwards into Blackberry Township.

On February 16, 2007, Geneva filed a petition for leave to file a complaint in quo warranto. Geneva sought to challenge all of Batavia's annexation ordinances. On November 7, 2007, Batavia filed a petition for leave to file a complaint in quo warranto, attacking the Geneva annexation of the block of Blackberry Township territory.

The trial court held that Geneva Ordinance No.2006–7 was "a legal gimmick aimed at preventing Batavia from exercising its lawful, even if unneighborly, right to annex territory" under the Public Library District Act of 1991 (Library Act) (75 ILCS 16/1–1 et seq. (West 2006)). The court further held that "Geneva failed to meet its burden" as the defendant to a quo warranto action and that Geneva's annexation ordinance was "null and void and of no effect." Geneva appealed.

The appeals court reversed, agreeing with Geneva that the trial court erred in determining that Ordinance No.2006–7 was a legal gimmick designed to interfere with and frustrate Batavia's ability to exercise its lawful authority to annex territory in Blackberry Township because the consideration of Geneva's intent was outside of its purview in reviewing an annexation under section 15–15 of the Act. The court also held that Batavia's annexation ordinance was invalid due to an incorrect legal description of the territory to be annexed.

"We note that, by holding that Geneva Ordinance No.2006–7 was not invalid (at least for the reasons stated by the trial court and raised by the parties), while Batavia Ordinance No.2006–11 was invalid, we have reversed the priority between the parties regarding their attempted annexations. We believe that the better practice in this situation is to allow another challenge to the annexation

ordinances, this time involving only proper grounds, such as contiguity and priority. Accordingly, we remand with directions to allow the parties to make appropriate challenges to the ordinances."

ZONING - MARYLAND

Friends of Frederick County v. Town of New Market

Court of Special Appeals of Maryland - August 25, 2015 - A.3d - 2015 WL 5021387

Objectors filed complaint against town, asserting that town's comprehensive plan failed to comply with state law. The Circuit Court entered summary judgment in favor of town. Objectors appealed.

The Court of Special Appeals held that a comprehensive plan is not required to include data to support the plan's goals, policies and recommendations.

INVERSE CONDEMNATION - MICHIGAN

HRT Enterprises v. City of Detroit

United States District Court, E.D. Michigan, Southern Division - August 13, 2015 - Slip Copy - 2015 WL 4771118

HRT Enterprises owns an eleven-acre parcel in the City of Detroit located directly across French Road from the Coleman A. Young International Airport.

The City's 2009 Airport Layout Plan contemplates an enlarged airport and includes the HRT property as designated for acquisition by the City in the event the development goes forward. HRT says that the City has inversely condemned the property by delaying its acquisition, and by taking actions that substantially reduce the property's value and deprive the property of any viable use.

In 2005, HRT initially sued the City in state court for inverse condemnation; however, a jury determined that the City's actions did not amount to a taking of the property. In this case, HRT sought a determination that the City's actions since 2005 amount to a taking of the property.

In March of 2013, the Court denied the City's motion for summary judgment. The Court explained in its decision that the additional facts that HRT says occurred after a state court jury reached an unfavorable verdict in 2005 "might lead a jury to conclude that today, in 2013, a taking of [the] property has occurred."

In May 2013, HRT filed a Motion for Summary Judgment on Liability, which was granted.

The court concluded that, although there were no approved plans to expand the airport or acquire the property, the City had effectively placed a hold on the property with no compensation to HRT.

"For all practical purposes, the City has effectively acquired HRT's property. The property is not commercially useable, and the City has not paid for its 'ownership.' It has inversely condemned the property.

The issue of damages would proceed to trial.

CONTRACTS - MINNESOTA

Rochester City Lines, Co. v. City of Rochester

Supreme Court of Minnesota - August 19, 2015 - N.W.2d - 2015 WL 4928213

Transit service provider brought declaratory judgment action against city, challenging bidding process by which city accepted competing contractor's bid and asserting defamation claim against city council member. The District Court granted summary judgment to city and council member. Provider appealed. The Court of Appeals affirmed. Provider appealed.

The Supreme Court of Minnesota held that:

- In the absence of a statutory standard, unreasonable, arbitrary, or capricious standard adopted in *Griswold* is the appropriate standard for reviewing a city's or county's decision to award a government contract after a "best value" bidding process;
- There was no evidence that winning bidder had an organizational conflict of interest as would render bidding process void; and
- Genuine issue of material fact existed as to whether city awarded the contract based on an unfair and biased process precluding summary judgment.

BOND VALIDATION - MISSISSIPPI

In re Lauderdale County

Supreme Court of Mississippi - August 20, 2015 - So.3d - 2015 WL 4945009

Objectors brought action against county board of supervisors to force election on the issuance of general obligation bonds, alleging board waived petition deadline by posting petition on the internet allowing signatories to remove their signatures after petition was submitted. The Chancery Court overruled the objection to bond validation, entered a validation judgment, and declined to require objectors to post a supersedeas bond for their appeal. Objectors appealed, and board cross-appealed.

The Supreme Court of Mississippi held that:

- Board did not waive deadline to file petition, and
- The Chancery Court did not abuse its discretion in declining request for supersedeas bond.

County board of supervisors did not waive initial deadline for objectors to file petition objecting to issuance of general obligation bonds by posting petition to a public forum on the internet for two weeks to ensure that signatories wanted their names on the petition, and allowing signatories to remove signatures if they so desired. Signatories had a right to withdraw their names before board finally heard the matter, board had duty to verify signatures on petition, and board did not publish names for an improper purpose or to actively persuade signatories to remove their names.

Chancery court did not abuse its discretion in declining county board of supervisors' request for supersedeas bond for objectors' appeal of judgment validating general obligation bonds. Even though stay of judgment was effectively accomplished merely by filing appeal, no stay was technically granted, no monetary judgment existed, board sought bond to cover damages and costs beyond the costs of litigation, judgment had no monetary basis on which court could have based bond amount, and court considered the potential costs to the parties.

MUNICIPAL ORDINANCE - MISSOURI

City of St. Peters Roeder

Supreme Court of Missouri, en banc - August 18, 2015 - S.W.3d - 2015 WL 4929090

After jury returned guilty verdict in City's prosecution under camera ordinance for failure to stop at red light, the Circuit Court granted defendant's renewed motion to dismiss charge. City appealed.

On transfer from the Court of Appeals, the Supreme Court of Missouri held that:

- Red light ordinance conflicted with state law to extent it prohibited assessment of points against driver's license and was therefore invalid;
- Charge Code Manual did not relieve state agency of statutory duty to assess points against driver's licenses for purposes of determining existence of conflict between ordinance and statute;
- Invalid points assessment portion of ordinance was severable from the ordinance; and
- Ordinance absent severed invalid portion could not be applied retroactively to defendant.

Municipal ordinance, creating an automated red light enforcement system under which motorists would be issued a notice of violation after being detected by a camera running a red light but would not have any points assessed against a motorist's driver's license, was in conflict with state statute requiring Director of Revenue to assess two points against the driver's license of any motorist convicted of a moving violation of a municipal ordinance, and was therefore void.

Although failure to obey a traffic control device, or running a red light, is not an offense specifically listed as a moving violation in state statute requiring Director of Revenue to assess two points against the driver's license of any person convicted of a moving violation of a municipal ordinance, the offense is nevertheless a moving violation encompassed in statute's catch-all category for moving violations not otherwise listed, as the motor vehicle involved in the violation is in motion at the time the violation occurs.

Assessment by Director of Revenue of two points against the driver's license of any person convicted of a moving violation of a municipal ordinance was a mandatory requirement under applicable state statute, such that any indication to the contrary in the Charge Code Manual, a standard manual of codes for all offenses maintained by Department of Public Safety, did not relieve Director or other agency from statutory duty to assess points, for purposes of determining whether municipal ordinance, creating an automated red light enforcement system under which a person would be issued a notice of violation but would not have any points assessed against that person's driver's license, was in conflict with state statute.

Invalid portion of municipal ordinance that conflicted with state statute to extent it prohibited assessment of points against motorist who was detected by camera running a red light was severable from the remaining valid portions. Ordinance contained severability clause, and invalid portion of ordinance did not further expressed intent to authorize the installation and use of automated red light enforcement systems as a means to enforce its traffic law prohibiting the running of a red light.

Remaining valid provisions of municipal ordinance, creating an automated red light enforcement system under which a person would be issued a notice of violation after being detected by a camera running a red light, could not be applied retroactively to defendant after invalid portion, which conflicted with state statute to extent it prohibited assessment of points against person's driver's license, was severed from the ordinance, as to do so would have violated due process and right of

protection against ex post facto laws in that defendant did not have fair notice that points would be assessed at the time of the violation.

MUNICIPAL ORDINANCE - MISSOURI

Tupper v. City of St. Louis

Supreme Court of Missouri, en banc - August 18, 2015 - S.W.3d - 2015 WL 4930313

Following dismissal of citations for violations of red light traffic ordinance, record owners of vehicles who were cited for violation of ordinance filed suit against city and Director of Revenue seeking declaratory and injunctive relief based on claim that ordinance, which carried mandatory rebuttable presumption that record owners were driving vehicle at time violation was captured on automated traffic control system, violated due process.

The Circuit Court declared ordinance unconstitutional and denied owners' request for attorney fees. All three parties filed notice of appeal. Appeals were consolidated.

On transfer from the Court of Appeals prior to opinion, the Supreme Court of Missouri held that:

- Owners did not have adequate remedy available at law to challenge constitutional validity of ordinance, as required to seek declaratory and injunctive relief in circuit court, after city dismissed prosecutions, overruling *Brunner v. City of Arnold*, 427 S.W.3d 201;
- Constitutional challenge was sufficiently ripe to raise justiciable controversy via action for declaratory judgment;
- Rebuttable presumption impermissibly shifted burden of persuasion to owner to prove that owner was not driving vehicle at time of violation, in violation of due process;
- Criminal law regarding presumptions applied to determination whether ordinance violated due process;
- Denial of owners' request for attorney fees was not abuse of discretion; and
- Director of Revenue lacked standing to appeal judgment.

OPEN MEETINGS - NEW JERSEY

Opderbeck v. Midland Park Bd. of Educ.

Superior Court of New Jersey, Appellate Division - August 18, 2015 - A.3d - 2015 WL 4997095

Students' father brought action against borough board of education, seeking injunction and alleging board violated Open Public Meetings Act (OPMA) by failing to include attachments to its agendas. The Superior Court entered injunction. Board appealed.

The Superior Court, Appellate Division, held that:

- Board was not required to post agenda on public website, and
- Board was not legally obligated to provide copies of any attachments or other documents referred to in agenda.

Term "agenda," within meaning of requirement under Open Public Meetings Act (OPMA) that borough board of education, as a public body, provide "adequate notice" to public, including by

publishing its “agenda,” before meeting to conduct official business, did not impose a legal obligation on the board to provide copies of any appendices, attachments, reports, or other documents referred to in its agendas.

Borough board of education was not required to post agenda of its official meetings on its public website under Open Public Meetings Act (OPMA), as OPMA did not state that public bodies were obligated to post agenda on website, but rather provided that no electronic notice was deemed to substitute for, or considered in lieu of, statutory adequate notice, which included publication in two newspapers.

CODE ENFORCEMENT - NEW YORK

New York Youth Club v. New York City Environmental Control Bd.

Supreme Court, Appellate Division, Second Department, New York - August 19, 2015 - N.Y.S.3d - 2015 WL 4922969 - 2015 N.Y. Slip Op. 06592

Petitioner filed article 78 proceeding for review of city environmental control board’s (ECB) determination denying its application to vacate default orders with respect to 230 notices of violation issued to petitioner, and seeking hearing with respect to all 461 notices of violation received by petitioner. The Supreme Court, Queens County, denied the petition. Petitioner appealed.

The Supreme Court, Appellate Division, held that petitioner was not served with 230 notices of violation by certified mail, as required for service of process of such notices.

Petitioner was not served with 230 notices of violation of administrative code regarding posting of handbills by certified mail at its last known business address, as required for service of process of such notices, and thus petitioner was entitled to annulment of city environmental control board’s (ECB) default order issued for petitioner’s failure to appear at hearing regarding violations, where affidavits of service merely stated that the notices were mailed to the addresses indicated on the notices in post paid envelopes deposited into United States Post Office depository, but did not indicate a certified mailing, nor did they indicate that delivery of the mailings was restricted to the petitioner.

VOTING - NORTH CAROLINA

City of Greensboro v. Guilford County Bd. of Elections

United States District Court, M.D. North Carolina - July 23, 2015 - F.Supp.3d - 2015 WL 4493790

In early July 2015, the North Carolina General Assembly passed a law that restructured both Greensboro city elections and the form of Greensboro city government. The City of Greensboro and six of its citizens filed suit, contending that the law violated their equal protection rights under the United States Constitution and the North Carolina Constitution.

The case presented two issues in the long run:

— Under what circumstances, if any, does the General Assembly’s decision to treat one municipality and its voters differently from all other municipalities and their voters in connection with referendum rights and local control over form of government, number and boundaries of districts,

method of electing council members, and style of elections violate the Equal Protection Clause?

— Did the General Assembly violate the "one person, one vote" principles of the Equal Protection Clause by the way it redistricted and reapportioned the eight Greensboro City Council seats?

In the short run, the question before the Court was whether the Court should enjoin the Guilford County Board of Elections from holding the 2015 municipal elections in conformity with the new statute in order to prevent irreparable harm to the plaintiffs caused by these alleged equal protection violations.

The District Court held that it appeared on the current record that the new statute deprived Greensboro voters, alone among municipal voters in the State, of the right to change the City's municipal government by referendum and otherwise treated the City of Greensboro and its voters differently from all other municipalities and municipal voters, without a rational basis.

Therefore, the plaintiffs were likely to prevail on the merits. The plaintiffs would suffer irreparable harm should the 2015 election go forward under the new law, and the public interest and the equities favored a return to the pre-existing status quo pending resolution of this lawsuit. The Court thus granted the plaintiffs' motion for preliminary injunction.

BALLOT INITIATIVE - OHIO

State ex rel. Lange v. King

Supreme Court of Ohio - August 25, 2015 - N.E.3d - 2015 WL 5039437 - 2015 -Ohio- 3440

Petitioner sought writ of mandamus to compel clerk of village to transmit a certified copy of a proposed initiative to the county board of elections.

Newton Falls Ordinance 2014–11 repealed a provision allowing residents a credit for income taxes paid to another municipality. Relator, Werner Lange, circulated petitions to place an initiative on the ballot to restore the tax credit and to mandate that the restoration of the credit be repealed only by popular vote.

The Supreme Court of Ohio held, in an expedited opinion, that:

- Initiative was properly filed with village clerk;
- Requirement that initiative petition contain only one proposal of law did not apply; and
- Clerk abused her discretion by considering initiative's fiscal impact.

Proposed initiative allowing residents a credit for income taxes paid to another municipality was properly filed with village clerk. Village was not a city and did not have an auditor, and statute required petition to be filed with city auditor or village clerk.

Requirement that initiative petition contain only one proposal of law applied only to statewide initiative and referendum petitions and, thus, did not apply to initiative allowing village residents a credit for income taxes paid to another municipality.

Village clerk abused her discretion by declining on the basis of its fiscal impact to transmit a certified copy of a proposed initiative to the county board of elections. It was an abuse of discretion for a village clerk to inquire into substantive questions not evident on the face of the petition, and fiscal impact fell outside the four corners of the document.

BALLOT INITIATIVES - TEXAS

In re Williams

Supreme Court of Texas - August 19, 2015 - S.W.3d - 2015 WL 4931372

Referendum proponents petitioned for writ of mandate challenging wording of ballot question.

The Supreme Court of Texas held that:

- Ballot question on referendum for repeal of ordinance had to be phrased so a "No" vote meant to repeal the ordinance, but
- Referring to ordinance as city's "Equal Rights Ordinance" was not improperly politically slanted.

Upon a referendum for the repeal of a city ordinance, a city charter provision stating that ballots used when voting upon proposed and referred ordinances shall set forth upon separate lines the words "For the Ordinance" and "Against the Ordinance" imposed a ministerial duty for the city to phrase the ballot question so that a "NO" or "AGAINST" vote meant to repeal the ordinance and a "YES" or "FOR" vote meant to maintain the ordinance, even though the city charter was preempted to the extent that it purported to require the specific words "For the Ordinance" and "Against the Ordinance."

The heading of the ballot question on a referendum for the repeal of a city ordinance was not improperly politically slanted in referring to the ordinance as the city's "Equal Rights Ordinance," where the ordinance itself contained the words "Equal Rights" in a heading, and the subject of the ordinance was discrimination in city employment, city services, city contracts, public accommodations, private employment, and housing.

EMPLOYMENT - WASHINGTON

Filo Foods, LLC v. City of Seatac

Supreme Court of Washington, En Banc - August 20, 2015 - P.3d - 2015 WL 4943967

Employers brought action against city, city clerk, and Port of Seattle, which was a special-purpose municipal corporation that, among other things, owned and operated the airport, challenging voter initiative that established a $15–per–hour minimum wage and other benefits and rights for employees in the hospitality and transportation industries. Committee that circulated petition as required to get initiative on the ballot intervened. The Superior Court entered partial summary judgment. Coalition and city sought review and employers sought cross-review.

The Supreme Court of Washington held that:

- Initiative did not violate the single-subject rule;
- Law resulting from initiative was enforceable at airport;
- Law was not entirely preempted by National Labor Relations Act;
- Initiative was not preempted by Americans with Disabilities Act (ADA); and
- Initiative did not violate the dormant Commerce Clause.

TAX - NEW JERSEY

Highpoint at Lakewood Condominium Ass'n, Inc. v. Township of Lakewood

Superior Court of New Jersey, Appellate Division - August 14, 2015 - A.3d - 2014 WL 10222380

Condominium association challenged township's foreclosure of unbuilt condominium units, and sought declaration that township did not hold title to undeveloped portion of parcel removed from condominium's common property. The Superior Court dismissed quiet title complaint. Association appealed.

The Superior Court, Appellate Division, held that:

- As matters of first impression, declared but unbuilt condominium units are "units" for property tax purposes;
- Association was not entitled to separate notice of foreclosure;
- Township had not obtained fee simple ownership of undeveloped parcel of land; and
- Uncertainty as to whether condominium common expense assessment charged to undeveloped units owner should be equal to those imposed on finished units warranted remand.

SPECIAL ASSESSMENTS - MINNESOTA

McCullough and Sons, Inc. v. City of Vadnais Heights

Court of Appeals of Minnesota - August 17, 2015 - N.W.2d - 2015 WL 4877761

Landowner appealed city's imposition of a special assessment. The District Court denied city's motion for summary judgment and city appealed.

The Court of Appeals held that:

- As a matter of first impression, right to appeal a special assessment to the district court is forfeited unless taxpayer files the statutorily required written objection before or at the special assessment hearing, and
- Although landowner had objected orally at special assessment hearing, his actions did not satisfy statutory written-objection requirement, and, therefore, his appeal was not properly perfected.

TAX - ARIZONA

Hub Properties Trust v. Maricopa County

Court of Appeals of Arizona, Division 1 - August 20, 2015 - P.3d - 2015 WL 4965889

This appeal concerns a property tax assessment for real property in Maricopa County for tax year 2011. Hub purchased the Property from the City of Phoenix on March 4, 2011. When the City owned the Property, it was exempt from property taxes.

After Hub purchased the Property, the County Assessor's Office determined the Property was no longer exempt municipal commercial property. As a result, the Property was included in the Assessor's roll as taxable property and was included in the County's tax roll for tax year 2011. The Maricopa County Board of Supervisors then fixed, levied and assessed property taxes for the Property for the County's assessment and tax roll for the 2011 tax year.

On appeal, Hub argued that because the City owned the Property "during the entire assessment period for the tax year 2011, on the tax lien date, and for more than two full months of the tax year at issue herein," the Property was exempt during tax year 2011. Thus, Hub contended, the Property was illegally taxed that year. Hub's argument presumed that once property is exempt, it is exempt for the entire tax year even if there is a change of use or ownership.

The Court of Appeals affirmed the Tax Court's conclusion that the period of exemption begins on the date the property enters government ownership and ends on the date it leaves government ownership.

Although the Property was tax exempt while the City owned it in 2011, the exemption was lifted when Hub purchased the Property in March.

IRS: Mailing Address for Notices of Defeasance and Certain Elections Required by Treasury Regulations.

The following Treasury Regulations – 1.141-12(d)(3), 1.142(f)(4)-1(b)(1), and 1.142-2(c)(2) – require that written notice be given to either the Internal Revenue Service or the IRS Commissioner within 90 days of the establishment of the defeasance escrows under Regs. 1.141-12 and 1.142-2, or the election under 1.141(d)(4)-1.

Treasury Regulations 1.150-5 provides that the notices required by these regulations be filed:

Internal Revenue Service
1111 Constitution Avenue NW
Attention: T:GE:TEB:O
Washington, DC 20224

Vanguard, Once Thwarted, Launches a Muni-Bond Rival to BlackRock's iShares.

The Vanguard Group Inc. was playing catch up when it was getting ready to launch its first municipal bond index fund in 2010.

Its competitors had already successfully brought similar products to the market, including State Street Global Advisors and BlackRock's iShares. Those issuers, who at the time had substantially larger ETF businesses than Vanguard, offered a suite of muni-bond products with more than $2 billion in assets apiece.

But Vanguard was forced to call off its launch. The December 2010 prediction by the analyst Meredith Whitney on "60 Minutes" — that bonds issued by U.S. cities and states would see billions in defaults — worsened the mood of investors shell-shocked by the financial crisis. A fund launch then could have been catastrophic, according to Christopher W. Alwine, the head of Vanguard's municipal bond group.

"People thought munis were the next shoe to drop," Mr. Alwine said. "There were heavy outflows in the muni market at the time. It wouldn't get any interest or it'd get redemptions, and it would make

it difficult to produce tight ‘tracking’ in the product,” capable of successfully matching the returns of its benchmark.

Five years later, Vanguard, now the top mutual fund company and No. 2 ETF shop behind iShares, is hoping that this time is different.

The Vanguard Tax-Exempt Bond Index Fund (VTEBX), launched Monday, is the mutual fund industry’s first passive municipal bond fund, according to Nadine Youssef, a spokeswoman for fund researcher Morningstar Inc. But its ETF counterpart, which Vanguard now runs under the ticker VTEB, will be going head to head with deeply entrenched competitors.

The top product, managed by BlackRock Inc., is a colossus: The iShares National AMT-Free Muni Bond ETF (MUB) manages more than $5.2 billion.

The Vanguard product is the cheapest fund of its kind, with annual expenses of 0.12% for both the ETF and the lowest-cost mutual-fund share class.

Mr. Alwine said that expense ratio will allow the funds to top the performance of its competitors, including the comparable iShares product. A BlackRock spokeswoman declined to comment.

They’re launching the fund into a much healthier market, analysts said, with many cities and states displaying stronger financial conditions and refinancing their debts at lower rates in the past several years. But it’s also potentially an environment of rising interest rates, which to some degree will erode the value of bonds.

The S&P National AMT-Free Municipal Bond Index, tracked by the Vanguard and iShares products, focuses on investment-grade bonds exempt from U.S. federal taxes and excludes the troubled U.S. territory Puerto Rico, which has been purchased by a number of municipal bond mutual funds. The index has averaged a 2.4% return over each of the last three years, or 3.7% each of the last five.

Over five years, 45% of active fund managers have topped the return of that index, according to Todd Rosenbluth, director of ETF and mutual fund research at S&P Capital IQ.

Like many bond index funds, this product looks to match the returns of its index not through buying every underlying bond but by “sampling,” using the assets they have to buy a representative group that matches the characteristics of the bonds in the index.

“While investors should expect that this product should be performing closely in line with the S&P index and should perform close from an ETF perspective to MUB, which tracks the same index, there will be some slight deviation in performance and how well it tracks the benchmark,” particularly before the fund reaches a critical mass of assets, Mr. Rosenbluth said.

“Especially in a world of soon-to-be-rising interest rates, that should make it harder for bond funds to perform as well as they have historically,” he added. “By shaving off the expense ratio, that increases the likelihood of stronger performance.”

Investment News

By Trevor Hunnicutt

Aug 27, 2015 @ 12:52 pm

Investors Brace for Puerto Rico's Debt-Restructuring Plan.

Investors will be watching Puerto Rico this weekend for details of a restructuring plan for its $72 billion debt load, as government officials face a Sunday deadline to deliver a draft of the plan to the governor.

The deadline kicks off what could be a busy week for the struggling island commonwealth, which defaulted on bonds from one of its public agencies earlier this month. Under previous agreements, the Puerto Rico Electric Power Authority, bondholders and other creditors are facing a Tuesday cutoff to shake hands on a restructuring program for the electric utility.

It isn't clear whether the government will release a draft version of its broader restructuring plan on Sunday, and analysts caution that any draft will likely be subject to heavy revisions. Daniel Hanson, an analyst at Height Securities, estimated in a recent research note that it could be up to two weeks before the full plan is officially released.

Earlier this week, Puerto Rican newspapers reported on some details of the proposed plan. The reports implied that Puerto Rico is "still intending to deeply haircut bondholders of many (or most) Puerto Rican bonds," meaning investors could face significant losses, Mr. Hanson wrote in his note.

"People are now looking for this report to give more color," said Bill Black, who helps oversee the $7.2 billion Invesco High Yield Municipal Fund.

Some Puerto Rico bonds have risen in price in recent days, reflecting optimism that investors will soon get a better idea of how the restructuring plan might look. A big chunk of Puerto Rico general-obligation bonds traded at 72.75 cents on Friday, up from 70.5 cents a week earlier, according to the Electronic Municipal Market Access website.

Puerto Rico, whose bonds are widely held by U.S. mutual funds, has been struggling with a lackluster economy and high unemployment for years. In June, Gov. Alejandro Garcia Padilla called the island's debts unpayable and directed a so-called working group of government officials to develop a draft restructuring plan and present it to him by Sunday.

The deadline comes after Puerto Rico this week further delayed a $750 million bond sale for its water and sewer authority. The sale has been scheduled for the past two weeks, but underwriters haven't been able to attract enough orders from investors to sell all the bonds, according to people with knowledge of the deal.

Officials have said they don't anticipate water and sewer bonds taking a hit as part of the restructuring plan, assuming the authority can sell bonds and its financial projections are met. Some investors, however, say the island commonwealth has been sending mixed messages. For example, Puerto Rico recently asked the U.S. Supreme Court to review a decision voiding a law allowing certain government agencies, including the water and sewer authority, to restructure their debts.

"You have one hand out telling people you can't pay your bills, and you have another hand out hoping to collect money, saying you can pay your bills," said Hugh McGuirk, head of municipal bonds at T. Rowe Price, which oversees about $22 billion in municipal debt. "The market is asking, which is it?"

The sewer authority planned to use the bulk of the proceeds for improvements to the water and sewer system. But it also planned to use the cash to pay off a $90 million credit line from Banco

Popular de Puerto Rico, which comes due on Monday. The authority pledged the “bulk of its cash reserves” as collateral for the loan, according to Fitch Ratings, which gave the planned sewer bonds a junk rating.

THE BOND BUYER

By MIKE CHERNEY

Aug. 28, 2015 5:40 p.m. ET

U.S. Research Quarterly, Second Quarter 2015.

About the Report

A quarterly report containing brief commentary and statistics on the U.S. capital markets, including but not limited to: municipal debt, U.S. Treasury and agency debt, short-term funding and money market debt, mortgage-related, asset-backed and CDO debt; corporate bonds, equity and other, derivatives, and the primary loan market.

Summary

Total Issuance Increases in 2Q’15

Long-term securities issuance totaled $1.76 trillion in 2Q’15, a 3.1 percent increase from $1.71 trillion in 1Q’15 and a 10.1 percent increase year-over-year (y-o-y) from $1.60 trillion in 2Q’14. Issuance fell quarter-over-quarter (q-o-q) across three asset classes: federal agency, asset-backed and equity while the remainder recorded increases.

Long-term public municipal issuance volume came in at $110.4 billion for 2Q’15, an 6.2 percent increase q-o-q ($104.0 billion) and 32.7 percent increase y-o-y ($83.2 billion). With private placements included ($2.5 billion), long-term municipal issuance for 2Q’15 was $113.0 billion, a 5.3 percent and 25.2 percent increase, respectively, q-o-q and y-o-y.

Total gross issuance of Treasury bills and coupons, with cash management bills, Floating Rate Notes and Treasury Inflation-Protected Securities included, was $1.69 trillion in 2Q’15, which was unchanged from 1Q’15 and a 1.1 percent decrease from 2Q’14’s issuance of $1.71 trillion. U.S. Treasury net issuance, including CMBs, fell sharply to $56.6 billion in the second quarter, a 51.5 percent decrease from $116.6 billion issued in the previous quarter but a much higher outcome than 2Q’14’s net redemption of $64.50 billion. Net issuance for the second quarter was 4.1 percent below the Treasury’s May net borrowing estimate of $59.0 billion.

Federal agency long-term debt issuance was $88.9 billion in the second quarter, compared to $130.19 billion in 1Q’15 and $69.4 billion in 2Q’14.

Mortgage-related securities issuance, which includes agency and non-agency passthroughs as well as collateralized mortgage obligations (CMOs), reached $441.2 billion in 2Q’15, a 27.0 percent increase q-o-q ($347.5 billion) and a 44.7 percent gain y-o-y ($304.9 billion). Increases were driven entirely by improvements in agency issuance, as non-agency volumes declined both q-o-q and y-o-y.

Asset-backed securities (ABS) issuance reached $60.1 billion in 2Q’15, falling 2.7 percent and 14.8

percent, respectively, q-o-q and y-o-y. The auto industry continued to lead issuance totals with $27.7 billion (46.1 percent of total 2Q'15 issuance), followed by credit cards ($8.8 billion, or 14.7 percent).

Corporate bond issuance stood at $442.6 billion in the second quarter, a 1.7 percent increase from the $435.0 billion issued in 1Q'15 and 3.5 percent above 2Q'14's issuance of $427.8 billion. Both the investment grade and high yield issuance showed quarterly increases with HY bonds' issuance increasing at a slightly faster pace.

Equity underwriting fell 9.5 percent to $81.0 billion in 2Q'15 from $89.5 billion in the previous quarter and down 14.2 percent y-o-y, but was 13.3 percent above the five-year average of $71.5 billion. The number of equity underwriting deals dropped to 301, down 6.2 percent q-o-q and 17.5 percent from 2Q'14. The average deal size dropped to $269.2 million in 2Q'15, a decline of 3.5 percent q-o-q but a 4.0 percent gain y-o-y.

View the Report.

August 19, 2015

What Happened to Edward Jones and Does it Impact Issue Price?

A few weeks ago, the Securities and Exchange Commission ("SEC") issued an Order stating that the broker-dealer Edward D. Jones & Co. L.P. ("Edward Jones") had to pay a hefty fine to the SEC as well as remuneration to its customers due to certain of its actions in the municipal bond market. You may be asking "what'd you do"? According to the SEC, Edward Jones sold municipal securities at prices in excess of the initial offering prices prior to the time that the bonds were able to be publicly traded and improperly retained bonds in its own inventory. Edward Jones benefitted from such practices by retaining the difference between the higher sales prices and the initial offering prices. Anyone who has spent any time on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access database ("EMMA") has observed that trading in the secondary market at prices in excess of the initial offering prices happens ALL….THE….TIME…. (after the bonds have been sold by the underwriter at their initial offering prices, of course). For years, broker-dealers and financial advisors have affirmed that such practice is common because bonds are originally offered to the public in blocks that are too large for smaller retail customers. Therefore, certain retail-oriented broker-dealers will purchase a maturity and divide it up into multiple smaller pieces and sell the pieces off at slightly higher prices to retail clients. Because of the inefficiency of selling smaller pieces, salespersons need higher compensation on a percentage basis to be incentivized to make those sales. So what's the big deal?

The Big Deal

The big deal is the timing of the sales and the misleading practice that Edward Jones engaged in to effectuate the sales! Specifically, and among other things, [1] the SEC determined that Edward Jones engaged in the following practices which violate the rules in footnote 1 below:

> Edward Jones initially purchased the bonds by placing a "group net" order which is typically a higher priority order reserved for customers of the co-managers rather than for the manager's own account (which orders are referred to as "stock" or "member" orders and given a lower priority). Edward Jones subsequently offered and sold the new issue municipal bonds at prices in excess of the initial offering prices during the period of time when Edward Jones was obligated, pursuant to the underwriting syndicate restrictions, to

> offer and sell the bonds at the initial offering prices (i.e. before the bonds could be marketed to the public).[2]
>
> In violation of its Agreement Among Underwriters ("AAU") (upon which the senior underwriter relied in making the certifications in the issue price certificate), Edward Jones did not offer to sell bonds to its retail customers at the bonds' initial offering prices. Instead, without giving its retail customers an opportunity to purchase the lower priced bonds, Edward Jones first offered and sold securities at prices in excess of the initial offering prices.

What does this have to do with tax? Isn't this a tax blog? Where am I?

For an issue of bonds that are publicly offered, the issue price is based on sales made or expected to be made as of the sale date (i.e., the date on which the issuer and underwriter enter into a written, binding obligation for the underwriter to purchase the bonds) to the general public. The senior manager typically makes the representations in the issue price certificate and in so doing it relies on representations of the co-managers in the AAU.

As a result, once Edward Jones made the representation, the issue price was based off of the initial offering price (i.e., the price paid by Edward Jones to obtain the bonds in the first place) and did not account for subsequent sales. Scandalous! Now, this is not a blog on issue price and there are a number of important tax law concepts (in the TEB world and elsewhere)[3] that are based off of issue price that are beyond the scope of this blog. For purposes of this blog, however, there are a few simple relationships that are important to understand:

- The higher the price of individual bonds, the higher the issue price (insightful, right)?
- The higher the issue price, the lower the yield (see footnote [4]).
- The lower the yield, the lower return that tax-exempt bond proceeds are permitted to generate without constituting arbitrage bonds or owing rebate!

If you've tuned out (can't blame you), here's where you should tune back in. If the higher-priced sales by Edward Jones are taken into account in determining the applicable bonds' issue price, then the issue price established by the issue price certificate is understated and the yield on the issue is overstated.[4] Any issue of bonds whose unspent proceeds are invested in investments that yield a return very close to the yield on the bonds as established by the lower issue price set forth on the issue price certificate run the risk of owing more rebate or losing their tax-exempt status!!![5] This is the point where my boss, Bob Eidnier, politely taps me on the shoulder and we have the following dialogue:

Bob: Joel, aren't you forgetting about a very important line in the definition of issue price?

Joel: Oh yeah, there is that line which reads "[t]he issue price does not change if part of the issue is later sold at a different price." But that line applies once the bonds are sold or expected to be sold to the public. Since Edward Jones did not effect such a sale, wouldn't it be inapplicable?

Bob: Possibly but the definition is designed to determine an issue price as of the sale date and based on reasonable expectations regarding the initial public offering price. Therefore, the issue price would have been established before Edward Jones sold the bonds at the higher prices! Permitting the consideration of sales after the initial sale to the underwriter(s) would introduce uncertainty into the determination of issue price that would make it very difficult, if not impossible, for issuers to comply with any of the tax-exempt bond provisions in the Code!

This is the way most of my disagreements with Bob go which is unfortunate for me but very fortunate for issuers because Bob is always correct (we're not above pandering here at Squire Patton Boggs!). Bob and I did not discuss whether sales by a member of an underwriting syndicate at prices in excess of the initial offering prices calls into question the reasonableness of the sale date expectations regarding issue price, but one would hope that where a member of the syndicate is less than forthcoming in the AAU about the initial offering prices of its sales to the public, the reasonableness of the lead underwriter's sale date expectations regarding issue price would not be impugned.

If the lack of consideration for post-sale date trading strikes you as odd and susceptible to manipulation, you aren't the only one. Interestingly, a few months ago the Service released a revised notice of proposed rulemaking that withdrew a prior, controversial set of proposed regulations governing issue price and replaced those with a more moderate approach. A Squire Patton Boggs tax partner wrote a magnificent blog (I describe it as magnificent because he is a partner) on the revised regulations, so a comprehensive explanation here is unnecessary. However, the proposed regulations do introduce an interesting concept that could be interpreted as the Service's consideration for Edward Jones-type activity. Specifically, if the proposed regulations were applied, when an underwriter has failed to sell at least 10 percent of each maturity of an issue to the general public and then subsequent to the sale date (but before the closing date of the issue), the underwriter sells the bonds at prices in excess of the initial offering prices, the underwriter must certify that the increase in price is due to market fluctuations and the issuer must "not know or have reason to know after exercising due diligence, that the certifications are false." Although the proposed regulations are not directly applicable to the Edward Jones case, they do introduce the concept of monitoring post sale-date trading by imposing a due diligence requirement.

Summary

The issue price rules are written (rightfully) to ensure that issue price can be determined as of the sale date (which would usually be the closing date for private placement bonds), and they currently preclude consideration of post-sale date activity in the determination of issue price. The heightened scrutiny over issue price that has evolved over the last 5-10 years coupled with the language in the proposed regulations may signal that the Service will eventually require issuers (and bond counsel :-)) to scrutinize post-sale date trading more closely. Rest assured, because this would signal a significant shift from current practice, the Service would likely impose any such requirement prospectively and with a lot of guidance.

[1] The SEC found that Edward Jones willfully violated Sections 17(a)(2) and (3) of the Securities Act (anti-fraud provisions), Section 15B(c)(1) of the Exchange Act (duty of municipal advisor), and rules G-17 (obligation of broker dealers to deal fairly), G-11(b) (broker dealer duty to disclose whether securities purchased for own account – priority given to customer orders rather than orders for own account), G-27 (obligation to supervise), and G-30 (requirement that BD sell to customers at price that is fair and reasonable).

[2] As an example, the SEC cited the Amarillo Economic Development Corporation, Taxable Sales Tax Revenue Bonds, Series 2009 (Official Statement) in which Edward Jones served as co-manager.

[3] For example, the 2% costs of issuance limitation is generally based off a proximate of issue price..

[4] In one example included in the SEC order, the increased sales price reduced the yield by more than 43 basis points.

[5] Federal tax law limits the amount of premium that certain tax credit bonds, such as Build America Bonds (Section 54AA of the Code) can have. Another consequence addressed in the SEC order is that bonds that are sold at higher prices could run afoul of this limitation and cause the bonds to no longer be eligible for the applicable tax credits.

About this Author

Joel Swearingen

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Strength in Numbers: Public-Private Partnerships.

Partner Steven Hilfinger contributed an article to the August 2015 issue of the Manufacturing Leadership Journal. "Strength in Numbers: Public-Private Partnerships," discusses how Public-Private Partnerships (P3s) can help manufacturers tackle projects that are too complex or expensive for a single company to handle. Hilfinger, formerly a senior advisor to Michigan Governor Rick Snyder, outlines the key strategies in establishing successful P3s.

Tax Analysts: IRS Details Tax Treatment of Police, Firefighter Uniforms.

The IRS Federal, State & Local Governments division has provided guidance on the tax treatment of casual items of clothing issued as uniforms to police officers and firefighters.

According to the directive, police officers and firefighters may treat the costs of the clothing as excluded from wages if two criteria are met: The employer requires the employees to wear the clothing as a condition of their employment; and the employer prohibits off-duty workers from wearing their designated uniforms as casual wear, such as a polo shirt or cap bearing official insignia.

Continue reading (subscription required).

Summary by Tax Analysts®

NABL Issues Updated Municipal Bankruptcy Primer.

The National Association of Bond Lawyers has released the 3rd edition of *Municipal Bankruptcy: A Guide for Public Finance Attorneys*. This edition updates the 2012 edition with the experience of recent municipal bankruptcies, particularly that of the City of Detroit. The Guide includes a discussion of alternatives to bankruptcy, a history of Chapter 9, the specifics of municipal bankruptcy, and the treatment of a bond issue in municipal bankruptcy. The Guide also discusses procedures for commencing a municipal bankruptcy case, many of the important case management aspects, the plan of adjustment, and dismissal of a Chapter 9 case. Suggested additional readings are also included.

While the Guide is not intended to be neither a comprehensive treatise on the United States Bankruptcy Code, a complete compendium of the statutes that exist in all fifty states and comprise the authorization for or the alternatives to federal bankruptcy for municipalities, nor an exhaustive scholarly work on municipal insolvency, it is intended to provide the bond practitioner with the information and resources he or she may need to assist clients.

Appeals Court Judges Uphold SEC Rule Similar to G-37.

WASHINGTON — A panel of three federal appeals court judges on Tuesday dismissed a challenge to the Securities and Exchange Commission's pay-to-play rule for investment advisors, which is similar to the Municipal Securities Rulemaking Board's Rule G-37 for broker-dealers.

The U.S. Court of Appeals for the District of Columbia Circuit dismissed the challenge by the New York Republican State Committee and the Tennessee Republican Party, saying the two groups missed the 60-day deadline to challenge the rule after it went into effect, as the Investment Advisors Act of 1940 requires. A lawyer for the groups would not comment on whether there are plans to appeal the decision.

The two Republican groups first challenged the SEC's rule in a 2014 federal district court case that was ultimately dismissed for a lack of subject matter jurisdiction. The rule, which was adopted in 2010, is designed to prevent investment advisors and their firms from making significant political contributions to state and local officials or candidates who can influence the award of investment business. If an IA contributes to such an official beyond a specified de minimis amount, the rule requires the IA to wait two years before he or she can provide services for compensation to that government client.

The Republican groups argued the rule violated their constitutional rights and was an example of the SEC overstepping its authority.

While the appeals court panel decision was based on a failure to follow appeals procedures and thus

does not have much bearing on the rule's substance, Hardy Callcott, a partner at Sidley Austin, said the constitutionality issue is likely to resurface when the MSRB modifies G-37 to include municipal advisors as well as dealers.

G-37 currently prevents a dealer from engaging in negotiated municipal business with an issuer for two years if that dealer or one of its municipal finance professionals makes a significant contribution to an issuer official who could influence bond business. Muni finance professionals can give $250 to a candidate whom they can vote for without triggering the ban.

FINRA has said it hopes to classify broker-dealers acting as placement agents as investment advisors under the SEC rule and that could also raise the constitutionality issue, Callcott said.

Neither of the proposed rule changes have been drafted, but Callcott said both will be "ripe for a challenge" if they are and the SEC approves them. He added that if they are challenged, the DC Circuit court will have to reconsider a 20-year-old case brought by Alabama bond dealer William Blount, who argued Rule G-37 violated his constitutional right to free speech.

The DC appellate court rejected the argument in 1995, ruling G-37 was "narrowly tailored to serve a compelling government interest." The Supreme Court declined to take up an appeal of the appellate ruling. But one could question whether the current Supreme Court would refuse to hear a similar case given that it has issued rulings overturning restrictions on political contributions, such as in Citizens United vs. Federal Election Commission in 2010.

THE BOND BUYER

BY JACK CASEY

AUG 25, 2015 4:58pm ET

Court Decisions Extend Chicago's Transfer Tax Ordinance to Cover Mortgage Assignment: Seyfarth Shaw

Earlier this month, in a case of first impression, the Circuit Court of Cook County, Illinois in the consolidated cases of *City of Chicago v. KTCP 225, LLC*, Case No. 13 L 050290, and *City of Chicago v. Horizon Group XXI, LLC,* Case No. 13 L 050291 (the"KTCP/Horizon Cases"), reviewed and analyzed the Chicago Real Property Transfer Tax Ordinance (the "Ordinance") to determine whether one who purchases a loan and mortgage through an assignment of mortgage acquires a "beneficial interest in real property" such that the parties are subject to transfer taxes on the assignment, and further whether the transaction qualifies under Exception C of the Ordinance, which exempts from taxation the granting of mortgages. Just last week the Circuit Court of Cook County again addressed these issues in *Halsted West v. City of Chicago*, Case No. 11 CH 19010, consolidated in the *City of Chicago v. Elm State Property* and *Halsted West*, Case Nos. 14 L 050273 and 14 L 050274 (the "Halsted West Cases").

Although there are parts of the court's opinions with which we take exception, the purpose of this memorandum is to report not to present a critical analysis. While a trial court's decision is of limited precedential value and is subject to appeal, the tenor of the City's litigation position and the court's decisions cannot be ignored.

The Ordinance

The Ordinance in relevant part provides that "a tax is imposed upon the privilege of transferring title to, or *beneficial interest in*, real property located in the city." (Emphasis added.) The Ordinance does not define "beneficial interest in real property," but provides examples of what qualifies, "including, but not limited to:" a beneficial interest in an Illinois land trust, a lessee interest in a ground lease that provides for a term of 30 or more years, and controlling interest in a real estate entity. However, the Ordinance contains numerous exemptions. Prior to May 8, 2013, Exemption C of the Ordinance exempted from tax "[t]ransfers in which the deed, assignment or other instrument of transfer secures debt or other obligations."

Although not germane to the cases in question, note that, under a May 8, 2013 amendment to the Ordinance, Exemption C applies to "[t]ransfers in which the deed, assignment or other instrument of transfer secures debt or other obligations; *provided, however, that any transfer must be to a mortgagee or secured creditor*." (Emphasis added.) In addition to the revision of Exemption C, the Ordinance as amended defines a "mortgagee" and "secured creditor" as "a lender, such as a bank, credit union, mortgage company or other person who acquires a mortgage or other instrument of transfer *primarily for the purpose* of securing a loan, and *not primarily for the purpose of acquiring the real property or beneficial interest in real property* that is the subject of the mortgage or other instrument of transfer." (Emphasis added.)

The Cases

In the KTCP/Horizon Cases, the court recited facts that had the taxpayers entering into deed-in-lieu of foreclosure (DIL) agreements before the mortgages were assigned (and received the borrowers' deeds contemporaneously with the mortgage assignments), and ruled that: (1) assignments of mortgages did convey a "beneficial interest in real property"; (2) the assignment and DIL transactions in this case cannot be separated when applying Exemption C; (3) the assignments of mortgage did not secure debt, and therefore the taxpayers did not qualify for Exemption C.

The first ruling would put all mortgage transactions under the Ordinance, subject to the availability of an applicable exemption. The court concluded that "if a mortgage was not a 'beneficial interest in real property' then the inclusion of the C Exemption…would be superfluous." The court held that since legislation must be interpreted to avoid making a provision superfluous, a mortgage must be a beneficial interest: "[s]ince mortgage liens are not actual title, they must be beneficial interests in real property."

The second ruling, that the assignments of mortgages and deeds must be considered together would seem to be limited to the facts of the case wherein the two parts of the transaction (mortgage assignment and deed) were expressly linked and simultaneous.

The court's third ruling, that the transactions were not entitled to Exemption C, will engender the most uncertainty. The court acknowledges that the granting of a mortgage as security for debt was exempt under Exception C, but reasoned that the assignment of a mortgage did not secure a debt or obligation (the requirement for Exemption C) but rather was a "transfer of debt": "…the Assignments conveyed rights to immediate possession and did not secure debt or other obligations." Perhaps the opinion can be limited to its narrow facts based on the court's own conclusion that due to the express ties between the mortgage assignments and the deeds, there was no debt existing at that time: "the Assignments conveyed rights to immediate possession and did not secure debt."

In the Halsted West Cases, the opinion is devoid of any discussion about the linking of the assignment of mortgage and deeds-in-lieu of foreclosure either in the facts or the legal analysis and thus would appear to broaden even further the taxability of mortgage assignments. In ruling that the mortgage assignments were taxable under the Ordinance, the court simply reiterated its earlier

opinion that an assignment of a mortgage constituted a transfer of a beneficial interest in real property and that while Exemption C exempted mortgages from the transfer tax, it does not exempt assignments of mortgage:

> "The Assignments are transfers of an instrument, which instrument is a transfer that secures debt or other obligations. The Assignments themselves are not instruments of transfer which secure debt. They are an assignment of a document which assigns a lien to secure debt. The Assignments did not secure anything, they simply transferred rights. There was no amount loaned in exchange for the Assignments. Therefore, by the plain meaning of the C Exemption, the Assignments are not exempt as they do not secure debt or other obligations. The Assignments did not secure debt between Taxpayers and the original mortgagees."

In the Halsted West Cases, the court makes no mention of DIL agreements, but recites, without connecting the fact to its argument, that deeds to the taxpayers from the borrowers were delivered many months after the mortgage assignments.

Conclusion

If nothing else, the rulings show the direction of the City's litigation posture in similar cases. At worst, the cases make taxable the numerous mortgage assignments made each year where the underlying collateral is Chicago real estate. At its most favorable to taxpayers, perhaps the cases can be limited to the narrow facts wherein there are both mortgage assignments and deeds in-lieu of foreclosure.

Last Updated: August 21 2015

Article by Jeffrey Jahns and Daniel J. Hagedorn

Seyfarth Shaw LLP

TAX - OHIO

MacDonald v. Shaker Hts. Bd. of Income Tax Rev.

Supreme Court of Ohio - August 19, 2015 - N.E.3d - 2015 WL 4937143 - 2015 -Ohio- 3290

Taxpayer challenged assessment of municipal income tax on present value of taxpayer's annuity payments from employer's retirement plan. The Municipal Tax Board held that amount at issue was not pension exempt from municipal income tax, and taxpayer appealed. The Board of Tax Appeals (BTA) reversed. City tax administrator and Municipal Tax Board appealed. The Court of Appeals affirmed. City tax administrator and Municipal Tax Board appealed.

The Supreme Court of Ohio held that:

- Even assuming that statute governing appeal to BTA applied same standard of review as statute governing judicial review by Court of Common Pleas of administrative agency ruling, BTA's review of tax board's legal conclusion that present value of taxpayer's annuity from retirement pension did not come within pension exclusion from municipal income tax was de novo, with no deference to

board, and
- On appeal to BTA, standard of review on questions of both law and facts was de novo.

S&P's Public Finance Podcast (Hillview, KY And University Of Oklahoma).

In this week's Extra Credit, Associate Scott Nees discusses our rating on Hillview, KY and Director Ken Rodgers talks about our rating action on the University of Oklahoma.

Listen to the Podcast.

Aug. 28, 2015

Are Muni Bonds an Income Equalizer?

A surprising look at who owns and who benefits the most from tax-exempt debt.

Income inequality has reemerged as the central issue in American politics. States and localities across the country are considering a variety of responses, including raising the minimum wage, enacting rent control and expanding affordable housing. But how will we pay for these responses?

Advocates for the "99 percent" have built a simple and compelling story: They blame their situation on taxes, the super-fortunate "1 percent" and a broken promise. For decades, the story goes, the lower and middle classes permitted the rich to pay less than their fair share of federal taxes. More money in the private economy was supposed to mean stronger economic growth, more jobs and better opportunities for everyone else. But instead of reinvesting in America, the 1 percenters took the money and ran. Now the 99 percent want to put an end to tax exemptions, credits and other "tax preferences" that have done little to help them.

Among these taxes are the "muni exemption" that excuses investors from paying federal income taxes on the interest they collect on investments in state and local government bonds. That interest rate is, of course, lower than it would be for a corporate bond. The exemption has been part of the federal tax code for as long as we've had a federal income tax. It's a natural target because conventional wisdom says municipal bonds mostly benefit rich folks who can afford to buy them. President Obama seems sympathetic to this argument and has floated his own plans to reform the exemption.

As it turns out, some new academic research sheds light on this issue. In a new paper, researchers Dan Bergstresser of Brandeis University and Randy Cohen of Massachusetts Institute of Technology ask a simple but often overlooked question: Who actually owns municipal bonds? To get at the answer, they analyzed 25 years of detailed data on individual households' finances. They found that municipal bond ownership has in fact become more concentrated with the wealthy. The top 1 percent of households by total wealth owned about one-quarter of all municipal bonds in 1989. By 2013 they had upped that edge to around 42 percent.

Ironically enough, this concentration of investment has a lot to do with our past attempts to reduce inequality. From 1989 to 2013, tax-deferred retirement accounts like 401(k)s and IRAs became the savings vehicle of choice for the middle class. Before those tools were available, regular folks often bought municipal bonds as a tax-free way to save for retirement or for college. Today they can buy

stocks and other taxable assets through a tax-free retirement account and realize a much better return on investment. Municipal bonds with their tax-free but lower interest rates make a lot of sense for rich people, but now the middle class have better options.

So if the 99 percent don't benefit from the muni tax exemption, what else is in it for them? That's the focus of a paper published in 2014 by a team of researchers from the Urban-Brookings Tax Policy Center. They looked at data from individuals' tax returns to see the muni exemption's direct and, more important, indirect effects. They too found the wealthy realize most of the tax benefits. However, their results also show that low-income taxpayers gain substantial indirect benefits, equal to as much as 15 percent of their total income.

How do these indirect benefits work? Simply put, the muni exemption reduces a government's cost to deliver basic public services more than it reduces the taxes paid by the rich. It allows public school districts to finance new school buildings at lower interest rates, so they do. Same for roads, transit systems, bridges and many other basic public services that the 99 percent use every day. It also shifts some of the 1 percent's attention away from corporate bonds and stocks, and that makes those investments even better: Through their 401(k)s and IRAs, lower- and middle-class folks can own them tax-free.

Tax reform can and perhaps should be a part of our policy response to income inequality. But that reform should follow from a compelling story that takes account of all the facts. This is especially true of the muni exemption's story.

GOVERNING.COM

BY JUSTIN MARLOWE | AUGUST 2015

What Happens When You Start Taxing Muni Bonds?

A new study offers the best data to date on how much the tax exemption on municipal bonds, which are often used to finance sports stadiums, saves state and local governments.

The $3.6 trillion municipal bond market is about as uniform as a crazy quilt. That's why it's hard to measure what one policy change — mainly, removing muni bonds' tax-exempt status — could mean for the market. But a new analysis offers the best glimpse yet of the impact that revisions might have on state and local governments.

The new study, commissioned by the International City/County Management Association and the Government Finance Officers Association, confirms one argument made in favor of the exemption: Since investors don't have to pay an income tax on their interest earnings from the bonds, governments can pay off their bonds at a lower interest rate than they would otherwise. The tax-free status of municipal bonds saved governments an estimated $714 billion in extra interest payments from 2000 to 2014, according to the report. That's the equivalent of building a state-of-the-art stadium, ballpark and arena for every professional sports city in the U.S. and Canada six times over.

Of course, this isn't the first study to back up the tax exemption's positive affect. What's different about this study is the level of data it provides policymakers. Previous reports merely offered a blanket comparison between the interest rates on a range of municipal bonds to the interest rate on U.S. treasuries, leading to the conclusion that interest rates for all muni bonds would have been between 2 and 3 points higher over the last decade without the tax exemption. But there's an old

saying about the municipal market: If you've seen one muni bond, then you've seen one muni bond.

To get at a more accurate picture of how the exemption saves governments money, Justin Marlowe, author of the new report and a Governing columnist, looked at how the type of issuer affects interest rates. He found that depending on the issuer, savings can range from $80 to $210 in additional interest expenses per $1,000 of borrowed money.

"The effect of the exemption is much more stable or predictable for bigger issuers than other kinds," said Marlowe, a public finance professor at the University of Washington. "It's valuable, but the value doesn't vary as much as it does for smaller issuers." And, he adds, the value of the exemption is lower post-financial crisis.

Very small bond offerings — less than $3 million — see the lowest savings, little more $50 per $1,000 borrowed. Cities, counties and schools on average see slightly better savings of roughly $75 per $1,000 borrowed. Before the financial crisis, those groups saw average savings ranging between $120 and $150 per $1,000 borrowed.

Among the different types of issuers, hospitals see some of the biggest savings on interest payments. The average hospital today saves more than $100 per $1,000 borrowed — 1 percent less in interest — than it would if the bonds were taxable. Before the 2008 financial crisis, hospitals saved more than $150 per $1,000 borrowed. The big savings is because hospitals, which include nursing homes, tend to be among the riskiest investments in the municipal market. For hospitals, the default rate is still very low — less than a half percent, according to Municipal Market Analytics. But for retirement homes, a very small player in the market, the default rate is 5 percent.

Although talk about removing the muni bond tax exemption seems to have cooled on Capitol Hill until at least after next year's presidential election, tax reform is on the lips of just about every presidential candidate. While it would likely cost governments more to borrow if the exemption is eventually removed, the action would also trigger other changes to the market, said Marlowe. Many high-net-worth investors attracted to the tax-free feature of muni bonds would likely bow out. At the same time, foreign and corporate investors who don't currently benefit from the tax-free status could swoop in. It could create an increase in demand for muni bonds and thus keep interest rates low.

"There are lots of market dynamics that might change who buys munis," Marlowe said. "The question is, how many of those folks are out there?"

GOVERNING.COM

BY LIZ FARMER | AUGUST 27, 2015

Christie's Recovery Elusive as Bond Market Penalizes New Jersey.

As New Jersey prepared for its biggest bond sale in more than two years, Governor Chris Christie's office said a break in rating cuts for the Garden State showed that its finances are on the mend. Bond prices suggest otherwise.

The extra yield investors demand to buy New Jersey bonds instead of top-rated debt is holding close to the highest since at least January 2013. When New Jersey began marketing the $2.2 billion of securities last week, 20-year bonds were offered for a yield of 5.07 percent, more than 2 percentage points above the benchmark, according to three people familiar with the sale who requested

anonymity because pricing wasn't final.

"The state is going to continue to have issues," said Scott McGough, who helps manage about $3 billion of municipal debt as director of fixed income for Glenmede Trust Co. in Philadelphia and isn't buying New Jersey bonds. He said officials aren't "making the adjustments you would want them to do."

New Jersey has a lower rating than any state except Illinois after nine downgrades since Christie took office in January 2010 and vowed to repair a government battered by the recession and squeezed by swelling shortfalls in its pension funds. That deficit, now $83 billion, has continued to grow despite a cut to benefits, as the slow recovery left Christie without money needed to make up for years of shortchanging the retirement system.

Ratings Respite

While New Jersey's bond yields have climbed relative to other securities, they're still less than they were in 2013 as municipal borrowing costs hover at a five-decade low.

New Jersey Assistant Treasurer Steven Petrecca said yield penalties have risen because of heightened investor scrutiny brought on by the fiscal struggles of Puerto Rico and Chicago.

"The bottom line here is that we believe that our bonds will be received because we always pay our debt," he said.

The state won a respite from the cuts to its rating ahead of the sale Tuesday by its Economic Development Authority, which is raising money to refinance debt and fund school construction. It's New Jersey's biggest securities offering since January 2013, Petrecca said.

Fitch Ratings on Aug. 18 changed the outlook on New Jersey to stable from negative, signaling that the state won't be downgraded again soon. The New York-based company said conservative revenue forecasts reduce the risk of another late-year budget deficit like those that have "plagued the state in recent years."

'Continued Progress'

Christie, who is campaigning for the Republican presidential nomination as a politician who cleaned up a fiscal mess he inherited, seized on the assessment.

The report from Fitch recognizes Christie's "continued progress in responsibly managing the state's finances by cutting discretionary spending, increasing reserves, and conservatively forecasting revenue," his office said in a statement.

The administration also drew on a less sanguine assessment from Moody's Investors Service, which said New Jersey's rating could be reduced again if the pension strains worsen, to make the case for further benefit cuts. "The problem is the unwillingness of Democrats in the legislature to come to the table and fix a broken system," his office said.

Assemblyman Gary Schaer, a Democrat who chairs the house's budget committee, said Christie has continued to shortchange the retirement system and failed to put needed money into schools and infrastructure.

Festering Wounds

“All of these problems remain and they are, at best, festering wounds with little or no triage going on,” Schaer said. “There’s no long-term plan to confront any of the fiscal issues facing the state.”

The pension-system deficit may widen because Christie’s administration is contributing $1.3 billion to it this year, less than half the $3.1 billion set by a 2011 law he signed that sought to make up for years of underfunding. He used the money to cover the government’s bills when tax collections fell short of forecasts.

Fitch and Standard & Poor’s grade New Jersey debt A, the sixth-highest level, while Moody’s places it in the same rank at A2.

“There’s been no success really in terms of dealing with the liability side of the equation,” said Paul Brennan, a money manager in Chicago at Nuveen Asset Management, which oversees about $100 billion of munis. “We’re now at the point where it’s becoming critical.”

Market’s View

His view is reflected in the bond market. Ten-year New Jersey debt yields 3.2 percent, or 0.96 percentage point more than benchmark tax-exempt munis. That’s close to the record high touched in July, according to data compiled by Bloomberg. The data begin in January 2013.

Investors have also demanded a higher premium to buy bonds sold by the economic development authority, which are rated one step below the state’s general obligations. Securities due December 2016 traded Monday for a yield of 1.5 percent, about 1.16 percentage points over benchmark munis. That’s higher than the average of 1.1 percentage point since March.

Bloomberg

Romy Varghese and Terrence Dopp

August 23, 2015

New Jersey Completes $720 Million Exit From Derivative Contracts.

New Jersey has ended its experiment with derivative contracts.

Some of the proceeds for a $2.2 billion bond sale scheduled for next week from the state’s Economic Development Authority will go toward termination fees for the final contracts ended in June. The state has paid $720 million to exit interest-rate swaps on about $4.2 billion in debt, according to Steven Petrecca, assistant state treasurer.

The administration of Governor Chris Christie decided to unwind the transactions after he assumed office in 2010. Bond documents for the sale said New Jersey officials began to enter into swaps in the 1990s and “more prevalently” in the early to mid-2000s.

“Truthfully, I don’t think people really understood the risks that were there,” Petrecca said in a telephone interview Friday. “Our view is that a plain vanilla portfolio is sometimes the best.”

Derivatives known as swaps, in which two parties agree to exchange payments based on underlying assets or indexes, were sold to states and local governments as a way of saving taxpayers money. Since the 2008 financial crisis, municipalities have paid at least $9 billion to cancel the swaps,

according to data compiled by Bloomberg. The contracts were supposed to reduce borrowing costs and protect them against rising payments.

Christie, who took office in 2010 and is a 2016 Republican presidential contender, inherited the swaps portfolio, which was connected to a “heck of a lot” of outstanding debt, Petrecca said.

In June, the Economic Development Authority terminated the contracts with eight counterparties on $1.15 billion in debt, the last such agreements backed by the state, bond documents show.

Bloomberg

Romy Varghese

August 21, 2015

NRA Sues Seattle Over Tax on Sales of Guns, Ammunition.

The National Rifle Association and other gun rights groups sued Seattle over the city’s new tax on the sales of firearms and ammunition, echoing the legal battle that followed a similar measure adopted by Chicago three years ago.

The Second Amendment Foundation Inc. and the National Shooting Sports Foundation joined the NRA and two firearms retailers in Seattle in a complaint alleging municipalities are prohibited from enacting regulations of firearms that aren’t authorized by state law.

Seattle Mayor Ed Murray said the city is committed to fighting back against an “ongoing national epidemic of gun violence,” according to a statement issued after the city council’s unanimous approval of the tax Aug. 10.

Seattle will levy a $25 tax on each retail firearm sale and collect two cents on each round of ammunition sold, according to the complaint. The ordinance is scheduled to take effect in January. Chicago, which also imposed a $25 tax on retail firearm sales, lost a bid in March to dismiss a constitutional challenge to its ordinance by area gun shops.

The gun rights advocates seek a court order barring the Seattle ordinance from taking effect, according to the complaint.

“The city believes it is well within its legal authority to tax the sales of firearms and ammunition, and will vigorously defend the ordinance in court,” Kimberly Mills, a spokeswoman for Seattle City Attorney Pete Holmes, said in a phone interview.

A copy of the complaint was provided by the Second Amendment Foundation and the filing couldn’t immediately be confirmed in Seattle state court records.

“We’ve been down this path before with Seattle when we sued them and won, knocking out their attempt to ban guns in city park facilities,” Second Amendment Foundation founder and Executive Vice President Alan Gottlieb said in a statement. “The city does not seem to understand that no matter how they wrap this package, it’s still a gun control law and it violates Washington’s long-standing preemption statute.”

Bloomberg

Joel Rosenblatt

August 24, 2015

California Rainy Day Fund Yields Results in Bond-Market Recovery.

California is once again the Golden State in the eyes of municipal-debt investors.

Bonds of the state, which was so strapped after the recession that it took to issuing IOUs and drew comparisons to Greece, are the best performers in the $3.6 trillion tax-exempt market this year after the obligations of Michigan. Investors are even willing to accept yields lower than benchmark indexes on the state's short-maturity debt, data compiled by Bloomberg show.

California plans to take advantage of the renewed faith in its finances by selling $1.9 billion in general obligations this week in the first offering of the securities since Standard & Poor's raised the state's credit rating to its highest level in 14 years. California's economy is expanding faster than the nation's, in part because of the technology-industry boom.

"The state of California has done a very nice job as far as improving its fiscal situation," said Greg Kaplan, director of fixed income in San Francisco at City National Bank's Rochdale unit, which manages $4.4 billion in munis. "Five years ago, people didn't want that paper. That fear is gone."

In July, S&P lifted the state's rating to AA-, its fourth-highest level, and pointed to passage of a budget that directed money to a rainy-day fund approved by voters in November. The fund, which requires the state to save a portion of capital-gains taxes, helps cushion the state when receipts fall, the company said.

Credit Environment

"It was important to see them enact a budget that represented an extension of their recent approach to their fiscal policy, which has been to emphasize structural alignment between the ongoing revenues and recurring expenditures," Gabriel Petek, a San Francisco-based S&P analyst, said Monday.

Investors have also liked how California under Governor Jerry Brown has notched budget surpluses after more than $100 billion of cumulative deficits from 2000 through 2010.

"Governor Brown has put the fiscal house in order," said Ben Woo, senior municipal analyst at Columbia Threadneedle Investments, which manages about $30 billion in local debt. "Compared to the chaotic political environment we're seeing in New Jersey and Illinois, California is a much better credit environment than some other states."

Penalty Declines

Investors are demanding about 0.18 percentage point over top-rated debt to own 10-year California securities, close to the 0.17 percentage point low since 2013, according to data compiled by Bloomberg. That's down from a peak of about 1.7 percentage points in 2009, when the state resorted to IOUs to pay bills.

That's also better than the 0.52 percentage point for debt issued by Pennsylvania, which has the

same investment-grade ratings from S&P and Moody's Investors Service.

If mutual-fund flows remain consistent, it's a "pretty easy case to make" that California spreads can go to 0.1 percentage point this year, Kaplan said.

That level was seen in 2006 and 2007, before deficits for the nation's most indebted state soared amid the recession and sparked comparisons to Greece, which recently received its third bailout since 2010 from European authorities to repay creditors.

Capital Projects

California is selling bonds mostly to refinance debt and to fund capital projects such as roads and public buildings.

"We have to take advantage of our recent credit upgrades, and I encourage individual and institutional investors to get behind California and help us make this sale a success," State Treasurer John Chiang said in a statement.

On Tuesday, when individual investors had a chance to order the securities, 10-year bonds were being marketed at a yield of 2.38 percent, according to a person familiar with the sale who requested anonymity because pricing wasn't final. That compares with 2.21 percent for top-rated munis. Final prices will be set Wednesday.

The size of the deal might "take some digestion" and may prevent the state from testing new lows for yields, said Woo, the analyst at Columbia Threadneedle.

Adrian Van Poppel, who helps run a California fund for Wells Capital Management in San Francisco, said he would want risk premiums above those seen on existing bonds before buying.

"It'll just come down to pricing for us," he said. "You're not getting much" in extra yield for debt maturing under five years.

Investors are demanding 0.57 percent to own California two-year bonds, less than the 0.6 percent for benchmark munis, according to data compiled by Bloomberg.

"We'll definitely be following it," Van Poppel said. "They've been moving in the right direction."

Bloomberg

Romy Varghese

August 24, 2015

New Jersey Penalized in Biggest Muni Bond Sale Since 2013.

The New Jersey Economic Development Authority sold $2.2 billion of bonds at yields that were more than 2 percentage points higher than benchmark tax-exempt securities in the state's biggest debt sale since 2013.

The bond offering shows the penalty New Jersey is paying to borrow as it faces financial pressure from an $83 billion deficit in its employee-retirement system, which state leaders have shortchanged

for years. The escalating bills to the pension funds have left New Jersey with the second-lowest credit rating among states after Illinois.

“Unless the state can show that it can make long-standing strides in its pension and health-care obligations, the state should be prepared to be penalized when it brings new issues to market,” said Neil Klein, senior managing director in New York at Carret Asset Management, which oversees $750 million of municipal debt. Carret didn’t buy any of the bonds.

Yields ranged from 3.24 percent for a bond maturing in 2019 to 5.1 percent for a 2040 security, according to data compiled by Bloomberg. Bank of America Merrill Lynch was the lead underwriter of the sale.

The 10-year securities were priced at 4.37 percent, compared with 2.21 percent yield on comparable top-rated debt. The $401.9 million in taxable bonds carried yields from 3.38 percent for 2017 securities to 4.45 percent for five-year bonds, the data show.

School Bonds

New Jersey ended up paying more in 10 years than A rated Guam, which sold comparable maturity debt Tuesday at a yield of 3.14 percent. Cobb County, Georgia’s top-rated taxable bonds, also priced Tuesday, yielded 3.25 percent in 10 years.

Proceeds for the New Jersey issue will fund school construction costs, refinance debt and terminate derivative contracts. The bonds are rated A3 by Moody’s Investors Service, the company’s seventh-highest investment grade.

The deal accomplished the state’s goals, and its true interest cost is 4.58 percent, said Christopher Santarelli, a spokesman for the Treasury Department.

“The offering saw widespread market acceptance with $450 million retail orders from mom and pops to some of the largest institutional municipal investors in the country,” Santarelli said by e-mail.

Bloomberg

Romy Varghese

August 25, 2015

Puerto Rico Optimistic About Bond Sale as Buyer Doubts Increase.

Puerto Rico isn’t giving up hope just yet that it can sell $750 million in water bonds while moving toward a debt-restructuring plan that may leave some investors with significant losses.

After initially announcing a sale date last week for the island’s Aqueduct & Sewer Authority issue, the sale was pushed back to a day-to-day status as investors demanded higher yields and more protection against the risk of the bonds being caught up in a reorganization proposal that may be released as soon as next week. The offering has remained in limbo since.

“We are not expecting to price this week since some investor’s requested, and we have agreed, to wait until after Sept. 1,” Alberto Lazaro, the water utility’s executive director, said in an e-mail Thursday. “There is not a set date, but rather we will evaluate and determine the appropriate timing,

but are expecting it would be in early September."

The water authority, know as Prasa, anticipates that investors should be able to make more informed decisions after Puerto Rico officials deliver the debt-restructuring proposal and the island's electric utility also unveils a turnaround plan on Sept. 1, Lazaro said.

Investors aren't convinced. While Puerto Rico officials tried Monday to assure would-be buyers that the water utility doesn't need to restructure its debt, the commonwealth last week petitioned the U.S. Supreme Court to reinstate a law that would allow some public corporations, including Prasa, to negotiate with bondholders to reduce what they owe.

"I'd be shocked if they get the deal done," said Matt Dalton, chief executive officer of Rye Brook, New York-based Belle Haven Investments, which manages $3 billion of municipal securities, including Puerto Rico debt. "Unless there's some big change between now and then, they're still looking at empty pockets for their debt."

Prasa had already increased the preliminary yield to 10 percent last week from an earlier offer of 9.5 percent, according to two people familiar with the sale who requested anonymity because pricing wasn't final. That's more than three times the 3.16 percent yield on benchmark 30-year municipal bonds, according to data compiled by Bloomberg.

Sale proceeds would help repay a $90 million bank loan with Banco Popular that expires Aug. 31. Prasa is negotiating with the bank and other financial institutions, Lazaro said.

"They've exhausted the traditional municipal buyer and now they've lost the bulk of the hedge fund industry," Dalton said.

Bloomberg

Michelle Kaske

August 26, 2015

A Decade Later, New Orleans Mends Finances and Neighborhoods.

When Matt Wisdom tried to round up investors for his three-D modeling company after Hurricane Katrina hit, people scoffed.

"They treated us like we were part of the developing world," said Wisdom, 43, chief executive officer of TurboSquid, which was founded before the storm. "The response we often got was, 'We'll invest in New Orleans, but we'll treat it like it is Estonia."'

Today venture-capital funds with more than $1 billion are lining up to provide money for entrepreneurs, and philanthropies, including the John D. and Catherine T. MacArthur Foundation, are providing grants for city projects.

"It's a sea change," Wisdom said. "We've become trendy."

New Orleans has rebounded from the costliest natural disaster in U.S. history, as tourists and tax collections near pre-storm levels and property values rise to new peaks. Beyond the determination of residents to return, recovery has been driven by billions of dollars in federal investment, including

an improved levy system, state aid for local governments, loans to help businesses rebuild and bond ratings that top those before the storm.

“The city was literally under water for three weeks, so there were a lot of doubts,” said Adrienne Slack, vice president in the New Orleans branch of the Federal Reserve Bank of Atlanta. “Now there is a focus on how the city can better position itself for the future.”

Rising Graduation Rates

The school system is being rebuilt with funds that include $1.8 billion from the Federal Emergency Management Agency. Graduation rates have risen to 73 percent in 2013-2014 from 54 percent in 2003-2004, and the percentage of students who are proficient on all state tests for all grades increased to 62 percent from 35 percent.

The city has repaired infrastructure, even though fixing all the streets will cost an estimated $9 billion. The Superdome — which sheltered thousands during the storm — has been renovated and now carries the Mercedes-Benz name. A new veterans’ hospital is scheduled to open in December 2016, and the new $1.1 billion University Medical Center New Orleans was designed with its emergency department and other mission-critical elements 21 feet above base flood elevation.

“Our vision is to make New Orleans a premier national and international health-care destination,” said Michael Hecht, president of Greater New Orleans Inc., which promotes economic development. Part of that plan is a 1,500-acre district focused on biosciences research and medical care that will create an estimated 34,000 jobs.

“If adversity is the mother of invention, then Katrina was the biggest mother of all,” Hecht said. President Barack Obama is visiting the city today, to celebrate its progress but also note its continuing economic inequality, according to the White House.

80 Percent Submerged

The Category 5 storm hit Louisiana and Mississippi on Aug. 29, 2005, with maximum winds of 125 miles an hour, according to the National Hurricane Center. Water surged as much as 28 feet above normal tide levels and destroyed levies designed to protect the city, which lies mostly below sea level. Floods covered 80 percent of New Orleans, and hundreds of thousands of the city’s 455,000 residents eventually fled; by 2006 only 211,000 remained.

The day after the storm, Standard & Poor’s warned it was reviewing ratings for the city and other local and state governments, which had about $8 billion of debt outstanding. Similar announcements followed from Fitch Ratings and Moody’s Investors Service.

Rating analysts had no way to predict when or how quickly the people and the tax bases would return, said Steve Murray, senior director with Fitch.

“This had never happened before to an American city,” Murray said. “It was so unprecedented to have such a dislocation of the population.”

State Treasurer John Neely Kennedy pushed the state to approve about $200 million in borrowing for local governments to cover service on outstanding debt until their tax revenues recovered, along with additional matching funds. The money was instrumental in helping many avoid default, he said.

Opportunity Bonds

The state also approved most of the $7.8 billion of so-called Gulf Opportunity Zone bonds, passed by Congress, to help rebuild low-income housing and facilities for businesses. Billions more flowed in through grants from FEMA, the Department of Housing and Urban Development, and government and private insurance.

New Orleans has worked its way back up to investment grade after Moody's and S&P cut its credit ratings to junk; the main drivers have been reduced deficits and higher tax revenue. In March, S&P raised its rating to A- from BBB+ when Katrina struck. Moody's rating now is A3, compared with Baa1 when the storm hit; it said in an Aug. 24 report that the city is financially and structurally better prepared for storms than before 2005.

The New Orleans Aviation Board sold $565 million in debt earlier this year primarily to fund construction of a new terminal at Louis Armstrong New Orleans International Airport. It will generate an estimated 21 percent increase in spending and support about 11,000 new jobs in the metro area, according to an economic-impact report released last year.

Challenges remain, including some that pre-date Katrina. The recovery has been uneven, with neighborhoods including the flood-ravaged Ninth Ward not coming back as quickly as others. Poverty and joblessness persist, especially among the black population. And crime continues to be a problem, although it is lower than it was in the 1990s.

Business Startups

Even so, business startups in metro New Orleans have outpaced those for the U.S. in the years since Katrina. The three-year-average was 471 per 100,000 adult population as of 2012, compared with 288 nationwide, according to a report by The Data Center, which compiles statistics about greater New Orleans and southeast Louisiana.

Three years after the storm, Patrick Comer relocated to the city from Los Angeles at the request of his wife, a New Orleans native.

"We made the decision to move there so we could contribute," said Comer, 41, who started an online survey and data company in 2010. Lucid Corp. now employs more than 80 people and plans to open a London office this fall.

By 2014, the most recent year for which data are available, the population had rebounded to 384,000, and the value of real estate had risen 56 percent compared with 2005. Retail sales totaled a record $6.5 billion, and 9.5 million visitors came to the city, the second highest since a record 10.1 million in 2004.

New Orleans received a MacArthur grant to reduce incarceration rates in its jails that could provide as much as $2 million for implementation. It also is among the first municipalities to participate in "What Works Cities Initiative," a program to help enhance the use of data to improve residents' lives from Bloomberg Philanthropies, established by Michael Bloomberg, majority shareholder in Bloomberg News parent Bloomberg LP.

"I thought it would take 20 years to get back to where we were," said TurboSquid's Wisdom, who helps entrepreneurs raise capital as a board member of the New Orleans Startup Fund. "Instead we've moved ahead."

Bloomberg

Darrell Preston

August 26, 2015

Illinois Budget Standoff Grinds On as State Finds a Way to Cope.

Republican Governor Bruce Rauner and Democratic House Speaker Michael Madigan, two of the most powerful politicians in Illinois, have been trying to outlast one another in a dispute that for two months has left the nation's lowest-rated state without a budget.

Illinois muddles through. Government employees get paid, thanks to court orders. Children go to school, thanks to Rauner's signing an education-funding bill. The state fair went on last week as scheduled and the governor signed a bill Aug. 14 designating pumpkin as the official pie.

The veneer of normalcy belies what Madigan terms an "epic struggle" with the venture capitalist-turned-politician. At stake are further credit downgrades for Illinois, and increased stress for Chicago and its schools, which are seeking relief from the state — relief delayed by the impasse.

"We're all a bunch of idiots," said Representative Jack Franks, a Democrat from the northern Illinois town of Woodstock.

"Just because Bruce Rauner says 'Republicans need to do this,' and Speaker Madigan says 'Democrats need to do that,' doesn't mean we have to listen to them," Franks said.

Yet Republicans line up behind Rauner, who insists on labor, tax and regulatory changes, and Democrats follow Madigan, who says the budget must be passed and revenue raised. There is no hint of a break in the impasse. Bondholders get paid, although many state vendors are getting stiffed to the tune of at least $3.5 billion.

Rauner, a first-time officeholder, is also Illinois's first Republican governor in a dozen years.

Campaigning on a pledge to shake up the government, a $62 billion enterprise, he has repeatedly challenged Democrats who hold veto-proof legislative majorities.

"I was elected by millions of people; he's been elected by 17,000 people," Rauner told a crowd at the Illinois State Fair last week, referring to Madigan. "Why is he there blocking what we need to do to reform and improve our great state?"

Rauner's confrontational strategy isn't meant to solve the budget standoff, said Doug Whitley, the former president of the Illinois Chamber of Commerce.

"The real story is how much of this whole exercise is posturing for the 2016 election," he said. "This thing could drag out until after next year's March primary."

In the tumultuous Midwest, Republican governors like Wisconsin's Scott Walker, Michigan's Rick Snyder and former Indiana Governor Mitch Daniels have prevailed in battles with organized labor, the Democrats' traditional support group. Rauner, who cites those governors as role models, wants to do the same in reliably blue Illinois.

David Yepsen, director of the Paul Simon Public Policy Institute at Southern Illinois University, said Rauner has misunderstood why he won election.

"He didn't get elected to gut the labor movement," Yepsen said. "He got elected because people

were angry with Pat Quinn," the previous Democratic governor.

Two Gallants

Madigan's obduracy hasn't made him a hero with the electorate, either, Yepsen said. "Nobody has the high ground with voters, and the people of Illinois say a plague on all their houses," he said.

When legislative and executive branches go to war over budgets, there are usually immediate consequences. Minnesota's government shut down in 2011, closing parks and rest stops in the summertime and engendering widespread outrage. It was over in three weeks.

Illinois is living with it. Rauner signed an education aid bill in June, enabling schools to open this month. State employees won court judgments to assure that they get paid. Another court mandated Medicaid payments, and lawmakers cleared the way for more than $5 billion in federal payments to state programs.

"This is a caricature of Illinois and all of its mismanagement," said James Nowlan, a former Republican legislator who has written about politics and policy in the state. "Nobody's looking beyond the next month, the next year, or the next 10 or 15 years."

At some point the consequences will demand attention, said Richard Ciccarone, president and chief executive officer of Merritt Research Services, which analyzes municipal finance. Illinois is spending without regard for a projected $6.2 billion deficit in the current year.

"As we get closer to the calendar year — maybe October — there will be struggles to pay higher education and hospitals and other institutions," Ciccarone said. "Things could really start to back up then."

Illinois could also be harmed by budget stress in Chicago and Chicago Public Schools, each of which has asked the state for relief from solvency-threatening pension obligations.

Whitley said local governments' pain and protests might end the stalemate.

"Right now we're spending about $4 billion or $5 billion more than we have," Franks said. "How long does this go? Forever."

Bloomberg

Tim Jones

August 27, 2015

Munis Dodge Market Turmoil With Top 2015 Returns Among Assets.

For U.S. investors, the safe haven from the recent global financial turmoil might be in their own backyards.

The $3.6 trillion market for state and local government debt rallied in August, pushing this year's return to 1.1 percent, Bank of America Merrill Lynch data show. Among fixed-income assets, that matched Treasuries, the traditional financial refuge, and beat U.S. corporate bonds, which lost 0.5

percent. The Standard & Poor's 500 index is down 3.5 percent, the most since 2008, while commodities saw about 16 percent of their value disappear.

The returns underscore the calm in the municipal-bond market, where most of the securities are held by individuals seeking tax-free income instead of speculators betting on price swings.

"Munis certainly have been an area of relative tranquility," said Chris Alwine, head of municipals at Valley Forge, Pennsylvania-based Vanguard Group Inc., which oversees $147 billion of the debt. "We expect to see higher levels of volatility in the Treasury and credit markets, but munis have been removed from that and we expect it'll remain that way."

Volatility has surged in global financial markets since China's surprise devaluation of the yuan this month, which sparked speculation that policy makers may fail to prevent a steep slowdown in the world's second-largest economy. The S&P 500 tumbled 11 percent in the six trading days through Tuesday, only to pare the losses as stocks rallied for the rest of the week.

Benchmark 10-year muni yields, which move in the opposite direction as prices, have slid 0.09 percentage point over the last three weeks, according to data compiled by Bloomberg.

History suggests the gains could last. The 2.22 percent yield on 10-year AAA munis compares with 2.14 percent for similar Treasuries. The ratio of the two rates, now 104 percent, is above the 97-percent average over the past decade, signaling that state and local debt remains cheap in comparison.

"It looks like people are coming in, parking cash, and re-evaluating what their asset allocation has been," said Rick Taormina, head of municipal strategies at J.P. Morgan Asset Management, which oversees $56 billion in state and local debt. "You see folks in these times go into safety."

In many ways, the odds were stacked against a rally.

Unlike last year, when investors poured cash into funds focused on munis, individuals yanked money from them for 11 straight weeks through July, the longest stretch in 18 months, Lipper US Fund Flows data show. The exodus came as states and cities were flooding the market with new bonds at the fastest pace in at least 12 years, seeking to borrow before the Federal Reserve raises interest rates.

The market was also put on edge by pockets of distress. Saddled with $72 billion of debt, Puerto Rico is on the verge of trying to force unprecedented losses on investors and defaulted for the first time this month.

Chicago's bond prices have tumbled since it lost its investment grade from Moody's Investors Service in May, the result of soaring bills to the workers' retirement system that the city shortchanged for years.

Yet buyers haven't been hurt by defaults as the growing economy boosts government tax collections. With the exception of Puerto Rico, only one bond issuer rated by Moody's — Dowling College in Oakdale, New York — failed to pay investors during the past two years. That's the first time that's happened since the 1990s.

Bankruptcies have also been scarce: Just Hillview, Kentucky, population 8,000, has sought court protection from creditors since Detroit did so two years ago.

Municipal securities carry an average rating in the AA tier, an advantage in a tumultuous global

market, Vanguard's Alwine said. It also helps that few localities would be directly affected by an slowdown in China or elsewhere overseas.

"It's a high-quality market and it's all domestic-focused," he said. "You have this weaker overseas growth, but when you look at munis, they're immune to those concerns."

Bloomberg

Brian Chappatta

August 27, 2015

Puerto Rico Spends More Than $60 Million on Debt Restructuring.

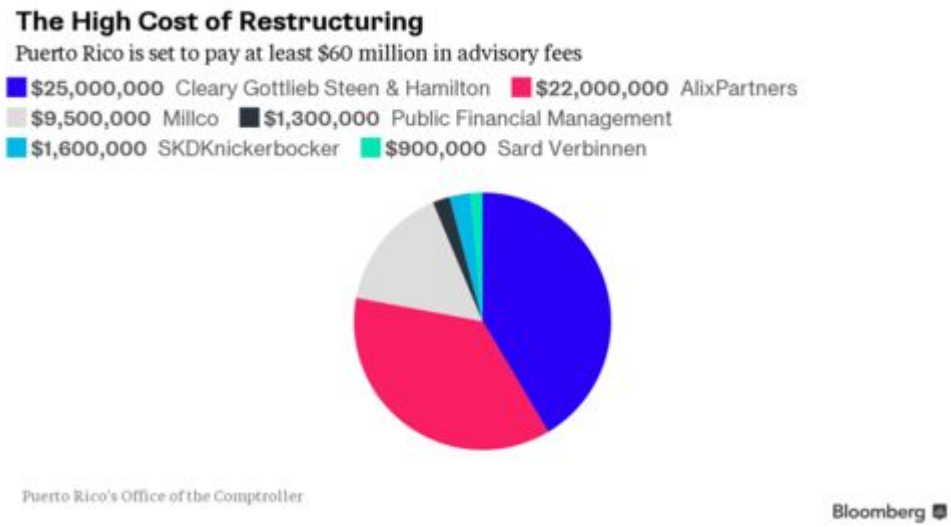
The old adage that it takes money to make money assumes a whole new meaning when its comes to Puerto Rico.
The commonwealth and its main electric utility have spent more than $60 million in legal and advisory fees from firms such as Cleary Gottlieb Steen & Hamilton LLP and Millstein & Co. over the past two years as the governor and public finance officials seek to restructure the island's $72 billion debt burden, according to a review of contracts by Bloomberg News.

And the billable hours will probably keep adding up. Commonwealth officials plan to unveil a proposal next week expected by analysts to seek a reduction in debt payments that may lead to protracted negotiations with creditors. Unlike Detroit, Puerto Rico localities cannot file for Chapter 9 bankruptcy protection, leaving the island without a clear legal framework to resolve its debt crisis.

"It makes sense they would need to rely on consultants more than the average issuer in a similar situation," said Matt Fabian, a partner at Concord, Massachusetts-based Municipal Market Analytics. "It's an incredibly complex restructuring, with a lot of different investor groups, a lot of different securities and moving parts."

The contracts provided by Puerto Rico's Office of the Comptroller show the Government Development Bank, which is overseeing the island's debt-adjustment proposal, and the Electric Power Authority, which is negotiating with its bondholders, have spent at least $60 million on outside consultants.

Puerto Rico's Restructuring Costs



Betsy Nazario, a spokeswoman in San Juan for the GDB, Barbara Morgan, who represents the bank at SKDKnickerbocker in New York, and Jesus Manuel Ortiz, a spokesman in San Juan for Governor Alejandro Garcia Padilla, didn't respond to e-mails and phone messages. Jose Echevarria, a spokesman in San Juan for the electric utility, declined to comment.

A Puerto Rico restructuring would be the largest ever in the $3.6 trillion municipal-bond market. After a history of borrowing to push out debt payments and fill budget gaps, the commonwealth is seeking to break the cycle with investors declining to lend more money. Officials plan to craft a debt adjustment plan by Aug. 30. The power utility and its creditors must negotiate a restructuring plan for its $9 billion of debt by Sept. 1 or an agreement that keeps discussions out of court will expire.

Puerto Rico needs to cut its debt load to $40 billion, according to Peter Hayes, who helps oversee $116 billion of munis at New York-based BlackRock Inc. Bondholders may receive an average of just 60 cents on the dollar if the commonwealth alters its debt, Hayes said.

The commonwealth's anticipated restructuring follows similar debt crises on the mainland. Detroit's bankruptcy, a 17-month process, cost $177.9 million on $8 billion of bonded debt. Jefferson County, Alabama, the second-biggest bankruptcy case after Detroit, spent about $38.3 million. That case lasted about two years and involved $4.2 billion.

A Puerto Rico restructuring will take longer, Fabian said. The debt consists of bonds repaid with different revenue streams and legal protections. The bondholders vary as well, with some wanting full repayment and others who bought at a discount likely willing to take less than par.

"This will likely take much, much longer than anyone expects," Fabian said. "There's the restructuring, and then there's likely to be litigation following the restructuring."

The GDB has spent about $26 million on legal and other advisory fees since it first hired outside professionals in October 2013 to help address its debt crisis, according to contracts. The Electric Power Authority, known as Prepa, is on the hook for about $35 million to law firms and consultants since it entered into a forbearance agreement with its creditors a year ago.

Cleary Gottlieb, which has advised Argentina and Greece in sovereign-debt negotiations, is set to receive the largest payments. The New-York based law firm charged the GDB $12.9 million through June, according to the contracts. Another $2 million agreement that ends June 2016 allows Cleary Gottlieb to enter into subcontracts with former International Monetary Fund official Anne Krueger–

who authored a report that recommends the island lower its debt payments and extend maturities — and former U.S. bankruptcy judge Steven Rhodes, who is serving as an adviser to the GDB.

Prepa has also enlisted Cleary Gottlieb, agreeing to pay as much as $10 million through December. Shannon Lynch, a spokeswoman for Cleary Gottlieb in New York, declined to comment.

Millco Advisors LP, an affiliate of Washington-based Millstein, has been providing financial advice to the commonwealth and Prepa since February 2014. The company is set to earn as much as $9.5 million through September from the GDB, according to contracts. Jim Millstein, the firm's chief executive officer and a former Cleary Gottlieb partner, was the U.S. Treasury Department's chief restructuring officer until March 2011, overseeing the overhaul of American International Group Inc.

Millco may also receive as much as $9 million if Prepa restructures its debt, under a contract that expires Dec. 31. Jenni Main, Millstein's chief financial officer, declined to comment.

Lisa Donahue, managing director at New York-based AlixPartners LLP, has been serving as Prepa's chief restructuring officer since September 2014, one month after the utility and its creditors signed a forbearance agreement. AlixPartners will earn as much as $22 million through Nov. 15, according to contracts with Prepa.

Florence Huang, a spokeswoman for AlixPartners, didn't respond to an e-mail and phone message.

While Puerto Rico is spending millions on outside experts as it faces a liquidity crunch, those professionals should provide a way out for the commonwealth that will improve the economy and make its debt sustainable, said James Spiotto, managing director at Chapman Strategic Advisors LLC, which advises on financial restructuring.

"The analysis part is important in addressing it in an affective way, so that the money you spend is well spent because you're going to need a recovery plan that is going improve the situation, grow the commonwealth and thereby improve the situation for everyone," Spiotto said.

A $650,000 GDB contract with Public Financial Management Inc. ended in June. A second agreement of equal amount expires June 2016. The Philadelphia-based firm is advising the island on capital-market transactions. Sandra Sosinski, a spokeswoman at PFM, directed questions to the GDB.

The GDB first hired outside communications firms in October 2013 as more mainland news outlets in the past two years have focused on the debt crisis. The bank's contracts with SKDKnickbocker totaled $1.6 million through June, which includes advertising costs in financial newspapers as part of the island's media campaign. Another $900,000 is owed to New York-based Sard Verbinnen & Co. for its work through June. Dave Millar, a spokesman at Sard Verbinnen, declined to comment.

Bloomberg

Michelle Kaske

August 28, 2015

Bloomberg Brief Weekly Video - 8/27

Taylor Riggs, an editor at Bloomberg Brief, talks with Joe Mysak about this week's municipal market news.

Watch the Video.

August 27, 2015

Moody's: New Orleans' Credit Profile has Improved Post-Katrina, but Fiscal Pressures Remain.

New York, August 24, 2015 — In the decade since Hurricane Katrina, New Orleans (A3 stable) has improved its fiscal management, rebuilt and bolstered its infrastructure and benefitted from the revitalization of its communities and the tourism industry. At the same time, the city's rising fixed costs, reliance on the volatile oil and gas sector, and vulnerability to flooding remain credit challenges, says Moody's Investors Service.

Compared to before the hurricane, New Orleans has improved its fiscal position by focusing on growing revenues, controlling expenses, and building reserves. Better sales tax collections and growth in property taxes have boosted the city's budget in both 2014 and 2015. New Orleans will also receive $36 million from its settlement with British Petroleum following the Deepwater Horizon oil spill.

The city also received a significant amount of federal aid after the hurricane which, combined with local and state funding, was used to strengthen levees, build new infrastructure and increase the city's emergency preparedness, according to Moody's new report "Ten Years After Katrina, New Orleans Better Prepared for Future Storms."

"The recovery of the local economy is a key stabilizing factor that has driven the city's recent positive momentum, by bringing people back, rebuilding communities and revitalizing the tourism industry, which is a key source of revenue for the city," says Andy Hobbs, a Moody's Assistant Vice President and Analyst.

The city's taxable property value has grown consistently since the hurricane, the number of conventions and trade shows hosted by the city has increased since the convention center reopened, and new developments such as the recent announcement that Viking Cruises will start operating out of the Port of New Orleans in 2017 are all factors that buoy the city's credit position.

However, offsetting these positive factors are the city's rising fixed costs for debt service, pension contributions and retiree healthcare payments, which have increased to $198 million in 2014, from $129 million in 2009.

"The city's fixed costs exceeds 30% of its operating revenues," says Hobbs. At the same time, "the city's contribution to its pension plans fell short by $17.7 million in fiscal year 2014, and annual pension requirements are expected to increase going forward".

In addition, New Orleans' dependence on the volatile oil and gas sector, declining employment in the public sector and below-average population growth leave the city trailing other metro areas in the US South in terms of key economic indicators. The city's population remains roughly 18% below pre-

hurricane levels.

New Orleans also has weak liquidity because it used reserves to fill budget gaps during the recession.

Overall, though, the State of Louisiana and the education and transportation sectors have emerged stronger post-Katrina. The state received a significant amount of money in the form of federal aid and insurance proceeds, which provided the liquidity for a post-storm rebuilding boom and helped the state mitigate the effects of the national recession.

The city's ports emerged relatively unscathed from the hurricane, but nevertheless received federal and state financial support to make up for the decline in cargo and cruise activity following the hurricane. The airport also received aid that has allowed it to expand capacity and attract more flights to more destinations.

And while total university enrollment is still down 15% from pre-Katrina levels, emergency funds helped New Orleans' universities emerge stronger by allowing them to invest in capital facilities.

Moody's subscribers can access this report here.

Moody's Revises U.S. Not-for-Profit Healthcare Outlook to Stable from Negative as Cash Flows Increase.

New York, August 26, 2015 — Moody's Investors Service has revised the outlook for the US not-fo--profit and public healthcare sector to stable from negative due to improvement across the industry's fundamental business, financial and economic conditions. The outlook had been negative since 2008.

"The outlook revision represents significant gains in the number of people with insurance, growing patient volumes, and sizeable reductions in bad debt that are contributing to very strong growth in operating cash flow," Moody's Vice President — Senior Analyst Daniel Steingart says.

Following several years of flat growth, operating cash flow growth increased to 12.3% in 2014 from 0.3% in 2013. The metric remains solid at 11.5% through March 2015, Moody's says in "Not-Fo--Profit Healthcare Outlook Stabilizes; Cash Flow Buffers Long-term Pressures."

Moody's says factors driving the stronger operating cash flow are increases in the number of insured individuals and a reduction in bad debt, particularly in states which expanded Medicaid eligibility.

Further, pent-up demand among the newly insured as well as a strong flu season in 2014/2015 facilitated increases in inpatient volumes during the last several quarters.

While these factors are anticipated to continue, momentum is expected to taper to levels at or below historical levels.

The outlook change to stable from negative expresses Moody's views for the sector will neither erode nor significantly improve materially for the 12 to 18 months. Looking beyond that horizon, pressures linger.

"The not-for-profit and public healthcare sector industry faces long-term challenges stemming from who pays for care, how providers are reimbursed, and changes in patient behavior. These risks may

weigh on profitability and growth," Steingart says.

The report is available to Moody's subscribers here.

Fitch: Oil Price Effect on U.S. Locals Will Vary.

Fitch Ratings-New York/Chicago-25 August 2015: The recent decline in oil prices has raised the pressure on certain cities, counties and single-purpose districts in oil-producing states, Fitch Ratings says. In our view, some will be able to raise taxes (and other revenue sources), cut spending and use reserves. Others have sufficient size and economic diversity to weather the economic stresses. All will be affected to varying degrees by the decline. West Texas Intermediate (WTI) crude oil fell below $40 per barrel in trading yesterday for the first time since 2009.

Our recent review of historical financial and economic data from selected Fitch-rated local governments since the early 1980s shows a high correlation between energy prices and financial data. We considered total tax revenue, GDP, unemployment and home prices. For example, sales tax collections in Texas fell by 1.4% in June 2015 from the previous June due largely to a weaker energy industry, ending a more than five-year streak of monthly gains.

We believe cities like Houston are facing some risk due to the decline in oil. Most major regional and multinational energy companies have offices in the Houston area, exposing it to employment pressures. Houston has limited ability to raise property taxes to compensate for revenue losses, as Proposition 1 limits tax revenue increases to the lesser of 4.5% or the combined percentage increases in population and consumer inflation. However, Houston's job diversity may mitigate some of this risk. Roughly 30,000 workers there are employed by hundreds of refining plants in the area, which benefit from lower oil prices.

Terrebonne Parish, LA also serves as headquarters for some offshore oil and gas companies and faces economic-related risks. The recent decline in oil prices will likely affect local employment, sales tax collections and home prices. Any related state funding decline could compound the impact, as cities and parishes in Louisiana receive a portion of state severance taxes and royalties. For Terrebonne Parish, these two sources total $5.9 million in the fiscal 2015 budget, or roughly 25% of general fund revenues. And, at nearly $41 million, sales taxes represented more than 35% of budgeted parish governmental revenues in fiscal 2015. Property tax millage rates can be increased to counter tax base losses, but any hike in a local sales tax rate must be approved by voters.

In our view, two Fitch-rated local issuers are at the highest risk: Culberson County Hospital District and Zapata County, TX, which are in remote locations with limited economies. To read more about these issuers and our review of historical financial and economic data for other issuers, see Fitch's Aug. 17 special report on "How Will Local Oil Patch Governments Fare?"

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Puerto Rico Turmoil Sinks Sewer Bond.

Up against a deadline to reveal its plan to restructure its staggering debt, Puerto Rico has decided not to move ahead with a controversial proposal to borrow an additional $750 million to pay for improvements to its water and sewer authority.

It attributed the decision, made late Monday, to the turmoil in the global markets. But the government also appears to have decided it could not borrow the money — by issuing bonds — at an affordable interest rate.

Just a few days earlier, Puerto Rico petitioned the United States Supreme Court asking for the right to restructure its debt — which has reached $72 billion — under its own quasi-bankruptcy law. Puerto Rico, a United States commonwealth, enacted the law last year because it has no access to the federal bankruptcy courts. But the law was later found unconstitutional and was voided by the courts.

Investors who at one time might have been potential buyers of the water and sewer bonds seemed taken aback by the island's move, on the one hand, to sell new bonds (and incur new debt) while also telling the Supreme Court that it had to restructure its old debt.

"You could take it on face value and say, 'Either they're lying to investors about the bonds being payable, or lying to the Supreme Court about the bonds being unpayable,' " said Matt Fabian, a partner at Municipal Market Analytics, a financial research firm. "I see it as a blunder, ultimately, and not anything more heinous, but it really undermines their ability to negotiate."

Taken together, the steps demonstrate some of the confusion within the government as it faces a Sept. 1 deadline to outline its restructuring plan. A working group, appointed by the governor, has been trying to put a proposal together for several months. But in a signal of political conflicts to come, the island's main opposition party has dropped out of the group.

"It's not like we wait till Sept. 1 and then we've got a road map to fixing everything," said Kent Collier, chief of Reorg Research, a firm that monitors Puerto Rican affairs for clients that include hedge funds.

About two months after the restructuring plan is issued, he said, the government is supposed to seek the authorizing legislation, setting off an unpredictable political process.

Eventually, Puerto Rican officials have expressed hopes of resolving their problems through a global debt-for-debt swap, in which the holders of the island's bonds would turn those in and receive new bonds that would be worth less but be far more likely to be paid off. But the details are sketchy and many other things must happen first.

"Their economy does need to grow, and I don't disagree that their debt is too high to do all the

things they need to do to make their economy grow and provide for the health and welfare of their citizens," said Gerry Durr, senior municipal credit analyst at Wilmington Trust. "But you know, I think the only way this thing really gets solved is if there's a strong, independent control board, and I don't think Congress has the appetite to impose one."

Until recently, senior Puerto Rican officials had sought to reassure investors that its water and sewer authority, known as Prasa, was a credible borrower.

Puerto Rico announced Prasa's plans to issue the $750 million of bonds just days after another branch of the government had defaulted on a different group of bonds, but the president of the Government Development Bank, Melba Acosta Febo, said that was not relevant.

It "reflects the individual financial circumstances of the various debt issuers across the commonwealth," she said.

The bonds that defaulted were issued by the Public Finance Corporation, a small, single-purpose entity that has no power to levy taxes. Its bond-marketing materials warn that investors will have little or no recourse in the event of a default.

Prasa, by contrast, provides essential services and can increase rates, within reason, because it is a monopoly. Prasa's bondholders have a first claim on that revenue if cash gets tight, and they can bring in a receiver to enforce collections.

In addition, the new Prasa bonds were expected to include such investor-friendly terms as a make-whole agreement, which would discourage Puerto Rico from refinancing them at lower interest rates in the future, if Puerto Rico's fortunes changed for the better.

"They were within striking distance of settling this deal," said Stephen Snowder, an associate editor at Reorg Research.

But the deal started to come unglued on Friday, after Puerto Rico filed its petition to the Supreme Court. It sought a review of the legality of its so-called Recovery Act, which tried to create a bankruptcylike restructuring framework for public corporations on the island. Among other things, the petition said that it needed to have a legal framework in case Prasa's debts have to be restructured.

"That's not the phrase you want in the middle of a bond deal," said Mr. Fabian.

On Monday, Prasa filed a statement from Victor Suárez Meléndez, the governor's chief of staff. "We currently do not contemplate Prasa necessitating a restructuring of its debt," he said.

But Mr. Suarez also tried to explain why Puerto Rico needed a safe place to restructure: "If any Puerto Rico utility ever needs to restructure its debts, it should be done in a way that is fair not only to their creditors but also to the people such utilities serve."

The next thing Mr. Snowder knew, he said, the deal was off. He said a colleague called Prasa's executive president, Alberto Lázaro, Monday evening to find out what was going on.

"Victor Suarez was making nice statements, and then a couple of hours later, we had Lázaro telling us that the deal was delayed, postponed or canceled," said Mr. Snowder. "No one has explained it to me."

THE NEW YORK TIMES

By MARY WILLIAMS WALSH

AUG. 25, 2015

S.E.C. Settlement With Citigroup Holds No One Responsible.

How can we expect Wall Street's me-first culture to change when regulators won't pursue or even identify the me-firsters who are directly involved?

That question came to mind after reading the terms of a settlement struck on Aug. 17 between the Securities and Exchange Commission and two units of Citigroup. It is a deal that holds no one at the bank accountable for behavior that caused investors to lose an estimated $2 billion.

The settlement involved a disastrous municipal bond strategy the bank concocted and peddled to 4,000 wealthy clients from 2002 until early 2008. It was sold to investors as a safe-money option, even though it used considerable leverage, which always brings hazards when assets decline.

The S.E.C. contended that officials at Citi did not disclose the risks in the investment strategy. "Advisers at these Citigroup affiliates were supposed to be looking out for investors' best interests, but falsely assured them they were making safe investments even when the funds were on the brink of disaster," said Andrew Ceresney, chief of enforcement at the S.E.C., when the settlement was announced.

Citigroup will pay $180 million in the settlement, most of which will be distributed to wronged investors. The bank neither admitted nor denied the S.E.C.'s allegations. A spokesman said the bank was pleased to have resolved the matter.

A $180 million deal is significant as far as these kinds of settlements go. But the S.E.C. is limited in its recoveries — it is only permitted to go after ill-gotten gains. It may not pursue compensatory damages for investor losses.

Among Citi's clients, those losses were substantial. And the bank has privately paid $726 million to compensate investors for some of them. The additional recoveries generated from the S.E.C.'s settlement will be nominal.

The timing of the S.E.C. case is also disappointing. It comes more than seven years after the Citigroup investment strategy imploded.

Unfortunately, six years is the time limit given to clients wishing to bring an arbitration case against the bank under Financial Industry Regulatory Authority rules. So the facts laid out in the S.E.C.'s complaint against Citi are of no help to any investor who had not yet sued to recover from the bank.

Most disturbing, though, is the lack of accountability in this settlement. As is all too common, Citigroup's shareholders are footing the $180 million bill associated with it. But they didn't devise the toxic municipal bond strategy, sell it or hide its risks to investors.

That was the work of Citi employees, as the S.E.C.'s order makes clear. Indeed, it contains chapter and verse about the crucial role played by the fund manager overseeing these investments. Some 50 references to actions taken by the fund manager and his staff are contained in the order.

For example: “the fund manager and the fund manager’s staff played a significant role in drafting and disseminating information regarding the funds to investors and financial advisers without sufficient review or oversight to ensure that the information given to investors was accurate.”

And “the fund manager was involved in virtually all fund-related communications with the financial advisers and investors.”

Yet the S.E.C. never identifies who this central player was.

The S.E.C. has come under fire before for settlements like this one. In 2011, it faced intense criticism over another Citigroup settlement from Jed S. Rakoff, a federal judge in New York. That case involved toxic mortgage securities that generated more than $700 million in investor losses.

Unhappy with that settlement, Judge Rakoff said, “A consent judgment that does not involve any admissions and that results in only very modest penalties is just as frequently viewed, particularly in the business community, as a cost of doing business imposed by having to maintain a working relationship with a regulatory agency, rather than as any indication of where the real truth lies.”

Speaking of truth, I asked Mr. Ceresney, the S.E.C. enforcement director, why the regulator did not identify or pursue the Citi fund manager who was all over the settlement order.

Through a spokeswoman, Mr. Ceresney said he could not comment on an individual case. But in a statement provided Thursday, he said, “The S.E.C. has aggressively held companies and their senior officers accountable for misconduct during the financial crisis, charging 181 companies and individuals, including 73 CEOs, CFOs and other senior corporate officers, obtaining more than $3.7 billion in monetary relief.”

The mystery man behind those Citi investments was Reaz Islam, a former managing director of the bank’s fixed income alternatives group. Mr. Islam left Citi in 2008; he is chief executive of L-R Managers LLC, an investment firm in New York.

When Mr. Islam testified in an investor arbitration brought against Citigroup in June 2012, it emerged that Citi paid him more than $10 million during the years he ran the funds.

Mr. Islam did not respond to a telephone message and an email seeking comment. But a website featuring Mr. Islam identifies him as a “seasoned investment professional.” His “can do attitude, inquisitiveness, sharp investment and business acumen, made him an excellent fit at Citigroup from the start,” the website says.

According to Mr. Islam’s regulatory record, 46 Citi customers have filed complaints against him. Four are pending; the rest have generated civil judgments or arbitration awards paid by the bank totaling $22.4 million. In all of those cases, Citigroup denied the allegations.

Since 2008, Philip Aidikoff, a lawyer at Aidikoff, Uhl & Bakhtiari in Beverly Hills, Cal., and Steven B. Caruso a lawyer at Maddox Hargett & Caruso, represented 125 investors against Citi involving its ill-conceived municipal bond strategy. They received settlement payments in all but three of their cases, including a remarkable $54.1 million settlement paid to two investors in 2011.

Mr. Caruso and an associate also met with the S.E.C. in Feb. 2009, and provided the regulator with thousands of pages of documents relating to the Citi investment strategy.

Reading the S.E.C.’s recent order six years later, the lawyers said they were astonished that Mr. Islam was neither identified nor pursued.

“They say this guy caused billions of dollars in losses, and they do nothing with him?” Mr. Caruso asked. “He was absolutely the mastermind, there is no doubt about that.”

Mr. Aidikoff agreed. “It’s easy for Citi to write a $180 million check,” he said. “When you have the folks who not only designed this program but ran it and ran it into the ground — why aren’t they being named?”

That really is one of the burning questions of our time.

THE NEW YORK TIMES

By GRETCHEN MORGENSON

AUG. 28, 2015

GASB Publishes New Authoritative Implementation Guide.

Norwalk, CT, August 27, 2015—The Governmental Accounting Standards Board (GASB) today published a document that details comprehensive authoritative implementation guidance cleared by the Board for state and local governments.

Implementation Guide No. 2015-1 incorporates changes resulting from feedback received during the year-long public exposure of previously issued implementation guidance, which was done in conjunction with the due process leading up to the issuance of GASB Statement No. 76, *The Hierarchy of Generally Accepted Accounting Principles for State and Local Governments.*

Statement 76 reduces the GAAP hierarchy to two categories of authoritative GAAP. The first category of authoritative GAAP consists of GASB Statements of Governmental Accounting Standards. The second category includes GASB Implementation Guides, GASB Technical Bulletins, and guidance from the American Institute of Certified Public Accountants that is cleared by the GASB.

Going forward, all new GASB implementation guidance, due to its elevated authoritative status, will be exposed for a period of broad public comment prior to issuance, as is done for other GASB pronouncements.

The requirements of *Implementation Guide 2015-1* are effective for reporting periods beginning after June 15, 2015. The guide is available for download free of charge on the GASB website.

Detroit’s Paying a Penalty on First Bond Sale Since Bankruptcy.

Detroit is paying a high price in its return to the $3.6 trillion municipal-bond market for the first time since emerging from a record bankruptcy.

The $245 million of bonds, to be sold Wednesday through the Michigan Finance Authority, have the top claim on city income taxes to ensure investors are repaid. Even so, 14-year debt is being offered at an initial yield of 4.75 percent, according to three people familiar with the sale who requested anonymity because it isn’t final. That’s 2.1 percentage points more than top-rated securities.

“It’s still Detroit,” said Dennis Derby, a portfolio manager in Menomonee Falls, Wisconsin, for Wells Capital Management, which holds the city’s water bonds among its $39 billion of munis. “There’s still concerns of whether or not they can have positive momentum.”

Detroit filed for bankruptcy protection two years ago to escape from debts it couldn’t afford after the population tumbled, tax collections slid and the automobile-industry’s decline left the economy reeling.

That allowed the city to cut $7 billion from its obligations by the time it emerged from bankruptcy in December, an effort to steady the government’s finances and hasten its revival.

Investor Losses

The plan left some general-obligation bondholders recovering as little as 41 percent of what they were owed, according to Moody’s Investors Service. Those losses called into question the long-held assumption that cities would do everything possible to repay securities backed by their full faith and credit.

To persuade investors to lend to the city again, Michigan Governor Rick Snyder signed legislation giving bondholders first claim to the income taxes that will repay the debt sold this week. That led Standard & Poor’s to award the deal an A rating, five steps above junk and nine levels higher than its grade on Detroit’s general obligations.

John Naglick, Detroit’s deputy chief financial officer, marketed the securities during a presentation in New York and in phone calls with investors. He declined to comment on the expected yields ahead of the sale.

“We feel that investors really took the time to understand the security provisions that came with this bond,” said Naglick. “People looked even beyond the bond at the recovery of the city of Detroit.”

Detroit Rebound

Detroit’s leaders have been seeking to revive the city, whose population of about 680,000 as of July 2014 was less than half the peak after the Second World War. There are signs of progress: employment has risen 3 percent over the last four years and income-tax revenue grew 18 percent from 2010 to 2015, according to Moody’s.

The proceeds from this week’s sale will repay a loan from Barclays Plc that helped Detroit emerge from bankruptcy, Naglick said. They will also finance city projects, including upgrades for the fire department’s fleet.

The city’s income-tax collections are strong enough to cover the bonds, S&P said in a statement last month.
While Moody’s wasn’t hired to rate the deal, it said it may have assigned the securities an investment-grade rank even though the city is five levels below that threshold.

Skeptical Investors

The deal isn’t the first for Detroit since it filed for bankruptcy. Michigan’s finance agency sold $185 million of bonds in June 2014 for Detroit’s lighting authority. With investor protections similar to those being offering this week, the 30-year securities sold for a yield of 4.6 percent, in line with an index of revenue bonds with the lowest investment grades, according to data compiled by Bloomberg.

The bankruptcy may deter some would-be buyers, said Dan Solender, who helps manage $17 billion as head of munis at Lord Abbett & Co. in Jersey City, New Jersey. The firm owns some of Detroit's water and sewer debt.

"The history there is pretty weak considering how they dealt with bondholders with their bankruptcy," Solender said. "They'll have market access. It's just at a cost."

Bloomberg

Elizabeth Campbell

August 17, 2015 — 9:01 PM PDT

Comment Deadlines Approaching for GASB Proposals on External Investment Pools and Irrevocable Split-Interest Agreements.

Norwalk, CT, August 24, 2015—Parties interested in submitting written comments on the Governmental Accounting Standards Board's proposed Statements regarding certain external investment pools and irrevocable split-interest agreements should file comment letters in the coming weeks.

The Exposure Draft, Accounting and Financial Reporting for Certain External Investment Pools, would permit qualifying external investment pools to measure pool investments at amortized cost for financial reporting purposes. Reporting under the amortized cost basis reflects investment cost and adjustments made for premiums or discounts associated with the purchase price of the underlying investments in the pool. Stakeholders are encouraged to review and provide comments on the proposal by **August 31, 2015**.

The Exposure Draft, Accounting and Financial Reporting for Irrevocable Split-Interest Agreements, proposes recognition and measurement guidance for state and local governments that benefit from irrevocable split-interest agreements. The proposal addresses when these types of arrangements constitute an asset for accounting and financial reporting purposes in cases where the resources are administered by a third party. The proposal also seeks input on expanded guidance for irrevocable split-interest agreements in which the government holds the assets. Stakeholders are encouraged to review the proposal and provide comments by **September 18, 2015**.

To submit a comment letter on a GASB project, include the project number (Certain External Investment Pools Project No. 3-29E; Irrevocable Split-Interest Agreements Project No. 3-26E) when emailing director@gasb.org or submitting in writing to:

Governmental Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

MSRB Core Operational Hours.

Changes to the Municipal Securities Rulemaking Board's (MSRB) information facilities to better align the language of the information facilities to the MSRB's administration of these systems are operative today (see MSRB Notice 2015-11). Among other things, these changes include adding references to the MSRB core operational hours of 7:00 a.m. to 7:00 p.m. Eastern Time on business days. All manuals and specifications for the MSRB's systems have been updated to clarify the availability of MSRB Support during core operational hours.

Puerto Rico Bond Offer Postponed, Seen Luring High-Yield Funds.

NEW YORK Aug 18 (Reuters) – Puerto Rico postponed until later this week its first bond sale in public markets since it defaulted, investors said on Tuesday, an offering that according to Fitch ratings agency may attract high-yield municipal funds.

According to data company IPREO, the $750 million deal for the Puerto Rico Aqueduct and Sewer Authority (PRASA) was slated to price on Tuesday.

One investor in contact with underwriters, who declined to be named, said they had been told the issue was postponed to Thursday.

"From everything I know now, I don't think (buying the issue) is a good idea," that investor said, adding they were concerned about the risk of default.

Lyle Fitterer, head of tax-exempt fixed income at Wells Capital Management, also said that it was his understanding that the release would happen Thursday.

It is meant "just to give investors more time to do their work," said Fitterer, who said he learned of the postponement from one of the underwriters.

PRASA and Bank of America Merrill Lynch, the lead underwriter for the deal, did not respond to requests for comment on the date of the pricing.

Bloomberg earlier reported the issue's delay.

High-yield closed-end funds may participate in this week's PRASA bond sale because of the authority's stable prices compared to other debt issuers from the island, Fitch Ratings said on Tuesday.

A return of municipal closed-end fund managers to Puerto Rico would be a source of liquidity for the U.S. commonwealth, according to Fitch.

The PRASA bond sale follows a failure by Puerto Rico to make a full payment due on bonds sold by its Public Finance Corp. The partial payment was considered a default by its creditors and ratings agencies, the first by the U.S. territory.

Fitch Ratings on Monday rated Puerto Rico's planned bond sale 'CC', meaning that default of some kind appears probable, and that there are very high levels of credit risk.

S&P, which lowered its rating on PRASA to CCC- in July, said on Tuesday that "events could unfold within the next three months that could expose PRASA to greater restructuring efforts."

Puerto Rico was scheduled on Monday to conclude its presentations to investors on the bond sale.

The island had been conducting presentations since late last week.

By Jessica DiNapoli

(Additional reporting by Megan Davies; Editing by Paul Simao and Alan Crosby)

How Can Communities Finance Microgrids for Public Safety?

Small local power grids, which may include renewable energy generation, can ensure the lights stay on during weather-related power outages.

In the United States, microgrids are concentrated in the Northeast, according to Katherine Tweed, a writer at Greentech Media. How can microgrids expand their footprint and reach other regions and cities?

The need for climate resilience is one common justification for building microgrids. Microgrids — small local power grids that may include renewable energy generation — can ensure the lights stay on at hospitals, transit centers, emergency shelters, business headquarters, prisons, colleges, apartment buildings and government offices during weather-related power outages.

According to Tweed, New Jersey has leveraged $200 million from its community development block grant for disaster recovery to create an energy resilience bank. This bank may support distributed generation and microgrids at community facilities such as water-treatment plants, high schools, town centers, emergency-response shelters and hospitals.

In the metropolitan areas of New York City, Washington and Chicago, owners of affordable housing complexes seek out opportunities to add climate-resilience technology to their buildings.

Taking a larger-picture perspective, microgrid developers could build electrical grids to serve groups of multifamily housing complexes. They also could provide microgrids for neighborhoods where residents might be unable to leave during weather emergencies due to income or health considerations.

What financing sources are available?

Microgrid financing can come from any one of a patchwork of funding sources. Sometimes, multiple sources can be combined to support individual projects. Putting these pieces together can require extensive groundwork and patience.

According to a presentation published by Ballard Spahr LLP, many financing tools are available to support microgrid construction. These include energy bonds, tax deductions, tax credits, credit enhancements and direct cash payments.

Energy bonds may include qualified energy conservation bonds, taxable bonds and tax-exempt bonds.

Tax credits and tax deductions can benefit for-profit microgrid projects, but cannot be used by tax-exempt organizations directly. However, municipal project developers can partner with for-profit entities.

Tax deductions can include accelerated depreciation on the capital cost of energy projects, the

commercial energy-efficiency deduction on capital costs and sales or property tax exemptions.

Federal tax credits for microgrids include the production tax credit, which covers utility-scale renewable energy installations, and the investment tax credit (ITC), which supports smaller renewable energy and cogeneration installations.

Some individual tax credits that recently have been available apply to wind power, solar power, geothermal energy, microturbines, hydropower, municipal solid waste combustion, cogeneration, biomass, fuel cells, marine power and thermal pumps.

However, a substantial number of these credits — the ones that apply to biomass, hydropower, marine power, municipal solid waste combustion and large-scale wind power — required construction to begin before 2014.

The future of these tax credits is uncertain because of pending changes in federal tax policy. Depending on the political decisions that are made in the next several years, these tax credits could be altered.

Credit enhancements involve third parties with good credit ratings committing to pay borrowers' debts if they default. These enhancements are available in the form of loan guarantees from United States Department of Energy, United States Department of Agriculture and other funders.

There are a number of potential sources of direct cash payments. At one point, 1,603 cash grants were available in lieu of the ITC; however, this is largely no longer the case. Renewable energy credit payments and rebates also can assist with financing. Other federal, state or local grants and incentives also may be an option.

Many utilities offer demand-side and efficiency incentive programs that provide rebates and rewards.

There are two methods of using shared savings to finance microgrids. In one approach, the developer provides the capital and shares more of the savings. In a second approach, the sponsor plays that role.

Public-benefit corporations, private investors, banks, utilities and energy service companies can provide private financing for community microgrid development.

With so many alternatives available, how can municipal project developers choose the options that are best for them?

Pace Law School has published a report that recommends a thorough initial assessment of each project. The assessment should take into account the sponsor's capital resources, its credit quality and its preferred ownership structure. These considerations should determine whether the sponsor relies on debt financing, equity financing, leasing, government funding or other options.

Is warehouse credit an option?

In January, a report by Clean Energy Group explored the possibility of providing warehouse credit for microgrids and related projects. The report, "Ramp up Resilient Power Finance" advised the creation of an integrated finance approach to make developers' work easier.

Warehouse credit involves pooling funds from groups of loans into securities that then can be traded. Green banks, community development financial institutions and government stakeholders

could set up warehouse credit for microgrids once they identify adequate demand exists.

According to Clean Energy Group, warehouse credit could assist both large and small projects.

Large resilient power projects might include wastewater treatment facilities and utility-owned microgrids.

Smaller community resilient-power facilities might include multifamily affordable housing, assisted-living facilities, emergency shelters, police and fire services, dialysis and community health centers, and publicly owned buildings.

Clean Energy Group is also researching ways to integrate distributed generation with affordable housing and senior housing. This could help to prevent avoidable humanitarian crises during weather-related blackouts.

“Fortunately, new institutions do not need to be created for these financing purposes,” the report said.

GreenBiz

Kat Friedrich

Wednesday, August 19, 2015 – 2:30am

Detroit's $245 mln Bonds Priced in First Post-Bankruptcy Issue.

Aug 19 Detroit’s post-bankruptcy debut in the U.S. municipal bond market on Wednesday resulted in hefty yields for $245 million of bonds.

Tax-exempt bonds totaling $134.7 million were priced at par with a top yield of 4.50 percent in 2029. Nearly $110.3 million of taxable bonds maturing in 2022 were priced at par with a 4.60 percent coupon.

Reuters

(Reporting By Karen Pierog Editing by W Simon)

California GO Refunding And New Issue Bonds Assigned 'AA-' Rating.

SAN FRANCISCO (Standard & Poor’s) Aug. 18, 2015–Standard & Poor’s Ratings Services has assigned its ‘AA-‘ long-term rating, and stable outlook, to California’s estimated $1.9 billion of general obligation (GO) bonds, consisting of $550 million in tax-exempt various purpose GO bonds and $1.35 billion in GO refunding bonds.

At the same time, Standard & Poor’s affirmed its ‘AA-‘ long-term ratings and underlying ratings (SPURs) on California’s $76 billion of GO bonds outstanding, as of July 1, 2015. The outlook on all ratings is stable.

Finally, we affirmed the long-term component of the 'AAA/A-1+' and 'AAA/A-2' ratings on some of the state's GO variable-rate demand bonds. The long-term component of the ratings is based jointly (assuming low correlation) on that of the obligor, California, and the various letter of credit (LOC) providers. The short-term component of the ratings is based solely on the ratings on the LOC providers.

"California's finances have been brought into structural alignment," said Standard & Poor's credit analyst Gabriel Petek. "Under current conditions, the state's fiscal structure generates modest operating surpluses that translate to larger projected budget reserves, according to the state Department of Finance's forecast, than the state has had in recent memory. Still, the state's tendency for revenue volatility coupled with the lack of an automatic process for midyear corrective budget actions — other than the governor declaring a fiscal emergency — constrain our rating on the state," added Mr. Petek.

Aided by temporary tax increases and a six-year bull market for equities, California is enjoying an extended period of strong revenue trends. The Department of Finance recently reported that tax collections for fiscal 2015 topped its updated May forecast by 0.6% on a cash basis. Revenue collections look even stronger when compared with the assumptions included in the original fiscal 2015 budget. On that basis, the state controller reports that tax receipts for the year came in $6.8 billion (6.4%) higher than projected at the time of budget enactment. In our view, the state's stronger credit quality primarily reflects its much improved fiscal position, which lawmakers have engineered with the help of the multi-year revenue rebound.

S&P's Public Finance Podcast (GARVEES, PRASA, And Pike County Schools).

In this week's Extra Credit, Managing Director Peter Murphy addresses GARVEES, Senior Director Ted Chapman talk about PRASA, and Anna Uboytseva discusses our rating action on Pike County Schools.

Listen to the Podcast.

Aug. 21, 2015

MSRB Eases Voluntary Bank Loan Disclosure for Issuers on EMMA.

WASHINGTON – The Municipal Securities Rulemaking Board has developed procedures for issuers to use to voluntarily disclose their bank loans on their home pages through EMMA in an effort to encourage such disclosures.

Bank loan disclosure has been an ongoing focus for the MSRB and credit rating agencies. They contend issuers' non-security debt obligations are important in determining a government's overall financial condition and the resources the government has to back its muni securities.

Bank loans have become a popular alternative to municipal securities for some issuers because they are cheaper and subject to much less regulation. While general information like the size of the loan usually ends up in an issuer's financial documents, specific details such as the loan terms are only disclosed on a voluntary basis.

The MSRB said in a release its new procedures for bank loan disclosures on EMMA will contribute to "transparency and fairness" in the municipal market.

"By integrating these voluntary disclosures with all other disclosure documents and recent trade activity of an issuer, EMMA issuer homepages make it easier for investors to browse for information to help them make informed decisions about municipal securities," the board said.

Katherine Newell, director of risk management for the New Jersey Educational Facilities Authority, said her office is recommending its college and university clients consider the new capabilities the MSRB is offering, although she emphasized that it is the individual client's decision to make the voluntary disclosures and that the clients already inform credit agencies about their bank loans if they have them.

She added the issuer clients should be aware of the ongoing discussions on the topic, which includes a white paper released in 2013 by 10 market groups to help issuers make decisions on whether to disclose bank loan information.

The paper laid out specific information an issuer could consider disclosing in regard to bank loans, including the date of incurrence, principal amount, maturity and amortization, the interest rate, and information about what would constitute a default and remedies, if different than for the issuer's outstanding bonds. It also recommended the voluntary disclosures be made within 10 business days of the execution of the bank loan, which is the same amount of time issuers are given to disclose material events related to securities trading under Securities and Exchange Commission Rule 15c---12.

Newell said the ongoing discussion about bank loan disclosure makes it more likely "the idea will catch on" with issuers. "The longer an issue like this is reported about, ultimately people will move toward making the disclosures," she said.

Allen Robertson, a shareholder at Robinson, Bradshaw & Hinton who worked on the 2013 white paper, said the MSRB change will be "good and helpful" for investors, but will not necessarily change the frequency or amount of voluntary bank loan disclosure. He said an increase in disclosure will take "continued additional education of issuers about the need for that disclosure and the desire from the buy side for that disclosure."

Susan Gaffney, executive director for National Association of Municipal Advisors, said NAMA is pleased with the MSRB's efforts to continue expanding EMMA.

"Discussion of bank loan disclosure has been a hot topic for many years and this effort will go a long way to provide a place for issuers to post their information, thus giving investors an easy way to know more about [issuers'] credit," she said.

THE BOND BUYER

by Jack Casey

AUG 18, 2015 4:07pm ET

NABL Provides Issuers Disclosure Guidance in Wake of SEC Cases.

WASHINGTON — The National Association of Bond Lawyers released a paper Thursday giving its members tools to help issuer clients develop written disclosure policies and procedures in response to recent Securities and Exchange Commission cases against issuers.

The paper, titled "Crafting Disclosure Policies," explores the functions and benefits of voluntary written disclosure policies as well as the considerations that should go into drafting such policies. The procedures can help clients avoid actions under federal securities laws, which prohibit issuers from making false or misleading statements or omissions that are material and connected to the purchase or sale of securities, NABL said. Generally, information is material if investors would want to know it before engaging in securities transactions.

Daniel Deaton, a partner with Nixon Peabody who was involved in drafting the paper along with an eight-person committee, said the idea was to emphasize that creating disclosure policies and procedures should be its own process for counsel and issuers that takes into account a careful analysis of the issuer. He added the process should not be "one-size-fits-all" and should incorporate the "excellent" internal processes issuers already tend to have.

"One of the big concerns the paper identifies is that [the procedures are] not imposing new bureaucracies on an issuer but rather that members are looking at the issuer for what it is within its own natural organic operation," Deaton said.

Lawyers and their clients should also keep the disclosure plan from "becoming just a checklist," NABL said, while determining the issuers' existing processes and then finding out what enhancements need to be made for better disclosure.

"A disclosure policy that is merely a checklist can result in a myopic process that does not encourage issuer staff and officials to see and convey the big picture," the paper said. "A disclosure policy ideally should strike a balance between being systematic" and pragmatic, "ensuring that the systematic aspects of the process do not become the purpose of the disclosure process itself."

The paper begins with a background section on disclosure policies that explains how issuers can "reduce the chances of making a material misstatement or omission in disclosure to investors" and also establish "a defense of reasonable care against actions for misstatements and omissions that nevertheless occur."

It then lays out the "four core components" of good disclosure policies: a description of the types of disclosures to investors that are covered by the policy; a clear statement of the process by which each type of disclosure to investors will be undertaken, drafted, reviewed, and approved, as well as how compliance with the process will be documented; the process for adequate supervision and reasonable disbursement of responsibilities; and the steps for training of officials and employees.

NABL recommends lawyers and issuer clients consider which documents they have that could be considered material statements and create an inclusive policy. Examples of documents issuers might consider include primary offering documents, continuing disclosure filings, audited financial statements, information contained on issuer websites, and other statements like press releases, interviews and speeches.

A comprehensive policy should also be structured to include applicable levels of review, whether that be from an internal working group tasked with reviewing the documents for accuracy, or reviews from senior officials, outside consultants or governing bodies. Additionally, any continuing disclosure review should start early enough to give enough time for careful consideration and all public statements should be "properly vetted" before being released.

Issuers should also document their compliance and consider the kind of training they want to pursue "to ensure that their personnel sufficiently understand the disclosure policy and the issuer's obligations under the federal securities laws," according to the paper.

The paper ends with three appendices that discuss relevant SEC enforcement actions against issuers, give annotated examples of disclosure policies and procedures, as well as a table of references.

In its appendix on SEC actions, the paper notes the commission has mentioned some form of disclosure policies in almost every recent order against issuers in the municipal securities market. It describes the specific emphasis put on clearly identifying individual responsibilities in disclosing information, the process for disclosing that information, and the necessary supervision that came out of the 2006 case against San Diego. It also calls for comprehensive disclosure policies like those that came from more recent cases like those against New Jersey, South Miami and Kansas.

The paper concludes by stating that lawyers and issuers can address the SEC concerns: by combatting the "silo" effect that comes when only one department of a much larger organization is tasked with disclosure activities; by removing discrepancies in training; and by weeding political considerations out of disclosure decisions.

"The SEC's comments regarding the importance of written disclosure policies are not isolated or ad hoc remarks, but rather appear to represent one of its major emphases in the municipal securities market," the paper said. "These comments are indicative of the SEC's position that issuers should adopt written disclosure policies to avoid the securities law violations alleged in these orders."

THE BOND BUYER

BY JACK CASEY

AUG 20, 2015 5:40pm ET

States, Localities Saved More than $700B Due to Muni Exemption.

WASHINGTON — The municipal bond tax exemption saved state and local government borrowers more than $700 billion in debt service expenses from 2000 to 2014, according to a white paper released this week by two local government groups.

The estimated savings amount was in 2014 dollars, according to the paper, which was issued by the International City/County Management Association and the Government Finance Officers Association.

The paper was written by Justin Marlowe, a professor at the University of Washington. It was released as proposals from Congress members, the White House and other sources have suggested limiting or eliminating the federal tax exemption for munis.

The "vast majority" of state and local capital spending is financed through bonds. The muni market is complex, since there are many issuers that can issue many different types of bonds, Marlowe wrote. Some past analysis of how a major change to the tax exemption would affect state and local governments' cost of capital have assumed that ending the exemption would uniformly increase interest rates for all munis. However, there are drawbacks to this approach, Marlowe wrote. There

is no evidence that ending the exemption would impact all bonds in the same way. Also, if analysts assume that repealing the exemption has a uniform effect on munis, they're not taking into account day-to-day market movements that affect both tax-exempt and taxable obligations.

Spreads between tax-exempt munis and taxable Treasuries are smaller and greater at different points in time. Since the financial crisis, it is typical for there to be a wide spread between muni and Treasury interest rates. The widening spread could be due to the lower overall liquidity of munis, concerns about state and local governments' credit quality, and changes in the value to investors of the tax exemption for munis, according to the paper.

Marlowe came up with estimates of the credit, liquidity and tax components of muni spreads that were based on market prices for more than 10 million muni transactions between 2000 and 2014. He found that from 2000 to 2014, the tax component of the muni spread was generally between -225 and -150 basis points, meaning that the muni exemption lowered interest rates on a typical bond by 1.50% to 2.25%.

Then he computed the amounts that borrowing costs would increase if the muni exemption was repealed. The calculations involved: increasing each bond's interest rates by the average tax component for all munis with the same maturity on the day the bond was sold; creating a "taxable equivalent" interest expense for each bond; and comparing the expense for the taxable equivalent to the expense for the actual bond.

Savings due to the tax exemption were much lower after the financial crisis than before it. This is not surprising because interest rates on Treasuries have been at record low levels for most of the post-crisis period, according to the paper.

Different types of borrowers had fairly consistent amounts of savings per $1,000 of borrowed money due to the exemption. Since the financial crisis, the exemption has meant savings of about $70 per $1,000 of borrowed money for cities in 2009 dollars, $76 per $1,000 of borrowed money for counties and $79 per $1,000 of borrowed money for schools, according to the paper.

The paper discussed two main alternatives to financing infrastructure through tax-exempt bonds — pay-as-you-go financing and public private partnerships.

"At the moment, there's no robust alternative to tax-exempt financing," Marlowe said in an interview with The Bond Buyer. While PAYGO financing and P3s definitely have a place in state and local finance, they're not as broadly useful as tax-exempt bonds, he said.

PAYGO is more flexible and more transparent than tax-exempt financing, but is hard to use for large projects such as new water treatment facilities, port infrastructure and major bridge replacements.

P3s provide state and local governments with access to new sources of capital and give governments the chance to improve their infrastructure capacity through a private partner. However, P3s carry a variety of risks, and it's unclear if they can work well to finance non-revenue generating infrastructure and smaller projects, according to the paper.

THE BOND BUYER

BY NAOMI JAGODA

AUG 19, 2015 3:10pm ET

Muni Sales Set to Fall as Redemptions Decline; Puerto Rico Sells.

Municipal bond sales in the U.S. are set to decrease in the next month while the amount of redemptions and maturing debt falls.

States and localities plan to issue $8.7 billion of bonds over the next 30 days, according to data compiled by Bloomberg. A week ago, the calendar showed $10.1 billion planned for the coming month. Supply figures exclude derivatives and variable-rate debt. Some municipalities set their deals less than a month before borrowing.

Puerto Rico Aqueduct and Sewer Authority plans to sell $750 million of bonds, New York State Convention Center Development Corp. has scheduled $640 million, Portland, Oregon, Sewer System will offer $404 million and Illinois Finance Authority will bring $400 million to market.

Municipalities have announced $10.1 billion of redemptions and an additional $17.9 billion of debt matures in the next 30 days, compared with the $29.5 billion total that was scheduled a week ago.

Issuers from Texas have the most debt coming due with $6.12 billion, followed by California at $1.77 billion and New Jersey with $929 million. Texas has the biggest amount of securities maturing, with $5.4 billion.

The $3.6 trillion municipal market shrank by 4 percent in 2014. This year, maturities are poised to drop 38 percent to $176 billion from the 2014 levels.

ETF Flows

Investors removed $106 million from mutual funds that target municipal securities in the week ended Aug. 5, compared with a reduction of $91 million in the previous period, according to Investment Company Institute data compiled by Bloomberg.

Exchange-traded funds that buy municipal debt fell by $10.2 million last week, reducing the value of the ETFs by 0.06 percent to $17.2 billion.

State and local debt maturing in 10 years now yields 103.273 percent of Treasuries, compared with 103.156 percent in the previous session and the 200-day moving average of 101.301 percent, Bloomberg data show.

Bonds of Michigan and California had the best performance over the past year compared with the average yield of AAA rated 10-year securities, the data shows. Yields on Michigan’s securities narrowed 5 basis points to 2.48 percent while California’s declined 1 basis points to 2.48 percent. Puerto Rico and Illinois handed investors the worst results. The yield gap on Puerto Rico bonds widened 137 to 11.14 percent and Illinois’s rose 36 basis points to 4.16 percent.

Bloomberg

Kenneth Kohn

August 17, 2015

Puerto Rico Seen Paying Triple Benchmark Yields in Return to Market.

Puerto Rico's water utility may have to pay yields three times higher than top-rated municipal borrowers as it sells $750 million of bonds, the first securities offering from the commonwealth since it defaulted this month.

The island's Aqueduct and Sewer Authority, called Prasa, is offering 30-year bonds for a preliminary yield of 9.5 percent, according to four people familiar with the sale who asked for anonymity because the deal isn't final. That compares with yields of 3.1 percent for benchmark securities. The bonds would carry an 8 percent coupon.

The sale comes amid an escalating fiscal crisis for Puerto Rico's government, which is seeking to restructure its $72 billion of debt and made only part of an interest and principal payment due by one of its agencies on Aug. 3. Prasa bonds maturing in 2042 traded Monday for an average of 69 cents on the dollar for a yield of 8.1 percent.

"They have to come with a pretty deep discount just to be in line with how bonds are trading in the secondary," said Daniel Solender, who helps manage $17 billion, including Puerto Rico debt, as head of munis at Lord Abbett & Co. in Jersey City, New Jersey.

The Prasa sale is a test of Puerto Rico's ability to access the capital markets and is the first sale of long-term debt from the island since it issued $3.5 billion of general-obligation bonds in March 2014.

Attracting Buyers

To attract buyers to that sale, which was the largest junk-rated offering ever in the municipal market, the commonwealth issued the securities, which had an 8 percent coupon, for 7 percent less than face value. Hedge funds bought the bulk of the bonds.

Kristen Kaus, a spokeswoman at Bank of America Merrill Lynch, the lead underwriter on the sale, didn't immediately respond to phone and e-mail messages seeking comment on the pricing.

Puerto Rico securities have been trading at distressed levels for two years on concern that the island of 3.5 million wouldn't repay its obligations on time and in full. Officials aim to craft a plan by the end of the month for restructuring the government's debts.

Prasa's bonds may be sheltered from that proposal. Government Development Bank President Melba Acosta, the island's top debt official, said the bank doesn't foresee the water agency reorganizing its obligations.

Bonds' Backing

Prasa, which had almost $5 billion of bonds and notes as of May 31, plans to raise rates by as much as 4.5 percent annually beginning in fiscal 2018. The utility provides water to 97 percent of the island's population and wastewater service to more than half. The bonds are repaid with fees on water use.

There should be enough buyers for the sale, even though Puerto Rico is seeking to lower its combined debt load, said David Tawil, co-founder of hedge fund Maglan Capital LP.

"There should be adequate appetite for the deal in order to get it completed," said Tawil, who

manages $80 million in New York. “The entity by all accounts is solvent and is self sufficient, vis a vis cash flow.

With a very robust coupon that you frankly cannot find out of any similar type of issuer, all that together gets you to a conclusion that this is a good investment.”

Bloomberg

Michelle Kaske

August 17, 2015

Fitch: CA Pension Case Highlights Legal Obstacles to Reform.

Fitch Ratings-New York-21 August 2015: A recent legal settlement in San Jose, CA underscores our view that reducing pension liabilities will be challenging for most governments and ultimately dependent on state-by-state judicial review, Fitch Ratings says. The city’s agreement with police and firefighter unions would restrict most pension reforms to new hires, leaving benefits for existing employees and retirees largely untouched. San Jose voters authorized broad changes to public pensions under Measure B in 2012, but reforms have been stalled by legal challenges from the outset.

Many observers had expected the litigation to provide an opportunity for legal clarification of the so-called California Rule, which provides that pension benefits are a vested contractual right and cannot be impaired for existing public employees and retirees. Lower courts had generally supported this position in earlier Measure B litigation, but such cases had yet to come before the Supreme Court of California.

Local government pension reform in California could see increased attention under a voter initiative targeting the November 2016 general election. Signature gathering recently began for the Voter Empowerment Act of 2016, which would amend the state’s constitution to permit local voter initiatives to address public employee compensation and retirement benefits. The measure was sponsored by San Jose’s former mayor, among other proponents, and appears designed to overturn the California Rule.

The likelihood of approval for the new initiative is uncertain, particularly given anticipated strong opposition from public employee unions. However, ongoing legal battles over pension reform can be expected regardless of the initiative’s outcome and will continue to challenge efforts to reduce pension liabilities in California and other states.

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Illinois Budget Logjam Spurs Downgrades While Lawmakers Debate Pie.

Illinois Governor Bruce Rauner agreed last week with lawmakers to designate pumpkin the official state pie. Reaching consensus on a budget is proving to be more difficult, and that's starting to ripple into the bond market.

The Chicago school district's credit rating was cut to junk on Aug. 14 as it waits on state help to close its deficit. Public university bonds may be downgraded, and securities sold by Chicago's convention center slid after lawmakers failed to approve a deposit needed for debt bills. Even Rauner said he wouldn't be surprised if there's another cut to Illinois's bond grade, which is already lower than any other state.

"As long as the budget impasse continues, the likelihood of a further downgrade does exist," said Peter Hayes, who oversees $116 billion, including some Illinois holdings, as head of municipal securities at New York-based BlackRock Inc. The company isn't buying state bonds amid the impasse.

Illinois has gone 49 days without a spending plan since the fiscal year started July 1 and there's no end in sight. Rauner, the state's first Republican governor in 12 years, and the Democrat-led legislature can't agree on how to fix a $6.2 billion deficit that was left after temporary tax increases expired.

Rauner is calling for limits on the power of unions, changes to business regulations and spending cuts before agreeing to new taxes. Democrats want steeper levies on the highest earners, among other revenue-raising measures.

Unprecedented Standoff

Illinois has had other budgetary jams, such as standoffs in the 1990s between the legislature and Republican Governor Jim Edgar, though none has lasted as long, according to the Civic Federation, a Chicago-based research group.

"There is no recent precedent in Illinois history for operating over two months into the fiscal year without a budget," Laurence Msall, president of the federation. "In addition to being highly unusual, this extended impasse is also fiscally reckless and expensive."

Investors have long penalized the state with higher borrowing costs. Yields on 10-year Illinois obligations reached 4.2 percent Tuesday, the highest among the 20 states tracked by Bloomberg. That's almost 2 percentage points more than top rated debt, near the record high reached in October 2013.

And even without a budget, the state hasn't been forced into a partial government shutdown. Illinois is paying its employees because of court orders, and money has been set aside for schools. The General Assembly may approve a bill this week, which Rauner said he'll sign, that releases $5 billion

of federal funds for social services.

Credit Ripples

The effects are beginning to be felt beyond the capital. In Chicago, school officials are waiting for the legislature's help with pension costs that are fueling its own budget shortfall. Because of that gap, Standard & Poor's on Aug. 14 lowered the district to BB, two steps below investment grade. That followed similar cuts since May by Fitch Ratings and Moody's.

Investors who bought bonds sold by the Metropolitan Pier and Exposition Authority, which runs the largest convention center in the nation, have also taken a hit. When the budget's delay prevented tax money from being transfered into its debt-service fund, S&P this month reduced its rating by seven notches. That caused its bonds maturing in 2050 to fall to an average of 100 cents on the dollar Monday from $1.05 on July 30. That pushed the yield up by more than a percentage point to 5.2 percent.

University Outlook

S&P reduced its outlook to negative from stable on some University of Illinois revenue bonds on Aug. 10, citing the lack of a budget and potential for funding cuts.

Illinois politicians are showing little haste in resolving the standoff. This week, Rauner was among those hobnobbing with voters at the state fair in Springfield, the capital, where politicians flock each year to glad-hand supporters, munch corn dogs and take in the agricultural bounty. House Speaker Michael Madigan is scheduled to be there for Democrat Day on Thursday.

"The longer it takes them to put together a final budget agreement, the greater the cost," said Ralph Martire, executive director of the Center for Tax and Budget Accountability, a Chicago-based research group. "The more they'll have to raise in taxes, and the more they'll have to cut in spending."

Bloomberg

Elizabeth Campbell

August 18, 2015

Detroit Disciplined in Return to Bond Market After Bankruptcy.

Detroit found that investors haven't forgotten the largest municipal bankruptcy in U.S. history.

The city sold $245 million of bonds Wednesday, its first offering since emerging from court protection last year. Tax-exempt securities due in 2029, which have the longest maturity, were priced to yield 4.5 percent, according to preliminary data compiled by Bloomberg. That's almost 2 percentage points more than top-rated debt, even though the bonds have a secured claim on the city's income-tax collections.

"They are still, yes, paying the price," said Michael Johnson, managing partner at Gurtin Fixed Income Management, which oversees $9.5 billion of munis in Solana Beach, California, which doesn't own the city's debt and didn't buy on Wednesday. "The forces that have hampered Detroit up

until now are still in place."

After decades of population loss, shrinking tax revenue and an economy reeling from the fading automobile industry, Detroit filed for Chapter 9 protection from creditors two years ago. The move allowed the city to lower its obligations by $7 billion by the time it exited bankruptcy in December, though it still has a lower credit rating than any other big U.S. city.

To persuade investors to lend to the city again, Governor Rick Snyder signed legislation in April giving bondholders first claim to the income taxes that will repay the new debt, which was sold through the Michigan Finance Authority. That assurance prompted Standard & Poor's to rate the bonds A, five steps above junk and nine levels higher than its grade on Detroit's general obligations.

Fresh Scrutiny

Detroit's bankruptcy increased scrutiny of legal safeguards on municipal bonds, especially those sold by financially distressed local governments. When Detroit adjusted its debts, some general-obligation bondholders recovered just 41 percent of what they were owed, according to Moody's Investors Service.

S&P still considers Detroit speculative grade and gives the city a B rating, five levels below investment grade, citing its "very weak" economy, management structure and budgetary flexibility.

The city's income tax collections are strong enough to pay for the bonds. The money that will be deposited in a fund earmarked for debt payments will be about 6.5 times what's needed, S&P said last month.

Detroit initially offered 14-year tax-exempt debt for a yield of 4.63 percent, according to three people familiar with the sale who requested anonymity as the pricing wasn't final. Demand allowed underwriters to cut the final yield.

Paying Premium

The federally-taxable portion maturing in 2022 yielded 4.6 percent, according to data compiled by Bloomberg. That's more than twice 10-year U.S. Treasuries.

"Even though I think they are paying a premium, people are comfortable with the analysis and what the city is offering in terms of the security, the pledge, and where they think the city is going financially," said Joseph Rosenblum, director of municipal credit research in New York at AllianceBernstein Holding, which manages $32 billion of municipal bonds. His firm put in an offer for some of the new securities.

The proceeds from the sale will repay a loan from Barclays Plc that helped Detroit emerge from bankruptcy. The funds will also finance city projects, including upgrades for the fire department's fleet.

Bloomberg

Elizabeth Campbell

August 19, 2015

Muni Junk Funds Boosting Liquidity to Avoid Taper Tantrum Redux.

High-yield municipal bond funds are building cash positions and boosting holdings of easy-to-sell securities as a hedge against the risk of rising redemptions in the wake of Puerto Rico's default and higher interest rates.

Managers at Franklin Advisers Inc. to New York Life Insurance Co.'s MainStay Investments have increased cash, while OppenheimerFunds Inc. boosted its line of credit with lenders by $500 million. Nuveen Asset Management's $10.6 billion high-yield fund, the market's biggest, increased holding of debt from states such as California and New York, whose higher income-tax rates boost demand for tax-exempt debt.

"Eight of the last 10 weeks have been outflows, but you haven't seen really that much selling pressure as a result," said John Miller, co-head of fixed income at Nuveen in Chicago. "Perhaps that's an indicator people are prepared."

Puerto Rico securities have traded at speculative levels for more than a year, which has given fund managers time to pare holdings of the island and build cash. The long-building strains on the U.S. commonwealth, which has more debt per resident than any state, are also unique.

Neither Puerto Rico Governor Alejandro Garcia Padilla's announcement in June that the island commonwealth can't pay its $72 billion debt, nor its default on bonds issued by a government corporation have been a catalyst for big outflows.

Taper Tantrum

High-Yield municipal bond funds, which are the most likely to hold Puerto Rico securities, have lost 2.7 percent, or about $1.9 billion of assets under management since early May, according to a Aug. 10 research report from Citigroup Inc.

Year-to-date, high-yield funds have taken in more than $900 million, according to Morningstar Inc. data.

That's a big difference from 2013, when fears that the Federal Reserve would end its bond buying program led investors to yank more than $11 billion from muni funds that invest in below investment-grade, speculative grade and un-rated debt, according to Morningstar. The broad selloff in the bond market became known as the

"Taper Tantrum."

Bond prices rose Wednesday as minutes from the Fed's last policy meeting said most participants noted that conditions for a rate increase were improving. Barclays Plc's muni high-yield index has lost about 2.2 percent this year, compared with a 0.9 percent gain for the broad $3.6 trillion market.

"There have been outflows in high yield, but they haven't been ruinous," said Matt Fabian, partner at Concord, Massachusetts-based Municipal Market Analytics, a bond research firm. "Past crises were more systemic. The current crisis is Puerto Rico specific."

Muni high-yield funds had an average cash allocation in June of 4.04 percent, compared with 3.17 percent for the same period in 2014, according to Morningstar data. Before the Taper Tantrum, the average was 2.13 percent.

Cash Cushion

Even so, many high-yield funds have adopted the boy scout motto: “Be Prepared.”

In the one-year period ending June 30, Franklin’s $2.1 billion California High Yield Municipal Fund reduced its Puerto Rico holdings by about 1 percentage to $57 million, while boosting its cash and cash equivalents almost fourfold to $173.5 million, according to data compiled by Bloomberg. MainStay Investments $1.74 billion high yield fund increased its cash equivalents 70 percent during the same period to $110.3 million.

Stacey Coleman, a spokeswoman for Franklin and Kevin Maher a New York Life spokesman, declined to comment.

Fund statements show that OppenheimerFunds, which held $4.6 billion of Puerto Rico bonds as of May 31, the most among muni funds, according to Morningstar, increased a revolving credit agreement to $2.5 billion last year. OppenheimerFunds also has a $750 million line of credit in the form of a committed reverse repurchase agreement facility.

Most Liquid

“As part of our effort to ensure liquidity in our municipal bond funds, OppenheimerFunds has a robust liquidity framework custom-built for each fund,” said spokesman Ray Pellecchia in an e-mail. “Under this framework, we assess each fund’s holdings, how those holdings would perform under stress such as outflows, and our means to meet potential outflows.”

Rather than boost cash and forgo returns, Nuveen’s Miller is increasing his allocation to high-yield debt from California and New York, states with high income-tax rates, which juice demand. The fund is also buying higher coupon debt, the average is 6.4 percent, sought by investors because it cushions the influence of interest rate movements on bond prices and provides higher income.

Narrower Spreads

California holdings in Nuveen’s high yield fund have increased to 20.4 percent as of July 31 from 17.6 percent, according to data compiled by Bloomberg. Miller has added California general obligation bonds, which have a bid-ask spread of two to four basis points, as well as debt issued for the Bay Area Transit Authority, a $1 billion desalination plant in Carlsbad and the Loma Linda University Medical Center.

“I’m not going to imply that every single California bond is liquid, but California is more liquid than other bonds around the country,” Miller said.

In New York, Nuveen owns $270 million of a $1.1 billion series of bonds issued to finance the construction of 3 World Trade Center. Bid-ask spreads, the difference between the highest price that a buyer is willing to pay and the lowest for which a seller is willing to sell, on the un-rated bonds are also two to four basis points.

Other sources of liquidity include bonds backed by a 1998 settlement with major tobacco companies, which are held by taxable total return bond funds and hedge funds. Hedge funds also own as much as 30 percent of the obligations of Puerto Rico and its agencies, Barclays estimates.

“Liquidity is much better than it was several years back, mainly because you have a lot more larger issuers and a lot more participants in the market,” said Dan Solender, who helps manage $17 billion as head of munis at Lord Abbett & Co. in Jersey City, New Jersey.

Bloomberg

Martin Z Braun

August 19, 2015

BlackRock Says Puerto Rico Possibly Attractive After Plan.

Puerto Rico bonds may become attractive after the junk-rated commonwealth releases a debt-restructuring plan, according to BlackRock Inc.'s head of municipal debt.

Puerto Rico officials are working on a proposal that would reduce its $72 billion debt load or allow the island to temporarily suspend debt-service payments. Governor Alejandro Garcia Padilla expects to receive that plan at the end of the month. Such changes to the debt may push prices on Puerto Rico bonds even lower, creating a potential buying opportunity, Peter Hayes, head of municipal debt at the world's biggest money manager, said in an interview Thursday on Bloomberg Television.

"We do see another leg down," Hayes, who helps oversee $116 billion of munis. "And at that point in time we do think it becomes interesting because it's a governmental entity. They have to continue to provide services."

Garcia Padilla in June said the commonwealth was unable to repay all of its obligations on time and in full. The Public Finance Corp. Aug. 3 failed to make a full $58 million debt-service payment to investors, the first default for a Puerto Rico entity.

Prasa Sale

The Puerto Rico Aqueduct & Sewer Authority, known as Prasa, was tentatively scheduled sell to $750 million in revenue bonds Thursday. The offering would be the first sale of long-term debt from the island since it issued $3.5 billion of general-obligation bonds in March 2014.

Kristen Kaus, a New York-based spokeswoman for Bank of America Merrill Lynch, the lead underwriter of the sale, and Norma Munoz, a spokeswoman for Prasa in San Juan, didn't immediately respond to e-mails Thursday on whether the bonds would be priced.

The water utility was offering 30-year bonds on Tuesday for a preliminary yield of 9.5 percent, according to four people familiar with the sale who asked for anonymity because the deal isn't final. That's about triple the yield for benchmark securities.

Puerto Rico securities have lost 11.2 percent this year through Aug. 19, the biggest decline for the period since at least 2007, according to S&P Dow Jones Indices.

Bloomberg

Michelle Kaske

August 20, 2015 — 6:01 AM PDT Updated on August 20, 2015 — 10:32 AM PDT

Kentucky Town Is First to File for Bankruptcy After Detroit.

Hillview, Kentucky, population 8,000, found a way to put itself on the map.

The town 13 miles south of Louisville on Thursday became the first city to file for bankruptcy since Detroit did two years ago. It joins an elite, if infamous, club: Only 54 cities, towns and counties have sought court protection from their creditors since 1980, said James Spiotto, managing director at Chapman Strategic Advisors, which advises on financial restructuring. Among them were San Bernardino, California, and Jefferson County, Alabama.

Hillview, which faced legal damages it couldn't afford, is only the third Chapter 9 filing this year, following an Oklahoma hospital and a special district in California.

As the economy has improved, tax revenues have followed, easing the strain on local governments. Others may have seen Detroit, which emerged from a record-setting municipal bankruptcy in December, as a cautionary tale.

"People saw Detroit — the pain, suffering, uncertainty, expense — and nobody seemed to be getting what they wanted," Spiotto, a Chicago-based lawyer, said. "It helped motivate governments and creditors to find other solutions."

Despite a spate of bankruptcies following the recession that ended six years ago, cities and counties rarely turn to federal court to escape from their debts. Even so, in an Aug. 5 report, Moody's Investors Service said it's not as taboo as it once was for governments reeling from chronic financial stress.

Contract Dispute

Hillview's Chapter 9 filing is the outcome of a contract dispute with a local company, Truck America Training, over a land sale. In February, Standard & Poor's lowered its rating to junk after the city unsuccessfully appealed a court ruling ordering it to pay $11.4 million in damages to the company.

The city last sold bonds in 2010, when it issued $1.4 million of general-obligation debt, according to data compiled by Bloomberg. A $210,000 portion of the securities maturing in 2017 last traded for 90 cents on the dollar on June 24, down from 99.7 cents when they were first offered.

Hillview estimated its liabilities as high as $100 million and assets as high as $10 million, according to the filing in U.S. Bankruptcy Court in Louisville. Truck America is the city's largest unsecured creditor.
City attorney Tammy Baker called the filing a "very difficult decision" for the city council. The mounting interest from the court judgment is more than $3,700 a day, she said.

"The city really ended up with no choice," Baker said in an interview. "With the interest accruing at that rate, it's just really going to be impossible for the city to pay that judgment."

Bloomberg

Elizabeth Campbell

August 20, 2015

Bloomberg Brief Weekly Video - 08/20/15

Taylor Riggs, an editor at Bloomberg Brief, talks with Joe Mysak about this week's municipal market news.

Watch the video.

August 20, 2015

Puerto Rico Finds Waning Demand for Water Bonds Amid Debt Talks.

Puerto Rico is running into resistance as the commonwealth tries to sell $750 million in bonds while crafting a debt-restructuring plan that would likely leave some investors with deep losses.

After aiming to price the Puerto Rico Aqueduct & Sewer Authority issue as early as Tuesday, the bond sale is now listed as day-to-day. That's even after adding bondholder protections and raising the preliminary yield levels to more than three times the level of benchmark securities.

"It's a pretty difficult thing to try to raise money when out of the other side of your mouth you're talking default and trying to pass laws that allow you to default," said Matt Dalton, chief executive officer of Rye Brook, New York-based Belle Haven Investments, which manages $3 billion of municipal securities, including Puerto Rico debt. He doesn't plan to buy any of the water bonds.

Puerto Rico raised the ire of investors by defaulting Aug. 3 on a $58 million agency bond payment, saying the legislature hadn't appropriated the funds and cash was being conserved to provide basic services.

Governor Alejandro Garcia Padilla in June said the island was unable to repay all of its $72 billion debt burden and directed officials to craft a debt-restructuring plan by the end of August that may suspend payments.

Price Talks

"We did not price yesterday in order to provide investors with the time they need to adequately review and analyze the materials so they can make the most informed decision about their potential investment," Barbara Morgan, who represents the Government Development Bank at SKDKnickerbocker in New York, said in an e-mail.

The bank works on the island's debt sales. Morgan declined to say when Prasa may sell the bonds.

Underwriters were talking Thursday about preliminary yields of 10 percent on the 30-year securities, up from 9.5 percent earlier in the week, according to two people familiar with the sale who requested anonymity because pricing wasn't final.

Kristen Kaus, a New York-based spokeswoman for Bank of America Merrill Lynch, the lead underwriter of the sale, declined to comment on when the bonds would be priced. Norma Munoz, a San Juan-based spokeswoman for the water agency, known by the Spanish acronym Prasa, didn't respond to e-mails.

Acceleration Fee

The utility also made adjustments to the deal that gives investors an acceleration fee in the event of a default and mandates that Prasa raise water rates by as much as 25 percent, if needed, to repay the bonds, according to sale documents.

Prasa needs the proceeds of the bond sale to help repay a $90 million bank loan with Banco Popular that expires Aug. 31. Other monies will finance infrastructure upgrades to help the utility meet clean-water requirements under a settlement agreement with the U.S. Environmental Protection Agency, according to bond documents.

Hedge funds are expected to purchase the bulk of the Prasa bonds, as they did when Puerto Rico sold $3.5 billion of general-obligation debt in March 2014. Buyers of distressed securities have been investing in commonwealth debt for about two years as traditional municipal-bond investors have reduced or eliminated their exposure.

Puerto Rico and its agencies are reeling from years of borrowing to pay bills. The island's economy has shrunk every year but one since 2006 and is projected to contract 1.2 percent this fiscal year.

Restructuring Plan

The utility provides water to 97 percent of the island's population and wastewater service to more than half. As residents continue to leave for the U.S. mainland, that has cut into demand for its services. Average monthly customer consumption decreased by about 6 percent in the year that ended in June.

Prasa's bonds may not undergo a debt restructuring. Government Development Bank President Melba Acosta, the island's top debt official, said the bank doesn't foresee the water agency reorganizing its obligations if the debt sale is completed.

Credit-rating companies aren't so sure. Standard & Poor's, which rates the utility CCC-, its third-lowest junk grade, may downgrade the agency because "events could unfold within the next three months that could expose Prasa to greater restructuring efforts," S&P analyst Theodore Chapman wrote in a report Tuesday.

Relative Value

The preliminary 10 percent yield compares with 3.1 percent on benchmark 30-year municipal debt, according to data compiled by Bloomberg. With a proposed 8 percent coupon, that's equal to a price of about 83 cents on the dollar, the two people said.

That's more expensive than existing Puerto Rico bonds. General obligation debt sold in March 2014 with an 8 percent coupon and maturing July 2035 traded Friday at an average price of 70.5 cents, for an average yield of 11.9 percent, data compiled by Bloomberg show. Prasa bonds with a 5.25 percent coupon and maturing July 2042 traded Friday at an average price of 63 cents, for a yield of about 8.9 percent.

Adding to the investor reluctance to buy the bonds is concern that this is another example of a commonwealth entity borrowing money to paper-over shortfalls rather than investing in infrastructure to improve long-term finances.

"You still have the same broken-down infrastructure and collections are terrible," Belle Haven's Dalton said.

Bloomberg

Michelle Kaske

August 20, 2015

Bloomberg Brief Municipal Market Expert Series.

Taylor Riggs, an editor at Bloomberg Brief Municipal Market, spoke with Justin Land, head of tax-exempt management at Wasmer, Schroeder & Co., about Florida's housing market and community development districts.

Watch the video.

July 30, 2015

Moody's: State Housing Finance Agencies will Benefit from Increasing Millennial Homeownership Rates.

New York, August 20, 2015 — State housing finance agencies (HFAs) are set to benefit from increases in home ownership among millennials Moody's Investors Service says in "Millennial Influx in Housing Market Will Benefit HFAs."

Rising wages and declining unemployment are positive factors supporting an expected increase in millennial homeownership, while HFA down payment and closing cost assistance will make their programs attractive to millennials.

"HFAs that capture even a small percentage of the increasing millennial homebuyer market share will see a material impact on loan originations and revenues," author of the report and Moody's Associate Analyst Wesley Coggins says. "According to the US census, 15 million millennial households do not own a home, presenting a sizable untapped market for HFAs."

Moody's says increasing loan originations by HFAs from millennial borrowing will positively impact revenue and potential asset balances, depending on how the new loans are financed.

HFAs programs are geared toward first-time homebuyers, many of which may not have accumulated a sufficient down payment for a new home. Roughly 15% of millennial homebuyers finance 100% of the purchase price of their homes, although this percentage will likely grow as more millennials enter the market.

As of 2014, 42 out of 44 state HFAs rated by Moody's offer some form of down payment and/or closing cost assistance. For 30 of these agencies, more than 50% of their loans include down payment assistance, Moody's says.

"Millennial demand for home buying is also sensitive to changes in the Federal Housing Administration's (FHA) mortgage insurance premium (MIP) and Fannie Mae and Freddie Mac's loan-to-value (LTV) limits," Coggins says. "As first-time homebuyers, many millennials have high loan-t--value ratios or require mortgage insurance to obtain a mortgage because they do not have funds for

a significant down payment prior to a home purchase," he says.

Beginning in 2010, FHA had steadily increased its MIP as part of its ongoing effort to reduce both the federal government and government-sponsored enterprises' footprint in the housing market. However, in January 2015, FHA started to reverse course and lowered the MIP by 50 basis points for loans with terms greater than 15 years.

The report is available to Moody's subscribers here.

Exclusive: New Jersey Paid $720 Million to Exit All Swaps Under Christie.

NEW YORK — New Jersey has terminated all of its interest rate swap agreements under Governor Chris Christie, paying banks $720 million to unravel $4.2 billion of swaps and wiping from its books a potentially big, unpredictable liquidity risk.

The derivative deals, which states and cities use to lower financing costs by hedging interest rate changes, have caused financial turmoil for some, most recently Detroit and Chicago. The deals either soured when rates did not move as expected or led to big termination fees triggered by credit rating downgrades.

In New Jersey, another credit cut would likely have left some of its debt just one notch above the level that would trigger swap termination payments. The state has suffered nine downgrades during Christie's tenure and is at risk of another because of its underfunded public pensions and financial weakness.

The full cost of terminating all the swaps has not previously been reported. New Jersey Treasury spokesman Christopher Santarelli provided the figure when asked about the state's exit from swaps as of June 30, which was included in a bond document this week.

Swaps "have been considered to be toxic by market participants and the administration. The state saw an opportunity to clean up its balance sheet and did so," Santarelli said in an e-mail.

New Jersey and its state bonding entities had $4.2 billion of outstanding swaps when Christie, a 2016 Republican presidential candidate, took office in 2010.

Over time, the agreements were whittled down, leaving the New Jersey Economic Development Authority (NJEDA), one of the state's biggest public debt issuers, with $1.15 billion of remaining swaps.

The NJEDA has now unwound those swaps with eight different counterparties as of June 30, it said this week in a document for investors ahead of a $2.2 billion bond sale on Aug. 31.

Swaps helped push Detroit into the largest U.S. municipal bankruptcy in 2013. Detroit entered swaps on pension debt it sold in 2005 and 2006, but the city's bet that interest rates would rise proved wrong. Instead they fell, and so did the city's bond ratings.

In February, Moody's Investors Service cut Chicago's credit rating to Baa2, a level that allowed banks to cancel certain swaps. The city then had to renegotiate the deals to avoid $60 million of termination fees. Moody's again downgraded Chicago in May, this time to junk status.

Detroit and Chicago "are recent reminders for municipalities to make sure they… completely understand their swap agreements," said Dan Heckman, senior fixed income strategist at U.S. Bank Wealth Management, which has a small amount of New Jersey debt.

"New Jersey and others are looking at this to make sure that there's nothing that could come up and bite them," he said.

In NJEDA's case, a downgrade to Baa2 would have allowed counterparties to terminate the swaps. They could then either force NJEDA to make termination payments or allow it to make collateral payments to keep the deals alive, according to bond documents.

About $54 million of the proceeds of the $2.2 billion Aug. 31 bond sale will be used to pay part of NJEDA's swap terminations, Moody's said. The rest will fund school construction projects and refund outstanding debt.

Borrowing to pay off a portion of the swaps means the state added to its long term costs to get out of its position, said Lisa Washburn, a managing director at Municipal Market Analytics.

"They're trading a potential short-term liquidity risk for a long-term obligation," she said.

Still, by ending swaps, New Jersey "put itself in the driver's seat," she said. "It eliminates the potential liquidity call if the swap should be terminated at a time when New Jersey doesn't have the cash to do so."

Fitch Ratings on Tuesday revised its outlook to stable from negative on New Jersey, saying "near-term budget risks have abated."

By REUTERS

AUG. 20, 2015, 6:01 P.M. E.D.T.

(Reporting by Hilary Russ; Editing by Bernard Orr)

NABL Releases Paper on Disclosure Policies and Procedures.

The National Association of Bond Lawyers released a paper – *Crafting Disclosure Policies* – which explores the functions and benefits of written disclosure policies, the subjects that drafters should consider addressing, and practical considerations for drafting such policies.

NABL has released a paper entitled Crafting Disclosure Policies, to provide NABL members with tools to advise issuers in developing written disclosure policies and procedures.

The paper contains the following:

- An exploration of the functions and benefits (as well as risks) of written disclosure policies, the subjects that drafters should consider addressing, and practical considerations for drafting such policies.
- A summary and discussion of relevant enforcement actions by the SEC.
- An annotated statement of policies and procedures. The annotated statement is not intended to be a recommended policy for any issuer. Rather, it is intended merely to illustrate the subjects and additional considerations that might be considered in formulating disclosure policies.

- Sample disclosure policies, found on the Securities Law and Disclosure Committee's page on NABL's website.

Detroit Sells First Municipal Bonds Since Emerging From Bankruptcy.

Detroit returned to the municipal-bond market for the first time since the city emerged from bankruptcy, selling $245 million of bonds Wednesday to investors demanding a premium for the securities despite extra protections for bondholders.

The tax-exempt bonds, maturing in 2029, sold through the Michigan Finance Authority, yielded 4.5%, more than a percentage point higher than other single-A rated debt, according to Thomson Reuters Municipal Market Data. The bonds' safeguards include a first claim on city income taxes, earning an investment-grade rating from Standard & Poor's Ratings Services, despite the city's credit rating, which is in junk territory.

The yield premium highlights the challenges Detroit faces with borrowing in the wake of a bankruptcy that left some investors concerned about the financial health of U.S. municipalities and questioning the safety of bonds backed by their full faith and credit.

"The positive is they do have market access; the negative is that they're paying for it," said Daniel Solender, head of the municipal bond group at Lord Abbett & Co., which manages about $17 billion in tax-exempt bonds. "There's demand for yield, and a decent enough portion of the market is willing to focus on the yield and structure of this deal, as opposed to the history."

The sale included about $135 million of tax-exempt bonds maturing between 2020 and 2029, with yields between 3.4% and 4.5%, and $110 million in taxable debt maturing between 2018 and 2022, yielding 4.6%, according to MMD. The money from the bonds will pay for city services and projects and repay underwriter Barclays PLC for lending which helped Detroit out of bankruptcy.

The income tax provides more than enough money to cover the debt payments, despite the city's still-weak economy and limited budgetary flexibility, S&P said in a July report. The need for investor protections and premiums shows the city's access to borrowing remains weaker than for most other issuers.

"We feel Detroit will continue to be challenged to deliver the services residents need and address the backlog of capital and other needs a large city has," S&P said.

Even with the additional assurances, there is enough uncertainty surrounding Detroit's recovery to unnerve investors, who remember losses on the city's debt, said Steven Shachat, who helps manage more than $1 billion of municipal bonds at Alpine Woods Capital Investors.

"When a municipality goes through bankruptcy, it's hard to jump right back in the pool," he said.

THE WALL STREET JOURNAL

By AARON KURILOFF

Aug. 19, 2015 2:24 p.m. ET

Write to Aaron Kuriloff at AARON.KURILOFF@wsj.com

NABL: Crafting Disclosure Policies.

The National Association of Bond Lawyers (NABL) has released Crafting Disclosure Policies, a paper to provide NABL members with tools to advise issuers in developing written disclosure policies and procedures. According to the release, the paper explores the functions and benefits (as well as risks) of written disclosure policies, the subjects that drafters should consider addressing, and practical considerations for drafting such policies. The paper also includes a summary and discussion of relevant enforcement actions by the Securities and Exchange Commission (SEC).

View the paper.

- New Rule to Lift Veil on Tax Breaks.
- MSRB Changes MA Conduct Proposal, But Not Principal Transaction Bar.
- MSRB Enables Issuers to Display Bank Loan Disclosures on Customized EMMA Issuer Homepages.
- Municipal Bond Underwriter Didn't Feel Like Underwriting.
- Edward Jones to Pay $20 Million to Settle SEC Municipal Bond Charges.
- SEC Members Demand Muni Markup Disclosure After Edwards Jones Case.
- UBS Fined $750,000 for Misstating Tax-Exempt Bond Interest.
- And finally, Oddly Specific Facts is brought to us this week by *Cordova v. City of Los Angeles*, in which the judge, describing a fatal car crash, wrote, "Out of control and spinning counterclockwise, the car struck one of several large magnolia trees planted in the median." Presumably, his honor's intent was to honor the memory of the deceased, whose final thought was undoubtedly, "Hey, we're spinning counterclockwise! Is that a magnolia tree?"

LIABILITY - CALIFORNIA

Cordova v. City of Los Angeles

Supreme Court of California - August 13, 2015 - P.3d - 2015 WL 4758177

Family of individuals who died in fatal automobile accident brought wrongful death action against city based on an alleged dangerous condition of public property. The Superior Court granted summary judgment for city. Family appealed, and the Court of Appeal affirmed. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that family was not required to show that allegedly dangerous condition of tree in median caused third party conduct that precipitated accident in order to recover under the Government Claims Act based on a dangerous condition of public property.

A public entity is not, without more, liable under the Government Claims Act for the harmful conduct of third parties on its property containing a dangerous condition, but if a condition of public property creates a substantial risk of injury even when the property is used with due care, a public entity gains no immunity from liability simply because, in a particular case, the dangerous condition of its property combines with a third party's negligent conduct to inflict injury.

Parents of deceased victims of motor vehicle accident in which vehicle, which was speeding, collided with a second speeding vehicle, jumped curb, and struck tree in median, were not required to show

in wrongful death action against city that allegedly dangerous condition of tree in median caused the third party conduct that precipitated the accident in order to recover under the Government Claims Act based on a dangerous condition of public property. Rather, they were only required to show dangerous condition of property, that is, a condition that created a substantial risk of injury to the public, proximately caused the fatal injuries the decedents suffered as a result of the collision with the other vehicle.

EMPLOYMENT - CONNECTICUT

Sidorova v. East Lyme Bd. of Educ.

Appellate Court of Connecticut - August 4, 2015 - A.3d - 158 Conn.App. 872 - 2015 WL 4528940

Terminated teacher brought action against board of education, alleging breach of contract, intentional infliction of emotional distress, negligent infliction of emotional distress, and breach of the covenant of good faith and fair dealing. The Superior Court entered summary judgment for board, and teacher appealed.

The Appellate Court held that:

- Teacher lacked standing individually to enforce the provisions of the collective bargaining agreement;
- Superintendent's manner of communicating teacher's termination was a discretionary act to which municipal immunity attached; and
- Teacher did not establish claim for breach of the covenant of good faith and fair dealing.

Terminated teacher lacked standing individually to enforce the provisions of the collective bargaining agreement since she failed to identify any provision in the agreement permitting her individually to enforce the agreement, she failed to allege that the union had breached its duty of fair representation, and she failed to allege a violation of her constitutional right to due process.

Superintendent's manner of communicating teacher's termination was a discretionary act to which municipal immunity attached. Collective bargaining agreement mandated no specific form or timing for the communication of a termination, it did not prescribe the manner in which the superintendent had to communicate the termination to the teacher, and instead, it merely provided that dismissal of teachers was a responsibility of the superintendent.

Terminated teacher did not establish claim for breach of the covenant of good faith and fair dealing. Teacher did not allege that board of education acted in bad faith, and she failed to set forth any factual allegations that board committed a fraud, sought to mislead or deceive teacher, acted with an improper motive, or with a dishonest purpose.

EMINENT DOMAIN - SOUTH CAROLINA

Columbia Venture, LLC v. Richland County

Supreme Court of South Carolina - August 12, 2015 - S.E.2d - 2015 WL 4751034

Real estate developer, which purchased 4,461 acres of land along a river for $18 million, brought action against county alleging unconstitutional taking and substantive due process violation, after

developer was unable to remove county's floodway designation, which involved an effective prohibition on construction. The Circuit Court granted summary judgment to county on per se taking and substantive due process claims, and, after a bench trial, found in favor of county on regulatory taking claim. Developer appealed.

The Supreme Court of South Carolina held that:

- County did not take flowage easement on property;
- County did not engage in exaction of property;
- County's restrictions did not amount to a categorical taking of property; and
- County's restrictions did not constitute a regulatory taking of property.

County did not take flowage easement on real estate developer's property by adopting revised flood maps of Federal Emergency Management Agency (FEMA), which designated most of developer's property as lying within the regulatory floodway and triggered development restrictions that prevented expansion of preexisting levees, and therefore developer was not entitled to just compensation under the Takings Clause. County did not increase the flood hazard to which developer's property had historically been exposed, and county's action merely maintained the status quo in terms of flood risk.

County did not engage in exaction of real estate developer's property by adopting revised flood maps of Federal Emergency Management Agency (FEMA), which designated most of developer's property as lying within the regulatory floodway and triggered development restrictions, and therefore developer was not entitled to just compensation under the Takings Clause. County did not require developer to grant an easement or dedicate a portion of its property for public use.

County's developmental restrictions on property within regulatory floodway did not amount to a categorical taking of real estate developer's property that was partially located in a floodway, and therefore developer was not entitled to just compensation under the Takings Clause. 30% of developer's property was not designated as lying within floodway, and entire tract of property retained substantial value for agricultural and other purposes, evidenced by sale of approximately 3,000 acres of the property for almost $10 million.

County's floodplain development restrictions prohibiting construction within regulatory floodway did not constitute a regulatory taking of real estate developer's property partially located within floodplain. Even if restrictions significantly impaired the fair market value of developer's property by preventing mixed-use development, developer lacked reasonable investment-backed expectations knowing property was likely subject to restrictions before purchasing it, and county had legitimate and substantial health and safety-related bases for restrictions that burdened more individuals that just developer and benefited property owners and taxpayers.

Real estate developer's investment-backed expectations for development of its property located within regulatory floodway and subject to county's developmental restrictions were unreasonable, which weighed against a finding that county had engaged in regulatory taking of property under the Fifth Amendment. Even though developer subjectively believed it would be allowed to develop property, county participated in National Flood Insurance Program (NFIP) for 18 years before property was purchased, developer was aware at the time of property's purchase of revised flood map affecting over 70% of the developer's property, and developer required approvals from Federal Emergency Management Agency (FEMA) and county to proceed with development plan.

The character of county's floodplain development restrictions provided substantial and legitimate social and economic cost mitigation and health and safety-related benefits without unjustly

burdening real estate developer with property located in floodplain, and therefore regulations weighed against a finding that county had engaged in regulatory taking of property under the Fifth Amendment. County ordinance encompassed over 16,500 acres throughout county and not just developer's property, restrictions benefited all owners of floodplain property by allowing county to reduce flood hazards, and restrictions benefited all taxpayers by reducing potential liability for response and rescue to flooding emergencies.

UTILITIES - MAINE

Office of Public Advocate v. Public Utilities Com'n

Supreme Judicial Court of Maine - August 13, 2015 - A.3d - 2015 WL 4758241 - 2015 ME 113

Office of the Public Advocate and natural gas customer appealed from an order of the Public Utilities Commission approving an alternative rate plan for natural gas utility, claiming that the Commission should have utilized the acquisition cost of utility instead of utility's original cost valuation to determine the value of the property that utility used in providing its customers with gas.

The Supreme Judicial Court of Maine held that Commission did not abuse its discretion by accepting the original cost valuation.

Public Utilities Commission did not abuse its discretion or exceed its statutory authority in authorizing alternative rate plan for natural gas utility, which had been sold by its previous owner, by accepting the original cost valuation as more accurately reflecting the reasonable value of the property that utility used in providing its customers with gas, rather than accepting the cost of acquiring utility, in fixing the just and reasonable rate base for utility. Commission gave due consideration to evidence of acquisition cost and to evidence of cost of utility's property when previous owner first devoted the property to public use, and Commission did not discuss utility's facilities in order to determine their current or fair market value.

Public Utilities Commission's inclusion of 50% of natural gas utility's regulatory proceeding expenses in its revenue requirement calculation had no impact on its decision to approve utility's alternative rate plan, and therefore Supreme Judicial Court did not need to address whether Commission abused its discretion. Even though Commission conceded that utility did not strictly comply with the filing requirements for regulatory proceeding expenses, Commission's decision to normalize a portion of utility's regulatory proceeding expenses had no impact on alternative rate plan's ultimate starting point rates.

ZONING - NEBRASKA

Dowd Grain Company, Inc. v. County of Sarpy

Supreme Court of Nebraska - August 14, 2015 - N.W.2d - 291 Neb. 620 - 2015 WL 4856284

Property owner filed suit against county seeking declaratory judgment that amended overlay district zoning ordinance, which exempted certain class of property owners from ordinance that imposed design requirements for new development, was unconstitutional special law. The District Court entered judgment for county, and owner appealed.

The Supreme Court of Nebraska held that:

- Amended ordinance which created exemptions from enforcement of design ordinance for certain class of property owners did not create permanently closed class, and
- Amended ordinance did not arbitrarily benefit class of property owners that were eligible for exemption.

Amendment to overlay district zoning ordinance which had provided design guidelines for new development proposals, which amendment exempted land platted prior to adoption of ordinance and land within boundary of highway corridor overlay that was zoned anything other than agricultural prior to adoption of ordinance, did not create permanently closed class, for purposes of non-exempt property owner's claim that exemption was unconstitutional special law. Real property was alienable, and thus, number of parcels area that qualified for exemptions was subject to change.

Amendment to overlay district zoning ordinance which had provided design guidelines for new development proposals, which amendment exempted land platted prior to adoption of ordinance and land within boundary of highway corridor overlay that was zoned anything other than agricultural prior to adoption of ordinance, did not arbitrarily benefit class of property owners that were eligible for exemption, for purposes of non-exempt property owner's claim that exemption was unconstitutional special law. Rather, there was reasonable basis for exemption, namely, that class of property owners who filed plat prior to enactment of overlay ordinance had expended substantial sums of money in developing property, including employment of engineers, surveyors, and other professionals, paving of streets, documentation of easements, and other costs of development, enforcement of overlay ordinance after these owners had already submitted plat based on absence of those design requirements would be harsh and unfair, and limiting exemption to those property owners who had completed process of submitting plat was reasonable.

VOTER INITIATIVE - NEW JERSEY

Redd v. Bowman

Supreme Court of New Jersey - August 11, 2015 - A.3d - 2015 WL 4726557

Mayor and city council president brought action to declare invalid a petition submitted by city voters for adoption of proposed ordinance that would prohibit city from disbanding its municipal police department and joining newly-formed county police force. The Superior Court ruled that proposed ordinance created undue restraint on future exercise of municipal legislative power. Voters appealed. The Superior Court, Appellate Division, reversed and remanded. Mayor and council president filed petition for certification, and voters filed cross-petition for certification, which were granted.

The Supreme Court of New Jersey held that:

- Appeal was not moot;
- Proposed ordinance did not constitute improper divestment of municipal governing body's legislative power;
- Proposed ordinance was not invalid by virtue of preemption; and
- Proposed ordinance was prohibited from being submitted to voters.

Proposed ordinance, initiated by city voters under Faulkner Act, to prohibit city from disbanding its municipal police department and joining newly-formed county police force was prohibited from being submitted to voters, since ordinance was out of date, inaccurate, and misleading. City had already disbanded its police force and contracted to receive its police services from county, voters

who signed petition did so at time when police reorganization was in planning stage, and nothing suggested that those voters would have supported petition after city police force was disbanded, such that submission of ordinance to voters would have undermined objectives of Act.

EMPLOYMENT - NEW MEXICO

Kane v. City of Albuquerque

Supreme Court of New Mexico - August 13, 2015 - P.3d - 2015 WL 4761421

Captain of fire department, who was nominated as a candidate for state House of Representatives, brought action against city, seeking injunctive relief to enable her to seek elective office despite prohibitions in city charter and personnel rules. The District Court granted captain a permanent injunction. City appealed. The Court of Appeals certified two related cases to the Supreme Court, which was accepted.

The Supreme Court of New Mexico held that:

- City's regulations were supported by a rational basis;
- Regulations did not violate captain's right to speak on a matter of public concern;
- Regulations were not unconstitutional qualifications for elective office;
- Municipalities have the legislative authority to enact qualifications for appointive positions;
- Statute protecting hazardous duty officers from prohibitions on political activity is not a general law regulating a topic of statewide concern; and
- City had power to prohibit hazardous duty officers from seeking elective office in its home rule charter.

LIABILITY - NEW YORK

Gregware v. City of New York

Supreme Court, Appellate Division, First Department, New York - August 4, 2015 - N.Y.S.3d - 2015 WL 4615591 - 2015 N.Y. Slip Op. 06408

Motorist and his wife brought action against city and road construction contractor, seeking to recover damages for personal injuries allegedly sustained in motor vehicle accident that occurred in construction zone. The Supreme Court, New York County, entered judgment following jury trial, apportioning liability 65% against city and 35% against contractor, and awarding plaintiffs damages of $2.2 million for past pain and suffering, $3.8 million for future pain and suffering, $700,000 for past loss of services and consortium, and $425,000 for future loss of services and consortium, and denied defendants' posttrial motions to set aside verdict and city's posttrial motion for summary judgment on its cross claim for contractual indemnification against contractor. Defendants appealed.

The Supreme Court, Appellate Division, held that:

- Narrowing of highway due to lane closures was proximate cause of motorist's injuries;
- Both city and contractor owed duty of care to motorist;
- Neither rear-ending driver nor motorist were negligent with respect to accident;
- Apportionment of fault was against weight of evidence;
- Awards for past and future pain and suffering constituted reasonable compensation;
- Awards for past and future loss of services and society constituted reasonable compensation; and

- Contractor was liable to city under contractual indemnity provision.

Apportioning 65% liability to city and remaining 35% to road construction contractor was against weight of evidence in motorist's personal injury suit against city and contractor, seeking to recover damages related to motor vehicle accident that occurred in construction zone in which lane closures and need to reduce speed allegedly were not adequately marked, where contractor was responsible for setting up and maintaining traffic pattern alleged to have caused accident, and, although single city representative observed traffic pattern and looked for "obvious problem," he disavowed any responsibility for setting up lane closures or ensuring compliance with contract provisions regarding placement of traffic control devices.

IMMUNITY - NEW YORK

Tara N.P. v. Western Suffolk Bd. of Co-op. Educational Services

Supreme Court, Appellate Division, Second Department, New York - August 12, 2015 - N.Y.S.3d - 2015 WL 4744397 - 2015 N.Y. Slip Op. 06498

Student brought action against, among others, county, county department of social services, county department of labor, alleged assailant, facility owner, and regional educational service agency, seeking damages for personal injuries she sustained when sexually assaulted while attending class at facility. County agencies moved for summary judgment dismissing complaint and all cross claims insofar as asserted against them. The Supreme Court, Suffolk County, denied motions. County agencies appealed.

The Supreme Court, Appellate Division, held that:

- County agencies were entitled to governmental immunity from student's claim, and
- Fact issues precluded summary judgment on contribution claim.

County, county department of social services, and county department of labor were entitled to governmental immunity from vocational student's claim seeking damages for personal injuries she sustained when sexually assaulted while attending class at facility where county referred level three sex offender for welfare to work program. County agencies did not voluntarily assume a special duty to student, student did not allege that county agencies violated any statutory duty, and county agencies did not assume positive direction and control in the face of a known, blatant, and dangerous safety violation.

Genuine issue of material fact existed regarding whether county, county department of social services, and county department of labor breached a duty of care to facility owner by referring level three sex offender to work at facility where vocational training was offered, precluding summary judgment on facility owner's claim for contribution against county agencies in student's action seeking damages for sexual assault at facility.

LABOR - PENNSYLVANIA

City of Allentown v. International Ass'n of Fire Fighters Local 302

Commonwealth Court of Pennsylvania - August 7, 2015 - A.3d - 2015 WL 4680890

Union and city petitioned to vacate final interest arbitration award. The Common Pleas Court

entered order. City sought review.

The Commonwealth Court held that:

- Requiring city to employ a minimum number of firefighters per shift was not properly the subject of collective bargaining under Act 111, and
- Arbitration panel could not properly eliminate ability of firefighter to buy time for calculation of pension benefits and the ability to retire at any age.

By requiring city to employ a minimum number of firefighters per shift, arbitration award unduly burdened city's managerial responsibilities and, thus, was not properly the subject of collective bargaining under Act 111, which governed policemen and firemen collective bargaining.

Arbitration panel in proceeding under Act 111, which governed policemen and firemen collective bargaining, could not properly eliminate ability of firefighter employed by home-rule charter city to buy up to four years of time for calculation of pension benefits and the ability to retire at any age. Provisions were illegal under Third Class City Code, which governed the city prior to its adoption of home rule, and required a minimum of 20 years of continuous service and a minimum age of 50 years for receipt of pension funds.

IMMUNITY - PENNSYLVANIA

Southeastern Pennsylvania Transp. Authority v. City of Philadelphia

Commonwealth Court of Pennsylvania - August 7, 2015 - A.3d - 2015 WL 4680775

Southeastern Pennsylvania Transportation Authority (SEPTA) brought action against city and city commission on human relations, seeking injunctive and declaratory relief, alleging that commission was prohibited from exercising jurisdiction over SEPTA under city's anti-discrimination fair practices ordinance.

The Court of Common Pleas sustained city and commission's preliminary objections. SEPTA appealed. The Commonwealth Court reversed. City and commission appealed. The Supreme Court vacated and remanded.

On remand, the Commonwealth Court held that legislature did not intend for SEPTA to be subject to city fair practices ordinance.

Metropolitan Transportation Authorities Act established that SEPTA enjoyed sovereign immunity, legislature did not specifically waive SEPTA's immunity from actions brought under local anti-discrimination ordinances, city fair practices ordinance was not the only anti-discrimination law applicable in city, since SEPTA was subject to the Pennsylvania Human Relations Act, which prohibited SEPTA from discriminating against its employees and passengers, and subjecting SEPTA to local anti-discrimination ordinances could have overwhelming consequences, since SEPTA's legal obligations would change in course of a single bus trip.

IMMUNITY - UTAH

Scott v. Utah County

Supreme Court of Utah - August 5, 2015 - P.3d - 2015 WL 4642962 - 2015 UT 64

Victim of violent sexual assault by prisoner who had escaped from private business's work site brought negligence action, for improper screening and placing participants in county's work-release program, against county, placement company, and private business. The District Court granted county, placement company, and private business's motion to dismiss. Victim appealed.

The Supreme Court of Utah held that:

- To impose a duty to protect others from one in the custody of another, the "others" likely to be harmed need not be identifiable, overruling *Higgins v. Salt Lake County*, 855 P.2d 231, *Rollins v. Petersen*, 813 P.2d 1156, and *Ferree v. State*, 784 P.2d 149;
- A custodian of a dangerous individual has a duty to prevent that individual from harming members of the public;
- County owed duty to victim; but
- Victim's negligence claim was barred by the Governmental Immunity Act.

Court's Free-Speech Expansion Has Far-Reaching Consequences.

WASHINGTON — It is not too early to identify the sleeper case of the last Supreme Court term. In an otherwise minor decision about a municipal sign ordinance, the court in June transformed the First Amendment.

Robert Post, the dean of Yale Law School and an authority on free speech, said the decision was so bold and so sweeping that the Supreme Court could not have thought through its consequences. The decision's logic, he said, endangered all sorts of laws, including ones that regulate misleading advertising and professional malpractice.

"Effectively," he said, "this would roll consumer protection back to the 19th century."

Floyd Abrams, the prominent constitutional lawyer, called the decision a blockbuster and welcomed its expansion of First Amendment rights. The ruling, he said, "provides significantly enhanced protection for free speech while requiring a second look at the constitutionality of aspects of federal and state securities laws, the federal Communications Act and many others."

Whether viewed with disbelief, alarm or triumph, there is little question that the decision, Reed v. Town of Gilbert, marks an important shift toward treating countless laws that regulate speech with exceptional skepticism.

Though just two months old, the decision has already required lower courts to strike down laws barring panhandling, automated phone calls and "ballot selfies."

The ordinance in the Reed case discriminated against signs announcing church services in favor of ones promoting political candidates. That distinction was so offensive and so silly that all nine justices agreed that it violated the First Amendment.

It would have been easy to strike down the ordinance under existing First Amendment principles. In a concurrence, Justice Elena Kagan said the ordinance failed even "the laugh test."

But Justice Clarence Thomas, writing for six justices, used the occasion to announce that lots of laws are now subject to the most searching form of First Amendment review, called strict scrutiny.

Strict scrutiny requires the government to prove that the challenged law is "narrowly tailored to serve compelling state interests." You can stare at those words as long as you like, but here is what you need to know: Strict scrutiny, like a Civil War stomach wound, is generally fatal.

"When a court applies strict scrutiny in determining whether a law is consistent with the First Amendment," said Mr. Abrams, who has represented The New York Times, "only the rarest statute survives the examination."

Laws based on the content of speech, the Supreme Court has long held, must face such scrutiny.

The key move in Justice Thomas's opinion was the vast expansion of what counts as content-based. The court used to say laws were content-based if they were adopted to suppress speech with which the government disagreed.

Justice Thomas took a different approach. Any law that singles out a topic for regulation, he said, discriminates based on content and is therefore presumptively unconstitutional.

Securities regulation is a topic. Drug labeling is a topic. Consumer protection is a topic.

A recent case illustrates the distinction between the old understanding of content neutrality and the new one.

Last year, the federal appeals court in Chicago upheld an ordinance barring panhandling in parts of Springfield, Ill. The ordinance was not content-based, Judge Frank H. Easterbrook wrote, because it was not concerned with the ideas panhandling conveys. "Springfield," Judge Easterbrook wrote, "has not meddled with the marketplace of ideas."

This month, after the Reed decision, the appeals court reversed course and struck down the ordinance.

"The majority opinion in Reed effectively abolishes any distinction between content regulation and subject-matter regulation," Judge Easterbrook wrote. "Any law distinguishing one kind of speech from another by reference to its meaning now requires a compelling justification."

That same week, the federal appeals court in Richmond, Va., agreed that Reed had revised the meaning of content neutrality. "Reed has made clear," the court said, that "the government's justification or purpose in enacting the law is irrelevant" if it singles out topics for regulation. The court struck down a South Carolina law that barred robocalls on political and commercial topics but not on others.

Last week, a federal judge in New Hampshire relied on Reed to strike down a law that made it illegal to take a picture of a completed election ballot and show it to others, including on social media. The law was meant to combat vote buying and coercion, which were common before the adoption of the secret ballot.

"As in Reed," Judge Paul Barbadoro wrote, "the law under review is content-based on its face because it restricts speech on the basis of its subject matter."

In a concurrence in the Reed decision, Justice Stephen G. Breyer suggested that many other laws could be at risk under the majority's reasoning, including ones concerning exceptions to the confidentiality of medical forms, disclosures on tax returns and signs at petting zoos.

Professor Post said the majority opinion, read literally, would so destabilize First Amendment law

that courts might have to start looking for alternative approaches. Perhaps courts will rethink what counts as speech, he said, or perhaps they will water down the potency of strict scrutiny.

“One or the other will have to give,” he said, “or else the scope of Reed’s application would have to be limited.”

In her concurrence, Justice Kagan scratched her head about how a little dispute about church signs could have gotten so big. “I see no reason,” she wrote, “why such an easy case calls for us to cast a constitutional pall on reasonable regulations quite unlike the law before us.”

THE NEW YORK TIMES

By ADAM LIPTAK

AUG. 17, 2015

MSRB Enables Issuers to Display Bank Loan Disclosures on Customized EMMA Issuer Homepages.

To support investor access to full disclosure about an issuer’s indebtedness, the Municipal Securities Rulemaking Board (MSRB) recently made it possible for issuers to display bank loan disclosures on their customized homepages on the Electronic Municipal Market Access (EMMA®) website. Voluntary disclosure of bank loan financings and other debt-like obligations on the EMMA website contributes to the transparency and fairness of the municipal market. By integrating these voluntary disclosures with all other disclosure documents and recent trade activity of an issuer, EMMA issuer homepages make it easier for investors to browse for information to help them make informed decisions about municipal securities.

Learn how to submit bank loan disclosures to EMMA and associate these disclosures with your customized issuer homepage.

Read more about customizing your EMMA issuer homepage.

MSRB Changes MA Conduct Proposal, But Not Principal Transaction Bar.

WASHINGTON – The Municipal Securities Rulemaking Board proposed several changes to clarify its proposed Rule G-42 on core duties of municipal advisors, but declined to ease a controversial provision that would bar an MA giving advice from acting as a principal in the same transaction.

The amendments, filed with the Securities and Exchange Commission on Thursday, were a response to criticisms and other comments the SEC received on the proposed modified rule filed by the MSRB on April 24.

The SEC published the proposal for comments on May 8, but recently asked for a second extension – up to 90 days from Aug. 6 – to consider whether to approve it.

The MSRB’s proposal states that MAs owe a fiduciary “duty of loyalty” to their municipal issuer clients, requiring “without limitation … to deal honestly and with the upmost good faith with a

municipal entity and act in the client's best interests without regard to the financial or other interests of the municipal advisor." The fiduciary duty was imposed on MAs by the Dodd-Frank Act.

The proposal also mandates a less stringent "duty of care" for all clients. The duty of care provision requires MAs to: exercise due care in their work; be qualified to provide advisor services; make a "reasonable inquiry" into the facts relevant to client's request before deciding whether to proceed; and undertake a "reasonable investigation" to determine their advice is not based on bad information.

The MSRB told the SEC that it had considered a number of comments on the proposed prohibition against an MA acting as a principal in a transaction with a muni issuer client that is directly related to a transaction on which the MA is providing advice.

Several groups complained the prohibition is unreasonable and overly burdensome. The groups pushed for exceptions to the ban such as allowing the relationship: if the MA has client consent; if the advice is provided incidentally or is necessary for a broker-dealer to complete a transaction; or if the dealer is an affiliate of a larger business also advising an issuer.

But the MSRB did not agree with the complaints, saying the ban as proposed is sufficient and will protect issuers from conflicts of interest that could arise from an MA acting as principal.

In one change to the proposal, the MSRB removed the words "without limitation" from the rule's standards of conduct section. The rule had read: "A municipal advisor to a municipal entity client shall, in the conduct of all municipal advisory activities for that client, be subject to a fiduciary duty that includes, without limitation, a duty of loyalty and a duty of care." The MSRB said eliminating "without limitation" will address concerns about "ambiguity regarding the relationship between additional fiduciary duties and the specified duties of care and loyalty." The board stressed, however, that this change does not narrow or modify the scope of fiduciary duty under the rule.

Another change was made to prevent duplicative disclosures of conflicts of interest in municipal advisor relationships. The rule had required disclosure of any conflicts of interest prior to, or upon, engaging in municipal advisory activities and then also required a similar disclosure be made when the advisory relationship would later be documented. Instead, the MSRB said it will not require an MA to disclose conflicts of interest in the documentation of the relationship if it has already been disclosed prior to the MA's activities and has not changed.

The MSRB also expanded the portion of the rule that requires MAs to disclose the last material change or addition to legal or disciplinary event disclosures on any Form MA or MA-I. The board said the MA should also provide a brief explanation for why the change or addition to the form was material.

The board clarified a section of the proposed rule that required MAs to alert clients if an advisory recommendation is unsuitable. Commenters had said the requirement is redundant because an MA already owes clients a fiduciary duty that would prohibit it from giving unsuitable recommendations. The MSRB said the requirement only applies if an MA is reviewing a recommendation from another advisor and finds it to be an unsuitable recommendation.

Susan Gaffney, executive director for National Association of Municipal Advisors, said NAMA is still concerned about confusion with Rule G-42 as it relates to prohibiting MAs from working on principal transactions related to the bond sale. She said that "in order to ensure compliance to the reasonable diligence and standards of conduct provisions "the MSRB should provide further interpretative guidance or through examples on how to meet these standards" either in the rulemaking or

separately.

Bond Dealers of America general counsel and managing director of federal regulatory policy Jessica Giroux said BDA is still reviewing the board's letter but is "pleased that the MSRB and SEC are in communication about the need for continued dialogue with the industry."

Michael Decker, managing director and co-head of municipal securities for the Securities Industry and Financial Markets Association, said SIFMA is still reviewing the MSRB's letter but that the group is "disappointed that the MSRB seems to have rejected some reasonable suggestions that we and others made to refine the proposed rule."

NAMA, BDA and SIFMA all said they would be submitting new comment letters to the SEC to address the MSRB's changes.

THE BOND BUYER

BY JACK CASEY

AUG 14, 2015 5:03pm ET

Citigroup Companies to Pay $180M Over Hedge Fund Fraud.

WASHINGTON – Two Citigroup companies on Monday agreed to pay $180 million to settle charges they defrauded investors by misrepresenting that investments in two now-defunct muni-related hedge funds were safe, low-risk and suitable for traditional bond investors.

New York-based Citigroup Global Markets and Citigroup Alternative Investments raised almost $3 billion in capital from about 4,000 investors between 2002 and 2007 through the two funds — ASTA/MAT and Falcon – before they collapsed in 2008 during the financial crisis, resulting in billions of dollars of losses, according to the SEC.

Without admitting or denying the SEC's findings, CAI, the investment manager for the two hedge funds, and CGMI, which employed the financial advisors that recommended the funds to investors, agreed to disgorge more than $139. 95 million of ill-gotten gains and pay prejudgment interest of more than $39.61 million to the SEC under the settlement.

Danielle Romero, managing director of global public affairs for Citigroup, said the company is "pleased to have resolved this matter."

The SEC found the two Citigroup affiliates continued accepting additional investments and assuring investors of the funds' safety even as they started to decline in late 2007. The "misleading representations" the Citigroup companies made were "at odds with disclosures made in marketing documents and written material provided to investors," the SEC said in a release.

"Firms cannot insulate themselves from liability for their employees' misrepresentations by invoking the fine print contained in written disclosures," said Andrew Ceresney, director of the SEC's enforcement division. "Advisers at these Citigroup affiliates were supposed to be looking out for investors' best interests, but falsely assured them they were making safe investments even when the funds were on the brink of disaster."

ASTA/MAT was a municipal arbitrage fund that purchased municipal bonds and hedged interest rate risks using a Treasury or LIBOR swap. The fund employed 8 to 12 times leverage. Approximately 2,700 investors and advisory clients of CGMI bought about $1.962 billion of investments in ASTA/MAT from September 2002 through February 2007, the SEC said.

Falcon was a multi-strategy fund with 20% invested in ASTA/MAT and the rest invested in other fixed income strategies such as collateralized loan obligations and collateralized debt obligations and asset-backed securities. The Falcon fund used 5 to 6 times leverage. About 1,300 investors and CMGI advisory clients bought approximately $936 million of investments in Falcon from October 2004 through October 2007, according to the SEC.

Financial advisors assured the investors that the investments were safe, low-risk bond substitutes and in some cases encouraged them to sell their bond portfolios so they could purchase ASTA/MAT shares. At the same time, the written materials the clients received said the investments should not be viewed as bond substitutes and "carried significantly greater risk than a bond investment," according to the SEC order.

Investors also paid two tiers of advisory fees, which totaled about $212.5 million between the two funds. One fee went to the financial advisors with CGMI and one went to the fund manager and fund manager's staff with CAI. Both companies returned a total of only approximately $72.5 million to investors after the funds collapsed.

In August 2007, Falcon fund started experiencing margin calls and requested a $200 million loan from CAI. The loan request was denied and in the next two months, CAI and the financial advisors sold an additional $110 million in fund shares to investors without disclosing the liquidity problems. Then between November 2007 and March 2008, more than $8.4 billion was sold to meet Falcon fund's margin calls.

Despite the mounting liquidity issues and warnings in written documents, the fund manager and several financial advisors continued assuring Falcon fund investors the fund had adequate liquidity and was well capitalized.

The SEC found CAI lacked necessary policies and procedures to supervise how the fund manager was representing the two funds to investors. The manager had "virtually complete control" of all the information going to investors, according to the order, and the manager's staff and CGMI's financial advisors were reliant on the manager for the information that would be passed along to clients.

The Commission found CAI and CGMI willfully violated parts of Section 17(a) of the Securities Act, which prohibits fraudulent conduct in the offer or sale of securities, and that CGMI also willfully violated several parts of Section 206 of the Investment Advisors Act of 1940, on prohibited transactions by registered investment advisors.

John "Jack" Coffee, a securities law professor at Columbia Law School, said the case will get banks' counsel taking to hedge fund managers both because "next time the penalties could be higher and because the other banks don't want the reputational damage."

"I think general counsel at other banks are going to be conscious that oral statements can come to the SEC's attention and produce enforcement actions even without a claim that the written disclosures were false," Coffee said.

But Better Markets president and chief executive officer Dennis Kelleher said in a statement the SEC's timing with the order is "laughable" and "too little too late" considering the violations

happened seven years ago.

“For enforcement to work as punishment and deterrence, it has to be swift, commensurate with the violations, require full disgorgement plus fines, and meaningfully punish individuals,” Kelleher said. “Justice delayed is justice denied, which too often is the SEC practice. The American public expects and deserves better.”

THE BOND BUYER

BY JACK CASEY

AUG 17, 2015 3:52pm ET

GASB Requires Governments to Disclose Information on Tax Abatements.

The Governmental Accounting Standards Board (GASB) issued final guidance on August 14, 2015 that requires state and local governments for the first time to disclose information about tax abatement agreements.

Governments often agree to abate or reduce the taxes of individuals and corporate taxpayers to promote economic development, job growth, redevelopment of blighted or underdeveloped areas, and other actions that are beneficial to the government or its citizens.

The disclosure requirements in GASB Statement No. 77, Tax Abatement Disclosures, are designed to provide financial statement users with essential information about these agreements and the impact that they have on a government’s finances.

SEC Members Demand Muni Markup Disclosure After Edwards Jones Case.

WASHINGTON — Securities and Exchange Commission members are calling for the adoption of rules requiring broker-dealers to disclose markups and markdowns on municipal securities, warning that if self-regulators do not act, the SEC will propose the rules itself.

Commissioners Luis Aguilar, Daniel Gallagher, Kara Stein and Michael Piwowar made the plea in a statement issued on Thursday after the SEC announced a first of a kind enforcement case, ordering the St. Louis-based brokerage firm Edward Jones to pay more than $20 million for overcharging retail customers for new municipal bonds. A spokesperson said SEC chair Mary Jo White has had the same position since she said in a speech in June 2014 that the SEC would work with self-regulators to develop rules requiring the disclosure of markups in riskless principal transactions.

In the enforcement case, the SEC found that, instead of selling new bonds to customers at the initial offering price, the retail-oriented firm and Stina Wishman, the former head of its municipal syndicate desk, took the bonds into the firm’s own inventory and then improperly sold them to customers at higher prices. In other instances, the firm failed entirely to offer bonds until secondary market trading began and also did not monitor the reasonableness of its markups in certain secondary market trades. It is the commission’s first case against an underwriter for pricing-related

fraud in the primary market for municipal securities.

“Edward Jones undermined the integrity of the bond underwriting process by overcharging retail customers by at least $4.6 million and by misleading municipal issuers,” Andrew Ceresney, director of the SEC’s enforcement division, said in a release. “This enforcement action … reflects our commitment to addressing abuses in all areas of the municipal bond market.” He would not comment on whether the improper pricing is a prevalent practice in the muni market but said the SEC’s probe is continuing.

LeeAnn Gaunt, the chief of the SEC’s enforcement division’s municipal securities and public pensions unit, said the absence of a markup disclosure rule limits trading information. “Because current rules do not require dealers to disclose markups on municipal bonds, investors receive very little information about their dealer’s compensation in municipal bond trades,” she said in the SEC’s release.

The enforcement case comes as the Municipal Securities Rulemaking Board proposed the idea of requiring dealers to disclose markups and markdowns on certain principal trades. The MSRB is collecting public comments on the idea, as well as modifications to an earlier proposal that would require dealers to disclose on customer confirmations a “reference price” of the same security traded on the same day.

The four SEC commissioners called for markup and markdown disclosure on munis, including riskless principal trades. They are trades in which dealers almost simultaneously buy and sell munis so that there is little risk the market will move against them. One obstacle to writing rules is that dealers have been arguing that riskless principal trades can’t be defined.

The overcharges in this case occurred through the offer and sale of 156 different bonds in 75 negotiated offerings in which Edward Jones served as a co-manager between February 2009 and December 2012. The order found Edward Jones negligently violated antifraud provisions of the Securities Act of 1933 as well as MSRB Rules G-17 on fair dealing, G-11 on primary offering practices, G-30 on prices and commissions, and G-27 on supervision.

The $20 million to be paid by the firm includes approximately $5.2 million in disgorgement and prejudgment interest for the customers who overpaid for bonds as well as a $15 million civil penalty. Wishman agreed to a $15,000 penalty and a ban from the securities market for at least two years. She retired from Edward Jones in 2013 after creating the firm’s municipal syndicate desk in 1993 and running it until she left. She was “primarily responsible for overseeing Edward Jones’ underwriting of new issue municipal bonds” during that time, according to the SEC order and was also responsible for keeping the desk in compliance with security laws and MSRB rules as well as doing a yearly review of written procedures on compliance

Edward Jones and Wishman neither admitted nor denied the SEC’s findings but agreed to the SEC’s orders. Lawyers for Wishman could not be reached.

John Boul, a spokesman for Edward Jones, said the enforcement case effects about 13,000 current and former clients of the firm and that the roughly $5.2 million in compensation and interest to be paid to them works out to about $400 per client. He noted that the case pertains to actions that took place from 2009 through 2013, that the firm has disclosed the SEC probe since 2012 and has fully cooperated with the commission. He also highlighted several of the firm’s remedial actions and added the firm is “pleased to have the matter resolved.”

Syndicates like the ones Edward Jones participated in for the negotiated offerings typically have

“agreements among underwriters” that lay out standard terms for the deals, according to the SEC order. It is generally understood that these AAUs obligate syndicate members to sell the bonds at the initial offering prices negotiated with the issuer before trading begins, something the SEC found Edward Jones repeatedly failed to do. The SEC also found Edward Jones failed to prioritize customer orders over its own accounts, in violation of Rule G-11.

In addition to issues in primary market trading, the SEC also found Edward Jones did not have an adequate supervisory system to ensure markups charged for principal transactions in the secondary market were not excessive. A markup is designed to compensate dealers for the risk they take on when holding securities in their inventory for principal trades, the SEC said. However, Edward Jones did not have “an adequate system for reviewing certain of its principle trades,” which “may have prevented [it] from determining whether the markups it charged for certain principal transactions were reasonable,” the commission said. The firm did not hold securities for principal transactions very long and “because of the short holding periods, it faced little risk as a principal and almost never experienced losses on these intraday trades,” the SEC said.

The SEC order provided some examples of the firm’s practices. In November of 2009, the firm acted as a co-managing underwriter for a $38.83 million issuance of taxable tax revenue bonds issued by the Amarillo Economic Development Corporation. Edward Jones did not inform its financial advisors about the offering until after the order period had closed, making it impossible for customers to place orders at the initial offering price. Instead, the firm acquired $3.665 million of the term bonds and, between the time the order period closed and the bonds began trading, the firm offered the bonds to customers at higher than initial offering prices. All of the other underwriters in that deal sold their entire allocations at the initial offering price, the SEC said.

The list of problematic Edward Jones bonds the SEC attached to its order includes 25 separate Build America Bond maturities, including one offering from the Nebraska Public Power District for which Edward Jones was a syndicate member. The firm improperly sold a portion of the bonds above the initial offering price and caused the Internal Revenue Service to conclude a portion of the offering did not qualify for BAB subsidies because it exceeded the de minimis amount of premium over the stated amount of the bond. The NPPD resolved the dispute by agreeing to pay the IRS $350,000 in exchange for continuing to receive subsidy payments. About $145,000 of that amount came from Edward Jones, Boul said. He said the firm has no open issues with the IRS in connection with the bonds listed in the SEC enforcement case. The firm refunded $122,891 for eight BAB maturities that were sold with more than a de minimis amount of premium, the SEC said.

In assessing the sanctions, the SEC took into account the remedial actions Edward Jones took, Ceresney said in a call with press. The firm started voluntarily disclosing its markups in 2013, Ceresney said. Edward Jones also: has hired a compliance officer for its fixed income desk; reduced its maximum markups and markdowns on municipal bond buy orders; produced a new written supervisory procedure; and retained a consulting firm to review the firm’s municipal business and make recommendations for improvement.

Carol McCoog, chair of the National Association of Bond Lawyers’ securities and disclosure committee, said the SEC enforcement action” sheds some light on behavior that’s eye-opening” that hurt both investors and issuers. “It’s difficult to know how it’s going to affect the market,” she said. “We’re still trying to grapple with the proposed issue price rules” that the IRS released earlier this summer.

“We’re going to see how all of this is intertwined,” she said, adding that the case shows that now both the SEC and IRS are focused on pricing practices.

Elaine Greenberg, a partner at Orrick, Herrington and Sutcliffe and former head of the SEC's municipal securities and public pension unit, said the SEC order sends "a message to firms that by this action the SEC [is] putting other firms on notice and if [it] find[s] violations similar to those" that were found in this case, then they "will likely pursue enforcement actions," Greenberg said.

It would not be surprising to see the SEC bring more such cases in the future, due to a two-fold waterfall effect, said one source who did not want to be identified.

First, the SEC enforcement staff has developed expertise in syndicate practices and muni bond pricing in this case and knows what to look for, the source said. In addition, the Financial Industry Regulatory Authority will also likely be looking out for similar wrongdoing.

THE BOND BUYER

BY JACK CASEY

AUG 13, 2015 3:31pm ET

MSRB Responds to Comments on Proposed Rule G-42 on Municipal Advisor Duties.

The Municipal Securities Rulemaking Board (MSRB) today submitted a letter to the Securities and Exchange Commission (SEC) responding to issues raised by commenters about proposed MSRB Rule G-42, on duties of non-solicitor municipal advisors. Read the MSRB's letter.

The MSRB also filed several clarifying and other minor amendments to the text of the proposed rule, which are explained in detail in the MSRB's letter. View the amended rule language.

The amendments revise the MSRB's April 2015 rule filing in which the MSRB sought approval from the SEC of new Rule G-42. The SEC has invited additional comment from interested parties on the proposed rule by September 11, 2015.

IRS Seeks Applications for Advisory Committee for the Tax Exempt and Government Entities Division.

The Internal Revenue Service seeks applicants for vacancies on the Advisory Committee on Tax Exempt and Government Entities (ACT). The committee provides advice and public input on the various areas of tax administration served by the Tax Exempt and Government Entities Division (TE/GE).

News Release

MSRB to Cut Underwriting Fee; Raise Initial, Annual Fees.

WASHINGTON — The Municipal Securities Rulemaking Board has announced that it will increase its

initial and annual fees while lowering its underwriting fee to better distribute costs among regulated entities based on their level of involvement in muni market activities.

In a change to its Rule A-12 on initial and annual registration fees, the MSRB will raise both its initial fee to $1,000 from $100 and its annual fee to $1,000 from $500. Both increases will be implemented on Oct. 1.

An amendment to Rule A-13 on underwriting and transaction fees will reduce the underwriting fee to $0.0275 per $1,000 of the par value of primary offerings from the current $0.03 per $1,000 of par value. That change will be implemented on Jan. 1.

The fee changes, which were filed with the Securities and Exchange Commission late Monday, are the result of a "holistic fee review" the MSRB said it undertook to balance its projected surplus in its technology fund with potential decreases in its future operating revenues.

The MSRB said the changes are "effectively revenue neutral" and support its "continuous and ongoing efforts" to "reasonably distribute fees among all regulated entities based on the level of involvement by brokers, dealers, municipal securities dealers and municipal advisors in the municipal securities market."

The annual fee has not changed since 2009 and in 2014 it only covered 3.5% of the MSRB's total expenses instead of the 5% it had covered in 2009, even as the number of regulated entities rose. The MSRB said the annual fee is "the primary way dealers share in the costs and expenses of operating and administering" the board and said the increase is a way for entities to "more fairly contribute" to MSRB costs.

The increase in the initial fee will be the first since the fee was adopted in 1975. The MSRB called the higher fee "reasonable" and said it would help defray a significant portion of administrative and operational costs.

Of the more than 2,000 dealers and municipal advisors registered with the MSRB in 2014, only about 140 dealers were assessed underwriting fees and 840 were assessed transaction and technology fees, according to the regulatory notice. Among the "highly concentrated" group of regulated entities paying these market activity fees, less than a dozen dealers accounted for about 52% of the payments. These findings led the MSRB to lower underwriting fees because the dealers who primarily pay them are also most of the payers of the transaction and technology fees.

Jessica Giroux, general counsel and managing director of federal regulatory policy for Bond Dealers of America, said BDA appreciates the MSRB's effort to create a more balanced distribution of fees among all regulated entities.

"The BDA's historical concerns have always been that the broker dealer underwriting fees finance the majority of the MSRB's operation," Giroux said. "However, it appears that the MSRB has taken such concerns into consideration as they evaluated their new fee structure."

Securities Industry and Financial Markets Association managing director and co-head of municipal securities Michael Decker said SIFMA is continuing to vet the MSRB's fee changes, but that they "won't appropriately balance the MSRB's expenses among all the regulated parties" because the board still does not require non-dealer municipal advisors "pay their fair share of the MSRB expenses."

He also said a separate proposal in the MSRB's regulatory notice to permanently collect the technology fee, $1.00 per transaction for each interdealer and customer sale report to the board,

goes back on an understanding market members had when the rule was approved in 2011 as a temporary measure until the MSRB's capital reserve rose to an appropriate level.

The MSRB will no longer allocate the money collected from the technology fee specifically for capitalized hardware and software expenses, it said in the notice. Instead, the revenue will be generally used "for the most appropriate organizational uses," the MSRB said.

THE BOND BUYER

BY JACK CASEY

AUG 11, 2015 1:21pm ET

MSRB Adjusts Fees to Align Revenues with Operational and Capital Expenses.

The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission a change to MSRB Rule A-12, on registration, and to MSRB Rule A-13, on underwriting and transaction assessments following an extensive holistic review of MSRB fees by its Board of Directors. The review was undertaken to ensure that the MSRB continues to be sufficiently funded to meet its operational and capital expenses in fulfilling its regulatory responsibilities while achieving a fair allocation among regulated entities for the associated expenses. The rule changes, which include a decrease in the underwriting fee under Rule A-13 and an increase to the initial and annual fees under Rule A-12, will effectively maintain the total fee revenue collected by the MSRB at approximately the current level.

Read the regulatory notice.

Muni Sales Set to Fall as Redemptions Decline; Puerto Rico Sells.

Municipal bond sales in the U.S. are set to decrease in the next month while the amount of redemptions and maturing debt falls.

States and localities plan to issue $8.7 billion of bonds over the next 30 days, according to data compiled by Bloomberg. A week ago, the calendar showed $10.1 billion planned for the coming month. Supply figures exclude derivatives and variable-rate debt. Some municipalities set their deals less than a month before borrowing.

Puerto Rico Aqueduct and Sewer Authority plans to sell $750 million of bonds, New York State Convention Center Development Corp. has scheduled $640 million, Portland, Oregon, Sewer System will offer $404 million and Illinois Finance Authority will bring $400 million to market.

Municipalities have announced $10.1 billion of redemptions and an additional $17.9 billion of debt matures in the next 30 days, compared with the $29.5 billion total that was scheduled a week ago.

Issuers from Texas have the most debt coming due with $6.12 billion, followed by California at $1.77 billion and New Jersey with $929 million. Texas has the biggest amount of securities maturing, with $5.4 billion.

The $3.6 trillion municipal market shrank by 4 percent in 2014. This year, maturities are poised to drop 38 percent to $176 billion from the 2014 levels.

ETF Flows

Investors removed $106 million from mutual funds that target municipal securities in the week ended Aug. 5, compared with a reduction of $91 million in the previous period, according to Investment Company Institute data compiled by Bloomberg.

Exchange-traded funds that buy municipal debt fell by $10.2 million last week, reducing the value of the ETFs by 0.06 percent to $17.2 billion.

State and local debt maturing in 10 years now yields 103.273 percent of Treasuries, compared with 103.156 percent in the previous session and the 200-day moving average of 101.301 percent, Bloomberg data show.

Bonds of Michigan and California had the best performance over the past year compared with the average yield of AAA rated 10-year securities, the data shows. Yields on Michigan's securities narrowed 5 basis points to 2.48 percent while California's declined 1 basis points to 2.48 percent. Puerto Rico and Illinois handed investors the worst results. The yield gap on Puerto Rico bonds widened 137 to 11.14 percent and Illinois's rose 36 basis points to 4.16 percent.

Bloomberg

Kenneth Kohn

August 17, 2015 — 4:28 AM PDT

UBS Fined $750,000 for Misstating Tax-Exempt Bond Interest.

A unit of UBS AG was fined $750,000 for misstating that tax-exempt interest paid to customers was taxable, according to the Financial Industry Regulatory Authority.

As a result of inadequate procedures to address short positions in municipal bonds, UBS told about 4,370 customers that about $1.2 million in interest the firm paid them was exempt from taxes, Finra said. In fact, UBS didn't hold the bonds on behalf of the customers and the interest the firm paid them was taxable as ordinary income. The error resulted in the underpayment of about $282,000 in federal taxes, the regulator said. Only interest that is received from a municipal issuer is exempt from federal income tax.

"The firm failed to consider — and its automated system that calculated the interest owed to customers did not take into account — whether the interest it paid to customers should be coded as non-taxable when the interest was paid by the firm rather that the municipal issuer," Finra said.

UBS violated Municipal Security Rulemaking Board rules related to supervision and fair dealing, according to Finra.

UBS accepted Finra's decision without admitting or denying the findings.

By Martin Z. Braun

BLOOMBERG NEWS

AUGUST 15, 2015

Municipal Bond Underwriter Didn't Feel Like Underwriting.

As you may be aware, the basic idea of the securities business is: Buy Low, Sell High. What with the law of one price, advances in modern information technology, etc., this is not always easy to do. If you are a bond trader, there just aren't that many opportunities to buy a bond from one customer for a low price and turn around and sell it to another customer at a much higher price. That's good! For the customers.1 But for the traders, at least part of the job is to create those opportunities. Some ways of doing that are totally fine. Some are a bit unseemly, but legal. Some are illegal, or at least, so prosecutors think.

I find this a very murky area. It's easy to see why outsiders and prosecutors and customers might be offended when they find out that bond traders bought low from one customer and sold high to another customer with shall we say imperfect disclosure of those facts. But that is kind of the job. And the lines between how you are and are not allowed to do it don't seem totally clear to me. It's okay to sell bonds to a customer who doesn't know what you paid for them, probably, most of the time.2 It's not okay to lie to the customer about the price you paid for them, probably, most of the time. Other complexities abound.

It seems to me that these lines are drawn mostly by *custom*. If you nudge and omit and shade the truth in ways that are blessed by longstanding industry custom, then no one in the industry will be that mad at you, though prosecutors still might be. If you just go around lying where everyone else tells the truth, no one will sympathize when you get in trouble. That is the essential substance of the Jesse Litvak case: Was Litvak, convicted last year of criminal fraud in selling mortgage bonds, lying about stuff that everyone lies about? Were his lies just "puffery" that his counterparties knew to discount? Or was he breaking new ground in bond-deception creativity, lying to his customers about things they weren't expecting to be lied to about?

Yesterday brokerage firm Edward Jones and its former head of municipal underwriting Stina Wishman agreed to settle Securities and Exchange Commission charges that they did this:

> In certain co-managed, negotiated transactions during the Relevant Period as further detailed below, Wishman and the municipal syndicate desk at Edward Jones improperly offered out particular bonds to customers from its inventory at prices above the initial offering prices while syndicate restrictions remained in effect. In these instances, Wishman and Edward Jones' municipal syndicate desk typically placed orders with the lead underwriter for specific maturities for the firm's own inventory during the order period, but did not give their customers an opportunity to similarly participate. Once Edward Jones' municipal syndicate desk obtained an allocation of those bonds and took them into inventory, and while syndicate restrictions remained in effect, the firm offered the securities to customers from its own inventory at prices above the initial offering prices in these transactions.

They settled "without admitting or denying the findings"; Edward Jones agreed to pay more than $20 million. According to the SEC order, Edward Jones would sign up to be an underwriter of municipal bonds. It wouldn't lead the underwriting, but would be a co-manager, involved in the syndicate so

that it could sell some of the bonds to its "well-known, geographically-dispersed retail customer base." But instead of doing what underwriters do — take orders from customers, put those orders into the order book, get allocated some bonds and sell those bonds to the customers at the offering price of the bonds — Edward Jones would (sometimes, from 2009 through 2012) just buy the bonds for itself at the offering price,3 and then sell them to customers at a higher price.

That is bad!4 Underwriters are supposed to distribute their bonds to customers, not hold on to them and hope they go up. And Edward Jones's behavior seems to have been even worse than that: It didn't just put the bonds in inventory, wait until they started trading, and hope to flip them for a profit (which would be bad!); it actually sometimes sold bonds to customers at prices above the offering price *while the offering was still going on*.5 As far as I can tell, this worked mostly because customers didn't know any better, and Edward Jones didn't tell them.6 (There's no suggestion that Edward Jones lied to the customers about the price it paid, though.)

All of this strikes me as shocking, but there's a reason that I'm shocked. The reason is that I used to work as a bond underwriter, and I know from experience that this sort of thing is *just not done*. Here is the SEC trying to explain why:

> During the Relevant Period, underwriters that used the template AAUs for negotiated municipal offerings were obliged, under those agreements, to make a public offering of all bonds at the initial offering price in effect at the time they were allocated bonds by the issuer and senior manager. Market participants have long understood the AAU to place an obligation on the syndicate members, as parties to the agreement, to offer and attempt to sell the bonds at the initial offering prices negotiated with the issuer before the bonds begin trading.
>
> In addition to the agreed-upon terms of the AAU, municipal underwriters adhere to a well-established industry practice in negotiated offerings that requires them, when part of a syndicate, to offer and attempt to sell all of the bonds at the initial offering prices for a certain period of time. These limitations are known as "syndicate restrictions," and are generally in effect until the expiration of those restrictions. Among other things, syndicate restrictions ensure that the bonds are sold at the price which the issuer and the syndicate have agreed to sell them.

An "AAU" is an "Agreement Among Underwriters," and I confidently assert that no bond syndicate manager has ever read one. (Here's the standard master AAU for municipal underwritings in effect at the time, and I am not 100 percent convinced that it says all of what the SEC says it says, though its powerful mojo repelled me from reading it too.)7 The real point here is that there is a "well-established industry practice" that, if you're an underwriter for municipal bonds, and you buy bonds from the issuer at the offer price,8 you have to re-sell them to customers at the offer price. You just can't do what Edward Jones did.

The SEC grasps at some specific written authorities that sort of say that — the AAU and bond purchase agreements for these deals, and some Municipal Securities Rulemaking Board9 rules — but it's clearly leaning heavily on custom, and on the industry understanding of what those authorities actually mean. Underwriting is a complex process that grew up organically and that is governed not so much by clear specific rules as it is by broadly shared understandings of how underwriters are supposed to behave. Some behaviors are fine, even though outsiders find them puzzling. Other behaviors are wildly illegal, even though, when the SEC gets around to punishing them, it has a bit of a tough time pointing to the actual words that say they're illegal. It's just … you know … you can't *do* that.

But while Edward Jones's alleged behavior here was *very bad*, it was not *a priori* bad. Buying bonds from a seller at 100 and re-selling them for 103 is not self-evidently evil, even if you don't tell your customer that you paid 100. What makes it bad is the set of customer expectations and industry traditions that provide context for the basic buying and selling behavior.

Here's the Wall Street Journal on this case:

> Some analysts said the case opens a new front for the SEC's enforcement efforts in the sale of bonds backed by state and local government-related entities, showing a changing focus from problems related to disclosure to those related to pricing. SEC commissioners Luis Aguilar, Daniel Gallagher, Kara Stein and Michael Piwowar said in a statement the case illustrates the need for better rules on transparency in bond pricing.
>
> "The Commission's recent enforcement action against [Edward Jones] involving the offer and sale of municipal bonds to retail investors highlights the need for clear rules requiring the disclosure of mark-ups and mark-downs," they wrote, urging the Financial Industry Regulatory Authority and the Municipal Securities Rulemaking Board to complete rules mandating increased price transparency. "If not, we believe the Commission should propose rules to address this important issue," they wrote.

Maybe, sure, why not. Perhaps transparency solves everything. But to me the problem here was less about pricing transparency and more about the violation of expectations. After all, Edward Jones didn't violate the clear rules requiring disclosure of mark-ups, since those rules don't exist. The SEC found instead that it violated general anti-fraud rules.10 It deceived investors, not by lying to them, exactly, but by not behaving in the way they reasonably expected. And you can't extend from this case to other cases about "pricing," of municipal bonds or otherwise. The pricing and disclosures that customers expect are a function of specific contexts and rules and industry practices. The fact that Edward Jones shouldn't have sold these bonds to its customers for 103 is a fact about underwriting of primary offerings, which doesn't necessarily tell you anything about disclosure requirements in secondary trading.

When people get in trouble for fraud, in mortgage bonds or Libor manipulation or anything else, they are often scolded with words to the effect of "It's no excuse to say that everyone is doing it." *But it is!* Fraud is only fraud if it deceives.11 If everyone is used to operating without transparency, it's no fraud on them to be a bit shady. If everyone is expecting transparency, then opacity can be fraud. As the SEC knew in this case, industry custom can be the best indication of what is and isn't fraud. And if the custom looks a little fraudy, well, maybe the fact that it's customary makes it okay?

1. Except insofar as they are worried about dealers providing insufficient liquidity. As Dan Davies has argued, if the buy-side wants dealers to cushion them against a liquidity shock, maybe they should pay dealers more? Though of course that would guarantee nothing.

2. Nothing is ever legal advice, but this is particularly not legal advice. TRACE exists, etc., and in many trading contexts you are required to give the customer transparency about what you paid. In others you aren't.

3. Minus, of course, underwriting fees:

> *The municipal issuer usually compensates the syndicate for its services in distributing the bonds by selling the bonds to the syndicate at a discount to the "initial offering price," the price at which the bonds are offered to the investing public by the syndicate at the time of original issuance. The difference between the initial offering price and*

the discounted price for the syndicate is the "underwriters' discount" or "underwriters' spread."

4. I feel like I'm saying that a lot this week. It's been a big week for SEC actions! (As promised!) I like to joke sometimes about the national obsession with golf-based insider trading, but the news release hacking, the ITG order-flow misuse and the Edward Jones muni-underwriting abuses all strike me as really serious problems, so nice work by the SEC to address all of them.

5. I'm not totally clear on the timing but here's one example from the SEC order:

> *45. The senior manager filled Edward Jones' entire orders for NPPD BABs on June 10 at par. The senior manager informed Edward Jones that it had been allocated $100,000 of the 2026 maturity and $10 million of the 2035 maturity, and that the initial offering price was 100 (i.e., par).*
>
> *46. On the afternoon of June 10, after the BABs order period closed but before syndicate restrictions were lifted, Wishman informed Edward Jones' Nebraska FAs of the NPPD BAB allocations and instructed them to offer those bonds out to customers at prices higher than the initial offering prices. Edward Jones offered the 2026 maturity of NPPD BABs at 102 and the 2035 maturity of NPPD BABs at 103, both above the initial offering price.*
>
> *47. On June 11, 2009, the senior manager sent a final pricing wire to the syndicate that set the initial trading time of NPPD bonds for 2:15 p.m. Eastern Time ("ET") that day. At 2:36 p.m. ET that day, the senior manager sent a free-to-trade wire to the rest of the syndicate regarding the NPPD taxable bonds and BABs which read: "Effective immediately all syndicate terms and price restrictions are removed and the bonds are free to trade."*

6. From the order:

> *Generally, the syndicate is the only source of pricing and other information about the bonds to be issued before and during the order period(s). Retail investors, in particular, must rely on communications from their broker-dealer, acting in the capacity of underwriter, to learn about pricing and other offering details before the bonds begin trading. Ultimately, the initial offering prices are printed on the cover page of the final disclosure document, known as the Official Statement ("OS"), which typically is released days after the bonds begin trading.*

7. That's from this Sifma page (the 2002 Version "MAAU Master Standard Terms and Conditions – Negotiated Offerings of Municipal Securities"). The key language seems to be on page 14:

> *You agree to make a public offering of all Securities confirmed to you by us (other than for carrying purposes) at the public offering price in effect at the time of such confirmation and to offer all other Securities acquired by you prior to the time we have advised you that no Securities are held for the account of the Account at not less than the public offering price as from time to time in effect. You may, however, (i) hold Securities that cannot be sold at the public offering price, for later sale at such prices whether above or below the public offering price in effect at the time of confirmation, as you determine, and (ii) reserve Securities for retail sale in customary amounts, even if unfilled orders from nonretail purchasers have been received.*

What does that last clause (ii) mean? I think it means that the co-managers can keep customary amounts of bonds for sale to retail customers, but the actual operation of the clause seems to be left to custom to work out.

8. Again, less fees (see footnote 3). It is perhaps clarifying to pretend that banks buy bonds at the offer price and re-sell at the offer price and get paid a fee separately, though the actual legal operation is that they buy at a discount and sell at the offer price.

9. For the AAU, see footnote 7, above.

For the bond purchase agreements, see paragraph 20 of the SEC order, which says that "Many BPAs include an explicit agreement by the syndicate to offer all of the bonds to be issued at the final offering price negotiated with the issuer." But as a co-manager, Edward Jones wouldn't sign the purchase agreement, which was executed by "the senior manager on behalf of the syndicate."

For the MSRB rules, see paragraphs 71-81 of the SEC order. Some of these rules (G-17 and G-30(a)) are about general fairness and excessive markups, but one, Rule G-11(b), does require syndicate members to identify the person for whom the order is submitted, and the SEC says that Edward Jones fudged that identification to get bonds for itself. This sort of thing does seem to be what Rule G-11(b) is meant to prevent; on the other hand, you can't really say that the harm that Edward Jones did came from improper identifications on syndicate forms. And even this comes down to questions of custom; see paragraph 31 of the order ("Pursuant to industry practice and MSRB rules, a group net order can be placed for a dealer's own account, but it would have to be disclosed that the order was for stock, that is, for the dealer's own account.").

10. See paragraphs 65-70 of the SEC order, particularly 65-66:

> *Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities … directly or indirectly … to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." Section 17(a)(3) of the Securities Act makes it unlawful "in the offer or sale of any securities … directly or indirectly … to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser." Negligence is sufficient to establish a violation of Sections 17(a)(2) and 17(a)(3); no finding of scienter is required. Aaron v. SEC, 446 U.S. 680, 696-97 (1980).*
>
> *An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. Municipal Securities Disclosure, Exchange Act Release No. 26100, 1988 WL 999989 at 20 (Sept. 22, 1988). "By participating in an offering, an underwriter makes an implied recommendation about the securities." Id. "An underwriter must investigate and disclose material facts that are known or reasonably ascertainable." Dolphin and Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (citing Municipal Securities Disclosure, Exchange Act Release No. 26100, 1988 WL 999989 at 20). "Although other broker-dealers may have the same responsibilities in certain contexts, underwriters have a 'heightened obligation' to ensure adequate disclosure." Id.*

11. I mean, not really, I'm being rhetorical here. (Another super-not-legal-advice sentence.) But, materiality, reliance, blah blah blah.

Bloomberg

By Matt Levine

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This column does not necessarily reflect the opinion of the editorial board or Bloomberg LP and its owners.

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Muni Bonds are Poised to Shine as Rates Move Higher.

As the Federal Reserve inches toward its first interest-rate hike in nearly a decade, some market watchers see the municipal bond market as uniquely poised to outshine the taxable fixed-income space.

Thanks largely to a guilt-by-association with high-profile trouble spots like Puerto Rico and Chicago, much of the $3.7 trillion muni bond market is boasting yields close to or above comparable taxable bonds.

The 10-year Treasury bond, for example, is currently yielding 2.1%, which compares to a 2.63% yield for the iShares National AMT-Free Muni Bond ETF (MUB).

“The yields are so high because there’s a cloud hanging over the muni market, and people are throwing out the baby with the bathwater,” said Ron Bernardi, muni bond trader and president of Bernardi Securities.

“Right now the supply of quality munis is insufficient to meet demand,” he added. “I don’t think you’ll see mid- and long-term munis move as much as taxable bonds when rates rise.”

The yield anomaly, considering that muni bond yields historically hover around 85% of taxable equivalents, creates a kind of buffer for muni bonds when prices start to fall across the bond market as rates move higher.

But fixed-income experts say that buffer is just part of the case for munis in the much-anticipated rising-rate cycle.

“Muni bonds would do better in a rising-rate cycle for a variety of reasons,” said Dan Heckman, senior fixed-income strategist at U.S. Bank Wealth Management.

He cited growing property-tax revenues as a positive influence on muni bonds, which represents the income for much of the muni bond market.

“There’s typically about a three-year lag, with reassessments and rising property-tax revenues,” he said. “Even in a rising-rate environment, property-tax revenues are going to rise.”

To be clear, the multi-year quantitative-easing program that is still artificially holding down interest rates has created an unprecedented scenario for the financial markets in general, and fixed income in particular. But as the markets brace for what could be a rate hike this year, the muni market at least appears to be the safer bet.

“Rising rates, by definition, will be problematic for fixed income, but the muni market is very different from the Treasury and corporate bond markets,” said Jeff Hudson, a partner at Cedar Ridge Partners.

“Munis, which are 70% owned by mom-and-pop investors, are almost automatically less volatile because retail investors tend to react slower,” he added.

Another changing dynamic in the muni bond space is the dramatic reduction in rated and insured issuances, which are now down to about 30% of all fixed-income issuances, from close to 70% prior to the financial crisis, according to Mr. Hudson.

“People used to buy munis just based on ratings, [but] now they have to actually look under the hood and understand what’s going on with the credit, which has made the muni market more credit-driven and less rates-driven,” he added. “It’s too simple to make any big predictive statements about what the muni market will do when rates rise, because we really don’t know.”

The closest thing there is to a beta test on a rate hike is short stretch of mid-2013 when the Fed tested the bond market with the idea of reducing the multi-trillion-dollar quantitative-easing program.

The so-called taper tantrum, from May through mid-September 2013, was essentially a knee-jerk reaction from investors.

From May 1 through Sept. 15 of that year, the S&P 500 Index gained 6.6%, the Barclays US Aggregate Bond Index lost 4.2%, the 10-year Treasury declined by 8.2%, the iShares muni bond benchmark ETF fell by 7.8%, and muni bond mutual funds declined by an average of 5%.

By that brief example, it does appear muni bonds are likely to hold up slightly better through a rate hike.

“The 10-year Treasury can be quite volatile, because people tend to jump in and out of it, but munis are still primarily purchased by retail investors and that makes them less likely to act like trading vehicles,” said Tom Dalpiaz, managing director at Granite Springs Asset Management.

“The tax exemption alone, in some sense, almost means they are going to be less volatile,” he added.

Jim Colby, senior municipal strategist at Van Eck Global, said nothing has been more anticipated than the upcoming Fed rate hike, and the bond markets are likely prepared for it. But that doesn’t mean investors won’t try and avoid the pain by selling bonds as rates rise.

“You might have investors and advisers very much concerned about the impact of rising rates on bonds and the inverse impact on bond values,” he said. “Some people will feel they should exit munis because they don’t want to see the book losses as rates rise, but if you exit munis you’re giving up the tax-advantaged coupon.”

Investment News

By Jeff Benjamin

Aug 12, 2015 @ 12:26 pm

Puerto Rico Agency Sets $750 Million Bond Sale After Default.

Puerto Rico's main water utility plans to sell $750 million of revenue bonds, the first debt offering from the financially struggling Caribbean island since it defaulted on securities sold by one of its agencies last week.

The deal may price as soon as next week. It will follow the Public Finance Corp.'s failure to make a full bond payment on Aug. 3 and come just weeks before the commonwealth is set to propose a plan for restructuring its $72 billion of debt. Melba Acosta, the island's top debt chief, doesn't foresee the water agency reorganizing its obligations in such a move.

The utility's sale will test Puerto Rico's ability to access the capital markets. Governor Alejandro Garcia Padilla in June said the U.S. territory can't afford to repay what it owes as the population falls and the economy struggles to grow. Its bond prices have dropped amid speculation about the scale of the losses facing investors.

"This is going to be a bumpy ride for the commonwealth," said Joseph Rosenblum, director of municipal credit in New York at AllianceBernstein Holding, which manages $32 billion of municipal bonds, including Puerto Rico securities. He said investors need to consider "what's the spillover to the value of my bonds?"

AllianceBernstein will determine whether to buy once it sees the prices that are offered, Rosenblum said.

Lower Yields

The Aqueduct and Sewer Authority, called Prasa, will use the proceeds to finance capital improvements to help the water utility comply with environmental regulations. Its debt is repaid with money from customers' bills.

The yields on Prasa bonds are some of the lowest among the commonwealth's different agencies, reflecting their relative safety amid the island's escalating crisis. Bonds maturing July 2042 traded Tuesday at an average 68 cents on the dollar to yield 8.2 percent, less than Puerto Rico's general obligations, data compiled by Bloomberg show.

The securities have risks and will be initially sold in denominations of $100,000, according to the bond documents. Prasa has been rationing water since May in parts of the island because of a drought, which increases expenses and lowers demand, according to the documents.

Puerto Rico public corporations could also win the power to file for bankruptcy, the bond documents warn. Island officials have been lobbying Congress to allow some agencies to do so.

Default Risk

"If the authority is unable to charge and collect rates that are sufficient to provide for debt service on its bonds and other indebtedness and meet its operating expenses, the authority may be unable to meet its debt and other obligations as they become due," according to bond documents.

Puerto Rico and its agencies are reeling from years of borrowing to pay bills. Officials plan to present a debt-restructuring proposal by Sept. 1. If Prasa is able to sell the bonds, it won't need to restructure its debt, Melba Acosta, president of the Government Development Bank and one of the officials crafting the island's debt proposal, said Tuesday in a statement.

Prasa, which had almost $5 billion of bonds and notes, as of May 31, plans to raise rates by as much as 4.5 percent annually beginning in fiscal 2018.

The utility provides water to 97 percent of the island's population and wastewater service to more than half. As residents continue to leave for the U.S. mainland, that has cut into demand for its services.

Average monthly customer consumption decreased by about 6 percent in the year that ended in June.

Pitching Deal

Efrain Acosta, the utility's finance director, will begin meeting with investors this week to discuss the offering, he said in a telephone interview from San Juan.

Some agency bonds have more than three times the revenue needed to cover debt-service and reserves sufficient for a year's worth of principal payments, he said.

It's hard to estimate at what coupon and yield the bonds would find enough buyers after the default and with the prospect of some entities gaining access to Chapter 9, said Daniel Solender, who helps manage $17 billion, including Puerto Rico debt, as head of munis at Lord Abbett & Co. in Jersey City, New Jersey.

Whether the firm will participate in the sale depends on the pricing and structure of the deal, Solender said.

"It's going to have to be an attractive price given the default," Solender said. "It's probably the credit that could get the lowest yield right now, but it's still a test to see what the yield would be and if there are enough buyers."

Legal Jurisdiction

To sell $3.5 billion of general obligations in March 2014, the debt was priced with an 8 percent coupon at a yield of 8.73 percent, or 93 cents on the dollar.

The Prasa bonds also allow for any legal dispute to occur in a New York state or federal court, rather than in San Juan, according to bond documents. That's a feature that hedge funds demanded in order to buy the general obligations sold last year.

Bank of America Corp. is the lead underwriter on a the deal, with a syndicate that includes JPMorgan Chase & Co., Popular Securities and Santander Securities.

Puerto Rico securities, including Prasa bonds, have been trading at distressed levels for two years on concern the island wouldn't repay its debts on time and in full.

Prasa last sold bonds in 2012, Efrain Acosta said. The utility has been working on this borrowing for a year, he said.

“After a tough year for Prasa and Puerto Rico, we finally got the bond document out,” he said. “We have to close this chapter soon.”

Bloomberg

Michelle Kaske

August 11, 2015 — 6:00 AM PDT Updated on August 11, 2015 — 1:11 PM PDT

TAX - CONNECTICUT

Town of Stratford v. Jacobelli

Supreme Court of Connecticut - August 18, 2015 - A.3d - 2015 WL 4727134

Town and its tax assessor brought action against owners of aircraft hangars located at airport for declaration that the hangars were subject to municipal taxation. The trial court rendered judgment in favor of town and assessor. Owners appealed.

The Supreme Court of Connecticut held that:

- Hangars were buildings subject to municipal taxation as real property;
- Hangars were not exempt as held in trust for State;
- Trial court did not clearly err in finding that owners failed to show a substantial measure of supervision and control over the hangars by the city; and
- Hangars were not exempt under statute requiring Office of Policy and Management to determine the amount due to each town for a municipally owned airport.

Portable aircraft hangars located on city land at airport were “buildings,” similar to sheds, which were enumerated in statute making buildings used for business and sheds liable to taxation and, thus, hangars were subject to municipal taxation as real property, where hangars had shed-like metal walls with wooden cross-beams mounted with studs, were affixed to the ground by means of heavy spikes driven through openings in the metal base into the asphalt paving, and, although the hangars were capable of being disassembled, it would have required much effort, as the spikes and boards would have to be removed and the walls collapsed.

Aircraft hangars were not exempt from municipal taxation as held in trust for the State or belonging to any general aviation airport or other airport, where airport was not a general aviation airport, and airport was not owned by the State or the State Airport Authority.

Trial court did not clearly err in finding that hangar owners failed to show a substantial measure of supervision and control over the hangars by the city such that ownership should more properly be placed with the city, although terms of owners’ occupancy pursuant to sublease and month-to-month lease with the city evinced some control by city over lessee’s access to the airport, where terms did not necessarily amount to substantial control over the hangars such that ownership of the hangars was more properly placed in the city, and each hangar was for the private use of their respective owners or occupants, some hangars could be purchased with various options, and owners could purchase their hangars from any supplier.

Aircraft hangars were not exempt from taxation under statute that required Office of Policy and Management to determine the amount due, as a state grant in lieu of taxes, to each town for a municipally owned airport, where there were no facts in the record to suggest that city submitted

the assessed value of the hangars to the State, received a grant in lieu of taxes that took into consideration lost tax revenue relating to the hangars, and also sought to assess the hangars to the owners.

TAX - WASHINGTON

Wedbush Securities, Inc. v. City of Seattle

Court of Appeals of Washington, Division 1 - August 10, 2015 - P.3d - 2015 WL 4726868

Registered securities broker sought review of decision of hearing examiner upholding city's business and occupation (B&O) tax assessment. The Superior Court affirmed. Broker appealed.

The Court of Appeals held that because broker's service income was derived from customer contacts by telephone and the Internet, the entire amount was subject to B&O tax.

TAX - NEW YORK

AJM Capital II, LLC v. Incorporated Village of Muttontown

Supreme Court, Appellate Division, Second Department, New York - July 29, 2015 - N.Y.S.3d - 130 A.D.3d 1018 - 2015 WL 4546740 - 2015 N.Y. Slip Op. 06335

Assignee of tax lien certificates for liens on three parcels owned by village brought action to enforce payment under the certificates. The Supreme Court, Nassau County, granted village's motion to dismiss. Assignee appealed.

The Supreme Court, Appellate Division, held that real property tax law that generally permitted municipalities to sell publicly owned land to satisfy tax liens on it did not apply to land held for public use.

Real property tax law that generally permitted municipalities to sell publicly owned land to satisfy tax liens on it did not apply to land held for public use, and thus village was not permitted to consent to the sale of parcels containing public streets in order to satisfy tax lien on property. Property containing public streets was held for public use, property's use as dedicated public streets had not been discontinued, real property tax law only authorized collection of validly levied or charged taxes, and property held for public use was exempted from taxation.

California's New Law Creates Hybrid P3 Model to Build Civic Center.

Legislation Gov. Jerry Brown signed Aug. 11 allows Long Beach, Calif., to combine elements of several types of public-private partnership agreements into a hybrid model to expedite the construction of the city's new civic center. The project's new buildings will include a seismically safe city hall, headquarters for the Port of Long Beach and the main city library. A park will be redesigned as well. Transit-oriented mixed-use developments, high-rise condominiums and retail shops also will be built on the almost 16-acre site, the city announced in a press release.

The law places sections of state and case law that apply to lease-leaseback public-private partnerships and design-bid-finance-operate-maintain (DBFOM) P3s into one section of state law

that applies specifically to the civic center project. The law reduces the risk of the procurement method being legally challenged because, to date, it has been used only to develop infrastructure projects, not city hall buildings, according to the city.

The law also authorizes the private partner to lease or own all or part of the project for up to 50 years. Under existing law, private leasing or ownership of such projects expires after 35 years, the legislative counsel's digest of the law says.

The civic center project will create 3,700 jobs construction-related jobs; it also will bring the Port of Long Beach's headquarters back to the city's downtown and re-establish its waterfront presence after a year-long, temporary relocation a few miles outside the city, said Lori Ann Guzman, president of the Long Beach Board of Harbor Commissioners.

"Long Beach residents are closer to seeing significant revitalization and modernization in downtown" as a result of the new law, said Sen. Ricardo Lara, the bill's primary sponsor. "The civic center is at the core of Long Beach and the expansion project will benefit residents for years to come."

This project has been in the planning stages for some time. Two teams of developers presented proposed plans for the civic center to the city in October. In January, the Long Beach City Council selected a DBFOM team, led by Plenary Group, to negotiate the real estate andP3 terms of the civic center project.

The civic center is not Long Beach's first P3. The city used this procurement method to build its award-winning courthouse, which opened in 2013.

NCPPP

By Editor August 13, 2015

S&P's Public Finance Podcast (Rating Trends, Atlantic City, And Puerto Rico)

In this week's Extra Credit, Senior Directors Larry Witte and Dave Hitchcock discuss rating trends over the past 30 years and our recent action regarding Puerto Rico's bond payment default, respectively, and Associate Tim Little explains our rating action on Atlantic City.

Listen

Aug 07, 2015
