
The Week in Public Finance: Bad Balancing Acts, Best Taxpayer ROI and Double Taxation.

A roundup of money (and other) news governments can use.

GOVERNING.COM

BY LIZ FARMER | MARCH 31, 2017

A Way to Unlock the Value of an Airport.

St. Louis is looking at a public-private partnership. If the issues are properly addressed, it's an idea well worth considering.

St. Louis Mayor Francis Slay recently asked the Federal Aviation Administration to consider allowing his city to enter into a public-private partnership to lease its airport to a qualified airport manager backed by private infrastructure funds — a model that exists in much of the rest of the world but not so much in the United States. The mayor's plan has the potential to unlock value now trapped in the airport to address broader city needs, and it could serve as an example of how local governments can produce resources without adverse budget or ratepayer impact at a time when the country is starved for infrastructure investment.

Local officials who have pledged to keep an open mind on the proposal have nevertheless raised issues that will need to be addressed. The issues are familiar ones to me. As mayor of Indianapolis in the 1990s, I did the country's first major full outsourcing of an airport. At the time our airport, as is true of St. Louis' Lambert International, was successful and well managed. I wanted to market-test whether a private company that specializes in airport management, with access to worldwide technology and best practices, could produce more customer satisfaction, better airline relationships and more net revenue while holding down increases in passenger enplanement costs.

My Indy transaction preceded and in part brought about congressional authorization of the Airport Privatization Pilot Program that Mayor Slay is requesting permission for St. Louis to join. This FAA program permits a limited number of cities to unlock the value they have created in this asset and deploy that value back into the community. Since in Indianapolis we did not have access to this FAA program, no matter how much money we saved the city could in no way benefit. This made no sense to me. If the airport didn't operate at maximum efficiency, the airlines and thus the passengers would pay more. If it did operate better, then why shouldn't the city benefit in a share of the revenues or receive repayment for some of its original contribution of land?

But we did it anyway, both to improve passenger satisfaction and enhance the airport's net revenues — both of which got better during the time the airport was operated by BAA, at the time the operator of London's airports. BAA agreed to a performance-based contract in which goals for improved operations, maintenance cost savings and better passenger experience levels had to be met before it received compensation. The project ended when BAA exited the U.S. market.

The anxieties raised by various St. Louis stakeholders are reasonable and should be addressed, and the best way to do that is by laying out at the rules from the beginning. Neither passengers nor the airlines should pay more as a result of any transaction. The city should be a financial partner in the deal, with its long-term interests aligned with the private operator through an ongoing revenue share. Customer-service levels should go up based on measurable, enforceable operating standards. The successful private manager should have specific requirements and incentives for significant capital investment in the airport and ancillary economic development. Overall, the transaction should be perceived as a win for the city, the community, the airport and the airlines.

A good model for the process is the most recent large U.S. airport public-private partnership, that of San Juan's airport. The Puerto Rico government brought the necessary political will to the P3 market and ran a thorough proposal process that resulted in a contract providing for over $1.2 billion in unrestricted proceeds to the territory's government and another $1.4 billion of capital investment at the airport over the 40-year lease to the private operator.

Mayor Slay's bold move to test this evolving market deserves support. The flying public, St. Louis taxpayers and the airlines deserve protection and continued excellence in operations and capital investment, and all of that can potentially be accomplished while producing significant unrestricted proceeds for the city.

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BY STEPHEN GOLDSMITH | APRIL 3, 2017

[Transportation Advocates to Trump: Where's the Money?]

The president's budget proposal has many in the industry worried that he might break his promise to spend $1 trillion on infrastructure.

One of President Trump's most popular promises has been his oft-repeated pledge to spend $1 trillion in infrastructure improvements. While he has never given much detail about how he'd do that, the idea was enough to give hope to local officials, state highway departments and transit agencies.

But those hopes are beginning to dim.

Earlier this month, the Trump administration released a budget outline that called for cutting funding for the U.S. Department of Transportation by 12.7 percent. The new president also proposed eliminating popular programs, such as competitive TIGER grants, which are used to build large, intermodal projects, and New Starts, which funds transit construction.

In addition, the administration wants to ax subsidies for air service in small cities and eliminate Amtrak services for unprofitable routes in the South and West. The plan, which has informally been referred to as the "skinny budget," would cut Energy Department programs for researching new vehicle technologies, and scale back funding for the U.S. Army Corps of Engineers, which maintains ports, rivers and other waterways throughout the country.

Cuts like these, many observers say, are at odds with a president who envisions himself a builder.

“There’s clearly an inconsistency between the campaign promises and the very first budget proposal,” says Robert Puentes, the president and CEO of the Eno Center for Transportation. “We know [infrastructure] is not the first policy priority, but the skinny budget has left people scratching their heads.”

Trump’s top budget aide, Office of Management and Budget Director Mick Mulvaney, acknowledged the dissonance while discussing the budget outline.

“People might say, ‘Well, goodness gracious, that doesn’t line up with what the president said about a commitment to infrastructure.’ That was done intentionally,” Mulvaney told reporters. “Why? Because we believe those programs to be less efficient than the infrastructure package that we’re working on for later this year. So what we’ve effectively done is try to move money out of existing, more inefficient programs, and hold that money for what we expect to be more efficient infrastructure programs later on.”

But without any details about what would be in the new infrastructure package, that explanation isn’t likely to sit well with transportation advocates.

“Actions that result in a reduction to U.S. transportation system investment concern us, so we’re anxious to see the president’s full infrastructure investment package to put the proposals outlined in this budget in context,” says Bud Wright, the executive director of the American Association of State Highway and Transportation Officials.

Linda Bailey, the executive director of the National Association of City Transportation Officials, went further, saying the Trump budget outline would be a “disaster for cities.”

“President Trump has promised to rebuild our nation’s infrastructure with a widely touted $1 trillion infrastructure plan,” she says. “But it is impossible to square his words with his budget proposal.”

Trump’s budget proposal also suggested large cuts to popular programs like Meals on Wheels, public television and energy assistance for low-income Americans in order to pay for increases in military spending.

Marcia Hale, the president of Build America’s Future, says the combination of all of those unpopular proposals makes it unlikely that Congress will go along with the Trump blueprint. She doesn’t think the fate of the budget proposal will directly affect the president’s plans to invest in infrastructure. But Hale anticipates that the administration will focus on areas that could attract private financing, such as toll roads, water and broadband.

Puentes, the president of the Eno Center, says Trump’s background may give him a different perspective on what is crucial infrastructure. Trump may be more interested in spurring real estate developments than, say, funding public transportation.

In his first weeks in office, Trump’s biggest impact on infrastructure will ultimately benefit private developers. The president signed executive measures that encouraged construction of two controversial oil pipelines, the Keystone XL Pipeline and the Dakota Access Pipeline.

Just weeks before Election Day, Trump’s campaign released a short infrastructure plan that would have relied primarily on tax credits for private investors. That plan received only tepid support from transportation advocates because it did not include any new revenue to pay for projects. It also focused solely on projects that would generate their own revenue, which wouldn't really help residents in rural areas or agencies with major repair and maintenance needs.

Both Commerce Secretary Wilbur Ross, one of the two authors of the Trump campaign proposal, and Transportation Secretary Elaine Chao, said during their confirmation hearings that new federal revenues would be needed to address the country's infrastructure needs. But they didn't elaborate.

"The infrastructure paper I put out was meant to provide another tool, not to be the be all and end all," Ross told a Senate panel in January. "There will be some necessity for [direct federal spending on transportation], whether it's in the form of guarantees or direct investment or whatever."

For now, though, transportation advocates will have to wait to see whether that funding materializes and, if it does, whether it will be used to pay for the needs at the top of their lists.

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BY DANIEL C. VOCK | MARCH 27, 2017

Learning from Buffalo and Denver: Can Tax Credits Help Restore Polluted Sites?

Tax credits can help clean up pollution and renew communities, three experts from Buffalo and Denver told Oregon leaders and professionals during a visit to Portland last week – but it's important to think carefully as they're set up.

There are thousands of known or suspected polluted properties – often called "brownfields" – around greater Portland, ranging in size from big industrial sites to corner gas stations and dry cleaners. Leaders, advocates and business are all interested in finding workable tools to get these sites cleaned up and renewed for better uses, including jobs, homes and commercial opportunities.

The Legislature has expanded the brownfield toolbox several times in recent years, making tools like land banking and property tax abatements available to local governments that want to use them to help spur cleanup and development.

But Oregon still does not have a tool that more than a dozen other states are using to help with particularly troublesome brownfields – those where whoever is responsible for the pollution has gone bankrupt, disappeared or abandoned the site.

Last week, three brownfield experts shared how state tax credit programs have helped make cleanup of abandoned brownfields possible in Denver and Buffalo, New York. Their visit culminated with a lunchtime discussion at the Collaborative Life Sciences Building in Portland's South Waterfront, itself one of the region's ongoing brownfield cleanup stories.

They shared tips for how tax credits can help with brownfield cleanup. Here are a few of the highlights.

Continue reading.

Oregon Metro News

By Craig Beebe

March 29, 2017 10:40 a.m.

Scott: IRS Should Go After Developer, Lawyers in DC Bond Deal.

WASHINGTON – The District of Columbia is appealing the Internal Revenue Service's finding that some of its bonds are taxable, at the same time a former IRS official is urging the agency to go after the developer and bond counsel in the transaction.

Mark Scott, the former head of the IRS' tax-exempt bond office who now represents whistleblowers in private practice, said both the developer, LCOR New Oyster School LLC, and the bond counsel should have known the bonds did not comply with the federal tax requirements at the time they were issued.

DC issued the $11 million of PILOT revenue bonds in 1999 as part of a much-lauded public-private partnership to build the James F. Oyster Elementary School. The bonds were used to finance construction of the school and were to be entirely repaid by payments-in-lieu of taxes (PILOTS) to be made by LCOR. The school was built on .79 of an acre.

As part of the deal, D.C. sold LCOR about .88 of an acre next to the school, estimated to be worth roughly $3.7 million, on which the developer constructed a 211-unit luxury residential apartment complex. The district had no financial interest in the apartment building, but exempted LCOR from paying property taxes on the building's land in return for LCOR's making PILOTS to the district for debt service on the bonds.

Scott claims the bonds are actually taxable private activity bonds. He says that D.C., in essence, made an indirect loan to LCOR of about $3.7 million and then allowed the developer to pay for it with the PILOTS, based on a tax-exempt rate. Scott contends the bonds fall under the federal anti-abuse rule for private activity bonds and that, under that rule, the IRS commissioner can reallocate the $3.7 million value of the property as a loan to the developer.

Under tax requirements, bonds are PABs if they involve a private loan that is the lesser of 5% or $5 million. Five percent of $11 million of bonds would be $550,000. The bonds would be taxable because luxury apartment complexes do not fall into one of the qualified categories of projects that can be financed with tax-exempt PABs.

The IRS apparently agreed with Scott and on Feb. 2, it sent D.C. a Proposed Adverse Determination that its bonds were taxable.

On Monday, D.C. filed an appeal of that determination with the IRS' Office of Appeals. It announced the appeal in a notice filed on the Municipal Securities Rulemaking Board's EMMA website.

Scott said he doesn't think D.C. will prevail in the appeal.

"The chance of appeals coming up with a different decision is slim because this has already been reviewed for legal sufficiency by an IRS legal review team," Scott said, based on documents he obtained from the district through a Freedom of Information Act request.

The IRS “should go after the developer here, which is taking a deduction presumably for the full amount of property taxes and part of those taxes are actually payments on the loan that should not be deductible,” said Scott. “LCOR duped D.C. and is now making millions from the Oyster P3 bond deal. Shouldn’t they pay to resolve the adverse IRS exam?” he asked.

Scott said the IRS should also go after the bond counsel, too, because it never should have given the opinion that the bonds were tax-exempt. “They should go after Hunton & Williams under Section 6700” of the Internal Revenue Code, he said.

Hunton & Williams was listed on the official statement as bond counsel. But Andrew Kintzinger, counsel at the firm, said on Thursday, “The lawyers who handled this issue left Hunton soon after the issue was completed. Since that time, we have not been involved in that matter. We understand that Ed Oswald, as The Bond Buyer has reported, is handling the audit for the District.”

Oswald, with Orrick, Herrington & Sutcliffe, is serving as tax controversy and representing the District in the IRS matter. The lawyers involved in the deal left Hunton & Williams and went to Orrick after the deal was completed, sources said.

Section 6700 allows the IRS to go after transaction participants, rather than the taxpayers, for violations of tax law requirements. But this section of the tax law does not appear to have been used in recent years.

The Bond Buyer

By Lynn Hume

March 23, 2017

How the Buyside Is Handling Trump's Shift from Healthcare to Tax Reform.

Municipal portfolio managers are sticking with their health care strategies after the failure of the American Health Care Act last Friday, saying they expect the Trump administration to continue its quest to undo Obamacare.

With tax reform replacing health care on the front burner, they predicted the prospect of lower rates or a change in the muni tax exemption will have a greater impact on overall market demand and other technicals than on their individual strategies.

“On any given day, we are and will remain open to sourcing value across the hospital sector – or any other major municipal sector for that matter – as long as the end product in our portfolios is properly diversified and all credits have been thoroughly reviewed,” Jonathan Law, a portfolio manager at investment and financial services firm Advisors Asset Management, said on Wednesday.

Law, who has been pro-health care sector since prior to President Obama’s Affordable Care Act becoming law in 2010, said his exposure was steady through the first quarter of 2017 and he doesn’t expect to do anything different in light of the AHCA defeat.

His firm is responsible for $1.1 billion of client assets under management, of which $370 million consists of municipal assets, as of Dec. 31, 2016.

He said he will keep his sights set on larger, nonprofit systems with multiple hospitals in multiple states, organizations with leading market share, and/or well-diversified revenues that aren't overly reliant on Federal funding.

"The sound and rational municipal investor was generally unaffected by the proposal and the failure of the American Health Care Act," Law said. "Compared to the rest of the market, the health-care sector did not trade out of the ordinary at any point during the lifespan of this bill."

Law said it is also unlikely that health care bonds will rally and spreads significantly tighten following the AHCA's demise.

Dawn Mangerson, who co-manages municipal portfolios with Jim Grabovac at McDonnell Investment Management, said the team continues to like the hospital sector, in which it was recently overweight.

McDonnell oversees $11.5 billion in client assets, 63% of which are tax-exempt municipal assets, including separately-managed accounts and two sub-advised municipal mutual funds, as of Dec. 31, 2016.

"We were looking for an opportunity to take advantage of spread widening – which we did see – but there was not enough supply" in the first quarter, Mangerson said on Tuesday.

She and Grabovac will be looking for more opportunities from the sector as the second quarter rolls in next week.

While portfolio managers are seeing little impact from the failure of the AHCA, the event is triggering more of a reaction in the overall municipal market, municipal experts said this week.

Price, performance, and value are just some of the market technicals being influenced – or expected to be impacted – by the non-vote of AHCA, according to municipal experts this week.

For instance, municipal bonds already outperformed along the curve, following U.S. Treasuries to "decidedly higher levels" last week, Jeffrey Lipton, managing director and head of municipal research and strategy at Oppenheimer & Co. wrote in a March 27 report.

Municipal yields finished unchanged on March 24 – the day the AHCA vote was removed from the previous day, which Lipton said indicated "support for haven assets evident early this week."

The 10-year and 30-year Municipal Market Data triple-A benchmark yields declined by 12 and 11 basis points, respectively, Lipton pointed out, while comparable maturity U.S Treasury yields declined by seven and eight basis points, respectively.

Other impacts from the defeat of the AHCA are being seen in municipal volume and flows, managers and analysts said.

"With municipal yields off their highs of the quarter and supply limited on year-over-year basis, it wouldn't be a surprise to see issuers returning to the market with more new money and refunding deals during the second quarter," Law of AAM said.

The volatility and uncertainty surrounding the new administration "and its ability to pursue a successful fiscal stimulus policy with tax-reform at the core would likely create a more uneven trajectory of muni bond mutual fund flows," according to Lipton's report.

For example, he said, flows turned positive after three consecutive weeks of outflows, according to Lipper Inc.

Meanwhile, some managers agreed that the impact from the passage of the AHCA would have put the municipal health care sector in critical condition.

“The potential to restrict Medicaid funding would have been a negative for the hospital sector,” Grabovac said.

Secondarily, it would have also been a negative for states, which would have been responsible for picking up the slack in a market where states and hospitals make up a quarter of the debt.

He said the market is “breathing a little easier” in the wake of AHCA’s failure. “To have dodged that bullet is a credit positive,” especially for smaller, rural hospitals, Grabovac added.

Managers like Lipton said the negative consequences could have included significantly reduced funding for Medicaid beneficiaries, a more restrictive deployment of subsidies, and elimination of the newly applied taxes under ObamaCare, as well as associated budgetary implications.

Alan Schankel, managing director of research at Janney Capital Markets, said it would have triggered investor concerns about the healthcare sector, since fewer customers covered by insurance in coming years would have reduced hospital revenues.

“The state sector would also have been pressured by the conversion of federal Medicaid matching funds into block grants, which would have reduced federal payments to states over time,” Schankel added.

The bill’s failure serves as an example of “rhetoric meeting reality,” according to Grabovac.

“The failure of the AHCA to even come to a vote in the house is really significant and a significant indication of how difficult the legislative road is going forward,” he said.

Schankel said although the ACA “emerged from the Congressional process intact, uncertainty remains, with the potential for Congress to revisit in future.”

Lipton said the “much-heralded, yet perhaps ill-conceived” AHCA would have been the fulfillment of one of the “hallmark promises” of President Trump’s campaign.

“Given the events of last week, we would expect market performance to be more sensitive to potential disruptive forces regarding the President’s agenda,” Lipton said. “Undoubtedly, there is likely to be an extended post mortem of the AHCA.”

Now that health care is taking a backseat, managers say the focus on tax reform under the Trump administration creates some challenges and uncertainty for the municipal market. But like the failure of the AHCA, it will not damage or alter their investment strategies or goals.

“The House failure to pass the AHCA does not render tax-reform improbable,” Lipton wrote in his report.

“It does, however, make it more difficult with potential delays, especially given the observation that the Republicans have competing ideological agendas within their own party, and we have to wonder how easily they can come together on other policy legislation.”

Lipton predicted tax reform will be a fourth quarter event – or possibly a 2018 first quarter occurrence – with the Border Adjustment Tax a widely-debated issue, and infrastructure spending and deregulation also crucial topics.

"We remain skeptical over just how much GDP growth can actually offset the Republican tax cuts," Lipton wrote, adding that there is a potential impact on economic growth from tighter Fed policy and a stronger dollar.

Lipton predicts three increases to short-term rates this year, with June and December being appropriate dates.

"If Congress demonstrates continued divergent views that inhibit the Administration's agenda, there could very well be a recalibration of economic growth and inflationary performance expectations," he added.

Lipton said as the market moves into the tax-reform phase of fiscal policy, he expects the relative value ratios to remain "generally rangebound."

On March 24, the Bloomberg Valuation 10 and 30-year ratios stood at 95.56% and 102.86%, respectively.

"While we remain cautious of the potential effects these various tax proposals could have on the municipal market, the concrete issues at hand that we prepare and adjust our investment strategy around continue to be rising interest rates and inflation," Law said.

He seeks a defensive duration versus his benchmark, above average coupon bonds, and properly diversifying across various sectors, states, as well as parts of the yield curve to manage his composite portfolios through a rising rate environment – despite the potential tax proposals.

Tax reform is not as complex as health care economics, according to Grabovac, who believes any potential tax changes will involve smaller reductions in rates compared to some of the more significant cuts that have been floated as ideas.

"There were concerns that if a significant change in marginal rates were implemented that could reduce demand from insurance companies and banks, which are 30% of the market," Grabovac said.

"To the extent those changes are very likely to be moderated significantly that has removed some potential concern," he added.

In fact, the failure of the AHCA could end up sparking increased appetite for municipals, portfolio managers and analysts predicted.

"Perhaps we may see a change in sentiment now that health care reform has been tabled and chances of Republican consensus have now been diminished," Lipton's report said, suggesting the possibility of a "more enduring appetite" for less risky assets.

"Other than an immediate selloff following the election, the market has held in extraordinary well, and there has been no significant lessening of the demand," Grabovac said.

Similarly, there is less concern if individual tax cuts are likely to be moderate and take longer to implement "rather than more quickly and at an extreme fashion," according to Grabovac.

"I think the big issue of potentially the border tax and deductibility of interest are extreme changes to the tax system and probably will have a difficult time getting resolution even within the Replication party – if they chose to take a path other than through reconciliation," Grabovac said.

He said tax reform issues highlight the difficult political balance that Congress and the Trump administration face. He said it will likely be "much more difficult to accomplish the fiscal initiatives than the market anticipated."

The Bond Buyer

By Christine Albano

March 30, 2017

Trump Proposes $17.9B More Budget Cuts for FY-2017, Gutting TIGER, CDBG.

WASHINGTON – Having failed to get Congress to enact a health care bill to replace the Affordable Care Act, President Trump may now be setting up a contentious debate with lawmakers over the budget for fiscal 2017, which is almost half over.

The Office of Management and Budget has proposed $17.9 billion in additional spending cuts beyond the program levels already negotiated by the House and Senate in the continuing resolution for fiscal 2017, which ends on Sept. 30. The CR is due to expire on April 28 and the failure to extend it, adopt a new one, or pass an omnibus bill by then could force a shutdown of the federal government.

The cuts proposed for fiscal 2017 were made just two weeks after President Trump released a skinny budget proposing major cuts for domestic programs for fiscal 2018, which starts on Oct. 1 of this year. Senate Appropriations Committee Vice Chair Patrick Leahy, D-Vt., criticized the cuts.

"Unfortunately, this appears to be more of the same partisan campaign gestures from the Trump Administration, making shortsighted and draconian cuts on the backs of the middle class and the most vulnerable Americans," Leahy said. "Cutting cancer research, slashing affordable housing and programs to protect the environment, and making middle class taxpayers pay for a wall that Mexico was supposed to pay for? I've already made some blunt statements about the idea of an enormously expensive and ineffective wall. These may be the Trump Administration priorities, but they aren't the priorities of the American people."

In its chart of the $17.9 billion of cuts proposed for fiscal 2017 that was sent to the lawmakers and made available by publications such as CQ and Politico, OMB proposed eliminating the $499 million for the popular Transportation Investment Generating Economic Recovery (TIGER) grant program. The House and Senate agreed in the current CR to provide $499 million to the program, which supports innovative projects, including those that are multimodal and multi jurisdictional and are difficult to fund through traditional federal programs. The $499 million figure was a compromise from the $450 million in the House CR and the $525 million in the Senate CR.

Since 2009, the TIGER grant program has provided a combined $5.1 billion to 421 projects in all 50 states, the District of Columbia, Puerto Rico, Guan, the Virgin Islands and tribal communities. The program is so popular that demand far exceeds available funding. In 2016, the Transportation Department, which administers TIGER, received 585 eligible applications requesting more than $9.3 billion – well over the $500 million that was leveraged to support $1.74 billion in transportation investments.

OMB told lawmakers in the chart that the $499 million cut "eliminates funds for the TIGER program, which provides localized benefits that can be funded through other existing funding streams."

Susan Monteverde, vice president of government relations for the American Association of Port Authorities, said many lawmakers have been very supportive of the TIGER program, which is broader and more flexible than other federal grant programs, such as FASTLANE.

The FASTLANE grant program, established by the Fixing America's Surface Transportation (FAST) Act, provides grants to fund critical freight and highway programs, but is not multimodal, she said.

TIGER grants can be used for freight or rail projects connected to ports and are not just for local projects, Monteverde said. "Seaports provide national benefits," she said, adding, "They handle imports and exports that come into and go out of the country."

OMB also proposed cutting $447 million from the Transit New Starts program, the Federal Transit Administration's primary grant program for funding major transit capital investments, including heavy rail, commuter rail, light rail, streetcars and bus rapid transit. The current CR makes $2.16 billion available for the program, after the House initially called for $2.5 billion and the Senate $2.34 billion.

OMB said the cut would "cover the cost of projects with existing full funding grant agreements" but that the administration "proposes to suspend additional projects from entering the program and believes localities should fund these localized projects."

OMB proposed to cut $1.49 billion from the Community Development Block Grant (CDBG) program, about half the $2.99 billion level the House and Senate agreed to in the current CR.

Both chambers had initially proposed $3.0 billion for the program before dropping the level in the final CR.

OMB said in the chart: "No grants have been awarded for the fiscal year. The program is unauthorized and has been challenged to demonstrate its effectiveness given the breadth of activities it can support."

The CDBG is one of the longest-running programs with the Department of Housing and Urban Development and funds local community development activities such as affordable housing, anti-poverty programs, and infrastructure development. The grants are allocated to local and state governments according to a formula.

"This program has very deep roots and is widely supported by both sides of the aisle" in Congress, said one source at the U.S. Conference of Mayors. "It would be devastating to get this kind of cut. This program serves more than 1,200 jurisdictions."

"We're almost half through fiscal 2017," said the source, who did not want to be identified. "I don't think this is doable. Cities have been going on as if they were going to get this revenue."

The Bond Buyer

By Lynn Hume

March 28, 2017

[Shake-Ups and Changes at the Tax-Exempt Bond Branch.]

The IRS has announced that it will combine the Tax-Exempt Bonds Branch and the Indian Tribal Government Branch of the IRS Office of Tax Exempt and Government Entities (TE/GE). The new combined entity will be headed by Christie Jacobs, who has long been the Director of the Indian Tribal Government Branch. (Though Ms. Jacobs apparently does not have any experience with tax-exempt bonds, Sunita Lough, the Commissioner of TE/GE, assures us that Ms. Jacobs is a “very smart person” and “very capable.”) The Tax-Exempt Bonds Branch has been without a permanent Director since Rebecca Caldwell-Harrigal left the post in December 2016 (Imraan Khakoo served as acting Director in the meantime).

Formerly, the IRS Tax-Exempt Bonds Branch was divided into a Field Operations division (focusing on examinations) and a Compliance and Program Management (CPM) division (which, among other things, oversaw the administration of the VCAP program). As part of the reorganization, CPM will cease to exist, and its operations will be spread between a Compliance, Planning and Classification group that will span the full breadth of TE/GE (which includes some areas other than TEB and the Indian Tribal Government Branch), and a smaller, core “technical support” group that will continue to exist within TEB after it is combined with the Indian Tribal Government group. It is unclear whether this reallocation of resources will allow TEB to focus more attention and energy on examinations.

Continue reading.

By Johnny Hutchinson on April 3, 2017

The Public Finance Tax Blog

Squire Patton Bogs

[Federal $1 Billion Bond Program Is Making a Difference in Community Development.]

Steve and Deona Thomas manage a 13-unit apartment building on Chicago’s South Side, and they needed to refinance the mortgage on it this year. Through their small property management and rehab company, the Thomases have become award-winning preservers of affordable housing in the city. Such developments don’t get the familiar 30-year, fixed-rate mortgages that individuals and families use to buy their homes. Commercial loans, which apply in the Thomases’ case, tend to have terms of five to 10 years. Typically, in order to lower monthly payments during the life of the loan, commercial loans are structured so that the last payment is a very large lump sum of the remaining balance (what’s known as a balloon payment). As they near the end of a current loan, businesses usually refinance — and pay off the existing mortgage with a new five- to 10-year loan. That comes with a new balloon payment looming at the end.

For many small businesses and nonprofits, this mortgage game becomes a stress-inducing cycle.

A few weeks ago, the Thomases were able to obtain a 20-year loan for that property, fully amortized — meaning no balloon payment — from the [Chicago Community Loan Fund] (CCLF). No more endless refinancing cycles. At the end of the 20 years, the building will be free and clear of commercial mortgage debt.

That loan was made possible thanks to the newest program of the U.S. Treasury's CDFI Fund, known as the CDFI Bond Guarantee Program, or BGP. It was created by the Small Business Jobs Act of 2010. The federal government purchases bonds issued by federally certified community development financial institutions, or CDFIs. The bonds are 100 percent guaranteed by the U.S. Treasury, and each bond provides capital at up to 29.5-year terms. The BGP is currently the only source of long-term, fixed-rate capital for community development.

Continue reading.

NEXT CITY

BY OSCAR PERRY ABELLO | MARCH 30, 2017

The SEC's Proposed Changes To Rule 15c2-12 Could Have Far-Reaching Impact On Issuers And Obligors Of Municipal Securities: Foley & Lardner

Introduction

On March 1, 2017, the Securities and Exchange Commission ("SEC") issued Release No. 34-80130 (the "Release") proposing several amendments to its Rule 15c2-12 (the "Rule") that would add two new events to the list of events that must be included in the continuing disclosure undertakings of municipal issuers or obligors of municipal bonds.

- The first additional event, in general, is the incurrence of "financial obligations, if material, or agreeing to covenants or other provisions that affect security holders, if material," and
- The second reportable event is the occurrence of one or more of the following events under the terms of such a financial obligation: "default, event of acceleration, termination event, modification of terms or other similar events under the terms of a financial obligation of the obligated person," if the event reflects financial difficulties.

The compliance date of the proposed amendments would be no earlier than three months after any final approval of the proposed amendments, should the SEC adopt the proposed amendments in final form.

Many participants in the municipal securities market have called for greater transparency surrounding issuer's or obligor's bank loans or direct purchases of municipal securities ("direct placements"), but the scope of the proposed amendments is far broader than simply requiring disclosure of such direct placements.

Under the Release, the term "financial obligation" is very broadly defined and includes, in addition to a debt obligation such as a direct placement– leases, guarantees, derivatives or monetary obligations arising from a judicial, administrative or arbitration proceeding. Coupled with the qualifier "if material," which the SEC has not clarified in the context of the Rule, issuers and obligors may feel compelled to disclose a great deal of information. The use of the term "lease," which the Release defines as including both capital and operating leases, could open the door to reporting a significant number of obligations, especially in certain market sectors, as discussed below. Similarly, in the second proposed additional event, the use of the term "default" intentionally captures events earlier in time than when an "event of default" is declared and, if such default “reflects financial difficulties,” the event must be disclosed and the context provided.

This Client Alert will provide background concerning the Rule and describe the terms and scope of the proposed amendments to the Rule. It then will examine some of the issues that these proposed amendments raise in the context of the municipal market. Lastly, it will suggest some strategies for participants in the municipal market to address the challenges posed by these proposed amendments. Note that the SEC will accept comments during a 60 day period that begins on the date of publication in the Federal Register, although comments on the underlying financial impacts are due to the Office of Management and Budget (“OMB”) within 30 days. Given the breadth of the proposed amendments, as well as the potential for a significant amount of work created for issuers and obligors, comments to both the SEC and OMB are likely to be helpful.

Background

The SEC has indirectly regulated disclosure by issuers and obligors of municipal securities pursuant to the Rule by requiring that the broker-dealers underwriting an issue of bonds obtain a written undertaking from the issuer or obligor to provide certain annual financial data and timely notice of certain events that primarily relate to the offered securities to the Municipal Securities Rulemaking Board’s (“MSRB”) Electronic Municipal Market Access (“EMMA”) website. In addition, in connection with the issuance of the municipal securities, an underwriting broker-dealer must reasonably determine that the issuer or obligor has complied with its prior continuing disclosure undertakings, or accurately disclosed in its Official Statement relating to such securities any failures to comply with such undertakings, within the past five years.

Since 2009, issuers and obligors have increasingly used direct placements as substitutes for publicly offered municipal securities. Direct placements can be beneficial to issuers and obligors for several reasons, including the lack of a requirement to provide the purchaser or lender with an official statement and generally lower transaction costs. Although many such transactions are issued pursuant to the same underlying legal documents as the issuer’s or obligor’s outstanding bonds, many others include additional covenants or other provisions for the benefit of the purchaser or lender, often set forth in a separate continuing covenants agreement or a similar instrument. Currently, there is no regulation which requires either an issuer or obligor or a broker-dealer to post direct placement documentation on EMMA.

A number of market participants, particularly municipal analysts and rating agencies, have called for issuers and obligors to provide disclosure through EMMA regarding these direct placements, since the additional debt has the potential to materially alter the analysis of the issuer’s or obligor’s financial condition. Further, because in certain instances the additional terms and financial covenants agreed to by the issuer or obligor could have a material impact on the rights of the holders of outstanding publicly held bonds, these commentators have also sought to have these terms and financial covenants disclosed. A number of issues and obligors have voluntarily provided the requested information regarding such direct placements to EMMA. However, the SEC has noted that many other issuers and obligors have not made such information regarding direct placements available on EMMA, leading to a lack of information in the market regarding these securities or, in some cases, information “asymmetry” among various market participants.

In addition to information regarding direct placements, the SEC states that some market participants have called for issuers and obligors to provide information to EMMA regarding derivatives, such as interest rate swaps, and capital and operating leases, that is not currently required to be disclosed under the Rule.

The Proposed Amendments

Accordingly, in order to address the lack of publicly available information regarding direct placements and other "financial obligations," the SEC has proposed to amend the Rule to require timely disclosure of "financial obligations of the obligated person, if material" and of any agreement that includes "covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material." In addition, the proposed amendments would require issuers and obligors to provide timely notice of a "default, event of acceleration, termination event, modification of terms or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties." These amendments would apply to continuing disclosure undertakings for municipal securities issued after the effective date of the proposed amendments, and would not be retroactive, in general. The amendment does not provide the elements that would need to be included in a notice filed with EMMA.

Unpacking the Proposed Amendments

Scope of "financial obligations" that must be disclosed. The clear focus of the Release and the proposed amendments to the Rule is provision of continuing disclosure relating to direct placements, but the scope of the proposed amendments is significantly broader than direct placements. The term "financial obligation" is defined to include a "(i) debt obligation, (ii) lease, (iii) guarantee, (iv) derivative instrument, or (v) monetary obligation resulting from a judicial, administrative, or arbitration proceeding." Further, these terms are interpreted broadly in the Release, For example, the Release provides that the term "lease" is intended to include an operating lease or a capital lease, while a "guarantee" is intended to capture a contingent financial obligation of the issuer or obligor to secure the obligations of a third party or of the issuer or obligor itself. Thus, an extremely wide range of obligations, if material, would need to be disclosed to EMMA by issues and obligors if the amendments are adopted, as proposed.

Impact of "materiality" qualifier. A second area of concern is the use of materiality to qualify those events that must be disclosed. This qualification ideally would limit the amount of disclosure that must be provided only to events where there is a substantial likelihood that a reasonable investor would consider such information important in making an investment decision, based on the Basic v. Levinson standard of materiality. However, as was evidenced by the SEC's recent Municipal Securities Disclosure Cooperation ("MCDC") initiative, there is a lack of clear guidance regarding what is material to an investor in the municipal market, leading to a conservative view of materiality and what one market participant has termed "hyper disclosure".

Determining which events are "material" to a reasonable investor could be difficult and, if the SEC does not later concur with the issuer's or obligor's analysis, the consequences can be severe. Thus, use of the materiality standard (without further guidance) to qualify the events that must be disclosed gives rise to the concern that issues and obligors will be required to provide detailed summaries of its direct placements, leases, swaps, for example, or to post in full redacted copies of the underlying documentation, in order to comply with the Rule.

Particular impact on certain municipal sectors. A corollary concern is that for certain sectors of the municipal market, this approach could give rise to a flood of information in an attempt to meet the requirements of the Rule, while not actually providing real insight into the issuer's or obligor's actual financial situation. For example, most airports structure their arrangements with the parties doing business at the airport, such as airlines, rental car companies and concessionaires, through leases. The sheer volume of leases to which a large airport is a party could overwhelm participants in the municipal market, as it is likely that such issuers and obligors will choose to simply post redacted versions of the relevant documents. Similarly, many healthcare systems both own medical office buildings and lease space to third parties, as well as lease other space themselves. The volume of such leases, especially for a large system, also could be substantial. This volume of data (and related workload to assemble such documentation) does not appear to be reflected in the economic analysis performed by the SEC in connection with the Release.

Events "reflecting financial difficulties." One of the themes of the Release is that, the timing of such financial difficulties disclosure under current law is often delayed because it is included in an annual filing, or such disclosure may not include the detail that would be required under the proposed amendments. In the Release, the SEC also notes that certain events that would indicate that the issuer or obligor was experiencing financial difficulties are not currently required to be disclosed under the Rule. Thus, the second added event of the proposed amendments would require an issuer or obligor to provide timely notice of any of the following events: "default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties."

In the Release, the SEC first notes that the qualifying trigger that any of the events must "reflect financial difficulties" should allow issuers and obligors to distinguish between events that do not reflect financial difficulties, such as failure to comply with a covenant to provide notice of a change of address, compared to the failure to replenish a debt service reserve fund. The former is unlikely to be evidence that the issuer's or obligor's ability to pay its obligations when due has been compromised, while the latter could indeed be indicative of financial distress. However, this qualifier, like materiality, has not been clearly defined nor has the SEC provided guidance on how this standard should be interpreted. Note, also, that this requirement will apply to a listed event relating to any of the issuer's or obligor's financial obligations, not solely those entered into after the date of the amendment of the continuing disclosure undertaking required by the Rule, if amended as proposed.

Timing of disclosure of events. The use of certain terms in the proposed amendments will require issuers and obligors carefully to maintain up-to-date data on the status of all of their "financial obligations," as defined by the SEC. For example, use of the term "default," rather than "event of default," intentionally requires disclosure of an event at an earlier point in time than is generally required under the Rule currently, since an "event of default" typically accrues following some notice and cure period, while a "default" is the failure to act or the taking of a prohibited action. Thus, even if a default is cured before it amounts to an event of default, if the default itself reflected financial difficulties, it must be disclosed. This can be contrasted with an acceleration event or termination event, which are typically actions taken once an event of default has occurred, cure rights have been exhausted, and the counterparty has determined to exercise its remedies.

Similarly, a modification of terms is often a negotiated response to a situation which may or may not rise to the level of a default or which may result in the waiver of a default. For example, where an issuer or obligor fails to meet a financial covenant, such as a minimum debt service coverage ratio, but still has adequate financial resources to pay its operating expenses and debt service as and when due, it is not uncommon for the lender and issuer or obligor to agree to a temporary (or permanent) amendment of the covenant in exchange for certain actions, such as engaging a consultant to recommend methods to increase revenues or reduce expenses, or both. Under the proposed amendments to the Rule, any such amendment would need to be disclosed, along with the surrounding terms and conditions relating to the amendment, if such modification of terms "reflects financial difficulties."

A note about responsibilities of broker-dealers. Although most of the foregoing discussion relates to the potential impact on **issuers and obligors** of the proposed amendments to the Rule, the Rule requires **broker-dealers** to have a reasonable basis for concluding that the issuer or obligor has met its obligations under its continuing disclosure undertakings and that any material failures have been disclosed. Under the current list of events that must be disclosed pursuant to the Rule, the scope of a broker-dealer's inquiry is fairly limited and the due diligence necessary to comply with this requirement is relatively straight-forward (though not simple). Under the proposed amendments, broker-dealers would have a far greater scope of events that require disclosure and, therefore, a far more complex due diligence process will be necessary. This is especially critical because the SEC has indicated that simply relying on a certification of the borrower without additional inquiry is not sufficient to discharge the broker-dealer's duties under the Rule. Thus, broker-dealers will need to develop a significantly more robust due diligence process (or cause their counsel to review a wider array of documentation) in order to comply with the Rule if the amendments are adopted as proposed.

Steps to Prepare for the Amendments

As described above, the amendments to the Rule proposed in the Release could have a significant impact on the municipal market, especially upon issuers and obligors, but also on broker-dealers. Set forth below are several actions that issuers, obligors and broker-dealers may wish to consider undertaking in response to this proposal.

Review and Comment. First, the SEC has solicited comments on the proposed amendments to the Rule and on the Release, including comments to both the SEC and OMB on the economic analysis set forth therein. Issuers, obligors and broker-dealers may want to submit comments; for example comments regarding the scope of the proposed amendments, difficulties that parties anticipate in complying with the proposed amendments and suggestions for addressing those difficulties, and comments on the assumptions underlying the SEC's economic analysis. Given the new administration's recent Executive Order restricting the issuance of new regulations, comments on the economic impact of the proposed amendments may require the SEC to undertake a much more exhaustive analysis before the proposed amendments can be adopted. Further, examples of the potential difficulties that these amendments, as proposed, may cause issuers and obligors or broker-dealers may allow the SEC to tailor the proposed amendments more narrowly to achieve the SEC's stated goals, while limiting unintended and unnecessary collateral consequences.

Review Current Arrangements and Disclosure Policies. If the proposed amendments to the Rule are adopted, even in a more limited form, issuers and obligors will need to be prepared to gather and disseminate a considerably wider scope of information regarding their financial obligations than is currently the case. It would likely be prudent for issuers and obligors to review their existing disclosure undertakings and policies and consider what modifications may be necessary to comply with the Rule as amended. Further, because of the potentially broad scope of such requirements, the person or persons responsible for filing event notices with EMMA will need to develop processes and procedures for becoming aware of these additional events in a timely manner, evaluating whether they are material or reflect financial difficulties, and preparing and filing the required notices, generally within 10 business days of the occurrence of the event. It seems likely that the most important and difficult element of this new, wider inquiry will be setting up processes to ensure that the designated person receives timely notice of the new events that must be disclosed.

Similarly, broker-dealers will need to revise their due diligence processes to devise methods of determining whether any of the new listed events have occurred and, if so, whether they were material or reflect financial difficulties and, if so, were adequately and timely reported to EMMA.

Consider Disclosure Standards Under Federal Securities Laws; and What Must Be Included in an Events Notice. Another critical element that must be borne in mind by borrowers is that the requirements of Rule 10b-5, which requires that disclosure be accurate and complete, will apply to each of the event filings. Thus, simply filing a notice with EMMA that a certain event has occurred may not be sufficient, even if such a notice meets the requirements of the applicable continuing disclosure undertaking. Because many, if not all, of the new proposed events require a certain degree of analysis and context to determine whether they are material or reflect financial difficulties, additional disclosure necessary to provide the context of such a determination is likely to be necessary. Disclosure filed with EMMA is subject to the 10b-5 standard and therefore cannot contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which it was made, misleading.

Last Updated: March 23 2017

Article by Michael G. Bailey, David Y. Bannard, Laura L. Bilas, Heidi H. Jeffery and Dana M. Lach

Foley & Lardner

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.

SIFMA Proposes 'Revocable Bids' in Draft Document for Issue Price Rules.

WASHINGTON – The Securities Industry and Financial Markets Association has released draft riders to model bond documents to make it easier for dealers and issuers to comply with issue price rules, including one that would allow revocable bids in competitive sales – a new concept in the municipal market.

SIFMA is seeking industry comments on the draft documents by April 12, hoping to finalize them soon after that to give market participants plenty of time to include them in their policies and procedures before the Treasury Department issue price rules take effect on June 7.

Draft riders are proposed for the three existing SIFMA versions of master Agreements Among Underwriters, the master Selling Group Agreement, the Retail Distribution Agreement, the Bond Purchase Agreement and the Notice of Sale.

“The issue price model documents will help reduce legal costs and regulatory risk while increasing legal certainty,” said Leslie Norwood, managing director, associate general counsel and co-head of SIFMA’s municipal securities division. “They are designed to make it easier for our members to assist their issuer clients in complying with the issue price rules.”

“Part of our goal is to promote understanding of the expectations for all market participants and to promote transparency in the sales terms for issuers, underwriters, as well as financial advisors, to make sure there is no market disruption for transactions that sell on or after … June 7,” she added.

Issue price is important because it determines the yield on bonds and whether an issuer is complying with arbitrage rebate or yield restriction requirements. It also determines whether the subsidy payments for direct-pay bonds such as Build America Bonds are appropriate.

Under existing rules that have been in place for years, the issue price of each maturity of bonds that is publicly offered is generally the first price at which a substantial amount, defined as 10%, is reasonably expected to be sold to the public.

But tax regulators became concerned that some dealers were “flipping” bonds — selling them to another dealer or institutional investor who then sold them again almost simultaneously — with the prices continually rising before the bonds were eventually sold to retail investors. They found that some “reasonably expected” issue prices for bonds were not representative of the prices at which the bonds were actually sold.

So they adopted a new general rule under which the issue price will be the price at which the first 10% of a maturity of bonds is actually sold to the public. If 10% of a maturity is not sold, a special rule can be used under which the issue price is the initial offering price (IOP) as long as the underwriters hold the IOP for five business days after the sale date.

The five-day “hold-the-offering-price” requirement is designed to prevent pricing abuses such as flipping. The lead underwriter must certify the IOP to the issuer, as well as provide documentation, such as the pricing wire. Each underwriter in a syndicate must agree in writing that it will not offer or sell the bonds at a price higher than the IOP for five business days after the sale date.

There is an exemption from the new issue price rules for competitive sales under which an issuer may treat the reasonably expected IOP of the bonds to be the issue price if the issuer obtains a certification from the winning underwriter bidder as to the reasonably expected IOP upon which it based its bid. But this exemption is conditioned on, among other things, the issuer receiving at least three bids from separate underwriters and awarding the bonds to the bidder who offers the highest price or lowest interest cost.

Issuers have the option of using any of these rules up until the closing (issue) date for their bond transactions.

It is in its draft riders to the Notice of Sale for competitive transactions that SIFMA introduces the concept of revocable bids because the exemption to the issue price rules for these deals is contingent on the issuer’s receiving at least three bids for the bonds.

“This is really the most novel part of our documents,” said Norwood. “This is a new concept to the industry where we are trying to assist issuers to get the best possible price within the set of new rules but also have all of the participants understand the terms of the sale.”

There are two draft riders for Notices of Sale, one for revocable bids and one for non-revocable bids.

Under the draft rider to the Notice of Sale called Alternative 1, the bids are revocable. The general idea is the issuer expects to get at least three bids for the bonds but the underwriter doesn’t want the risk that the issuer won’t get the bids it needs for the competitive sale exemption and therefore wants an “out” from its bid.

“This is the least costly alternative if three bids are obtained and the sale qualifies for the competitive sale exemption,” said Norwood.

In this case, if the issuer gets fewer than three bids for the bonds, it goes to the underwriters and asks whether they want to confirm or revoke their bids. If the underwriters revoke their bids, the sale fails. If the underwriters confirm their bids, they do so only after understanding whether the issuer wants them to hold bonds at the IOP for five business days or until 10% of the bond maturities are sold.

Under the draft rider to the Notice of Sale called Alternative 2, the bids would not be revocable. Here, the bidding underwriters know they can’t revoke their bids, so they are put on notice, and they price in the risk that they may be asked to hold the IOP for five days.

"This is the most like current notices of sale," said Norwood. "There will be a higher cost for irrevocable bids because of the risk the underwriter may have to hold them at the IOP for five days."

These standardized Notices of Sale should "facilitate the understanding of sales terms and help issuers obtain as many bids as possible on the bid date in competitive deals," said Norwood, who noted dealers are more likely to bid with easy to understand and standardized documents.

Draft riders are proposed for SIFMA's three versions of AAUs, which are agreements between the managing underwriters and syndicate members. One is an electronic master AAU for negotiated deals published in 2002 and another is an electronic master for competitive deals issued that same year. The third is a paper AAU that can be used on a per-transaction basis.

The draft riders essentially say that if underwriters don't sell up to 10% of a maturity, they must promptly report that to the managing underwriter and that if the managing underwriter decides that syndicate members must hold the IOP of the bonds for five business days, the syndicate members will abide by that. The draft makes clear that if any underwriter fails to comply with the hold-th--price rule, it alone will be liable for that, and not the other underwriters.

Draft riders are proposed for retail distribution agreements, which are agreements between underwriters and retail distributors, in negotiated deals. Basically, retail distributors have the same responsibilities as underwriters under these riders.

Riders are proposed for selling group agreements, which are for the group of dealers selling the bonds.

SIFMA is also proposing inserts for bond purchase agreements between issuers and underwriters. Typically issuers have their own bond purchase agreements so that's why SIFMA's providing an insert. In the draft, SIFMA says the model issue price certificate, which is being drafted by the National Association of Bond Lawyers and may be issued next week, will be attached to the bond purchase agreement.

"We want to encourage and facilitate early discussions between issuers and underwriters about the expectation of how the issue price will be determined," said Norwood. Often underwriters will pre-sell or get indications of interest for bonds, letting them know if they can sell 10% of a maturity on the sale date or not in negotiated deals, she noted.

The Bond Buyer

By Lynn Hume

March 29, 2017

NAMA Wants MSRB to Withdraw Proposed Muni Advisor Advertising Rule.

WASHINGTON – The National Association of Municipal Advisors is urging the Municipal Securities Rulemaking Board to withdraw its proposed rule on MA advertising.

If it does not abandon the rule, the MSRB must make a slew of changes to it, said NAMA, many of which dealer groups and other MAs are also requesting.

NAMA and the other groups and market participants made their comments to the MSRB on its proposed new Rule G-40 on MA advertising, as well as proposed revisions to its existing Rule G-21 on dealer advertising to align it with the Financial Industry Regulatory Authority's Rule 2210 on communications with the public.

The MSRB released the proposals in mid-February, saying the new requirements would reinforce protections for investors and issuers as well as standardize requirements for dealers and MAs. Susan Gaffney, NAMA's executive director, said in the group's comment letter, that the goal of protecting the public and potential MA clients is already covered in the MSRB's Rule G-17 on fair dealing, which makes the "present proposal unnecessary." Gaffney also wrote that G-40, which would carry many of G-21's provisions over to MAs, fails to differentiate between the "products" that underwriters and investment advisors offer to retail customers and the "services" that MAs generally provide to their issuer clients.

If the MSRB decides to pursue the rule, Gaffney said, one of the "significant changes" that would have to be made would be bifurcating the rule to separately cover products and services to "better acknowledge different types of advertising." The bifurcation would be necessary because "the clear majority of MAs … only conduct professional services advertising" instead of product advertising.

Rule G-40, as proposed, would be substantially similar to Rule G-21 but specific language would be altered so it is aligned with MA practices. It would apply to advertisements by non-solicitor and solicitor MAs and would define advertisement as any promotional literature distributed or made generally available to a municipal advisory client by an MA. Similarly to the amended G-21, G-40 would exclude certain documents from the definition of advertisement such as official statements, preliminary prospectuses, and registration statements.

NAMA is asking that "general information exclusions" listed in Securities and Exchange Commission guidance on the MA Rule be exempted from the definition of advertising. Such exclusions would include things like: information regarding a person's professional qualifications or prior experience; general market and financial information; and factual information describing various types of debt financing structures.

The MA group is also asking that requests for proposals and qualifications be excluded from the definition along with client lists, testimonials, and case studies in certain forms. Public Financial Management and PFM Financial Advisors echoed those requests in a separate comment letter saying much of that information does not include commentary or clients' opinions but instead gives examples of the types of work that an MA has done in serving its clients.

Both PFM and NAMA said that the MSRB should eliminate the "content standards" section of proposed Rule G-40, which requires advertisements to be based on fair dealing and good faith, because that principle is already in Rule G-17.

NAMA is additionally asking that the proposed rule, which would allow an MA to say it is registered with the MSRB, also allow an MA to indicate it is registered with the SEC.

The MSRB needs to give clear guidance on how the proposed rule would apply to MA firm websites and social media platforms, NAMA said.

The Securities Industry and Financial Markets Association and Bond Dealers of America overlapped somewhat with the MAs in their comment letters, but both dealer groups focused the majority of their letters on what they said was the MSRB's failure to properly harmonize G-21 with FINRA Rule 2210.

SIFMA said it is pleased that the MSRB is leveling the regulatory playing field between dealers and MAs, but requested a full harmonization between G-21 and Rule 2210 as well as a clarification that application of G-21 and G-40 to dealers would be based on a firm's activities and not just on its registration as a dealer.

Leslie Norwood, managing director and associate general counsel with SIFMA, suggested that the MSRB incorporate Rule 2210 in G-21 by reference to alleviate dealer concerns about the burdens that would come from complying with differing requirements in the muni and corporate space. She also included numerous changes and considerations for the MSRB if it decides to more fully harmonize the two rules short of incorporating 2210.

One necessary area for change according to Norwood and Mike Nicholas, chief executive officer of BDA, is to abandon the "one-size-fits-all" definition of advertisement in Rule G-21 in favor of the three categories FINRA uses for communication: institutional, retail, and correspondence. That breakdown would allow firms to establish uniform procedures for communicating with the different sectors of the market and include requirements, like principal approval, needed to accompany each, the groups said.

Both dealer groups also laid out certain exceptions from the rule they said were necessary, including: private placement memoranda and limited offering memoranda; testimonials; investment analysis tools; and illustrations.

The Bond Buyer

By Jack Casey

March 27, 2017

BDA Comment Letter: MSRB Request for Comment on Amendments to MSRB G-21 and Advertising Standards for Municipal Advisors (MSRB G-40).

The MSRB has released a request for comment on proposed amendments to MSRB G-21 standards applicable to dealers and to establish proposed MSRB G-40, an advertising standard for municipal advisors.

BDA's comment letter is here.

BDA Comment Letter Summary

- BDA urges the MSRB to harmonize MSRB G-21 with FINRA 2210, which has different requirements for retail, institutional, and correspondence communication
- BDA urges MSRB to exempt institutional communications and correspondence from the proposed principal approval requirement of G-21
- BDA urges MSRB to exempt municipal advisor advertisements from the proposed principal approval requirement of proposed MSRB Rule G-40
- BDA states that the proposed testimonial prohibition in both G-21 and G-40 is unwarranted and not harmonized with FINRA 2210
- BDA urges MSRB to exclude free writing prospectuses from the proposed definition of "correspondence"

BOND DEALERS OF AMERICA

MARCH 27, 2017

TAX - OHIO

State ex rel. Delaware Joint Vocational School Dist. Bd. of Edn. v. Testa

Supreme Court of Ohio - March 8, 2017 - N.E.3d - 2017 WL 939001 - 2017 -Ohio- 796

Joint vocational school district board of education sought writ of mandamus to compel State Tax Commissioner to apply reduction factors and calculate tax rates on levy that school district had sought to renew.

The Supreme Court held that Commissioner had no such duty absent valid election result ascertained and announced by proper authority.

There was no valid election result ascertained and announced by proper authority, and thus State Tax Commissioner had no duty to apply reduction factors and calculate tax rates for levy for multicounty joint vocational school district, where board of elections in largest county included in school district failed to send resolution to boards of elections in other counties that were part of district, levy was never voted on in those counties, and board of elections did not certify election results using form prescribed by Secretary of State and failed to list final vote totals of each county in school district.

Webinar: Acting on Non-Revenue Water - All Flows are Cash Flows

Date: 13 April 2017 – 1:00 PM Eastern Daylight Time

CEC: A certificate of attendance will be offered.

Duration: Approximately one hour. Free to attend.

Presented by:
Andy Moore, Product Manager, Neptune Technology Group
Will Jernigan, P.E., Director of Water Efficiency, Cavanaugh

Description:
In this webinar from Neptune Technology Group, learn how to address your water utility's "pain points" regarding Non-Revenue Water – financial implications, customer pressures, water scarcity and government regulations. Work flows, meter flows, and the flow of information all affect your water utility's bottom line: cash flows.

On this journey, you'll have a guide that understands the daily challenges you face, while offering concrete actions that provide real solutions. Monitor your system to recapture apparent and real water losses. Proactively address leaks across your water distribution network. And share data across departments to save time, labor, and money.

Register.

Senate Bill Would Allow SEC to Impose Higher Securities Law Fines.

WASHINGTON — The Securities and Exchange Commission would be able to impose much higher penalties on individuals and entities that violate securities laws under bipartisan legislation proposed on Thursday in the Senate.

The bill, called the Stronger Enforcement of Civil Penalties Act of 2017, was introduced by Sens. Jack Reed, D-R.I., Chuck Grassley, R-Iowa, Patrick Leahy, D-Vt., and Heidi Heitkamp, D-N.D. It was referred to the Senate Banking Committee.

Under the bill, individuals charged with the most serious securities law violations would face a penalty that would be the greater of: $1 million; three times the monetary gain; or the losses incurred by the victims of the violation, according to a description released by the senators. Entities charged with those serious violations would face a penalty that is the greater of: $10 million; three times the monetary gain; or the losses the victims of the violations incurred.

The SEC would also be able to triple its fines against recidivists that have committed criminal or civil securities fraud within the previous five years.

Grassley said he welcomes the increased penalties for repeat offenders that the bill would provide.

"That step should help change the dynamic of business as usual," he said. "A penalty should mean something, and it should get the recidivists' attention."

The SEC can currently only penalize violators in cases up to $181,071 per offense for individuals and $905,353 for institutions, according to the release on the bill. The SEC can also calculate penalties to equal the amount of ill-gotten gains if the enforcement action is filed in federal court, but cannot do so if it is filed in an administrative proceeding. The legislation would allow the SEC to assess the penalties for cases in both federal court and administrative proceedings.

"This bill strives to make potential and current offenders think twice before engaging in misconduct by increasing the maximum civil monetary penalties permitted by statute, directly linking the size of the maximum penalties to the amount of losses suffered by victims of a violations, and substantially raising the financial stakes for repeat offenders of our nation's securities laws," the senators said in their joint release.

Reed said that "investors deserve real protection, and the law needs to change to ensure the punishment fits the crime."

“This bill gives the SEC more tools to demand meaningful accountability from Wall Street,” he said.

The maximum penalties under the bill for each second tier violation of securities laws would be the greater of $100,000 or the total monetary gain for individuals and the greater of $500,000 or the total monetary gain for entities. First tier violations, the least serious of the three tiers, would be the greater of $10,000 or the total monetary gain for individuals and the greater of $100,000 or the total monetary gain for entities.

The bill would also give the SEC authority to pursue civil penalties for violations of prior injunctions obtained under the securities laws. Each violation of an injunction or order would be deemed a separate offense, but in the event of a continuing failure to comply, each day of continued failure would be considered a separate offense.

The Bond Buyer

By Jack Casey

March 30, 2017

The Future of the Great Lakes Region: Urban Institute Report

Abstract

The Great Lakes region—home to 50 million people in Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin—has become a fixture in our national political discourse. Many of the country’s social, economic, and political challenges are being played out here.

Despite a decade of job loss, demographic shifts, and falling household incomes, evidence suggests the area has strong foundations capable of sustaining future growth and prosperity. By building on these strengths, the Great Lakes region can rewrite its Rust Belt narrative as a story of resurgence.

Outlined below are key findings from the Urban Institute report The Future of the Great Lakes Region, which offers a glimpse into the region’s past and future challenges and promise. This report provides a comprehensive analysis of recent economic, demographic, and social trends in the region, coupled with projections on how those trends will play out between now and 2040.

Manufacturing collapse, but steady population and economic growth

- From 2000 to 2010, manufacturing jobs in the region fell 35 percent, a loss of nearly 1.6 million jobs.
- Overall, though, the region added 1.2 million jobs from 2000 to 2015. But the growth was mainly in low-wage jobs.
- Sixteen percent of Great Lakes residents were ages 65 and older in 2015. From 1990 to 2015, the region’s white and native-born population was stable or declined, but African American, Hispanic, other non-white, and foreign-born populations grew rapidly. The region is still less diverse than other states were in 2000.

  Gradual population growth and labor force stabilization
- By 2040, the region is expected to grow by 3.2 million people. Births will outnumber deaths until around 2030.

- Standing at 8 million today, the senior population will reach 13 million by 2040. Younger age groups will shrink over this period, however, because of out-migration and lower birth rates.
- The labor force will shrink because of early retirement and out-migration of workers in their 30s and 40s, but young people will continue to enter the labor force.
- Although fewer manufacturing jobs exist, remaining industries will still be a major source of employment and high wages.

Challenges and promise

- From 2000 to 2010, median household incomes fell more dramatically in five of the six Great Lakes states than in the entire United States.
- More workers will have associate's and four-year college degrees, but this increase will be held back by disparities between African Americans and Hispanics on one hand and whites and Asians on the other.
- In addition to racial and economic segregation, demographic change and economic stress have reduced the vitality of rural, suburban, and urban communities.

Toward future prosperity

To improve the quality of life and economic mobility for Great Lakes residents, decisionmakers should

- Encourage young families with children to stay in the region to sustain population levels through more targeted investments;
- Welcome and integrate immigrants and their children into the community;
- Prepare young adults to enter the labor force; and
- Ensure workforce development systems upgrade worker skills, because manufacturing will continue to be a major source of jobs and high-wage employment.

Read the full report.

The Urban Institute

by Rolf Pendall, Erika C. Poethig, Mark Treskon & Emily Blumenthal

March 23, 2017

California Taps Investors' Craving for Yield With Tobacco Bonds.

- Tobacco debt beat the market four times in past five years
- Buyers snap up bonds after Trump rout as yields scarce

California's taking advantage of investors' taste for tobacco.

Tobacco bonds are returning 10 percent this year, over seven times that of the municipal market as a whole, as buyers itching for yield pick up the securities and drive prices higher. California on Thursday plans to sell $619 million to refinance a portion of a deal from a decade ago.

The new securities, which are backed by payments from tobacco companies under a settlement based on nationwide cigarette shipments, come just days before smokers in California will see state taxes on each pack jump to $2.87 from 87 cents on April 1.

“This is probably the top” of the market for tobacco bonds, said Alan Schankel, a managing director at Janney Montgomery Scott. “There’s not a lot of supply. Yields are hard to find.”

Tobacco bonds have been rallying since a rout in November sparked by Donald Trump’s presidential victory forced fund managers to sell the securities to meet redemptions. Tobacco bonds have outperformed the overall market four of the past five years, according to S&P Municipal Bond Indices.

Municipal high-yield funds have seen inflows for the past 11 consecutive weeks, according to Lipper US Fund Flows data. New York took advantage of the improved appetite in January by selling $1.1 billion in tobacco refunding bonds. Some of the securities have since traded with less in extra interest, or spread, indicating demand.

The securities come with unique risk. Higher cigarette taxes have contributed to declines in smoking, and nine states are considering raising them, according to an analysis by forecasting firm IHS Global Inc. The fewer cigarettes the tobacco companies sell, the less in revenue the governments get to pay bondholders.

The firm projects cigarette consumption to drop by an average of 3.1 percent annually through 2029. National shipments of cigarettes in the year ended in December totaled 258 billion, a 28 percent decline from 2007, bond documents show.

S&P Global Ratings gave an A rating, the sixth-highest level, to the California securities maturing through 2020, and rated the longest maturities three steps lower at BBB, based partly on the credit quality of the two largest participating tobacco manufacturers, Altria Group Inc. and Reynolds American Inc.

The refinancing would lower the overall 2007 deal’s carrying costs, which would improve the performance of the bonds not being taken out, said New York-based underwriter Ramirez & Co., which is working on the transaction.

The bulk of the offering isn’t being refinanced, demonstrating there are limited arbitrage opportunities, noted Janney’s Schankel. With the market expecting the Federal Reserve to continue raising rates this year, states are facing a smaller window to retire higher-cost tobacco bonds.

Last year, $474 million in bonds were issued, compared with $2.7 billion in 2013, data compiled by Bloomberg show.

“They’re squeaking out these refundings,” Schankel said.

Bloomberg Markets

by Romy Varghese

March 28, 2017, 9:39 AM PDT

State Funding Squeeze Could Mean “Ultimate Financial Disaster” for Michigan Communities.

Michigan cities and towns are hurting for cash. Many have had to cut services like street and sidewalk repair. Some have had to reduce the size of their police and fire departments.

The usual suspects of municipal finance woes—weak property tax revenues and rising employee retirement costs—share much of the blame.

But today there is another culprit: the state of Michigan itself.

For years, the state Legislature has been claiming a bigger share of revenue from the statewide 6% sales tax. Facing their own budget problems, decision makers in Lansing have shifted the financial stress to the local level.

According to the Michigan Municipal League, municipalities lost out on more than $6 billion because of reductions in revenue sharing from 2001 to 2014.

Marcus Peccia is city manager of Cadillac, Michigan. Peccia said his city of around 10,000 people has lost more than $4.5 million in revenue from the state since 2001.

In a city with an annual general fund of just $6.5 million, that has had a huge effect.

"We're down to essentially one operational crew from our public works department year-round," Peccia said. "And so, especially in the winter, with winter conditions, it makes it more difficult for us to provide the same level of services that we want to provide and that our citizens expect."

Peccia said that it can take up to five days to clear snow off the streets after a snowstorm, far longer than in past years. In the snowy northwest of the Lower Peninsula, that can mean the streets aren't even fully plowed before the next snowfall arrives.

(Subscribe to the Stateside podcast on iTunes, Google Play, or with this RSS link)

Hamtramck, a city of 20,000 located in the Detroit metro area, has also felt the funding squeeze.

"From 2003 to 2014, we lost about $13.3 million," said Hamtramck Mayor Karen Majewski. "That's almost the equivalent of a full year's general fund budget for us."

Hamtramck's budget issues lead to the city being taken over by a state-appointed emergency manager in 2013.

While the city's finances are in better shape since coming out of emergency management in 2014, the situation remains far from ideal. Some local residents have even taken charge of filling the city's potholes themselves.

Both Majewski and Peccia reported that their local representatives in Lansing are aware of the municipal funding problems. But the message does not seem to have reached the entire Legislature.

In recent months, there have been several proposals to cut state income taxes, in some cases to zero. At the same time, the governor hopes to increase the size of the rainy-day fund, which already holds more than $500 million.

The purpose of the fund is to avoid budgetary crises in the future. But for local leaders like Peccia and Majewski, who have been battling shrinking budgets for years, such proposals seem counterproductive at best.

"To have a rainy day fund at that magnitude that's being proposed and being talked about, in combination with also reducing the income tax levy, I think that could potentially be a combination or a mixture for ultimate financial disaster and ruin for many more communities across this state," Peccia said.

By STATESIDE STAFF & NICK WALLACE • MAR 29, 2017

Score NFL Raiders' Departure to Vegas a Touchdown for Oakland.

- Football team exit means less expenses for regional agency
- Cost of new arena to keep Raiders may have outweighed benefit

The Oakland Raiders' slogan is "Just Win, Baby." For the San Francisco area community that hosts the National Football League team, it may as well be "Just Leave, Baby."

The team's departure will help narrow the annual losses for the municipal agency running the stadium by eliminating its game-day expenses and the risk the city of Oakland and surrounding Alameda County could incur more debt and bills to keep the franchise.

"It's never better to lose an NFL team," said Scott McKibben, executive director of the Oakland-Alameda County Coliseum Authority, which owns the sports complex. "But in terms of pure dollars and cents, operationally, it's to our benefit."

The Raiders, a franchise famed for its dedicated fans, have decamped from Oakland before, playing in Los Angeles from 1982 until returning in 1995. This time the team is headed to Las Vegas, lured by a new arena financed with the largest public subsidy in pro-football history.

Across the country, the cost of hosting professional sports has strained municipal finances, from spring-training facilities in Glendale, Arizona, to the NFL stadium in Indianapolis. While some governments such as Nevada continue to woo teams through public resources for new venues, others have curbed their enthusiasm.

San Diego has seen its credit improve after its professional football team announced its departure for Los Angeles following voters' rejection of increased taxes to fund a replacement arena.

Indeed, a municipal bond issued by the Oakland coliseum authority is priced at the same spread over benchmark debt as seen on Jan. 19, the day the team officially filed to move to Las Vegas. The agency sold $198 million of debt in 1995 to lure the Raiders back to Oakland with a renovated complex. The securities were refinanced in 2012.

The Raiders were never obligated to pay any of the debt service, which totaled about $13 million in the last fiscal year. Adding to the strain on the authority's finances, the team doesn't pay for game-day expenses, such as security officers, said McKibben.

He expects the gap between the cost of hosting Raiders games and the revenue from rent, beer sales and parking fees to saddle the authority with at least a $1 million loss for the coming season. The shortfall may grow as the Raiders, which may leave after 2018 when the new venue in Las Vegas is complete, lose fans and fewer attend games, he said.

The city and county each commit to paying half of the authority's costs and debt service. Last fiscal year, their contributions totaled $22 million. The $83 million in outstanding bonds for the Raiders' stadium, which mature in 2025, remains their obligation no matter the team's location.

Local officials did vie to keep the Raiders, with Oakland Mayor Libby Schaaf pledging land and $200 million in municipal bonds backed by tax revenue generated by a new arena. The fact the team spurned it in favor of a more expensive and bigger facility in Las Vegas takes away a risk to the city, said Jenny Poree, senior director at S&P Global Ratings.

"We think the economic impact to the city is pretty minimal relative to what the additional debt and potential additional costs would have been," she said.

Las Vegas and its surrounding Clark County won't see a significant financial hit based on how that deal is structured, she said. An increase in hotel taxes provides the public subsidy, and although Clark County is pledging its general-obligation credit as a backstop, its strong financial characteristics would leave its rating unaffected.

Oakland's loss of the Raiders may not translate to a windfall for Las Vegas and Clark County either, said Eric Hoffmann, senior vice president at Moody's Investors Service.

"There's really very little evidence that professional sports teams have a material economic effect on either a local economy or municipal government," he said.

Bloomberg Markets

by Romy Varghese

March 31, 2017, 2:00 AM PDT

[Government Data Startup ClearGov Gets a Boost with New Funding.]

[ClearGov], a startup company that uses data to make sense of municipal finance for taxpayers and public officials, said this week it has raised its largest venture-funding round yet: $1.2 million from Boston-based Kepha Partners and quasi-public venture capital firm MassVentures.

The Hopkinton-based tech startup was founded in late 2015 by Chris Bullock, a data analytics expert who previously had founded a legal-focused startup after working at the Nasdaq Stock Market. Bullock said he was inspired to build the company, which has a total of 10 employees, after he found himself looking for information related to a vote to build a new elementary school in his town. When he went to understand the finances of the town, he discovered the town's website was not helpful: He found a sizable, downloadable PDF document outlining the town's finances, but not much else.

"Most importantly, there was no context to the data," said Bullock. "I can see the town spends $55 million on education. That's just a big, amorphous, meaningless number."

So he began to form the company, which focuses on benchmarking and comparing municipal financial data for residents — all of this data giving taxpayers a transparent, customizable view into their town's finances.

"We go out and gather data from state, local and national entities and scrub and clean and normalize it," he said. Then that data is transformed into infographics, so that taxpayers will be able to see "where the money is coming from and where it's going."

ClearGov makes money by charging towns or cities an annual subscription fee. So far, there are about 100 municipalities in five states paying for the service on its website (Brookline is one of the company's paying customers). But ClearGov has more than 20,000 cities and towns displayed out of 89,000 municipal entities across the United States. Municipalities can communicate to residents on the site about budget details and the towns can also access data about its own finances.

"Most people don't trust what they don't understand," said Bullock, who declined to disclose revenue. "There's a lot of misperceptions out there. When I started meeting with local government officials, one thing that struck me is these are normal people who want to do the right thing. They want to battle waste. They're doing that, but they don't have a great way to communicate that."

Bullock will use the new funding to build up ClearGov's sales and marketing team "and expand our data reach and also develop new technologies," he said. He hopes to double the startup's headcount in the next year.

Boston Business Journal

Mar 30, 2017, 7:16pm EDT

David Harris oversees the Boston Business Journal's digital content.

U.S. Municipal Bond Sales Down 10 pct in First Quarter.

March 31 (Reuters) – Debt sales by states, cities, schools and other issuers in the U.S. municipal market slumped 10.1 percent to $85.87 billion in the first quarter of 2017, compared with the same quarter last year, according to preliminary Thomson Reuters data on Friday.

Refundings of existing bonds totaling $44.7 billion slightly outpaced new money issuance of $41.16 billion.

In March, issuance of $29.8 billion was up from $21.8 billion in February, but lagged March 2016's $40.9 billion supply.

In the coming week, sales of bonds and notes are estimated at nearly $7.5 billion.

Next week's biggest deal is a $778 million Massachusetts general obligation bond issue pricing through Citigroup on Thursday.

The deal includes $400 million of bonds with serial maturities in 2032 through 2037 and term bonds due in 2042 and 2047, according to the preliminary official statement.

Nearly $277.6 million of refunding bonds are due in 2017 and from 2022 through 2027. Green bonds totaling $100 million carry serial maturities from 2023 though 2027 and in 2037, as well as a 2047 term maturity.

Meridian Health will sell $620 million of new and refunding revenue bonds through the New Jersey Health Care Facilities Financing Authority. Bank of American Merrill Lynch is scheduled to price the bonds on Wednesday.

Flows into U.S. municipal bond funds perked up in the week ended March 29. The funds reported net inflows of $265 million, up from $173.5 million in the prior week, according to Lipper, a unit of

Thomson Reuters. (Reporting by Karen Pierog; Editing by Jeffrey Benkoe)

Can Government Incentives Boost Green Bond Growth?

Government incentives to boost issuance?
Despite the rapid growth seen across the green bond market, it may not be enough to meet the climate goals set out by governments globally. In addition to creating clear definitions and standards to promote market confidence and transparency, government incentives may also be needed to spur further growth. Tax advantages for investors, similar to the benefits individual investors in U.S. municipal bonds receive, may be one option governments can explore. Alternatively, direct subsidies to issuers, preferential treatment for green bonds that are held on bank balance sheets, or preferential withholding tax rates are other avenues worth exploring. A massive increase in issuance, as well as a robust secondary market and additional ways for investors to access green bonds, are essential for continued market growth.

What can add to further growth?
In order for the green bond market to expand further, government roles are vital. Government policies and standardizations will lead to more transparency in the green bond market and thus reduce the issuance of unlabeled bonds. The proceeds from green bonds are needed to fund and finance projects to mitigate climate-related risks.

The proceeds from these bonds have been used in various environmental projects, as you can see in the above graph. Green companies earn 50%–100% of their revenues from clean technologies such as renewables (QCLN) and energy efficiency (IEO).

You can get exposure to the clean energy industry by considering the VanEck Vectors Global Alternative Energy ETF (GEX), the PowerShares WilderHill Clean Energy ETF (PBW), and the iShares Global Clean Energy (ICLN).

Some governments have gotten involved in supporting and developing the standards of the green bond market. A research paper by the OECD (Organisation for Economic Co-operation and Development) stated that in 2015, Switzerland was the first national government member of the Climate Bonds Partners to show support in the development of the Climate Bonds Standard.

José Ángel Gurría, the secretary-general of the OECD, stated in a research paper on green bonds, “Government policies can play a central role in influencing how private capital is mobilised and shifted. It will only be green if the investment landscape is supportive.”

Governments can add to the growth of the green bond market by mobilizing and making efficient use of public capital. That could lead to a faster transition to a low-carbon economy.

By VanEck | Mar 31, 2017

SIFMA Releases Muni Issue Price Model Documents for Industry Comment.

New York, NY, March 30, 2017 – SIFMA today released draft municipal security issue price model documents in an effort to aid industry market participants in compliance with the new Treasury Department issue price rules for municipal securities, which become effective on June 7, 2017.

"The issue price model documents will help reduce legal costs and regulatory risk while increasing legal certainty," said Leslie Norwood, managing director, associate general counsel and co-head of SIFMA's Municipal Securities Division. "They are designed to make it easier for our members to assist their issuer clients in complying with the issue price rules and in understanding the expectations of market participants while promoting transparency of sales terms for both issuers and underwriters."

The draft model documents include model riders to the Master Agreement Among Underwriters, Master Selling Group Agreement, Retail Distribution Agreement, Model Bond Purchase Agreement and the Notice of Sale.

SIFMA welcomes industry comments on the model documents between now and April 12, 2017, after which the documents will be finalized, issued to SIFMA members and posted on SIFMA's website for broad industry use.

The model documents are available here.

Release Date: March 30, 2017

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

GFOA Advisory: Pension Obligation Bonds.

Advisory:
GFOA Advisories identify specific policies and procedures necessary to minimize a governments exposure to potential loss in connection with its financial management activities. It is not to be interpreted as GFOA sanctioning the underlying activity that gives rise to the exposure.

Background:
Pension obligation bonds (POBs) are taxable bonds1 that some state and local governments have issued as part of an overall strategy to fund the unfunded portion of their pension liabilities by creating debt. The use of POBs rests on the assumption that the bond proceeds, when invested with pension assets in higher-yielding asset classes, will be able to achieve a rate of return that is greater than the interest rate owed over the term of the bonds. However, POBs involve considerable investment risk, making this goal very speculative.2 Failing to achieve the targeted rate of return burdens the issuer with both the debt service requirements of the taxable bonds and the unfunded pension liabilities that remain unmet because the investment portfolio did not perform as anticipated. In recent years, local jurisdictions across the country have faced increased financial stress as a result of their reliance on POBs, demonstrating the significant risks associated with these instruments for both small and large governments.

Recommendation:
The Government Finance Officers Association (GFOA) recommends that state and local governments do not issue POBs for the following reasons:

1. The invested POB proceeds might fail to earn more than the interest rate owed over the term of the bonds, leading to increased overall liabilities for the government.
2. POBs are complex instruments that carry considerable risk. POB structures may incorporate the use of guaranteed investment contracts, swaps, or derivatives, which must be intensively scrutinized as these embedded products can introduce counterparty risk, credit risk and interest rate risk.3
3. Issuing taxable debt to fund the pension liability increases the jurisdiction's bonded debt burden and potentially uses up debt capacity that could be used for other purposes. In addition, taxable debt is typically issued without call options or with "make-whole" calls, which can make it more difficult and costly to refund or restructure than traditional tax-exempt debt.
4. POBs are frequently structured in a manner that defers the principal payments or extends repayment over a period longer than the actuarial amortization period, thereby increasing the sponsor's overall costs.
5. Rating agencies may not view the proposed issuance of POBs as credit positive, particularly if the issuance is not part of a more comprehensive plan to address pension funding shortfalls.

Committee:
Retirement and Benefits Administration

Notes:
1 The Tax Reform Act of 1986 eliminated the tax exemption for pension obligation bonds.

2 Alicia H. Munnell, Jean-Pierre Aubry, and Mark Cafarelli, "An Update on Pension Obligation Bonds," Center for Retirement Research at Boston College, July 2014.

3 See GFOA Advisory – Using Debt-Related Derivatives and Developing a Derivatives Policy (2015)

Approved by GFOA's Executive Board:
January 2015

Illinois Governor Vetoes Chicago Pension Fix, Angers City's Mayor.

CHICAGO — Illinois Governor Bruce Rauner on Friday vetoed a legislative fix favored by Chicago Mayor Rahm Emanuel for two of the city's struggling pension funds and castigated it as a "kick-th--can approach."

The financial footing and credit ratings for the nation's third-largest city have slipped precipitously as its unfunded pension liabilities grew to $33.8 billion for Chicago's four retirement systems in the most recent accounting.

The plan that passed the Illinois Senate unanimously in January and cleared the House overwhelmingly last December would have granted the state's blessing to alter the city's pension repayment schedule for its municipal and laborers' retirement systems.

The systems are projected to run out of money in the coming decade and were depending on legislative sign-off of the city's enactment of a water and sewer usage tax and telephone surcharge designed to help get them 90 percent funded in 40 years.

City officials have acknowledged that more money will be needed starting in 2023 when payments will reach actuarially required levels.

But Rauner rejected the package, saying it created a payment schedule that eventually would necessitate a tax increase for Chicago. He said it needed to be part of a broader, statewide pension funding strategy to address Illinois' $129.8 billion unfunded pension liability.

"This is another kick-the-can approach to pension funding that landed Chicago in fiscal crisis in the first place," Rauner said in a prepared statement. "This bill will create an unsustainable funding schedule that will lead to tax increases without solving the real problem."

A spokesman for the Democratic mayor slammed the Republican governor's action as an "irresponsible and irrational decision."

"Instead of helping secure the future of our taxpayers and middle-class retirees, the governor chose to hold them hostage – just as he has done to social service providers, schoolchildren and universities across the state," Emanuel spokesman Adam Collins said in a statement, referring to Rauner's inability to broker a state budget deal for 21 months.

Rauner's action left Democrats with no ability to block his veto because the pension bailout passed in the previous session of the state General Assembly, which ended in mid-January, and the governor's only options were to approve or reject the measure.

But the city is pinning its hopes on an identical piece of legislation that passed the newly seated state Senate in late January and is awaiting action in the House, Collins said.

By REUTERS

MARCH 24, 2017, 6:18 P.M. E.D.T.

(Editing by Matthew Lewis)

Gov. Rauner Vetoes Overhaul of Chicago City Pension System.

SPRINGFIELD, Ill. — Illinois Gov. Bruce Rauner vetoed legislation Friday that Chicago officials hoped would bolster the city's sagging pension systems.

The Republican criticized the plan as too limited and argued the state should tackle the state's onerous pension debt while shoring up municipal retirement accounts.

"It's like trying to fix a drought with a drop of rain," Rauner said in his veto message. "We see pension funding challenges throughout the state. 'One-off,' short-sighted approaches won't really fix the problem."

Rauner forecast the action in January, when he announced disapproval of the plan after it sailed out of the state Senate unanimously.

It was intended to deal with laborers' and municipal workers' pension accounts. Fire and police systems are separate.

The plan would have required new employees pay 11.5 percent of their paychecks toward retirement, up from 8.5 percent. The city would have tripled its contributions to the programs in part with increases on water and sewer services.

“The governor continues to make one irresponsible and irrational decision after another,” Adam Collins, spokesman for Chicago Mayor Rahm Emanuel, said in a statement. He said lawmakers overwhelmingly approved the legislation “because it improves our fiscal stability for taxpayers and shores up pensions for thousands of retirees who earned them.”

Collins noted that financial rating agencies revised the city’s credit outlook last fall, pinning hopes on the plan. Without it, the accounts go broke as early as 2025.

Rauner indicated Friday he wants to combine Chicago pension fix with a long-awaited overhaul of the state’s five employee pension programs, which are a combined $130 billion short of what they need to cover all obligations.

He has been urging the Senate to separate its pension plan from the compromise budget deal known as the grand bargain so that a funding fix can get underway sooner. That legislation includes extra money for Chicago Public Schools to get the system through the school year.

By THE ASSOCIATED PRESS

MARCH 24, 2017, 6:57 P.M. E.D.T.

Michigan Senate OKs $5M Sinkhole Loan, Allots Flint Funds.

LANSING, Mich. — The Michigan Senate on Wednesday approved a $5 million interest-free state loan to help repair a large sinkhole in suburban Detroit, narrowly rejecting a call to stick with a House plan that would instead give Macomb County a $3 million infrastructure grant.

The midyear budget bill , which also would formally allot $100 million in federal aid toward Flint’s water crisis, cleared the Republican-controlled chamber 36-1. Democrats and some Republicans from Macomb County and elsewhere unsuccessfully tried to reinstate the proposed grant, which had been overwhelmingly endorsed by the GOP-led House last week.

“It’s their problem to solve,” Republican Senate Majority Leader Arlan Meekhof said of Macomb County. “I’m happy to give them a no-interest loan, which we did. But I’m not interested in having the line out my door go forever for people that want to get in line for free money for their infrastructure.”

A broken sewer line caused the football field-sized sinkhole on Christmas Eve in Fraser. Three houses had to be condemned and a major road has been closed.

Macomb County Public Works Commissioner Candice Miller, a former Republican congresswoman, called Meekhof “pompous and arrogant” and accused him of standing in the way of a project designed to keep raw sewage out of 150,000 basements and the Great Lakes.

“He has the wrong job title. He’s not a leader,” she said in a statement that also credited the House and the governor’s office. “Term limits can’t come fast enough for some people. … If I had $5 million to pay him back, I wouldn’t need the money in the first place.”

Meekhof spokeswoman Amber McCann countered that Miller “spent too much time in Washington” and “doesn’t get to dictate the terms” of the assistance.

“The majority leader and 35 other senators voted to help fix the problem,” she said.

Sen. Steve Bieda, a Warren Democrat, voted against the legislation after his amendment to issue a grant rather than a loan failed 17-20. He said the sinkhole has had a broad impact because millions of gallons of sewage were discharged into a river.

“This is an issue that affects everybody, as it stands to negatively impact the Great Lakes,” Bieda said. “And it’s one that needs to be fixed in the near future as the rains that are anticipated in April will only exacerbate the problem.”

The $3 million grant would offset the cost of a $12 million-plus pipe system that was installed to divert sewage around the collapsed sewer interceptor, according to Macomb officials. A local drainage district will sell municipal bonds to finance the cost of emergency work on the damaged pipe, Miller said.

The bill also would allocate $100 million in Flint aid that Congress and former President Barack Obama enacted into law in December. And it includes $1 million for capital improvements to the Michigan Capitol building.

Sen. Tory Rocca, a Sterling Heights Republican, was angered by the GOP majority’s decision to authorize a loan instead of a grant.

“Year after year you come to my county for money. And now when we need a little bit of help and a tiny bit of our money back, people are pretty hostile to that. It doesn’t seem right,” he said.

It is unclear how the House will respond. It is expected to vote Thursday, before the Legislature’s two-week spring break.

By THE ASSOCIATED PRESS

MARCH 29, 2017, 6:33 P.M. E.D.T.

Senate Repeals Labor Dept. Municipal Retirement Plan Rule.

WASHINGTON — A divided U.S. Senate on Thursday killed a regulation that had exempted city-run retirement savings plans for low-income workers from strict pension protection laws.

Utah Republican Orrin Hatch, the resolution’s sponsor, has said he expects the Senate to soon repeal a related rule on state-operated retirement plans.

That resolution may face a tougher time than the one on municipal plans, which barely passed in a 50-49 vote. States are farther along establishing retirement programs for people who do not have workplace savings plans, and Republicans who advocate for states’ rights are more skeptical of the resolution.

The House of Representatives has already passed both resolutions.

Thursday’s vote marked the 12th time the Republican-controlled Congress has successfully killed an Obama-era regulation through the use of an obscure 1996 law known as the Congressional Review Act.

The law lets Congress repeal a newly minted rule through simple majority votes in the House and Senate, and a signature from the president. A “substantially similar” rule can never be enacted in its place.

The Labor Department rule was finalized after May 2016, putting it into the window of time set by the law when Congress can repeal it. Using the resolutions, Republicans have sent rules spanning a variety of areas to the chopping block in hopes of loosening regulation they say constricts economic growth.

Thursday’s resolution and its near-twin for state plans counters the trend by maintaining regulatory requirements.

Toward the end of President Barack Obama’s tenure, his Labor Department exempted both state and city-run retirement plans from the 1974 Employee Retirement Income Security Act, or ERISA, a law designed to protect workers’ savings with detailed compliance requirements.

Private-sector workers whose employers do not offer 401(k) or other retirement benefits, and who often have low incomes, are automatically enrolled in the plans being launched in states such as California, Illinois and Oregon.

States say the ERISA exemption lets employers pass workers’ money into plans without footing compliance costs.

They also say Wall Street wants to block the plans because they create competition.

But the Investment Company Institute, a mutual funds trade group, the U.S. Chamber of Commerce and others in financial services say the exemptions shortchange workers from important federal pension protections that other workers receive.

By REUTERS

MARCH 30, 2017, 4:27 P.M. E.D.T.

(Reporting by Sarah N. Lynch; Editing by Tom Brown and Bill Rigby)

U.S. Sanctuary Cities Weigh Response to Trump's Threat to Curb Funding.

NEW YORK — Officials from so-called sanctuary cities met in New York on Tuesday to discuss their response to threats from the Trump administration to cut off some funding to cities and states that fail to assist federal authorities in arresting illegal immigrants.

Attorney General Jeff Sessions threatened on Monday to strip U.S. Justice Department grants from cities and other local governments that choose to shield illegal immigrants from deportation efforts under President Donald Trump.

His remarks were aimed at dozens of cities and other local governments, including New York, Los Angeles and Chicago, that have joined a growing “sanctuary” movement aimed at protecting immigrant communities.

Tuesday’s meeting in New York marked the second straight day of brainstorming on the immigration issue by leaders of some of America’s biggest urban centers.

Public officials, liberal activists and academics from around the country shared information on a host of issues. Topics discussed included when and how to challenge requests from Immigration and Customs Enforcement (ICE) to hold illegal immigrants under arrest, for separate local offenses.

Attendees came from California, Texas, Wisconsin, Pennsylvania, Connecticut, Washington State and elsewhere.

Sanctuary cities in general offer safe harbor to illegal immigrants and often do not use municipal funds or resources to advance the enforcement of federal immigration laws. Sanctuary city is not an official designation.

Federal records show the Justice Department doled out $1 billion to state governments and $430 million to nonprofits in 2016, but only $136 million directly to cities and counties.

Crime is generally lower in sanctuary counties, according to a study presented by University of California San Diego assistant professor Tom Wong. He said the findings echoed those of law enforcement officials themselves, since they have found they are more effective when they can focus on day-to-day policing instead of immigration enforcement.

Chicago City Council member Carlos Ramirez-Rosa said that although his city is a sanctuary jurisdiction, immigration agents raided a home there on Monday where eight people, including three children, were sleeping.

The agents shot and wounded Felix Torres, though he was not the person agents were seeking, Ramirez-Rosa said.

“This guns blazing raid … is exactly why my city should refuse to comply with ICE, under all circumstances,” he said.

By REUTERS

MARCH 28, 2017, 2:33 P.M. E.D.T.

(Reporting by Hilary Russ; Editing by Daniel Bases and Tom Brown)

The Oakland Raiders Sack the Taxpayers.

It’s time to stop stadium financiers from exploiting a tax-code loophole that lets them use municipal bonds.

It’s official: The Oakland Raiders are moving to Las Vegas. Beginning in 2020 they will play in a shiny new 65,000-seat stadium, outfitted with a retractable roof, that’s expected to cost $1.9 billion. If you’re an American taxpayer, you’ll help fund it—even if you live nowhere near Nevada. About $750 million for the project will be financed through municipal bonds, which are tax exempt. The federal tax break is projected to amount to some $120 million, according to the Brookings Institution.

Congress and President Trump should take the Raiders’ bad example as impetus for reform. As they consider a $1 trillion plan to restore America’s aging roads, airports, waterways, bridges and rails, lawmakers should ask why so many stadiums are following the Las Vegas model.

The alternative is what Oklahoma City did in 1993. Residents there passed a temporary 1% increase in the sales tax to fund—without incurring debt—a building spree called Metropolitan Area Projects, or MAPS. Over five years, the plan raised $350 million for nine projects, including a stadium now called the Chesapeake Energy Arena, home of basketball's Oklahoma City Thunder.

This pay-as-you-go approach may sound unremarkable, but it is nothing short of exceptional. Most professional sports stadiums these days are financed with municipal bonds. But this kind of debt wasn't intended for lavish football or basketball arenas.

Municipal bonds were supposed to give communities a way to build public projects—hospitals, schools, roads—without having to pay federal taxes on the debt's interest. The point was to ease the financial burden on cities and states that invest in expensive but essential infrastructure.

Over the past 30 years, however, stadium financiers have exploited a loophole in the tax code to qualify professional sports arenas for municipal bonds. Because federal taxes aren't incurred on the interest of this debt, stadiums essentially receive multimillion-dollar subsidies from Washington.

Last year a [Brookings study] examined 45 stadiums built or seriously renovated since 2000. Thirty-six were funded at least in part with municipal bonds, resulting in forgone federal tax revenue of $3.7 billion. That's enough money to employ 88,000 military staff sergeants or give each state a $74 million block grant. Or it could help reduce the national debt.

To solve this problem, I have introduced the No Tax Subsidies for Stadiums Act, which would prohibit arena financiers from using municipal bonds. Instead of building enormous, lavish sports facilities on the backs of unsuspecting taxpayers across the nation, financiers should ask communities to "buy in" to their vision. If residents want a stadium to be built, they will be willing to pay for it—as they did in Oklahoma City. Otherwise, sports franchises and leagues always have the option to finance construction privately.

Funding an upgrade to America's core infrastructure shouldn't require Congress to use budget gimmicks or run up the national debt. Closing loopholes, such as requiring stadium financiers to pay federal taxes on bond interest, would move lawmakers hundreds of millions of dollars closer to the $1 trillion goal post.

THE WALL STREET JOURNAL

By STEVE RUSSELL

March 29, 2017 7:02 p.m. ET

Mr. Russell, a Republican, represents Oklahoma's Fifth Congressional District.

SIFMA Statement on Senate Passage of CRA Resolution on Municipal Retirement Plans.

Washington, DC, March 30, 2017 – SIFMA today issued the following statement from Lisa Bleier, SIFMA managing director and associate general counsel on Senate passage of on H.J. Res. 67 to override the Department of Labor's (DOL) regulation regarding savings arrangements established by state political subdivisions for non-governmental employees:

“We commend the Senate for passing the resolution to protect private-sector retirement savers. The DOL’s regulation could leave workers saving for retirement without important protections including survivors benefits, spousal benefits, children’s benefits and inter-state portability. Under this guidance, cities could have created plans that restrict options and limit plan customizability while prohibiting an employer match, which is crucial to maximizing retirement savings.

“While we agree that more must be done to encourage Americans to save for retirement, exempting municipal plans from providing important protections for workers is not the solution. This resolution ensures that retirement savers have the same high-level protections and options available to workers under private plans. We urge the President to sign this resolution without delay.”

Release Date: March 30, 2017

Contact: Carol Danko, 202-962-7390, cdanko@sifma.org

U.S. Threat to 'Sanctuary' City Funds Likely to Have Little Impact: S&P

SAN FRANCISCO — U.S. Attorney General Jeff Sessions’ threat to strip Justice Department grants from cities and local governments that shield illegal immigrants from deportation would have minimal impact on municipal credit ratings, according to S&P Global Ratings.

The financial rating firm said on Thursday that an analysis of 10 large so-called sanctuary jurisdictions found the Justice Department funds made up on only 0.2 percent of budgets, on average.

The term sanctuary is not an official designation but has come to be used generally to describe cities and local governments that offer safe harbor to illegal immigrants and often do not use municipal funds or resources to advance the enforcement of federal immigration laws.

The 10 jurisdictions reviewed were: Cambridge, Massachusetts; Detroit; Josephine County, Oregon; Los Angeles County, California; New York City; Oakland, California; San Francisco; Santa Fe, New Mexico; Seattle; and Washington, D.C.

Of the places reviewed by S&P, funding from the Justice Department made up the largest share of federal funding in Oakland, with 8 percent of federal funding, and Seattle, with 7 percent.

S&P said it expected both cities’ financial strength and economic growth to offset any potential losses.

Grants for health, community development and transportation generally make up the largest share of federally derived revenue for jurisdictions. But this funding is typically allocated by formulas set in statute and lack any connection to immigration enforcement. As a result, S&P said it viewed “the likelihood of Congress withholding or deferring these funds to sanctuary jurisdictions as more remote.”

Justice Department grants were among the most at risk, because this funding is “generally provided on an annual basis in the form of competitive grants,” said S&P.

Some local governments receive as much as 41 percent of their budgets from the federal government, while others receive none at all. Counties tend to have more exposure than cities, as counties generally administer their own criminal justice programs, according to S&P.

By REUTERS

MARCH 30, 2017, 3:06 P.M. E.D.T.

(Reporting by Robin Respaut; Editing by Bill Rigby)

Illinois Risks Rating Downgrade Without Budget Deal: Moody's.

CHICAGO — Illinois' already low credit rating could be downgraded if the state does not end its record-breaking budget impasse over the next two months, Moody's Investors Service said on Thursday.

The credit rating agency said the state is at a "critical juncture," and failure to reach a budget consensus by the May 31 end of the legislative session would "signal deepening political paralysis, heightening the risk of creditor-adverse actions."

"This is sort of a do-or-die moment here with respect to the leaders in state government," Moody's analyst Ted Hampton said.

Moody's rates Illinois Baa2, which is just two steps above the junk level and is the lowest rating among the 50 states. Illinois also pays a bigger penalty than other states in the U.S. municipal bond market after six credit downgrades since 2015 by the three major rating agencies.

A 21-month standoff between Illinois' Republican governor and Democrats who control the legislature has left the state operating on continuing appropriations and court-ordered spending.

As a result, the state's pile of unpaid bills, a barometer of its deep financial woes, has tripled since 2015, hitting a record-high $13 billion last week.

If Illinois begins a third straight fiscal year without a complete budget, money set aside for payments on its $26 billion of outstanding general obligation bonds could be at risk of being borrowed to cover operational expenses, Moody's said in a report.

Another possibility could be that core operational needs would be prioritized over debt service, it added.

With a budget deal, Illinois would be able to stabilize its financial position, the report said, noting that political gridlock, not fundamental economic factors, are largely driving the state's financial pressures.

Asked about Moody's report by a reporter in the state capitol, Governor Bruce Rauner said he continues to push for a budget that includes structural changes to spur economic growth.

Moody's said a bipartisan bill package that surfaced in the Senate in January but has since stalled could improve the state's financial prospects.

The package includes legislation to complete the fiscal 2017 budget, which expired on Dec. 31, as well as to hike taxes, cut pension costs by about $1 billion annually, authorize borrowing to pay down the bill pile, expand casino gaming and freeze local property taxes.

“We continue to work toward compromise but aren’t there yet,” said John Patterson, a spokesman for Democratic Senate President John Cullerton.

Illinois’ fiscal year begins July 1.

By REUTERS

MARCH 30, 2017, 4:18 P.M. E.D.T.

(Reporting by Karen Pierog; Editing by W Simon and Matthew Lewis)

Jackpot! Las Vegas Raiders Shake Down Tax Payers For $750 Million Stadium.

$750 million.

That’s how much Mark Davis and the Las Vegas Raiders want Nevada taxpayers to fork over in order to build a new 65,000-seat, $1.9 billion stadium, part of the deal to woo the team from their longtime home in Oakland.

ESPN’s Kevin Seifert crunched the numbers, and determined that taxpayers have given almost $7 billion in tax money to the NFL to help fund the building of stadiums.

So will Nevada see a big economic boost for laying so much money on the table to help keep a bunch of billionaires rich? It’s doubtful.

According to a study by the Brookings Institute, there is little evidence that new stadiums provide enough local economic benefit to pay back the hundreds of millions of dollars taxpayers forked over to build them.

“Decades of academic studies consistently find no discernible positive relationship between sports facilities and local economic development, income growth, or job creation,” the authors of the study explained in their report. “And local benefits aside, there is clearly no economic justification for federal subsidies for sports stadiums.”

And that price tag doesn’t include the cost to federal taxpayers thanks to the use of tax-exempt bonds, which teams frequently employ to finance the constriction of their stadiums.

Take the New York Yankees, who finished construction on the new Yankee Stadium in 2009. The final bill was estimated to be $2.5 billion, but of that, nearly $1.7 billion was financed by tax-exempt municipal bonds issued by New York City.

“Because the interest earned on the municipal bonds is exempt from federal taxes, a large amount of tax revenue that would have been collected—had the bonds been issued as taxable—went toward the construction of the stadium,” the authors of the report explained.

And we’re not even talking about the costs to taxpayers for things like added infrastructure, gifting city-owned land, economic opportunity grants, a waiver from anti-trust laws, subsidies from the U.S. military… the list goes on and on.

All this while the NFL is making more money than they know what to do with. SportsBusiness Daily pegged the NFL’s annual revenue at $14 billion annually.

While average people in Nevada will fork over their hard-earned money to help build the new stadium, only wealthy fans, wielding their expense-account, will be able to afford to set foot in the arena.

Where's the revolt? – Rob Tornoe

FORBES

MAR 30, 2017 @ 09:37 PM

Fitch: Toshiba Insolvency Would Raise US Nuclear Plant Costs.

Fitch Ratings-New York-21 March 2017: The fiscal pressures on Westinghouse Electric Company LLC and its parent company, Toshiba Corporation, are weighing on the credit quality of the public power issuers that are involved in two nuclear power projects, Fitch Ratings says. The three issuers with co-owner interests have been subject to negative actions since 2015 when Toshiba's credit began to weaken, construction delays continued and additional cost overruns began to develop.

Westinghouse and Toshiba are the lead contractor and guarantor, respectively of the Alvin W. Vogtle Electric Generating Plant (Vogtle) and the Virgil C. Summer Nuclear Generating Station (Summer) development. The public power co-owners include Municipal Electric Authority of Georgia (MEAG), Oglethorpe Power Corporation, GA and South Carolina Public Service Authority (Santee Cooper), all of which remain on Negative Watch or Outlook. JEA and PowerSouth Energy Cooperative have agreed to purchase project output, but have Stable Outlooks.

The current financial strain on Westinghouse and Toshiba could lead to higher completion costs and further delays. In the event of bankruptcy, the Engineering, Procurement and Construction contract could be terminated and allow the co-owners to draw on letters of credit posted by the developer. However, the co-owners' abilities to recover additional costs and damages from the project guarantor could be limited in bankruptcy, undermining the benefits of the fixed-price agreement.

Fiscal pressure rose last week as the Japanese government said it was not considering supporting Toshiba and the company missed, for the second time, a reporting deadline for its audited third quarter results. Its application to delay its results until April 11 was approved, but it remains at risk of being delisted for failure to meet the requirements of the Tokyo Stock Exchange. Toshiba has undertaken a number of initiatives to bolster its liquidity and improve credit quality, including the proposed sale of its profitable memory chip business, but the success of these strategies is uncertain.

The public power issuers we rate have begun to make their plans for completing the plants with substitute contractors more detailed should Toshiba enter bankruptcy. The transition to a new construction team would almost certainly result in further revisions of the in-service dates past 2020 and higher costs to be borne by ratepayers.

The public power issuers have different supports that limit their rating downsides from these possible outcomes, including the unconditional obligation and ability to recover project-related costs, whether or not the projects are completed or operated. Each of the public power issuers also has the ability to set rates necessary to recover those costs independent of external regulatory approval. However, the willingness of each issuer to maintain robust financial metrics in the wake of higher costs is uncertain.

Contact:

Dennis Pidherny
Managing Director, US Public Finance
+1 212 908-0738
Fitch Ratings, Inc.
33 Whitehall Street, New York, NY

Robert Rowan
Senior Analyst, Fitch Wire
+1 212 908-9159

Media Relations: Alyssa Castelli, New York, Tel: +1 (212) 908 0540, Email: alyssa.castelli@fitchratings.com.

Investors Bottom Fish Municipal Bonds Tied to Westinghouse Bankruptcy.

NEW YORK — The sell-off of municipal bonds tied to the bankruptcy filing of Westinghouse Electric Co paused on Thursday as investors reconsidered concerns on the likelihood that construction of four U.S. nuclear power plants hit by billions in cost overruns will be completed.

The four reactors are part of two projects known as V.C. Summer in South Carolina, which is majority-owned by SCANA Corp and Vogtle in Georgia, which is owned by a group of utilities led by Southern Co.

Westinghouse is a unit of Japanese conglomerate Toshiba Corp.

Tax-exempt bonds issued by the Municipal Electric Authority of Georgia (MEAG), which owns 22.7 percent of the Vogtle units, and South Carolina Public Service Authority (Santee Cooper), which owns 45 percent of the V.C. Summer units, reversed a recent slide, albeit in thin trading volumes.

“It could be considered a dead-cat bounce in the market as people are starting to get comfortable with their ability to pay their bonds and it doesn’t appear that this is going to lead to a default,” said Brett Adlard, municipal strategist at Piper Jaffray in Chicago.

Adlard said there could be near-term weakness in the bonds because of headline risks, but there is a slow realization that there are underlying strengths, such as Santee Cooper’s flexibility to raise electricity rates given that the rates are considered low when measured against the rest of the nation.

On Wednesday, SCANA executives told analysts that in the case of the V.C. Summer operations, most of the components are already bought and on site, which employs about 5,000 people.

“The Trump administration, being so pro-jobs, shutting down these two large nuclear plants would look like a negative from their goal,” Adlard said, adding that Westinghouse’s involvement in military operations makes this a national security interest.”

MEAG’s 6.637 percent bond maturing in 2057 saw improvement with the yield spread over the benchmark MMD yield curve narrowing by 4.5 basis points to 285.7 basis points. However, over the last 10 trading days, spreads are wider by a significant 26.9 basis points, according to Thomson

Reuters data..

Santee Cooper's 5 percent bond maturing in 2028 improved on Thursday with the yield spread narrowing by 16.7 basis points to 95.1 basis points. That is still 35.6 basis points wider over the last 10 trading days. Wider spreads indicate weak performance in a credit.

Costs for the projects have soared due to increased safety demands by U.S. regulators and also due to significantly higher-than-anticipated costs for labor, equipment and components.

"These are fundamentally strong credits, but that said, they have made a lot of investments in these plants and now there is more uncertainty on how much more it is going to cost or how much longer it will take to complete the plants," said John Ceffalio, municipal credit analyst at AllianceBernstein in New York.

"To date, both MEAG and Santee Cooper have had a lot of political support. We question how strong that support will be going forward given additional costs and delays," he said.

By REUTERS

MARCH 30, 2017, 6:27 P.M. E.D.T.

(Reporting by Daniel Bases; Editing by Leslie Adler)

- Cambridge Minibond Official Statement. (In a rare – and likely ne'er-to-be-repeated – moment of initiative, we tracked down the Official Statement for the City of Cambridge, Massachusetts General Obligation Bonds, 2017 Series A (Minibond Program) that you've been hearing about recently.)
- NFMA Recommended Best Practices in Disclosure for Charter School Debt Offerings.
- Counsel of Development Finance Agencies Bookstore.
- Foley & Lardner: New Regulations on Issue Price of Tax-Exempt Bonds.
- SIFMA: SEC Approves Move to Shorter T+2 Settlement Cycle for Munis and Other Securities.
- Orrick: IRS Revenue Procedure 2017-13 Safe Harbor Requirements for Services Contracts.
- Neighborly Issuer Solutions Position
- And finally, *Castille v. St. Martin Parish School Board* this week brings us the inspiring story of Mr. Gerald Castile, who since 1977 has been faithfully transporting Louisiana school children without complaint. Well, maybe the occasional complaint… Our favorites include (but are hardly limited to) initially deeming a particular route undesirable until "it changed over time and became more desirable as the route became less populated." Suppose that does indeed cut down on that whole pick up/drop off hassle. And then there was the route, "populated with children from families that were known to have little or no respect for the bus operators." Known? Was this knowledge passed down through generations of bus operators? How exactly does a family become bus operator disrespecters? Is it passed down through generations of bus operator disrespecting families? So many questions but, most importantly, how do we end this tragic cycle? How?

LIABILITY - CALIFORNIA

J.M. v. Huntington Beach Union High School District

Supreme Court of California - March 6, 2017 - 2 Cal.5th 648 - 389 P.3d 1242 - 214 Cal.Rptr.3d 494 - 17 Cal. Daily Op. Serv. 2056

Student petitioned for relief from the Government Claims Act presentation requirement for his claim against school district.

The Superior Court denied petition. Student appealed. The Court of Appeal affirmed. Student petitioned for review. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that:

- Student's application to present late claim was deemed denied when district failed to act on it within 45 days, disapproving *E.M. v. Los Angeles Unified School Dist.*, 194 Cal.App.4th 736, 125 Cal.Rptr.3d 200;
- District's failure to give written notice of denial of application to present late claim did not estop district from invoking six-month limitations period; and
- Six-month limitations period was not equitably tolled.

PUBLIC EMPLOYMENT - LOUISIANA

Castille v. St. Martin Parish School Board

Supreme Court of Louisiana - March 15, 2017 - So.3d - 2017 WL 1041216 - 2016-1028 (La. 3/15/17)

School bus driver brought action against school board, seeking damages in both contract and tort law for school board's failure to comply with state tenure laws in reassigning him to different route.

Following a bench trial, the Judicial District Court dismissed bus driver's contractual claims. Bus driver appealed. The Court of Appeal affirmed in part and reversed in part. School board applied for writ of certiorari.

The Supreme Court of Louisiana held that:

- School board breached its implied contractual obligations when it failed to take bus driver's seniority into account when it reassigned bus routes, but
- School board's breach of contract was not committed in bad faith.

School board's breach of contract in failing to take tenured school bus driver's seniority into account when it reassigned bus routes was not committed in bad faith, and thus bus driver was not entitled to recover contractual damages for acceleration of his episodes of anxiety and depression. Board's decision to redraw routes was based on legitimate goal of saving money on fuel costs by making routes more efficient, and board's decision to ignore drivers' seniority in assigning routes was at most a product of negligence or bad judgment.

CHARTER AMENDMENT - MINNESOTA

Bicking v. City of Minneapolis

Supreme Court of Minnesota - March 15, 2017 - N.W.2d - 2017 WL 1017813

Members of citizen group petitioned for review of city's denial of their request to put a proposed amendment to the city charter on the ballot.

The District Court dismissed the petition. Members appealed, and their petition for accelerated review with the Supreme Court was granted.

The Supreme Court of Minnesota held that:

- Case was justiciable, and
- Proposed amendment conflicted with state law.

Contest between citizens and city over citizens' right to place proposed city charter amendment on ballot was justiciable, and therefore Supreme Court had jurisdiction to resolve issue of whether city properly directed clerk not to place proposed amendment on ballot. Case involved dispute between adverse parties that claimed legal right to control decision to place proposed amendment before voters, and parties' conflicting legal claims presented concrete, genuine, justiciable controversy regarding city's authority to refuse to place proposed amendment on ballot.

Citizen-initiated proposed city charter amendment, which would have required police officers to maintain professional liability insurance, conflicted with state law, and therefore city properly refused to place amendment on ballot based on conflict preemption. Provision designating officers' coverage as primary added requirement that was absent from state law, provision relieving city of its liability for torts committed in scope of officers' employment until officers' insurance coverage was exhausted permitted what state law forbade, and provision requiring purchase of insurance coverage for acts for which city would otherwise have been immune forbade what state law permitted.

EMINENT DOMAIN - MISSOURI

Big Oak Farms, Inc. v. United States

United States Court of Federal Claims - March 17, 2017 - Fed.Cl. - 2017 WL 1046465

Landowners, whose land was located in floodway, filed complaint, alleging that United States took their property without just compensation in violation of Fifth Amendment when Army Corps of Engineers activated floodway by breaching levee that protected their property, thereby unleashing flood that caused damage to their land, crops, equipment, and infrastructure, as well as leaving behind sand and gravel deposits that subjected their property to flooding during low-level rainstorms.

Parties moved for summary judgment.

The Court of Federal Claims held that:

- Landowners had initial burden to show that flood control project and activation of project's floodway caused additional flooding beyond what would have occurred under same conditions had government not constructed project or activated floodway;
- If landowners satisfied their burden, government had burden of showing that benefits to landowners' tracts from years of flood protection more than offset damage to each tract from

- activating floodway;
- Factual issue existed as to whether landowners whose land was located in floodway suffered more property damage from activation of floodway than each would have suffered without its operation;
- Factual issue existed as to whether benefits that landowners received from flood control project more than offset damage caused by flooding;
- Landowners claiming rights under flowage easements had to show that activation of floodway caused flooding that exceeded or changed character of flooding authorized by those easements; and
- Factual issue existed as to whether government was liable to compensate landowners under terms of flowage easements.

ZONING & LAND USE - NORTH CAROLINA

Thompson v. Town of White Lake

Court of Appeals of North Carolina - March 7, 2017 - S.E.2d - 2017 WL 899983

Landowner filed petition to challenge zoning decision of town's board of adjustment that stopped landowner from completing construction of a storage building in a residential neighborhood.

The Superior Court affirmed, and landowner appealed.

The Court of Appeals held that:

- Order was a final order for purposes of appeal, and
- Superior court misapplied a de novo standard of review.

Superior court order regarding landowner's permit to construct garage building was a final order for purposes of appeal, although landowner had asserted permit revocation as grounds for appeal but town's notice of intent did not actually revoke permit, where order fully decided whether building complied with ordinance and whether town board of adjustment was correct in affirming stop work order and notice of intent to revoke permit, and order remanded the matter only for the board to schedule landowner's compliance with the permit.

Superior court misapplied a de novo standard of review and entered new findings of fact contrary board of adjustment's finding that storage building was a commercial structure and was inconsistent with building permit. Determination that building was a commercial structure arose from board members' consideration of evidence presented at hearing and inferences drawn from the evidence, board also determined that the evidence presented did not support zoning inspector's allegation that landowner failed to develop building in accordance with the approved plans, and board affirmed stop work order based solely on the allegation that building would be used "for commercial purposes."

PLANNING & LAND USE - VERMONT

In re Atwood Planned Unit Development

Supreme Court of Vermont - March 17, 2017 - A.3d - 2017 WL 1035175 - 2017 VT 16

Group of landowners adjacent to proposed planned unit development (PUD) appealed determination by town's development review board (DRB) approving applicant's PUD permit.

The Superior Court, Environmental Division, affirmed. Landowners appealed.

The Supreme Court of Vermont held that:

- Rule for environmental court proceedings requiring appellant to file statement of questions to be determined on appeal allowed Environmental Division to require landowners to limit their statement of questions to ensure that applicant had notice of matters to be considered on appeal;
- After requiring landowners to file new statement of questions to be considered on appeal, Environmental Division was obligated to resolve all issues raised by landowners' amended statement of questions; and
- Even if applicant failed to post public notice of hearing before DRB on public right-of-way closest to property for which application for PUD permit was made, applicant made reasonable efforts to provide adequate posting and notice, and thus, applicant satisfied statutory notice requirements to obtain approval of permit.

Reminder: Comments on Draft Amendments to MSRB's Rule on CUSIP Numbers Due Next Friday, March 31.

Read the Request for Comment.

MSRB Municipal Advisor Review - Spring 2017

MSRB Municipal Advisor Review – Spring 2017

NFMA Recommended Best Practices in Disclosure for Charter School Debt Offerings.

The Disclosure Committee of the National Federation of Municipal Analysts is pleased to release the *Recommended Best Practices in Disclosure for Charter School Debt Offerings*.

To view the paper, click here.

This RBP, like others the NFMA has produced, may also be found under Resources, Best Practices in Disclosure as its permanent home on the NFMA website.

Nebraska County Faces Bankruptcy After $28.1 Million Judgment.

Gage County, Neb. faces bankruptcy after $28.1 million judgement following exoneration of 6 defendants

A small rural county in Nebraska, Gage County, is facing bankruptcy after a jury awarded $28.1 million to six people who sued the county. They were exonerated by DNA evidence after being wrongly imprisoned for a crime that took place there in 1985. Collectively, they spent 75 years in prison.

While Gage County waits to see if the verdict gets tossed out on appeal, county supervisors are weighing their options. Two bankruptcy attorneys hired by the county “are working on giving us information on how that [bankruptcy] would proceed and how that would affect the county,” Gage County Board Chair Myron Dorn said.

With a population of a little more than 20,000, the county has an annual budget of $27 million and collects about $8 million in taxes per year. Legal fees totaling more than $3 million have already sucked funds from the county’s operational budget over the past seven years.

Nebraska limits the amount counties can collect from property taxes; the county could increase their property taxes to raise another $4 million annually, before it hit that ceiling, Dorn said. County residents could also vote to raise their own taxes even more, but “we’ve had that discussion,” he said “and our Board agrees that that wouldn’t pass.”

The county could also look to the state legislature to pass a generic bill at a future session that would provide funding for the county, he said.

Exonerated by DNA evidence

The specter of bankruptcy is the result of the decades-old crime case that dates to Feb. 6, 1985, when a 68-year-old grandmother was found raped and murdered in her home in Beatrice, the county seat.

The people who served time for the crime, three men and three women, became known as the “Beatrice Six.” They were exonerated by DNA evidence in 2008. By then, they had collectively served 75 years in prison.

Jury awards $28.1 million

The Beatrice Six filed a federal lawsuit against Gage County, as well as a former sheriff’s deputy and reserve deputy, claiming that investigators worked to close the case despite contradictory evidence. Last summer, a federal jury awarded the Beatrice Six $28.1 million, plus additional money for legal fees.

Unless the verdict is tossed out on appeal, the county will need to pay the $28.1 million plus lawyer fees.

“Everything is still on the table until the Eighth Circuit makes a ruling,” Dorn said. In January, Gage County asked the Eighth Circuit to overturn the federal jury ruling or set a new trial. They expect oral arguments to take place this spring before a three-judge panel of the Eighth Circuit.

Nebraska Intergovernmental Risk Management Association (NIRMA), Nebraska Association of County Officials and the Nebraska Sheriffs’ Association filed friend of the court briefs. The groups did not side with either Gage County or the Beatrice Six, but wanted to weigh in because the outcome could have significant effects upon the state’s counties, law enforcement and all Nebraska residents, Dorn noted.

Insurance claims denied

In 2009, Gage County filed claims with both the risk-sharing pool and a private insurer, Dorn said.

The county used the private insurer when the Beatrice Six were arrested and convicted. Both insurers denied the county's claims.

The county hired two lawyers to dig into the county's insurance history to leave no stone unturned in hopes of finding something that would help the county pay the judgement, Dorn said.

"They have filed in court on behalf of the county," Dorn said. "One suit was filed against our current insurance company since about 1997. The other was against the insurance company the county had before 1997. Both lawsuits are challenging the companies' claims of 'no' liability or insurance coverage. "If we don't pursue it, we won't know if we will get anything [from them]," Dorn said.

"We [the Gage County Board of Supervisors] meet every two weeks and we have closed sessions just about every meeting about this," he said.

"It has taken on its own personality; it has a life of its own. Whatever the verdict, it will have a profound impact on the county."

One of the kickers to the story: A DNA test in 1989 that could have cleared things up in the cold case was deemed too expensive. Cost? $350, the Associated Press reported.

DNA evidence has exonerated hundreds

Of the 349 people exonerated with DNA evidence nationwide, 254 have been awarded compensation though state statutes, civil suits or private bills, according to the Innocence Project. These 254 people have been awarded a total of $657 million.

Some 144 people have been awarded compensation though state statutes, 119 through civil suits and 26 through private bills, the Innocence Project said.

Pretrial settlement limits damages

In a somewhat similar case, New York resident Jeffrey Deskovic served nearly 16 years in prison after he was wrongfully convicted in Westchester County, N.Y., but got separate awards from the City of Peekskill, the county of Westchester, the state of New York and the New York State Police.

A federal jury in 2014 awarded him $40 million after finding ex-Putnam Sheriff's Investigator Daniel Stephens fabricated evidence and coerced Deskovic's false confession in the 1989 murder of a Peekskill High classmate, USA Today reported.

Lawyers told the newspaper they believed it was the largest jury award in a wrongful conviction case. Putnam County was expected to pay less than the $40 million — $10 million — because of a pretrial settlement that limited damages.

Going bankrupt

Other jurisdictions that have faced bankruptcy include Jefferson County, Ala., as well as several cities. The Alabama county's debt escalated after bond issuance deals for upgrading the county's sewer system soured, Reuters reported. The county filed a $4.23 billion bankruptcy in 2011, the largest ever for a jurisdiction until Detroit's $18 billion case two years later.

The City of Dallas is facing financial hardships due to unfunded public safety pensions for retired police officers and firefighters and back pay liabilities, and is reported to be $5 billion in the red, The New York Times recently reported.

The Times reports that officials are considering raising property taxes, borrowing money for the pension fund, delaying long-awaited public works or even taking back money from retirees.

COUNTY NEWS

By MARY ANN BARTON Mar. 20, 2017

BDA Comment Letter to DOL on Proposed 60-Day Delay to Applicability Date of the Fiduciary Duty Rule.

The Department of Labor proposed a 60-day delay to the applicability date of the fiduciary duty rule. Comments on the 60-day delay were due by Friday, March 17th.

The comment letter, submitted by the BDA, is here. Please feel free to reach out to jvahey@bdamerica.org with any comments or questions.

BDA Comment Letter Summary

- BDA expresses support for the 60-day delay and recommends a longer, 180-day delay
- BDA notes that the Labor Department's economic cost-benefit analysis overstates benefits to investors because the analysis is based on mutual fund fees and not commissions and markups and markdowns from bond trades, which are less expensive than mutual fund fees
- BDA reminds the Labor Department of the existing investor protections of the broker-dealer regulatory regime

DOL Temporary Enforcement Memorandum

On March 10th, the DOL published a Temporary Enforcement Memorandum, which provides guidance on how the DOL plans to enforce the rule if the proposed rule to delay the applicability date is not adopted or is not adopted until after the April 10 applicability date.

1. In the event the Department issues a final rule after April 10 implementing a delay in the applicability date of the fiduciary duty rule and related PTEs, the Department will not initiate an enforcement action because an adviser or financial institution did not satisfy conditions of the rule or the PTEs during the "gap" period in which the rule becomes applicable before a delay is implemented, including a failure to provide retirement investors with disclosures or other documents intended to comply with provisions of the rule or the related PTEs.

2. In the event the Department decides not to issue a delay in the fiduciary duty rule and related PTEs, the Department will not initiate an enforcement action because an adviser or financial institution, as of the April 10 applicability date of the rule, failed to satisfy conditions of the rule or the PTEs provided that the adviser or financial institution satisfies the applicable conditions of the rule or PTEs, including sending out required disclosures or other documents to retirement investors, within a reasonable period after the publication of a decision not to delay the April 10 applicability date. The Department will also treat the 30-day cure period under Section IX(d)(2)(vi) of the BIC Exemption and Section VII(d)(2)(v) of the Principal Transactions Exemption as available to financial institutions that, as of the April 10 applicability date, did not provide to retirement investors the disclosures or other documents described in Section IX(d)(2)(vi) of the BIC Exemption and Section VII(d)(2)(v) of the Principal Transactions Exemption.

Bond Dealers of America

March 21, 2017

Bloomberg Brief Weekly Video - 03/23

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

Watch the video.

Bloomberg

March 23, 2017

Bloomberg Markets: Bonnell Says Munis in 'Wait and See' Period.

Bloomberg Markets with Carol Massar and Cory Johnson.

GUEST: John Bonnell Senior Portfolio Manager USAA Investments Discussing outlook for the municipal bond market infrastructure spending, healthcare and tax reform on the horizon.

producer: Paul Brennan +1-212-617-8292 or pbrennan25@bloomberg.net

Play episode.

Running time 09:30

March 23, 2017 — 12:15 PM PDT

San Francisco Boosts Deficit Forecast, Anticipating Higher Costs.

- Expenses will outpace revenue by about three to one, plan says
- Uncertainty on state and federal funding weighs on outlook

San Francisco's budget deficit is projected to hit $907 million by 2022, up from a previous estimate of $848 million, as costs such as retirement expenses outpace revenue.

Accounting for higher inflation drove the increase in the forecast, which was released Thursday in the city's five-year financial plan, updated from a previous report in December. Over the period, San Francisco's expenses are seen rising 30 percent, about three times as much as collections. The city is required to balance its budgets.

The outlook underscores the challenge fixed obligations such as pensions can impose on cities even as wealthy as San Francisco. The forecast doesn't consider the loss of any state or federal dollars, which comprise 20 percent of municipal revenue. The federal administration has pledged to withhold aid to cities such as San Francisco over its handling of undocumented residents.

That threat comes amid expectations that while property collections will remain strong, revenue sources sensitive to the economy, such as sales and hotel taxes, will slow or even decline, according to the city's report.

"This shift, coupled with great uncertainty from the state and federal budgets, results in real downside risk to the city's financial outlook," the analysis said.

Bloomberg Markets

by Romy Varghese

March 24, 2017, 6:14 AM PDT

[Is There a New Markets Tax Credit Surplus? - CDFA // BNY Mellon Development Finance Webcast Series.]()

April 18, 2017 @ 1:00 PM Eastern

After the latest round of allocations from the CDFI Fund, there are now more New Markets Tax Credits available than there are qualifying projects. This webcast will explain the double allocation of tax credits that occurred during the last round and explore how this is affecting the tax credit markets. During this installment of the CDFA // BNY Mellon Development Finance Webcast Series, our expert speakers will provide an inside look into how these tax credits can be leveraged and consider opportunities that a surplus creates for qualifying projects.

Speakers

Rena Nakashima, Moderator
Senior Product Manager
The Bank of New York Mellon

Nathanael Voss
Principal and Managing Director
Baker Tilly

Cam Turner
Principal
United Fund Advisors

Bob Labes
Partner
Squire Patton Boggs

Register in advance to confirm your participation and receive login information. Registration is free and open to all interested stakeholders.

[REGISTER]()

HSE Municipal Market Update - March 17, 2017

HSE Municipal Market Update – March 17, 2017

JCT's Flawed Analysis on Munis is Hurting Case for Tax-Exempts.

WASHINGTON – The analysis used by the Joint Committee on Taxation to show tax-exempts are inefficient is flawed and unfairly hurts municipal bonds, George Friedlander, a managing partner at Court Street Group Research, said at a conference in Florida last week.

Friedlander has been making his case that the JCT is wrong as fears grow that Congress will propose revenue-neutral, comprehensive tax reform to lower individual and corporate tax rates and broaden the tax base, using caps or the elimination of tax-exempt bonds to pay for that.

At The National Municipal Bond Summit in Palm Beach, Fla., sponsored by The Bond Buyer and Bond Dealers of America last week as well as in a recent paper, Friedlander said the JCT estimates that eliminating tax exemption could raise up to $50 billion a year.

But this level of revenues can only be achieved if the elimination of tax exemption is applied retroactively – an outcome that would be devastating to the value of the $3.5 trillion to $3.7 trillion of outstanding bonds and that would cause a breach of promise made to bondholders. If the JCT's methodology is applied to only new bonds, the amount of additional revenues to Treasury would be only $20 billion over a five-year period, assuming current tax rates, he said.

The JCT has viewed tax exemption as an "inefficient subsidy" for years, based on its methodology, which it detailed in a report in July 2012. But Friedlander contends the JCT's methodology is flawed because it uses an "apples and oranges" comparison. It compares triple-A corporate bonds using a Standard and Poor's index to bonds rated A1/A+ in the Bond Buyer index, he said.

"They assume that because muni yields appear to be high as a percentage of corporate bond yields, the marginal tax rate of the marginal buyer of tax-exempt bonds must be low; and thus, everyone on a higher tax bracket must be earning a 'windfall,'" Friedlander said. "However … when muni yields are compared to what muni yields would have to be if these bonds came as taxable bonds, the low marginal tax rates for the marginal buyers of municipals disappears."

In comparing the two indices, Friedlander said, "We also noted that the Bond Buyer Index always yields sharply more than actual bonds in the muni market – at least 100 basis points more back then and at least 50-60 basis points more in the current, lower-yield environment."

In addition, he said, the JCT fails to take into account that the 20year corporates it compares to tax-exempts are essentially noncallable, while almost all munis have 10year calls. The committee also fails to take into account that corporates are typically very large bullet maturities preferred by institutional buyers of taxable bonds and have better disclosure, compared to munis, which often have smaller, serial maturities and less disclosure.

Taking all of these factors into account, "munis priced in comparison with what they would have to yield in the taxable market puts the marginal rate of the marginal buyer of munis at around 30% and eliminates a very large proportion of the purported windfall," Friedlander said.

The JCT and other critics of munis assume that if tax-exempts didn't exist, investors would buy fully taxable bonds and pay taxes at their marginal rates, which is "the underpinning of their entire analysis," Friedlander said. But this is "a highly flawed assumption" because many investors would buy equities instead or would stay in cash or near-cash investments, he said.

"And the cost to state and local governments of having to fund in the fully taxable market would be sharply higher than under the JCT analysis," Friedlander said.

"The bottom line is that the efficiency of the tax-exemption, when measured properly, is actually quite high," he said.

He also contends that the tax-exempt bond market provides a kind of "sort and selection mechanism" for infrastructure projects. "There just isn't any easy way to measure the 'right amount' of support for infrastructure projects, unless the recipient of the support is committing to pay for a portion of the project in the form of bond debt service," he said.

The Bond Buyer

By Lynn Hume

March 20, 2017

Bills Seek Infrastructure Funding Through Tax Reform.

DALLAS – More than $170 billion of revenue would be provided for infrastructure from the repatriation of $2 trillion of accumulated U.S. corporate overseas earnings through tax reform under a pair of bills filed Wednesday by a bipartisan trio of lawmakers.

The legislation would bridge the partisan gap in Congress over how to fund future infrastructure spending, said Rep. John K. Delaney, D-Md., the chief sponsor of both bills.

"Our broken tax code and our crumbling infrastructure are two problems that are dragging down productivity and economic growth," Delaney said of the measures, which mirror legislation he sponsored in 2015.

The legislation was filed as a new study by Moody's Investors Service forecasts a slow ramp up to increased federal infrastructure spending due to a lack of bipartisan agreement over funding mechanisms and how to implement a massive infrastructure program.

Moody's expects additional infrastructure spending to be modest in 2017 and 2018 despite calls by President Trump and Senate Democrats for $1 trillion over 10 years of new funding in separate proposals, said AJ Sabatelle, a managing director at Moody's and the lead author of the report.

"The pace of new project launches will be slow," the report said. "Infrastructure spending will increase in the coming years, but … the rate of increase will more likely be in the low- to mid-single digits in the near term."

The public-private partnerships, envisioned as the heavy lifter in the Trump plan, may not be applicable to projects without a revenue stream, while the direct public investments proposed in the Democrats' plan would likely require higher levels of state and local borrowing, as well as increased taxes to support the debt, according to Sabatelle.

“Either proposal would amount to a $100 billion annual increase in spending on infrastructure,” Sabatelle said. “But finding a reasonable balance between direct government spending and private investment will take time.”

The Partnership to Build America Act sponsored by Delaney and Rep. Rodney Davis, R-Ill., would create a $50 billion infrastructure bank to provide financing for transportation, water, and education projects by states and local governments.

The American Infrastructure Fund would be financed by the proceeds from the purchase by corporations of $50 billion of 50-year bonds. The corporations would be allowed to repatriate an undetermined amount of overseas earnings with no federal tax liability for every $1 invested in the 1% bonds.

Those proceeds could be leveraged to provide $750 billion of low-interest loans and loan guarantees, Delaney said.

The fixed-rate infrastructure bonds would not be guaranteed by the federal government and are not intended as a good investment on their own, he said.

At least 35% of the projects financed by the infrastructure bank must have a minimum of 10% of their funding from private debt or equity.

The Infrastructure Act 2.0 introduced by Delaney and Rep. Ted Yoho, R-Fla., would provide six years of solvency to the Highway Trust Fund and establish a bipartisan House and Senate joint commission to develop a permanent solution that would bring additional revenues into the fund.

The bill would subject existing overseas corporate earnings by U.S. multinational corporations to a mandatory, one-time tax of 8.75% instead of the current 35% rate and sets an 18-month deadline for comprehensive tax reform.

The reforms would bring in $120 billion for the HTF, enough to cover the expected funding gap for six years and also provide $25 million for a pilot program of regional infrastructure accelerators, Yoho said.

If reforms were not enacted by the deadline, the corporate tax rate would be set at 12.25% for overseas profits for corporations not paying foreign income taxes and at 2% if they were paying a 25% tax rate.

The Bond Buyer

By Jim Watts

March 22, 2017

Clayton Would Make Enforcement of Individuals a Priority.

WASHINGTON – Jay Clayton would continue the trend seen in municipal bond cases of taking enforcement actions against individuals, if confirmed as Securities and Exchange Commission chair by the Senate.

Speaking to members of the Senate Banking Committee at his confirmation hearing on Thursday, Clayton, a lawyer with Sullivan & Cromwell in New York who has represented large investment banking firms like Goldman Sachs, said that he believes individual accountability in enforcement cases is a key to effective commission oversight.

“Individual accountability is extremely important, not only to get rid of bad actors but [to set] a tone for the industry,” he said, adding that individual prosecution in the white collar area is a “wonderful deterrent.”

Clayton told committee members that he is “100% committed to rooting out any fraud and shady practices” in the financial system and that he recognizes “that bad actors undermine the hard-earned confidence that is essential to the efficient operation” of the capital markets.

Clayton’s focus on individual enforcement, though not specifically directed at the municipal market, echoes muni-related statements and actions of SEC officials, including former chair Mary Jo White and former director of enforcement Andrew Ceresney. The majority of the muni-related cases the SEC has pursued against firms and issuers in recent years have included actions against individuals who the commission alleges played key roles in the violations.

During White’s and Cerseney’s tenure, the SEC for the first time, used the “control person liability” section of the federal securities laws in a municipal case and Ceresney, in a speech last year, said muni market participants shouldn’t be surprised if they see it used again. The control person liability section of the Securities and Exchange Act of 1934 allows the SEC to hold public officials responsible for violations based on their control of the municipal entity that engaged in the fraud. The SEC used it in two 2014 actions, one against the former mayor of Allen Park, Mich. and the other against the mayor of Harvey, Ill.

Mark Zehner, deputy director of the SEC enforcement division’s public finance abuse unit, told muni market participants at a conference at the end of October that they should expect to continue seeing enforcement actions against investment bankers and issuers involved in federal securities law violations. He said the focus on individuals stems from a concern before his unit was created in 2010 that the muni market wasn’t getting the enforcement division’s intended message about the importance of complying with federal securities laws.

“You should expect that, whenever we are looking at the work of an investment banking firm, it’s not going to simply be with respect to the firm,” Zehner said at the time, adding that considering actions against individuals is no longer a trend but a given.

Senators on the committee generally complimented Clayton on his stated devotion to strictly enforcing the law, but some Democrats like Sen. Elizabeth Warren, D-Mass., questioned whether his past involvement with major Wall Street firms may hinder the SEC’s enforcement abilities.

Warren raised the possibility that there would be a split between the SEC commissioners in an enforcement decision from which Clayton would have to recuse himself because of past ties to the parties involved. That would lead to a firm or individual avoiding enforcement, Warren said.

Clayton downplayed the problems that might result from any recusals and said that they would not impact his focus on individual accountability.

Republicans on the committee generally complimented Clayton on his past experiences and focused on his plans to promote capital formation. Senators also asked several times about potential regulatory rollbacks given Trump’s past speeches and executive orders aimed at reducing regulations.

While Clayton avoided direct comments about deregulation, he said he has “a real problem with regulations that are unnecessarily complex” and that reducing complexity and creating clarity in rulemakings is very important.

The Bond Buyer

By Jack Casey

March 23, 2017

[Hawkins Advisory: (2017 Average Area and Nationwide Purchase Price Safe Harbor Limits)]

This issue of the Hawkins Advisory provides information of specific interest to single-family housing bond issuers regarding Average Area and Nationwide Purchase Price Safe Harbor Limits for 2017 (Rev. Proc. 2017-27).

Read the Advisory.

3/21/2017

Orrick: IRS Revenue Procedure 2017-13 Safe Harbor Requirements for Services Contracts.

IRS Revenue Procedure 2017-13 (the “***Revenue Procedure***“) sets forth, and significantly liberalizes, the requirements for determining whether a contract (a “***Services Contract***“) with a service provider or manager (a “***Service Provider***“) can cause the Service Provider to be treated as a private business user of a facility financed with tax-exempt bonds (a “***Project***“). This guidance provides a safe harbor relating to government purpose and 501(c)(3) bonds. Satisfying the requirements means the Services Contract will not cause private business use (“***Private Use***“).

SAFE HARBOR REQUIREMENTS
Reasonable Fee: The fee paid to the Service Provider must be reasonable. Fees determined through a competitive process or fees within a normal range for such services will be reasonable.

No Net Profits: Compensation to the Service Provider cannot be based, even in part, on the net profits of the Project. This includes directly sharing net profits, as well as designing incentives that are based on a combination of gross revenues and expenses. Incentive compensation based on performance metrics like quality of services or productivity is not necessarily treated as a net profits incentive. In practice, payments under most Services Contracts are split between (i) reimbursement for actual Service Provider costs, subject to the approval of annual budgets by the Project owner, and (ii) a separate management fee. The cost reimbursement payments generally are ignored in determining if there is a net profits interest. The IRS strongly prefers this split payment approach, as opposed to an “all-in” compensation structure in which the Service Provider is paid a comprehensive fee and is entirely responsible for paying all operating costs out of that fee. Such all-in contracts raise net profits concerns and may also conflict with the Control and Risk of Loss requirements described below. Finally, even in the context of all-in contracts, certain types of management fees defined in the Revenue Procedure (one or more of a capitation fee, a periodic fixed fee, a per-unit fee, or a fee based on certain performance metrics) are not considered to be net profits arrangements. Although subordinated management fees can raise net profits concerns, this feature is discussed in Net Losses, immediately below.

No Net Losses: Very similar to the net profits prohibition, compensation to the Service Provider cannot be based, even in part, on the net losses of the Project. The most common example of a net losses problem is if the fee paid to the Service Provider is subordinate to the payment of debt service and if the fee would never be paid if there are insufficient funds at the time the fee is due. Subject primarily to some timing limitations, a solution can be for any unpaid fees to accrue with interest. A Service Provider whose compensation is reduced by a stated dollar amount for failure to keep the managed property's expenses below a specified target will not be treated as bearing a share of net losses as a result of this reduction. Like the net profits prohibition, all-in contracts raise significant concerns, the reimbursement of costs generally is ignored, and management fees that are capitation fees, periodic fixed fees, and per-unit fees are not considered to be net losses arrangements, even in all-in Services Contracts.

Term Limitation: The term of the Services Contract may not be longer than 30 years, or 80% of the remaining useful life of the Project if shorter. The useful life of a newly constructed Project that consists primarily of building construction or improvements should support a 30-year Services Contract.

Control: The Project owner must exercise control over the Project. This control requirement is met if the Project owner approves (i) the annual operating budget, (ii) any capital expenditures, (iii) the disposition of property, (iv) the rates charged for the use of the Project, and (v) the general nature and type of use of the Project. For Services Contracts with cost reimbursement plus a management fee, these control requirements should be satisfied under typical practices.

Risk of Loss: The Service Provider cannot be responsible for replacing the Project if there is a catastrophic loss. The Service Provider can, however, be responsible for obtaining adequate insurance, so long as the cost of the insurance is a cost reimbursement item.

Service Provider Tax Position: The Services Contract must state that the Service Provider will not claim any depreciation or amortization deduction, investment tax credit, or deduction for any payment as rent with respect to the Project.

Limitation on Rights: Finally, the Service Provider must not have a role or relationship with the Project owner, such as the CEO of the Service Provider being in a similar position with the Project owner, that as a practical matter would limit the Project owner's rights to take action under the Services Contract.

PROFESSIONAL SERVICES CONTRACTS

The requirements described above apply in a specialized manner when the contract relates to services provided solely by individuals or groups of professionals, for example physician contracts. The control requirements relating to budgeting, capital expenditures and disposition are not meaningful in that context. Control over rates charged can be meaningful, but the Revenue Procedure allows for the rates in this context to simply be "reasonable and customary as specifically determined by, or negotiated with, an independent third party (such as a medical insurance company)." Similarly, it is difficult for these contracts to be anything other than all-in contracts, because the primary expense is simply the compensation to the professional.

EXCLUDED INCIDENTAL SERVICES

An important point that often is ignored is that contracts for ancillary or incidental services are not considered to be Services Contracts and therefore do not cause the Service Provider to be a private business user even if the term of the contract is longer than 30 years.

Incidental Services. Contracts for services that are solely incidental to the primary governmental function of the financed facility are not considered to be Services Contracts. Excluded incidental services include routine, hard asset services, such as repair and maintenance, that do not give the Service Provider control over the business represented by the Project (such as setting prices) or compensate the Service Provider directly based on the economic performance of the Project. For example, a 40-year, all-in contract to maintain and repair a Project will not result in Private Use, if the compensation to the Service Provider is not based on Project net profits and the Service Provider is not economically responsible for replacing components of the Project. Similarly, an asset manager retained by the Project owner purely to oversee the Service Provider is an excluded incidental contract.

Cost Reimbursement Contracts. Even if the contract is not for incidental services, if the only compensation payable to the Service Provider is the reimbursement of the Service Provider for actual and direct expenses paid by the Service Provider to unrelated parties, the contract is not considered to be a Services Contract. If the Project consists predominantly of electric generating facilities, electric transmission facilities or other public utility property, the contract also is not considered to be a Services Contract if the only compensation is (i) the reimbursement of actual and direct expenses of the Service Provider, and (ii) reasonable administrative overhead expenses of the Service Provider.

CONCLUSION

The Revenue Procedure replaces prior guidance, most notably Revenue Procedure 97-13, and provides a new approach. The old formulaic approach to balancing the contract term and the fixed portion of the compensation is entirely replaced. The main takeaways from the discussion above are (i) except in the context of certain contracts for professional services (e.g., physician contracts), Services Contracts generally should be structured so that the payments to the Service Provider are split between reimbursement for actual Service Provider costs, subject to an annual budgeting process, and a separate management fee that can include incentives and (ii) most of the tax analysis, even for very long term contracts, will focus on the net profits/losses limitation. Also, when contemplating a repair and maintenance services arrangement for a Project, the first question should be whether the contract is solely for excluded incidental services.

Orrick Public Finance Alert | 03.23.17

by Charles C. Cardall

Partner, Tax

[S&P: Preliminary Federal Budget Proposal Indicates Potential Tax Base Declines For Maryland And Virginia.]

The fiscal 2018 budget put forward by the Trump Administration, if enacted as proposed, would have a disproportionate effect on the D.C. regional economy and Maryland and Virginia finances in particular, S&P Global Ratings believes.

Continue reading.

Mar. 21, 2017

The Regulatory Freeze: Where do we stand now?

The IRS tax exempt bond group ("TEB") continues to work on completing its 2016-'17 Guidance Plan, as Bob Eidnier wrote last week. However, it might be some time before we see that guidance because of executive branch actions intended to reduce regulations and regulatory costs. The restrictions on new guidance are very broad, and appear to apply to more than just regulations. Tax Notes reported on February 14 that it will be "a while" before new guidance is released by the IRS. For those of you who have lost track, see below for links to and a summary of President Trump's executive orders and related executive branch guidance concerning the regulatory freeze and regulatory reform.

Continue reading.

The Public Finance Tax Blog

By Alexios Hadji on March 24, 2017

Squire Patton Boggs

Treasury To Suspend Sales Of State And Local Government Series Securities.

The U.S. Department of the Treasury's Bureau of the Fiscal Service (the "Treasury") announced on March 8, 2017 the suspension of sales of State and Local Government Series (SLGS) nonmarketable Treasury securities, effective 12:00 noon Eastern Time, March 15, 2017.

SLGS are special purpose securities that the Treasury issues to state and local government entities to assist them in complying with federal tax laws and Internal Revenue Service arbitrage regulations. SLGS are issued at the request of the government entity when it has cash proceeds to invest from the issuance of tax exempt bonds. SLGS securities are purchased only by issuers. As a result of the SLGS suspension, also known as closing the SLGS window, the Treasury will no longer accept new subscriptions for SLGS securities. The Treasury is anticipated to reopen the SLGS window when Congress enacts, and the President signs, legislation raising the debt limit.

Please note that entities must submit their intention to purchase SLGS either 7 calendar days before the issue date, if for more than $10 million, or 5 calendar days before the issue date if for $10 million or less. Therefore, the window for subscriptions closed on Wednesday, March 8 and Friday, March 10, respectively. Treasury's past practice has been to honor all SLGS subscriptions submitted by the specified time and date of the SLGS suspension. Unless otherwise prohibited for another reason, SLGS maturities, interest payments, and early redemptions will be processed as normal during the SLGS suspension. Open-market Treasury securities, which are purchased after soliciting bids from banks and other financial institutions are still an option.

Last Updated: March 22 2017

Article by Luisella P. McBride and Francina J. Brinker

Miles & Stockbridge

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.

Cambridge Minibond Official Statement.

City of Cambridge, Massachusetts General Obligation Bonds, 2017 Series A (Minibond Program) (MA)

Official Statement posted 3/3/17

Preliminary Official Statement posted 2/24/17

Rieger Report: Why Foreign Investors Like U.S. Municipal Bonds.

A trend that has been catching attention is purchases of U.S. municipal bonds by foreign investors. A terrific summary was recently published by VanEck's Michael Cohick and that can be found by clicking here.

As that research points out, the Federal Reserve data on foreign investor holdings has jumped to end 2016 at $106 billion. That data can be found on page 125 of the Federal Reserve Statistical Release March 9th 2017.

Some factors that could be making U.S. municipal bonds attractive to foreign investors include:

- A strong U.S. dollar or perspectives of a strong for longer U.S. dollar.
- U.S. municipal bonds, whether tax-free or taxable, offer incremental yield relative to the negative or near zero yield environments seen in the Eurozone and Japan.
- The relatively high quality of investment grade municipal bonds to other asset classes such as U.S. corporate bonds and in some cases sovereign bonds.
- The low historical default rate of investment grade municipal bonds.
- Shorter duration than U.S. investment grade corporate bonds. For example, investment grade municipal bonds tracked in the S&P National AMT-Free Municipal Bond Index have more than a two year shorter duration than those tracked in the S&P 500/MarketAxess Investment Grade Corporate Bond Index. Note: both indices designed to reflect more liquid segments of the markets.
- Relatively lower volatility of U.S. municipal bonds as compared to U.S. corporate bonds.
- Due to these factors, U.S. municipal bonds can also be a diversifying asset class.

Liquidity: Due to the large number of U.S. municipal bond issuers and the sheer number of municipal bonds outstanding the depth of liquidity for U.S. municipal bonds has been a factor impacting the market for decades. The lower depth of liquidity for U.S. municipal bonds helps keep yields higher as a liquidity "premium" is demanded by the market in return for this risk. The advent and growth of diversified municipal bond Exchange Traded Funds (ETF's) could be helping to provide access to and liquidity for municipal bonds. The Federal Reserve Statistical Release shows assets in municipal bond ETF's have grown from $15.1 billion at year end 2014 to $24.7 billion at year end 2016.

J.R. Rieger
Head of Fixed Income Indices

S&P Dow Jones Indices

MARCH 27, 2017 – 1:00 »

Foley & Lardner: New Regulations on Issue Price of Tax-Exempt Bonds.

On December 9, 2016, the Department of the Treasury and Internal Revenue Service (IRS) published final regulations on the definition of "issue price," for purposes of the arbitrage rules that apply to tax-exempt bonds. A copy of the new regulations can be reviewed here.

These new issue price regulations will significantly change the practices, agreements, and certifications relating to the sale of tax-exempt bonds.

June 7, 2017 Applicability Date. The new regulations apply to bonds sold on or after June 7, 2017. Accordingly, this delayed effective date will provide an opportunity for the municipal bond industry to develop approaches to respond to the new rules before they need to be applied.

Why Were New Rules Needed? The existing regulations have been in place for decades and appear to have generally worked well for issuers. The new regulations were motivated by a perception at the IRS that the existing rule based on reasonable expectations may result in abuses and is not readily administrable. Whether that is really the case is highly questionable. Nonetheless, one of the underlying themes of the new regulations is a lack of trust in rules that rely on reasonable expectations.

More Complicated Rules. The new regulations are more complicated than the existing final regulations. The existing final regulations basically provide for two different rules to establish the "issue price" of bonds sold for money: separate rules for (1) bonds for which a "bona fide public offering" is made and (2) bonds for which a bona fide public offering is not made. The first rule is generally favorable and workable for issuers because it permits the issue price to be established on the date a bond purchase contract is entered into on the basis of reasonable expectations.

The new regulations retain parts of the general framework of the existing final regulations, but are more complicated. The new final regulations provide for four different rules to establish the issue price of bonds sold for money: (1) a special rule for bonds sold in a "competitive sale"; (2) a special rule for bonds offered to the public pursuant to agreements of underwriters to hold the offering price; (3) a general rule, if the issuer chooses not to use one of the special rules described above (or is unable to qualify for one of the special rules); and (4) a rule for private placements. (Although rules (3) and (4) could be viewed as different applications of the same rule). An issuer does not need to apply the same rule for all bonds of the same issue.

The rules in the new regulations are in one way more flexible than the existing regulations, because they allow an issuer to choose which rules to apply (when bonds could qualify for more than one rule). With this additional flexibility, however, also comes additional complexity.

Maturity-by-Maturity Rules. The new final regulations provide that the issue price of bonds that do not have the same credit and payment terms is determined separately. For example, suppose a bond issue has 12 different maturities of serial bonds and two term bonds (and, for all bonds of each maturity, the credit and payment terms are the same). In a typical case, the issue price of each maturity needs to be separately determined.

This appears to be a mere rephrasing of the same rule in the existing final regulations (which refer to establishing the issue price of "substantially identical" bonds). This rule has important ramifications under the new regulations, as described below.

The General Rule. The new final regulations provide that, unless the issuer applies a special rule, the issue price of bonds issued for money is the first price at which a substantial amount of the bonds is sold to the public. 10 percent is a substantial amount.

This general rule is similar to the rule in the existing regulations, except that it refers only to actual sales, and does not permit the use of reasonably expected sale prices. The main reason for the "reasonable expectation" rule in the existing final regulations is to permit an issuer to establish its tax plan on the sale date (that is, the date of bond purchase contract is signed), which is generally in advance of the closing date. The general rule does not accommodate the practical need to resolve important tax compliance matters on the date the bonds are priced.

The following "special rules" are basically intended to permit an issuer to establish the issue price of bonds on the sale date, but yields this desired result only under limited circumstances.

Special Rule for Competitive Sales. For bonds issued for money in a competitive sale, an issuer may treat the reasonably expected initial offering price to the public as of the sale date as the issue price of the bonds if the issuer obtains a certification of the bonds' reasonably expected offering price to the public as of the sale date upon which the price in the winning bid is based. The winning bid must be the highest price/lowest interest cost bid. The new regulations contain a number of detailed requirements to qualify as a "competitive sale" which appear to be intended to assure that a bona fide bidding process is followed. Probably the most important (and troublesome) of these is a requirement that the issuer receives bids from at least three underwriters who have established industry reputations for underwriting new issuance of municipal bonds.

The special rule for competitive sales is helpful, but its specific requirements (particularly the three-bid requirement) appear to be unduly rigid, particularly because issue price ordinarily needs to be separately determined for each maturity. For example, if the issuer does not receive three bids for one maturity of a bond issue, the issue price of that maturity will need to be determined using one of the other permitted methods. The need to establish issue price using a "back up" method may, in some cases, substantially complicate the agreements and documentation relating to competitive sales.

Special "Hold the Offering Price" Rule. The issuer may treat the initial offering price to the public as of the sale date as the issue price if the following requirements are met: (1) the underwriters offered the bonds to the public for purchase at a specified initial offering price on or before the sale date (as established by specific certifications and documentation) and (2) each underwriter agrees in writing that it will neither offer nor sell the bonds to any person at a price that is higher than the initial offering price during a required period. The required period starts on the sale date and ends on the earlier of the close of the fifth business day after the sale date or the date on which the underwriters have sold a substantial amount of the bonds to the public at a price no higher than the initial offering price to the public.

This new rule presumably will become the preferred method for establishing issue price in negotiated sales, but will require new practices that may not always be easy to implement. In particular, new covenants in bond purchase contracts, agreements among underwriters, and retail distribution contracts would be required, and care must be taken to obtain specific and rigorous certifications.

Also, although not entirely clear, it appears that another method must be used if an underwriter does not comply with such a written agreement and in fact sells bonds at a price higher than the initial offering price during the required period.

Clarified Definition of an "Underwriter" and the "Public." The existing regulations have long provided that the issue price of bonds issued for money is the first price at which a substantial amount is sold to the "public." Under the existing regulations, the "public" does not include "bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters and wholesalers." Under the existing regulations, the scope of this exception was not clear. The new regulations simply suggest, to some degree, that the public does not include "underwriters," and otherwise clarify the exception.

The new regulations define "underwriter" by reference to whether there is a direct or indirect contract with the issuer to participate in the initial sale of the bonds. Under the new regulations an underwriter is (1) any person who agrees pursuant to a written contract with the issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the bonds to the public and (2) any person who agrees pursuant to a written contract directly or indirectly with such a person to participate in the initial sale of bonds to the public (for example, a retail distribution agreement between a national lead underwriter and a regional firm under which the regional firm participates in the initial sale of the bonds to the public).

Although the new regulations do not apply before June 7, 2017, it is possible that this generally favorable new definition of "underwriter" will be viewed as a clarification of the standard in the existing regulations, and inform certifications and other practices prior to June 7, 2017.

Private Placements. The new regulations provide that if a bond is issued for money in a private placement to a single buyer that is not an underwriter or a related party to an underwriter, the issue price of the bond is the price paid by the buyer. It is not clear whether this is merely an example of the general rule, or is intended as a separate rule. In any event, however, the rule is similar to the treatment under the existing regulations.

Questions Not Answered. Although the new regulations are much more detailed than the existing regulations, they do not address many important questions relating to issue price. Perhaps most importantly, the new regulations apply only for purposes of the arbitrage and rebate rules that concern investments related to tax-exempt bonds. The new regulations do not answer whether they should apply for purposes of other tax-exempt bond rules, including rules relating to how bond proceeds are required to be used. One example is the rule that generally prohibits the use more than two percent of the proceeds of an issue of tax-exempt bonds (other than governmental bonds) to be used to pay costs of issuance. As a practical matter, however, most bond counsel will also look to these new regulations for purposes of complying with rules other than arbitrage.

Towards Implementation. The new regulations are doubtless more complex than the existing regulations, and will require new practices, contractual covenants, certifications and documentation. Although the new regulations are more favorable than the regulations proposed in 2013 and 2015, they appear to contain certain glitches that may be problematic. In particular, the rigidity of the three-bid requirement for the special rule for competitive sales will likely be problematic. In a different time, the Treasury and IRS might be expected to act on cleaning up the glitches before the effective date. In light of the restrictions on new regulations imposed by the new Administration, however, it would seem unlikely that corrective regulations could be published before June 7, 2017.

Article by Michael G. Bailey, David Y. Bannard, Laura L. Bilas, Dana M. Lach, Emily F. Magee & Mark T. Schieble

Friday, March 24, 2017

Foley & Lardner LLP

Toshiba Meltdown Casts Cloud Over Bonds for Nuclear Plants.

- Company unit that's building facilities considering bankruptcy
- Public utiltities in two states issued muni bonds for projects

The financial meltdown at Toshiba Corp.'s nuclear power-plant business is seeping into the U.S. municipal-bond market.

Debt issued by public utilities in Georgia and South Carolina that helped finance the first U.S. nuclear reactors built in 30 years has gotten riskier as exploding construction costs threaten the solvency of contractor Westinghouse Electric Co., a unit of Toshiba.

As the company reels from losses, Westinghouse is considering bankruptcy and Toshiba may sell a majority stake in its memory chip business to stem the bleeding. While the Japanese company guaranteed that Westinghouse will finish the work, the security of that backstop has been cast into doubt by Toshiba's weakened condition. Moody's Investors Service warned this week that it may downgrade the municipal debt tied to the projects, with S&P Global Ratings following suit late Thursday.

"A bankruptcy would raise a level of uncertainty about what happens," said Moody's analyst Michael Haggarty. "Our concern is they may have to go back to the ratepayers for potential additional costs."

The Municipal Electric Authority of Georgia is working with Southern Co. to build new reactors at Plant Vogtle, about 30 miles (48 kilometers) southeast of Augusta. The South Carolina Public Service Authority, known as Santee Cooper, and Scana Corp. are constructing two new units at the V.C. Summer plant some 30 miles northwest of Columbia, the state capital. Santee Cooper owns 45 percent of the new units, while the Georgia power authority owns about a quarter of the project in its state.

Moody's changed its outlooks on the ratings of $7.1 billion of municipal debt issued by Santee Cooper and $2.9 billion from the Georgia agency, saying a Westinghouse bankruptcy could call into question its ability to complete the projects and shift costs onto those agencies. Moody's rates Santee Cooper's debt, A1, the fifth-highest level. The Georgia bonds are graded either A2, one step lower, or Baa2, two steps above junk, depending on the legal security that backs them.

"We would argue the plants most likely get finished, but what is that additional cost going to be and who's going to absorb that cost," said Lyle Fitterer, who oversees $40 billion, including securities issued by Santee Cooper, as head of tax-exempt debt for Wells Capital Management. “Most likely, if Westinghouse files bankruptcy the onus is going to be put on the owners of these plants.”

The difference between the yield on some bonds issued by Santee Cooper and top-rated securities — a measure of the risk perceived by investors — has widened to more than 2.2 percentage points, an increase of about 0.67 percentage point since late December, according to data compiled by Bloomberg. That gap for Georgia project bonds averaged 1.35 percentage points Thursday, up from 0.96 percentage point two months ago.

A Westinghouse bankruptcy could make prices on the bonds more volatile, particularly because the debt issued by Santee Cooper has traditionally been held by risk-averse investors, Fitterer said.

“We think the whole complex is at risk of downgrade because of this, but ultimately it’s not something that will put any one of those entities out of business or cause their ratings to go to non-investment grade,” he said.

Santee Cooper is committed to finishing the project, said Mollie Gore, a spokeswoman for the agency. She declined to comment on Moody’s decision to change the outlook on its rating.

“We’ve got about 5,000 contract workers on site today at V.C. Summer and they’re all working hard and continue to make progress building these new units,” said Gore.

Santee Cooper, created by the South Carolina legislature in 1934, serves 2 million residents, and its board has the power to set rates. On March 20, the utility’s board voted to study whether customers need to pay more to fund construction of the new reactors, the Post and Courier of Charleston reported.

The Georgia electric authority was created by the state legislature in 1975 to provide wholesale electric power to 49 cities in the state. Moody’s action was “more related to the concern with Westinghouse that it is with MEAG power,” said Edward Easterlin, the agency’s chief financial officer.

In addition to Toshiba’s guarantee, and $2.1 billion of unspent construction proceeds, the authority has $920 million letters of credit issued by Japanese banks that would be available if Westinghouse files for bankruptcy, said Pete Degnan, the Georgia agency’s general counsel. Toshiba has guaranteed as much as 40 percent of the contract price if Westinghouse abandons the project, Degnan said.

“We don’t see that the Westinghouse bankruptcy would impact our ability to access the letters of credit or the parent guarantee of Toshiba,” Degnan said.

Westinghouse has been building the power plants since 2013. The projects have been plagued by litigation, design changes and the need to get approvals from the Nuclear Regulatory Commission. Labor productivity has suffered because of a lack of supervisors on the site, said Degnan.

Bloomberg Markets

by Martin Z Braun

March 23, 2017, 12:20 PM PDT

Puerto Rico's Defaulted Debt at Record Low as Recovery Rate, Legal Battle Weigh.

NEW YORK (Reuters) – Puerto Rico's benchmark government bond slumped to an all-time low on Monday after competing groups of bondholders stepped up their legal battle over who should be paid first out of a smaller-than-expected pool of cash.

Benchmark Puerto Rico general obligation (GO) debt maturing in 2035 and carrying an 8 percent coupon, fell 5.15 points in price to 61.35 on Monday, according to Thomson Reuters data.

The U.S. commonwealth is in the midst of trying to pull itself out of a financial quagmire that leaves it with $70 billion in debt it cannot pay without a massive restructuring.

It is also fighting a 45 percent poverty rate and islanders fleeing for the mainland in search of a better life.

The debt, which has been in default since last year when the U.S. Congress passed a rescue law known as PROMESA that suspended debt payments, has dropped 11.4 points in price since a new fiscal rescue plan was accepted on March 13. Defaulted debt trades more like an equity and is not typically quoted with a yield.

Investor sentiment turned more negative when so-called COFINA bondholders, whose debt is backed by sales tax revenue, asked a federal judge in San Juan on Sunday to deny the GO bondholder group's effort to stop the island's government from making payments on COFINA debt.

GO debt traditionally is considered senior to all other debt obligations as it is backed by the good faith and credit of a municipality. A larger amount of COFINA debt is held on the island than GO debt, which is held widely in U.S. municipal bond portfolios.

The Financial Oversight and Management Board for Puerto Rico, established by the PROMESA law, certified a revised fiscal turnaround plan on March 13 that set aside less money for servicing debt payments than originally planned.

A lower-than-expected amount of money set aside to service debt under the new plan, $800 million per year versus $1.2 billion a year over a 10-year period, puts the recovery rate for bondholders, in aggregate, around 30 cents on the dollar, according to analysts.

"The most liquid bond prices have dropped after the acceptance of the fiscal plan by the PROMESA board and the recovery rate being on the low side," said Joe Rosenblum, director of municipal credit research at AllianceBernstein in New York. "I'm not making a comment on whether it is correct or final, but at least sets up from Puerto Rico's side a much lower recovery rate."

"That is carrying forward and over the weekend the COFINA creditors committee went hard against the GO bondholders. We knew all along that was going to be a tough battle," he added.

Municipal analysts at Barclays Capital estimated that even if 100 percent of the additional revenue and expense measures are met, "the debt stack would need to be reduced to about 31 percent in order to achieve a stable debt-to-GNP ratio."

"We assume exit yields of $4.9 percent post restructuring, consistent with where 10 year single-B high yield municipal bonds trade," Barclays said in a March 15th research note.

Reuters

By Daniel Bases

March 20, 2017

(Editing by Bernadette Baum and Chizu Nomiyama)

SIFMA: SEC Approves Move to Shorter T+2 Settlement Cycle for Munis and Other Securities.

On March 22, the U.S. Securities and Exchange Commission (SEC) Acting Chair Piwowar and Commissioner Stein voted unanimously to approve changes to SEC Rule 15c6-1 that facilitate a move to a T+2 settlement cycle for most securities including munis. On behalf of the T+2 Industry Steering Committee, DTCC, ICI and SIFMA commended the SEC for finalizing the rule changes. "The SEC's action marks a critical milestone and the last major hurdle in the T+2 effort. Moving forward, robust planning and coordination among the industry and regulators will be essential to meet the T+2 target date of September 5, 2017." said Kenneth E. Bentsen, Jr., SIFMA president and CEO.

SEC Press Release
T+2 Industry Steering Committee Statement
SIFMA Comment Letter to MSRB on Notice 2015-22 (December 2015)
SIFMA Comment Letter to SEC on MSRB Rules G-12 and G-15 (April 2016)

TAX - CALIFORNIA

California State University, Fresno Association, Inc. v. County of Fresno

Court of Appeal, Fifth District, California - March 2, 2017 - Cal.Rptr.3d - 2017 WL 818475 - 17 Cal. Daily Op. Serv. 2010

A nonprofit public benefit corporation that operated state university's on-campus arena brought a property tax refund action against county.

The Superior Court entered judgment for nonprofit corporation after bench trial. County appealed.

The Court of Appeal held that:

- Filing period for refund claim began to run when county assessment appeals board mailed written notice of determination to corporation;
- Refund claim was subject to a one-year filing period; and
- Equitable tolling did not apply to the one-year filing period.

The one-year filing period for taxpayer's property tax refund claim against county began to run when the county assessment appeals board made a final determination on the assessment reduction application and mailed a written notice of the determination to the taxpayer, not on the later date when taxpayer paid the tax.

Taxpayer's property tax refund claim against county was subject to the one-year filing period for a claim after "the county assessment appeals board makes a final determination on the application for reduction in assessment or on the application for equalization of an escape assessment of the property, and mails a written notice of its determination to the applicant and the notice does not advise the applicant to file a claim for refund," where board mailed a notice to taxpayer that did not advise taxpayer to file a claim for refund, taxpayer paid the outstanding taxes and penalties, and then taxpayer filed a refund claim.

Equitable tolling does not apply to the statutory one-year filing period for a refund claim after "the county assessment appeals board makes a final determination on the application for reduction in assessment or on the application for equalization of an escape assessment of the property, and mails a written notice of its determination to the applicant and the notice does not advise the applicant to file a claim for refund," since the statute is not a statute of limitations.

Free Seminar to Examine Municipal Finance of CA Stormwater Projects.

As part of its Strategy to Optimize Resources Management of Storm Water (STORM) series, the State Water Resources Control Board will host a free seminar in April to explore legal cases and ongoing efforts to address the municipal finance of stormwater projects. Michael G. Colantuono, special counsel to counties, cities and special districts around California, is slated to speak at the event.

Colantuono, a leading expert on Proposition 218, assisted the Legislative Analyst's Office in the impartial analysis of the measure and co-chaired the committee which drafted what became the Prop. 218 Omnibus Implementation Act of 1997. He also chaired the committee that drafted the League of California Cities' Prop. 218 Implementation Guide and chaired the League committee that drafted the Proposition 26 Implementation Guide. He is also a shareholder at Colantuono, Highsmith & Whatley, a municipal law firm with offices in Los Angeles and Grass Valley.

The seminar will be held on **Thursday, April 20 from 10 – 11:30 a.m.** in the Byron Sher Auditorium at the California Environmental Protection Agency (CalEPA) building at 1001 I Street in Sacramento. **This event also will be available via webcast on CalEPA's website.**

Please register for this free event please visit EventBrite.

For questions about this seminar please contact Jeffrey Albrecht with the State Water Board at (916) 322-8569

Subtracting Schools from Communities.

What happens to communities when local schools close?

When schools close for good in Chicago or Baltimore or Detroit, it makes headlines. People stage protests, go on hunger strikes, file lawsuits.

When a school closes for good in Joiner, Arkansas, the national media barely notices—but the community certainly does.

“The impact is felt more quickly in rural areas,” said Tequilla Banks, an executive vice president with TNTP who grew up in Joiner and has worked in nearby districts. “There aren’t other wraparound services, right? There aren’t other venues. Even extracurricular activities—it’s harder to get kids to those if the school isn’t right there.”

Research has shown that although changing schools can negatively affect students, the impact of moving to a better school after a school closure can be positive. Similarly, research in New York City found that closing low-performing high schools benefitted future students, who instead attended other, higher-performing schools. But none of this research accounts for what happens to the community.

“The decisions that we make, when they affect the communities our kids live in, they also affect the kids,” Banks said. “We make these decisions to close schools in isolation, but they have unintended consequences that very well may undermine our efforts.”

To begin to understand those unintended consequences, we must first understand which communities and students school closures affect.

Continue reading.

The Urban Institute

by Alexandra Tilsley

March 23, 2017

CDFA Bookstore.

The Council of Development Finance Agencies Bookstore includes such titles as:

- **Practitioner’s Guide to Economic Development Finance 2nd Edition**
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Neighborly Issuer Solutions Position.

SAN FRANCISCO / NEW YORK

Neighborly is a fast-growing, venture-backed public finance startup headquartered in downtown San Francisco, with offices in New York and Kansas City. Positioned in the intersection of technology, finance and government, we develop exceptional technologies to radically modernize public finance, the $1 billion per-day, 200 year-old market that powers vital public projects like schools, parks, and next-generation infrastructure. Our solutions positively impact the operational efficiency of public finance, how our communities evolve, and how citizens participate in their democracy.

You're an experienced public finance banker, municipal advisor, or issuer seeking new opportunities within the municipal finance industry. We're a team of finance professionals and technologists dedicated to creating innovative solutions and technology for our issuer clients. At Neighborly, we believe in creating efficiency and transparency in the municipal bond market. Our Issuer Solutions Team is dedicated to working with issuers, municipal advisors, bond attorneys, and other industry professionals to develop new technologies to enhance the bond issuance and distribution process. If you believe that municipal bonds are an essential tool in the financing of public goods and want to join our team innovating how fixed-income securities are made, distributed, and managed, we would love to have you join our team.

What You'll Do

- Lead senior and co-managed deal teams in the execution of municipal bond financings.
- Work with Neighborly's Capital Markets on the pricing of bond transactions.
- Drive decision making of the public finance team
- Work closely with Neighborly leadership to shape policy, including membership on the Municipal Underwriting Credit Committee
- Work with leading market professionals ranging from the largest of state municipal bond issuers to small communities who need more efficient access to capital
- Work with team of engineers to develop new tools to make available to issuers, municipal advisors, and other industry participants
- Represent Neighborly at industry events and conferences
- Focus on building technical and market understanding throughout the organization

Requirements

- 5+ years of municipal finance experience at an issuer, as a public finance banker, issuer, or municipal advisor
- Ability to develop and execute a municipal bond financing, including working with deal team to develop terms of issuance, including structure, credit, pricing, and legal framework
- A broad and deep network of public finance industry relationships
- Track record of developing innovative and quantitative bond financing solutions for municipal issuer clients
- Proven management background and leadership capabilities
- Comfortable working with large and sophisticated municipal bond issuers
- Travel required
- Have passed the bar; hold or able to qualify for Series 7, 63, 53
- Experienced enough to know how the municipal industry operates today, ambitious enough to help make it more efficient and transparent in the future

Additional Preferred Qualifications

- Working knowledge of "Green" or "ESG" bond criteria
- Strong quantitative and financial modeling background or experience
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Though we maintain exceptionally high standards for talent, Neighborly is an Equal Opportunity Employer. We don't discriminate based on race, color, religion, sex, gender identity or expression, national origin, political affiliation, sexual orientation, marital status, disability, age, parental status, military service, or other non-merit factors. If you have the skills we need and the ambition to grow fast with us, that's all that matters.

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Fitch: Proposed US Budget Cut May Pressure State Revolving Funds.

Fitch Ratings-New York-20 March 2017: The Trump Administration's proposed 2018 budget cuts to the US Department of Agriculture's (USDA) rural water and wastewater grant program would likely result in a partial diversion of funds from the US Environmental Protection Agency's (EPA) State Revolving Fund (SRF) Programs, Fitch Ratings says.

The recommended budget essentially calls the USDA program redundant and eliminates its nearly $500 million budget. Without any offsetting increases in SRF grant funding, SRF project funding, which is frequently used, would likely be strained.

SRF programs provide valuable financing options for municipalities' water- and sewer-related infrastructure needs. SRFs combine a pool of loan repayments with additional forms of credit enhancement, such as reserve funds, to protect bondholders from losses caused by the default of pool participants.

The combined 2018 budget proposal for clean and drinking water SRFs is approximately $2.3 billion, which is similar to last year. Therefore, increases in funding needs, or similarly, funding reductions, could eventually lead to further leveraging of the SRF programs.

We do not expect any ratings impact in the near term, as the SRF programs rated by Fitch have substantial reserves and equity positions. However, ratings could be pressured over the long term if there are any substantial increases in program leverage to meet the demands from utilities historically served by the USDA.

Most SRFs are rated 'AAA' by Fitch. Associated costs of financing are passed to SRF program borrowers, many of which may not have affordable access to the capital markets.

Fitch's program asset strength ratio (PASR) is a measure to help market participants distinguish the relative financial strength of Fitch-rated SRFs. The PASR, an asset-to-liability ratio, is calculated by dividing the amount of aggregate pledged assets, including scheduled loan repayments, reserve funds, and account earnings, by aggregate outstanding debt service. The overall median PASR for the sector in 2016 was 1.9x, equivalent to 2015 and up slightly from 1.7x and 1.8x in 2013 and 2014, respectively. The high PASR levels reflect SRF's robust enhancement.

Contact:

Doug Scott
Managing Director, U.S. Public Finance

+1 512 215-3725
Fitch Ratings, Inc.
111 Congress Avenue Suite 2010, Austin, TX

Major Parkhurst
Director, U.S. Public Finance
+1 512 215-3724

Robert Rowan
Senior Analyst, Fitch Wire
+1 212 908-9159

Media Relations: Elizabeth Fogerty, New York, Tel: +1 (212) 908 0526, Email: elizabeth.fogerty@fitchratings.com.

Additional information is available on www.fitchratings.com. The above article originally appeared as a post on the Fitch Wire credit market commentary page. The original article can be accessed at www.fitchratings.com. All opinions expressed are those of Fitch Ratings.

New Wave of Puerto Rico Bond Troubles Hits Mutual Funds.

Oppenheimer, Franklin Templeton, others see market value plunge

Another downturn in Puerto Rico bonds is rippling through mutual funds on the mainland.

A new fiscal plan that leaves the troubled island commonwealth with less money to cover its debts pushed the value of certain bonds down as much as 9% last week through Thursday, according to Municipal Securities Rulemaking Board data.

That means tens of millions of dollars in paper losses for U.S. mutual funds that are some of the largest holders of Puerto Rico's $70 billion in debt. That includes OppenheimerFunds, said a person familiar with the matter.

Oppenheimer and Franklin Templeton Investments are among more than 50 U.S. fund companies that own $14 billion in bonds issued by the commonwealth, according to research firm Morningstar Inc.
The market value of that $14 billion has dropped to $8 billion as Puerto Rico's financial condition worsened over time, according to the most recent information available from Morningstar.

The lower value doesn't necessarily equate to $6 billion in losses because the funds could have purchased the bonds at any time over the past several years as the value dropped. The date of the mutual funds' bond purchases aren't public.

Oppenheimer's $6.6 billion investment now has a market value of $3.5 billion, according to Morningstar. Franklin Templeton's $2.7 billion holding has a value of $1.4 billion, according to Morningstar. About 7% of Franklin's debt is insured, according to a person familiar with the matter.

Puerto Rico Gov. Ricardo Rossello had initially proposed earmarking about $1.2 billion a year for debt repayment over the next decade. But the fiscal control board that Congress created to oversee a debt restructuring required him to revise his economic forecasts downward. That left about $800 million for annual debt service.

The move affected various Puerto Rico bonds in different ways. One considered a benchmark—a $3.5 billion general- obligation bond maturing in 2035—fell about 9% for the week through Thursday, according to trading data from the Municipal Securities Rulemaking Board's Electronic Municipal Market Access website. That is a big move in the normally sleepy municipal-bond world. The bond price, which had been climbing since Mr. Rossello took office in January, is now a few cents above its one-year low.

Paper losses on that bond for mutual funds were about $10 million, based on trading data. Mutual-fund holdings of that particular bond could have sold for about $98 million as of Thursday, compared with $108 million at the end of the prior week, based on trading data Thursday tracked by MSRB.

Other commonwealth bonds also dropped in value during that period. Prices on four sales-tax bonds and two other general-obligation bonds fell between 2% and 10%, according to an analysis by ICE Data Services. Those bond groups together make up much of U.S. mutual funds' holdings.

More declines are likely, said Matt Fabian, a partner with the research firm Municipal Market Analytics. "Even if the fiscal plan is the start of a negotiating process, bondholder losses are probably larger than current market prices imply," Mr. Fabian said.

One big U.S. mutual fund company isn't worried: MFS Investment Management's Puerto Rico bonds have a market value of $508 million, according to Morningstar, but the mutual fund said the "vast majority" is insured, making it far less vulnerable to changes in the island's financial condition.

A total of about $12 billion of the island's outstanding debt is insured, according to filings by the island's five biggest bond insurers

"Our direct exposure to the credit of Puerto Rico is limited," a MFS spokesman said.

THE WALL STREET JOURNAL

By HEATHER GILLERS

March 19, 2017 9:52 p.m. ET

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

Moody's Lauds Detroit's Move to Set Aside Cash for Pensions.

(Reuters) – The Detroit City Council's approval this month of a special fund to cover pension payments is a positive credit move, although concerns remain over the availability of money to cover retirement benefits, Moody's Investors Service said on Monday.

The council on March 10 approved Mayor Mike Duggan's proposal to deposit $377 million into a trust fund by the end of fiscal 2023 to help Detroit cover higher-than-expected pension payments starting in fiscal 2024.

"This credit positive action will improve the city's capacity to meet the upcoming pension contribution hike," Moody's said in a report.

Detroit, which has a junk rating of B2 from Moody's, exited the biggest-ever municipal bankruptcy in December 2014 with the assistance of money from a so-called grand bargain that included donations from foundations and others to help cover pension costs.

Moody's said Detroit could become financially stressed once money from the trust fund and from the grand bargain is depleted in the 2030s. The credit rating agency also said planned deposits into the pension trust fund could be hampered by lower-than-expected revenue growth.

"Because future (trust fund) deposits are not legally mandated, they could be an attractive cost-cutting target to close potential budget gaps," Moody's added.

Detroit's court-approved bankruptcy exit plan had projected city pension payments to spike to $111 million beginning in fiscal 2024 after years of minimal or no payments by the city. But a subsequent actuarial analysis pegged the payment spike at $200 million or more.

The bankruptcy allowed the city to shed about $7 billion of its $18 billion of debt and obligations. Since its bankruptcy exit, Detroit's finances have been subject to a state oversight commission.

By REUTERS

MARCH 20, 2017, 12:09 P.M. E.D.T.

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

Uncertain Fate of Obamacare Causes Some Hospitals to Halt Projects, Hiring.

(Reuters) – Uncertainty surrounding the Republican plan to replace Obamacare is forcing some U.S. hospitals to delay expansion plans, cut costs, or take on added risk to borrow money for capital investment projects, dealing an economic blow to these facilities and the towns they call home.

Hospitals typically lay out multi-year operating plans that prioritize investments, such as new clinics, medical wings, technology or other projects that help draw in more patients and increase revenue. In addition to enhancing patient care, these projects are vital to the local economy as a driver of jobs ranging from construction and maintenance to restaurants and transportation.

Denver Health Medical Center, for example, opened a new $26.9 million clinic in the city's southwest in 2016 to provide care to an area lacking in health services and saw more patients within six months than it had expected over two years. The health system planned to build or remodel five more facilities based on the new clinic's success.

But since November's election, when Republicans swept the White House and Congress, Denver Health has deferred $73.7 million-worth of construction projects that had been planned to serve more low-income residents, many of whom were newly insured under Obamacare.

"We want to know what will happen with the Medicaid expansion population, and what will be the timeline for that," said Peg Burnette, Denver Health's chief financial officer. "Due to the uncertainty, we're not going to issue new debt. We have no plans for that in the near future."

Denver Health is not alone. Across the country, hospitals are shifting to a more conservative stance as they await sweeping changes to the nation's healthcare law that for the first time in U.S. history would reverse a government healthcare entitlement program. The Affordable Care Act, commonly known as Obamacare, provided coverage to 20 million Americans and brought higher revenues to many hospitals.

The law’s likely overhaul puts many hospitals in a uniquely daunting position of being unable to predict how many of their patients will be insured and what type of coverage they will have in the future. As a result, many are more wary than in years past to invest in expensive capital projects, issue debt, or expand into new regions, said healthcare experts and hospital executives.

This is playing out in Arizona, where Kingman Regional Medical Center is taking cost-cutting measures by renegotiating medical supply and service contracts. The University of Alabama at Birmingham Health System, which includes six hospitals, is largely holding off hiring non-clinical staff, a trend also evident in national data.

Across the industry, hospital jobs so far in 2017 grew by 8,775 monthly on average, compared to 11,413 jobs for the same period last year, Bureau of Labor Statistics data shows.

The Republican-proposed bill, set to come before the U.S. House of Representatives on Thursday for a vote, would unwind the Medicaid expansion, cap federal payments to states and replace Obamacare’s income-based tax credits with flat age-based credits. The bill would still need approval in the Senate if it clears the House this week.

When asked about the early signs of hospitals putting spending on hold, a White House spokesperson expressed confidence that “the disastrous Obamacare law will be replaced with the American Health Care Act — the vehicle which will reform our broken healthcare system.”

The nonpartisan Congressional Budget Office estimates the new proposal would cause 14 million people to lose health insurance next year and 24 million by 2026. The bill has divided House and Senate Republicans and sparked fierce criticism from Democrats and leading medical and hospital groups, including the American Medical Association and American Hospital Association.

“It’s very challenging to plan for your future in an environment like this,” said Beth Feldpush, senior vice president of policy and advocacy at America’s Essential Hospitals, a group that represents safety-net hospitals nationally.

Not all hospitals are on hold. Some healthcare groups in areas with growing populations, such as Atlanta and Houston, are pushing ahead with capital expansion projects. Others, such as Maryland’s Prince George’s County, are still planning to move forward with construction plans, thanks in part to a partnership with the University of Maryland Medical System.

With the new medical center, Prince George’s County hopes to end its long-time reliance on $30 million annually from public subsidies to help cover operations. But that goal assumed Obamacare would remain intact, said Thomas Himler, Prince George’s deputy chief administrative officer.

“It could be that three years out we are no longer making money, we are losing money,” said Himler.

The uncertainty has seeped into the municipal bond market, where nonprofit hospitals access capital. The sector sold 36 percent less debt for new projects so far in 2017, compared to the same period last year, while the rest of the municipal market increased the amount of new money issued by 23 percent, Thomson Reuters data shows. While municipal analysts say it’s too early to draw conclusions, the uncertainty surrounding Obamacare is a likely cause for the decline.

“There’s a wait-and-see feeling,” said Kevin Holloran, a senior director at S&P Global Ratings.

“Hospitals are saying, we’ll revisit this in six months or more.”

REVENUES AND RESTRAINT

Since enrollment started in 2014, the Affordable Care Act brought significant changes to Denver Health Medical Center, a safety-net hospital with the busiest trauma center in Colorado. Historically, nearly two-thirds of patients were either uninsured or covered by Medicaid, the government health insurance program for the poor.

Almost immediately after Obamacare went into effect, rates of uninsured dropped and Medicaid coverage jumped to over half of all patients.

With so many more patients covered, hospital margins grew and days of cash-on-hand climbed. Such financial improvements enabled the hospital to invest in new projects, including the Pena Family Health Center in southwest Denver. The hospital planned to construct three more clinics, to expand two existing clinics, and to build a new parking garage to drive new revenues and expand its coverage.

But since November’s elections, much of those plans have been deferred, including a $24 million expansion of a second clinic, largely financed through bonds. The health system still plans to move forward with the construction of one clinic and the remodeling of another. But those plans could be bigger.

“There’s great demand that we’re concerned about not being able to meet in the future,” said Burnette.

By REUTERS

MARCH 23, 2017, 8:15 A.M. E.D.T.

(Reporting by Robin Respaut in San Francisco and Yasmeen Abutaleb in Washington; editing by Edward Tobin)

[Pension Crisis Too Big for Markets to Ignore.]

In late 2006, Aaron Krowne, a computer scientist and mathematician, started a website that documented the real-time destruction of the subprime mortgage lending industry. The Mortgage Lender Implode-O-Meter caught on like wildfire with financial market voyeurs, regularly reaching 100,000 visitors. West Coast lenders, some may recall, were the first to fall in what eventually totaled 388 casualties.

A year earlier, to much less fanfare, Jack Dean launched another website in anticipation of the different kind of wave washing up on the California coastline. Called the Pension Tsunami, the website was originally conceived to provide Golden State taxpayers with a one-stop resource to track news stories on the state’s mammoth and numerous underfunded public pensions.

Dean came about his inspiration honestly: “I started tracking this issue in 2004 after the Orange County Board of Supervisors gave a retroactive pension formula increase of 62 percent to county employees,” he said. “I was stunned. It’s the main reason Orange County has a $4.5 billion underfunded liability today.”

As the years have passed, though, the site has become a font of information for states and municipalities nationwide as well as corporate pensions. In all, over 40,000 headlines have been posted to the website to date. On a recent Friday, Dean posted multiple stories on the California Public Employees' Retirement System, the country's largest pension program, as well as a budget cliff facing San Francisco, six Los Angeles public safety officers who collected over $1 million apiece last year in pensions, and eight cities that could face bankruptcy when the next recession hits. But the day's headlines also included the latest on the fiasco unfolding in Dallas, an update on Houston's less awful situation and features on states that have become the site's other usual suspects — Connecticut, Illinois and New Jersey. And that was a slow news day.

The question is why haven't the headlines presaged pension implosions? As was the case with the subprime crisis, the writing appears to be on the wall. And yet calamity has yet to strike. How so? Call it the triumvirate of conspirators – the actuaries, accountants and their accomplices in office. Throw in the law of big numbers, very big numbers, and you get to a disaster in a seemingly permanent state of making. Unfunded pension obligations have risen to $1.9 trillion from $292 billion since 2007.

Credit rating firms have begun downgrading states and municipalities whose pensions risk overwhelming their budgets. New Jersey and the cities of Chicago, Houston and Dallas are some of the issuers in the crosshairs. Morgan Stanley says municipal bond issuance is down this year in part because of borrowers are wary of running up new debts to effectively service pensions.

Federal Reserve data show that in 1952, the average public pension had 96 percent of its portfolio invested in bonds and cash equivalents. Assets matched future liabilities. But a loosening of state laws in the 1980s opened the door to riskier investments. In 1992, fixed income and cash had fallen to an average of 47 percent of holdings. By 2016, these safe investments had declined to 27 percent.

It's no coincidence that pensions' flight from safety has coincided with the drop in interest rates. That said, unlike their private peers, public pensions discount their liabilities using the rate of returns they assume their overall portfolio will generate. In fiscal 2016, which ended June 30th, the average return for public pensions was somewhere in the neighborhood of 1.5 percent.

Corporations' accounting rules dictate the use of more realistic bond yields to discount their pensions' future liabilities. Put differently, companies have been forced to set aside something closer to what it will really cost to service their obligations as opposed to the fantasy figures allowed among public pensions.

So why not just flip the switch and require truth and honesty in public pension math? Too many cities and potentially states would buckle under the weight of more realistic assumed rates of return. By some estimates, unfunded liabilities would triple to upwards of $6 trillion if the prevailing yields on Treasuries were used. That would translate into much steeper funding requirements at a time when budgets are already severely constrained. Pockets of the country would face essential public service budgets being slashed to dangerous levels.

What's a pension to do? Increasingly, the answer is swing for the fences. Forget the fact that just under half of pension assets are in the second-most overvalued stock market in history. Even as Fed officials publicly fret about commercial real estate valuations, pensions have socked away eight percent of their portfolios into this less than liquid asset class. Even further out on the risk and liquidity spectrum is the 10 percent that pensions have allocated to private equity and limited partnerships. For the better part of a decade, New Albion Partners Chief Market Strategist Brian Reynolds has tracked pensions' allocations to these so-called alternative investments, and the total is approaching $350 billion.

The working assumption is that the Pension Tsunami will never make land fall, but the next time you take comfort in the sanctity of pensions given they have yet to self-destruct, ask yourself instead how they are hedged in the event of a correction. Will it be their bond, stock, real estate or private equity holdings that shield their portfolios? Or will it be none of the above?

Bloomberg Prophets

By Danielle DiMartino Booth

MARCH 24, 2017 8:45 AM EDT

Professionals offering actionable insights on markets, the economy and monetary policy. Contributors may have a stake in the areas they write about.

Danielle DiMartino Booth, a former adviser to the president of the Dallas Fed, is the author of “Fed Up: An Insider’s Take on Why the Federal Reserve Is Bad for America,” and founder of Money Strong LLC.

This column does not necessarily reflect the opinion of the editorial board or Bloomberg LP and its owners.

To contact the author of this story:
Danielle DiMartino Booth at Danielle@dimartinobooth.com

To contact the editor responsible for this story:
Robert Burgess at bburgess@bloomberg.net

Rising Pension Debts Checking Muni Supply, Morgan Stanley Says.

- Muni market sees low new money issuance compared to mid-2000s
- Government credit not facing ‘imminent deterioration’

A drop in the sale of state and local government debt this year may have a culprit other than rising interest rates.

Analysts at Morgan Stanley, led by Michael Zezas, said the rising retirement-system costs has made government more leery of running up new debts. State and local revenues have not kept pace with growth in total liabilities that now amount to $4.97 trillion, the analysts say.

Despite January seeing a year-over-year rebound in tax revenues, the unfunded pension liabilities pressures “would make this a hollow victory if they aren’t sustained,” the analysts added. Unfunded pension obligations have risen to $1.9 trillion from $292 billion since 2007, according to data compiled by Bloomberg.

The drop-off in muni new money issuance comes as unfunded pension liabilities continue to pressure many municipalities’ budgets, ranging from Chicago Public Schools to the Dallas Police and Fire Pension.

Escalating pension bills for the city of Chicago triggered Moody’s Investors Service to downgrade its credit to junk. S&P Global Ratings has warned Dallas and Houston could have their ratings lowered if they don’t shore up their pension funds while New Jersey’s rating has been cut repeatedly due to underfunded pension obligations.

As state tax collection growth is slowly decelerating, the analysts say investors should limit their exposure. Investors should note that this trend won’t add more pressure to the municipalities than they’re already facing.

“None of this is to suggest a crisis or imminent deterioration in general government credit,” the analysts said in a note.

Blooomberg

by Jordyn Holman

March 21, 2017, 9:28 AM PDT

Crisis? What Pension Crisis?

A new paper from the University of California at Berkeley contends that concerns about the declining health of public retirement systems in the modern era are largely overblown. The author, Tom Sgouros, argues that maintaining a fully funded pension is not necessary for governments because they’ll always be around to pay the bill.

Sgouros also argues that the accounting standards used to evaluate pension plans are partly to blame for the current pension crisis narrative. Be it city council members or “analysts at Moody’s determined to justify a downgrade,” these players often misuse the data to blame pension plans for municipal woes. “Debt due in the distant future is not a crisis today,” he writes, “even if it is a cause for concern.”

The Takeaway: Sgouros makes several good (and interesting) points. But he doesn’t really acknowledge that pension funds are essentially money set aside to invest and help pay for retirement benefits and are thus designed to defray the ultimate cost of those benefits to the government. In other words, pay less today rather than a lot more down the road. The accounting and numbers may be twisted in seven different kinds of ways, depending on who’s doing the talking, but it’s not a reason say the entire process doesn’t matter.

GOVERNING.COM

BY LIZ FARMER | MARCH 24, 2017

The Week in Public Finance: Detroit's Big Pension Plan, Debating the Pension Crisis and Counties Under the Gun.

A roundup of money (and other) news governments can use.

GOVERNING.COM

BY LIZ FARMER | MARCH 24, 2017

Recycling Infrastructure Assets to Spur Infrastructure Investment.

The Trump Administration has the admirable goal of encouraging infrastructure investment. One policy it may want to consider is promoting the recycling of existing municipal infrastructure assets. This policy was developed in Australia and has been successful there.

Recycling infrastructure assets does not refer to re-using concrete blocks. Rather, it is a vernacular term that refers to the sale by a municipality of existing infrastructure assets to private investors to raise cash that the municipality can then use to construct new infrastructure assets.

Existing infrastructure assets with revenue histories are perceived as a safer investments for investors than investing in the construction of a new asset that is unknown whether or not it will be able to be operated successfully. This perception means that private investors will pay a higher price for an infrastructure asset with a revenue history than for an infrastructure asset that has yet to be constructed. Further, new infrastructure projects require years to design, approve and construct.

Under a policy of recycling infrastructure assets, municipalities are encouraged by the federal government to sell existing assets that have revenue streams. An example could be a tunnel or a port. The proceeds of the sale are required to be held in a account that can only be used to fund new infrastructure projects.

The federal government encourages the sales by providing a financial incentive to the municipality that is a percentage of the sales price, for instance 15%. So if an operating toll bridge is sold for $100 million to private investors, the federal government provides an additional $15 million. Now, the municipality has $115 million that it can use immediately to construct a new infrastructure project that either might not be suitable for private investment (e.g., improvements to public school buildings) or that private investors may be reluctant to underwrite without a revenue history.

The federal subsidy serves three purposes. First, it motivates the municipality to undertake a complicated legal and financial process, which it might otherwise opt to avoid. Second, when constituents assert that the municipality should not sell a much loved asset (e.g., a stadium), the municipal officials can respond that they care about the stadium too; however, the federal government is providing a cash subsidy for doing this. Third, it provides much needed funding for infrastructure.

Another nuance is that in Australia title in fee simple to the infrastructure asset in question is not usually sold to the private investor. Rather, the municipality enters into a long-term lease or concession contract for the asset with the private investors. Therefore, constituents who are concerned about a prized asset being in private hands can be assured that eventually (e.g., 50 years) that possession of the asset will eventually revert to the municipality. That is, the politicians can state we did not sell the beautiful toll bridge, we merely leased it to an investor.

Even more infrastructure funding could be raised if the tax-exempt bond rules in the United States were modified to permit private investors to issue tax-exempt bonds to fund a portion of the payment for the long-term lease or concession contract. The tax exemption on the bonds would enable the private investors to issue debt at lower interest rates than they could using traditional taxable debt and, thus, pay more for their interest in the infrastructure assets while earning a comparable equity return.

If the Trump Administration wants to improve America’s infrastructure in an expedited manner with minimal involvement of the federal bureaucracy, then it should urge Congress to enact legislation that provides municipalities a subsidy based on the sale proceeds of assets and enables private investors to issue tax-exempt debt to fund their investment in municipal infrastructure assets.

Mayer Brown

By David K. Burton on March 22, 2017

[President Trump Takes Executive Action On Energy Infrastructure Projects: Cadwalader]

President Trump issued an executive order and four presidential memoranda (the "Executive Actions") intended to streamline the regulatory process, dismantle burdensome regulations and promote domestic job growth within the energy sector. The Executive Actions direct specified Cabinet members and agencies to remove regulatory barriers to infrastructure investments, and order the use of American-made materials to construct pipelines within the United States.

In a [memorandum], Cadwalader attorneys Mark Haskell, Brett Snyder and Mary Treanor review the Executive Actions, as well as the ongoing challenges faced by natural gas and oil projects in light of those actions.

Commentary

The Executive Actions do not clarify whether these requirements apply to offshore or cross-border pipelines, nor how the administration will effectuate the directive without violating existing international trade agreements. Key language in the memoranda, requiring American-made materials "to the maximum extent possible and to the extent permitted by law," may provide a loophole. Commenters suggest that this phrase avoids running afoul of existing trade treaties.

Last Updated: March 20 2017

Article by Brett Snyder

Cadwalader, Wickersham & Taft LLP

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

- GASB Issues Omnibus Statement Addressing a Broad Range of Practice Issues.
- SEC Proposes Expansive New Continuing Disclosure Requirements Regarding Private Debt and Other Financial Obligations.
- SEC Seeks Comment on Proposed Amendments to Municipal Securities Disclosure Rule.
- Cambridge, Mass., Community-Sourced Minibonds Could Spark Market Trend.
- Changes in the Audit Process for Tax Advantaged Bonds Related to IRS Division Reorganization.
- Report from TSLI – What Can We Expect in the Near Term from the IRS?
- *William Beaumont Hospital System v. Morgan Stanley & Co., LLC* – Court of Appeals holds that allegations by nonprofit hospital system that broker-dealers withheld information about structure of auction-rate securities (ARS) market and their support-bidding practices, that they

misrepresented availability of fixed-rate versus formulaic-rate structures, and that they failed to warn hospital system about deteriorating ARS market did not satisfy heightened fraud and mistake pleading standard.
- And finally, Great Moments in Judicial Overreach is brought to us this week by *Den Hartog v. City of Waterloo*, which contains this stupefying zinger, "The exact extent to which we may go in deciding questions of fact from the record is vaguely defined; it lies in a shadow land, a 'twilight zone,' whose boundaries do not admit of definite charting." We'll give you a moment to let that sink in.

SPECIAL ELECTIONS - ARKANSAS

Mississippi County v. City of Osceola

Supreme Court of Arkansas - March 2, 2017 - S.W.3d - 2017 Ark. 632017 WL 829214

Taxpayers and city brought action against county seeking to enjoin a special election regarding the use of revenue from a sales tax and a bond issue to fund construction of a new courthouse.

The Circuit Court enjoined the election. County appealed.

The Supreme Court of Arkansas held that passing of scheduled date of election and resolution of a companion case rendered the appeal moot.

County's appeal of trial court's decision to enjoin a special election regarding the funding of the construction of a new courthouse was moot, where the scheduled date of the special election had passed, and a companion case had already resolved the pertinent issues.

ZONING & PLANNING - GEORGIA

City of Cumming v. Flowers

Supreme Court of Georgia - March 6, 2017 - S.E.2d - 2017 WL 875041

Homeowners filed a complaint seeking a writ of mandamus and an injunction in order to appeal the decision of the city's board of zoning appeals to grant a setback variance to neighboring developer.

The Superior Court, Forsyth County, Philip C. Smith, J., denied city's and developer's motion for summary judgment, but granted their requests for certificates of immediate review. City's and developer's applications for interlocutory appeal were transferred to the Supreme Court and granted.

The Supreme Court of Georgia held that:

- Board decision was quasi-judicial, and thus statute allowing a petition for certiorari applied;
- Local ordinances cannot create means of appeal to the superior court that are not authorized by statute, disapproving *Dougherty County v. Webb*, 256 Ga. 474, 350 S.E.2d 457; and
- A quasi-judicial decision of a zoning board may be appealed by certiorari even if the local ordinance does not so provide, disapproving *Jackson v. Spalding County*, 265 Ga. 792, 462 S.E.2d 361, *Shockley v. Fayette County*, 260 Ga. 489, 396 S.E.2d 883, *City of Atlanta v. Wansley Moving & Storage Co.*, 245 Ga. 794, 267 S.E.2d 234.

DRAINAGE DISTRICTS - IOWA

[Board of Water Works Trustees of City of Des Moines v. SAC County Board of Supervisors]

Supreme Court of Iowa - January 27, 2017 - 890 N.W.2d 50

City board of water works trustees brought several claims in federal court against drainage districts, alleging that districts had allowed excessive levels of nitrates in river.

The United States District Court certified questions.

The Supreme Court of Iowa held that:

- There exists no remedy against drainage districts other than mandamus;
- The broad immunity in favor of drainage districts does not violate equal protection;
- Districts did not unconstitutionally take board's property; and
- Board could not assert claims against districts under inalienable rights clause.

A drainage district's immunity from suit for money damages is not based on the doctrine of sovereign immunity; instead, it flows from the fact that a drainage district is an entity with special and limited powers and duties conferred by the Iowa Constitution.

Drainage district immunity from suit for money damages is premised on their limited purpose, which is to build and maintain drainage improvements that provide for the drainage and improvement of agricultural and other lands, thereby making them tillable or suitable for profitable use.

Even if city board of water works trustees were regarded as a private entity, drainage districts did not unconstitutionally take board's property by permitting nitrate concentrations in river to exceed standards for drinking water; board did not own water flowing in river, nor was it denied access to that water.

City board of water works trustees, which was a public entity, could not assert takings claim against drainage district, which was another political subdivision of state, based on excessive nitrate concentrations in river.

City board of water works trustees could not assert claims against drainage districts under inalienable rights clause based on excessive levels of nitrate concentrations in river; clause did not provide basis for one public entity to sue another over use of state-owned assets.

HIGHWAYS - IOWA

[Den Hartog v. City of Waterloo]

Supreme Court of Iowa - March 10, 2017 - N.W.2d - 2017 WL 942846

Taxpayers filed petition for writ of mandamus and temporary injunction challenging municipality's agreement to transfer to residential developer property originally acquired for use as a highway right-of-way, alleging that municipality failed to follow statutory procedures for sale of unused right-of-way.

The District Court dismissed action. Taxpayers appealed, and the Supreme Court reversed and remanded with instructions to enter requested injunction. After city gave notices of intended sale under preference statute, taxpayers filed application to find city in contempt of court, and sought restraining order. The District Court found that notices did not satisfy statutory requirements but declined to find contempt. Taxpayers appealed.

The Supreme Court of Iowa held that:

- Developer was not entitled under preference statute to notice of city's intended sale of right-o--way;
- Platted descriptions of right-of-way were sufficient to describe property subject to sale;
- Fair market value of right-of-way had to include value of developer's improvements which were made prior to the notices; and
- City did not act contemptuously when giving notices of sale under preference statutes.

Developer was not the present owner of land adjacent to right-of-way and thus was not entitled under preference statute to notice of city's intended sale of right-of-way. Developer was not an owner of the right-of-way at the time it was acquired by city for highway construction, and any claim of ownership derived from a sale of the right-of-way land to developer from the city did not make developer the present owner of land adjacent to the right-of-way.

City's notices of intended sale, which used platted descriptions, were sufficient under preference statute to describe highway right-of-way property subject to sale.

Fair market value of highway right-of-way, as included in city's notices of intended sale under preference statute, had to include value of developer's improvements which were made prior to the notices. If preferential offers did not equal or exceed the fair market value of the land as improved, city could confirm its prior sale to developer.

City did not act contemptuously, in violation of injunction prohibiting it from selling highway right-of-way without complying with statutory preference sale requirements, when giving notices of intended sale, although city improperly included developer, which previously had purchased the land and began development before sale was challenged, as preferential buyer within the "present owner of adjacent land" category and failed to include developer's improvements in property's stated fair market value, where there was limited interpretive guidance available on the statute, and statutory compliance had been complicated by the prior sale of the land to developer.

SECURITIES - MASSACHUSETTS

Commonwealth v. Tradition (North America) Inc.

Appeals Court of Massachusetts, Suffolk. - February 21, 2017 - N.E.3d - 91 Mass.App.Ct. 63 - 2017 WL 677363

Commonwealth brought enforcement action against broker engaged in transactions involving municipal bond derivatives, claiming that broker engaged in bid rigging and other deceptive practices in violation of Consumer Protection Act and False Claims Act.

Broker filed third-party claims against individuals and corporations with whom it had consulted in the allegedly fraudulent transactions, seeking contribution for any liability broker might have to Commonwealth, and alleging various other claims, including breach of contract, breach of the implied covenant of good faith and fair dealing, common-law indemnification, unfair and deceptive trade practices, fraud and deceit, intentional and negligent misrepresentation, civil conspiracy, unjust enrichment, and tortious interference with contractual relations.

The Superior Court Department dismissed third-party complaint against certain third-party defendants and dismissed remaining third-party claims. Broker appealed.

The Appeals Court held that:

- Contribution claims were barred due to Commonwealth and broker entering into settlement agreement that did not discharge common liability of all joint tortfeasors;
- Issue whether noncontribution claims were barred by statutes of limitation could not be resolved on motion to dismiss due to factual dispute;
- Dismissal of third-party contribution claims did not warrant drastic sanction of dismissal of third-party noncontribution claims; and
- Broker sufficiently alleged that consultant personally participated in the alleged wrongful conduct at issue.

Third-party claims, asserted by broker engaged in transactions involving municipal bond derivatives, against individuals and corporations with whom it had consulted in allegedly fraudulent transactions, seeking contribution for any liability broker might have as result of Commonwealth's claims for violation of Consumer Protection Act and False Claims Act, were barred due to Commonwealth and broker entering into settlement agreement that did not discharge common liability of all joint tortfeasors, which was prerequisite for contribution under Uniform Contribution Among Tortfeasors Act, notwithstanding broker's argument that it was not required to release third-party defendants because, at time settlement agreement was signed, statutes of limitation had already expired on any claims Commonwealth might have had against them.

Issue whether third-party claims, asserted by broker engaged in transactions involving municipal bond derivatives, against individuals and corporations with whom it had consulted in allegedly fraudulent transactions, for fraud and deceit, intentional and negligent misrepresentation, civil conspiracy, unjust enrichment, tortious interference with contractual relations, and violations of Consumer Protection Act, were barred by statutes of limitation could not be resolved on motion to dismiss, due to factual dispute as to when broker was on inquiry notice of its potential third-party claims based on alleged bid rigging by its consultants.

Dismissal of third-party claims, asserted by broker engaged in transactions involving municipal bond derivatives, against individuals and corporations with whom it had consulted in allegedly fraudulent transactions, seeking contribution for any liability broker might have as result of Commonwealth's claims for violation of Consumer Protection Act and False Claims Act, did not warrant drastic sanction of dismissal of broker's noncontribution third-party claims, even if noncontribution parties and claims had been improperly joined in action, where dismissal would bar subsequent litigation of noncontribution claims because limitations periods had expired.

Broker, which was engaged in transactions involving municipal bond derivatives, sufficiently alleged that consultant personally participated in the alleged wrongful conduct at issue, as required to state causes of action for fraud and deceit and other torts, and broker was not required to allege facts to establish basis to pierce corporate veil in order to state such causes of action, given that employees could be held liable for torts in which they personally participated.

AUCTION RATE SECURITIES - MICHIGAN

William Beaumont Hospital System v. Morgan Stanley & Co., LLC

United States Court of Appeals, Sixth Circuit - January 26, 2017 - Fed.Appx. - 2017 WL 384309

Nonprofit hospital system brought action against underwriters and broker-dealers alleging fraud and misrepresentation in connection with issuance of auction-rate securities (ARS) to finance renovations of one of its hospitals and for construction of new facility.

The United States District Court for the Eastern District of Michigan dismissed claims. Hospital appealed.

The Court of Appeals held that hospital system failed to state claims for fraud and misrepresentation.

Allegations by nonprofit hospital system that broker-dealers withheld information about structure of auction-rate securities (ARS) market and their support-bidding practices, that they misrepresented availability of fixed-rate versus formulaic-rate structures, and that they failed to warn hospital system about deteriorating ARS market did not satisfy heightened fraud and mistake pleading standard, and, thus, hospital system failed to state claims for fraud and misrepresentation under Michigan law in connection with issuance of ARS to finance hospital renovations and construction of new facility.

CONTRACTS - NEBRASKA

Tryon v. City of North Platte

Supreme Court of Nebraska - February 3, 2017 - N.W.2d - 295 Neb. 706 - 2017 WL 469560

Objectors brought action to invalidate contract between city and ambulance service contractor, alleging city provided insufficient notice of conflict of interest before awarding contract.

The District Court dismissed action. Objectors appealed.

The Supreme Court of Nebraska held that:

- Allegations of objectors' amended complaint were sufficient to state claim that city failed to comply with Open Meetings Act notice requirements, and
- Allegations of amended complaint were sufficient to state claim for violation of Political Accountability and Disclosure Act.

Allegations of objectors' amended complaint were sufficient to state claim that city failed to comply with Open Meetings Act notice requirements prior to awarding contract to ambulance service provider, even though amended complaint did not refer to Act and objectors did not refer to Act at hearings before trial court, where amended complaint focused on notice of public meetings and alleged lack of publicly available information on citizens review committee which provided recommendations to city council.

Allegations of objectors' amended complaint were sufficient to state claim that city's award of ambulance services contract violated Political Accountability and Disclosure Act, where objectors asserted that city council awarded a contract to ambulance services provider and that contract was not awarded through an open and public process, because the notice provided was insufficient.

UTILITIES - NORTH DAKOTA

Environmental Driven Solutions, LLC v. Dunn County

Supreme Court of North Dakota - March 7, 2017 - N.W.2d - 2017 WL 899992 - 2017 ND 45

Waste oil treatment company brought action against county, seeking declaratory judgment that Industrial Commission, rather than county, had jurisdiction to determine siting of company's treating plant.

The Commission intervened in the proceedings. The District Court granted summary judgment in favor of company. County appealed.

The Supreme Court of North Dakota held that county's zoning requirements, which county used to halt construction of waste oil treating plant, were preempted by state law, and thus county had no authority through its zoning regulations to veto Industrial Commission's siting of plant.

Commission had statutory authority to regulate waste oil treating plants, and legislative intent indicated that Commission would occupy the field of regulation of oil and gas waste treatment plants.

EMINENT DOMAIN - WEST VIRGINIA

West Virginia Department of Transportation, Division of Highways v. Newton

Supreme Court of Appeals of West Virginia - March 7, 2017 - S.E.2d - 2017 WL 958602

Mineral rights owner filed petition for writ of mandamus seeking to force Department of highways to institute condemnation proceedings for limestone it excavated from its land.

The Circuit Court entered judgment for owner and subsequently awarded her attorney fees and expenses of $32,510.05 for mandamus proceeding and $228,917.44 for fees and expenses incurred in condemnation proceeding. Department appealed and owner cross-appealed.

The Supreme Court of Appeals held that:

- Mandamus and eminent domain proceedings constituted inverse condemnation action for which owner was entitled to recover attorney fees;
- Trial court did not abuse its discretion by concluding that owner was entitled to fees and expenses for her mandamus action on ground that Department acted in bad faith; but
- Remand was warranted for trial court to make factual findings as to factors to be used to determine whether fees and expenses awarded were reasonable.

Mandamus and eminent domain proceedings constituted inverse condemnation action for which mineral rights owner was entitled to recover reasonable attorney fees after she ultimately prevailed and judgment was entered in her favor, despite claim that there was no inverse condemnation because Department of Highways ultimately filed eminent domain proceeding. Department did not intend to institute eminent domain proceedings against owner's mineral interest, although Department was aware that limestone it was removing from property belonged to owner, no effort was made to contact her, and, upon learning of removal of limestone from property, owner's only recourse was to file petition for writ of mandamus.

Trial court did not abuse its discretion by concluding that mineral rights owner was entitled to attorney fees and expenses for her mandamus action seeking to force Department of Highways to institute condemnation proceedings for limestone it excavated from her land on ground that Department acted in bad faith. Department failed to exercise its nondiscretionary duty to institute condemnation proceedings for taking of limestone from property and failed to disclose volume of limestone removed, and delay occasioned by Department's refusal to file condemnation action coupled with commencement of highway construction while it was trespassing upon owner's mineral interests put owner at distinct disadvantage in proving volume and value of her mineral interest, which greatly increased litigation costs and expenses.

Remand was warranted for trial court to make factual findings as to factors to be used to determine whether attorney fees and expenses awarded to mineral rights owner in mandamus and eminent domain proceedings after she ultimately prevailed against Department of Highways were reasonable; Department raised factual questions as to accuracy of fees, and there was complete absence of factual findings in final order to permit meaningful review of reasonableness of amount of fees and expenses awarded.

SEC Seeks Comment on Proposed Amendments to Municipal Securities Disclosure Rule.

Read the Proposed Amendments and the Request for Comment.

Cambridge, Mass., Community-Sourced Minibonds Could Spark Market Trend.

Cambridge, Mass., raised $2 million through a sale of community-sourced minibonds, which the city and its underwriter say could further a trend in the $3.8 trillion municipal bond marketplace.

Public finance firm Neighborly underwrote the general obligation deal through its affiliated broker-dealer, Neighborly Securities.

"Our intention is to democratize access to municipal bonds," said James McIntyre, head of finance for San Francisco-based Neighborly and a former executive director of public finance for Morgan Stanley.

Cambridge, a 110,000-population city across the Charles River from Boston and home to Harvard University and Massachusetts Institute of Technology, will use the proceeds to fund capital projects such as school building renovations and street and sidewalk improvements.

Officials marketed the tax-exempt bonds only to city residents, capped individual orders at $20,000 and lowered the minimum investment amount to $1,000 from the customary $5,000.

Retail orders began selling at the close of business on Feb. 17, at the start of the three-day President's Day weekend. The sale closed March 8.

The Series A minibonds bonds pay a tax-exempt interest rate of 1.6% and will mature in five years, on Feb. 15, 2022, with the first coupon due Aug. 15.

According to Neighborly, more than 240 individuals invested in the minibonds. It marked the initial investment in a municipal bond for 45 of them.

Locke Lord LLP was bond counsel in Cambridge. Hilltop Securities Inc. unit First Southwest was the financial advisor.

Fitch Ratings, S&P Global Ratings and Moody's Investors Service all assign triple-A ratings to Cambridge GOs.

"This will not only engage residents, but we will make them a financial partner in our infrastructure investments," said City Manager Louie DePasquale.

A publicity campaign included pamphlets, "invest in Cambridge" mass-transit posters, a video and a huge sign in front of City Hall on Massachusetts Avenue.

According to neighborly founder Jase Wilson, the sale is a throwback to yesteryear.

"The most exciting thing about the Cambridge minibond issue is that it's not a new idea at all," he said. "It's in fact the way our nation's communities used to borrow money to build public projects."

Denver, for example, issued its first minibonds in 1990. In 2014, the city generated $12 million through a crowdfunding in $500 increments, as part of a $550 million transaction to finance city road improvements.

"The minibonds definitely met Denver's goal of helping residents invest in the community, so the project was well worth the additional resources and effort," wrote Elizabeth Fu, a manager at the Government Finance Officers Association's Research and Consulting Center.

"Of course, this tool isn't for everyone," she wrote, because some governments might have trouble with the additional workload, the level of resources needed for administration, or the additional cost.

Cambridge also sold $56.5 million in general obligation municipal purpose loan of 2017 Series B bonds competitively on March 1. Morgan Stanley submitted the winning bid with a true interest cost of 2.303%.

Proceeds from that sale will benefit sewer and stormwater, energy efficiency and street repair citywide, including Cambridge Common and tourist spot Harvard Square.

Neighborly's director of business development, Pitichoke Chulapamornsri, said the firm structures bond financings to connect a city's capital plan with its residents. "We are excited to help redefine the 'public' in public finance," he said.

Wilson and bond broker Patrick Hosty founded Neighborly in Kansas City, Mo., in 2012. Wilson moved headquarters to San Francisco while Hosty still runs the Kansas City office. The firm also has an office in New York.

Neighborly plans deals similar to Cambridge this year in Burlington, Vt.; Austin, Texas; and Lawrence, Kan. – all home to state universities.

"Communities that are innovative and engaged are usually college towns," said McIntyre. "They are the ones with the most participation."

Harvard and MIT, two of the nation's wealthiest universities and the two largest employers in

Cambridge, fuel the city's economy. According to Fitch, they employ more than 18% of the city's workforce.

MIT, in particular, has built out significantly around the Kendall Square neighborhood near the river.

"Cambridge continues to maintain and strengthen its position as a national leader in the life-sciences and high-tech sectors," Fitch wrote in a report. Expansions in these sectors have contributed to the tax base, employment and resident income growth over the past several years and is projected by the city to continue in the near future, the rating agency wrote.

The city has $377 million of debt, said Moody's.

The Bond Buyer

By Paul Burton

March 15, 2017

SEC Proposes Expansive New Continuing Disclosure Requirements Regarding Private Debt and Other Financial Obligations.

On March 15, 2017, the Securities and Exchange Commission ("Commission" or "SEC") published in the Federal Register for comment proposed amendments to Rule 15c2-12 (the "Rule") under the Securities Exchange Act of 1934 ("Exchange Act") that would amend the list of event notices required under the Rule in a manner that, if such amendments are finalized in their proposed form, would likely require issuers of, or "obligated persons" on, publicly offered municipal bonds to provide detailed ongoing disclosure of any new debt, derivatives and other "financial obligations."

The Rule requires that a broker, dealer, or municipal securities dealer (collectively, "dealers") acting as an underwriter in a primary offering of municipal securities reasonably determine that an issuer or an obligated person has undertaken, in a written agreement or contract for the benefit of holders of the municipal securities, to provide to the Municipal Securities Rulemaking Board ("MSRB") through the MSRB's Electronic Municipal Market Access ("EMMA") system, prompt notice of specified events. The proposed amendments would amend the list of such event notices to include;

> (i) incurrence of a financial obligation of the obligated person, if material, or agreement [by the obligated person] to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material; and
>
> (ii) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties.

The proposed amendment provides a broad definition of "financial obligation" which includes: a (i) debt obligation, (ii) lease, (iii) guarantee, (iv) derivative instrument, or (v) monetary obligation resulting from a judicial, administrative, or arbitration proceeding. The "financial obligation" definition excludes traditional municipal bonds which are already covered by the Rule.

In the release accompanying the proposed amendments, the SEC noted that if new financial obligations or new material covenants, events of default or remedies impacted an issuer's or obligated person's liquidity and creditworthiness, the credit quality of the issuer's or obligated person's outstanding debt could be adversely affected which could impact an investor's investment decision or other market participant's credit analysis. Such changes to credit quality could also affect the price of the issuer's or obligated person's existing bonds. Items the SEC referenced as potentially material include debt service coverage ratios, rate covenants, additional bond tests, contingent liabilities, events of default, remedies and priority payment provisions (including structural priority such as balloon payments, for example).

The Commission's accompanying release stated that the event notice of incurrence of a material financial obligation generally should include a description of the material terms of the financial obligation. According to the release, examples of such material terms include the date of incurrence, principal amount, maturity and amortization, and interest rate, if fixed, or method of computation, if variable (and any default rates); the release states that disclosure of other terms may be appropriate as well, depending on the circumstances.

Unless the proposed amendments are pared back following the comment period, they are likely to result in the required disclosure by issuers or obligated persons of municipal bonds subject to the Rule of virtually all new loan agreements with banks or other private lenders, privately placed municipal bond indentures or loan agreements, swap agreements, real estate leases, and material judgments or arbitration rulings, as issuers and obligated persons are unlikely to shoulder the administrative burden and legal risk associated with determinations of which obligations, and which terms of such obligations, are "material" and which are, and will remain in hindsight, clearly immaterial. Similarly, for expense and risk reasons, it is more likely that full legal documents will be disclosed versus substantially redacted or summarized versions.

The proposed amendments do not appear to require disclosure of the termination or satisfaction of financial obligations previously disclosed on EMMA as material events; accordingly they may result in the accumulation over time on EMMA of a variety of lengthy loan agreements, indentures, swap agreements and the like with no clear way for bondholders or brokers accessing EMMA to determine whether the relevant obligations and the related agreements continue in effect. Such overdisclosure may limit the pool of investors with respect to the obligations of the issuer or obligated person, in that brokers responsible under MSRB Rule G-47 for conveying to customers all material information about the security accessible on EMMA may opt not to do so for securities with EMMA postings that include unwieldy amounts of raw legal documents.

Issuers and obligated persons may also deem the requirement to publicly disclose otherwise private transactions adverse to their business interests. Currently, for example, an issuer or obligated person may negotiate different covenants and different covenant levels with different private lenders, without each lender necessarily having access to the covenants of the other lenders. If the amendments require the issuer or obligated person to disclose on EMMA the coverage, days cash on hand, interest rates and other material terms of its private loan arrangements, the result over time may be for each new lender to require, in effect, most favored nation status with covenants and other terms at least as tough as the toughest terms previously agreed to by the applicable issuer or obligated group. Reasonable minds may disagree on whether that should "come with the territory" when an issuer chooses to access the public municipal market, but to date such public disclosure of the details of private transactions has not been required.

The second new event notice, for the occurrence of a default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the issuer or obligated person, presents a different judgment call for issuers and obligated persons, as such disclosure is only required if the event "reflects financial difficulties." Some of the examples cited in the release for subsequent events include monetary or covenant defaults that might result in acceleration of the debt, swap events, such as rating downgrades, which might require the posting of collateral or the payment of a termination payment and changes to the contract rights of the counterparties to financial obligations. Again, it is unlikely that entities subject to such requirements would expend much legal capital on parsing through whether a swap termination event, or even an amendment of loan documents, "reflects financial difficulties", and the tendency is likely to be towards overdisclosure.

There are additional ambiguities in the proposed amendments. According to the accompanying release, the amendments will only be applicable to continuing disclosure agreements executed after the amendments are finalized, but it is unclear, for example, whether an issuer or obligated person that executes a continuing disclosure agreement governed by the amended Rule will be required to disclose all previously incurred material "financial obligations", or whether only "financial obligations" incurred following the execution of such an agreement will be subject to such disclosure. The accompanying release does indicate that the required notice of default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation which reflect financial difficulties would apply with respect to financial obligations previously incurred.

Unlike many of the existing events for which event notices are currently required under the Rule, which occur rarely, incurrence of financial obligations occurs regularly for many issuers and obligated persons. Accordingly, these amendments arguably would constitute the broadest expansion to date of the Rule's continuing disclosure requirements. They are sure to generate many comments from affected parties before they are finalized.

by Charles E. Carey

Friday, March 17, 2017

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

SEC's Proposed Disclosure Amendments Criticized as too Costly, Burdensome.

PALM BEACH GARDENS, Fla. – The Securities and Exchange Commission's proposed amendments to its Rule 15c2-12, which would create numerous new disclosure obligations for issuers, received more criticism on Thursday as market participants noted a lack of specificity in them and the burdens and costs that they would impose on issuers.

Members of the bond community made their comments during various panels and speeches at The Bond Buyer and Bond Dealers of America National Municipal Bond Summit here.

Ben Watkins, Florida's director of bond finance, during a luncheon speech that touched on regulation generally, as well as the amendments, said that the regulators don't "fully appreciate the costs and burdens they impose on the market."

"From my perspective, the regulatory creep is like kudzu in the South in the summer, it continues perpetually," he said, specifically singling out the SEC's Municipal Advisor Rule, the Municipalities Continuing Disclosure Cooperation initiative, and the recently proposed 15c2-12 amendments.

He added that investment banks "are now an elaborate front for compliance departments" because "they're not free to bank anymore" given the regulations imposed in recent years.

"So much time, effort, and energy goes into compliance that that diverts resources that would otherwise be available to deliver intellectual capital and solutions to the issuer community and for the benefit of the market as a whole," Watkins said.

The proposed amendments to 15c2-12 are designed to achieve a goal most municipal participants have supported – helping rating agencies, analysts and others obtain information about bank loans, private placements and other alternatives to publicly offered tax-exempt bonds that issuers and borrowers are increasingly using that fall outside the current 15c2-12 disclosure requirements.

The first new material event notice category would require an issuer or borrower to file a notice if they incur a financial obligation that is material or a financial obligation has an agreement to covenants, events of default, remedies, priority rights or similar terms "any of which affect securities holders, if material." The SEC has consistently declined to define materiality, contending it's based on facts and circumstances, but the Supreme Court has said a fact is material if there is a substantial likelihood that a reasonable investor would consider it important.

Financial obligations are defined as "a debt obligation, lease, guarantee, derivative instrument or a monetary obligation resulting from a judicial, administrative or arbitration proceeding."

The second new material event category would require a notice to be filed for certain actions or events related to the financial obligation that "reflect financial difficulties" such as a default, event of acceleration, termination event, or modification of terms.

Underwriters would have to reasonably determine that an issuer or borrower has agreed to provide notice of such events in its continuing disclosure agreement (CDA). The proposed amendments, if adopted would apply to CDAs entered into in connection with primary offerings occurring on or after the compliance date for the amendments.

Watkins said that it would be best for the SEC to be specific and "give clear and narrow rules that people can follow rather than saying 'all material financial obligations.'"

The broad definition of material financial obligations puts everyone in the position of wondering what the SEC is talking about and what they need to do, Watkins said.

"You spend your time, effort, energy, and money focused on that rather than complying with the rule," he added.

Jessica Kane, director of the SEC's Office of Municipal Securities, said on a panel before Watkins' speech that the new amendments would use the definition of materiality in the same way it is used in the 14 event notices that are already included in 15c2-12. She added that the determination of what is material is something that an issuer or obligated person is in the best position to make based on the relevant elements and circumstances at the time.

Kane said that the SEC expects materiality "is a concept that issuers are familiar with and know how to apply."

Guy Yandel, executive vice president and co-manager of George K. Baum & Company's muni division, participated on Kane's panel and said he thinks the issue of materiality would be "a little different" in the two new event notices if they were approved.

"In all of the 14 previous events, we could counsel our clients that they shouldn't try to make a materiality call, they should just say what they did," Yandel said. "With these, it's a little more difficult because if you were to try to do that, you'd be uploading garbage contracts that municipalities enter into and I don't think that is the intent."

He added that means issuers are no longer going to be able to fall back and say 'we're just going to disclose everything' but will instead have to make a materiality determination.

Kane encouraged industry comments on the proposed amendments at various times during the panel and specifically pointed out that the amendments' proposing release asks a number of questions about whether the definition of financial obligations is the right definition with the right scope.

Watkins said the Government Finance Officers Association will be commenting on the proposal, adding that, in his view, voluntary industry initiatives and best practices coupled with collaborative efforts among stakeholders is "the best way to go" and should precede regulation and enforcement.

However, the SEC and others like financial analysts are still concerned about a lack of information despite past collaboration, GFOA best practices, and other efforts from market participants and regulators to increase voluntary bank loan disclosure.

Bill Oliver, industry and media liaison for the National Federation of Municipal Analysts, said during a separate panel on Thursday that he thinks the SEC generally did "a pretty good job in terms of defining concerns that credit analysts have in terms of disclosing financial obligations that have an impact on how you calculate debt ratios and also the effect on existing bondholders."

NFMA sent a letter to the SEC in August 2016 urging changes to Rule 15c2-12, including expanding the list of material events to include bank loans and other debt obligations.

The Bond Buyer

By Jack Casey

March 16, 2017

GASB Issues Omnibus Statement Addressing a Broad Range of Practice Issues.

Norwalk, CT, March 20, 2017 — The Governmental Accounting Standards Board (GASB) today issued guidance addressing several different accounting and financial reporting issues identified during the implementation and application of certain GASB pronouncements.

The issues covered by GASB Statement No. 85, *Omnibus 2017*, include:

- Blending a component unit in circumstances in which the primary government is a business-type

activity reporting in a single column for financial statement presentation
- Reporting amounts previously reported as goodwill and “negative” goodwill
- Classifying real estate held by insurance entities
- Measuring certain money market investments and participating interest-earning investment contracts at amortized cost
- Timing of the measurement of pension and other postemployment benefits (OPEB) liabilities and related expenditures recognized in financial statements prepared using the current financial resources measurement focus
- Recognizing on-behalf payments for pensions or OPEB in employer financial statements, and
- Simplifying certain aspects of the alternative measurement method for OPEB.

Statement 85 also addresses issues similar to those covered in Statements No. 78, *Pensions Provided through Certain Multiple-Employer Defined Benefit Pension Plans*, and No. 82, *Pension Issues*, including:

- Presenting payroll-related measures in required supplementary information by OPEB plans and employers that provide OPEB
- Classifying employer-paid member contributions for OPEB, and
- Accounting and financial reporting for OPEB provided through certain multiple-employer defined benefit OPEB plans.

The provisions of Statement 85 are effective for periods beginning after June 15, 2017. Earlier application is encouraged.

MSRB Seeks to Establish Continuing Education Requirements for Municipal Advisors.

The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission amendments to MSRB Rule G-3, on professional qualification requirements.

The proposed amendments would establish continuing education (CE) requirements for municipal advisors and would require implementation of a continuing education training program for individuals qualified as municipal advisor representatives. The proposed amendments seek to avoid unnecessary regulatory overlap with existing CE requirements for municipal securities dealers, which may also act as municipal advisors.

The filing also includes accompanying amendments to MSRB Rule G-8, on books and records to be made by brokers, dealers and municipal securities dealers and municipal advisors.

Read the SEC filing.

FINRA Hits Santander with $175K Fine for Charging Customers Unfair Muni Bond Prices.

FINRA slapped Santander Securities with a $175,000 fine for allegedly selling municipal bonds to customers at unfair and unreasonable prices.

The regulator charged that the pricing in at least 12 transactions were not reasonable, taking into consideration factors such as the judgement of the broker or the dealer as to the fair market value of the securities, according to the settlement the firm reached with FINRA.

FINRA charged that Santander Securities sold municipal bonds to clients at unreasonable prices.
FINRA charged that Santander Securities sold municipal bonds to clients at unfair prices.
The unfair pricing occurred from July 2013 to September 2013, FINRA claimed.

“Santander Securities is pleased to have resolved this matter,” said Nancy Orlando, a spokeswoman for Santander Bank. Orlando added that since 2013 the firm has enhanced its compliance, risk management, legal and control functions. “We take our compliance responsibilities very seriously, and are committed to providing excellent service to our customers,” she said.

In addition to the $175,000 fine, the firm was ordered to pay restitution to the affected customers in the amount of $62,807 plus interest. The restitution does not preclude customers from pursuing their own actions, FINRA said in the settlement document.

Santander settled the charges without admitting or denying FINRA’s findings.

Bank Investment Consultant

By
Margarida Correia

Published
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CA Citizen Panels Overseeing School Bonds Need Help, Statewide Panel Says.

FAIRFIELD — Oversight of school construction bonds – proposed by creating citizen committees in California – is not taking place for the most part, the Little Hoover Commission said in a study.

Independent training is needed for citizens bond oversight committees created in 2000 when the threshold to pass school bond measures in California was reduced from two-thirds to 55 percent, said the study released late last month.

“Bond oversight committees in many communities act simply as cheerleaders for the district, often because members simply do not understand their roles or know what actions they can take,” states the study, “Borrowed Money: Opportunities for Stronger Bond Oversight.”

Little Hoover Commission recommendations include requiring school districts in the state to provide a minimal budget for oversight committees, with money to hire independent counsel with municipal bond expertise.

Bonds proposed to voters should list projects the money will pay for, the commission also recommends.

Sharon Bacinett, vice chairwoman of the Citizens Bond Oversight Committee for the Measure C bond in the Fairfield-Suisun School District, said Monday she has not yet seen the Little Hoover Commission report but that hiring an attorney would be a waste of time and money.

The school district has attorneys and any questions the oversight committee had were answered, Bacinett said.

Every project Measure C paid for was on time and under budget, she said.

Bacinett said that Kim Van Gundy, assistant director of facilities and operations, goes to school construction sites to see about change orders requested on projects.

“Kim Van Gundy is right on top of it,” Bacinett said. “As long as we’ve got Kim Van Gundy we’re going to be fine.”

Voters passed the $100 million Measure C bond in 2002. The district leveraged that money to get about $108 million more to complete various facilities projects. Voters in the district passed the $249 million Measure J school facilities bond in June 2016.

Lyman Dennis, chairman of the Citizens Bond Oversight Committee for Measure Q at Solano Community College, said he has not read the commission report but that allowing oversight committees to hire attorneys “would be good.”

“There’s room for improvement,” Dennis said of the citizen panel’s work.

Voters passed the $348 million Measure Q bond in 2012.

Ivette Ricco, who served from 2010 to 2016 on the citizens bond committee for the West Contra Costa County School District, said in a letter to the Little Hoover Commission that school districts completely control the oversight committees.

Dennis Clay, in an August statement to the commission, said that he works at the West Contra Costa school district as a whistle-blower.

“West Contra Costa likes to claim transparency, but for the most part it has actively worked against it,” Clay wrote. “People in West Contra Costa, and maybe in government in general, are not hired based on competence,” he said, but as a school district official said, “on cultural fit.”

Matthew Duffy, superintendent of the West Contra Costa district, said of the school district’s practices on bonds over the past 15 years, in a Sept. 22 letter to the Little Hoover Commission, “We knew and understand the concerns expressed by many members of our community.”

Several changes have improved the district’s practices, Duffy wrote He concluded his letter by stating, “We look forward to the continued conversation around our school construction program.”

Richard Michael of the California School Bond Clearinghouse Project testified before the commission Sept. 6 about “oversight in the era of government by what it can get away with it.”

“There is no oversight of district bond expenditures in California,” Michael said.

A few private firms working hand-in-hand to sell bonds to school districts control the industry, he said. Deals happen on a very local level and avoid scrutiny, he said.

“The industry has had the advantage of operating in plain sight,” Michael said, “but in the dark with respect to the voters in the districts that comprise its clientele.”

Bonds typically include broad categories of vague projects, Michael told the commission.

School districts with previous bond measures trumpet the fact the oversight committee has "approved" its "good stewardship of public funds," he said. No empirical evidence supports such conclusions, Michael said, and the school district has captured the bond committee.

Committees look good on paper but fall apart in practice, he said before the commission.

Public knowledge about bonds is limited, Michael said, and celebrity news often dominates the media.

"To most of the people in the state, even the tens of millions with bond programs already in place, it doesn't even appear on their news stream. The Kardashians, yes. Bonds, no," Michael said.

The firms of Piper Jaffray and RBC Capital Markets LLC contributed to the Solano College district's Measure Q bond campaign for the November 2012 election and then after the measure passed, served as the bond underwriters. Piper Jaffray was the leading contributor to the campaign, providing $25,000, according to campaign records; and RBC Capital Markets was the third-highest contributor, providing $18,000, campaign records show.

The services of the bond underwriters were already under contract with Solano College prior to the election, Yulian I. Ligioso, the college's vice president of finance and administration, has said. Those agreements were approved by the college's governing board in August 2011, Ligioso has said.

The Sacramento-based Little Hoover Commission describes itself as "an independent state oversight agency."

Daily Republic

By Ryan McCarthy | March 15, 2017

Reach Ryan McCarthy at 427-6935 or rmccarthy@dailyrepublic.net.

As Interest Rates Rise, Muni Bonds' Unique Characteristics Matter More.

This year, the Federal Reserve is likely to raise interest rates at least three times. The current rate hike cycle is the first in nearly a decade and after all those years of zero-bound rate policy, some investors may feel as though this is a step into uncharted territory. Standish, however, has managed municipal bond portfolios through many similar interest rate tightening cycles and our analysis of how various asset classes have performed during previous periods of rising rates makes us confident that opportunities may exist for investors to earn attractive yields while also reducing portfolio risk amid the ongoing normalization of monetary policy.

Download the White Paper.

BOK Financial Sued Over Municipal Bond Deals.

The cases concern bond deals, including some settled last year with the SEC

BOK Financial is now facing two lawsuits over municipal bond deals, including some of the same bond deals that led to it to pay more than $1.6 million to settle charges from the Securities and Exchange Commission in September of last year.

Two groups of municipal bond investors are suing Tulsa-based bank holding company for aiding fraud, negligence and breaching its fiduciary duty in two separate, yet similar, lawsuits after its business partners in the bond deals, which financed purchasing or renovating senior living facilities, were charged with fraud.

The second civil suit, a class-action complaint, was filed in federal court Monday and is seeking in excess of $5 million in damages. The first lawsuit was filed in September in Tulsa County District Court and is seeking $5 million in damages.

In a statement Wednesday to the World on the second lawsuit, BOKF said, "We will vigorously defend the lawsuit and are confident we will prevail."

Regarding the first lawsuit, the bank has said in SEC filings that it feels it has a valid defense and argued in court filings that the case should be put on hold and investors, including the plaintiffs, will be paid as part of a court-ordered payment plan.

In announcing the settlement, the SEC said the company failed in its "gatekeeper role" when it didn't notify people who invested in the bonds that the manager of the bond offerings for the senior living facilities, Christopher Brogdon, was using emergency cash and not replenishing it.

As trustee for the bonds, the bank held the invested cash and was in charge of making sure the operators of the senior living facilities complied with the obligations of the debt, filings claim.

The most recent lawsuit alleges that three men, Brogdon, Todd Barker and Dwayne Edwards, used money from the bonds for unauthorized activities such as financing other projects and personal expenses, and that BOKF was required to alert investors and failed to do so.

BOKF said of the second lawsuit: "The only connection between BOKF and the two separate matters is that Mr. Brogdon sold the underlying assets to Mr. Edwards. The bank fulfilled all of its obligations as trustee for the Dwayne Edwards bonds in a timely fashion, provided prompt notices to the market and took prompt action to protect the bondholders. The lawsuit is without merit and misrepresents the facts in the Dwayne Edwards matter."

Court filings allege that the bank's primary point of contact with Brogdon was a former member of the bank's corporate trust department and that employee knew of Brogdon's actions but instead of notifying investors, chose to protect that the fees generated by Brogdon's business. That employee was fired in 2015.

After the SEC settlement, the bank said in a statement: "The actions of a former employee in this matter are completely contrary to our guiding principles. Our board of directors and audit committee have worked with the SEC to create policies and procedures to prevent this from happening again."

BOKF doesn't expect that the first lawsuit will have an impact on its financial well-being according to SEC filings.

"Management has been advised by counsel that the Bank has valid defenses to the claims. The Bank expects the Court ordered payment plan will result in the payment of the bonds by the principals," the bank said in its latest 10-K. "Accordingly, no loss is probable at this time and no provision for loss has been made. If the payment plan does not result in payment of the bonds, a loss could become probable. A reasonable estimate cannot be made at this time though the amount could be material to the Company."

By Samuel Hardiman | Tulsa World

Posted: Thursday, March 16, 2017 12:00 am

Samuel Hardiman 918-581-8466

sam.hardiman@tulsaworld.com

Emanuel's Short-Term Budget Solutions Will Cost $1 Billion In Interest.

For years, Chicago has patched up budget deficits with long-term borrowing — an expensive habit that Mayor Rahm Emanuel inherited, perpetuated and has vowed to break.

But a Tribune analysis of the city's latest bond sale, a $1.2 billion offering earlier this year, shows that the mayor will continue to run the city with borrowed money, at great long-term expense, through the rest of his term in 2019.

Among the findings of that analysis:

•The majority of the money will be used for budget relief and come at a very high cost. Almost all of the additional costs, however, do not kick in until after the end of Emanuel's current four-year term. By paying only interest for the first several years of the loan, Emanuel can use the funds borrowed this year to smooth out budgets through 2019 at minimal expense.

•Some of the money will be used to refinance previous borrowing but at a higher interest rate. The main advantage for the city is that it kicks the costs further into the future. In all, taxpayers are on the hook for $1.1 billion in interest on the loan, which will cost $2.3 billion to repay over 20 years.

•The city will continue to rely on borrowed money to pay legal settlements, turning to a new stockpiling strategy rather than trying to pay these costs out of its regular operating revenues as many municipalities do. Borrowing this way adds $120 million in interest costs to the $225 million set aside for settlements.

The city portrays the new $1.2 billion in borrowing as a turning point, saying it will no longer restructure old debt to push costs into the future at greater expense. That tactic, known as "scoop and toss," has been widely criticized as a desperation move during the terms of Emanuel and his predecessor, Mayor Richard M. Daley.

City Budget Director Alexandra Holt told the Tribune: "It is the last time we are borrowing for scoop and toss. It is the last time we are borrowing for routine settlements and judgments."

The Tribune detailed Daley's reliance on debt in its 2013 investigative series "Broken Bonds," which showed how the mayor built his political legacy through spending then left taxpayers with a huge debt to pay. The city's massive liabilities, which also include unpaid pension obligations, have driven down the city's credit rating and made it much more expensive to borrow money. Chicago's general obligation bond ratings fell below investment grade in 2015 and remain at junk status.

Carole Brown, the city's chief financial officer, said January's bond sale is intended to show investors and municipal market analysts action on Emanuel's financial reform agenda. The mayor recently urged Moody's Investors Service to reconsider its low opinion of Chicago's creditworthiness or withdraw its public ratings of the city, arguing in a December letter that the city is on a path to financial stability.

But experts say that, given Chicago's history of borrowing, pension burden and continued struggles to balance its budgets, there can be no certainty the city can make good on promises to end its bad habits.

Matt Fabian, a partner at Concord, Mass.-based Municipal Market Analytics, said he is not convinced that the city has its budget problems solved and that it won't need to scoop and toss old bonds or borrow for judgments and settlements in the future to make ends meet.

"That is the promise from the mayor, and you can't fully dismiss that promise, but as an investor you have to assume they will do this again." Fabian said.

"We all know that the city does not have any extra money, so it makes sense that they would finance what they are going to do," Fabian added, "but this is a cost of the city not having liquid resources elsewhere. This is an example of in America why poor people fall farther behind, because they are forced to finance things that other people would just pay for."

By using bond funds to close its budget gaps, the city can spare residents from further tax increases and avoid more painful cuts to city services in the short term, said Jason Horwitz, the Chicago-based director of public policy and economic analysis for Anderson Economic Group.

But Horwitz said the tactic comes at a high price and essentially guarantees future budget deficits or tax increases, as debt payments pile up for years to come.

"Borrowing more and accumulating more debt has been an expensive choice," he said. "I think the fact the city has drawn out its fiscal problems has made it much more difficult to find remedies."

Of the $1.2 billion the city borrowed, $687 million will go to help close its budget gaps through 2019, including debt payments that are coming due and anticipated legal claims. Just $365 million will go to municipal bonds' more traditional uses — city maintenance, construction and equipment.

Payments on the massive deal are limited to just over $130 million through the next mayoral election. In a particularly complicated move known as "capitalized interest," the city is using $77 million of the borrowed money to pay interest costs on the loan through 2019. That strategy lowers debt costs for several years but increases the amount that must be repaid, adding more than $87 million in interest.

Since Emanuel took office in 2011, the city's general obligation bond liabilities have increased dramatically. The city now owes $18.1 billion in payments on $9.8 billion in debt, up from $13.2 billion on $7.2 billion in 2011.

Debt service on all of Chicago's outstanding general obligation bonds totals $500 million this year, but in 2020 — after the mayoral election — it will grow to more than $900 million. Payments then do not decline significantly until after 2036.

Asked how the city will balance its budgets in those years, budget office spokeswoman Molly Poppe said officials will continue to cut costs through spending reforms and find other available revenues.

Holt said the size and structure of the borrowing was necessary because the city would not be returning to the bond market for several years and needed to be prepared for a variety of costs.

“We need to be prepared to pay for expenses, whether they are fixing bridges or repairing the lakefront or fixing the roofs on buildings or paying judgments and settlements or buying a new fire engine — all of that stuff needs to be paid for, and we do our planning ahead of time,” she said.

In a 2015 speech to civic leaders, Emanuel promised that Chicago would begin to pay for more of the city’s routine judgments and settlements with operating funds, preserving its long-term debt for the other more common uses of municipal bonds mentioned by Holt.

Indeed, the city plans to use operating funds to pay for all of its 2016 judgments and settlements, which are expected to total roughly $110 million, according to the budget director. That would be the first time since Emanuel took office that no debt would be issued to pay for legal liabilities. According to the city’s online financial records, since 2006 the city borrowed to pay a portion of its legal claims every year through 2015.

But this year’s bond deal also includes $225 million set aside for future liabilities. In other words, although this could be the last time Chicago borrows money to make these payments, it expects to use borrowed money for that purpose for some years to come — a strategy that adds huge interest costs to each legal claim.

For instance, if the city uses the stockpiled funds to pay $1.8 million in new legal settlements that the City Council approved last month, interest costs would boost the total outlay to $2.8 million, according to the Tribune’s analysis.

Including the new bonds, the city has borrowed just under $1 billion for legal costs since 2006, of which $664 million came under Emanuel’s watch.

According to Fabian, using some of the borrowed money to stockpile funds to pay for unidentified future liabilities was an expensive and risky budget gimmick that may suggest city leaders fear they may have trouble selling more debt in the future. Brown told the Tribune that the city is not concerned about losing access to the municipal bond market.

Richard Ciccarone, president of the municipal bond research company Merritt Research Services, said the city was being closely watched for progress on the mayor’s debt reform agenda, and he was surprised that plan had evolved to borrowing in advance for legal liabilities.

“I think we assumed they would pay off legal liabilities known to them at this time and begin to pay them off going forward with current funds as a pay-as-you-go,” Ciccarone said. “The stockpiling for the future might not be the spirit of the way this was understood by many analysts or investors.

“On the positive side, it does provide a contingency for unexpected difficulties that may occur, especially some very highly visible and contentious situations in Chicago both on the law enforcement side as well as the issues involving labor,” he said.

The size and scope of Chicago’s repeated borrowing to pay for legal claims is extraordinary, according to Ciccarone, who said most cities borrow only occasionally for that purpose — such as when the cost comes unexpectedly or is too large to be paid from available resources.

Ald. Scott Waguespack, 32nd, who sits on the City Council’s Finance Committee, said paying more than $100 million in interest to borrow for the city’s future judgments and settlements was more than he expected. But specifics about the deal — why the city was borrowing for legal claims, how much it would cost — were hard to obtain from the mayor's finance team, he said.

"They kind of argue that this is what we are going to do, and that is all there is to it," Waguespack said. The bond sale was approved without opposition by the City Council in October.

Brown and Holt said that they spent extensive time briefing the council on the bond issuance and that aldermen were aware of the high cost of the borrowing and how the funds would be used.

Another pledge Emanuel made in his 2015 speech was that the city would end "scoop and toss" refunding by 2019. However, the Tribune found that the latest deal includes refinancing of bonds that would have come due between 2020 and 2022, for a total of just under $50 million in old debt. All of the restructured bonds have higher interest rates and the majority have longer maturities — the hallmarks of scoop-and-toss deals.

Most of that debt — $33 million — would have been paid in 2020. Poppe said the restructuring of those bonds meets the mayor's 2019 deadline because these bonds would have been accounted for in the 2019 budget, despite maturing in 2020.

As for the remaining bonds, she said the debt coming due in 2021 and 2022 is being refinanced using new bonds that will be repaid in the same year as the old bonds, so it is not a scoop and toss. However, the new bonds have a higher interest rate, 7.0 percent compared with 5.6 percent, leading to a small increase in cost.

The Chicago Tribune

by Peter Matuszak

March 21, 2017

pmatuszak@chicagotribune.com

Changes in the Audit Process for Tax Advantaged Bonds Related to IRS Division Reorganization.

Last week at the National Association of Municipal Bond Lawyer's Tax and Securities Law Institute, the IRS Commissioner for the Office of Tax Exempt and Government Entities (TE/GE) announced changes to TE/GE's operations and structure. These changes will consolidate and standardize certain operations. In particular:

Effective May 1, 2017, TE/GE will implement the following changes:

- TE/GE will consolidate into a new Compliance, Planning and Classification Office (CP&C), discussed below,certain work being done in each of the TE/GE functions:

– Exempt Organizations (EO)
– Employee Plans (EP)
– Federal State and Local Government (FSLG)
– Indian Tribal Government (ITG)
– Tax Exempt Bonds (TEB)

- TE/GE will move FSLG, which largely deals with employment tax issues, to EO.
- TE/GE will restructure TEB and consolidate it with ITG under a new Director TEB/ITG, discussed below.
- Effective April 1, 2017, TE/GE will standardize the information document request (IDR) and related enforcement process for TE/GE IDRs, including IDRs for tax-advantaged bonds.

This Alert discusses these changes and is relevant to taxpayers, including issuers and borrowers, and their attorneys working with TEB, as well as attorneys who work with TE/GE's EO, EP, FSLG, and ITG Offices.

Compliance, Planning and Classification Office

CP&C is a new office that will be responsible for case selection and closed case quality review for all the TE/GE functions. For case selection, CP&C will conduct research and review data, identify issues with the help of technical experts from each of the functions, and select and assign cases to the functions. CP&C will be led by Steve Martin, who currently works on case classification and delivery in the Large Business and International (LB&I), transfer pricing office.

TEB Restructuring and Consolidation with ITG

TE/GE is consolidating TEB and ITG under a Director TEB/ITG, who will initially be Christie Jacobs, the current Director ITG. This Director will have the ITG and TEB examination functions to which CP&C will assign cases and a technical function. The TEB examination work will remain largely unchanged, but that office will be reduced from five to three workgroups. TEB's Compliance and Program Management Office will be eliminated and the operations of that office not consolidated within CP&C will be moved to the technical function that will be responsible for TEB's Voluntary Closing Agreement Program (VCAP), direct-pay bond allocations, and Knowledge Management (K-Net) which is a formal structure created in 2015 to consolidate technical expertise and facilitate knowledge transfer. The Commissioner did not specify which function would perform education and outreach activities currently done by CPM and ITG.

IDR Process

Beginning April 1, TE/GE will implement new standard procedures and best practices for IDRs. This new process largely incorporates LB&I's IDR practice. In short, it reflects an effort to make the IDR process more collaborative and to provide standard IDR procedures.

Under the new process:

1. An agent will mail to the taxpayer the initial contact letter, which the procedures suggest should include the initial IDR.
2. After 10 business days, the agent will contact the taxpayer to discuss the issues being examined and the items being requested in the IDR.
3. The agent may refine the IDR based on that conversation and will attempt to arrive at a mutually agreed upon response date with the taxpayer; the Commissioner made clear that a request for significant time to obtain an attorney would likely not be granted. If a date cannot be agreed upon, the agent is to set a reasonable date.
4. The agent will review the response and notify the taxpayer whether the response is complete or whether additional information is needed.
5. If additional information is needed, the additional material will be also be subject to due dates, some of which are mandated in the procedures and may be as short as 15 business days.
6. If the request is not fully and timely met after a second extension to submit the additional

information, the agent is instructed to begin the enforcement process, which could lead to a pre-summons and summons to supply the information.

by Rebecca L. Caldwell-Harrigal

March 15 2017

Greenberg Traurig LLP

Introduction To Tax For Public Finance – Orrick Tax Presentation.

Topics covered:

- Introduction to Tax for Public Finance
- Tax-Exemption for State and Local Bonds
- Inefficiency in Tax-Exempt Subsidy
- Types of Tax-Exempt Bonds
- Overview of Federal Income Tax Restrictions
- Use of Proceeds and Financed Project Private Activity Restrictions
- Privately Used Projects
- Arbitrage and Rebate
- Other Federal Income Tax Restrictions
- Tax Definitions—New Money vs. Refunding
- Tax Definitions—Issuer and "Issue"

Read Article.

Last Updated: March 9 2017

Article by John Stanley

Orrick

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 - TEXAS

Valero Refining–Texas, L.P. v. Galveston Central Appraisal District

Supreme Court of Texas - February 24, 2017 - S.W.3d - 2017 WL 727276

Taxpayer, which owned oil refinery, filed petition for review of order by county appraisal review board regarding appraisal of refinery for property tax purposes, asserting that appraisal district had appraised refinery unequally as compared to other oil refineries.

Following jury trial, the District Court rendered judgment on jury verdict in favor of taxpayer. Appraisal district appealed. The Court of Appeals reversed and remanded. Appraisal district and taxpayer filed petitions for review, which were granted.

The Supreme Court of Texas held that:

- Trial court had jurisdiction over taxpayer's appeal of valuations from only certain tax accounts, as components of refinery;
- Some evidence supported jury's finding that medium conversion refinery was comparable to taxpayer's heavy conversion refinery;
- Component accounts of taxpayer's refinery could be compared to component accounts of comparable refineries without consideration of refineries' total valuation;
- Value of pollution control equipment was not required to be considered in determining whether taxpayers' processing operations had been taxed unequally; and
- Refineries' values could be adjusted by calculating equivalent distillation capacity.

Trial court had jurisdiction over taxpayer's appeal from valuations by county appraisal review board of only three tax accounts arising from appraisal district's division of taxpayer's oil refinery and its improvements into separate accounts and individual appraisal of those accounts, though district asserted taxpayer was required to challenge valuation of whole tract. Taxpayer filed separate protests of some, but not all, of account appraisals, board decided protests by separate orders for each account, taxpayer timely appealed those orders, taxpayer's petition sufficiently identified property covered by tax accounts, and nothing in provisions governing appeals required taxpayer to challenge all appraisal accounts used to appraise its property.

Some evidence supported jury's finding that medium conversion oil refinery was comparable to taxpayer's heavy conversion refinery located in same county, such that medium conversion refinery could be considered as comparable property in determining whether taxpayer's refinery was appraised unequally based on its appraised value exceeding the median appraised value of medium conversion refinery and other heavy conversion refinery, though medium conversion refinery had much less capacity and complexity. Taxpayer presented evidence that all three refineries had same business functions of processing crude oil, similar storage facilities, equal access to utilities, and on-site support facilities, and appraisal district used similar accounts and appraisal methods for all three refineries.

Component accounts created by appraisal district for determining value of components of taxpayer's refinery could be compared to component accounts of other comparable oil refineries, in determining whether processing operations components of taxpayer's refinery had been taxed unequally as compared to other oil refineries, without consideration of refineries' total valuation, though district asserted value of property in one tax account was affected by value of property in other accounts. Property in each account could be viewed in isolation, as district used separate accounts in appraising refineries, and property owner was entitled to have notice of what was in each account to ensure property was not double-taxed.

Value of pollution control equipment, as component of taxpayer's oil refinery, was not required to be considered in determining whether processing operations components of taxpayer's refinery had been taxed unequally as compared to other oil refineries, though appraisal district asserted that equipment was required to be included in comparing values of taxpayer's processing units and tanks, as such equipment was integral part of refinery, without which refinery could not operate and that excluding valuation substantially impacted equalized values calculations in taxpayer's favor. Since equipment could be appraised separately, then other account appraisals could be compared without regard to the pollution control equipment appraisals, and benefit to taxpayer's position was irrelevant.

Oil refineries' values could be adjusted by calculating equivalent distillation capacity, in determining whether processing operations components of taxpayer's refinery had been taxed unequally as compared to other oil refineries, though appraisal district asserted equivalent distillation capacity metric only measured what refinery process units took in and yielded and did not apply to buildings or tanks, where even appraisal district's experts agreed that equivalent distillation capacity was a useful factor in adjusting values for comparison.

TAX - COLORADO

City of Aurora v. Scott

Colorado Court of Appeals, Div. I - February 23, 2017 - P.3d - 2017 WL 710507 - 2017 COA 24

City and city's urban renewal authority brought action against county assessor, seeking an order for assessor to delay allocation of tax increment financing (TIF) following city's adoption of urban renewal plan under the Urban Renewal Law (URL).

The District Court entered judgment in favor of assessor. City and authority appealed.

The Court of Appeals held that:

- Arbitration was not the exclusive remedy for assessor's challenge to city's plan;
- Assessor was neither party to, nor in privity with a party to, public hearings in which city's urban renewal plan was approved, and therefore claim preclusion did not bar assessor's subsequent challenge to plan's timeline for allocation of TIF; and
- Provision of URL stating that TIF cannot "exceed [25] years after the effective date of adoption of [a TIF] provision" does not allow city, in adopting an urban renewal plan, to choose any date as the effective date of adoption regardless of when the provision was actually approved.

County assessor's challenge to city's urban renewal plan's timeline for tax increment financing (TIF) under the Urban Renewal Law (URL) was not related to compliance with statutory TIF timeline, and therefore arbitration was not exclusive remedy for assessor's challenge, where challenge was unrelated to any requirement specifically enumerated in subsection of URL as subject to challenge through arbitration but rather was based on interpretation of different TIF subsection of URL.

County assessor was neither party to, nor in privity with a party to, public hearings in which city's urban renewal plan was approved, and therefore claim preclusion did not bar assessor's subsequent challenge to plan's timeline for allocation of tax increment financing (TIF), even if assessor had notice of public hearings, whether neither assessor nor county had any role in decision to adopt or reject plan.

Provision of Urban Renewal Law (URL) stating that tax increment financing (TIF) cannot "exceed [25] years after the effective date of adoption of [a TIF] provision" does not allow city, in adopting an urban renewal plan, to choose any date as the effective date of adoption regardless of when the provision was actually approved.

Even if home rule city's adoption of urban renewal plan was a legislative act, adoption of plan was not within scope of city's powers; urban renewal was matter of mixed state and local concern, and plan conflicted with state statute's timeline for tax increment financing (TIF).

Report from TSLI – What Can We Expect in the Near Term from the IRS?

Last week I attended the NABL Tax and Securities Law Institute, which always provides valuable insights from representatives of Treasury and the IRS. Vicky Tsilas, Chief, Branch 5, Financial Institutions and Products, was a panelist for Tax Hot Topics and gave a very interesting status report on the 2016-2017 Guidance Plan (first reported on here by Mike Cullers), which was issued on August 15, 2016. In addition to noting those projects that have been completed, she also discussed the remaining items, indicating her priorities and possibly the order in which they will be completed, recognizing of course that TEB does not have control over the timing of the necessary approvals within Treasury. (I'd also like to thank Ms. Tsilas for our subsequent discussion clarifying several points for this report.)

Continue reading.

The Public Finance Tax Blog

By Bob Eidnier on March 17, 2017

Squire Patton Boggs

S&P Credit FAQ: Cybersecurity, Risk, and Credit in U.S. Public Finance.

Cyberattacks on all types of companies, governments and other organizations are regular news headlines. Motivations of the attackers vary and while it may appear that there is little discrimination as to the type of entity targeted, with retail stores, political national committees, and major tech giants all reporting incidents, almost all cyberattacks have an intended result.

Continue reading.

Mar. 13, 2017

S&P: South Carolina's Proposed Pension Reform Provides Path To Improve Funding, But Challenges Remain.

As governments across the country grapple with rising pension and other postemployment benefit costs, some are reconsidering pension reforms in addition to those they adopted following the Great Recession of 2007 to 2009. South Carolina is one such state.

Continue reading.

Mar. 14, 2017

S&P: California Pension Giants Lower Their Discount Rates To Preserve Long-

Term Plan Sustainability.

The two largest public pension systems in the U.S. — California Public Employees' Retirement System (CalPERS) and California State Teachers' Retirement System (CalSTRS) — both have committed to lowering their discount rates without changing their funds' asset allocations.

Continue reading.

Mar. 15, 2017

S&P: Long-Term Structural Balance Still Elusive In New Jersey's Proposed Fiscal 2018 Budget.

S&P Global Ratings today said that New Jersey Gov. Chris Christie's fiscal 2018 budget proposal might look fine in the near term, but long-term structural balance remains elusive thanks to the state's continued deferral of full funding for future retirement obligations.

Continue reading.

Mar. 16, 2017

CO Ruling Says Tax-Increment Financing Must Begin Immediately.

Tax-increment financing is something that just can't wait.

The Colorado Court of Appeals has affirmed a court ruling from one year ago that favored the Arapahoe County Assessor's Office and its strict interpretation of the legally accepted timeline for when such approved financing plans should begin in a city's urban-renewal areas.

In 2015, then-Arapahoe County Assessor Corbin Sakdol was sued by the City of Aurora and the Aurora Urban Renewal Authority in a challenge to his interpretation of a state law on the start date of such plans.

Tax-increment financing is a tool municipal governments can use to finance the redevelopment of so-designated "blighted" property by diverting property taxes that would have been collected by counties, school districts and special districts for up to 25 years to help pay off certain costs associated with urban renewal.

In 2014, the City of Aurora approved two urban-renewal plans, each with its own tax-increment provisions, including a delayed start date of up to three years in some areas.

Sakdol, who retired in January, determined the 25-year clock was to begin as soon as the plans were adopted. Aurora filed an unsuccessful lawsuit in district court disputing that contention.

"Nothing in the plain language of [state statute] permits an urban-renewal plan's [tax-increment financing] provision to have a start date that is different than the effective date of approval of the plan itself," stated Sakdol's legal argument as now affirmed by both courts.

Assessor Marc Scott, who was appointed to the position upon term-limited Sakdol's voluntary retirement two months ago, was gratified by the Court of Appeals' decision.

"We are pleased that once again the courts have reaffirmed our interpretation of Colorado law as it pertains to urban -renewal authorities and [tax-increment financing]," Scott said. "We look forward to working with our municipalities and urban-renewal authorities on future projects that will benefit the citizens of Arapahoe County."

Aurora could appeal the case to the state Supreme Court.

THE VILLAGER

BY PETER JONES

March 15, 2017

How Long Can Illinois Hold Onto Investment Grade Ratings?

CHICAGO – Illinois' sovereign powers over spending and revenues and its sturdy general obligation repayment statute are being tested as its budget gridlock inches toward the two-year mark.

The two factors have propped up the state's credit profile but as the state's budget deficit, bill backlog, and unfunded pension obligations climb to record levels, some market participants and politicians are questioning how long Illinois can preserve investment-grade status.

They see risk in the state's failure to overcome political gridlock and use its sovereign powers to fix its budget problems, and the threat that liquidity strains could overwhelm the GO repayment provisions.

"Nothing is off the table here," S&P Global Ratings analyst Gabriel Petek, a senior director in the state governments group, said when asked how long the state could hold on to an investment-grade rating while continuing on its current course.

Illinois is the lowest rated state, now at the Baa2/BBB level across the board, only two notches away from speculative grade territory where no state has gone in recent memory

"It's something that we are watching. It's unprecedented for a state to go this long without a budget," Petek said during a panel discussion at the rating agency's state and local government credit forum in Chicago Thursday.

Moody's Investors Service and S&P assign Illinois a negative outlook and Fitch Ratings has the credit on negative watch.

The market already trades Illinois paper at junk level. The state's 10-year GO is trading at a 215 basis point spread to the Municipal Market Data's top-rated benchmark. That's up from a 12-month average of 191 bp and up from 170 bp a year ago.

MMD's BBB in the 10-year range trades at a 97 basis point spread.

"Illinois has a much higher spread than this level," said Thomson Reuters MMD's Daniel Berger. "The market does not consider Illinois GOs as an investment grade."

Spreads hit a peak of 238 basis points at the end of 2016. “Illinois is paying a steep price for going two years without a budget,” Triet Nguyen, head of public finance credit at NewOak Fundamental Credit, wrote in a March 6 report looking at Illinois and New Jersey trading levels. “This is an unheard-of spread for a state GO credit and we can only infer that the market is already viewing the Prairie State as below investment grade.”

S&P’s negative outlook suggests there’s at least a one-third probability that the state will see a downgrade over a one- to two-year timeframe. Petek said when looking at the state’s $12 billion backlog of unpaid bills and a pension system funded ratio of just 39.2%, “the trend is not good.”

About 90% of state government spending continues based on continuing appropriations and court orders, while higher education and social services, have received just piecemeal appropriations.

A downgrade looms if the state begins fiscal 2018 on July 1 without progress, S&P warned in a report earlier this month after negotiations stalled on a bipartisan Senate budget deal known as the “Grand Bargain.”

Entering a third fiscal year without a comprehensive budget “could indicate to us an erosion in political will that renders its credit quality and fundamental fiscal conditions as inconsistent with the state’s current rating,” the report said.

Fitch also issued a pointed warning in connection with its Feb. 1 downgrade.

“If the state continues on the current path, a further downgrade would be warranted,” its analysts wrote.

“We have ample liquidity to make debt service payments and are committed to make all bond payments in full and on time,” Gov. Bruce Rauner’s administration said in a statement. “Monthly general funds revenue on average are more than 12 times monthly general revenue fund general obligation debt service transfer requirements.”

GOBRI AND SOVEREIGN POWERS

The sovereign powers that provide broad authority to manage expenses and taxation are highlighted in all Illinois rating reports as a key rating strength, along with its GO statutory protections and its diverse economy.

At some point, however, “you lose the natural protections” afforded by your sovereign powers, said Richard Ciccarone, president at Merritt Research Services LLC.

“Illinois still has the economic capacity to turn it around,” Ciccarone said. “That’s a big distinction; we have a political stalemate that puts the state in a credit condition that’s not consistent with the economic capacity of the state.”

A core strength of the state GO – highlighted in state investor presentations and recognized by market participants as one of the strongest among states – is the irrevocable and continuing appropriation for debt service payment.

Statutes direct the state treasurer and comptroller to make all necessary transfers monthly from any and all revenues and funds of the state to cover 1/12 of principal and 1/6 of interest for payments due in the next 12 months. They flow into the General Obligation Bond Retirement and Interest fund known as GOBRI.

"These features remain integral to the state's investment grade ratings," a recent S&P report said.

Analysts worry that such a prioritization over other state stakeholders starved for their aid or vendor payments is not "sustainable."

"Sometimes those protections can fall away," Petek said, citing challenges posed to debt structures in Detroit, Puerto Rico, and Stockton. Calif. At the end of the day, he said, flow of funds and security features don't make up "for what is fundamental insolvency."

Illinois is nearing a point of "service level insolvency," and "it's problematic," he said.

He's not the only analyst with such concerns.

If basic functions of a state cannot be implemented or carried out or vendors or organizations in dire need take the state to court, "that could force the state to reprioritize" its use of revenues, said Howard Cure, director of municipal research at Evercore Wealth Management LLC.

As the state's bill backlog and other liabilities mount so that liquidity is stretched, "layers of protection that cushion you between default and on time payment are diminished," Ciccarone said.

INVESTMENT GRADE

While it's unheard of for a state to fall to speculative grade status, "it's also unheard of to go two years without a budget," Cure said.

"I think the market is still willing to give them a benefit of the doubt" that leaders can reach a compromise, because it's not an economic issue but political paralysis, Cure said.

A one-notch downgrade would send Illinois' appropriation-backed and moral obligation debt, which is one notch below the GO rating, down to junk.

At risk is the Metropolitan Pier and Exposition Authority's $2.6 billion of convention center bonds, $431 million of Illinois Sports Facilities Authority sports facilities bonds and $267.8 million of Chicago motor fuel tax revenue bonds.

Illinois has $26 billion of GO debt and $2.5 billion of sales tax-backed Build Illinois bonds. Moody's links the two ratings. Fitch and S&P assign high-grade ratings to sales tax paper.

No state in recent memory has been rated in speculative territory, according to the three rating agencies.

All three major rating agencies had California in triple-B territory in 2003 and 2004, and Fitch and Moody's also sent California there in 2009 and 2010.

Moody's in 2009, when it rated California Baa1, notched some regional center debt three rating levels off the state credit, which put them at junk.

Market participants are pondering the rating agencies' next steps and the impact on trading values.

NewOak in its report said it sees Illinois as a better relative value than New Jersey because it's already trading at junk levels.

A downside for buyers is the prospect that the "Grand Bargain" dies and no new fix surfaces and the rating agencies junk the rating, Nguyen wrote.

"There might be a short-term market over-reaction, which we would view as a buying opportunity," he wrote. "A more likely scenario would call for other rating agencies to downgrade the state to the lowest investment grade status and just stop there."

Nguyen believes it "will still take a lot" for rating agencies to drop the rating below investment grade.

As the budget gridlock drags on, concerns mount that a resolution might not come before the 2018 election, when Democrats hope to win back the governor's office. Rauner, a Republican, is expected to seek re-election.

Nguyen raises the specter that the state will limp along until the next election. That would result "in short-term market volatility, but investors should be well compensated for that risk at a spread of 240 [bp] or wider."

The impasse has been driven by Rauner's refusal to approve a budget with any tax hikes unless lawmakers also pass his policy and governance reforms, which are opposed by the legislature's Democratic majorities.

Senate President John Cullerton, D-Chicago, a co-author of the "Grand Bargain," warned against such a position in a recent speech.

"By then, we'll have been downgraded to junk status and no one will lend us money. The new governor will have that hung around his or her neck," he said.

"The governor is very concerned about the state's finances and does not expect the state to be rated below investment grade," the administration said in a statement. "He is seeking a balanced budget and structural changes to grow the economy and improve the state's fiscal health."

The Bond Buyer

By Yvette Shields

March 14, 2017

P3 Plan Revs Up Stalled Oklahoma Highway.

DALLAS - Oklahoma plans to complete an unfunded Tulsa highway project that's been on the books for 50 years with a seven-way partnership that would include an expected $100 million investment from the one private sector partner.

The private partner would recoup its investment by collecting tolls on the five-mile, four-lane segment, including a bridge over the Arkansas River, that would complete the Gilcrease Expressway highway loop around Tulsa.

Oklahoma transportation secretary Gary Ridley said the project is expected to cost $240 million, but the total amount of funding from all seven partners, including money already spent on the extension, will be closer to $300 million.

Six of the partners are public and the private partner probably will contribute about $100 million to the project, he said.

“From the public sector, we’re putting in somewhere around $190 million,” Ridley said. “The private sector puts in whatever the balance is. Then the tolls or a portion of the tolls go to pay that off.”

The private partner will be selected in six months to a year, Ridley said. Once the funding is in place, construction will take about two-and-a-half years.

Public sector participants in the Gilcrease extension include the Oklahoma Department of Transportation, the city of Tulsa, Tulsa County, the Indian Nations Council of Governments, Oklahoma Turnpike Authority, and the Federal Highway Administration.

Planning for the Gilcrease Expressway loop began in the 1950s but stalled at the Arkansas River crossing needed to complete the road around Tulsa.

A study by the turnpike authority in 2010 determined that traffic on the bridge would not generate the toll revenue needed to finance it. Cost of the final 6.7 miles of the project was estimated at $373 million in the study.

Available funding for the project in recent years has included $6.5 million per year from the FHWA and $1 million per year from the city, but at that rate the project would not have been fully funded until 2050.

That would be almost 100 years after the project was envisioned, Ridley said.

“Thank you all for your patience for 50 years,” Ridley said at Friday’s announcement of the P3 proposal. “You’ve got about three more years of patience we’re going to need from you before we open this up, but it will come and it will happen.”

Tulsa Mayor G.T. Bynum said his 90-year-old grandfather attempted to find a funding solution for the expressway project as a city official in the 1960s.

“It’s surreal for me as the mayor to be talking today about the plan to finish something that he was working on as street commissioner in 1964,” he said.

Partnering with the state and a private investor on the highway project will remove much of the city’s financial burden, Bynum said. The route for the road was determined in 1961, with the expectation that Tulsa would build it.

“The city of Tulsa was trying to do this by ourselves when building expressways is not the city of Tulsa’s area of expertise,” he said. “We do streets.”

The turnpike authority has a better ability to access capital markets for the expressway extension, said Deputy Mayor Michael Junk.

“Roads aren’t free,” Junk said. “There are many times that we have seen the need for infrastructure improvements, but we haven’t had the capital to do so. A toll way is another means to accomplish that goal.”

The Gilcrease project was included in Gov. Mary Fallin’s Driving Forward program, an $892 million turnpike package that she proposed in October 2015.

Fallin used her State of the State address in February to push for an increase in Oklahoma’s gasoline and diesel taxes and a $350 million infrastructure bond program.

Fallin's tax proposal includes a 10 cent per gallon increase in the state's gasoline tax of 17 cents per gallon and an increase of 7 cents per gallon in the diesel tax of 14 cents.

The Bond Buyer

By Jim Watts

March 14, 2017

[The Week in Public Finance: Trump's Budget, the CBO on Health Care and Accounting for Higher Ed.]

A *roundup* of money (and other) news governments can use.

GOVERNING.COM

BY LIZ FARMER | MARCH 17, 2017

Trump May Not Want Refugees, but Rust Belt Mayors Do.

- In St. Louis, Bosnians revitalize a depleted neighborhood
- Post-industrial cities are hungry for newcomers from abroad

In 1997, refugee Alem Boric and a partner started Europa Market, 600 square feet of Bosnia in St. Louis.

Today, what began as a corner store in the city's Bevo Mill neighborhood is a 96,000-square-foot (8,900-square-meter) juggernaut that distributes smoked meats, cheeses, cakes and Croatian jams from the former Yugoslavia, Germany, Italy and Greece to 28 U.S. states. The company, now up to 45 employees, has seen its revenue double annually for the past several years.

Bevo Mill windmill-shaped restaurantPhotographer: Eric Englert/Bloomberg
In the suburbs and countryside of Rust Belt swing states, President Donald Trump's anti-immigrant message may have carried the day, but in St. Louis and the rest of the region's dilapidated, post-industrial cities, it's anathema. Immigrants represent rebirth: They've stabilized neighborhoods, cushioned city coffers and, in the process, supported credit ratings and bond sales. Mayors from Detroit to Cleveland — as well as northeastern cities like Albany, New York, and Lowell, Massachusetts — see financial salvation in these newest Americans and are dismayed by Trump's drive to tighten the borders.

St. Louis Mayor Francis Slay raves about the booming Bosnian immigrant community in his city.

"We were losing population and people more than almost any city in America before the Bosnians came," said Slay, a Democrat. "They've helped us revitalize this city."

Much of the Rust Belt's pain comes from the excruciating transition it's making to a service-sector economy from one predicated on manufacturing. In its cities, the share of the nation's employment dropped to 27 percent in 2000 from 43 percent in 1950, according to one study. Sustaining population has been a struggle: More than half of 23 municipalities, including Detroit, Syracuse, and Toledo, saw losses from 2000 to 2014, according to census data.

Haven Found

Many Bosnians in St. Louis fled Yugoslavia's brutal civil war in the 1990s and are largely Muslim. That carries particular resonance as the Trump administration tries to block refugees in the name of stopping Islamist terrorism during a conflict that's forced almost 5 million people from Syria.

The U.S. Conference of Mayors has decried Trump's measures, pointing to a tradition of providing "safe haven, freedom and opportunity." Leaders of cities including Los Angeles, Dallas, Seattle, Louisville, Phoenix and Boston spoke out separately, many saying immigrants were key to prosperity.

"Cities see immigrants and refugees filing into the labor market where native-born Americans aren't," said Christina Pope, a regional manager at Welcoming America, a Decatur, Georgia, nonprofit that boosts immigrant entrepreneurship and economic integration.

Voters who propelled Trump to the White House acted in the face of such judgments by people they saw as "global elites," said John Mauldin, Dallas-based president of Millennium Wave Advisors, an investment advisory firm.

"The data — you can make it say almost anything that you want it to say," said Mauldin, who says the U.S. has admitted too many refugees without valuable skills. "It really boils down to people's impressions, what do they feel, their political bias."

Suburbs are Trump country: While St. Louis went 79 percent for Hillary Clinton, the encircling towns voted for Trump at shares exceeding 60 and 70 percent.

"I am in total support of Trump. I don't want St. Louis to be a sanctuary city," said Rene Artman, a Republican activist from suburban Fenton. "My mother-in-law was an immigrant. She came in the right way. We are a country of immigrants. Come in the right way and everyone is welcome."

St. Louis can use whomever it can get.

Withering City

The population withered to about 316,000 from 347,000 in 2000. U.S.-born residents decreased by about 10 percent while the smaller crop of foreign-born rose by a similar magnitude.

"Population growth is very important for healthy communities and economies — usually it's a telltale sign," said Dan Heckman, a Kansas City-based fixed-income strategist at U.S. Bank Wealth Management.

The overall decline contributed to a bleaker outlook for the city's debt, according to Heckman. A St. Louis bond that matures in 2033 traded March 15 for an average yield of 3.6 percent, about 1.2 percentage points more than top-rated debt, according to data compiled by Bloomberg.

So St. Louis is doubling down on its welcome. The city needs personal-care aides, food workers and customer-service representatives, according to a St. Louis Community College report last year. Immigrants make an outsize impact in those roles.

Refugees are helped by the International Institute of St. Louis, which provides short-term help with employment and housing. From 1979 through 2016, the group sponsored about 23,000 refugees, about 30 percent Bosnians, said Chief Executive Officer Anna Crosslin.

Immigrant spending power in the metropolitan area amounted to about $3 billion in 2014, when they contributed about $1.1 billion in taxes to local coffers, according to New American Economy, co-founded by former New York Mayor Michael Bloomberg. (Bloomberg is founder and majority owner of Bloomberg News parent Bloomberg LP.) The newcomers are about 29 percent more likely to be entrepreneurs than native-born St. Louisans, the data show.

Meet the Residents

Ibrahim Vajzovic

Ibrahim Vajzovic, a former civil engineer, landed in Bevo Mill in 1994 and took an entry-level job. He said Bosnians "cleaned up the area," named for a windmill-shaped restaurant and populated by successive waves of immigrants. Now, he runs a multifaceted business providing real estate, travel and insurance services, but spends most of his time teaching business courses for Fontbonne University.

Sadik Kukic arrived in 1993 with about $58 and no English. Two decades later, he's the owner of Taft Street Restaurant and Bar and president of the Bosnian Chamber of Commerce.

The chamber was a leading voice in establishing a community improvement district in Bevo Mill. A special assessment for building owners and a fresh 1 percent sales tax for residents will fund the project, which will raise about $750,000 by 2021. More than a third will go toward public safety, with another 20 percent for infrastructure.

Residents are enjoying brighter housing prospects even as the city overall has been slow to recover since the housing crisis. Among 84 zip codes with at least 100 sales in the metro area, several in and around Bevo Mill were among the top 15 for greatest price appreciation over the past five years, according to Daren Blomquist, vice president at ATTOM Data Solutions in Irvine, California. The old Bevo Mill is slated to become a biergarten.

Boric said the city helped him and Europa Market thrive, as did previous immigrants and their descendants.

"A lot of the folks in the neighborhood, those Germans, appreciated us, as they saw themselves in us," he said. "Bosnians were well-received. The city and the mayor appreciated us."

Bloomberg Markets

by Michelle Jamrisko and Eric Englert

March 17, 2017, 2:00 AM PDT

Ohio Taxpayers on the Hook as Venture Fund Can't Pay Bondholders.

- Waiting for startups to produce cash, it couldn't meet debts
- Venture-capital fund's returns have lagged benchmark

The venture-capital fund created by Ohio to cultivate local startups is going on public assistance.

Still waiting for its young companies to morph into the next Snap Inc. or Facebook Inc., the Ohio Capital Fund, which was financed through the sale of municipal bonds, didn't generate enough money from its investments to pay $9.8 million on February 15, when the first principal payments on its debt started coming due, according to a securities filing. To avoid a default, it had to draw on $7.5 million from the state, the only time the fund has turned to that taxpayer lifeline in its 11-year history.

Ohio is among at least a dozen states, including New York, North Carolina and Pennsylvania, that have established funds to foster nascent tech companies. The Ohio fund, founded in 2005, was created by the state legislature to transform an economy upended by the decades-long loss of manufacturing jobs.

To encourage investors to buy the fund's bonds, Ohio agreed to extend as much as $20 million of tax credits per year over the thirty-year life of the program — insuring it can cover the debt even while waiting for investments to pay off. This allowed securities issued for the program to carry a AA-rating, just two levels below Ohio's general-obligation debt.

"Anyone you talk to would prefer a scenario where you don't use tax credits," said Mark Williams, chairman of the Ohio Venture Capital Authority, which oversees the fund. "I think when this was built and designed it was understood that was very possible."

The Ohio fund, managed by an affiliate of Cincinnati-based Fort Washington Investment Advisors, has only delivered an annualized return of 7.2 percent, compared with 8.9 percent for the median venture capital fund, according to the Ohio Venture Capital Authority. When factoring in debt costs, expenses and the $15 million in management fees paid to Fort Washington-affiliate Buckeye Venture Partners since 2005, though, that swings to a 6.5 percent yearly loss.

"Due to the geographic constraints and the limited universe of funds in which OCF could invest, we feel that the underlying fund performance is in line with expectations," said Stephen Baker, Fort Washington's head of private equity. The legislation creating the fund didn't set a performance objective.

The regional effort marked a push to jumpstart the economy by breaking the near monopoly that America's coasts have on the venture-capital industry. Just 22 percent of such investments went to companies outside San Francisco, New York, Boston and Los Angeles in 2015, according to the Center for Regional Economic Competitiveness and Brentwood, Tennessee-based Cromwell Schmisseur LLC, which designs state venture programs. The consulting firm didn't work with Ohio.

"Because of the extreme geographic concentration of venture capital, it is much harder for good deals to get financing where they're at," said Eric Cromwell, founding member of Cromwell Schmisseur. "When well-designed, programs like this encourage private investment in high-growth potential businesses between the coasts."

Greatest Hits

The fund has committed capital to 30 venture funds, which are required to put at least half of the money in state-based startups. Those funds have invested $284 million in 88 Ohio companies, helping to spur the creation of about 1,100 jobs, according to a Nov. 16, 2016 program summary.

It has scored some hits. Among them is CardioInsight, a Cleveland-based medical device company that's developed a new approach to improve the mapping of electrical disorders of the heart and was purchased by Medtronic Plc for $93 million in June 2015. Simbionix, another Cleveland company that creates virtual reality surgical simulation and training, was sold in 2014 for $120 million.

The Ohio fund has received $82 million from its investments so far. Its holdings were valued at $96.6 million as of June 30.

Until February, it only had to pay semi-annual interest on almost $160 million of debt. Then principal payments kicked in, increasing debt-service costs from about $7 million to $19.5 million a year. The fund is scheduled to make $195 million in debt payments between Feb. 2018 and August 2027, according to the state.

Its next payment is due Aug. 15 and it's possible the state may need to cut another check if distributions from the underlying funds don't materialize, Williams said.

Ohio Governor John Kasich opposes issuing more debt for the fund and wants the cash it earns to pay off debt first, instead of being reinvested, said Lyn Tolan, a spokeswoman for the Ohio Development Services Agency, which advises the fund.

Ohio moved into venture capital to nudge the economy more than to make a profit, given that steadier returns can be found elsewhere. Returns after fees for the median venture capital fund that began making investments between 2005 and 2014, ranged from 0.77 percent in 2014 to 19.4 percent in 2010, according to data compiled by Cambridge Associates.

"Overall, returns are disappointing and fall short of expectations," said Diane Mulcahy, an adjunct lecturer at Babson College's division of entrepreneurship and a Senior Fellow at the Ewing Marion Kauffman Foundation, where she manages the foundation's private equity, venture capital and real assets investments. "If the state's true intent was to create jobs, is borrowing to invest in a venture capital fund the best way?"

Bloomberg Markets

by Martin Z Braun

March 17, 2017, 2:00 AM PDT

Bloomberg Brief Weekly Video - 03/16

Amanda Albright, a contributor to Bloomberg Briefs, talks with Editor Joe Mysak about this week's municipal market news.

Watch video.

Bloomberg

March 16, 2017

The Big Three: Taking a Comprehensive Look at Financial Reporting.

The GASB is either actively working on or conducting research on three interrelated projects that will allow the Board to take a comprehensive look at financial reporting for state and local governments.

Of these three efforts, two are on the current technical agenda:

- Financial Reporting Model Reexamination, and
- Revenue and Expense Recognition.
- The third, the Note Disclosures Reexamination, was recently added to the Board's pre-agenda research.

Work on "The Big Three" began with the Financial Reporting Model Reexamination. The project was added to the current agenda after two years of research. In late 2016, the Board issued an Invitation to Comment (ITC) in this project. Here, the Board is evaluating—and asking for your input at each stage along the way—what the model should ultimately look like. While the existing model remains effective in most respects, recent Board research identified that there are potential areas for improvement. These are the areas the Board is asking for your input on at the ITC stage.

As the direction is determined for the reporting model, the Board also will look at how revenue and expense should be recognized within that model in the Revenue and Expense Recognition project. This project is designed to develop a comprehensive application model for the recognition of revenue and expenses that arise from nonexchange, exchange, and exchange-like transactions, including guidance for exchange transactions that have not specifically been addressed in the current literature.

As the model is being determined, the question becomes: What disclosures need to be made to offer a complete understanding of the financial model and the related recognition concepts? The objective of the pre-agenda research on the Note Disclosures Reexamination is to evaluate whether currently required note disclosures are sufficiently meeting the informational needs of users of state and local government financial reports. The research should provide the Board with the information necessary to determine whether additional or revised guidance is needed.

The timing of the interrelated projects is staggered to allow the Board to work on them in unison so they can be issued consecutively—and in as timely a manner as possible. The time horizon for completion of these efforts is relatively lengthy, however. The anticipated timing for completion of the Financial Reporting Model Reexamination alone is late 2021. The Board looks forward to your input as these activities progress.

GASB: Financial Reporting Model Invitation To Comment - Public Hearings and User Forums.

Schedule of Public Hearings and User Forums

In the coming weeks, the GASB will be holding a series of public hearings and user forums on the Financial Reporting Model ITC. Please review the schedule, determine the best event for you, and share your input and feedback.

Events are currently scheduled for:

- New York
- Atlanta

- Dallas
- San Francisco
- Washington, DC
- Denver
- Newark, CT

Click here to learn more and to register.

Fitch: CBO Estimate Confirms Major Implications for States from AHCA.

States that expanded Medicaid access to the newly eligible population under the Affordable Care Act are particularly at risk. But even non-expansion states will face budgetary challenges, which will likely accelerate for all states over time.

Continue reading.

City Rights in an Era of Preemption: A State-by-State Analysis.

In a new report, the National League of Cities finds that states limit city power through preemption in a number of policy areas, ranging from labor protections to taxing authority.

Preemption is the use of state law to nullify a municipal ordinance or authority. In some cases, preemption can lead to improved policy statewide. However, preemption that prevents cities from expanding rights, building stronger economies, and promoting innovation can be counterproductive when decision-making is divorced from the core wants and needs of community members.

View or download the full report.

National League of Cities

February 16, 2017

Reminder: Comments on Draft Amendments To MSRB's Advertising Rules Are Due Next Friday, March 24.

Read the Request for Comment.

CUSIP Requests Surge in February Signaling Corporate and Muni Bond Bounce.

NEW YORK, NY, MARCH 16, 2017 – CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for February 2017. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity, found a notable uptick in the pre-trade market for corporate and municipal bonds in February, following three straight months of declines.

[Read Report.]

[Trump Budget Blueprint Mum on Major Infrastructure Plans.]

The Trump administration's 2018 budget proposal would make significant cuts in the budgets of three agencies that may be expected to help carry out the president's ambitious infrastructure repair and modernization plans. What isn't included in the budget blueprint are details about the president's often-touted $1 trillion infrastructure renewal plan.

"[T]he President has emphasized that one of his top priorities is modernizing the outdated infrastructure that the American public depends upon," according to the March 16 blueprint. "To spearhead his infrastructure initiative, the President has tapped a group of infrastructure experts to evaluate investment options along with commonsense regulatory, administrative, organizational, and policy changes to encourage investment and speed project delivery. Through this initiative, the President is committed to making sure that taxpayer dollars are expended for the highest return projects and that all levels of government maximize leverage to get the best deals and exercise vigorous oversight. The Administration will provide more budgetary, tax, and legislative details in the coming months."

In terms of individual department and agency funding, the proposal would slash $2.6 billion (31 percent) from the Environmental Protection Agency's budget, which would result in the elimination of 50 programs and 3,200 positions, reported The Washington Post. However, the $5.7 billion agency budget would include $2.3 billion for state revolving funds (a $4 million increase) and $20 million for the Water Infrastructure Finance and Innovation Act program (level funding).

The Department of Transportation's budget would be cut by $2.4 billion (12.7 percent) to $16.2 billion. This would include eliminating funding for the Transportation Investment Generating Economic Recovery grant program, which funds surface transportation projects. The proposal also calls for privatizing the Federal Aviation Administration's air traffic control function. It is not clear whether this could involve a P3 element.

The Army Corps of Engineers' budget would fall by $1 billion (16.3 percent) to $5 billion.

However, the General Services Administration's discretionary budget authority would increase by $200 million to $500 million, although it's not clear how much money it will be authorized to spend on costly projects such as the planned FBI headquarters swap or plans to consolidate the Department of Homeland Security at the St. Elizabeth's West campus, reported the Washington Business Journal.

This preliminary budget blueprint will be followed by a more comprehensive budget proposal to be released in May, the Post reported.

NCPPP

March 16, 2017

The Old, Dirty, Creaky U.S. Electric Grid Would Cost $5 Trillion to Replace. Where Should Infrastructure Spending Go?

The American Society of Civil Engineers just gave the entire energy infrastructure a barely passing grade of D+

The electric grid is an amazing integrated system of machines spanning an entire continent. The National Academy of Engineering has called it one of the greatest engineering achievements of the 20th century.

But it is also expensive. By my analysis, the current (depreciated) value of the U.S. electric grid, comprising power plants, wires, transformers and poles, is roughly US$1.5 to $2 trillion. To replace it would cost almost $5 trillion.

That means the U.S. electric infrastructure, which already contains trillions of dollars of sunk capital, will soon need significant ongoing investment just to keep things the way they are. A power plant built during the rapid expansion of the power sector in the decades after World War II is now 40 years old or older, long paid off, and likely needs to be replaced. In fact, the American Society of Civil Engineers just gave the entire energy infrastructure a barely passing grade of D+.

The current administration has vowed to invest heavily in infrastructure, which raises a number of questions with regard to the electric system: What should the energy grid of the future look like? How do we achieve a low-carbon energy supply? What will it cost?

Infrastructure seems to be an issue that can gather support from both sides of the aisle. But to make good decisions on spending, we need first to understand the value of the existing grid.

Continue reading.

JOSHUA D. RHODES, THE CONVERSATION

Upgrading Our Infrastructure: Targeting Repairs for Locks, Dams and Bridges.

Colorado State University engineers outline their plan to improve America's D+ infrastructure rating

For the second time in a row, America's infrastructure has earned a grade of D+ from the American Society of Civil Engineers. ASCE issues these report cards every four years, grading the state of U.S. bridges, dams, parks, airports, railroads and other vital links. The fact that our nation's overall grade has not improved since the last report card in 2013 shows that major investments are long overdue. The Conversation

President Trump has promised to propose US$1 trillion in investments over 10 years to modernize the nation's infrastructure. If the Trump administration finds a way to fund such a plan, it will face many pressing questions over how to spend the money.

The most likely and logical strategy would be to pursue a combination of new construction projects, repairs and retrofits, selected to provide maximum bang for the buck. Repairing a structure is typically less expensive than retrofitting it by adding new components, which in turn is cheaper than building a new structure.

At Colorado State University (CSU) we are developing two strategies that can prolong the service life of structures such as bridges and navigation locks. First, we are identifying appropriate intervals between inspections, to minimize inspection costs without undercutting public safety. Second, we are using innovative methods to effectively increase structures' service lives, reducing the need for expensive new construction projects.

Continue reading.

HUSSAM N. MAHMOUD, THE CONVERSATION

SATURDAY, MAR 18, 2017 12:29 PM PDT

Water Infrastructure Funding: Where Do We Go From Here?

Donald Trump made big claims during the election about a plan to invest $1 trillion in America's infrastructure, indicating he would make water a top priority. Indeed, it was one of the least controversial aspects of his campaign. There is a currently a $600 billion funding gap for water and wastewater infrastructure, and the need to invest in these systems is one of the few things both parties actually agree on. "These are real numbers that no one is disputing," said Adam Kranz, CEO of the National Association of Clean Water Agencies (NACWA) in Washington, D.C. "Now we need real money on the table to address them."

The president's vision includes developing a long-term water infrastructure plan to upgrade aging water systems, and tripling funding for state revolving fund (SRF) programs to help states and local governments upgrade critical drinking water and wastewater infrastructure. It's an enticing promise for communities across the country that are struggling with aging systems and the cost of upgrading their infrastructure to meet new regulatory requirements. However it remains to be seen whether his administration will follow through on all of these investment promises, and more importantly, where all the money will come from. "All I can say now is 'who knows?'" said Kranz.

Bonds, Funds, and Rate Increases

Kranz does believe there will be more money on the table for water infrastructure during this administration based on Trump's vision statement and his desire to be viewed as a builder. However, Republicans have also made it clear that they intend to cut back spending, so Kranz worries that any money put in place for water infrastructure may come at the expense of other important programs. "The goals within the administration suggest a level of conflict," he said.

Mike Keegan of the National Rural Water Association is especially concerned about how funding for specific projects will get prioritized. His members are all small communities with significant infrastructure needs, and they worry that the current administration will funnel funds to more affluent communities through WIFIA, which is for larger projects and limited to communities with good credit. "A lot of the communities with the greatest need can't access that kind of funding, which is limiting for our members," he said.

Another vital source of funding that might be at risk are tax exempt bonds. "Tax exempt municipal bonds are a very important tool for municipalities of all sizes," said Tracy Mehan, executive director of government affairs for the American Waterworks Association (AWWA). They give local bodies access to low-cost capital and the power to issue bonds for specific projects based on the needs of their communities, rather than leaving these decisions to federal bodies. However, Republicans have vowed to overhaul the tax code and have made it clear that everything is on the table. "There has been specific talk about getting rid of the tax exempt status for municipal bonds, which has a lot of utility folks concerned," added Tommy Holmes, director of federal legislation for AWWA.

NACWA, AWWA, and 27 other industry organizations wrote a letter to Congress in January, encouraging the new administration not to eliminate tax-exempt municipal bonds, noting that they have been used to finance more than $2 trillion in infrastructure investments over the past ten years and are on a path to finance another $2 trillion in the next ten years. "It's an important finance tool for the water utility industry," Holmes said, noting that the loss of tax-exempt status would deliver a significant blow to water infrastructure investment.

Julius Ciaccia, CEO of Northeast Ohio Regional Sewer District in Cleveland, believes communities shouldn't count on government funding for these projects, and that they need to consider rate increases to fill the funding gaps. He notes that after big grants for wastewater infrastructure projects dried up in the 90s, Cleveland had no choice but to raise rates to cover the cost of upgrades. "We've all seen what happens when utilities don't invest in their infrastructure," he said. Cleveland residents saw 12 percent annual rate hikes over the past five years, and will see another 8.3 percent increase per year through 2021, with additional funds supporting Project Clean Lake, a federally mandated $3 billion effort to reduce stormwater runoff into Lake Erie.

The rate increases are significant, but Ciaccia noted that they are comparable to gas and electric rates for residents, and align with the real cost of managing the water and wastewater systems. "A lot of utilities' rates are still way undervalued when you consider the cost of the service we provide," he explained. And while increases can be a tough sell for residents, it's better than running the system to failure. "You have to have strong leadership and you have to communicate about the value of the water system to help people understand what they are getting," he said. "It's something that all utilities need to do better."

Value in Teamwork

The reality is that regardless of who is in office, there are no easy solutions to the country's water infrastructure crisis. Municipalities and utilities need to rely on a number of funding sources and strategies to deliver any projects, and the more innovation they can get the better, said David St. Pierre, executive director of the Metropolitan Water Reclamation District of Greater Chicago (MWRD). MWRD has 80 ongoing projects as part of its five-year capital program. St. Pierre is focused on finding more innovative strategies to fund these and other badly needed water infrastructure projects, in large part by working more collaboratively with communities and state agencies.

MWRD's primary source of financing is through bonds and the SRF, and they encourage communities to match funds when possible. Being able to access SRF funds is particularly helpful because it gives local communities the confidence to participate financially in these projects, he said. "Because we can match them, they are willing to leverage their own funds, whereas on their own they are afraid to makes these kinds of commitments."

But to have a real impact, communities need to think beyond traditional water funding sources. He points to a unique project in Robbins, Ill., that he hopes will become a model for future infrastructure development. The small community had significant flooding problems, and while

MWRD could have come in and "dug a big hole" to address the flooding, his team wondered if they could do more for the struggling community.

They ultimately partnered with 50 government agencies and private organizations to design and fund a three-tiered infrastructure amenity project, complete with wetlands, athletic fields, parks, paths, shops, green energy infrastructure and a residential community near the metro. "We brought all of these public and private stakeholders together and showed them that if we work together we can get so much more done," he said. The project is still in the design phase, but everyone is excited about the potential, and they have all agreed to contribute funds. The project is expected to break ground in 2018.

St. Pierre sees these kinds of collaborations as the key to getting big infrastructure projects off the ground, and the future for water infrastructure funding. "I can't solve every problem with a $20 million a year budget," he said. "But if we get out of our niches and work together we can accomplish so much more."

WaterWorld

By Sarah Fister Gale

About the Author: Sarah Fister Gale is a Chicago-based correspondent for WaterWorld. Over the last 15 years, she has researched and written dozens of articles on water management trends, wastewater treatment systems and the impact of water scarcity on businesses and municipalities around the world.

To Speed Up Infrastructure Projects, Trump Revisits Environmental Regs.

The White House's push to build more infrastructure — and quickly — will likely bring changes to some of the country's most iconic environmental laws.

President Trump has made no secret over the course of his campaign and early administration that he thinks it takes too long for infrastructure projects to get approved and built. A report from The Wall Street Journal last week indicated just how much he'd like to speed things up: The president wants states to start building within 90 days of getting federal money, compared with the years it can take for projects to start now.

The biggest hold-ups for most projects, though, come from federal — not state — regulations. State and county transportation officials say federal environmental, safety and workplace reviews can more than double the time it takes to complete a project.

But, they add, a GOP-controlled Congress and new administration provides the perfect opportunity to re-evaluate many of those long-standing environmental laws.

"We are not talking about trying to go out and gut the environmental process," says Tim Hill, the administrator in charge of environmental services for the Ohio Department of Transportation (ODOT). "That's not what states are about. They support clean air. They support clean water. They want to make good, common-sense decisions. But they want common-sense decisions in a process that allows flexibility."

Of course, many environmental groups are wary of any major changes to landmark environmental laws, especially because Congress has already sped up many parts of the reviews in recent years.

“They already won,” says Scott Slesinger, the legislative director for the Natural Resources Defense Council (NRDC). “The problem isn’t and has never been [environmental reviews] that have caused the delays. It’s other stuff. It’s money. It’s local opposition. It’s supply-chain problems.”

Trump has already begun the process of rolling back some environmental regulations, but his administration largely hasn’t specified what changes they’d like to see in order to speed up infrastructure projects. Experts, however, point to several areas that are most likely to get more scrutiny.

Clean Water Act

In February, Trump signed an executive order instructing the Environmental Protection Agency to start the years-long process of defining more specifically which types of waterways fall under the Clean Water Act.

The order was cheered by the National Association of Counties, which has complained that the Obama administration’s interpretation of the act is too expansive.

Congress passed the Clean Water Act in 1972, but a series of court decisions since 2001 left in question which waters were regulated by it. Everybody agrees that the law applies to navigable rivers and lakes. Beyond that, though, things get trickier — particularly when it comes to wetlands and areas that are sometimes, but not always, covered in water.

In 2015, Obama sought to settle the debate by including small streams and wetlands under the act. But Brian Namey, a spokesman for the National Association of Counties, says Obama only muddied the waters further.

“What the previous administration did to clarify the definitions [only confused them more],” he says. “We are going to work with the new administration to make clearer rules. Counties need clarity.”

One of the reasons road builders are so concerned about the existing rule is that the more expansive definitions give opponents of a project more opportunities to sue to stop or delay it, says Nick Goldstein, the vice president of regulatory affairs for the American Road and Transportation Builders Association.

But Schlesinger of the NRDC says the worries over the Obama-era interpretation are overblown. He argues that the industries most affected by the more expansive rule he issued are home building and oil and gas development — not transportation.

Beyond the issue of what kind of waterways are covered by the Clean Water Act, Congress could also look at whether the permit application process required by the law is duplicative. ODOT’s Hill says projects that include, say, bridges over streams need both an environmental impact statement that includes the project’s effect on waterways and a separate approval from the U.S. Army Corps of Engineers that covers many of the same areas.

Endangered Species Act

Congress is already looking at revising the landmark 1973 environmental law, for reasons that go far beyond transportation and infrastructure projects.

For one, the law restricts land development, which can hamper oil drilling, home construction, farming and ranching. For another, the process of delisting a species that has recovered is very contentious.

Nevertheless, the Endangered Species Act touches upon “almost every project that we process,” says ODOT’s Hill. It’s “been around for 30 or more years and has not been through any substantial changes since its inception. So [it’s] definitely due for a rework.”

The law currently protects 1,276 species that are either threatened or endangered. New wildlife are added all the time, especially because the law gives private citizens the ability to sue to add new species. In other words, it’s rare for a large project to go from start to finish without having to adjust to a new listing.

Making matters worse, the federal government often lists new protected species before it determines its plan for rehabilitating them. That means that transportation agencies can go several years without knowing for sure whether they will meet the federal criteria. During that time, frequent communication with the U.S. Fish and Wildlife Service is required on every individual project in order to make sure the new projects are in compliance once the rehabilitation plan is completed.

“When they put a new species on that list without that homework being done first, transportation agencies are at loss,” says Hill.

National Environmental Policy Act

The National Environmental Policy Act (NEPA) is one of the most sweeping environmental laws on the books, and, depending on your perspective, one of the most onerous.

It requires anyone receiving federal money to assess the environmental impact of the projects as well as their impact on businesses, residents and historic sites.

The scope of the review depends on the size of the project. Projects that cost less than $5 million — which are the vast majority of transportation projects — are generally excluded from the impact study. Slightly larger projects, like a new intersection or highway on-ramp, require a more involved process called an “environmental assessment.” The biggest projects, like ones that require new rights of way, require a full environmental impact statement.

It’s the biggest projects that tend to get the most attention, and they’re the ones with the longest approval process. For projects approved in 2011, for example, the average time the NEPA process took was more than six years.

Congress responded to criticism about the lengthy reviews when it wrote its last two major surface transportation funding bills in 2012 and 2015. Federal lawmakers, for example, expanded the types of projects that were exempt from the reviews. They also allowed states to conduct their own NEPA reviews on behalf of the federal government, which California, Florida, Ohio, Texas and Utah have opted to do. Hill says Ohio saved $4.6 million in the first three months of doing the reviews itself.

Shannon Eggleston, the director of environment programs for the American Association of State Highway and Transportation Officials, sees another opportunity to streamline the process. She points to a provision that blocks federal money from being spent on environmental reviews for a project until all the funding to pay for that project has been identified.

The result, she says, is that “there’s not on-the-shelf, ready-to-go projects.”

Buy America

As part of his infrastructure push, Trump has emphasized making U.S. companies "buy American and hire American." Congress has already enacted several Buy America provisions covering a range of infrastructure including highways, rail cars and water pipes. But if Trump opts to go further, it could undermine his goal of expediting infrastructure projects.

Goldstein, from the road builders group, says the issue with Buy America provisions is not location but cost.

"If you're talking about something that costs under a dollar — like a nut or a bolt — should you be required to go to spend many dollars to buy an American screw?" he asks.

Buy America laws already complicate the building of transit projects, says Rob Healy, the vice president of government affairs for the American Public Transportation Association. For example, when transit agencies have to relocate utility lines, they have to ensure that they are using American-made pipes and other components to do so. But that makes it hard to re-use the same pipes because utilities don't track the origins of those components with the detail required by Buy America provisions.

Healy notes that the most recent federal transportation law, the FAST Act, which was signed in December 2015, increases the percent of U.S.-made components required to be in new buses and rail cars from 60 percent to 70 percent by 2020.

"We just had this increase," he says. "Let us implement it before we go to a higher domestic content requirement."

Funding

If there's any agreement on what could speed up new infrastructure projects, it's on the need for more federal spending.

Slesinger from the NRDC says better funding of federal environmental agencies would help provide staff to do the needed environmental reviews for infrastructure projects more quickly.

An influx of new money would also allow transportation planners to make plans farther into the future. The current federal spending plan for transportation only goes through 2020, and it relies on one-time money. That doesn't bode well for planners who want to build a project that will take more than three years to finish.

"You don't have a lot of projects because they're not funding a lot of projects," says Schlesigner. "If the pool of projects is small, you can't blame that on NEPA."

GOVERNING.COM

BY DANIEL C. VOCK | MARCH 13, 2017

Puerto Rico Bonds Decline After Recovery Plan Leaves Less for Paying Debts.

- Prices of most-active securities fall after board backs plan
- Final proposal suggests need for bigger bondholder concessions

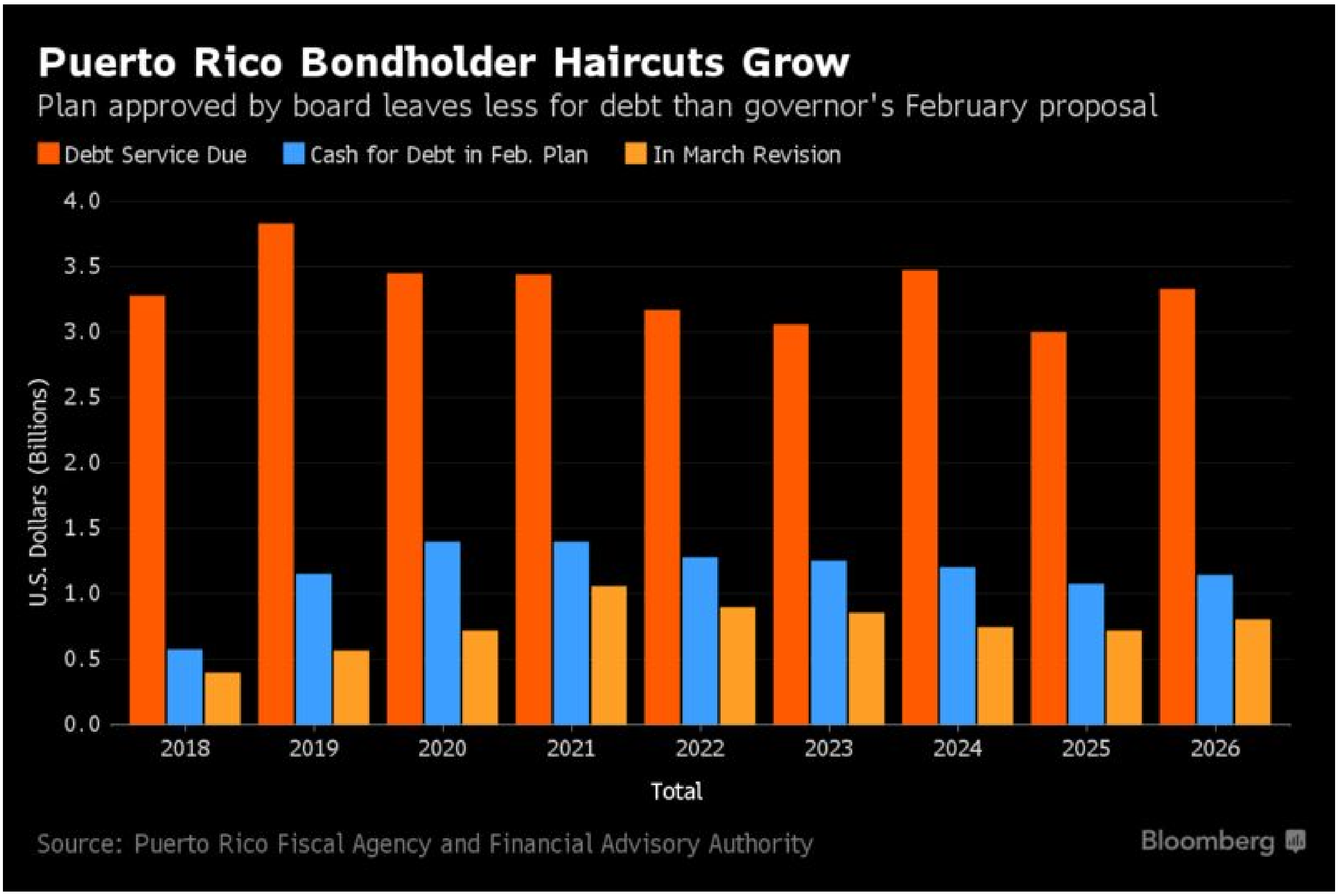
Puerto Rico general-obligation bonds fell after the federal oversight board approved a financial recovery plan that will cover less than a quarter of the debt payments coming due, underscoring the deep concessions the island plans to seek from investors.

The price of securities due in 2035, among the most actively traded, dropped 5 percent to an average of 67.5 cents on the dollar Tuesday to the lowest in two months, according to data compiled by Bloomberg. Those maturing in 2039 slipped to 60.2 cents from 63.8 cents Monday.

The decline followed the panel's approval of a revised proposal from Governor Ricardo Rossello on Monday that lays out a path for closing the territory's chronic budget deficits. The blueprint leaves an average of less than $800 million annually for debt service over the next decade, a fraction of the more than $3 billion owed each year from 2018 through 2027. The latest figures marked a reduction from what the governor initially proposed to repay.

The plan will serve as benchmark as the island begins discussions with creditors over how deeply to reduce its debts.

"The sentiment definitely turned negative on some of these numbers, but we still don't know what the final restructuring will be," Daniel Solender, head of municipals at Lord Abbett & Co., said in a telephone interview. "If this news triggered someone to sell, it's a thin market so it would have driven the markets down further."



In an interview Monday, Rossello said that he was pursuing talks with creditors "aggressively" after the panel approved his proposal. "Right now, having a certified plan allows us to sit down with the different bondholders at different levels," he said.

In a follow up interview on Bloomberg Television Tuesday the governor added they would "see if we can find a best alternative, best solutions for both bondholders and of course the people of Puerto

Rico.”

Bloomberg Markets

by Rebecca Spalding

March 14, 2017, 11:24 AM PDT March 14, 2017, 1:01 PM PDT

[Puerto Rico Board Approves Fiscal Road Map.]

Plan lays groundwork for debt negotiations as May 1 deadline looms

The federal board overseeing Puerto Rico’s finances approved a fiscal plan for the island Monday after marathon talks over the weekend with advisers of Gov. Ricardo Rosselló. The deal clears the way for the governor to start negotiations with creditors over the U.S. territory’s $70 billion debt load.

Puerto Rico is racing to meet a May 1 deadline to reach a settlement with bondholders under legislation passed by the U.S. Congress in June that permitted the commonwealth to restructure its debts. Obtaining board approval for the fiscal plan required newly elected Mr. Rosselló to agree to potentially painful spending cuts while leaving less money to repay bondholders, but the deal allows for more expenditures if the island’s economy improves.

“We were limited by what we could do with creditors before having a plan certified,” Mr. Rosselló said in an interview. The governor said he would be personally involved in talks with bondholders in coming days.

The federal oversight and management board approved the plan at a meeting Monday in New York, modifying a proposal last week by the governor that would have paid bondholders $1.2 billion a year over a decade, or roughly a third of what they are owed under existing contracts.

The approved plan forecasts that a roughly $800 million primary surplus will be available annually to service debt over the next 10 years. The reduction reflects the oversight board’s more conservative forecasts of economic contraction and budget deficits in Puerto Rico.

The board rejected the governor’s proposal last week, saying it relied on overly optimistic revenue assumptions and didn’t include enough government spending cuts to close a yawning fiscal gap. The board’s modifications opened the door to austerity measures the governor had resisted, including possible employee furloughs, pension spending reductions and the elimination of Christmas bonuses.

Mr. Rossello’s administration agreed with the board’s required expenditure cuts on health-care and public-sector payroll: by $650 million in 2018, by $1.2 billion in 2019 and by $2.05 billion in 2021, Elias Sanchez, the governor’s representative on the board, said in an interview.

The plan also assumes that Congress won’t extend health-care funding for Puerto Rico under the Affordable Care Act, or ACA, that is scheduled to lapse in December, something Mr. Rosselló is lobbying to prevent.

“The elephant in the room is the assumption that there will be no federal funding for health care,” Mr. Rosselló said. “If we do get federal funding at the same level it means we’ll have $1.5 billion more in fiscal 2019 and forward."

Despite Republican efforts to repeal the ACA, Puerto Rico could get its current funding extended when Congress passes in coming weeks a new continuing resolution, a bill that keeps the government funded in the absence of a full-year spending bill, Mr. Rosselló said.

The plan could be amended if Congress sends Puerto Rico additional federal health-care dollars but that won't necessarily boost money paid to bondholders, said David Skeel, a law professor and oversight board member.

Puerto Rico bond prices held steady Monday as investors bet that the island would ultimately generate more cash to pay its debts than projected under the fiscal plan. The island's benchmark $3.5 billion bond due 2035 dipped slightly to about 72 cents on the dollar, according to Electronic Municipal Market Access

The debt-relief law that Congress passed last summer protects Puerto Rico from creditor lawsuits until May 1, when a stay on litigation is scheduled to expire. The governor has called for an extension of the stay to pursue consensual deals with creditors, but any extension must be approved by Congress.

Mr. Skeel said he "would not bet" on an extension of the May 1 deadline. After that date, Puerto Rico can switch to a quasi-bankruptcy process that can bind creditors to unfavorable repayment terms.

THE WALL STREET JOURNAL

By ANDREW SCURRIA and MATT WIRZ

Updated March 13, 2017 5:39 p.m. ET

Write to Andrew Scurria at Andrew.Scurria@wsj.com and Matt Wirz at matthieu.wirz@wsj.com

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Puerto Rico Fiscal Plan Triggers Bond Rout.

Economic estimates stoke fears that creditors will be asked to take large losses

Investors in Puerto Rico debt are contending with the fallout from a tough fiscal plan approved Monday by the federal oversight board managing the island's financial overhaul.

The price of Puerto Rico's $3.5 billion general-obligation bond due in 2035 has fallen about 10% since Monday to 66 cents on the dollar, according to data from Electronic Municipal Market Access.

The economic estimates baked into the 10-year plan are far more bearish than analysts and fund managers expected, stoking fears that creditors will be asked to recognize large losses as part of an expected restructuring.

The larger the losses, or "haircuts," Puerto Rico tries to impose on the hedge-fund and mutual-fund managers who own much of its $70 billion in debt, the harder it will be to negotiate settlements with them. The most likely alternative is lengthy and expensive litigation between the island and its creditors, investors have said.

Bondholders were particularly surprised by the pressure the oversight board exerted over Puerto

Rico's Gov. Ricardo Rossello to replace earlier estimates with more conservative figures, leaving less money for bond payments, said Andrew Gadlin, an analyst at Odeon Capital Group LLC, a broker specializing in distressed debt.

"We're dealing with a board that was thought to be creditor friendly that now looks to be pretty unfriendly," Mr. Gadlin said. "It's similar to what you saw in Detroit." Detroit filed in 2013 for the biggest-ever U.S. municipal bankruptcy.

Negotiations between Puerto Rico and bondholders had been on hold until Mr. Rossello's administration delivered a fiscal plan that the board approved. The governor initially proposed earmarking about $1.2 billion a year for debt repayment over the next decade, but the board forced him to revise his economic forecasts downward, leaving about $800 million for annual debt service.

When the oversight board publicized its conservative forecasts last week, Puerto Rico's two largest bondholders, Franklin Advisers Inc. and Oppenheimer Funds Inc., sent board members a letter asking that they postpone its March 15 deadline for plan certification to allow further review. Instead, the board approved the plan two days before the deadline.

The new plan gives Puerto Rico a concrete set of figures from which to launch restructuring talks with bondholders, but the commonwealth has little time to negotiate a deal. The commonwealth received a stay on creditor litigation as part of a debt-relief law passed by Congress in June, but that moratorium expires May 1.

Puerto Rico and its financial adviser, Rothschild & Co., now have less money with which to broker settlements among several factions of bondholders, some of which have already filed lawsuits demanding repayment.

Holders of Puerto Rico's $13 billion in general-obligation bonds have formed a committee. So have owners of $17 billion in bonds backed by sales tax and investors in about $9 billion of bonds issued by the Puerto Rico Electric Power Authority. Prices of sales-tax-backed bonds due in 2041 have dropped this week about 5.5% to 59.50 cents on the dollar.

The conservative assumptions enforced by the oversight board have a silver lining, said Daniel Solender, a municipal-bond portfolio manager at Lord Abbett, which owns about $100 million of Puerto Rico bonds across various funds. By basing its fiscal model on pessimistic forecasts, Puerto Rico is unlikely to repeat a longstanding pattern of overpromising economic performance and then underdelivering, he said.

Disappointing as the plan may be to some, it finally opens the door to real negotiations between Puerto Rico and its creditors, Mr. Solender said.

THE WALL STREET JOURNAL

By MATT WIRZ

Updated March 16, 2017 12:19 a.m. ET

Write to Matt Wirz at matthieu.wirz@wsj.com

- **Ed. Note #1:** Please note that the inclusion of any and all references to the new administration, and the leader thereof, arise only in the course of our ordinary (shoddy) reportage and is in no way filtered to express any particular political viewpoint whatsoever. We barely manage to keep this leaky tub afloat as it is, so certainly don't need to be steering into that iceberg.

- **Ed. Note #2:** Briggs & Morgan is looking for a public finance paralegal in its Minneapolis office. We mention this to remind you that our Classifieds are free of charge, so feel free to send us solicitations for everything from used futons to lightly-soiled associates.
- The SEC's Proposed Changes to Rule 15c2-12 Could Have Far-Reaching Impact on Issuers and Obligors of Municipal Securities: Foley & Lardner
- Bond Documents Being Revised for Issue Price Rules.
- How Poker Reminded Me That the Rev. Proc. 97-13 Safe Harbors for Management Contracts Live On: Squire Patton Boggs
- Donald Trump is Poised To Do Great Harm to U.S. Cities (But Not For the Reasons You Might Think).
- Issuer Considerations: Bank Loans – SDMN Webinar
- Webinar Recap: Mismeasurement of the Efficiencies of the Municipal Tax-Exemption.
- And finally, please take a moment out of your busy day to savor the following insight from the Supreme Court of Rhode Island, "The right to keep alpacas does not run with the land." We can't quantify precisely why it is that we find this so hilarious, but we do. We just do.

EMINENT DOMAIN - KANSAS

Doug Garber Construction, Inc. v. King

Supreme Court of Kansas - January 27, 2017 - 388 P.3d 78

Eminent domain proceeding was commenced regarding property condemned by Secretary of Transportation in order to facilitate construction of highway.

The District Court awarded property order $112,000 as compensation, and property owner appealed.

The Supreme Court of Kansas held that:

- Street relocation and wetland reclamation project, for which property was taken, was contingent upon highway construction project such that projects had to be treated as one for valuation purposes, and
- Property owner's lay testimony that taken half-acre plot was worth $40 million was not based on permissible considerations.

Street relocation and wetland reclamation project, for which property was taken, was contingent upon highway construction project which destroyed wetlands such that projects had to be treated as one for valuation purposes and project influence rule prohibited expert's testimony as to valuation of taken property based on its proximity to new intersection of highway and relocated street. Expert's report treated the completion of the highway and street as a unified project that would catalyze commercial development, and report based its fair market value calculation on new land use opportunities that would arise after the highway was constructed and the relocated street served as a new gateway to city.

Property owner's lay testimony that taken half-acre plot was worth $40 million was not based on permissible considerations and thus was inadmissible to determine value in eminent domain proceeding. Valuation was based on miles of highway in other states which had been sold for billions of dollar, and required property owner to be able to lawfully collect tolls from road users.

MUNICIPAL ORDINANCE - MISSOURI

Cooperative Home Care, Inc. v. City of St. Louis, Missouri

Supreme Court of Missouri, en banc - February 28, 2017 - S.W.3d - 2017 WL 770971

Petitioners filed petition against city, city's board of public services, and various named city officers in their official capacities, seeking declaratory judgment that city ordinance establishing citywide local minimum wage was invalid and seeking injunctive relief to prevent city from enforcing the ordinance.

The Circuit Court entered judgment invalidating the ordinance. Petitioners and city appealed.

The Supreme Court of Missouri held that:

- Legislative bill adopting statutory provision, which prohibited municipalities from establishing minimum wage exceeding the state minimum wage, contained more than one subject, and thus violated state constitution's single subject rule;
- Statutory provision could be severed from unchallenged portions of the bill;
- City ordinance did not conflict with state's minimum wage law, and thus, ordinance was not preempted by state's minimum wage law;
- City ordinance fell under exception to state statute prohibiting political subdivisions from establishing minimum wage exceeding requirements of federal or state laws, and thus, ordinance was not preempted by state statute;
- City did not act outside of its home-rule authority in enacting city ordinance; and
- City ordinance did not violate general rule prohibiting the delegation of legislative functions by giving city official the authority to promulgate rules and regulations regarding the interpretation, application, and enforcement of the ordinance.

SECURITIES - MISSISSIPPI

Watkins Development, LLC v. Hosemann

Supreme Court of Mississippi - March 2, 2017 - So.3d - 2017 WL 841128

Developer sought judicial review of decision of the Secretary of State adopting decision of hearing officer determining that developer had engaged in four violations of Mississippi Securities Act.

The Chancery Court affirmed in part and set aside in part Secretary's order. Developer appealed. The Court of Appeals affirmed in part and reversed and rendered in part. Developer filed petition for writ of certiorari.

The Supreme Court of Mississippi held that:

- Secretary was not entitled to review of portion of chancellor's ruling that was not appealed, and
- Evidence supported finding that developer committed securities-fraud violations.

Evidence supported finding that developer committed securities-fraud violations in connection with revenue bonds sold to finance city's renovation project at mall. There was evidence that developer represented that all bond proceeds would be used to finance mall project and/or failed to disclose that some bond proceeds would be used on another project, and developer's misappropriation was inextricably tied to his alleged misrepresentations in private placement memorandum (PPM), bond-purchase contract, and loan agreement.

EMINENT DOMAIN - IOWA

Johnson Propane, Heating & Cooling, Inc. v. Iowa Department of Transportation

Supreme Court of Iowa - March 3, 2017 - N.W.2d - 2017 WL 836826

After a compensation commission awarded landowner funds for a partial taking by the Department of Transportation, landowner filed a notice of appeal, arguing that the taking left it with an uneconomical remnant.

Department moved for summary judgment on the basis that the challenge was not timely. The District Court granted the motion.

The Supreme Court of Iowa held that landowner alleging that Department of Transportation's partial taking left it with an uneconomical remnant was required to bring a separate action within 30 days from notice of assessment, rather than in proceedings in front of compensation commission Compensation commission lacked authority to determine whether taking left an uneconomical remnant.

EMINENT DOMAIN - MONTANA

Deschner v. State of Montana, Department of Highways

Supreme Court of Montana - February 28, 2017 - P.3d - 2017 WL 772735 - 2017 MT 37

Property owners brought action against state, asserting claims for negligence and inverse condemnation and alleging that construction and placement of state highway and culvert caused unnatural increase in amount of water that ran off highway onto rockfall site, ultimately causing a slab of rock to fall onto owners' home.

Following a jury trial, the District Court entered judgment in favor of state. Owners appealed.

The Supreme Court of Montana held that trial court's decision to give jury instruction that required property owners to prove elements to their inverse condemnation claim beyond that which case law and state constitution's eminent-domain section required rather than giving either of property owners' proposed jury instructions did not constitute reversible error in action against state for negligence and inverse condemnation, although jury did not reach issue of causation in inverse condemnation claim; owners were required to prove that state caused their damages, jury found state contributed 0% to the cause of owners' damages in negligence claim, and damages in negligence claim and inverse condemnation claim were indistinct.

EMINENT DOMAIN - NORTH CAROLINA

Wilkie v. City of Boiling Spring Lakes

Court of Appeals of North Carolina - December 30, 2016 - S.E.2d - 2016 WL 7976113

Property owners brought inverse condemnation by the city after city raised level of a lake and caused flooding on their property.

The Superior Court entered an order concluding that property owners were entitled to damages from city's taking of their property, and city appealed.

The Court of Appeals held that:

- Appeal was properly before Court of Appeals;
- Action taken by city was not inverse condemnation; and
- Property owners had a direct claim against city under state constitution.

City's appeal of order that concluded that city had taken property through inverse condemnation when it raised the water level of a lake and flooded their property, was properly before Court of Appeals. Although the order was interlocutory, it was issued pursuant to the public condemnation statute, addressed the area taken by city, and affected a substantial right.

Action taken by city in which it raised water level in city owned lake, which resulted in the flooding of property owners' property, was not inverse condemnation, and thus property owners did not have remedy through an inverse condemnation action. City's action to raise lake water level was intended to benefit property owners whose lots bordered lake, which was a private, rather than public, use.

Property owners, who had their property flooded after city took measures to raise water level of city owned lake, had a direct claim against city under state constitution. Property owners had no adequate state law remedy, and alleged that the city caused the damage to their property, that city took property belonging to them, and that city affected their property rights in violation of their constitutional rights.

ZONING & LAND USE - RHODE ISLAND

Preston v. Zoning Board of Review of Town of Hopkinton

Supreme Court of Rhode Island - February 27, 2017 - A.3d - 2017 WL 752600

After town zoning officer issued a notice of violation to property owners for keeping four alpacas on their property, property owners appealed.

The Zoning Board of Review determined alpacas were domestic animals, were not prohibited, but imposed four conditions.

Neighbor appealed. The Superior Court affirmed. Neighbor petitioned for a writ of certiorari.

After granting certiorari, the Supreme Court held that the Zoning Board could not impose, as a "condition" in its ruling, that "[t]he right to keep alpaca on this property does not run with the land."

ZONING & LAND USE - VIRGINIA

Boasso America Corporation v. Zoning Administrator of the City of Chesapeake

Supreme Court of Virginia - March 2, 2017 - S.E.2d - 2017 WL 829688

Property owner sought certiorari review of an adverse decision of the board of zoning appeals.

The Circuit Court dismissed petition. Property owner appealed.

The Supreme Court of Virginia held that:

- Local governing body was required to be named as a necessary party in the petition within 30 days of the final decision, and
- Local governing body could not be named as a necessary party after expiration of the 30-day period.

To properly initiate a proceeding challenging a decision of a board of zoning appeals, the petitioner can name the governing body in a separate heading or caption or name it in the body of the petition, so long as a reasonable reader would understand either from the petition's text or context or both that the necessary party is being mentioned not as a mere historical reference within the larger background of the case, but as the party against whom the appeal is being taken.

Bond Documents Being Revised for Issue Price Rules.

WASHINGTON – Bond lawyer and dealer groups are drafting revisions to bond documents for market participants to begin using by June 7 when the Internal Revenue Service's issue price rules take effect.

The tax committee of the National Association of Bond Lawyers is drafting a model issue price certificate, Perry Israel, a lawyer with his own firm, told NABL members meeting here Thursday at the group's 15th annual Tax and Securities Law Institute. He is co-chairing TSLI.

Issue price certificates, which underwriters provide issuers, have been used for years and historically have been attached to the tax certificates at transaction closings. But in recent years, as sensitivity has grown over the issue price of bonds, lawyers and underwriters tried to add various sentences and clauses to the certificates.

NABL's tax committee is drafting model language that it hopes everyone will use. Israel said the model certificate has been circulated to NABL's board of directors, as well as SIFMA and the tax-exempt financing committee of the American Bar Association. It could be released as soon as the end of next week and, if not then, certainly later this month, he said.

SIFMA is working on revisions to its agreement among underwriters, the bond purchase agreement, and the notice of sale.

Leslie Norwood, SIFMA's co-manager of municipal securities who was at the NABL meeting, said the dealer group is revising the documents "in an effort to make sure that all of the parties are clear about the issue price rules and their requirements and responsibilities" and that everyone is "on the same page."

Some lawyers at TSLI talked about adding language about issue price to the notice of sale, so that an underwriter bidding on the bonds agrees to certify as to the issue price.

Issue price is important because it is used to help determine the yield on bonds and whether an issuer is complying with arbitrage rebate or yield restriction requirements. It is also used to determine whether the subsidy payments for direct-pay bonds such as Build America Bonds are appropriate.

Under existing rules that have been in place for years, the issue price of each maturity of bonds that is publicly offered is generally the first price at which a substantial amount, defined as 10%, is reasonably expected to be sold to the public.

But tax regulators became concerned that some dealers were “flipping” bonds — selling them to another dealer or institutional investor who then sold them again almost simultaneously — with the prices continually rising before the bonds were eventually sold to retail investors. The regulators worried that the “reasonably expected” issue prices for bonds were not representative of the prices at which the bonds were actually sold.

To address their concerns, the regulators adopted a general rule under which the issue price is the price at which the first 10% of a maturity of bonds is actually sold to the public. If 10% of a maturity is not sold, a special rule can be used under which the issue price is the initial offering price (IOP) as long as the underwriters hold at the IOP for five business days after the sale date.

The five-day “hold-the-offering-price” provision is an anti-flipping or an anti-abuse provision. The lead underwriter must certify the IOP to the issuer, as well as provide documentation, such as the pricing wire. Each underwriter in a syndicate must agree in writing that it will not offer or sell the bonds at a price higher than the IOP for five business days after the sale date.

Under a special rule for competitive sales, an issuer may treat the reasonably expected IOP of the bonds to be sold to the public as the issue price if the issuer obtains a certification from the winning underwriter bidder as to the reasonably expected IOP upon which it based its bid. To achieve a competitive sale: the issuer must disseminate the notice of sale in a manner reasonably designed to reach potential underwriters; all bidders must have an equal opportunity to bid; the issuer must receive bids from at least three underwriters “who have established industry reputations for underwriting new issuances of municipal bonds;” and the issuer must award the bonds to the bidder who offers the highest price or lower interest cost.

Issuers have the option of using any of these rules up until the closing (issue) date for their bond transactions.

The Bond Buyer

By Lynn Hume

March 9, 2017

SIFMA Issues Statement on the ASCE 2017 Infrastructure Report Card.

Today, SIFMA issued a statement from Michael Decker, managing director and co-head of SIFMA’s Municipal Division, on the American Society of Civil Engineers (ASCE) 2017 Infrastructure Report Card: “While showing some incremental progress towards improving our nation’s infrastructure since the 2013 ASCE Report Card, the 2017 Report Card clearly shows the desperate need for a strong commitment to infrastructure investment, which will help spur job creation and economic growth. SIFMA strongly advocates that the tax exemption for municipal bond interest remain intact, so that it may continue to help America’s cities and states boost their local economies through the construction of new projects such as roads, hospitals and schools." Michael Decker also noted the importance of public-private partnerships as a key component of any plan, as they ease the burden on the cash-strapped federal government.

ASCE 2017 Infrastructure Report Card

SIFMA Press Release

ASCE's 2017 Infrastructure Report Card.

The *2017 Infrastructure Report Card reveals* that we have made some incremental progress toward restoring our nation's infrastructure. But it has not been enough. As in 2013, America's cumulative GPA is once again a D+.

The 2017 grades range from a B for Rail to a D- for Transit, illustrating the clear impact of investment – or lack thereof – on the grades. Three categories – Parks, Solid Waste, and Transit – received a decline in grade this year, while seven – Hazardous Waste, Inland Waterways, Levees, Ports, Rail, Schools, and Wastewater – saw slight improvements. Six categories' grades remain unchanged from 2013 – Aviation, Bridges, Dams, Drinking Water, Energy, and Roads.

The areas of infrastructure that improved benefited from vocal leadership, thoughtful policymaking, and investments that garnered results. These improvements demonstrate what can be accomplished when solutions that move projects forward are approved and implemented.

Explore All Categories of American Infrastructure

Interactive Database from SIFMA Research: Capital Markets in Your State.

View and download state-by-state data on corporate, equity and municipal issuance; top public companies; securities industry employment; and more. We invite you to explore this interactive database to find the companies and municipalities in your state that are accessing the capital markets to drive economic growth.

View the database.

S&P: U.S. Higher Education Sector Credit Quality Remained Stable Overall In 2016.

The higher education sector's credit quality remained predominantly stable in 2016 despite a record number of rating changes. As of Dec. 31, 2016, S&P Global Ratings maintained public ratings on 440 U.S. not-for-profit colleges and universities. Our ratings span the spectrum from 'AAA' to 'CC.'

Continue reading.

Feb. 8, 2017

S&P: U.S. Charter Schools' Credit Quality Is Stable Despite Negative Rating Trend In 2016.

The credit quality of U.S. charter schools remained relatively stable in 2016 but the trend of rating and outlook changes was negative. S&P Global Ratings took 47 rating actions last year, of which 36 were downgrades and 11 were upgrades. Affirmations made up about 41% of the total number of actions for the year.

Continue reading.

Feb. 3, 2017

S&P: Pension Pressures Will Weigh On 15 Largest U.S. Cities' Budgets.

U.S. cities have varying legal, governance and benefit structures and operate in different legal and economic environments, so there's no one-size-fits-all measure for assessing their pension risk. Regardless of structure, most municipal pension plans experienced the market downturn in 2008-2009 and have not been able to recover to funded levels seen in the early 2000s.

Continue reading.

Mar. 8, 2017

Issuer Considerations: Bank Loans - SDMN Webinar

On Tuesday, February 28, 2017 at 2PM Eastern Time, NAST and the State Debt Management Network hosted a webinar that discussed many details of bank loans/direct loans. Selection process, advantages, disadvantages, pricing, disclosure practices, credit implications, regulatory impacts, and overall best practices were discussed.

David Erdman from the Wisconsin Capital Finance Office co-facilitated the discussion with Ellen Evans from the Washington Treasury Office. Our two speakers – Renee Boicourt, Managing Director at Lamont Financial Services and Peg Henry, Deputy General Counsel at Stifel Financial Corp brought their unparalleled expertise to the webinar and to answer your questions.

Watch the webinar.

How Poker Reminded Me That the Rev. Proc. 97-13 Safe Harbors for Management Contracts Live On: Squire Patton Boggs

Poker has a well-established hierarchy of winning hands. If you're holding a full house, you've got a right fine hand, but if you reach for the pot when the last bets are called and another player has four deuces, you will at best be the object of ridicule and at worst the subject of grievous bodily harm or death (it all depends on with whom you are playing). Legal authorities also have a strict order of priority. The most extreme adverse consequences that can befall one who forgets the priority of winning poker hands are unlikely to meet one who forgets which legal authorities take precedence over others, but it's good practice to be mindful of the hierarchy of legal authorities.

The recent issuance of Rev. Proc. 2017-13 is a case in point. As Bob Eidnier discussed in his recent post on this Revenue Procedure, the Internal Revenue Service issued it in response to requests from the National Association of Bond Lawyers and others for clarification of Rev. Proc. 2016-44 (which superseded Rev. Proc. 97-13)[1] that a management contract does not result in the manager receiving net profits from the managed facility (and, thus, in private business use of the tax-exempt bond proceeds that financed that facility) if the qualified user of the facility pays the manager a form of compensation permitted under Rev. Proc. 97-13 (percentage of gross revenue or expense (but not both), per-unit fees, capitation fees, periodic fixed fees, and certain types of incentive compensation) and the manager also bears some amount of the cost of operating the managed facility. Stated another way, NABL requested that the IRS make clear that the various management contract compensation arrangements permitted under the Rev. Prov. 97-13 safe harbors from private business use not be treated as the sharing of net profits of the managed facility under Rev. Proc. 2016-44.

Continue reading.

Bloomberg Brief Weekly Video - 03/10

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

Watch the video.

Bloomberg News

March 10, 2017

Puerto Rico Oversight Board Backs Governor's Turnaround Plan.

- Federal panel, governor resolve disagreement over blueprint
- Amendment would furlough workers to resolve cash shortages

Puerto Rico's federal oversight board approved Governor Ricardo Rossello's plan for pulling the island out of a fiscal crisis, a step that will allow the territory to start negotiating with bondholders to reduce its $70 billion debt.

The decision, made at a public meeting in New York Monday after the governor rolled back forecasts that the panel said were overly optimistic, marks an early move to steady Puerto Rico after a series of bond defaults. If the board and Rossello remained at loggerheads, the federal appointees could have imposed their own measures under sweeping powers extended by Congress last year.

The plan proposed by Rossello, who took office in January, relied heavily on increasing revenues through tax overhauls and wresting cost-savings from the government operations, stopping short of the bigger reductions to spending on health care and other programs suggested by the U.S. overseers. As a condition of its approval, the board demanded furloughs for government employees, deeper pension-spending cuts and the potential elimination of Christmas bonuses to shore up needed cash.

"Puerto Rico is about to capsize — the island is overwhelmed by debt," said David Skeel, a member of the board. The proposal "calls for everyone to sacrifice."

The governor relied on a less sanguine outlook for Puerto Rico's current trajectory when revising his proposal and increased spending reductions to $25.7 billion over ten years from $19.8 billion initially floated last month, according to copies released by the board. It would also extract larger concessions from bondholders: There would be less than $800 million annually left over for debt service over the next decade, just a fraction of the more than $3 billion it owes each year.

Having the fiscal outline in place will allow Puerto Rico to begin talks on what will be the biggest debt restructuring ever in the U.S. municipal bond market, a haven where few borrowers default. Puerto Rico's general obligations due in 2035, one of its most active securities, dropped to an average of 71.6 cents on the dollar Monday from 72.8 cents Friday.

The approval comes after the board last week advised Rossello that it would reject his initial plan unless it was revised, saying it relied on overly optimistic assumptions and failed to go far enough to stabilize the government's finances.

Rossello has sought to avoid deep cutbacks to government programs that would worsen the economic contraction or fall heavily on the low-income residents of an island where nearly half live below the poverty line. His predecessor began defaulting on debt in 2015 to conserve cash for services after years of borrowing to cover bills.

"I'm very pleased that our plan got certified and approved," Rossello said in an interview. "We were able to maintain our principles to have a plan that would safeguard the most vulnerable."

Puerto Rico is under pressure to begin negotiating with bondholders because a temporary hold on creditor lawsuits is set to lapse in May, leaving it potentially exposed to rulings requiring it to make good on past-due payments. Rossello has requested that the stay be extended to give him more time.

"The fiscal plan recognizes that there are no simple, easy, painless solutions to the problems that built up over 20 years," Jose Gonzalez, a member of the oversight board, said during the meeting. "It's barely the end of the beginning of a long process to get Puerto Rico on the road to economic growth again."

Bloomberg Markets

by Rebecca Spalding

March 13, 2017, 8:30 AM

Bloomberg's Mysak: Illinois Revenues Experiencing a 'Freefall'

Bloomberg Markets AM with Pimm Fox and Lisa Abramowicz.

GUEST: MUNIS IN FOCUS: Joe Mysak, Editor for Bloomberg Brief: Municipal Market, on Illinois's revenue experiencing a "February freefall."

Running time 08:00

Play Episode

Bloomberg News

March 10, 2017 — 8:54 AM PST

Paralegal – Public Finance

Briggs and Morgan, P.A. is seeking a full-time Paralegal for our Minneapolis office.

Responsibilities include: preparing drafts of preliminary election and improvement proceedings, drafting of resolutions, documents and certificates in connection with tax-exempt financings; tax increment subsidies, industrial development and hospital bonds and notes; supervision of document organization and coordinating documents for closing and post-closing; attending and assisting at closings and preparing various federal and state filings.

Qualified candidates will: have effective oral and written communication skills, demonstrated analytical ability and strong organization skills; ability to solve problems, balance priorities and manage multiple projects and activities. General understanding and knowledge of state and local government financing required. An associate or bachelor's degree, or paralegal certificate or equivalent, and 3+ years related experience required.

Contact Details:
Kim Hansen
Human Resources Manager
khansen@briggs.com

Will Tobacco Bonds Go Up In Smoke?

Tobacco bond yields can be addictive, but price volatility and default risk could make you ill.

Municipal tobacco bonds are one of the largest and most liquid segments of the high-yield muni bond market. They can offer enticing yields and periods of extraordinary returns. However, those features also come with high levels of price volatility. And because their repayment is dependent on cigarette consumption — and consumption is going down faster than expected — future defaults are almost certain, although perhaps not for a few years. So, are tobacco bonds good for investors or are they likely to go up in smoke?

How tobacco bonds came to be

The vast majority of these bonds were issued between 1998 and 2007, following the tobacco company settlements with 46 states to compensate for damages incurred due to smoking. States agreed to drop any future litigation against tobacco companies in return for annual payments based on cigarette consumption, subject to certain adjustments. Many states decided to securitize the future revenue stream and offload the risk of declining consumption — and future tobacco company solvency — on investors through the issuance of bonds. Today, tobacco bonds represent close to 20% of the Bloomberg Barclays High Yield Municipal Bond Index.

Will smoking declines snuff out payments?

Because of its addictive nature, smoking was initially thought to be fairly inelastic and unaffected by price increases that tend to depress demand in other products. This resulted in bond securitization structures that assumed fairly low levels of annual consumption declines. However, since the initial issuance, cigarette tax increases and stronger governmental regulation — including smoking bans in bars and restaurants — have combined to accelerate a decline in smoking.

The resulting declines in cigarette sales have been more severe than initially modeled in earlier tobacco securitizations and may portend future defaults. But as long as people are smoking cigarettes and the tobacco manufacturers remain in business, the odds of ultimate recovery may be higher than in other defaulted municipal bond situations — even if repayment is much later than scheduled maturity. This is because the pledge of securitization payments by the tobacco companies is perpetual.

Tobacco bonds rally, then decline

The characteristics that attract buyers to the tobacco bond sector — namely the size and liquidity — also largely explain the high levels of volatility when things turn. The most recent period of outflows that began in October 2016 and accelerated following the national elections is a good example of how quickly things can turn for valuations in the tobacco sector.

After years of consistent declines in cigarette sales, cigarette usage in 2015 was largely flat — reportedly due to increased consumer discretionary income as a result of falling gas prices. This set in motion a strong rally in tobacco bonds that lasted from September 2015 to October 2016. During this time, the tobacco sector of the high-yield index was up an impressive 21.7%. But for November 2016, tobacco bonds were down more than 9%, outpacing the overall high-yield index, which was down just under 6% for the month. The sector continued to demonstrate its volatile nature as we entered 2017, returning 10.86% through February 2017, significantly outperforming the overall high-yield index return of 3.82%.

Bottom line

We maintain a negative view on the tobacco bond sector. The availability of higher yield and the sector's strong potential for ultimate recovery — even if not at the originally scheduled bond maturity — can justify some limited exposure to tobacco bonds. However, since price volatility can be significant, only those portfolios with a very high risk tolerance should have exposure to this sector.

By Columbia Threadneedle Investments on March 6, 2017

Donald Trump is Poised To Do Great Harm to U.S. Cities (But Not For the

Reasons You Might Think).

American cities collectively hold about $3.7 trillion in bonds, which have historically been used to fund capital expenditures. In recent years, however, bond issuers have been strategically leveraging municipalities' debts via derivatives, which have introduced systemic risk into the municipal finance system. L. Owen Kirkpatrick writes that the Trump administration's stated desire to dismantle the Dodd-Frank Act may speed up the current cycle of financial instability, and lead to more financial pain and misery for US cities.

On February 3, 2017, President Donald Trump signed an executive order directing the US Treasury to begin dismantling the financial regulations established by the 2008 Dodd-Frank Act. On the surface, the order may seem to have little to do with the affairs of US cities. But cities are now deeply reliant on finance markets to pay for the things that they need. In 2011, the US municipal bond market encompassed over one million bonds worth $3.7 trillion, issued by almost 50,000 different municipal entities. Being so closely tethered to capital markets means that cities are now profoundly impacted by changes in the financial sector.

Local officials, of course, have always needed access to long-term debt for the upfront capital expenditures required for large-scale municipal systems. In the mid-twentieth century, the municipal debt market was a rather staid and sedate place, made up of low-risk, long-term debt instruments. This debt took two basic forms: (1) low-risk "general obligation bonds" backed by the taxing power ("full faith and credit") of the issuing municipality, and (2) "revenue bonds" that are backed by dedicated revenue streams (such as toll receipts), which do not require electoral approval nor count against local debt limits.

In the 1970s and 1980s, municipal finance began changing as arcane, high-risk products and practices gained popularity. These profitable but unstable instruments flourished in an under-regulated environment. While the federal government sets the parameters of municipal securities via tax law, they are otherwise only lightly monitored. As the Securities and Exchange Commission (SEC) reports, "[d]espite its size and importance, the municipal securities market has not been subject to the same level of regulation as other sectors of the US capital markets." The passage of the Tax Reform Act of 1986 changed the structure of the market, but not the level of regulation or oversight. After its passage, new practices emerged which ultimately encouraged municipal issuers to strategically leverage their bond proceeds.

The strategic leveraging of municipal debt takes the form of financial derivatives: interest-rate swaps, variable-rate demand obligations, floaters/inverse floaters, auction-rate instruments, and the like. If there was any doubt as to the regulatory status of municipal derivatives, the Commodity Futures Modernization Act (2000) ruled that they were exempted from federal rules governing securities, an exemption that would also preempt the field of state regulations. Municipal derivatives had three key things in common. First, they promised more profits for Wall Street firms than long-term, fixed-rate bond issues. Second, due to the lack of oversight, they could be aggressively pitched to local officials. And, lastly, they promised impressive returns for municipal issuers by capturing the spread between long- and short-term interest rates.

Derivatives also introduced systemic risk into the municipal finance system. As more US cities made the bet that interest rates would remain low, vulnerability spread, and when interest rates rose, it triggered a crisis from which some cities are still recovering. Diminished revenues and a rash of speculative municipal debt that "went bad" in the aftermath of the crisis tightened the fiscal noose. When Detroit filed for bankruptcy in 2013 it became the twenty-eighth US city to do so since the onset of the crisis. Numerous quasi-public agencies (local and regional authorities, public corporations, and special districts) face similar pressures. For better or worse, urban fortunes are now tied to finance markets.

Cyclical volatility and the three stages of municipal finance

This linkage has a destabilizing effect on municipal finance, but the instability is not random. American economist and financial theorist, Hyman Minsky (1919-1996), posits that volatility in financial markets is cyclical. According to Minsky's *financial instability hypothesis* (FIH), the cycle begins during boom times, when a heady sense of optimism contributes to the spread of increasingly speculative debt structures, whereby firms more aggressively leverage debt for the purposes of investment and expansion. This speculative activity causes the price of financial assets to increase, which (temporarily) rewards and legitimizes risky debt leverage practices. But this is a highly unstable form of growth and the cycle ultimately ends in crisis.

Minsky specifies three stages of financial activity, which can apply to the world of municipal finance. The safest liability structure is employed by "hedged" financing units, which honor their outstanding debt, both interest and principal, through normal operating revenues. For cities, this consists of intergovernmental grants, "pay as you go" financing structures, and long-term, low-risk debt vehicles (general obligation bonds).

The second, "speculative," type of debt structure is employed by units whose revenues can pay the interest on outstanding debt, but cannot pay down the principal (which is refinanced or rolled over). This may be the case in cities that make big capital investments in future development (e.g. stadium), but where revenues fail to meet projections. In such cases, officials may float short-term debt, in pseudo-continuous fashion, to meet the operational requirements of the city.

The final category is "Ponzi" financing, in which revenues cannot meet debt obligations, neither interest nor principal. Cities sell assets, or undertake high-risk financing strategies (e.g. derivatives), which seek to leverage municipal debt to pay expenses. The three stages are marked by an increasing reliance on capital markets – while hedge financing is "impervious" to financial volatility, speculative and Ponzi are highly "vulnerable… to changing market conditions."

Minsky believed that this pattern tends to reset and repeat. Depression conditions will persist until they are addressed by monetary intervention from a "lender of last resort." Specifically, it is up to the Federal Reserve to "pick up the pieces when things go wrong," thus punching society's ticket for another boom-bust financial ride. By injecting liquidity into the system, central banks ensure the integrity of "too big to fail" financial institutions and establish a floor under asset prices as institutional investors unwind their leveraged positions.

But here we encounter a core contradiction: every time the central bank intervenes, it legitimizes risky activity. "[B]y validating the past use of an instrument," Minsky explains in Stabilizing an Unstable Economy (1986), "an implicit guarantee of its future value is extended." This creates a moral hazard in which "the protected multibillion-dollar banks… can bias their asset and liability innovations toward instruments that can compromise their liquidity and equity and expect to be protected."

One way in which this central difficulty can be mitigated is through a revitalized regulatory apparatus that sets well-defined limits on the range of acceptable financial activities. "A tighter regulatory regime may be… a way of getting around the moral hazard," argues Minsky, thereby slowing the progression to the next crisis. For this to be achieved, it is necessary to rein in destabilizing financial instruments and liability structures. Ideally, Minsky concludes, regulatory restructuring should entail "the creation of new economic institutions which constrain the impact of uncertainty."

Dodd-Frank and municipal securities

In the case of the municipal securities crisis, the immediate recovery effort was fueled by a broad consensus concerning the need for significant reform, itself unsurprising given the nature and scale of the crash. This effort resulted in the 2010 Dodd-Frank Act, which impacted municipal securities in several key ways.

While the municipal market had been exempted from previous rounds of regulation it now fell largely under the purview of the Securities and Exchange Commission (SEC). Suddenly, the SEC was no longer "toothless" in the municipal arena. Secondly, steps were taken to decrease the number of "unregulated market participants" dealing in municipal securities and derivatives. This involved expanding the regulatory reach of the Municipal Securities Rulemaking Board (MSRB) to include financial advisors. This set industry standards for advisors designed to curb problems associated with "role-switching" and graft that plagued the pre-crisis market.

The Dodd-Frank Act certainly wasn't perfect. According to the SEC itself, the Act spread regulatory responsibility across several agencies rendering enforcement uneven and incomplete. Municipal finance remained a cat-and-mouse game, in which bankers and hedge fund managers try to innovate their way around the latest regulatory standards. On the other hand, however, it has also been said that the 2008 crisis launched a regulatory "revolution" in the municipal bond market. Extensive and ongoing fraud investigations, heightened regulatory scrutiny, new administrative structures, and new transparency, disclosure, and ratings standards represented substantial efforts to regulate municipal capital markets.

The cycle is pivoting

The immediate post-crisis period is a pivotal point in the cycle – the moment when political and economic repair operations are intellectually conceived and institutionally implemented. Ideally, for Minsky, this process results in a reinvigorated regulatory apparatus undergirded by deep political and social-psychological shifts in how we perceive and interact with markets. In a best-case scenario, the cycle is essentially reset to stage one, paving the way for another sustained period of growth. Of course there is no guarantee that repair operations will be successful; numerous obstacles threaten to prevent or pervert the ideal response to crisis.

There is also an important timing aspect at play. Immediately following a crisis, with the memory of lost fortunes still fresh, investors, lenders, and policymakers are cautious. But as those memories fade, the "lure of a bonanza" becomes more enticing and regulations are relaxed. But therein lays the rub. "Unless the regulatory apparatus is extended," warns Minsky, "the success enjoyed by these interventions in preventing a deep depression will be transitory; with a lag, another situation requiring intervention will occur."

In the US, the financial instability cycle has sped up and periods of inter-crisis stability are now fleeting. The Trump administration's dismantling of the Dodd-Frank Act less than seven years after its passage is powerful evidence of this trans-cyclical acceleration. For a time, Wall Street firms and other market participants may indeed get swept up in the exuberance that attends the latter stages of the financial cycle. But this optimism too will be fleeting and the cycle will end, once again, in crisis and despair for US cities.

This article is based on the paper, *"The New Urban Fiscal Crisis: Finance, Democracy and Municipal Debt"* in Politics & Society.

The New Urban Fiscal Crisis Finance, Democracy, and Municipal Debt.

Abstract
Numerous U.S. cities suffered immense fiscal strain following the subprime mortgage crisis and financial crash of 2007–8. Diminished revenues, tightened credit, and speculative financing that went bad in the aftermath fueled widespread fiscal distress on the local scale. Although the current moment resembles fiscal crises that crested in cities in the 1970s–90s, two factors distinguish the current period. First, municipal affairs have become thoroughly financialized—dominated by speculative securities and volatile debt arrangements—such that local crisis can no longer be understood apart from financial market instability. Second, local fiscal politics have become increasingly removed from democratic oversight and control. This de-democratization hinders the capacity of political communities to reregulate markets and rebuild urban communities. An analytic model derived from the work of Hyman Minsky and Karl Polanyi emphasizes how cities become ensnared in a "financial instability" cycle and how communities seek to protect themselves by way of the "double movement."

Download the full report.

L. Owen Kirkpatrick

First Published February 9, 2016

GOP Health Plan: Winners, Losers & Who Knows.

Investors trying to get a handle on how to play the GOP's long-awaited proposal for replacing the **Affordable Care Act** appear to have been left with more questions than answers.

Called the **American Health Care Act**, the legislation unveiled Monday phases out key parts of the 2010 law known unofficially as Obamacare. The legislation ends a requirement to have coverage, but creates a new tax credit aimed at helping Americans buy insurance if they don't get it at work. Meanwhile, the law eliminates many of the taxes used to fund the ACA and winds down the expansion of Medicaid over the next few years, which bodes badly for some hospital chains and small insurer that specialize in that niche market.

In a recent note, analysts at **Morgan Stanley** weighed in on some investment implications surrounding the Medicaid market, medical devices, drug prices, and even the municipal bonds (as both Moody's and S&P recently noted, the bill is a credit negative for hospitals).

> **Munis** – The bills are a credit negative for hospitals. But cheaper valuations means investors may be overestimating the degree of these negatives and the odds of timely implementation. 1) The transition from federal subsidies for the exchanges' insurance plans to tax credits based on age and income potentially increase the out-of-pocket cost of insurance for individuals. 2) The pullback of Medicaid expansion and move to per-capita caps in 2020 are de facto cuts, as we have previously written. However, as the muni hospital spread to the main muni index continues to widen, and with proposed cuts that are not as deep or immediate as some had feared, muni hospitals may look appealing to investors seeing yield.

Continue reading.

Barron's

By Johanna Bennett

March 9, 2017, 11:51 A.M. ET

U.S. Municipal Bond Market Ticks Up to $3.8337 trillion in Q4, Fed Says.

The U.S. municipal bond market grew slightly to $3.8337 trillion in the fourth quarter of 2016 from a revised $3.8334 trillion in the third quarter, according to a quarterly report from the Federal Reserve released on Thursday.

Households, or retail investors, held $1.644 trillion of muni bonds compared to $1.588 trillion the previous quarter.

Property and casualty insurance companies bought $10.8 billion of munis in the fourth quarter after $19 billion of acquisitions in the third quarter. Life insurance companies added $5.4 billion to their muni holdings, while U.S. banks picked up $53.4 billion.

U.S. mutual funds shed $88.5 billion of munis in the fourth quarter, the funds' biggest reduction of the asset class in at least five quarters. Exchange traded funds added $4.9 billion.

Foreign buyers purchased $21 billion of munis. Their fourth-quarter holdings were $106.4 billion, their highest on record.

Thursday, 9 Mar 2017 | 12:29 PM ET

Reuters

IRS Reorganizing Tax Exempt Bond Group in May.

WASHINGTON – The Internal Revenue Service's tax exempt bond office will undergo some major changes as part of a reorganization of the Tax Exempt & Government Entities Division in early May, the commissioner of that division told bond lawyers meeting here.

The tax-exempt bond office will be combined with the office of Indian tribal governments to form a new ITG/TEB office within TE/GE, Commissioner Sunita Lough said on panel at the National Association of Bond Lawyers' Tax and Securities Law Institute here on Thursday.

There will no longer be a TEB director as of May 1, Lough said. There has not been a director, only an acting director, of the office since Rebecca Harrigal, now Caldwell-Harrigal, left TEB in December to become a shareholder at Greenberg Traurig here.

The new ITG/TEB office will be chaired by Christie Jacobs, who has been director of ITG, Lough said. Asked by NABL members about Jacobs' municipal bond experience, Lough said she has not practiced in the tax exempt bond area but "is a very smart person" and "very capable."

“You should not be worried about that at all,” Lough told the lawyers.

The reorganization is aimed at increasing efficiency, she said.

The TEB part of ITG/TEB will be focused on audits and examinations going forward, Lough said.

IRS tax exempt bond field operations, which will fall the under ITG/TEB office, will be continue to be led by Allyson Belsome who will report to Jacobs. The number of managers for field agents (examiners) will drop to three from five, Lough said, adding that, with attrition, five was “just not sufficient to sustain.”

The tax exempt bond field agents will stay in place under ITG/TEB. Arbitrage rebate and refunds will also be a function of the field offices, Lough said.

Steve Chamberlin will head up a technical support group within ITG/TEB that will be responsible for voluntary closing agreements.

A new compliance, planning and classification group that will span across TE/GE will be responsible for identifying issues and cases, as well as doing research, obtaining data, and planning, including for tax exempt bonds.

That CP&C group will determine what issues should be explored and where high levels of noncompliance exist. In the case of tax-exempt bonds, it will give this information to Belsome. She will assign it to agents in the field. The agents will get electronic files or packets of information explaining an issue and the legal analysis for the IRS’ concerns.

On Friday, Lough talked about the new Information Document Request (IDR) process that will be put in place for tax-exempt bonds and other areas of TE/GE on April 1. The new IDR program, which has been very successful in the IRS’ Large Business and International Division, is aimed at expediting audits and increasing communication with taxpayers.

Under the process, IDR’s will be drafted and IRS agents will talk with muni issuers or their lawyers to make sure everyone understands what the issues are and what documents are needed before the IDRs are finalized.

Richard Chirls, a partner at Orrick, Herrington & Sutcliffe, said he likes the idea of increased effectiveness and communication, but thinks that issuers should think about having their lawyers on hand to talk to the IRS auditors, especially if substantive issues are being discussed.

“I’m a bit concerned about how well this is going to work in some instances in the governmental area,” he said on a TSLI panel.

“We’ll see how it all plays out,” said Brad Waterman, a tax controversy lawyer with his own practice, who was also on the panel.

The Bond Buyer

By Lynn Hume

March 10, 2017

When It Comes to Tax Incentives, How Transparent Is Your City?

A new report highlights major holes in local governments' online disclosure of how economic development dollars are spent.

When it comes to tax breaks for economic development, following the money has never been easy.

Thanks to new accounting rules, states and localities have to disclose how much revenue they lose to such deals. But a new report finds that most of the nation's largest local governments fail to reveal other basic information online, like what companies are benefiting, how much money they receive or whether they deliver on promises to create jobs.

The Washington-based watchdog group, Good Jobs First, reviewed disclosure practices for 50 of the largest cities and counties and assigned scores based on how much information was made available on public websites.

Just 35 of the 85 economic development programs identified the companies receiving incentives, while only 19 listed dollar amounts paid to or claimed by businesses.

Continue reading.

GOVERNING.COM

BY MIKE MACIAG | MARCH 13, 2017

The Week in Public Finance: Paying for Repeal and Replace, SEC's New Disclosure Rule and the Online Sales Tax Fight.

A roundup of money (and other) news governments can use.

GOVERNING.COM

BY LIZ FARMER | MARCH 10, 2017

How Refinancing Debt Can Help Pensions.

North Carolina wants to use existing low rates to shore up retiree pensions and health-care debt.

In the low interest rate environment, states and localities have been saving billions by refinancing old debt. In most cases, the savings have benefited the general fund balance. But in North Carolina, State Treasurer Dale Folwell is making a push to instead use those savings to pay down pension and retiree health-care debt.

Starting this spring, Folwell plans to refinance "every dollar we possibly can." He'll ask the General Assembly to divert the savings to the treasurer's office, where he'll then divvy up the extra dollars:

15 percent goes into the pension fund and 85 percent goes toward retiree health-care debt, which has a larger unfunded liability.

The approach has garnered rave reviews, but some question just how big a dent any such savings can make in an unfunded liability that in North Carolina totals nearly $38 billion between retiree pensions and health care.

It's true the money can add up. Since 2009, North Carolina has refinanced roughly $4 billion in debt, amounting to savings of nearly $289 million, according to the state's most recent debt affordability study.

Nationwide, more than half of the total bonds issued in the municipal market since 2009 have been to refinance deals. Last year, roughly $275 billion of the nearly $450 billion in total bond issuance was to refinance existing debt. Refinancing deals are still expected to drive issuance this year, even with the Federal Reserve slated to raise short-term interest rates.

The savings per deal can vary. Connecticut saved nearly $76 million last year when it refinanced $501 million in general obligation bonds. In 2015, Washington state refinanced $421 million and saved $32 million in debt costs.

Municipal bond expert Matt Fabian also notes that savings from refinancing debt aren't immediate. Similar to refinancing a home, the debtor makes lower payments on the debt going forward, meaning the total savings are realized over time. For instance, Connecticut in 2014 refinanced $822 million in general obligation bonds and saved $94.8 million over the next 11 years."So the savings are real but it's on paper," says Fabian, a partner at Municipal Market Analytics. "In effect, it's a promise to pay [over time] from the general fund the savings they just generated."

Still, Fabian praises North Carolina because refinancing essentially produces "found" money. "Any time you can start paying down a debt without raising taxes or cutting spending, that's a good thing," agrees Donald Boyd, director of fiscal studies at the Nelson A. Rockefeller Institute of Government. He adds that it's also better fiscal policy to put found money into a one-time use, rather than into recurring expenses like the current year's budget.

Folwell thinks that credit ratings agencies will look favorably upon the tactic. North Carolina already has a top AAA rating, but he thinks that by urging local governments to follow the state's lead, it will strengthen their credit ratings as well. "If you take a portion — if not all – of those interest savings and put it toward another liability," says Folwell, "it is a win-win in the eyes of the community, the state and the rating agency."

GOVERNING.COM

BY LIZ FARMER | MARCH 8, 2017

States and Cities May Need Shelter From the Storm Brewing in U.S. Housing Policy.

Changes are likely on the way, and they could damage budgets.

The direction set by Ben Carson, the new Department of Housing and Urban Development secretary, will have immense impacts on localities. For starters, federal housing programs make up 40 percent of federal transfers to local governments. That's a big chunk of change even as federal transfers overall have been in a long-term decline.

Before we go on, here are some key numbers: Since 1977, the share of local government revenue from non-tax sources has remained fairly steady at 60 percent of general revenue. But the composition of non-tax revenue has changed. The portion from intergovernmental transfers declined from 43 percent of general revenue in 1977 to 36 percent in 2013, while revenue from charges and fees increased from 15 percent to 23 percent. Likewise, while the share of general revenue from local taxes has remained at about 40 percent, the composition of tax revenue has changed. The contribution of property taxes to general revenue declined from 34 percent in 1977 to 30 percent in 2013, while revenue from sales taxes increased from 5 percent to 7 percent.

Bottom line: Whether or not Carson makes any changes to federal transfer monies, the pressure on local taxes is real. On property taxes, the least popular of the three possible local taxes, the pressure is especially immense.

Consider Pennsylvania. In January, Gov. Tom Wolf recommended a three-pronged approach to helping distressed cities. Along with state economic aid and easing municipal pension debt, he suggested providing property tax relief. If his plan is successful — and legislators in Harrisburg seem open to it — it would help city residents by cutting the biggest single local tax bill they pay. "Places like Scranton would see a big drop in the tax bill and a big increase in property values," the governor told The Scranton Times-Tribune. His January comments came in the wake of action taken by the Pennsylvania House, which passed a bill to replace nearly $5 billion worth of property taxes with higher state income and sales taxes. The state Senate narrowly rejected a bill to mostly eliminate property taxes with that same combination of higher state taxes.

Once localities are dependent on state taxes — rather than property tax revenue — they are at greater peril. The property tax may have its up and downs, but it is by and large a fairly steady income stream and one that's under a locality's control. State payouts are prey to budget cuts when there's a downturn in the economy.

The affordability of housing, which also has a huge impact on localities, is spiraling in an unfortunate direction. Mortgage rates have been on the rise and are likely to continue to inch up. Federal policy could be a further threat. Both the mortgage-interest deduction from federal income taxes and tax-exempt housing bonds are at risk in the new Congress. Meanwhile, the nation's housing inventory is nearly 10 percent below a year ago, and the homeownership rate has fallen close to a 51-year low.

Rental affordability is an even bigger problem. Between 2001 and 2013, we lost 2.4 million rental housing units (both market-rate and subsidized) that were affordable to people making less than 50 percent of area median income. In addition, 106,000 public housing units and 146,000 project-based rental assistance units were lost, according to an Urban Institute report, which also noted that some 450,000 more units are at risk of disappearing or deteriorating.

Building more units or preserving existing ones would help, but with a very large federal deficit, and proposed steep federal tax cuts, it appears unlikely that traditional HUD programs will be able to fill the gap. Chances are that HUD will experience significant budget cuts, which means both Community Development block grants and housing assistance to states and localities will be diminished.

That's not a pretty housing picture for cities, their pocketbooks and their housing stock.

GOVERNING.COM

BY FRANK SHAFROTH | MARCH 2017

[S&P: The Common Credit Characteristics of Highly Rated U.S. Municipal Water and Sewer Utilities.]

The credit quality of U.S. municipal water and sewer utilities is generally strong, with almost half of the sector considered highly rated with debt ratings of 'AA-' or higher. In our analysis of the group according to our criteria, S&P Global Ratings found that highly rated utilities have in common certain credit characteristics.

Broadly, the sub-group stands out for having:

- A consistent financial performance;
- Assets that already functioning at high level, or a clear plan and funding to develop their assets; and
- An overall alignment of strategic goals among management, elected officials, and customers.

Continue reading.

Lawyers Concerned About Burdens From SEC Disclosure Amendments.

WASHINGTON – The SEC's proposed changes to its Rule 15c212 will create many new disclosure obligations that will be costly and burdensome for issuers, especially those that are smaller, said bond lawyers meeting here on Thursday.

The lawyers made their comments during the National Association of Bond Lawyers' Tax and Securities Law Institute here and discussed the recent amendments that would add two new events to the list of material events that issuers must report under 15c212.

The amendments are designed to achieve a goal most municipal participants have supported – helping rating agencies, analysts and others obtain information about bank loans, private placements and other alternatives to publicly offered tax-exempt bonds that issuers and borrowers are increasingly using that fall outside the current 15c212 disclosure requirements.

The first new material event notice category would require an issuer or borrower to file a notice if they incur a financial obligation that is material or a financial obligation has an agreement to covenants, events of default, remedies, priority rights or similar terms "any of which affect securities holders, if material."

Financial obligations are defined as "a debt obligation, lease, guarantee, derivative instrument or a monetary obligation resulting from a judicial, administrative or arbitration proceeding."

The second new material event category would require a notice to be filed for certain actions or events related to the financial obligation that "reflect financial difficulties" such as a default, event of acceleration, termination event, or modification of terms.

Underwriters would have to reasonably determine that an issuer or borrower has agreed to provide notice of such events in its continuing disclosure agreement (CDA). The proposed amendments, if adopted would apply to CDAs entered into in connection with primary offerings occurring on or after the compliance date for the amendments.

Timothy Stratton, a lawyer with Gust Rosenfeld in Phoenix, said the proposal may not sit well with the “thousands and thousands” of local government issuers who might use the alternatives to avoid disclosure obligations like those in the proposal.

“This kind of pulls the rug out from underneath some of that,” Stratton said about the proposal.

He added there is going to be “a real learning curve” for a lot of issuers that will not be immediately thinking about the financial obligations because they aren’t bonds.

“I think we’ve sufficiently gotten our issuers to disclose issues for bonds … but the transportation department and school district are not really going to be thinking about this when they sign the school bus lease,” he said. “That’s where I’m really concerned. It’s a laudable goal to say, ‘Yes, we’re going to put all this information out there for the bondholders,’ but I think we have to on the flip side say, ‘What’s the practical effect and impact on the issuers.'”

“We’re going to have to do a great deal of education out in the field with our clients, with our various state associations and others,” Stratton said.

The first new material event notice category would require an issuer or borrower to file a notice if they incur a financial obligation that is material or a financial obligation has an agreement to covenants, events of default, remedies, priority rights or similar terms “any of which affect securities holders, if material.”

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Stratton said one of the concerns is that terms are supposed to be disclosed based on materiality.

The SEC has consistently declined to define materiality, but the Supreme Court has said a fact is material if there is a substantial likelihood that a reasonable investor would consider it important.

“I think that gives me and a lot of my fellow practitioners here a great deal of anxiety as we are advising clients moving forward,” Stratton said. “There are just so many terms and conditions in a number of these bank loans and that’s just talking about bank loans, not even thinking about swaps and derivatives transactions.”

Andrew Kintzinger, counsel with Hunton & Williams here, said that it seems to him that the proposal ends up “talking about extreme materiality or hyper-materiality” where issuers now feel they need to disclose a lot to avoid possible enforcement actions from regulators.

Kintzinger said the SEC’s cost estimates for the proposal “are way off” and that “either issuers are going to pay a lot of money summarizing aspects of financial obligations or broker-dealers are going to spend a lot of time on EMMA reading full credit agreements.”

Rebecca Olsen, deputy director of the SEC's Office of Municipal Securities, made clear the SEC's use of the materiality standard is not suggesting that issuers need to submit a release every time they enter into a contract. She offered clarifications on lawyers' questions throughout the discussion and consistently encouraged those present to share the comments and concerns they were voicing with the commission during the 60-day comment period.

"There will certainly be costs to doing this but there will be benefits to the market" such as "putting investors in a position to protect themselves by making informed investment decisions," Olsen said.

The Bond Buyer

By Jack Casey

March 9, 2017

The SEC's Proposed Changes to Rule 15c2-12 Could Have Far-Reaching Impact on Issuers and Obligors of Municipal Securities: Foley & Lardner

Introduction

On March 1, 2017, the Securities and Exchange Commission ("SEC") issued Release No. 34-80130 (the "Release") proposing several amendments to its Rule 15c2-12 (the "Rule") that would add two new events to the list of events that must be included in the continuing disclosure undertakings of municipal issuers or obligors of municipal bonds.

- The first additional event, in general, is the incurrence of "financial obligations, if material, or agreeing to covenants or other provisions that affect security holders, if material," and
- The second reportable event is the occurrence of one or more of the following events under the terms of such a financial obligation: "default, event of acceleration, termination event, modification of terms or other similar events under the terms of a financial obligation of the obligated person," if the event reflects financial difficulties.

The compliance date of the proposed amendments would be no earlier than three months after any final approval of the proposed amendments, should the SEC adopt the proposed amendments in final form.

Many participants in the municipal securities market have called for greater transparency surrounding issuer's or obligor's bank loans or direct purchases of municipal securities ("direct placements"), but the scope of the proposed amendments is far broader than simply requiring disclosure of such direct placements.

Under the Release, the term "financial obligation" is very broadly defined and includes, in addition to a debt obligation such as a direct placement– leases, guarantees, derivatives or monetary obligations arising from a judicial, administrative or arbitration proceeding. Coupled with the qualifier "if material," which the SEC has not clarified in the context of the Rule, issuers and obligors may feel compelled to disclose a great deal of information. The use of the term "lease," which the Release defines as including both capital and operating leases, could open the door to reporting a significant number of obligations, especially in certain market sectors, as discussed below. Similarly, in the second proposed additional event, the use of the term "default" intentionally captures events earlier in time than when an "event of default" is declared and, if such default “reflects financial difficulties,” the event must be disclosed and the context provided.

This Client Alert will provide background concerning the Rule and describe the terms and scope of the proposed amendments to the Rule. It then will examine some of the issues that these proposed amendments raise in the context of the municipal market. Lastly, it will suggest some strategies for participants in the municipal market to address the challenges posed by these proposed amendments. Note that the SEC will accept comments during a 60 day period that begins on the date of publication in the Federal Register, although comments on the underlying financial impacts are due to the Office of Management and Budget (“OMB”) within 30 days. Given the breadth of the proposed amendments, as well as the potential for a significant amount of work created for issuers and obligors, comments to both the SEC and OMB are likely to be helpful.

Background

The SEC has indirectly regulated disclosure by issuers and obligors of municipal securities pursuant to the Rule by requiring that the broker-dealers underwriting an issue of bonds obtain a written undertaking from the issuer or obligor to provide certain annual financial data and timely notice of certain events that primarily relate to the offered securities to the Municipal Securities Rulemaking Board’s (“MSRB”) Electronic Municipal Market Access (“EMMA”) website. In addition, in connection with the issuance of the municipal securities, an underwriting broker-dealer must reasonably determine that the issuer or obligor has complied with its prior continuing disclosure undertakings, or accurately disclosed in its Official Statement relating to such securities any failures to comply with such undertakings, within the past five years.

Since 2009, issuers and obligors have increasingly used direct placements as substitutes for publicly offered municipal securities. Direct placements can be beneficial to issuers and obligors for several reasons, including the lack of a requirement to provide the purchaser or lender with an official statement and generally lower transaction costs. Although many such transactions are issued pursuant to the same underlying legal documents as the issuer’s or obligor’s outstanding bonds, many others include additional covenants or other provisions for the benefit of the purchaser or lender, often set forth in a separate continuing covenants agreement or a similar instrument. Currently, there is no regulation which requires either an issuer or obligor or a broker-dealer to post direct placement documentation on EMMA.

A number of market participants, particularly municipal analysts and rating agencies, have called for issuers and obligors to provide disclosure through EMMA regarding these direct placements, since the additional debt has the potential to materially alter the analysis of the issuer’s or obligor’s financial condition. Further, because in certain instances the additional terms and financial covenants agreed to by the issuer or obligor could have a material impact on the rights of the holders of outstanding publicly held bonds, these commentators have also sought to have these terms and financial covenants disclosed. A number of issues and obligors have voluntarily provided the requested information regarding such direct placements to EMMA. However, the SEC has noted that many other issuers and obligors have not made such information regarding direct placements available on EMMA, leading to a lack of information in the market regarding these securities or, in some cases, information “asymmetry” among various market participants.

In addition to information regarding direct placements, the SEC states that some market participants have called for issuers and obligors to provide information to EMMA regarding derivatives, such as interest rate swaps, and capital and operating leases, that is not currently required to be disclosed under the Rule.

The Proposed Amendments

Accordingly, in order to address the lack of publicly available information regarding direct placements and other "financial obligations," the SEC has proposed to amend the Rule to require timely disclosure of "financial obligations of the obligated person, if material" and of any agreement that includes "covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material." In addition, the proposed amendments would require issuers and obligors to provide timely notice of a "default, event of acceleration, termination event, modification of terms or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties." These amendments would apply to continuing disclosure undertakings for municipal securities issued after the effective date of the proposed amendments, and would not be retroactive, in general. The amendment does not provide the elements that would need to be included in a notice filed with EMMA.

Unpacking the Proposed Amendments

Scope of "financial obligations" that must be disclosed. The clear focus of the Release and the proposed amendments to the Rule is provision of continuing disclosure relating to direct placements, but the scope of the proposed amendments is significantly broader than direct placements. The term "financial obligation" is defined to include a "(i) debt obligation, (ii) lease, (iii) guarantee, (iv) derivative instrument, or (v) monetary obligation resulting from a judicial, administrative, or arbitration proceeding." Further, these terms are interpreted broadly in the Release, For example, the Release provides that the term "lease" is intended to include an operating lease or a capital lease, while a "guarantee" is intended to capture a contingent financial obligation of the issuer or obligor to secure the obligations of a third party or of the issuer or obligor itself. Thus, an extremely wide range of obligations, if material, would need to be disclosed to EMMA by issues and obligors if the amendments are adopted, as proposed.

Impact of "materiality" qualifier. A second area of concern is the use of materiality to qualify those events that must be disclosed. This qualification ideally would limit the amount of disclosure that must be provided only to events where there is a substantial likelihood that a reasonable investor would consider such information important in making an investment decision, based on the Basic v. Levinson standard of materiality. However, as was evidenced by the SEC's recent Municipal Securities Disclosure Cooperation ("MCDC") initiative, there is a lack of clear guidance regarding what is material to an investor in the municipal market, leading to a conservative view of materiality and what one market participant has termed "hyper disclosure".

Determining which events are "material" to a reasonable investor could be difficult and, if the SEC does not later concur with the issuer's or obligor's analysis, the consequences can be severe. Thus, use of the materiality standard (without further guidance) to qualify the events that must be disclosed gives rise to the concern that issues and obligors will be required to provide detailed summaries of its direct placements, leases, swaps, for example, or to post in full redacted copies of the underlying documentation, in order to comply with the Rule.

Particular impact on certain municipal sectors. A corollary concern is that for certain sectors of the municipal market, this approach could give rise to a flood of information in an attempt to meet the requirements of the Rule, while not actually providing real insight into the issuer's or obligor's actual financial situation. For example, most airports structure their arrangements with the parties doing business at the airport, such as airlines, rental car companies and concessionaires, through leases. The sheer volume of leases to which a large airport is a party could overwhelm participants in the municipal market, as it is likely that such issuers and obligors will choose to simply post redacted versions of the relevant documents. Similarly, many healthcare systems both own medical office buildings and lease space to third parties, as well as lease other space themselves. The volume of such leases, especially for a large system, also could be substantial. This volume of data (and related workload to assemble such documentation) does not appear to be reflected in the economic analysis performed by the SEC in connection with the Release.

Events "reflecting financial difficulties." One of the themes of the Release is that, the timing of such financial difficulties disclosure under current law is often delayed because it is included in an annual filing, or such disclosure may not include the detail that would be required under the proposed amendments. In the Release, the SEC also notes that certain events that would indicate that the issuer or obligor was experiencing financial difficulties are not currently required to be disclosed under the Rule. Thus, the second added event of the proposed amendments would require an issuer or obligor to provide timely notice of any of the following events: "default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties."

In the Release, the SEC first notes that the qualifying trigger that any of the events must "reflect financial difficulties" should allow issuers and obligors to distinguish between events that do not reflect financial difficulties, such as failure to comply with a covenant to provide notice of a change of address, compared to the failure to replenish a debt service reserve fund. The former is unlikely to be evidence that the issuer's or obligor's ability to pay its obligations when due has been compromised, while the latter could indeed be indicative of financial distress. However, this qualifier, like materiality, has not been clearly defined nor has the SEC provided guidance on how this standard should be interpreted. Note, also, that this requirement will apply to a listed event relating to any of the issuer's or obligor's financial obligations, not solely those entered into after the date of the amendment of the continuing disclosure undertaking required by the Rule, if amended as proposed.

Timing of disclosure of events. The use of certain terms in the proposed amendments will require issuers and obligors carefully to maintain up-to-date data on the status of all of their "financial obligations," as defined by the SEC. For example, use of the term "default," rather than "event of default," intentionally requires disclosure of an event at an earlier point in time than is generally required under the Rule currently, since an "event of default" typically accrues following some notice and cure period, while a "default" is the failure to act or the taking of a prohibited action. Thus, even if a default is cured before it amounts to an event of default, if the default itself reflected financial difficulties, it must be disclosed. This can be contrasted with an acceleration event or termination event, which are typically actions taken once an event of default has occurred, cure rights have been exhausted, and the counterparty has determined to exercise its remedies.

Similarly, a modification of terms is often a negotiated response to a situation which may or may not rise to the level of a default or which may result in the waiver of a default. For example, where an issuer or obligor fails to meet a financial covenant, such as a minimum debt service coverage ratio, but still has adequate financial resources to pay its operating expenses and debt service as and when due, it is not uncommon for the lender and issuer or obligor to agree to a temporary (or permanent) amendment of the covenant in exchange for certain actions, such as engaging a consultant to recommend methods to increase revenues or reduce expenses, or both. Under the proposed amendments to the Rule, any such amendment would need to be disclosed, along with the surrounding terms and conditions relating to the amendment, if such modification of terms "reflects financial difficulties."

A note about responsibilities of broker-dealers. Although most of the foregoing discussion relates to the potential impact on issuers and obligors of the proposed amendments to the Rule, the Rule requires broker-dealers to have a reasonable basis for concluding that the issuer or obligor has met its obligations under its continuing disclosure undertakings and that any material failures have been disclosed. Under the current list of events that must be disclosed pursuant to the Rule, the scope of a broker-dealer's inquiry is fairly limited and the due diligence necessary to comply with this requirement is relatively straight-forward (though not simple). Under the proposed amendments, broker-dealers would have a far greater scope of events that require disclosure and, therefore, a far more complex due diligence process will be necessary. This is especially critical because the SEC has indicated that simply relying on a certification of the borrower without additional inquiry is not sufficient to discharge the broker-dealer's duties under the Rule. Thus, broker-dealers will need to develop a significantly more robust due diligence process (or cause their counsel to review a wider array of documentation) in order to comply with the Rule if the amendments are adopted as proposed.

Steps to Prepare for the Amendments

As described above, the amendments to the Rule proposed in the Release could have a significant impact on the municipal market, especially upon issuers and obligors, but also on broker-dealers. Set forth below are several actions that issuers, obligors and broker-dealers may wish to consider undertaking in response to this proposal.

Review and Comment. First, the SEC has solicited comments on the proposed amendments to the Rule and on the Release, including comments to both the SEC and OMB on the economic analysis set forth therein. Issuers, obligors and broker-dealers may want to submit comments; for example comments regarding the scope of the proposed amendments, difficulties that parties anticipate in complying with the proposed amendments and suggestions for addressing those difficulties, and comments on the assumptions underlying the SEC's economic analysis. Given the new administration's recent Executive Order restricting the issuance of new regulations, comments on the economic impact of the proposed amendments may require the SEC to undertake a much more exhaustive analysis before the proposed amendments can be adopted. Further, examples of the potential difficulties that these amendments, as proposed, may cause issuers and obligors or broker-dealers may allow the SEC to tailor the proposed amendments more narrowly to achieve the SEC's stated goals, while limiting unintended and unnecessary collateral consequences.

Review Current Arrangements and Disclosure Policies. If the proposed amendments to the Rule are adopted, even in a more limited form, issuers and obligors will need to be prepared to gather and disseminate a considerably wider scope of information regarding their financial obligations than is currently the case. It would likely be prudent for issuers and obligors to review their existing disclosure undertakings and policies and consider what modifications may be necessary to comply with the Rule as amended. Further, because of the potentially broad scope of such requirements, the person or persons responsible for filing event notices with EMMA will need to develop processes and procedures for becoming aware of these additional events in a timely manner, evaluating whether they are material or reflect financial difficulties, and preparing and filing the required notices, generally within 10 business days of the occurrence of the event. It seems likely that the most important and difficult element of this new, wider inquiry will be setting up processes to ensure that the designated person receives timely notice of the new events that must be disclosed.

Similarly, broker-dealers will need to revise their due diligence processes to devise methods of determining whether any of the new listed events have occurred and, if so, whether they were material or reflect financial difficulties and, if so, were adequately and timely reported to EMMA.

Consider Disclosure Standards Under Federal Securities Laws; and What Must Be Included in an Events Notice. Another critical element that must be borne in mind by borrowers is that the requirements of Rule 10b-5, which requires that disclosure be accurate and complete, will apply to each of the event filings. Thus, simply filing a notice with EMMA that a certain event has occurred may not be sufficient, even if such a notice meets the requirements of the applicable continuing disclosure undertaking. Because many, if not all, of the new proposed events require a certain degree of analysis and context to determine whether they are material or reflect financial difficulties, additional disclosure necessary to provide the context of such a determination is likely to be necessary. Disclosure filed with EMMA is subject to the 10b-5 standard and therefore cannot contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which it was made, misleading.

Foley & Lardner LLP

Monday, March 13, 2017

Michael G. Bailey
Partner
Michael G. Bailey is a partner and business lawyer with Foley & Lardner LLP. Mr. Bailey's practice focuses on tax-advantaged financing, including tax-exempt financing and tax credit transactions. He also focuses on development of tax compliance policies and procedures, energy tax issues, exempt organization tax issues and other federal and state income tax matters. His tax controversy practice focuses on tax-advantaged financing transactions and exempt organization matters. Mr. Bailey is chair of the firm's Health Care Finance Practice and a member of the firm's…

mbailey@foley.com
312.832.4504
www.foley.com
www.foley.com/blogs/

David Y. Bannard
David Y. Bannard, Foley, Boston, Regulatory Compliance Lawyer
Partner
David Y. Bannard is a partner and business lawyer with Foley & Lardner LLP. He focuses his practice on representing airports in a wide variety of matters, including regulatory compliance, leasing, rate-setting and concessions agreements, and public finance matters. Mr. Bannard is an experienced bond lawyer, having served as bond counsel to airports and other issuers, and counsel to borrowers and underwriters, as well as in-house issuer's counsel, in many transactions. He is a member of the firm's Finance & Financial Institutions, Public Finance, Health Care Finance and Real Estate Practices. Mr. Bannard is the leader of the firm's Airport Services Practice and also a leader of the firm's Public/Private Partnership Practice and a member of the Health Care Industry Team.

dbannard@foley.com
617.342.4033
www.foley.com
www.foley.com/blogs

Laura L. Bilas
Laura Bilas, Foley Lardner Law Firm, Business and Finance Attorney
Partner
Laura L. Bilas is a partner and business lawyer with Foley & Lardner LLP. She is the chair of the firm's Public Finance Practice and her practice is concentrated on public finance and structured lending matters. Ms. Bilas' experience includes serving as bond counsel, borrower's counsel, underwriter's counsel, and credit enhancement provider's counsel for numerous public finance and other structured transactions, including general obligation, special service area, special assessment, tax increment, multi-family housing, health care and industrial development…

lbilas@foley.com
312-832-4533
www.foley.com
www.foley.com/blogs/

Heidi H. Jeffery
Heidi H. Jeffery, Foley Lardner, Municipal Finance Transaction Lawyer, private activity bond Attorney
Partner
Heidi H. Jeffery is a partner and business lawyer with Foley & Lardner LLP. Ms. Jeffery has experience in general municipal, private activity bond, housing, student loan, health care and senior living finance. In such transactions, she has served as bond counsel and counsel to developers, underwriters, credit enhancers, issuers and borrowers. Ms. Jeffery is a member and former vice chair of the firm's Senior Living Team. She is also a member of the firm's Finance & Financial Institutions, Health Care Finance, and Public Finance Practices and the Health Care…

hjeffery@foley.com
312.832.4518
www.foley.com
www.foley.com/blogs/

Dana M. Lach
Dana Lach, Foley Lardner Law Firm, Business and Healthcare Attorney
Of Counsel
Dana M. Lach is of counsel and a business lawyer with Foley & Lardner LLP, where she counsels health care and cultural and educational facilities in connection with financing transactions, including tax-exempt bonds, commercial loans and on traditional financing products such as commercial paper programs and securitizations, and derivative transactions. In addition, Ms. Lach routinely serves as counsel to investment banks, commercial banks, and other financial institutions in connection with tax-exempt financing transactions. Ms. Lach's experience as bond counsel,…

dlach@foley.com
414-297-5206
www.foley.com
www.foley.com/blogs/

MSRB Publishes Designation Information Regarding Mandatory Participation in Business Continuity and Disaster Recovery Testing.

To facilitate compliance with Securities and Exchange Commission Regulation Systems Compliance and Integrity (Regulation SCI), the MSRB adopted Rule A-18 on Mandatory Participation in Business Continuity and Disaster Recovery Testing on November 2, 2015. Pursuant to Section (b) of Rule A-18, the MSRB is notifying MSRB-registered entities of the criteria for designating participants for the MSRB's next mandatory functional and performance testing of the operation of its business continuity and disaster recovery plans.

Read the regulatory notice.

S&P: Proposed ACA Replacement Would Pressure Hospital Revenues And Margins

A replacement for the Affordable Care Act (ACA)—promised by Donald Trump and Republican leaders–has now been put forth for Congressional consideration. There had been much speculation about the details, but the main provisions of the proposed American Health Care Act (AHCA) are not a surprise.

Continue reading.

Mar. 8, 2017

How Healthy Are Your Hospital Bonds?

Bonds for health care systems have long been a staple of the high-yield municipal bond market. I believe that they are closer to low-risk tax-backed and utility revenue bonds, which have extremely low default rates which approximate .5% an issue over the entire life of those bonds.

Bonds for senior living communities, development district "dirt bonds", tobacco bonds and corporate "industrial development bonds can have default rates over the life of those bonds that range from 8%-15%. It is estimated that hospital bond defaults in range between 3%-4% over their life.

There is a wide spectrum of health care bonds. Bonds issued by large multi-state issuers have the lowest risk, because no single hospital default would drag down the rest of the system. Lower risk however means lower yields. Then then there is an array of single site hospitals, with varying degrees of risk. I prefer hospitals that have national or international demand, perhaps because of the specialty they may offer such as state-of the art pediatric, heart and/or cancer services. I also look for balance sheets containing at least 150-200 days of cash on hand to meet recurring monthly expenses, and cash equaling or exceeding outstanding debt.

Finally, there are "Critical Access Hospitals", small units in rural areas where patients cannot reach acute care facilities within driving distance. These hospitals obtain special subsidies to allow for their operation under sparse resources.

Risks in this sector are considerable because competition from new hospitals can drain resources from older hospitals. However, health care represents a vital public service, and will continue unless technology provides an alternative. At this point, it is fruitless to ascertain changes to ObamaCare until the President and Congress "show their cards."

Dick Larkin, Credit Analyst for Stoever Glass
March 6, 2017

Dick Larkin is a former Chief Municipal Rating Officer for S&P. Stoever Glass is a 54 year-old Investment firm specializing in Municipal Bonds located in New York & Florida. A registered Broker/Dealer, Member FINRA, SIFMA, & SIPC. Advisory Services through Stoever Glass Wealth Management, Inc., a registered advisory firm.

Fitch: Medicaid Changes in ACA Repeal Bill Pose Risks for States and Hospitals.

Fitch Ratings-New York-07 March 2017: The congressional bill released yesterday by House Republicans to repeal and replace the Affordable Care Act (ACA) includes significant changes to Medicaid that expose states to new fiscal and policy risks, says Fitch Ratings. States generally maintain significant flexibility to deal with fiscal challenges, including shifts in federal funding, while maintaining fundamental credit quality. As Medicaid represents approximately one-third of state budgets, the fundamental changes proposed could challenge that flexibility. Implications for lower levels of government including school districts, cities, counties, and public higher education institutions that rely on state support could be more significant given their generally more constrained budgetary flexibility. Hospital and skilled nursing home providers would be at risk of reduced coverage eligibility, reduced reimbursement for services provided or both.

First, the House Republican American Health Care Act (AHA) proposes ending Medicaid's entitlement structure and moving states to a per capita cap system on Jan. 1, 2020. The per capita cap structure proposed in AHA is intended to slow the growth in federal Medicaid spending by limiting increases in federal spending to a measure of medical inflation and shifting risk for higher costs to states, providers and enrollees. The Kaiser Commission on Medicaid and the Uninsured estimates that the March 2016 House Budget Resolution (which included the option of per capita caps or block grants for Medicaid) would reduce federal spending on traditional Medicaid by $1 trillion (or 26%) over 10 years. The Congressional Budget Office (CBO) has not yet released its official estimates of AHA's effect on the federal budget.

Reducing federal Medicaid funding anywhere near 26% over 10 years would require states to make significant budgetary changes. Without CBO estimates of the full magnitude of the AHA's proposed reductions in federal spending, it is difficult to assess how effectively states could prepare for these changes. Effects for each state will also vary, depending on their per capita spending levels for Medicaid in the fiscal 2016 base year under AHA. House Republicans and the President have previously indicated states could utilize unspecified new flexibility to offset the reduced funding. Fitch notes that current law already offers states discretion to implement Medicaid within federal statutes and rules, and also creates a waiver process for additional flexibility. Currently, every state has at least one waiver in place. And during the last two recessions, the states implemented a wide range of changes in Medicaid operations and financing (with and without waivers), including a pronounced shift to managed care. As such, it is unclear that any additional flexibility provided by the federal government would be sufficient to offset the funding cuts.

Second, the AHA ends new enrollment in the Medicaid expansion and the enhanced federal match that 31 states and the District of Columbia have opted into, on Dec. 31, 2019. Under AHA, states that expand before that date will continue to receive the enhanced federal funding envisioned under current law for the newly eligible population under the expansion. But the enhanced funding would only apply to those individuals who were enrolled prior to Dec. 31, 2019. Over time, the newly eligible population would roll off, as would the associated enhanced federal funding. The federal Department of Health and Human Services (HHS) estimated 9.1 million people received insurance coverage under state Medicaid expansions in federal fiscal year 2015. With the enhanced matching rate (100% in 2015 and phasing down to 90% by 2020 under current law), HHS estimates the states received $58.1 billion in federal funding to provide that coverage in 2015.

Under AHA, expansion states would not risk immediately losing the billions in federal funding for the newly eligible. But they will be faced with a unique policy predicament of denying Medicaid access to individuals who would otherwise qualify beginning in 2020, or taking on significant costs they had anticipated would be borne largely by the federal government.

The 19 non-expansion states, and health care providers operating within them, could see short-term benefits under AHA. The bill establishes a $2 billion annual pool of federal funding available from 2018 to 2021 to states that do not expand to offset their payments to Medicaid providers, presumably because of higher uncompensated care levels. Similarly, AHA limits planned reductions in Medicaid's disproportionate share (DSH) funding provided to states for safety-net providers to $3 billion annually instead of $8 billion under current law. Under AHA, non-expansion states are exempt from even these more limited DSH cuts. All states, and the District of Columbia, would be subject to the more long-term and consequential implications of the AHA's per capita cap system for Medicaid financing described above.

The AHA released yesterday is the first public draft of major legislation that will likely be the subject of intensive lobbying efforts and potentially significant revisions. Beyond the Medicaid provisions noted above, the legislation also includes wide-ranging changes to other aspects of the healthcare industry that could directly or indirectly affect state and local governments including public health funding, the individual marketplace, and related tax provisions. But the House Republican leadership has laid out an aggressive timeline with the first committee hearings scheduled for Wednesday. The bill appears broadly in line with the President's healthcare goals outlined in his recent address to Congress and he released a brief statement indicating his support for the AHA.

Fitch will continue to closely monitor legislative developments around the AHA, which could have implications for states' credit quality as well as for related public finance entities and healthcare providers. Medicaid changes that significantly reduce federal funding will cause states to consider a broad mix of revenue increases or spending cuts to maintain long-term fiscal balance. Local governments, school districts and higher education institutions could face fiscal stress in adjusting to reduced state support. In a time of already muted revenue growth, spending cuts could affect K-12 and higher education the most, as those are the other largest areas of state spending outside of Medicaid. Similarly, changes that result in rising uninsured and uncompensated care levels and reduced reimbursement to hospitals, health systems and long term care providers would be a negative credit development and likely pressure healthcare provider performance over the longer term.

Contact:
Eric Kim
Director
+1-212-908-0241
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

James LeBuhn
Managing Director
+1-312-368-2059

Amy Laskey
Managing Director
+1-212-908-0568

Media Relations: Elizabeth Fogerty, New York, Tel: +1 (212) 908 0526, Email: elizabeth.fogerty@fitchratings.com.

Additional information is available on www.fitchratings.com

[GASB 2017 Request for Research.]

Gil Crain Memorial Research Grant

Since its formation in 1984, the Governmental Accounting Standards Board (GASB) has encouraged academics and other researchers to conduct studies that would be relevant to the GASB's standards-setting activities. For more than 30 years, such research efforts have resulted in publishing their research in peer-reviewed journal articles, GASB research briefs, and occasionally in GASB research reports.

The GASB hopes to encourage more collaborative research efforts with academics by offering one or two $5,000 research grants, to be awarded by the end of June 2017.

Topics include:

- Related Party Transactions;
- Subsequent Events;
- Present Value;
- Public-Private Partnerships;
- Interfund Transactions;
- Chapter 9 Bankruptcies;
- Derivative Instruments; and
- Distributed Water Management Programs.

Read the full GASB Request for Research.

[Sector Specific Infrastructure Bills Better Way to Go, Fischer Says.]

DALLAS – Congress needs to craft sector-specific legislation to fund the renewal of U.S. highways, airports, and other infrastructure rather than a single, all-encompassing measure for all, Sen. Deb Fischer, R-Neb., suggested to state highway officials meeting in Washington.

Finding the federal funding needed for President Donald Trump's $1 trillion infrastructure renewal program would be easier if the problem were to be broken down into its various components, Fischer said Thursday in her keynote address to the annual winter gathering of the American Association of State Highway and Transportation Officials.

"I think it would be very difficult to have one big, huge, comprehensive infrastructure bill dealing with roads and bridges, ports, airports, broadband, pipelines, all of these items," Fischer said. "We would end up with better policy if we would take each section of our infrastructure needs and address them with specific pay-fors but also to meet the different needs of all the separate sectors."

Funding the five-year, $305 billion Fixing America's Surface Transportation Act passed in late 2015 required almost $70 billion of general fund transfers to support the declining federal gasoline tax and other revenues dedicated to the Highway Trust Fund, Fisher noted.

“Finding pay-fors for a trillion dollars is difficult,” she said.

Fischer’s proposal for a number of sector-specific funding measures would conflict with the aspirations for a single infrastructure funding bill outlined to the same group on Wednesday by Rep. Bill Shuster, R-Pa., chairman of the House Transportation and Infrastructure Committee.

“The main thing is going to be an infrastructure package, and it will cover everything—rail, transit, highways, aviation, and pipelines,” Shuster said during his remarks. “We’re going to have a big, broad bill.”

Fischer said she is optimistic that infrastructure renewal will be the prime focus of the Trump administration.

“President Trump has spoken frequently about the need to invest in our transportation infrastructure,” she said. “It is not stimulus, it is an investment in our economy and in our national security.”

The measure she introduced last month to divert $21.4 billion per year of fees, duties, and taxes collected at U.S. borders and entry points by Customs and Border Patrol to transportation projects would solve the most immediate problems facing the HTF, Fischer said.

The border fee revenues totaled $46 billion in fiscal 2015 but the agency uses only $2 billion of the collections for operational needs, she said.

The diversion that would be authorized by her Build the USA Infrastructure Act (S. 271) would begin when the FAST Act expires at the end of fiscal 2020 and continue for five years, Fischer said.

The bill would extend the solvency of the HTF and restore the purchasing power of the 18.4 cent per gallon federal gasoline tax that has been lost to inflation since the tax’s last increase in 1993, she said.

“America needs a new plan,” Fischer said. “By using this existing revenue stream we will provide stability to the Highway Trust Fund. We can do that without increasing taxes or fees.”

Rep. Peter DeFazio, D-Ore., the top Democrat on the House transportation panel, told the state officials earlier that his three-part infrastructure proposal would provide up to $60 billion per year of additional funding for roads, airports, and seaports. The first of the three bills, the one on airports (H.R. 1265), was introduced Wednesday.

The plan includes indexing federal fuel taxes to the wholesale price of gasoline and diesel, dedicating an existing federal harbor tax strictly to port maintenance, and allowing airports to raise their passenger facility charge to support additional bonds for terminal projects and other related infrastructure, he said.

The indexing proposal would raise the gasoline tax by about 1.2 cents per year to support up to $33 billion of road bonds per year for 15 years, DeFazio said.

“We need more substantial federal funding,” he said.

The Bond Buyer

By Jim Watts

March 3, 2017

Dollar Volume of Muni Trades Last Year at $3.14T, Highest Since 2012.

WASHINGTON – The dollar volume of municipal bond trading soared higher last year than in any year since 2012, the Municipal Securities Rulemaking Board found in its 2016 Fact Book released Monday.

The total par amount traded reached $3.14 trillion, almost 30% higher than in 2015. The last time that amount was surpassed was 2012, when it reached almost $3.23 trillion, according to the statistics book.

Of that amount, customers bought a total par amount of $1.58 trillion, sold $947.08 billion, with interdealer trades totaling $609.52 billion.

By tax status, almost $2.71 trillion of the par amount traded was tax-exempt, $256.21 billion was taxable, $136.64 billion of securities traded were subject to alternative minimum tax and $32.67 billion was other.

By coupon type, the largest par amount traded was fixed rate, at $1.78 trillion, followed by variable rate, at $1.01 trillion, zero coupon securities, at $107.34 billion, and other, at $230.52 billion.

The total number of trades last year was almost 9.36 million, only about 1.1% above the 9.26 million trades in 2015. The highest total number of trades over the past five years was 10.63 million in 2013. The vast amount of the number of trades last year was tax-exempt, at almost 8.60 million, and fixed rate, at 8.81 million.

The top most actively traded securities by par amount of trades last year were $7.31 billion of the Industrial Development Board of the Parish of East Baton Rouge, La, Inc. revenue bonds for an ExxonMobil project. The bonds were issued in 2010 and are slated to mature in 2035. That was followed by $5.64 billion of Puerto Rico Sales Tax Financing Corp. sales tax revenue bonds sold in July 2007 with a maturity of 2054.

The top most actively traded securities by number of trades was St. John Baptist Parish La.'s fixed revenue bonds for a Marathon Oil Corp. project issued in 2007 with a 2037 maturity. There were 8,092 trades of these bonds last year. The second highest was 4,205 trades of Illinois State taxable general obligation pension bonds issued in 2003 with a 2033 maturity. Following that was 4,093 of trades of Commonwealth of Puerto Rico public improvement refunding bonds issued in 2012 with a 2041 maturity.

The Fact Book shows a steady drop in registered dealers in recent years. Last year there were 1,448 registered dealers, down 6% from 1,541 in 2015. The 2015 figure is down 5.2% from 1,625 in 2014. The most dealers – 1,787– were registered in 2012 during the past five years.

Last year the top five dealers accounted for 48% of the par amount of trades, and the top 10 dealers accounted for 69% of them. The top five dealers accounted for 35% of the number of trades last year and the top 10 were responsible for 52% of them.

The MSRB looked at continuing disclosures submitted and found that the number of financial submissions rose to 98,084 in 2016, up slightly from 97,379 in 2015, but below the peak of 101,289 in 2014. Material event submissions dropped to 63,586 last year from 68,309 in 2015 and a peak of 74,340 in 2014.

The Bond Buyer

By Lynn Hume

March 6, 2017

Dear Colleague Letter Supports Municipal Tax-Exemption.

Reps. Hultgren (R-IL) and Ruppersberger (D-MD) recently co-authored a letter to the Chair and Ranking Member of the House Ways and Means Committee, urging them to carefully consider any legislative proposal that would increase the cost of infrastructure financing for state and local governments. The letter was signed and supported by an additional 154 other Members from both sides of the aisle. The MBFA Coalition assisted in the effort to obtain these signatures.

You can view the letter here.

The letter highlights the value of the tax-exemption, including:

Over $400 billion in municipal bonds were issued to finance core infrastructure projects in 2015
Fiscal federalism–local control and local responsibility makes municipal bonds an effective and efficient financing tool
Municipal bonds are on pace to finance upwards of $3 trillion in new infrastructure investments by 2026

The Municipal Finance Caucus is also co-chaired by Reps. Hultgren and Ruppersberger and the MBFA will continue to work with their staffs to obtain support to retain the current law status of the municipal tax-exemption in upcoming measures on tax reform and infrastructure.
For more information on the MBFA please visit www.munibondsforamerica.org

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GASB - Postemployment Benefits: Determining the Long-Term Expected Rate of Return.

Calculating an appropriate discount rate to measure the net liability for postemployment benefits is a critical financial accounting and reporting issue for state and local governments. The *long-term expected rate of return* is a fundamental component used in developing the discount rate. As can be seen by the sensitivity disclosures required by the postemployment benefits standards, a change of just 1 percentage point in the discount rate can have for many plans a significant impact on the net liability.

In justifying the *long-term expected rate of return*, one often hears "historical investment performance supports that rate." The standards, however, address the *long-term* ***expected*** *rate of return*. Historical data can be inconsistent with the forward-looking nature of this expectation and is not a complete source for the development of long-term anticipations about future economic phenomena.

The *long-term expected rate of return* should be based upon the nature and mix of current and expected postemployment benefit investments. That means the postemployment benefit investments must be expected to be invested using a strategy to achieve that return.

During the development of the postemployment benefits standards the Board concluded that it was not within the scope of the Board's activities to set standards that establish a specific ***funding*** method for postemployment benefits–that is a policy decision for government officials or other responsible authorities to make. Accordingly, the postemployment benefits standards set requirements in the context of ***accounting, not funding***. This is a very important distinction, as one also often hears "we will reduce the discount rate gradually over time, that's all we can afford now." Affordability is a ***funding*** issue, ***not*** an ***accounting*** issue.

The ***accounting*** standards require the use of the *long-term expected rate of return* to develop the discount rate–***funding*** affordability is ***not*** a component to be considered in determining the *long-term expected rate of return* when developing the discount rate for financial accounting and reporting purposes. To appropriately comply with the postemployment benefits standards for financial reporting purposes, it is critical that governments measure the net liability for postemployment benefits using a discount rate based on an ***accounting*** perspective–one that appropriately incorporates the *long-term expected rate of return*–***not*** a rate based on a ***funding*** affordability perspective.

FROM THE CHAIRMAN
BY DAVID A. VAUDT, GASB CHAIRMAN

MSRB Publishes Annual Fact Book of Municipal Securities Market Data.

Washington, DC – Last year saw the highest dollar volume of municipal securities transactions in any year since 2012, according to the new Fact Book published annually by the Municipal Securities Rulemaking Board (MSRB). In 2016, municipal securities trading volume reached $3.14 trillion, 30% higher than last year. Municipal securities par trading volume declined an average 9% annually between 2012 and 2015.

The MSRB's Fact Book provides comprehensive and historical statistics on municipal market trading patterns, among other data. In 2016, the average size of a municipal securities transaction was $335,017, up 28% from a year earlier. Transactions of more than $1,000,000 made up 76% of the $3.14 trillion traded in 2016 while transactions of $100,000 or less account for 80% of the 9.36 million trades in 2016.

Access the 2016 Fact Book.

The Fact Book also documents the number and type of primary market and continuing disclosures submitted to the MSRB by municipal market participants. Last year's 162,000 continuing disclosure submissions reflected the second consecutive annual decline in submissions after the number peaked following the Securities and Exchange Commission's Municipalities Continuing Disclosure Cooperation Initiative, which addressed securities law violations by municipal issuers and underwriters of municipal securities related to information in bond offering documents about past compliance with continuing disclosure obligations. The initiative boosted the number of continuing disclosures to a high of 175,000 in 2014.

All data in the Fact Book are based on information submitted to the MSRB by municipal securities dealers, issuers and those acting on their behalf. Some of the data in the Fact Book can be accessed digitally on the MSRB's Electronic Municipal Market Access (EMMA®) website, which allows users to view trading and new issuance statistics for different date ranges, types of trades and securities. Daily and historical summaries of trade data based on security type, size, sector, maturity, source of repayment and coupon type are housed in EMMA's Market Statistics section.

The MSRB promotes market transparency and access to real-time, municipal market bond information by collecting and publicly disseminating information through EMMA and other transparency systems.

Date: March 6, 2017

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1500
jgalloway@msrb.org

Trump Promised $1 trillion for Infrastructure, But the Estimated Need is $4.5 trillion.

The Trump administration promises to pump $1 trillion into improving the country's crumbling infrastructure, but a benchmark report says it will take almost $4.6 trillion over the next eight years to bring all those systems up to an acceptable standard.

The price tag for redemption has grown steadily for 15 years while an expanding country has focused on building new infrastructure rather than maintaining existing systems that were nearing the end of their natural life.

Since 2001, the cost of repairing those systems has mushroomed from $1.3 trillion to the current figure, more than three times as high, according to an assessment released Thursday by the American Society of Civil Engineers (ASCE). The report comes out every four years.

It gave the U.S. infrastructure an overall grade of D-plus, the same grade it received in 2013, "suggesting only incremental progress was made over the last four years."

"President Trump is on to something when he calls for a national rebuilding," ASCE President Norma Jean Mattei said in presenting the study. "But Congress and the American people have to pay for it."

She said lawmakers should raise the federal gas tax by 25 cents and index it to inflation.

Trump reiterated campaign promises on infrastructure in his inaugural address and in his recent address to Congress, but the only supporting detail for that pledge thus far has been an 11-page white paper issued in October. In that document, Trump said the money would be raised by granting private investors an 82 percent tax credit that would encourage them to pump money into infrastructure projects.

"We can use private financing for the major things, but it's a slice of investment," said former Pennsylvania governor Ed Rendell (D), who now co-chairs the advocacy group Building America's Future. "You can't do it on the cheap. It's time for Congress to suck it up and vote for real [federal] investment."

Rendell said the “fix it first” approach that Trump espouses — repairing needy infrastructure before launching new projects — is not likely to draw private investors.

Congressional leaders and state and local officials have made clear that while private investors might put money into select projects in urban areas from which they can expect a return, they would shy away from investment in rural areas and would rather build new infrastructure than repair systems that have deteriorated.

“I think the federal government has to play a larger role,” said Connecticut Gov. Dan Malloy (D).

Infrastructure underpins everyday life in the United States, covering far more than the roads and bridges commonly thought of when the word comes to mind. It includes a vast network of other systems that most people take for granted, including drinking water and sewer service, the delivery of electricity, as well as railroads, transit systems and ports.

The ASCE has been chronicling the decline of infrastructure category by category since 1998, when it took over the task that had been handled for a decade by the National Council on Public Works Improvement.

In recent years, most of the 14 categories the ASCE has assessed have received a D, and hardly any has moved by more than a fraction of a grade. For example, inland waterways were judged to improve from a D-minus to a D, while transit systems declined from a grade of D to a D-minus.

The commentary provided with each grade was revealing:

Airports (D): Congestion at airports is growing, with 24 of the big airports expected to achieve “Thanksgiving-peak traffic volume” at least one day each week.

Bridges (C-plus): Four in 10 of the country’s 614,387 bridges are more than 50 years old and near the end of their designed life span. Nearly 59,000 are structurally deficient.

[Nearly 59,000 bridges in U.S. are structurally deficient]

Dams (D): An estimated 2,170 of the country’s 90,580 dams are considered as “high-hazard potential” because of failed upkeep.

Drinking water (D): There are 240,000 water-main breaks each year, wasting 2 trillion gallons of water.

Electricity (D-plus): Most electrical transmission lines were built in the 1950s and 1960s with a 50-year life expectancy, and they are running at maximum capacity everywhere but Alaska and Hawaii.

Ports (C-plus): Mega-ships now arriving from the Far East and able to transit the newly expanded Panama Canal can call on very few of the 926 U.S. ports unless channels are dredged to accommodate their deeper drafts.

Railroads (B): The private freight railroads that own most U.S. rail track invested $27.1 billion to upgrade systems in 2015 and continue that investment.

Roads (D): Traffic backups cost $160 billion in wasted time and fuel in 2014, and about 20 percent of highway pavement is in poor condition.

Transit systems (D-minus): Though they carried 10.5 billion trips in 2015, chronic underfunding and aging infrastructure have led to a $90 billion repair bill.

ASCE Executive Director Thomas W. Smith III cited an urgent need for the White House to deliver a comprehensive plan for infrastructure restoration.

"Our nation's infrastructure is making headlines for all the wrong reasons," Smith said. "While we haven't seen action [from the White House], we have to hold feet to the fire."

The Washington Post

By Ashley Halsey III

March 9, 2017

[Webinar Recap: Mismeasurement of the Efficiencies of the Municipal Tax-Exemption.]()

Hosted by MBFA in partnership with Court Street Group Research LLC

On Thursday, March 9th, approximately 50 industry groups representing issuers, investors, and state and local governments, participated in the MBFA/Court Street Group Research webinar on the Mismeasurement of the Municipal Tax-Exemption.

The Powerpoint presentation with audio can be viewed here.

The webinar featured the commentary of:

- **Ron Bernardi**, President & CEO, *Bernardi Securities*
- **George Friedlander**, Managing Partner, *Court Street Group Research*
- **John Godfrey**, Senior Government Relations Director, *American Public Power Association*

The webinar focused on the recent rhetoric from Hill meetings and reports around Washington on the purported inefficiencies of the tax-exemption. Our experts discussed why the municipal tax exemption is efficient, what the potential implications for municipals are in tax reform, and prospects for maintaining the tax-exemption in tax reform.

Additional Materials:

- To view the Powerpoint slides for the webinar (without audio) click here.
- To view the JCT report from July 2012 click here.

For any questions concerning this event, please contact Justin Underwood at justin@munibondsforamerica.org.

Dealers Say MSRB Minimum Denomination Rule Would Hurt Investors.

WASHINGTON – Dealer groups are still opposed to a proposed standalone minimum denomination rule from the Municipal Securities Rulemaking Board after several changes, arguing it would hamper liquidity and should be abandoned for altered suitability requirements.

Bond Dealers of America and the Securities Industry and Financial Markets Association made their comments about the proposed standalone Rule G-49 in letters sent to the Securities and Exchange Commission. The MSRB made several changes to the proposed rule before filing it with the SEC, most significantly by eliminating one exemption under the original proposal.

BDA, which is asking the commission to reject the proposed rule, said the muni industry would be better served if the SEC directed the MSRB to eliminate both its current and proposed minimum denomination requirements and instead draft an interpretive release to its Rule G-19 on suitability to appropriately regulate the concern at the center of the proposed rule – protecting investors.

"The real regulatory need here is that dealers need to be required to honor an issuer's determination of investor suitability in transactions where the authorized denominations are $100,000 or above," said BDA chief executive officer Mike Nicholas.

Nicholas added that "the greatest impediment to a fair market and the greatest source of investor harm" is the current MSRB minimum denomination regulatory framework under Rule G-15. The interpretive release BDA is asking for should be "narrowly constructed to address suitability concerns for transactions in municipal securities" with minimum denominations of $100,000 or more, Nicholas wrote.

Leslie Norwood, managing director and co-head of the municipal securities division for SIFMA, said SIFMA "is disappointed in the recent amendments to the MSRB's draft rule and feels strongly" that they do not serve their stated purpose. She also wrote that the MSRB's goals with the proposed rule could be effectively achieved by making consideration of liquidity as a result of a below-minimum denomination position a part of Rule G-19 suitability analyses.

"Assuming consideration of the liquidity of a below-minimum denomination position is handled in Rule G-19, there would be no need for Rule G-49 other than with respect to confirmation disclosure, a matter that would be best addressed in Rule G-15," Norwood wrote.

Rule G-49 would contain current requirements in Rule G-15 that prohibit dealers from engaging in transactions with customers in amounts below the minimum denominations of municipal securities set by issuers. It would also include two current exceptions to the prohibition as well as one more exception first proposed in April 2016. That exception would allow a dealer that has bought a customer's liquidated position in an amount less than the minimum denomination to sell those bonds to one customer with no prior holdings of the bonds and to any customers who already have positions in the bonds.

The standalone rule would also eliminate the current requirement in G-15 that a dealer, in some situations, must obtain a "liquidation statement" from a party that isn't its customer but rather the party from which the dealer purchased the securities. The liquidation statement must be obtained before the sale of securities to another customer and confirm that the original selling customer fully and completely liquidated its below-minimum position.

By taking away the liquidation statement, the MSRB felt that another safeguard was needed for an existing exception under G-15 that says a dealer can sell a below-minimum amount of a bond to a customer if the sale is a result of another customer liquidating his or her entire position in the bonds.

It proposed a new “safeguard” that would prohibit a dealer engaged in an interdealer trade from selling less than all of a below-minimum position that the dealer acquired either from a customer that fully liquidated its below-minimum position or from another dealer. That prohibition would satisfy the MSRB’s goal by preventing the creation of additional below-minimum positions, the MSRB has said.

The other current exception to the MSRB’s minimum denomination rule would not be affected by the liquidation statement changes. That exception allows dealers to buy munis below the minimum denomination from customers if the dealer determines, based on the customer’s account information or written statement, that the customer is selling its entire position in the bonds.

SIFMA is asking the SEC to ensure that the MSRB’s proposed “safeguard” is removed before the rule is approved because it would limit interdealer transactions and hurt liquidity. Norwood added that it would also create concerns about the timing of sales or keep a dealer from pursuing a transaction if, for example, the dealer is selling a below-minimum denomination position and finds a customer without prior holdings in the securities to buy a portion of the below-minimum amount but then can’t locate customers with prior holdings to buy what’s left over.

“The benefits of the elimination of the liquidation statement … are completely outweighed by the negative impacts of limiting interdealer transactions,” Norwood wrote.

SIFMA also wants an amendment to the rule after determining that it can be read to prohibit breaking up a below-minimum position if the position is acquired from a customer but permits breaking up the position if it is acquired from a dealer.

“SIFMA and its members see no reason why there should be a prohibition on dealers selling the below-minimum denomination position to more than one customer if the position is acquired from a customer,” Norwood wrote. She included two separate alternatives to the MSRB’s current language that would clear up the group’s concerns.

The letter also includes a number of examples that illustrate the group’s point that prohibitions on breaking up positions acquired from customers and prohibitions on interdealer trades where the selling dealer breaks up its position could prevent transactions that would ultimately lower the number of minimum denomination positions in the market.

SIFMA is also asking that the MSRB require the filing of minimum denomination information on its EMMA system on all transactions and to clarify what “entire position” means for a customer that has more than one account with a firm.

The Bond Buyer

By Jack Casey

March 6, 2017

Deloitte Power & Utilities Quarterly Accounting Update Webinar - Q1, 2017

Tuesday, April 11
12:00 – 1:30 p.m. ET

Prepared by Deloitte & Touche LLP's Energy & Resources Group, this Quarterly Accounting update webinar will focus on technical accounting and regulatory issues in the Power & Utilities sector. Participants will learn about new accounting rules and other utility accounting matters, and use this knowledge to prepare for quarterly accounting and reporting requirements.

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TAX - FLORIDA

City of Largo v. AHF–Bay Fund, LLC

Supreme Court of Florida - March 2, 2017 - So.3d - 2017 WL 823607

City brought action against property owner, which was exempt from ad valorem taxes as non-profit operator of affordable housing, for failure to make annual payment under payments-in-lieu-of-taxes (PILOT) agreement.

The Circuit Court entered judgment in favor of city. Owner appealed. The District Court of Appeal reversed and remanded and certified question.

The Supreme Court of Florida held that:

- Affordable housing property exemption does not prohibit payment of ad valorem taxes that equal amount of taxes that would be due if property owner waived exemption and entered into contract;
- PILOT agreement was not void as contrary to public policy; and
- PILOT agreement did not violate state constitutional provision providing that cities could only impose taxes as permitted by law.

Statutory affordable housing property exemption does not expressly prohibit the payment of ad valorem taxes or payments that equal the amount of taxes that would be due if a property owner decides to waive the exemption and enter into a contractual agreement.

Payments-in-lieu-of-taxes (PILOT) agreement between city and property owner, under which owner that was exempt from ad valorem taxes as non-profit operator of affordable housing agreed to make annual payments to city in amount equal to portion of ad valorem taxes to which city would otherwise be entitled to receive for property if taxable, was not void as contrary to public policy. City and owner entered into voluntary agreement supported by valid consideration, parties agreed on method of calculating consideration for their agreement and performed their respective obligations for period of time, and contract supported public policy favoring affordable housing for low-income families by enabling owner to procure funding necessary for building of apartment complex.

Payments-in-lieu-of-taxes (PILOT) agreement between city and property owner, under which owner that was exempt from ad valorem taxes as non-profit operator of affordable housing agreed to make annual payments to city in amount equal to portion of ad valorem taxes to which city would otherwise be entitled to receive for property if taxable, did not violate state constitutional provision providing that cities could only impose taxes as permitted by law. Payments negotiated by city and owner were not taxes, as city did not act by sovereign right in entering into agreement, since its decision to accept owner's offer and enter into agreement was proprietary, as opposed to unilateral act by sovereign right for purpose of supporting government functions, and city's obligation under agreement was not citywide.

[Ex-NY Area Development Official Pleads Guilty in Landmark Municipal Bond Case.]

(Reuters) – A former suburban New York development corporation director pleaded guilty to defrauding investors on Tuesday, marking what prosecutors said was believed to be the first-ever conviction for federal securities fraud in connection with municipal bonds.

Aaron Troodler, 42, former executive director of the Ramapo Local Development Corp in Ramapo, New York, pleaded guilty to securities fraud and conspiracy before U.S. District Judge Cathy Seibel in White Plains, New York, according to prosecutors.

Troodler is scheduled to be sentenced on Sept. 18. The securities fraud charge carries a maximum sentence of 20 years.

Joseph Poluka, an attorney for Troodler, declined to comment.

Troodler was charged last April along with Christopher St. Lawrence, Ramapo's elected supervisor. U.S. Attorney Preet Bharara at the time said the case was the first criminal securities fraud case over municipal bonds.

Prosecutors said Ramapo and the development corporation, which was established and owned by the town, together sold more than $150 million of bonds while Troodler and St. Lawrence concealed the town's deteriorating finances.

The town's financial woes were largely due to a $58 million minor league ballpark project, prosecutors said. The park, originally called Provident Bank Park and now Palisades Credit Union Park, is home to the Rockland Boulders.

Although Ramapo residents rejected a plan to guarantee bonds used to finance the park in a 2010 referendum, and St. Lawrence told residents that no public money would be used to pay for the project, Ramapo ended up paying more than half the cost, according to prosecutors.

Troodler and St. Lawrence falsified the town's finances to help sell the bonds, including by putting millions in fake receivables on its books, prosecutors said.

St. Lawrence is scheduled to go to trial in April. He and Troodler also face civil claims by the U.S. Securities and Exchange Commission.

The probe of the finances of Ramapo, which is 28 miles northwest of New York City and had 126,595 residents as of the 2010 census, began with a whistleblower complaint, according to Bharara.

The Federal Bureau of Investigation searched Ramapo's municipal offices in May 2013 after an audit by New York's state comptroller criticized the funding of the stadium and the cost to taxpayers.

By REUTERS

MARCH 7, 2017, 6:24 P.M. E.S.T.

(Reporting By Brendan Pierson in New York; Editing by Tom Brown)

SIFMA Statement on the ASCE 2017 Infrastructure Report Card.

Washington, DC, March 9, 2017 – SIFMA today issued the following statement from Michael Decker, managing director and co-head of SIFMA's Municipal Division, on the American Society of Civil Engineers 2017 Infrastructure Report Card:

"While showing some incremental progress towards improving our nation's infrastructure since the 2013 ASCE Report Card, the 2017 ASCE Report Card clearly shows the desperate need for a strong commitment to infrastructure investment, which will help spur job creation and economic growth. SIFMA strongly advocates that the tax exemption for municipal bond interest remain intact, so that it may continue to help America's cities and states boost their local economies through the construction of new projects such as roads, hospitals and schools. Meaningful public-private partnerships should also be a key component of any plan, as they will ease the burden on the cash-strapped federal government by leveraging our capital markets to create expanded financing options."

- SEC to Propose Issuer Disclosures on Bank Loans, Private Placements.
- SEC Proposes Rule Amendments to Improve Municipal Securities Disclosures.
- MSRB Draft Rules Would Clarify CUSIPs Needed for Private Placements.
- The Coming Transparency Wave: GASB 77
- Hawkins Advisory: Municipal Market Regulatory Update.
- IRS Publishes Population Figures for Housing Credit, Private Bonds.
- NFMA Municipal Analysts Bulletin.
- MSRB 2016 Fact Book.
- And finally, Great Moments in Misguided Linguistic (Pubic) Hair-Splitting, is brought to us this week by *Board of Liquor License Commissioners for Baltimore City v. Kougl*, in which Detective Fletcher Jackson of the Baltimore City Police Department's Special Enforcement Section, Vice Division, took it upon himself to conduct an undercover investigation at Club Harem, an adult entertainment establishment. During his investigation, one of the Club's employees, Jamaica Brickhouse, approached Detective Jackson and engaged him in conversation. "After introducing herself, Brickhouse exposed her breasts to Detective Jackson and invited him to touch them. He complied." While we appreciate your dutiful compliance, Detective, is it not the case that one complies with a directive and accepts an invitation? It remains a distinct possibility that Detective Jackson's busy – yet rewarding – work schedule will prevent him from delving further into this distinction.

PUBLIC RECORDS - KANSAS

State v. Great Plains of Kiowa County, Inc.

Court of Appeals of Kansas - February 10, 2017 - P.3d - 2017 WL 542051

County filed petition against non-profit hospital administrator, seeking to enforce Kansas Open Records Act. Both parties moved for summary judgment.

The District Court entered judgment in favor of county. Administrator appealed.

The Court of Appeals held that non-profit hospital administrator's financial records relating to hospital it leased from county board of trustees of hospital fell within statutory definition of public records. Board was statutorily required to maintain the financial records of the hospital, and, as a result of the lease and fact that board failed to maintain such records, administrator was the custodian of the public financial records.

MUNICIPAL ORDINANCE - MARYLAND

[Board of Liquor License Commissioners for Baltimore City v. Kougl]

Court of Appeals of Maryland - February 17, 2017 - A.3d - 2017 WL 660604

Liquor licensee filed for judicial review of decision of local liquor board finding that he violated rules relating to solicitation of prostitution and indecent exposure, and suspending his license for one month.

The Circuit Court affirmed. Licensee appealed, and the Court of Special Appeals reversed and remanded. Liquor board sought further review, which was granted.

The Court of Appeals held that local liquor board rules governing sexual conduct and prohibiting illegal conduct on licensed premises imposed strict liability on licensee for offending conduct that occurred on his premises.

Local liquor board rules governing sexual conduct and prohibiting illegal conduct on licensed premises imposed strict liability on licensee for offending conduct that occurred on his premises, despite requirement that licensee "suffer," "permit," or "allow" such violations; a licensee could "allow" prohibited conduct without knowledge that it was occurring, and could unknowingly "permit" conduct prohibited by the rules, and "suffer" did not impose a knowledge requirement.

ZONING & PLANNING - NEW JERSEEY

[In re Declaratory Judgment Actions Filed By Various Municipalities]

Supreme Court of New Jersey - January 18, 2017 - A.3d - 2017 WL 192895

After the Supreme Court declared the Council on Affordable Housing (COAH) defunct for failing to enact new regulations relating to construction of low- and moderate-income housing in municipalities for over 16 years, 13 municipalities filed declaratory judgment actions to ascertain their fair share obligation for affordable housing.

The cases were consolidated, and the Superior Court issued an interlocutory order regarding the municipalities' obligations relating to the need that arose during gap period. Township appealed, and the Superior Court, Appellate Division, reversed. Housing center sought leave to appeal, which was granted.

The Supreme Court of New Jersey held that:

- Municipalities were required to address need for low- and moderate-income housing that arose during period during which COAH failed to promulgate viable rules for construction of such housing;
- Towns were constitutionally obligated to provide a realistic opportunity for their fair share of

affordable housing for low- and moderate-income households formed during gap period and presently existing; and
- In determining municipal fair share affordable housing obligations after gap period, the trial courts were required to employ an expanded definition of present need.

In determining municipal fair share affordable housing obligations after 16-year period during which Council on Affordable Housing (COAH) failed to promulgate viable rules for construction of such housing, the trial courts was required to employ an expanded definition of present need. The present-need analysis was required to include, in addition to a calculation of overcrowded and deficient housing units, an analytic component that addressed the affordable housing need of presently existing low- and moderate-income households, which formed during the gap period and were entitled to their delayed opportunity to seek affordable housing, and the trial courts was also required to take care to ensure that the present need was not calculated in a way that included persons who were deceased, who were income-ineligible or otherwise were no longer eligible for affordable housing, or whose households may have been already captured through the historic practice of surveying for deficient housing units within the municipality.

UTILITIES - NEW YORK

Prometheus Realty Corp. v. New York City Water Bd.

Supreme Court, Appellate Division, First Department, New York - February 16, 2017 - N.Y.S.3d - 2017 WL 628338 - 2017 N.Y. Slip Op. 01263

Property owners brought Article 78 proceeding challenging municipal water board's annual 2.1 percent rate increase and its one-time bill credit to certain tax class following mayor's elimination of board's rental payments to municipality, seeking declaratory judgment that water board acted outside of its authority and jurisdiction, and order enjoining water board and water finance authority from enforcing rate increase and bill credit pending resolution of suit.

The Supreme Court, New York County, annulled and vacated water board's resolutions. Defendants appealed.

The Supreme Court, Appellate Division, held that:

- Board's adoption of rate increase and implementation of credit program distinguishing among different classes of customers was not ultra vires action, and
- Board acted in arbitrary, capricious, and unreasonable manner, when it authorized $183 credit to some, but not all, water customers at same time that it needed to increase overall water rates to fund projected budget shortfall for particular year.

Municipal water board's adoption of a rate increase and implementation of credit program distinguishing among different classes of customers was not ultra vires action, since board had broad statutory authority to set water rates.

Municipal water board acted in arbitrary, capricious, and unreasonable manner, when it authorized $183 credit to some, but not all, water customers at same time that it needed to increase overall water rates to fund projected budget shortfall for particular year. Even though board acted to provide some relief to keep water and sewer bills as low as possible to all one-family to three-family homes across municipality, rationale for designating class one property owners as qualified for or deserving of credit, but not other classes of property owners was lacking, and credit could not be reconciled with projected budget shortfall for year in which credit was given.

BONDS - PUERTO RICO

Lex Claims, LLC v. Garcia-Padilla

United States District Court, D. Puerto Rico - February 17, 2017 - F.Supp.3d - 2017 WL 657432

Bondholders filed suit against governor of Puerto Rico, seeking declaratory judgment that measures taken by Puerto Rico violated Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) and seeking injunction preventing enforcement of measures until PROMESA Financial Oversight and Management Board determined their propriety.

Governor moved to stay. Various entities moved to intervene.

The District Court held that:

- Counts alleged were not “other action or proceeding against the Government of Puerto Rico that was or could have been commenced before” enactment of PROMESA, within meaning of PROMESA’s automatic stay provision;
- Counts were not seeking “to recover a Liability Claim against the Government of Puerto Rico that arose before” enactment of PROMESA, within meaning of automatic stay provision;
- Counts were not “any act to obtain possession of property of the Government of Puerto Rico or of property from the Government of Puerto Rico or to exercise control over property of the Government of Puerto Rico,” within meaning of automatic stay provision;
- Counts were not “any act to create, perfect, or enforce any lien against property of the Government of Puerto Rico,” within meaning of automatic stay provision;
- Counts could not be stayed in exercise of court’s inherent authority;
- PROMESA Oversight Board could intervene as of right;
- Insurer could intervene as of right; and
- Possibility existed that existing party to action would not adequately represent respective interests various owners of general obligation bonds in differing amounts, and thus those owners could intervene as of right.

Count seeking order prohibiting enforcement of executive order halting payments on general obligation bonds and Puerto Rico Emergency Moratorium and Financial Rehabilitation Act which empowered Governor to issue executive orders, and count seeking order prohibiting diversion of revenues that Commonwealth collected from its Sales and Use Tax to Puerto Rico Sales Tax Financing Corporation, were not “other action or proceeding against the Government of Puerto Rico that was or could have been commenced before” enactment of Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), within meaning of PROMESA’s automatic stay provision. Although those counts implicated lawfulness of Commonwealth’s assignment of revenues, asserted legal premise underlying those counts was that executive order and Moratorium Act were preempted by PROMESA, and those claims could not have been raised prior to enactment of PROMESA because they sought to enforce specific provision of PROMESA.

Count seeking order prohibiting enforcement of executive order halting payments on general obligation bonds and Puerto Rico Emergency Moratorium and Financial Rehabilitation Act which empowered Governor to issue executive orders, and count seeking order prohibiting diversion of revenues that Commonwealth collected from its Sales and Use Tax to Puerto Rico Sales Tax

Financing Corporation and directing Corporation to transfer revenues to Commonwealth, were not seeking "to recover a Liability Claim against the Government of Puerto Rico that arose before" enactment of Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), within meaning of PROMESA's automatic stay provision, since "Liability Claim" was defined as right to payment or equitable remedy for breach of performance, and counts were not aimed at confiscating any property of, or obtaining any form of payment from, Commonwealth.

Count seeking order prohibiting enforcement of executive order halting payments on general obligation bonds and Puerto Rico Emergency Moratorium and Financial Rehabilitation Act which empowered Governor to issue executive orders, and count seeking order prohibiting diversion of revenues that Commonwealth collected from its Sales and Use Tax to Puerto Rico Sales Tax Financing Corporation and directing Corporation to transfer revenues to Commonwealth, were not "any act to obtain possession of property of the Government of Puerto Rico or of property from the Government of Puerto Rico or to exercise control over property of the Government of Puerto Rico," within meaning of automatic stay provision of Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), since relief on those counts would only preclude Commonwealth from dissipating its assets in manner that violated PROMESA.

Count seeking order prohibiting enforcement of executive order halting payments on general obligation bonds and Puerto Rico Emergency Moratorium and Financial Rehabilitation Act which empowered Governor to issue executive orders, and count seeking order prohibiting diversion of revenues that Commonwealth collected from its Sales and Use Tax to Puerto Rico Sales Tax Financing Corporation and directing Corporation to transfer revenues to Commonwealth, were not "any act to create, perfect, or enforce any lien against property of the Government of Puerto Rico," within meaning of automatic stay provision of Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), since counts had effect of precluding Commonwealth from continuing to spend and transfer its assets in manner that violated PROMESA.

Count seeking order prohibiting enforcement of executive order halting payments on general obligation bonds and Puerto Rico Emergency Moratorium and Financial Rehabilitation Act which empowered Governor to issue executive orders, and count seeking order prohibiting diversion of revenues that Commonwealth collected from its Sales and Use Tax to Puerto Rico Sales Tax Financing Corporation and directing Corporation to transfer revenues to Commonwealth, could not be stayed in exercise of court's inherent authority, since Congress did not intend in enacting Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) to stay all claims against Commonwealth for particular period of time and those counts were not stayed by express provisions of PROMESA that had been enacted by Congress.

Oversight Board under Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) could intervene as of right in action brought by holders of bonds against governor of Puerto Rico seeking declaratory judgment that measures taken by Puerto Rico violated PROMESA and seeking injunction preventing enforcement of measures until PROMESA Financial Oversight and Management Board determined their propriety, since Congress specifically stated that Oversight Board "may intervene in any litigation filed against the territory"; although Oversight Board failed to attach pleading to its motion to intervene, bondholders were not prejudiced.

Insurer could intervene as of right, in action brought by holders of bonds against governor of Puerto Rico seeking declaratory judgment that measures taken by Puerto Rico violated Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) and seeking injunction preventing enforcement of measures until PROMESA Financial Oversight and Management Board determined their propriety, on basis that it insured over $800 million of those bonds and would have to make payments to bondholders should Puerto Rico Sales Tax Financing Corporation default on its obligations. Although insurer was subrogated to rights of bondholders, there was reasonable likelihood that insurer would suffer direct economic harm if bondholders ultimately were successful.

Possibility existed that existing party to action brought by holders of bonds against governor of Puerto Rico seeking declaratory judgment that measures taken by Puerto Rico violated Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) and seeking injunction preventing enforcement of measures until PROMESA Financial Oversight and Management Board determined their propriety would not adequately represent respective interests various owners of general obligation bonds in differing amounts, as required for owners to be able to intervene as of right, since indenture trustee that allegedly represented those owners had moved to dismiss itself as defendant.

TAX - VERMONT

Vermont College of Fine Arts v. City of Montpelier

Supreme Court of Vermont - February 10, 2017 - A.3d ----2017 WL 562865 - 2017 VT 12

College brought action against city, seeking declaratory judgment that it was entitled to public schools or public use exemptions from property tax for its building, which was partially leased to the state during the years at issue.

The Superior Court granted summary judgment for city. College appealed.

The Supreme Court of Vermont held that:

- City’s board of civil authority was authorized to rule on tax-exempt status, and thus college was required to appeal to board;
- Supreme Court would address merits of college’s appeal, despite college’s failure to exhaust administrative remedies;
- College was permitted to apply for exemptions under multiple clauses of governing subsection;
- College was not entitled to public schools exemption; and
- College was not entitled to public use exemption.

City’s board of civil authority was authorized to rule on tax-exempt status, and thus college, in order to satisfy requirement that it exhaust administrative remedies before seeking a judicial remedy, was required to appeal to the board the city assessor’s decision finding college’s property did not qualify under public schools or public use exemptions from property tax; statute governing appeals to the board provided that the board would “hear and determine such appeals until all questions and objections [were] heard and decided.”

Supreme Court would address the merits of college’s claim that it was entitled to exemption from property tax under public schools or public use exemptions, notwithstanding college’s failure to exhaust administrative remedies by failing to appeal to city’s board of civil authority the city assessor’s finding that college was not entitled to exemption, where Court’s jurisprudence regarding exhaustion of administrative remedies in challenging the determination of tax exempt status under the public schools and public use exemptions was inconsistent.

College was permitted to apply for exemptions from property tax under multiple clauses of statute’s subsection governing public schools and public use exemptions; public schools exemption was separate and independent from public use exemption.

College was not entitled to public schools exemption from property tax for its building for years in which the state leased a portion of the building and the college used another portion for storage of equipment; neither the fact that the building had been used for educational purposes in the past, nor the possibility that it could be used for such purposes in the future, impacted the analysis, but rather the relevant test was the use of the property during the tax years in question.

College was not entitled to public use exemption from property tax for its building for years in which the state leased a portion of the building, where college's nonprofit ownership and state's use lacked concurrence, such that the two did not have a single mission.

SEC Takes First Step on Disclosure of Bank Loans to States, Localities.

States and municipalities looking to fund projects have been turning to loans from banks for cheaper finance in recent years

WASHINGTON—The Securities and Exchange Commission took a first step toward shedding light on loans from banks to states and localities that are increasingly being used to finance infrastructure projects, rather than issuing debt in public markets.

The SEC on Wednesday unanimously voted to propose new requirements that state and local governments disclose the details of the bank loans, helping to illuminate a corner of the nearly $4 trillion municipal-bond market where there is currently no consistent reporting.

States and localities looking to fund projects such as roads, schools and bridges are turning to bank loans for cheaper financing in recent years. Such loans total roughly $40 billion to $50 billion in annual issuance, according to consulting firm Municipal Market Analytics. Bank loans are cheaper than issuing debt in the public markets in part because they don't require a rating, which can cost a municipality tens of thousands of dollars, and typically don't carry the same disclosure requirements.

Investors currently "may have limited access, or substantially delayed access, to information about these nonpublic financings," SEC commissioner Kara Stein, a Democrat, said ahead of the vote.

Wednesday's uncontroversial proposal is among a handful of measures the SEC is able to advance despite its depleted ranks. The agency is operating with two commissioners, three fewer than its full complement, in the early days of the Trump administration.

Jay Clayton, President Donald Trump's pick to head the agency on a full-time basis, is awaiting Senate confirmation. The SEC's acting chief is Republican Commissioner Michael Piwowar. The other current commissioner is Ms. Stein.

Unlike publicly traded corporations, borrowers in the municipal-bond market are exempt from requirements to file documents with the SEC before they sell bonds and file updates on a regular basis. As a result, the SEC regulates municipal-debt disclosures only indirectly through banks, prohibiting them from underwriting the bonds unless the issuer enters into private disclosure agreements with investors.

Wednesday's move expands an existing list of "material events" that municipal borrowers agree to disclose on a continuing basis after the issuance of their debt.

Under the proposal, the list would expand to include a requirement to disclose the terms of any bank loans or other financial obligations borrowers may have entered into with a bank outside the public markets. In addition to bank loans, the requirement would also encompass the details of any swaps contracts municipalities enter into to, for instance, hedge against interest-rate changes.

States and localities would also have to disclose if they default, terminate or accelerate the payment of these financial obligations.

Currently, the list encompasses more than a dozen events ranging from payment delinquencies to ratings changes.

The SEC will seek public comment on Wednesday’s proposal for 60 days. After the comment period, the agency would have to vote on the measure before it could go into effect.

In addition to the bank-loan proposal, the SEC separately voted to collect public feedback on whether to update its disclosure requirements for bank holding companies for the first time in more than 30 years, though the agency stopped short of proposing specific changes.

The SEC also voted on a third proposal aimed at requiring the use of the so-called inline XBRL format for corporate financial data and certain mutual fund information.

Yet another measure the SEC finalized is aimed at making it easier for investors to find access exhibits to corporate filings, requiring companies to include a hyperlink to each exhibit in the filing’s exhibit index.

THE WALL STREET JOURNAL

By ANDREW ACKERMAN

Updated March 1, 2017 2:50 p.m. ET

Write to Andrew Ackerman at andrew.ackerman@wsj.com

SEC to Propose Issuer Disclosures on Bank Loans, Private Placements.

WASHINGTON – The Securities and Exchange Commission is set to propose changes that would require issuers and borrowers to disclose information about the growing number of alternative financial obligations to municipal bonds, such as bank loans, private placements, swaps, guarantees and leases.

Acting Chairman Michael Piwowar, a Republican, and Commissioner Kara Stein, a Democrat, voted on Wednesday to propose adding two new material events to the list of events that must be disclosed by issuers and borrowers under the SEC’s muni disclosure Rule 15c2-12. The proposed amendments could be on the SEC’s Wednesday or Thursday this week and published in the Federal Register next week. There will likely be a 60-day comment period after that, sources said.

While muni issuers and borrowers must contractually agree to disclose financial and operating data at least annually as well as notices of material events when they occur in order for firms to underwrite and sell their bonds under Rule 15c2-12, other financial obligations fall outside of that disclosure regime.

In many cases, credit analysts and other market participants either have no information about bank loans, private placements and swaps or do not have information on a timely basis, even though these obligations can affect the issuer's indebtedness, creditworthiness and liquidity.

Currently the SEC has 14 specified material events as well as a requirement for issuers to disclose if they have failed to meet their disclosure filing requirements within the last five years. These two amendments would make 16 specified events.

The proposed amendments also set forth a definition for the term "financial obligation."

The first amendment would require issuers and borrowers to file material event notices when they enter into certain financial obligations, if they are material. They must all file such notices if for those obligations they adopt agreements to covenants, events of default, remedies, priority rights or similar terms of obligations that could affect security holders, if material.

The second one would require material event notices to be filed when certain events are triggered such as acceleration of the debt, terminations, modifications, or other actions or terms indicating financial difficulties.

In discussing the proposals at the commission meeting, Piwowar noted that issuers' use of alternatives to publicly offered municipal bond financings, such as bank loans, have more than doubled since the financial crisis. Bank loans increased to $153 billion in 2015 from $67 billion in 2010, he said.

Both he and Jessica Kane, director of the SEC's Office of Municipal Securities, said that these alternative financial obligations can impact an issuer's indebtedness, creditworthiness and liquidity, creating risks for its existing muni bondholders.

Market participants said these disclosures are needed, but that they want to see the details of what the SEC is proposing.

"We have asked the SEC previously to require the disclosure of bank loan and private placement terms that could affect outstanding bondholders so in that respect we're happy with today's commission action," said Michael Decker, managing director and co-head of the municipal division for the Securities Industry and Financial Markets Association. "We need to look at the details of the proposal to ensure it's comprehensive and workable. We'll be looking at the rule from the perspective of dealer due diligence and whether dealers can efficiently determine when issuers are in compliance with previous disclosure agreements."

Ernie Lanza, senior counsel at Clark Hill and former Municipal Securities Rulemaking Board general counsel, said, "The definition of financial obligation is important to see what scope of arrangements will be covered and whether [the term] is well-defined or open to interpretation."

Jessica Giroux, general counsel and managing director of Bond Dealers of America, said, "Since the market has continued to see challenges in the area of disclosure, we support the concept of these amendments to improve market transparency. Once the rule text is available, our membership will review the details and will submit a comment letter to the SEC."

Emily Brock, director of the Government Finance Officers Association's federal liaison center, said GFOA called for issuers to disclose bank loans in its best practice "Understanding Bank Loans" but has concerns about mandating such disclosures.

"We recognize that bank loans, which are an important financing tool in a government's financing toolkit, may be executed in an environment that is not as transparent as the public bond market," she said. "For that reason, the GFOA remains engaged in independent and municipal market coalition efforts to improve voluntary disclosure of bank loans and have significant concerns with the process and procedural effect of mandatory disclosure. We plan to issue comments on these particular rule amendments to 15c2-12."

The Bond Buyer

By Lynn Hume

March 1, 2017

SEC Proposes Rule Amendments to Improve Municipal Securities Disclosures.

Washington D.C., March 1, 2017 — The Securities and Exchange Commission (SEC) today voted to propose rule amendments to improve investor protection and enhance transparency in the municipal securities market.

Rule 15c2-12 under the Securities Exchange Act of 1934 requires brokers, dealers, and municipal securities dealers that are acting as underwriters in primary offerings of municipal securities subject to the Rule, to reasonably determine, among other things, that the issuer or obligated person has agreed to provide to the Municipal Securities Rulemaking Board (MSRB) timely notice of certain events. The amendments proposed by the SEC today would add two new event notices:

> – Incurrence of a financial obligation of the issuer or obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the issuer or obligated person, any of which affect security holders, if material; and
>
> – Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the financial obligation of the issuer or obligated person, any of which reflect financial difficulties.

"Today the SEC took steps to empower investors by improving their access to current information about the financial obligations incurred by municipal issuers and conduit borrowers," said SEC Acting Chairman Michael S. Piwowar.

These proposed amendments would provide timely access to important information regarding certain financial obligations incurred by issuers and obligated persons that could impact such entities' liquidity and overall creditworthiness.

The public comment period will remain open for 60 days following publication of the proposing release in the Federal Register.

* * *

FACT SHEET
SEC Open Meeting
March 1, 2017

Action

The Commission will consider whether to propose amendments designed to better inform investors and other market participants about the current financial condition of issuers of municipal securities and obligated persons. Specifically, the proposed amendments would facilitate timely access to important information regarding certain financial obligations incurred by issuers and obligated persons, which could impact an issuer's or obligated person's liquidity and overall creditworthiness and create risks for existing security holders.

Highlights

The proposed amendments to Exchange Act Rule 15c2-12 would amend the list of event notices that a broker, dealer, or municipal securities dealer acting as an underwriter in a primary offering of municipal securities subject to the Rule must reasonably determine that an issuer or obligated person has undertaken, in a written agreement for the benefit of holders of municipal securities, to provide to the Municipal Securities Rulemaking Board within ten business days of the event's occurrence.

Specifically, the proposed amendments would add two new events to the list included in the Rule:

Incurrence of a financial obligation of the issuer or obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the issuer or obligated person, any of which affect security holders, if material; and

Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the financial obligation of the issuer or obligated person, any of which reflect financial difficulties.
The proposed amendments also would set forth a definition for the term "financial obligation."

Background

Adopted in 1989, Rule 15c2-12 is designed to address fraud and manipulation in the municipal securities market by prohibiting the underwriting of municipal securities and subsequent recommendation of those municipal securities by brokers, dealers, and municipal securities dealers for which adequate information is not available.

What's Next

The Commission will seek public comment on the proposed amendments to Rule 15c2-12 for 60 days following publication in the Federal Register.

MSRB Statement on SEC Proposal to Improve Bank Loan Disclosure.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today endorsed the Securities and Exchange Commission (SEC) for proposing regulatory changes to improve the content and timeliness of disclosure of information about bank loans and other alternative financings entered into by issuers of municipal securities. At its March 1, 2017 open meeting, the SEC voted to advance a proposal to amend Rule 15c2-12 under the Securities Exchange Act of 1934 to include two required event disclosures related to bank loans.

“The MSRB is very pleased at the SEC’s action on bank loan disclosure,” said MSRB Executive Director Lynnette Kelly. “The MSRB has supported improved disclosure as a way of addressing risks posed to municipal bondholders of additional financial obligations of a bond issuer and their impact on its outstanding debt.” These risks include terms and conditions of alternative financings that may require the acceleration of debt repayment if the borrower encounters financial stress or the dilution of a bondholders’ security position if a bank loan is on parity with or senior to other outstanding debt.

Since 2012, the MSRB has advocated for voluntary bank loan disclosure by municipal securities issuers through its Electronic Municipal Market Access (EMMA®) website. “We strongly encourage state and local governments to voluntarily disclose information about bank loans and other alternative financings on EMMA,” Kelly said. “These disclosures can provide bondholders, potential investors and other market participants access to key information useful in assessing their current holdings of municipal securities or in making investment decisions.”

Read more about bank loan disclosures and the resources the MSRB makes available to municipal securities issuers seeking to make voluntary disclosures.

Date: March 1, 2017

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1500
jgalloway@msrb.org

MSRB Draft Rules Would Clarify CUSIPs Needed for Private Placements.

WASHINGTON – The Municipal Securities Rulemaking Board has drafted rule amendments that would clarify that dealers must obtain CUSIP numbers for private placements, including direct purchases when the dealer is acting as a placement agent.

The draft amendments to Rule G-34 on “CUSIP Numbers, New Issue and Market Information Requirements” would also subject non-dealer municipal advisors to CUSIP requirements when acting as financial advisors for munis sold in competitive offerings.

Additionally, the amendments would also remind dealers that they have to obtain CUSIP numbers for secondary market securities.

The board is requesting public comments on the draft amendments, which include definitional and technical changes as well, and has asked for the comments to be submitted by March 31.

The MSRB said it will decide whether to proceed with, or reconsider, the draft amendments based on the comments.

“It’s important that we clarify and remind dealers of their obligations under Rule G-34, and that we require all municipal advisors to follow the same obligations on new issue transactions,” MSRB Executive Director Lynnette Kelly said Thursday. “Great clarity and consistency of regulations on obtaining CUSIP numbers will improve market efficiency and transparency.”

In its 21-page release, the board said, that it “believes that these draft amendments will provide a range of benefits, including reducing investor risk and regulatory uncertainty. However, the draft amendments may impose some costs on firms or require them to revise certain business practices."

The board asked commenters for estimates of the costs of the amendments, but said it "assumes that [the costs] will be significantly less than the benefits that will accrue over time to investors as well as the market as a whole."

The release said the MSRB drafted the amendments after learning that there have been industry questions about the application of CUSIP number requirements for private placements of municipal securities. Some industry participants, such as banks in direct purchase transactions, do not appear to believe that CUSIP numbers are required with respect to muni securities, the board said. There also appears to be some uncertainty regarding the application of CUSIP Number requirements for secondary market securities, where the characteristics of a muni issue have been altered such as through a remarketing or the purchase of insurance on part of the issue.

In addition, the MSRB has been worried about a regulatory imbalance between dealer and non-dealer municipal advisors since the adoption of Dodd-Frank Act, which put non-dealer MAs under federal regulation for the first time. It has become industry practice in competitive offerings, in some cases, for the issuer to let the dealer financial advisor obtain the CUSIP numbers for the bonds so they can be readily sold after the bonds are awarded. Some issuers appear to have tried to go around dealers and used non-dealer MAs to avoid getting CUSIP numbers. The MSRB amendments would impose on non-dealer MAs the same requirements as dealer MAs in competitive offerings to obtain CUSIP numbers.

The release asks commenters to answer several questions such as whether the proposed amendment to the definition of "underwriter" in G-34 is sufficient to clarify that CUSIP numbers are needed in private placements as well as public offerings. Is there another more effective way to achieve this result? the board asked.

The MSRB asked if the industry understands that mode changes in a remarketing do not require a new CUSIP number as long as the entire maturity of a particular CUSIP number changes in the same way?

The board also asked whether issuers would forgo working with either dealers or non-dealer MAs in certain circumstances to avoid the CUSIP numbering requirements.

The Bond Buyer

By Lynn Hume

March 1, 2017

MSRB Seeks Comment on Draft Amendments to and Clarifications of Rule on CUSIP Numbers.

Read the Request for Comment.

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